Indonesian tax news

Highlight

PRECIOUS CONSULTING

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Preliminary tax refunds

Judging the benefits against the risk

Normally a tax refund can only be requested at year end. This is done by ticking the refund box of the annual income tax return (AITR) submitted to the Indonesian Tax Office (ITO) for income tax or a similar box of the monthly tax return (MTR) for VAT. A thorough tax audit will then ensue. If things are in order, will you get an Overpaid Tax Assessment Letter ("OTSL" or "*SKPLB*") stating the refund amount you will ultimately get, mostly in almost a year.

Activities calling for no self-payment VAT*) (1)

- ❑ Export of VATable tangible goods
- ❑ Export of VATable intangible goods
- ❑ Export of VATable services
- ❑ Deliveries of VATable goods/VATable services to Tax Collectors
- ❑ Deliveries of VATable goods/VATable with VAT not to be collected

*) Art. 9(4b) of the VAT Law as amended by the Job Creation Law

A monthly refund request is possible for VAT, but can only be invoked by a VATable entity ("PKP") engaging in "taxable activities" which do not call for any self-payment of VAT (Box. 1). Engaged exclusively in such activities, a company will inevitably accumulates input VAT unlimitedly. Monthly VAT refunds accordingly fit quite well. Nevertheless the scheme still involves a thorough tax audit and may take months, only if things are in order, to get an OTSL.

Facing with these issues, a faster and streamlined tax refund procedure should be welcomed. This is precisely what on offer in DGT Reg. PER-4/PJ/2021 (PER. 4) issued on 16 March 2021. If things are in order, it suggests, you will get a preliminary tax refund (PTR) in no more than a month of the request date for VAT and three months for income tax. No tedious audit is required. Instead, the DGT needs only a simple verification to issue a PTR Decision Letter (PTRDL or "SKPPKP").

Three privileged groups

PTR facility is available for three entity groups. The first group, commonly called golden taxpayers, are businesses (taxpayers) that demonstrate outstanding tax compliance performance indicators (Box 2). A specific official designation from the Director General of Taxation (DGT) is required for a company to have the status. An application letter for it must be submitted to the DGT no later than 10

Outstanding compliance performance indicators*) (2)

- ❑ On time tax return submissions for the last three years
- ❑ No delinquent tax liabilities
- ❑ Unqualified opinion of the financial statements attached to the last three years' AITRs
- ❑ No tax crime conviction for the last five years

*) Art. 17C (2) of the Tax Administration (KUP) Law. The relevant entities are referred to as "taxpayers that satisfy a set of specified criteria". In that context, the indicators indicate satisfaction of those criteria.

January of a calendar year. If meeting the prescribed criteria, you will get the DGT's decision letter in no more than a month which confirms your status as a golden taxpayer. If no decision is issued within a month of the request date, PER 4 suggests, deemed approval should prevail. With that status, you may apply for a PTR for both VAT and income tax.

A golden taxpayer status should prevail from the confirmation date until cancelled by the DGT. A set of prescribed reasons is set for the DGT to cancel the status (Box 3). Once cancelled, resuming the status is possible but it means going through the same procedure as that required for obtaining a new one, bearing in mind that the outstanding compliance performance indicators remain crucial.

Why should the DGT cancel a golden taxpayer status?*) 3

- ❑ A late submission of an AITR
- ❑ Late submissions of a monthly tax return (MTR) for two tax periods (months)
- ❑ Late submissions of an MTR for three tax periods in a single calendar year
- ❑ Under a preliminary tax crime investigation (BUPER)

*) Art. 5(3) of MOF Reg. 39/PMK03/2018 as amended by Reg. 117/PMK.03/2019

The second group consist of shortlisted types of VATable entities (PKP) stipulated by the Minister of Finance (MOF) as of a low-risk nature (Box 4). A specific official designation from the DGT is also required for an entity of this group to get the status. If you are part of the shortlisted group, you can submit an application letter to the DGT. Approval will be granted in no more than 15 working days if you meet these conditions: (1) VAT returns for the last 12 months have been filed; (2) Not being subject to a preliminary tax crime investigation; and (3) Not convicted of tax crime for the last five years. If no decision is issued within 15 working days, deemed approval should prevail. With the low-risk PKP status, you can apply for a PTR for VAT only.

Low-risk VATable entities (*PKP*)*) 4

- ❑ Companies with shares traded on the Indonesian Stock Exchange
- ❑ State-owned companies (BUMN/BUMD)
- ❑ BUMN/BUMD-directly owned companies (shares > 50%)
- ❑ PKP confirmed as a Customs Main Partner
- ❑ PKP confirmed as an Authorized Economic Operator
- ❑ Other manufacturer PKP with its own production facility
- ❑ A PKP with a VAT refund request of up to IDR1 billion in a VAT return
- ❑ Certified pharmaceutical distributors
- ❑ Certified health equipment distributors
- ❑ Certain SPC in a collective investment contract (KIK) arrangement

*) Art. 13(2) of PMK 39/2018 as amended by PMK 117/2019, PMK 200/2015

For all the requirements, a PKP with a tax refund request not exceeding IDR1 billion in its VAT return gets the low-risk PKP status automatically without the need of the DGT's official designation.

The third privileged group, officially called "taxpayers that satisfy a set of specified requirements", consist of taxpayers and PKPs with a tax refund request on their tax returns not exceeding a certain amount (Box 5). Unlike the two other groups, no specific official designation from the DGT is required for this group. Any entities that satisfy the specified requirements can apply for a PTR for either income tax or VAT up to a specified amount. These includes a

Taxpayers that *satisfy a set of specified requirements**) 5

- ❑ Individual person taxpayers not engaging in any business or independent personal services who file an overpaid AITR
- ❑ Individual person taxpayers engaging in a business or an independent personal service with a tax refund request not exceeding IDR100 million in their AITR
- ❑ Corporate body taxpayers with a tax refund request not exceeding IDR1 billion in their AITR
- ❑ VATable entities (PKP) with a VAT refund request not exceeding IDR1 billion in their VAT return

*) Art. 17D(2) for the basic conditions. Art. 9(2) of PMK 39/2018 for the refund threshold

PKP with a VAT refund request not exceeding IDR1 billion which is also part of the low-risk PKP group (Box 4).

COVID 19-related incentive

With the COVID 19 pandemic impact on business still rampant, the MOF expanded the PTR availability to businesses beyond the three privileged groups. This was done by discretionarily granting certain businesses a low-risk taxpayer status (Box 6) on the basis of their business types or satisfactions of other requirements through MOF Reg. 9/PMK.03/2021 issued on 2 February 2021 (PMK 9). A business that meets the specified requirements automatically gets the low-risk PKP status without the need to apply for it to the DGT. Nor is a DGT decision letter required to confirm the status. If you believe you satisfy the specified requirement, for instance your KLU is included in the KLU list of PMK 9, then you can apply for a PTR for VAT in the same way as that set out in PMK 39.

Businesses discretionarily designated as low-risk PKPs on a temporary basis*) 6

- ❑ PKPs with a Business Area Classification Code (KLU) covered in the designated KLU list of PMK 9/2021
- ❑ PKPs with a Export-Oriented Import Facility (KITE) status
- ❑ PKPs with a license as a Bonded Zone Management, a Bonded Zone Enterprise, or an Enterprise within a Bonded Zone.

*) Art. 15(2) MOF Reg. 9/PMK.03/2021

Nevertheless, the arrangement is different from that for the general low-risk PKPs at least in two aspects. First, the low-risk status and in turn the PTR facility applies only on a temporary basis, i.e. up to June 2021. Unless officially extended by the MOF, the status will automatically be gone after June 2021 and the PTR facility will be no longer available for them by then. Second, only PKPs with overpaid VAT refund request up to IDR5 billion qualify for the special low-risk PKP status.

Worrying surcharge

For all the benefits of a PTR, many worry about the potential administrative penalty for any tax underpayment identified later on. The DGT may conduct an audit after the issuance of a PTRDL (SKPPKP) and if it ends up in a Tax Underpayment Assessment Letter (TUAL or "*SKPKB*"), many think, a surcharge of 100% of the underpaid tax amount is awaiting.

The penalty risk is real, especially for income tax where disputes between the taxpayer and the DGT in a tax audit may arise for many factors, from asymmetric understanding between the two about the business arrangement and the tax law provisions to the way a transaction is entered into the taxpayer's books and the filing system which affects the ease of verification and getting the relevant supporting documents. This should explain why PTR is not popular for income tax, apart from the fact that, you can only apply for it on a yearly basis after filing the AITR.

Their understanding, though, is not fully valid and crucially for VAT should not unnecessarily cause a PTR phobia for some reasons. First, the 100% surcharge is applicable only for the Golden Taxpayer group and the other group referred to as "taxpayers that satisfy a set of specified requirements" (Box 5). Low-risk PKPs are not exposed to the 100% surcharge for a similar type of incidence. Instead, they are penalized with interest at a rate to be derived from the monthly MOF-set reference rate for a maximum of 24 months. Yet, PKPs with a VAT refund request not exceeding IDR1 billion of the latter group is also characterized as low-risk PKPs and accordingly do not risk the 100% surcharge either. If the interest rates applied to date are a guide, it appears not to go beyond 1,82% a month averaging 1.78% for November 2020-April 2021.

Second, determining the VAT liability is much more straightforward than income tax liability. The rules are not as complicated as those for income tax so that asymmetric understanding between the tax auditors and the taxpayer could be minimized. Hence the risk of tax dispute for VAT should be much lower than income tax.

Third, despite the simplicity of the verification, the DGT does not loosen its standard by which it releases a refund. It always requires "hard evidence" that the tax payment represented by a "tax document" (WHT slip, tax invoice, PP 25 slip, etc.) has reached the State Treasury. Therefore, a vendor-issued tax invoice does not automatically justify a refund to the buyer to which it is addressed. The buyer must report the tax invoice in its VAT return as an input credit and the vendor reports the same tax invoice in its VAT return (Box 7). The strict standard may be disappointing for some, but it helps mitigate the worrying penalty risk.

Closely filtered tax payment documents*) 7

- WHT slips covered in the TPR applicant's AITR and reported in the withholder's MTR
- PPh 25 slips covered in the TPR applicant's AITR and bearing a State Receipt Transaction Validation Code (NTPN)
- Tax invoices reported in the MTRs of both the TPR applicant the issuer of the tax invoices
- Tax assessments issued by the Customs Directorate has been paid and captered by the DGT's intranet.

*) Art. 10 of PMK 39/2018

Forth, as aforesaid, companies engaging exclusively in taxable activities that do not call for any self-payment of VAT (Box 1) will inevitably accumulate input tax from month to month unlimitedly. Carrying over the overpaid tax from one month to the next exposes the company to a similar risk of 100% administrative penalty for any amount declared unclaimable by the DGT in a tax audit. Regular PTRs should help mitigate the risk.

Moreover, any time before a tax audit comes in, you can revise your tax returns if you are aware you have received too much in the preliminary tax refund. Repaying the tax will inevitably be subject to an interest penalty for up to 24 months. But the law suggests the interest rate should be lower than that charged through a tax underpayment assessment letter (TUAL or *SKPKB*).

In business every opportunity bears a risk. When it comes to the chance to get a PTR, the penalty risk is real. However, there is a built-in mechanism to mitigate the risk. You may also have your own way to manage the risk.

Please contact us to get more insight.

PT PreciousNine Consulting

Cyber 2 Tower, 18th Floor
Jl. HR Rasuna Said Blok X-5 Kav. 13,
Jakarta Indonesia
Phone: +62 21 5799 8778, +62 21 2935 2500

Your PreciousNine Contacts

Anindita Hayuningtyas
anindita.hayuningtyas@preciousnine.com

Fillyanto Sembiring
fillyanto.sembiring@preciousnine.com

Lili Tjitadewi
lili.tjitadewi@preciousnine.com

Martias
martias@preciousnine.com

Noviana Tan
noviana.tan@preciousnine.com

Randy Adirosa
m.adirosa@preciousnine.com

Dian Kusuma
dian.kusuma@preciousnine.com

Inge Jahja
inge.jahja@preciousnine.com

Lina Rosmiana
lina.rosmiana@preciousnine.com

Nandha
nandha@preciousnine.com

Nuryadi Mulyodiwarno
nuryadi.mulyodiwarno@preciousnine.com

Robertus Winarto
robertus.winarto@preciousnine.com