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# Government Releases Derivative Regulations on the Taxation Cluster of Job Creation Law and Incentive Policies for Cooperatives and MSMEs

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Published every two weeks, DDTC Newsletter provides a summary of key tax law changes, both the current modifications and changes in taxation regulations, particularly those pertaining to domestic policies.

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# Government Releases Derivative Regulations on the Taxation Cluster of Job Creation Law and Incentive Policies for Cooperatives and MSMEs

## Derivative Regulation on the Taxation Cluster of Job Creation Law

### Meet Our Experts



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The government has released a new policy regarding tax treatment to support ease of doing business. This policy is outlined in Government Regulation No. 9 of 2021 concerning Tax Treatment to Support Ease of Doing Business (Gov. Reg. 9/2021). This regulation has been formulated to implement and concurrently outline the tax provisions regulated under Law No. 11 of 2021 concerning Job Creation (Job Creation Law).

The provisions on the tax treatment to support ease of doing business in this regulation are outlined in the following seven chapters.

***Chapter one,*** contains general provisions governing general terms. In addition to the definitions, the first chapter of this regulation emphasizes that the tax treatment regulated under Gov. Reg. 9/2021 includes the areas of income tax (PPh), value added tax (PPN), and general tax provisions and procedures (*Ketentuan Umum dan Tatacara Perpajakan*/KUP).

***Chapter two,*** this regulation stipulates the principles of tax treatment to support the ease of doing business in the field of income tax. Broadly speaking, this chapter confirms the Article 26 Income Tax treatment on interest. The Article 26 Income Tax policy on interest includes interest, premium, discount, and compensation in connection with the guarantee of debt repayment received by non-resident taxpayers other than permanent establishments (*Bentuk Usaha Tetap*/BUT) subject to a final income tax rate of 20%.

The rate can be reduced to 10% or adjusted to the provisions under a Tax Treaty (*Persetujuan Penghindaran Pajak Berganda*/P3B). The rate reduction, however, only applies to bond interest income received by non-resident taxpayers other than PEs. Bond interest includes the following three types of bonds:

(i) interest on interest-bearing bonds equal to the gross amount of interest in accordance with the term of ownership of the bonds;

(ii) discount on interest-bearing bonds equal to the difference in selling price or nominal value above the cost of the bonds, excluding accrued interest; and

(iii) discount on non-interest-bearing bonds amounting to the difference between the selling price or the nominal value above the cost of the bonds.

The parties acting as Article 26 Income Tax withholding agents on bond interest income are custodians, securities companies, dealers, or banks. The provisions on Article 26 Income Tax on bond interest also apply to bonds issued under sharia principles. The provision of Article 26 Income Tax on bond interest comes into effect 6 months after the enactment of this regulation, i.e. as of 2 August 2021.

***Chapter three,*** contains changes to the provisions in Government Regulation No. 94 of 2010 concerning the Calculation of Taxable Income and Payment of Income Tax in the Current Year (Gov. Reg. 94/2010) as amended by Government Regulation No. 45 of 2019 (Gov. Reg. 45/2019). Through this regulation, the government has added a new article in Gov. Reg. 94/2010 as amended by Gov. Reg. 45/2019, i.e. Article 2A.

The provisions in Article 2A regulate exemptions of income in the form of dividends or other income from income tax objects. These exemptions apply to dividends or other income received or earned by resident individual and corporate taxpayers since the enactment of the Job Creation Law. Other income referred to in Article 2A is after-tax income from a Permanent Establishment (PE) abroad and foreign-sourced active income not through a PE.

On the other hand, dividends that are exempted from income tax objects are dividends distributed based on a general meeting of shareholders or interim dividends, including similar meetings and similar dividend distribution mechanisms. Dividends on which Income Tax is not withheld are referred to in Article 4 paragraph (3) paragraph f subparagraph 1 of the Income Tax Law. However, in the event that a resident individual taxpayer does not meet the investment requirements, the dividends will be subject to income tax when the dividends are received. Income tax becomes payable on dividends received by the resident individual taxpayer must be self-remitted as per the provisions of the minister of finance regulations.

***Chapter four***, amendments to Government Regulation No. 1 of 2012 concerning the Implementation of Law No. 8 of 1983 concerning Value Added Tax on Goods and Services and Sales Tax on Luxury Goods as amended several times, most recently by Law No. 42 of 2009 (Gov. Reg. 1/2012).

The amendments to Gov. Reg. 1/2012 include several things, including:

(i) the referred to VAT, Income Tax, and KUP Laws are the result of amendments in Job Creation Law;

(ii) addition of several terms in Gov. Reg. 1/2012;

(iii) expansion of the category which did not include the definition of supplies of Taxable Goods (*Barang Kena Pajak*/BKP), it now also includes transfers of BKP for the purpose of capital payment in replacement of shares to the entity;

(iv) deletion of Article 16 which regulates the provisions on input VAT crediting on capital goods by Taxable Persons for VAT Purposes (*Pengusaha Kena Pajak*/PKP) that are not yet in production;

(v) confirmation of when VAT and STLGs become payable;

(vi) additional provisions for BKP in the context of merger, consolidation, expansion, split-off, and taking over of a business, as well as the transfer of BKP for the purpose of capital payment in replacement of shares;

(vii) additional provisions on when a supply of BKP in the form of movable goods by consignment becomes payable;

(viii) updates on the terms of tax invoice issuance;

(ix) affirmation of the provisions on the information in the tax invoice which now requires the inclusion of a Single Identity Number (*Nomor Induk Kependudukan*/NIK) or passport for buyers that do not have a Taxpayer Identification Number (*Nomor Pokok Wajib Pajak*/NPWP); and

(x) expansion of the definition of Retail Trade Taxable Enterprise (*Pengusaha Kena Pajak Pedagang Eceran*/PKP PE) which now also includes supplies through Trade Through Electronic Systems (*Perdagangan Melalui Sistem Elektronik*) and the deletion of details of PKP PE criteria.

***Chapter five,*** contains changes in the provisions on KUP for ease of doing business. The amendments to the provisions on KUP constitute amendments to several provisions in Government Regulation No. 74 of 2011 concerning Procedures for the Implementation of Taxation Rights and Fulfillment of Taxation Obligations (Gov. Reg. 74/2011). Several amended points in Gov. Reg. 74/2011 include:

(i) the referred to KUP Law is the result of amendments to Job Creation Law;

(ii) the administrative penalty in the form of a 150% fine for taxpayers that voluntarily disclose their erroneous acts in writing before the investigation is notified to the public prosecutor is reduced to 100%;

(iii) affirmation of the provisions on the disclosure of taxpayers' erroneous acts;

(iv) details of provisions on bookkeeping or recording for individual taxpayers that perform businesses or independent personal services and for corporate taxpayers;

(v) revisions on the provisions on the suspension of audits, resuming of suspended audits, termination of suspended audits;

(vi) revisions on the provisions on the basis for the issuance of Notice of Tax Underpayment Assessment (*Surat Ketetapan Pajak Kurang Bayar*/SKPKB) after the expiration of tax assessment;

(vii) provisions on the issuance of Notice of Additional Tax Underpayment Assessment (*Surat Ketetapan Pajak Kurang Bayar Tambahan*/SKPKBT) based on the results of repeated audits and the elimination of provisions on the issuance of SKPKBT after the expiration of tax assessment;

(viii) elimination of administrative penalties in the form of 48% interest on the total unpaid or underpaid taxes in SKPKB issued after the expiration of taxes;

(ix) adjustments to the provisions on the results of audits or repeated audits;

(x) adjustments to the provisions on the issuance of Notice of Tax Assessment (*Surat Ketetapan Pajak*/SKP) and/or Notice of Tax Collection (*Surat Tagihan Pajak*/STP);

(xi) deletion of provisions relating to administrative penalties for negligence;

(xii) deletion of Article 44, which contains interest compensation under several conditions;

(xiii) details of the provisions on interest compensation given based on the monthly interest rate stipulated by the Minister of Finance based on the reference interest rate;

(xiv) adjustment to the provisions on preliminary investigations;

(xv) the administrative penalty related to investigations terminated at the request of the Minister of Finance, which were originally a fine of four times the amount of underpaid taxes is now reduced to three times the amount of underpaid taxes;

(xvi) provisions on the use of certified and non-certified electronic signatures; and

(xvii) provisions on the Director General of Taxes' authority in issuing decisions or decrees in the electronic form.

***Chapter six,*** transitional provisions on the implementation of taxation. *First*, income tax withholding on bond interest income received by non-resident taxpayers other than PEs for up to 6 months since this regulation takes effect complies with the provisions under Government Regulation No. 16 of 2009 concerning Income Tax on Income in the Form of Bond Interest (Gov. Reg. 16/2009) as amended by Government Regulation No. 55 of 2019 (Gov. Reg. 55/2009).

*Second,* PKP other than PKP PE that prepares tax invoices without including the identity of the BKP buyer or JKP recipient according to the new provisions up to 30 days after this regulation comes into effect, will not be subject to administrative penalties.

*Third,* for notices of tax assessment (*Surat Ketetapan Pajak*/SKP) or notices of tax collection (*Surat Tagihan Pajak*/STP) issued since 2 November 2020 and contain administrative penalties in the form of interest of which the calculation starts before 2 November 2020, administrative penalties according to the reference interest rate based on the Minister of Finance Decree regarding interest rates as the basis for calculating penalties and interest compensation shall be valid for November 2020. Similarly, for the disclosure of incorrect filing of Tax Returns submitted since 2 November 2020, the calculation of administrative penalties begins before 2 November 2020.

*Fourth,* for the disclosure of erroneous acts as referred to in Article 8 paragraph (3) of KUP Law and the request to terminate tax crime investigations at the request of the Minister of Finance since 2 November 2020, the imposition of administrative penalties are in accordance with the provisions of KUP Law as amended by Job Creation Law. *Fifth,* the administrative penalties imposed through STPs issued for PKP that do not issue tax invoices or do not complete tax invoices will be subject to an administrative penalty of 1% in accordance with the provisions of KUP as amended by Job Creation Law.

*Sixth,* the interest compensation issued since 2 November 2020 and the calculation of interest compensation starting before 2 November 2020, is calculated using the interest rate in accordance with the reference rate for the granting of interest compensation in effect in November 2020.

*Seventh,* for repayments of input VAT that has been refunded or credited by PKP that does not supply and/or export BKP and/or JKP which have not been performed up to 2 November 2020, a Notice of Tax Underpayment Assessment (*Surat Ketetapan Pajak Kurang Bayar*/SKPKB) shall be issued for the input VAT as per the provisions under KUP Law as amended by Job Creation Law.

*Eighth,* for interest compensation that should not have been granted and has not been repaid by the taxpayer until 2 November 2020, the interest compensation is collected through a Notice of Tax Collection and is imposed as per KUP Law as amended by Job Creation Law.

***Chapter seven,*** contains the closing provisions which state that Government Regulation No. 19 of 2009 concerning Income Tax on Dividends Received or Earned by Resident Individual Taxpayers (Gov. Reg. 19/2009) remains valid insofar as it does not conflict with this regulation. Promulgated on 2 February 2021, this regulation has taken effect thereafter.

## Taxpayers Obliged to Electronically Prepare Unification Withholding Tax Receipts and Unification Periodic Income Tax Returns

### Meet Our Experts



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The Directorate General of Taxes officially stipulates taxpayers registered at five Tax Offices (*Kantor Pelayanan Pajak*/KPP) in the Special Capital Region of Jakarta as income tax withholding agents required to prepare 'unification withholding tax receipts' and file 'Unification Periodic Income Tax Returns' in the form of electronic documents.

The five tax offices include Central Jakarta Medium Tax Office, South Jakarta I Medium Tax Office, Jakarta Gambir Tiga Small Tax Office, Jakarta Gambir Empat Small Tax Office, and Jakarta Kebayoran Baru Empat Small Tax Office.

This stipulation is outlined in the Director General of Taxes Decree No. KEP-20/PJ/2021 concerning the Stipulation of Taxpayers as Income Tax Withholding Agents Required to Prepare Unification Withholding Tax Receipts and File Unification Periodic Income Tax Returns (KEP-20/2021).

Taxpayers stipulated under KEP-20/2021 include taxpayers that have met the criteria as income tax withholding agents required to produce unification withholding tax receipts and file unification periodic income tax returns in the form of electronic documents. This is based on the Director General of Taxes Regulation No. PER-23/PJ/2020 concerning the Form and Procedures for the Preparation of Unification Withholding Tax Receipts and the Form, Content, Procedures for the Completion, and Filing of Unification Income Periodic Tax Returns (PER-23/PJ/2020).

Unification periodic income tax returns refer to periodic tax returns used by income tax withholding agents to report the obligation to withhold and/or collect income tax, remit income tax withholding and/or collection, and/or self-remittance of several types of income taxes in one tax period. Unification periodic income tax returns include five types of income taxes, i.e. Article 4 paragraph (2) Income Tax, Article 15 Income Tax, Article 22 Income Tax, Article 23 Income Tax, and Article 26 Income Tax.

Unification withholding tax receipts, on the other hand, refer to documents in standard format or other equivalent documents prepared by an income tax withholding agent as evidence of the income tax withholding and shows the amount of income tax that has been withheld/collected. There are two forms of unification withholding tax receipts and unification periodic income tax returns, i.e. the paper form and electronic document.

As per the provisions under PER-23/2020, unification withholding tax receipts and unification periodic income tax returns in the form of electronic documents are prepared and filed through the unification e-Bupot application. Unification withholding tax receipts and unification periodic income tax returns in the form of electronic documents are used by income tax withholders/collectors that meet the following five criteria:

(i) the amount of withheld/collected income tax is nil due to the presence of Certificate of Exemption (*Surat Keterangan Bebas*/SKB);

(ii) the transaction is performed with a taxpayer that has a confirmed Certificate of Gov. Reg. No. 23 of 2018;

(iii) Article 26 Income Tax is withheld based on provisions under a Tax Treaty (*Persetujuan Penghindaran Pajak Berganda*/P3B) which is indicated by the receipt of a Certificate of Domicile (*Surat Keterangan Domisili*/SKD) of a non-resident taxpayer as per statutory provisions in the taxation sector;

(iv) income tax payable is borne by the government as per statutory provisions in the taxation sector; or

(v) withheld or collected and/or self-remitted income tax is provided with income tax facilities as per statutory provisions in the taxation sector.

The obligation to prepare unification withholding tax receipts and file unification periodic income tax returns in the form of electronic documents will be implemented starting from the February 2021 tax period. However, for taxpayers that file their tax returns through the Tax Application Service Providers (*Penyedia Jasa Aplikasi Perpajakan*/PJAP) webpage, this obligation shall be carried out from the March 2021 tax period.

KEP-20/2021 also stipulates that in the event a taxpayer registered at a tax office as an income tax withholder/collector moves to another tax office, the obligation to prepare the unification withholding tax receipts and file unification period income tax returns in the form of electronic documents remains valid.

Moreover, KEP-20/2021 states that taxpayers stipulated through this decree are no longer obliged to produce withholding tax receipts and file periodic income tax returns based on the following two regulations:

(i) the Director General of Taxes Regulation No. PER-53/PJ/2009 concerning the Form of Periodic Article 4 Paragraph (2) Final Income Tax Returns, Periodic Article 15, Article 22, Article 23, and/or Article 26 Income Tax Returns, as well as the Withholding Tax Receipts (PER-53/2009); and

(ii) the Director General of Taxes Regulation No. PER-04/PJ/2017 concerning the Form, Contents, Procedures for the Completion and Filing of Periodic Article 23 and/or Article 26 Income Tax Returns, as well as the Form of Article 23 and/or Article 26 Withholding Tax Receipts (PER-04/2017).

This Director General of Taxes decree has come into force as of the promulgation date on 22 January 2021. In the event of any errors in this Director General of Taxes decree, they shall be corrected accordingly.

## Tax Policy for Cooperatives and MSMEs

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The government has released policies related to the empowerment of cooperatives and micro, small and medium enterprises (MSMEs). These policies are outlined in Government Regulation No. 7 of 2021 concerning the Ease, Protection, and Empowerment of Cooperatives and Micro, Small, and Medium Enterprises (Gov. Reg. 7/2021). These policies, in essence, have been released to facilitate administration and tax incentives for cooperatives and MSMEs.

Several incentives are provided for cooperatives and MSME business players. *First*, incentives and ease of doing business in the framework of partnerships provided by the central government and local governments. This incentive is given to partnerships among medium and large enterprises with cooperatives, micro, and small enterprises. This partnership incentive program provides incentives to both partners, large and medium enterprises, as well as cooperatives, micro, and small enterprises.

The incentives in the framework of partnerships may take the form of reduction or relief of regional taxes and/or reduction or relief of local retributions. In this partnership incentive scheme, micro and small enterprises may also be given other incentives, i.e. (i) the provision of capital assistance to micro, small enterprises, and/or cooperatives; (ii) assistance for research and development for micro, small enterprises, and/or cooperatives; (iii) vocational training facilities

for micro enterprises, small enterprises, and/or cooperatives; and/or (iv) loan interest subsidies on program credits.

For medium and large enterprises, however, special provisions must be met to take advantage of these incentives. These special provisions include: (i) innovating and developing export-oriented products; (ii) absorbing local labor; (iii) using appropriate and eco-friendly technology; (iv) providing education and training for micro and small enterprises; (v) providing assistance for micro and small enterprises; (vi) involving micro and small enterprises in expanding market access.

*Second,* the ease/simplification of tax administration for micro and small enterprises. The ease or simplification of tax administration is aimed at facilitating the submission of financing facilities from the central government.

*Third,* income tax incentives for micro and small enterprises. The income tax incentives are given based on a single database that will be developed by the ministry in the field of cooperatives and MSMEs. The single database will be established by collecting, examining, and managing data according to MSME data standards.

*Fourth,* incentives in the form of reduction, relief, or exemption from local taxes and/or local retributions. The incentives for local taxes and retributions include Land and Building Tax in the Rural and Urban Sectors (*Pajak Bumi dan Bangunan Sektor Pedesaan dan Perkotaan*/PBB-P2), Land and Building Transfer Duty (*Bea Perolehan Hak atas Tanah dan Bangunan*/BPHTB), and regional retributions.

There are certain criteria for micro and small enterprises to take advantage of local tax and local retribution incentives. The criteria include:

(i) having just started production or operation

(ii) business turnover of a maximum of IDR 7,500,000,000

(iii) doing business in the agricultural, plantation, livestock, industry, services, cargo/transportation sectors, one-star hotels/budget hotels/hostels/homestays/guest houses, boarding houses, camping grounds/other short-term accommodation, restaurants/shops/stalls, and/or

(iv) participating in the electronic procurement of government goods/services.

The regulation has taken effect as of its promulgation date on 2 February 2021. With the enactment of this regulation, all implementing provisions of Government Regulation No. 17 of 2013 concerning the Implementation of Law No. 20 of 2008 concerning Micro, Small, and Medium Enterprises (Gov. Reg. 17/2013); Presidential Regulation No. 27/2013 concerning Entrepreneurial Incubator Development (Pres. Reg. 27/2013); and Presidential Regulation No. 98/2014 concerning Licensing for Micro and Small Enterprises (Pres. Reg. 98/2014) are declared to remain valid insofar as not conflicting with this regulation. When this regulation came into force, Gov. Reg. 17/2013, Pres. Reg. 27/2013, and Pres. Reg. 98/2014 were declared revoked and invalid.

## Tax Treatment on Transactions of Investment Management Institution and/or Its Entities

### Meet Our Experts



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in Principles of International Taxation and Principles of Corporate & International Taxation (Singapore option) from the Chartered Institute of Taxation, United Kingdom.

The government has officially issued Government Regulation No. 49 of 2021 concerning the Tax Treatment on Transactions Involving Investment Management Institution and/or the Entities It Owns (Gov. Reg. 49/2021). This regulation has been released to implement the provisions under Article 172 paragraph (2) of Law No.11 of 2020 concerning Job Creation (Job Creation Law).

Investment Management Institution *(Lembaga Pengelola Investasi*/LPI) is an institution that is given special authority (*sui generis*) to manage the central government's investment. LPI is established to increase and optimize asset value in the long term, in the context of supporting sustainable development and promoting the national economy.

To encourage LPI's growth and independence and attract investors to cooperate with LPI, tax treatment and/or special tax incentives for LPI, investment partners, and management power are to be regulated. The stipulations must continue to implement the principles of fair and transparent tax governance.

For this reason, in general, Gov. Reg. 49/2021 regulates the treatment of income tax and Value Added Tax (VAT) and/or VAT and Sales Tax on Luxury Goods (STLGs) on LPI and/or its entities, including third parties. Third parties include investment partners, investment managers, state-owned enterprises, government bodies or agencies, and/or other entities, both domestic and abroad.

The regulation, taking effect as of 2 February 2021, confirms that LPI is a resident corporate tax subject. On the other hand, entities owned by LPI, third parties, including funds (*Dana Kelolaan Investasi*) may either be resident tax subjects (*Subjek Pajak Dalam Negeri*/SPDN) or non-resident tax subjects (*Subjek Pajak Luar Negeri*/SPLN).

Funds refer to a means of investment which, among others, may take the form of funds managed through joint ventures, mutual funds, collective investment contracts, or other forms. A fund may be either an Indonesian legal entity or a foreign legal entity in which LPI invests to make profits.

Further, LPI, entities owned by LPI, third parties, and funds that become an SPDN are required to register themselves to be given a Taxpayer Identification Number (*Nomor Pokok Wajib Pajak*/NPWP), report their businesses to be confirmed as a Taxable Person for VAT Purposes (*Pengusaha Kena Pajak*/PKP), and carry out other tax obligations.

On the other hand, parties that constitute SPLN are required to carry out tax obligations as per statutory provisions in the taxation sector. Next, income received or earned by LPI, entities owned by LPI, third parties, or funds constitute an income tax object and is subject to income tax as per applicable provisions.

Gov. Reg. 49/2021, in essence, regulates tax treatment on four matters. *First,* the tax treatment on the establishment of reserve funds. Referring to Article 9 of Gov. Reg. 49/2021, the establishment of legal reserve funds is categorized as an expense that may be deducted from gross income. The establishment of the legal reserve funds that can be expensed includes:

(i) the same amount as legal reserve formed in the previous year, as per statutory provisions; and

(ii) is only allowed until the tax year in which the earlier between, depending on which event occurs first, the LPI's legal reserve reaching 50% of LPI's capital or the distribution of dividends or share of profits to the government.

*Second,* the tax treatment of loan interest. Income received or earned by LPI in the form of interest from loans to entities owned by LPI or joint ventures is exempted from income tax withholding or collection. The exemptions apply without a certificate of exemption. However, income in the form of domestic-sourced bond interest does not include income that is exempted from income tax withholding or collection.

*Third*, the tax treatment on the acquisition of assets. Acquisition of assets in the form of land and/or buildings as a substitute for shares or capital participation for LPI and/or the entities it owns shall be subject to Land and Building Transfer Duty (*Bea Perolehan Hak atas Tanah dan/atau Bangunan*/BPHTB). BPHTB may subsequently be used as a deduction from gross income in the tax year of the acquisition of the land and/or building.

*Fourth*, the tax treatment of dividends received by third parties. There are two groups of income in the form of dividends received or earned by third parties in connection with cooperation with LPI, as below:

**(i) Dividends originating from repayment due to liquidation in excess of the paid-up capital or the initial investment value**

Income in the form of dividends due to liquidation received by an SPDN third party is exempted from income tax objects. On the other hand, income in the form of dividends due to liquidation received by an

SPLN third party –that cooperates with LPI is direct and the entity or form of cooperation is a resident corporate tax subject– the following two provisions shall apply:

a. The dividends are not income tax objects insofar as invested or used to support other business needs in the territory of the Republic of Indonesia within 3 years since the dividends are received or earned.

b. The dividends are subject to a final income tax of 7.5% or according to the rates stipulated in a Tax Treaty. This provision applies if the dividends are not invested or used to support other business needs in the territory of the Republic of Indonesia for at least 3 years since the dividends are received or earned.

**(ii) Other dividends under whatever name and form**

These other dividends, in whatever name or form, constitute a share of the profits earned by the shareholders. Dividends in this group include, among others, the distribution of profits, either directly or indirectly, under whatever name and form and the recording of additional capital without remittance.

However, as per provisions under Gov. Reg. 49/2021, other dividends received by SPDN third parties are exempted from income tax objects. In contrast, other dividends received by SPLN third parties are subject to a final income tax of 7.5% or according to the rates stipulated in the Tax Treaty. The imposition of a final income tax applies if the cooperation with LPI is direct and the entity or form of cooperation is a resident corporate tax subject.

The final income tax on these dividends will be withheld by the entity or the form of cooperation between LPI and the third party. Withholding shall be performed at the end of the month the income is paid, or provided for the payment of income, or the due date of payment of the income concerned (depending on which event occurs first).

## Tax Relief in Connection with Natural Disasters in South Kalimantan and West Sulawesi

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The Directorate General of Taxes (DGT) provides tax relief to taxpayers that reside, domicile, and/or whose places of business activities are in South Kalimantan and West Sulawesi Provinces.

The tax relief is outlined in the Director General of Taxes Decree No. KEP-27/PJ/2021 concerning Taxation Policies in Connection with Natural Disasters in South Kalimantan and West Sulawesi Provinces (KEP-27/2021). Tax relief is provided in connection with natural disasters in South Kalimantan and West Sulawesi Provinces.

The Regional Government of South Kalimantan has also set forth the emergency response status for floods, landslides, tornadoes, and tidal waves in South Kalimantan Province. The emergency response status for the disasters has been set forth since 14 January 2021 based on the Governor of South Kalimantan Statement Letter No. 360/038/BPBD/2021.

Similarly, the West Sulawesi Regional Government has declared an emergency response status for earthquakes in West Sulawesi Province. The emergency response status was stipulated from 15 January 2021 to 28 January 2021 based on the Governor of West Sulawesi Decree No. 001/Darurat-SB/1/2021.

With regard to natural disasters in the two regions, the Director General of Taxes, through KEP-27/2021,

has decided to provide tax relief. This tax relief is provided to ease the burden and socio-economic impact on taxpayers affected by the disasters.

Through KEP-27/2021, the Director General of Taxes also stipulates the situation resulting from the natural disasters of floods, landslides, tornadoes, and tidal waves in South Kalimantan Province and earthquakes in West Sulawesi Province as force majeure. Moreover, KEP-27/2021 outlines two forms of tax relief to be provided.

*First,* the elimination of tax administrative penalties for late filing of Periodic Tax Returns and tax payments and/or remittance and/or tax liability. As for taxpayers in South Kalimantan, penalties are eliminated for the late filing of Periodic Tax Returns and tax payment and/or remittance and/or tax liability due on 14 January 2021 to 31 January 2021. Periodic Tax Returns and the payment and/or remittance should be performed no later than 28 February 2021.

For taxpayers in West Sulawesi, on the other hand, penalties are eliminated for the late filing of Periodic Tax Returns and tax payment and/or remittance and/or tax liability due on 14 January 2021 to 28 February 2021. Taxpayers in West Sulawesi may file Periodic Tax Returns and perform payment and/or remittance no later than 30 April 2021.

For this delay, the taxpayers will not be subject to administrative penalties in the form of fines or interest. The administrative penalties are eliminated by non-issuance of Notices of Tax Collection (*Surat Tagihan Pajak*/STP). However, in the event that STP has been issued, the Head of the Regional Office (*Kantor Wilayah*/Kanwil) of the DGT eliminates the administrative penalties *ex-officio*.

*Second*, the extension of the deadline for submitting legal remedies. Such legal remedies include: (i) objections; (ii) submission of the second application for reduction/elimination of administrative penalties; or (iii) the second reduction/cancellation of notices of tax assessment or STP.

The extension of the deadline for submission of legal remedies is granted to taxpayers in South Kalimantan whose deadline for submitting applications ends from 14 January 2021 to 31 January 2021. The extension of the deadline for submitting such applications is given until 28 February 2021.

For taxpayers in West Sulawesi, on the other hand, an extension is granted for applications of which the submission deadline ends from 14 January 2021 to 28 February 2021. The extension of the deadline for such applications is given until 30 April 2021.

The twelfth dictum of the regulation emphasizes that the Head of the Regional Office of the DGT on behalf of the Director General of Taxes may grant an elimination of administrative penalties and an extension of the deadline for the submission of legal remedies in the event of a natural disaster in his working area.

Both reliefs are granted considering the level of emergency or disaster in each region based on the decision of the regional head or competent official in the context of disaster management. The Director General Decree has taken effect as of 5 February 2021.

## Pricing of Steam and Electricity in Connection with the Stipulation of Tax Base of Land and Building Tax of Geothermal Mining Sector

### Meet Our Experts



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The government has issued the latest provisions on the stipulation of the price of steam and electricity in stipulating the tax base (*Nilai Jual Objek Pajak*/NJOP) of the land and building tax (*Pajak Bumi dan Bangunan*/PBB) in the mining sector, specifically for geothermal exploitation of body of earth for exploration.

These provisions are outlined in the Director General of Taxes Decree No. KEP-46/PJ/2021 concerning Pricing of Steam and Electricity Used in Stipulating the Tax Base of Land and Building Tax in the Mining Sector for Geothermal Exploitation of Body of Earth for Exploration (KEP-46/2021).

On a side note, the provisions on the stipulation of tax base of land and building tax for exploitation in the geothermal mining sector have formerly been regulated in the Minister of Finance Regulation No. 186/PMK.03/2019 (MoF Reg. 186/2019). KEP-46/2021 is an implementing regulation of Article 20 paragraph (4) of MoF Reg. 186/2019 which regulates the prices of steam and electricity for the purpose of establishing the Tax Base of Land and Building Tax of the geothermal mining sector.

MoF Reg. 186/2019 outlines that the Tax Base of Land and Building Tax for body of earth for exploration in the geothermal mining sector is stipulated based on the replacement sale value. The replacement sale value refers to the product of the multiplication of steam and/or electricity revenue by the capitalization figure.

Steam and/or electricity revenue referred to above is the product of multiplication of steam production by the price of steam and/or the result of electricity production multiplied by the price of electricity. Production refers to products sold in the last year before the tax year in which the land and building tax becomes payable. Further, the provisions on prices of steam and electricity are stipulated through the issuance of KEP-46/2021.

KEP-46/2021 sets forth updates to the prices of steam and electricity. *First*, the prices of steam used to stipulate the Tax Base of Land and Building Tax for body of earth for exploration is set at IDR866/kWh. *Second*, the price of electricity used for determining the Tax Base of Land and Building Tax for body of earth for exploration is set at IDR1,248/kWh. The two prices apply to the stipulation of Tax Base of Land and Building Tax of the mining sector, particularly geothermal exploitation of body of earth for exploration.

The provisions on the prices of steam and electricity may be used to determine the Tax Base of Land and Building Tax starting the 2021 tax year. In the event of any errors in the provisions under this regulation, they shall be corrected accordingly.

This regulation has taken effect from the promulgation date, i.e. on 10 February 2021. With the enactment of this regulation, the provisions on the price of steam and electricity that were previously regulated under the Director General of Taxes Decree No. 185/PJ/2020, are revoked and declared invalid.

## Adjustment of Policies on Rates and Local Taxes and Retributions

### Meet Our Experts



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The Indonesian government has released policies related to local taxes and retributions (*Pajak Daerah dan Retribusi Daerah*/PDRD) to support regional convenience and services. These provisions are outlined in Government Regulation No. 10 of 2021 concerning Local Taxes and Retributions in the Framework of Supporting Ease of Doing Business and Regional Services (Gov. Reg. 10/2021). Gov. Reg. 10/2021 has been released to implement the provisions under Article 114, Article 176, and Article 185 paragraph b of Law No.11 of 2020 concerning Job Creation (Job Creation Law). Broadly speaking, the provisions stipulated under this regulation include five matters.

***First,*** adjustments to the rates of local taxes and retributions (*Pajak Daerah dan Retribusi Daerah*/ PDRD). The central government, in accordance with the national priority program, may adjust the PDRD rate as stipulated in the regional regulation on PDRD through a presidential regulation. The presidential regulation stipulates at least six things, among others: (i) national strategic projects entitled to rate adjustment facilities; (ii) the types of taxes and/or retributions to be adjusted; (iii) the amount of the rate adjustments; (iv) enactment of the rate adjustments; (v) period of rate adjustments; and (vi) regions that perform rate adjustments.

Next, local governments, in implementing PDRD collection, must comply with the rates set by the presidential regulation. If the period of PDRD rate adjustments in the presidential regulation has expired, the rates set in the regional regulation on PDRD can be reinstated.

Prior to being stipulated in a presidential regulation, the PDRD rate adjustment must undergo several stages, i.e. the submission stage of proposed rate adjustments, the review stage of proposed rate adjustments, and the submission stage of proposed rate adjustments as a presidential regulation.

The submission stage of rate adjustments may be carried out by the minister or head of the institution as the person in charge of the national strategic project. This proposal must enclose: (i) projections of PDRD costs to be borne by the national strategic project; (ii) a list of types of PDRD on which rate adjustments will be made; (iii) proposed amount of rate adjustments; and (iv) study on project feasibility.

Further, the proposed rate adjustments will be subject to a review by the Ministry of Finance together with the Ministry of Home Affairs, related ministries/technical agencies, and related local governments. The result of the review will render a recommendation or rejection which is subsequently submitted to the minister/ head of the institution submitting the proposal. If a recommendation is obtained from the Minister of Finance, the recommendation may be used as the basis for submitting a proposal for the formulation of a presidential regulation.

The presidential regulation may be issued if the central government agrees to grant the rate adjustment proposal. The implementation of the presidential regulation will be monitored by the Ministry of Home Affairs, the relevant technical ministries/agencies, and the governor. The monitoring results will then be submitted to the Minister of Finance.

***Second,*** evaluation of regional regulations (*Peraturan Daerah*/Perda) in relation to PDRD. The evaluation is carried out on (i) a draft provincial regional regulation concerning PDRD; (ii) draft regency/city regional regulation concerning PDRD; and stipulated regional regulations on PDRD.

The evaluation of the draft provincial regional regulations concerning PDRD shall be carried out by the Minister of Home Affairs and the Minister of Finance. The evaluation results from the Minister of Finance are accordingly submitted to the Minister of Home Affairs for synchronization. On the other hand, the evaluation of draft regency/city regional regulations shall be carried out by the Minister of Finance, the Minister of Home Affairs, and the Governor. The evaluation results from the Minister of Home Affairs and the Minister of Finance are submitted to the Governor for synchronization.

The evaluation results of both the draft provincial and regency/city regional regulations may be in the form of approval or rejection. If the evaluation results are approved, the draft PDRD regional regulations can be further processed as per statutory provisions.

However, if the evaluation results indicate a rejection, the regional head together with the Regional Representative Assembly (*Dewan Perwakilan Rakyat Daerah*/DPRD) can revise the regional regulations according to the recommendations for improvement. The revised draft regional regulation may be resubmitted to the Minister of Home Affairs and the Minister of Finance. If the draft regional regulation has been revised in accordance with the recommendations, it can be further processed as per statutory provisions.

On another note, the Governor/Regent/Mayor is obliged to convey the regional regulations concerning PDRD to the Minister of Home Affairs and the Minister of Finance for evaluation purposes. If the regional regulation is deemed to be against the public interest, higher laws and regulations, and/or national fiscal policies, the Minister of Finance recommends that amendments be made to the Minister of Home Affairs.

Based on these recommendations, the Minister of Home Affairs submits a notification letter. Next, the regional head has 15 working days from the date the notification letter is received to revise the regional regulations. Amendments to regional regulations concerning PDRD must be submitted to the Minister of Home Affairs and the Minister of Finance within seven working days from the stipulation date of the regional regulations concerning PDRD.

***Third,*** supervision of local regulations concerning PDRD. Supervision of regional regulations concerning PDRD is carried out by the Minister of Home Affairs and the Minister of Finance. In supervising, the Minister of Home Affairs and the Minister of Finance coordinate

with the related Ministries/technical agencies and/or related Regional Governments The supervision of these regional regulations is based on: (i) monitoring reports; (ii) public reports; (iii) media coverage; (iv) field visits; (v) analysis of the development of the realization of PDRD; and/or (vi) other sources of information.

If violations or discrepancies are found in the monitoring results, the Minister of Finance recommends amendments to the regional regulations concerning PDRD and/or their implementing regulations to the Minister of Home Affairs. Based on the Minister of Finance's recommendations, the Minister of Home Affairs submits a notification letter to the Regional Head no later than five working days from the date the recommendation letter is received. The mechanism for regional regulation amendments follows the former provisions, i.e. carried out in 15 working days from the date the notification letter is received and must be submitted no later than seven working days from the stipulation date.

***Fourth,*** incentive support in implementing ease of doing business. If the simplification of business licensing results in a decrease in PDRD-sourced local revenues, the central government may provide budget incentive support for local governments. Said incentive support is provided in the form of transfers to regions, subject to further stipulations in minister of finance regulations.

***Fifth***, administrative penalties imposed on local governments. Regional governments that violate provisions on the submission deadline for draft regional regulations and/or do not amend regional regulations according to amendment recommendations will be given a written warning. Next, if the regional head does not follow up on the written warning from the Minister of Finance, he shall be subject to administrative penalties by the Minister of Finance. These administrative penalties apply in the following month or period in the following forms:

(i) Postponement of distribution of general allocation funds (*Dana Alokasi Umum*/DAU) and/or revenue sharing funds (*Dana Bagi Hasil*/DBH) of income tax (*Pajak Penghasilan*/PPh) of 10% of the total disbursement for regional governments that do not implement the provisions on the submission deadline of draft regional regulations.

(ii) Postponement or deduction of the distribution of DAU and/or DBH PPh by 15% of the total disbursement for local governments that do not implement the provisions on amendments to regional regulations.

If a region experiences extraordinary events such as natural disasters and infectious disease outbreaks with a negative impact on the regional fiscal, the Minister of Finance may relax the imposition of administrative penalties. The Ministry of Finance coordinates with the Ministry of Home Affairs and related ministries/agencies in imposing administrative penalties and relaxing administrative penalties.

In the event that a regional government subject to administrative penalties has fulfilled the obligation to submit a draft regional regulation and/or has amended the regional regulations, the Minister of Finance may redistribute the postponed General Allocation Fund (*Dana Alokasi Umum*/DAU) and/or the Revenue Sharing Fund (*Dana Bagi Hasil*/DBH) PPh.

However, if the sanctioned regional government does not fulfill this obligation, the postponed DAU and/or DBH PPh will be redistributed before the end of the fiscal year. Moreover, the Minister of Finance may re-impose administrative penalties in the form of postponement of the DAU and/or DBH PPh in the following fiscal year for local governments that do not fulfill this obligation.

The regulation has come into force as of the promulgation date on 2 February 2021. With the enactment of Gov. Reg. 10/2021, all statutory provisions relating to this regulation are declared to remain valid insofar as they do not conflict with this regulation.

## Ministry of Home Affairs Releases Regulation Related to the Calculation of the 2021 Motor Vehicle Tax Base and Transfer of Motor Vehicle Title Fee

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# Government Releases Derivative Regulations on the Taxation Cluster of Job Creation Law and Incentive Policies for Cooperatives and MSMEs

multinational companies in dispute resolution procedures, including tax objection, tax appeal, lawsuits and litigation at the tax court. The Licensed Tax Attorney and Tax Consultant is Certified B of Indonesian Tax Consultant Examination and also holds a Bachelor's degree in Fiscal Administration and a Master's degree in Accounting from University of Indonesia.

The Ministry of Home Affairs has established a new regulation that serves as the reference for the tax base (*Dasar Pengenaan Pajak*/DPP) calculation of motor vehicle tax (*Pajak Kendaraan Bermotor*/PKB) and transfer of motor vehicle title fee (*Bea Balik Nama Kendaraan Bermotor*/BBNKB) for the 2021 tax year.

Serving as the reference for the calculation of DPP PKB and BBNKB, this regulation has been released as a follow-up to the provisions under Article 5 paragraph (9) and Article 11 of Law No. 28 of 2009 concerning Regional Taxes and Retribution, which mandates the calculation of DPP PKB and BBNKB stipulated under the Minister of Home Affairs Regulation (Permendagri).

Permendagri on the calculation of DPP PKB and BBNKB will be subject to annual reviews. The latest regulation is outlined in the Minister of Home Affairs Regulation No. 1 of 2021 concerning the Calculation of the 2021 Motor Vehicle Tax Base and Transfer of Motor Vehicle Title Fees (Permendagri 1/2021). This regulation was promulgated and has come into effect as of 12 January 2021.

Permendagri 1/2021 outlines the provisions and amount of DPP PKB and BBNKB which consist of two elements, namely: (i) Sales Value of Motor Vehicle (*Nilai Jual Kendaraan Bermotor*/NJKB); and (ii) weight that relatively reflects the level of road damage and/or environmental pollution resulting from motor vehicle use. Details of the provisions and the amount of NJKB are listed in the Appendix of Permendagri 1/2021.

Weight, on the other hand, reflects the level of damage and is stated in a coefficient whose value is in the range of 1 to 1.3. The coefficient is stipulated based on the tolerance limit value for road damage and/or environmental pollution due to the use of motor vehicles.

Juxtaposed with the former regulation, the coefficients that reflect the weight of the damage remain the same. Details of the weight of the damage are also listed in the Appendix of Permendagri 1/2021. In summary, the coefficients that reflect the weight of the damage include:

(i) three-wheeled cars, two-wheeled motorbikes, wheeled motorbikes, and three-wheeled passenger motorbikes, and goods three-wheeled motorbikes – the coefficient value is equal to 1;

(ii) sedans – the coefficient value is equal to 1.025;

(iii) jeeps and minibuses – the coefficient value equal to 1.050;

(iv) blind vans, pick-up trucks, and microbuses – the coefficient value is 1.085;

(v) buses – the coefficient value is equal to 1.1; and

(vi) light trucks, trucks, and the like – the coefficient value is 1.3.

In addition to outlining NJKB and weight as the calculation basis of PKB and BBNKB, Permendagri 1/2021 also amends the provisions on the imposition of PKB and BBNKB for Battery-Based Electric Motor Vehicles (*Kendaraan Bermotor Listrik*/KBL).

Currently, PKB and BBNKB on Battery-Based KBL for both passengers/goods and public transportation of passengers/goods are set at a maximum of 10% of DPP PKB or BBNKB. The percentage of PKB and BBNKB imposition on battery-based KBL is lower than the stipulation in the previous year's regulation, i.e. a maximum of 30% of the DPP PKB and BBNKB.

The provisions on DPP limitation render a lower burden of PKB and BBNKB on Battery-Based KBL. The policy on the imposition of PKB and BBNKB on Battery-Based KBL constitutes an incentive provided by the governor.

Other than battery-based KBL, the incentive is also provided for ambulances, fire engines, and cleaning services belonging to the central government, the Indonesian National Army (*Tentara Nasional Indonesia*/TNI), the Indonesian National Police, and local governments. PKB and BBNKB on said vehicle class are imposed at 0% of the DPP PKB or BBNKB.

However, the requirements to obtain these incentives must take into account the level of economic growth, conditions of the Covid-19 pandemic, regional minimum wages, and/or other factors that may hinder investments. Provisions on the requirements to obtain PKB and BBNKB incentives are regulated by a governor regulation.

Another different aspect under Permendagri 1/2021 compared to the former regulation is that heavy equipment has been eliminated from PKB and BBNKB objects. This elimination is related to the Constitutional Court Decision No. 15/PUU-XV/2017 concerning the judicial review of Article 1 point 13, Article 5 paragraph (2), Article 6 paragraph (4), and Article 12 paragraph (2) of the Regional Taxes and Retribution Law. Based on this decision, heavy equipment is no longer classified as motor vehicles.

GOVERNMENT RELEASES DERIVATIVE REGULATIONS ON THE TAXATION CLUSTER OF JOB CREATION LAW AND INCENTIVE POLICIES FOR COOPERATIVES AND MSMES

## Guidelines for the Adjustment of Trial Proceedings and Other Administrative Services at the Tax Court

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The Chairperson of the Tax Court has released guidelines for the adjustment of trial proceedings and other administrative services. The guidelines have been released in connection with the postponement of trial proceedings and temporary suspension of face-to-face services at the Tax Court from 22 February 2021 to 26 February 2021.

The adjustment guidelines are outlined in Chairperson of the Tax Court Circular No. SE-03/PP/2021 concerning Guidelines for the Adjustment of Trial Proceedings and Other Administrative Services as a Follow-up to the Chairperson of the Tax Court Circular (SE-03/2021).

Taking effect as of 22 February 2021, this circular is intended as the guidelines regarding the provisions on the time frame for the preparation and implementation of trial proceedings and other administrative services. In further detail, there are two provisions concerning the period of the preparation and implementation of trial proceedings.

*First,* the trial preparation period does not take into account 22 February 2021 to 26 February 2021 (7 days) in the calculation of the time frame in the provisions under Article 48 of Law No. 14 of 2002 concerning the Tax Court (Tax Court Law).

*Second,* the trial proceeding period does not take into account the period between 22 February 2021 and 26 February 2021 (7 days) in the calculation of the time frame stipulated in Article 81 and Article 82 of the Tax Court Law.

Similarly, other administrative services do not take into account the period between 22 February 2021 and 26 February 2021 (7 days) in the calculation of the time frame referred to in the Tax Court Law.

Other administrative services include the delivery of a copy of the Tax Court's decision, submission of requests for case reviews from the parties, delivery of case reviews to the Supreme Court, delivery of a copy of case review decisions, license of attorney-at-law, and other trial documents.

## Postponement of Trial Proceedings and Temporary Suspension of Face-To-Face Services at the Tax Court

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## Government Releases Derivative Regulations on the Taxation Cluster of Job Creation Law and Incentive Policies for Cooperatives and MSMEs

The Chairperson of the Tax Court has issued Circular No. SE-02/PP/2021 concerning the Postponement of Trial Proceedings and Temporary Suspension of Face-to-Face Administrative Services (Via Helpdesk/Delivered in Person) at the Tax Court Starting 22 February 2021 to 26 February 2021 (SE-02/2021).

The general section of SE-02/2021 states that the postponement of trial proceedings and the temporary suspension of face-to-face administrative services are required as the tax court's commitment to follow up on the provisions on Covid-19 handling. This is due to a surge in Covid-19-positive cases in the Tax Court.

The circular is intended to provide information and legal certainty regarding tax court policies in terms of trial proceedings and face-to-face administrative services (via helpdesk/delivered in person) at the tax court in an effort to protect Tax Court Judges, Registrars, Employees, and all service users from being exposed to Covid-19.

The circular specifies several provisions. *First,* the trial proceedings at the Tax Court, including electronic trial proceedings, originally scheduled on Monday 22 February 2021 to Friday 26 February 2021 have been postponed and will be rescheduled with further notification.

*Second*, the panel of judges or single judge shall instruct the alternate registrar to notify the parties about the postponement of trial proceedings through electronic media or other media and record it in the Minutes of Hearing.

*Third*, trial proceedings at the Tax Court, including electronic trial proceedings, will be held starting 1 March 2021 subject to further notification.

*Fourth,* all face-to-face administrative services (via helpdesk/delivered in person), including the submission of appeals/lawsuits, submission of case reviews, information services, and submission of trial documents and other letters will be suspended from Monday, 22 February 2021 to Friday, 26 February 2021.

*Fifth*, while face-to-face administrative services (via helpdesk/delivered in person) as referred to in point four are temporarily suspended, appeals/ lawsuits and trial documents and other letters may be submitted by post.

*Sixth,* in the period between 22 February 2021 and 26 February 2021, the Tax Court in coordination with related units will trace close contacts, collect data, disinfect/sterilize all office environment, and conduct swab tests on judges, officials, employees, and support personnel within the Tax Court who are in close contact with parties confirmed Covid-19-positive.

*Seventh*, users of information services may use email (informationpp@kemenkeu.go.id), contact services on the Tax Court Secretariat website (www.setpp.kemenkeu.go.id), and Whatsapp on the phone number 081211007510 to obtain information concerning the Tax Court.

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