

Changes to Indonesia's Tax Holiday regime

On 18 September 2020, Indonesia's Minister of Finance ("MoF") signed MoF Regulation No. 130/PMK.010/2020 ("PMK-130") providing changes to MoF Regulation No. 150/PMK.010/2018 ("PMK-150") on tax holidays, as an incentive to conduct business in Indonesia. The regulation becomes effective as of 8 October 2020 and revokes PMK-150.

Corporate taxpayers making new capital investments and/ or expanding their businesses in "pioneer industries" can apply for this incentive. PMK-130 does not change the pioneer industries categories or the income tax incentive provided under PMK-150. The changes are mainly on the application procedures to obtain the tax holiday incentive. In particular, there is now greater clarity for a company in an industry not specifically listed as a pioneer industry as to whether it can make a special application to obtain the Tax Holiday incentive.

A. Who is eligible for the Tax Holiday incentive?

A company that makes a new capital investment in a Pioneer Industry is eligible to obtain a reduction on its corporate income tax for income earned from its Main Business Activities ("Tax Holiday incentive").

Under PMK-130, a company that can obtain Tax Holiday incentive must meet the following criteria:

- 1) It is a Pioneer Industry¹;
- 2) It is an Indonesian legal entity;

¹ Pioneer Industry is an industry that has broad connection and/or linkage, provides value added and high externalities, introduces new technology and provide strategic value for the national economy.

- 3) Is making a new capital investment which has not yet been issued with any prior approval or rejection on an application to obtain:
 - a) Tax Holiday incentive;
 - b) Tax Allowance incentive;
 - c) Income tax incentive for labor intensive industry; and
 - d) Income tax incentive on the Special Economic Zone ("SEZ")
- 4) It has new capital investment plan with a minimum value of IDR 100 billion;
- 5) It meets the Debt to Equity Ratio ("DER") requirement for tax purposes (which is currently 4:1); and
- 6) It commits to start realizing its capital investment plan within a year after the approval to obtain Tax Holiday incentive is issued.

In case the company is directly owned by local taxpayers, apart from meeting the criteria stated in (1) to (6) above, the company must show that all of its shareholders, which are stated in its Articles of Association, have fulfilled their tax obligations. This should be proven with a fiscal statement letter ("SKF") issued by the Director General of Taxation ("DGT"). In case there is a change in the shareholders, the condition to fulfill their tax obligations is only applicable to shareholders that are stated in the latest Articles of Association.

A taxpayer may still apply for the Tax Holiday incentive even if it is engaged in an industry that is not listed as pioneer industry stated in item C (a) to (r) below if the taxpayer:

- 1) meets the criteria to obtain Tax Holiday incentive as stated in item A (2) to (6) above;
- 2) reaches a score of at least 80 on the Pioneer Industry quantitative criteria (as shown in Attachment A of PMK-130); and
- 3) meets the SKF requirement for its local taxpayer shareholders.

Unlike the previous regulations, the MoF has now stipulated a "scoring guideline" on what can be categorized as a "Pioneer Industry" despite not being one of the specifically listed categories. Therefore, companies interested in making new investments have better guidance as to whether a proposed investment can be categorized as a "Pioneer Industry".

The criteria under PMK-130 to calculate the score on the Pioneer Industry quantitative criteria are:

- 1) Extensive interconnectivity, which covers:
 - a) Number of competitors in Indonesia;
 - b) The use of local content as the main materials;
 - c) The products are used domestically (import substitution);
 - d) Number of similar types of company in the area.
- 2) Has high value added or high externality, which covers:
 - a) Number of local labors to be used;
 - b) Investment location.
- 3) Introducing new technology, which covers:
 - a) Using environmentally friendly technology for the main and supporting production equipment;
 - b) Using new technology for the main and supporting production equipment.
- 4) Priority on the national industry scale, which covers:
 - a) Supporting the national strategic projects;
 - b) Production base (supporting international supply chain);
 - c) Establishing its own infrastructure facilities to be used by the company and communities.

B. What incentive is provided under the new Tax Holiday?

The Tax Holiday incentive under PMK-130 is the same as PMK-150.

The income tax reduction period of the Tax Holiday incentive is as follows:

- a) 50% reduction in corporate income tax payable for 5 fiscal years for new capital investment with a minimum amount of IDR 100 billion up to less than IDR 500 billion; and
- b) 100% reduction in corporate income tax payable for the following periods for new capital investment with a minimum amount of IDR 500 billion:

Category	New capital investment		Tax holiday period
	IDR	USD (for reference only)	
I	≥ 500 billion up to less than 1 trillion	≥ 33 million up to less than 68 million	5 fiscal years
II	≥ 1 trillion up to less than 5 trillion	≥ 68 million up to less than 338 million	7 fiscal years
III	≥ 5 trillion up to less than 15 trillion	≥ 338 million up to less than 1 billion	10 fiscal years
IV	≥ 15 trillion up to less than 30 trillion	≥ 1 billion up to less than 2 billion	15 fiscal years
V	≥ 30 trillion	≥ 2 billion	20 fiscal years

Additional period of corporate income tax reduction for two more fiscal years is also offered following the expiration of the above tax holiday for:

- a) 25% of the corporate income tax payable for the new capital investment with a minimum amount of IDR 100 billion up to less than IDR 500 billion; and
- b) 50% of corporate income tax payable for the new capital investment with a minimum amount of IDR 500 billion.

C. What kind of Pioneer Industry is eligible for the Tax Holiday?

PMK-130 does not change the pioneer industry categories or the definition of a pioneer industry under PMK-150. The list of pioneer industry under PMK-130 covers the following:

- a) Integrated upstream base metal industry (steel and non-steel), with or without its derivatives;
- b) Integrated purification and/or refinery of oil and gas industry, with or without its derivatives;
- c) Integrated petrochemical industry with oil, natural gas or coal based, with or without its derivatives;
- d) Integrated basic organic chemical industry sourced from agriculture, plantation or forestry, with or without its derivatives;
- e) Integrated basic inorganic chemical industry, with or without its derivatives;
- f) Integrated pharmaceutical raw material industry, with or without its derivatives;
- g) Manufacturing industry of irradiation equipment, electro medical or electrotherapy;
- h) Manufacturing industry of electronical or telematic equipment's main components;
- i) Manufacturing industry of engines and main components for engines;
- j) Manufacturing industry of robotic components,

which support the engine manufacturing industry;

- k) Manufacturing industry of main components for power plant machineries;
- l) Manufacturing industry of automotive and automotive main components;
- m) Manufacturing industry of main components for ships;
- n) Manufacturing industry of main components for trains;
- o) Manufacturing industry of main components for aircrafts and supporting activities for aerospace industry;
- p) Manufacturing industry with products based from agriculture, plantation, or forestry that produce pulp, with or without its derivatives;
- q) Economic infrastructure; or
- r) Digital economy that covers activities such as data processing, hosting, and other related activities.

The detail of the business activities and production types of each of the above pioneer industry is determined by the Investment Coordinating Board ("BKPM") Regulation. At present there are 174 industry codes nominated for coverage under the above industry categories.

D. How and when a company can apply for Tax Holiday incentive?

The Tax Holiday incentive application will be processed through Online Single Submission ("OSS") system.

When a company registers its new capital investment, OSS will notify the company on whether it meets the criteria to obtain Tax Holiday incentive. If the company receives a notification from OSS, which states that it meets the criteria to obtain Tax Holiday incentive, the company can continue the online application through OSS system by submitting the following documents:

- a) Softcopy of detail fixed assets in the capital investment plan; and
- b) Softcopy or an electronic document of the shareholders' SKF.

The complete application is submitted by OSS to the MoF as a recommendation to obtain Tax Holiday incentive and OSS will notify the taxpayer that its application is in process.

For a taxpayer that is engaged in an industry that is not listed as a pioneer industry, the supporting documents in item D (a) and (b) above are to be supported by:

- a) Softcopy of the Pioneer Industry criteria compliance study; and
- b) Soft copy of taxpayer's owned calculation on the Pioneer Industry quantitative criteria score (as per Attachment B of PMK-130).

The Chairman of BKPM shall evaluate whether the Pioneer Industry quantitative criteria score reaches at least 80 points within five business days after the application is completely received. If the score reaches at least 80 points, the application is considered to meet the Pioneer Industry criteria and will be processed by BKPM as a recommendation to obtain Tax Holiday incentive. OSS will notify the taxpayer that its application is in process. This decision can be re-evaluated by the DGT when it carries out a field audit based on the application to utilize the Tax Holiday incentive from the taxpayer.

The application for Tax Holiday incentive should be submitted through OSS before the Start of Commercial Production of the new capital investment, which is at:

- a) The same time when the company submits its application to obtain business registration number for a new taxpayer; or
- b) Within one year after the issuance of the business license for new capital investment.

If OSS system is not yet available, the application can be submitted offline through the Chairman of BKPM. The procedures to submit the application offline shall be carried out in accordance with BKPM regulation.

The decision to grant the Tax Holiday incentive to the company will be issued by the Chairman of BKPM for and on behalf of the MoF within five business days after it receives the complete proposal. The issuance of Tax Holiday incentive decree shall be conducted in accordance with BKPM Regulation.

The Tax Holiday incentive can be given by the MoF in respect of a proposal that is submitted within four years of the effective date of this regulation.

E. Taxpayer who receives assignment from the Government under national strategic project

A taxpayer who receives an assignment from the Government in relation to the accelerated implementation for the national strategic project ("Assigned Taxpayer") can apply to obtain the Tax Holiday incentive and it shall be given special treatments provided it meets the criteria. The special treatments are:

- a) It could submit its application after the Start of its Commercial Production, which is at the same time when the company submits its application to obtain business registration number for a new taxpayer; or within one year after the issuance of the business license for new capital investment;
- b) The investment value that shall be used to determine the Tax Holiday incentive period is the investment value at the time the taxpayer has realized all of its investment plan; and
- c) It can start to utilize the Tax Holiday incentive provided the taxpayer has started commercial production and it has realized all of its capital investment plan;

The assignment from the Government shall be determined by a Ministerial decree or a decree of the head of an institution that is equivalent to a Ministry.

The assignment from the Government can be carried out by the corporate taxpayer that is stated in the Ministerial/ head of institution decree; or a corporate taxpayer other than the corporate taxpayer stated in the Ministerial/head of institution decree, which has been formed to carry out this Ministerial/ head of institution decree. If, in conducting the assignment from the Government, the taxpayer uses spin-off scheme, the Tax Holiday incentive is provided to all of the investment value from the spin-off and the new capital investment.

F. When can a company utilize the Tax Holiday incentive?

A company can utilize the Tax Holiday incentive in the fiscal year when it starts its Commercial Production or when all of the new capital investment plan has been realized by Assigned Taxpayer.

The Start of Commercial Production is determined by the DGT based on a field audit that is conducted by the DGT after it receives the taxpayer's application to utilize the Tax Holiday incentive, which shall be submitted:

- a) after the Start of its Commercial Production, for a taxpayer that is engaged in pioneer industry; or

- b) after the end of the fiscal year when the company started its Commercial Production, for a taxpayer that is engaged in an industry not specifically listed as a pioneer industry.

The application to utilize the Tax Holiday incentive shall be carried out by the taxpayer via OSS by uploading supporting documents, which cover the following:

- a) Fixed assets realization along with their layout image;
- b) The taxpayer's SKF; and
- c) Documents related to its first-time sales.

The decision to utilize the Tax Holiday incentive shall be carried out by the DGT for and on behalf of the MoF.

G. What should be done by a company obtaining the Tax Holiday incentive?

A company obtaining Tax Holiday incentive must:

- a) Submit a report to DGT and Head of Fiscal Policy Board on an annual basis, in the form of:
 1. Capital investment realization report from the time it receives the MoF decision on the Tax Holiday incentive until the Start of Commercial Production; or for the Assigned Taxpayer, until it realizes all of its capital investment plan; and
 2. Production realization report from the fiscal year when the company starts its commercial production until the end of the fiscal year when the tax holiday expires; or for the Assigned Taxpayer, from the fiscal year the Tax Holiday incentive is determined by the DGT until the end of the fiscal year when the Tax Holiday expires.

Both reports must be submitted within 30 days after the end of the relevant fiscal year.

- b) Conduct separate bookkeeping between income that falls under the Tax Holiday incentive and other income that does not have the Tax Holiday incentive. Common expenses that cannot be separated between the two incomes in calculating the taxable income should be proportionally allocated; and
- c) Conduct withholding tax obligations as determined by the prevailing tax laws and regulations. Income earned by the company from its Main Business Activities is not subject to withholding tax during the period of the utilization of corporate income tax reduction (without requirement for the issuance of a withholding tax exemption letter). However, income earned by the company from other activities outside of its Main Business Activities can still be subject to withholding tax.

H. When can a Tax Holiday incentive be revoked?

Tax Holiday incentive can be revoked from a company if:

- a) Based on the field audit conducted by the DGT:
 - (i) it is discovered that the company's new capital investment realization value at the Start of Commercial Production is less than IDR 100 billion;
 - (ii) it is discovered that there is non-conformity between the realization and its Main Business Activities plan;
 - (iii) it is discovered that the taxpayer has already started its Commercial Production when it files an application to obtain Tax Holiday incentive (except for the Assigned Taxpayer);
 - (iv) it is discovered that the taxpayer does not meet the Pioneer Industry quantitative criteria;
- b) The company imports or purchases used capital goods in its realization of new capital investment used to obtain Tax Holiday incentive (except when the used goods are relocated as a whole package of new investment from other country and it is not produced locally, and/or the company is an Assigned Taxpayer);
- c) The company transfers its assets during the period of the Tax Holiday incentive, except where the transfers are conducted to increase efficiency, and it does not cause the realization of new capital investment value to be less than the new capital investment value plan; and/ or
- d) The company relocates its new capital investment to overseas.

The revocation of Tax Holiday incentive due to (a) above is decided by the MoF, while the revocation of Tax Holiday incentive due to (b) to (d) above is decided by the MoF based on the recommendation from the Head of Fiscal Policy Board. The revocation of Tax Holiday incentive shall be carried out by the DGT for and on behalf of the MoF.

If revoked, a company obtaining Tax Holiday incentive that has utilized the corporate income tax reduction, must repay the corporate income tax payable, including the penalties in accordance with the prevailing tax laws and regulations. The company cannot obtain further reduction on its corporate income tax if the Tax Holiday incentive is revoked due to (b) to (d) above.

I. Tax Holiday incentive evaluation

The Tax Holiday incentive will be published and periodically evaluated. The Chairman of BKPM shall submit a quarterly report to the MOF on the implementation of Tax Holiday incentive.

J. Transitional provisions

At the time PMK-130 is enacted:

- a) Taxpayer who has received Tax Holiday incentive based on MoF Regulation No. 130/PMK.011/2011 as amended by MoF Regulation No. 192/PMK.011/2014, can still utilize the tax incentive until the Tax Holiday expires;
- b) Taxpayer who has received Tax Holiday incentive based on MoF Regulation No. 159/PMK.010/2015 as amended by MoF Regulation No. 103/PMK.010/2016, can still utilize the tax incentive until the Tax Holiday expires;
- c) Taxpayer who has received Tax Holiday incentive based on MoF Regulation No. 35/PMK.010/2018 (PMK-35), can still utilize the tax incentive until the Tax Holiday expires;
- d) Taxpayer who has received Tax Holiday incentive based on PMK-150, can still utilize the tax incentive until the Tax Holiday expires;
- e) Provisions regarding assignment from Government, utilization of Tax Holiday incentive, field audit by DGT, decision on the utilization of Tax Holiday incentive, capital investment realization reporting, and revocation of Tax Holiday incentive under PMK-130 are also applicable to a taxpayer that has already received Tax Holiday incentive decision based on PMK-35 or PMK-150;
- f) For the application to obtain Tax Holiday incentive that has been submitted up to before the enactment of PMK-130 and it has already obtained decision in the coordination meeting carried out by BKPM, it shall be processed by using the provisions under PMK-150;
- g) For the application to obtain Tax Holiday incentive that has been submitted up to before the enactment of PMK-130 but it has not yet obtained decision from the coordination meeting carried out by BKPM, it shall be processed by using the provisions under PMK-130;
- h) For a taxpayer that owned business license for capital investment issued by OSS since the enactment of PMK-150 up to before the enactment of PMK-130 can apply the Tax Holiday incentive based on PMK-130 provided:

- (i) it meets the criteria;
 - (ii) the application is submitted before the Start of Commercial Production; and
 - (iii) the application is submitted within a year after the enactment of PMK-130;
- i) For a taxpayer that has received Tax Holiday incentive decision based on MoF Regulation No. 130/PMK.011/2011 as amended by MoF Regulation No. 192/PMK.011/2014, but has not yet utilize the Tax Holiday incentive, the procedures:
 - (i) on the reporting of funds utilization and capital investment realization shall be submitted based on the DGT Regulation No PER-44/PJ/2011;
 - (ii) application on the Start of Commercial Production shall be submitted based on PMK-130;
 - (iii) the decision on the Start of Commercial Production shall be processed based on the DGT Regulation No PER-45/PJ/2011.

As mentioned above, there are two provisions under PMK-130 (in item D above) which stipulates further implementation that refer to BKPM regulations. We understand from a discussion with a BKPM official that the amendments to the relevant BKPM regulations regarding tax holiday shall be issued this year.

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- ▶ Retail

Contact us

Tax Services Leader	Phone	Mobile	E-mail
Santoso Goentoro	+62 21 5289 5584	+62 816 893 648	santoso.goentoro@id.ey.com

Partner / Director / Senior Advisor	Phone	Mobile	E-mail
A. Business Tax			
Yudie Paimanta	+62 21 5289 5585	+62 816 893 687	yudie.paimanta@id.ey.com
Dodi Suryadarma	+62 21 5289 5236	+62 815 10000 490	dodi.suryadarma@id.ey.com
Bambang Suprijanto	+62 21 5289 5060	+62 811 326 597	bambang.suprijanto@id.ey.com
Nathanael Albert	+62 21 5289 5265	+62 811 950 926	nathanael.albert@id.ey.com
Sri Rahayu	+62 21 5289 5485	+62 816 883 281	sri.rahayu@id.ey.com
Henry Tambingon	+62 21 5289 5033	+62 816 166 1142	henry.tambingon@id.ey.com
B. International Tax and Transaction Services			
Ben Koesmoeljana	+62 21 5289 5030	+62 819 0569 8899	ben.koesmoeljana@id.ey.com
Triadi Mukti	+62 21 5289 5090	+62 816 186 0037	triadi.mukti@id.ey.com
Prasetya H. Lam	+62 21 5289 5022	+62 812 9900 8168	prasetya.h.lam@id.ey.com
Peter Ng	+62 21 5289 5228	+62 815 1800 790	peter.ng@id.ey.com
Jonathon McCarthy	+62 21 5289 5599	+62 815 1909 0233	jonathon.mccarthy@id.ey.com
Peter Mitchell	+62 21 5289 5232	+62 813 8185 4671	peter.mitchell@id.ey.com
Micky M Soeradiredja	+62 21 5289 5245	+62 812 8007 510	micky.mintarsyah@id.ey.com
Ryosuke Seto	+62 21 5289 5320	+62 811 806 135	ryosuke.seto@id.ey.com
C. Indirect Tax			
Iman Santoso	+62 21 5289 5250	+62 811 884 267	iman.santoso@id.ey.com
Elly Djoenaidi	+62 21 5289 5590	+62 816 893 689	elly.djoenaidi@id.ey.com
D. People Advisory Services			
Kartina Indriyani	+62 21 5289 5240	+62 811 868 336	kartina.indriyani@id.ey.com
Lusi Lubis	+62 21 5289 5262	+62 811 875 479	lusi.lubis@id.ey.com
E. Japanese Client Contact			
Yuichi Ohashi	+62 21 5289 4080	+62 821 1895 3653	yuichi.ohashi@id.ey.com

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