

Benefits in kind that can be treated as deductible expenses for employers

On 19 December 2018, the Minister of Finance (MoF) issued regulation No. 167/PMK.03/2018 (PMK-167) to regulate the tax treatment of expenses related to the provision of food and beverages for employees, and benefits in kind provided to employees in certain areas, that are permitted as tax deductions for the employer. PMK-167 is a replacement for MoF Regulation No. 83/PMK.03/2009 (PMK-83) and became effective on the date of issue.

Generally, when determining the taxable income of a domestic taxpayer or permanent establishment, benefits in kind are considered as non-deductible expenses. However, under PMK-167 there is an exception, where the provision of food and beverages for all employees, and benefits in kind provided to employees related to work in certain areas can be treated as deductible expenses.

This Alert summarizes key aspects of PMK-167.

A. Benefits in kind that can be treated as deductible expenses

Benefits in kind that can be treated as deductible expenses for the employer (and non-taxable income for the employees, who receive the benefits in kind) are as follows:

1. Provision of food and/ or beverages for all employees, which are related to their work. PMK-167 defines "employee" as all employees including board of directors and commissioners. This provision of food and/ or beverages covers:
 - a) the provision of food and/ or beverages in the work place; or
 - b) The provision of food and/ or beverages coupon given to employees whose nature of work hinders them to utilize the facility in (a) above. This covers employees in the marketing division, transportation division and other employees stationed off-premises. Coupon values that can be treated as deductible expenses shall be the same as the values of provision of food and/ or beverages for each employee that are given by the employer in the workplace.

2. Benefits in kind given to employees that are related to their work in “certain areas” in order to support Government policies for boosting development in those areas. These benefits in kind are infrastructure and facilities in the workplace given to employees and their families, which cover:

- a) Housing;
- b) Medical benefits;
- c) Education;
- d) Worship;
- e) Transportation. PMK-167 defines transportation as transportation for employees and their families related to their first assignment and at the end of the assignment; and/ or
- f) Sport facilities, not including golf, power boating, horse racing, and paragliding,

Provided the infrastructure and facilities are not already available so that the employer itself must provide them.

PMK-167 defines “certain areas” as geographic areas that have the economic potential to be developed but the condition of their economic infrastructure in general are not adequate, and are hard to reach by public transportation, whether from land, sea or air, so that to convert the available economic potential into actual economic results, the investor must bear quite a high risk and a relatively long return period. This specifically includes sea waters area of more than 50 meters depth, where the seabed has mineral reserves.

3. Benefits in kind in the form of facilities given to employees which are essential in carrying out their work as part of work safety facility, or because the nature of the work requires them. This covers the following:
 - a) Work safety equipment (including clothes);
 - b) Security uniform;
 - c) Employee shuttle service;
 - d) Accommodation for ship crew and alike; and/ or
 - e) Vehicle owned and used by a company for certain employees due to their position or nature of work.

B. Deductibility treatment

PMK-167 regulates on how the benefits in kind given to employees can be deductible for the employer as follows:

1. Benefits in kind for the purpose as stated in points A.2 and A.3 (c) and (d), which have economic life of more than a year, should be charged through depreciation as determined by Article 11 of the Income Tax Law;
2. Benefits in kind for the purpose as stated in points A.2 and A.3, which have economic life less than a year, should be deducted in the year these expenses are occurred;
3. Benefits in kind for the purpose as stated in point A.3 (e), should be deducted:
 - a) through depreciation (as determined by Article 11 of the Income Tax Law) by 50% of the depreciation amount for the acquisition and major overhaul of a vehicle, which has an economic life of more than a year; and
 - b) by 50% of the routine repair and maintenance expenses of the vehicle on the year these expenses occurred for the routine repair and maintenance of the vehicle.

C. Determination of “certain areas”

1. A decree to confirm a geographic area qualifies can be given to a taxpayer whose business located in the area that meets the criteria of “certain area” defined by PMK-167 (as stated in point A.2) for the period of:
 - a) 5 years; or
 - b) 10 years, for the holder of Production Operation Special Mining Business License (“IUPK-OP”), where:
 - i. the license is a transformation from a Contract of Work (CoW) or a coal mining CoW; and
 - ii. the provisions in the CoW or coal mining CoW have stipulated the treatments of the benefits in kind during the life of the contract.
2. In case the period under the certain area decree as stated in point (1) above has expired but the business location of the taxpayer still meets certain area criteria, the certain area decree can be extended for another 5 or 10 years in accordance with the previous decree.

3. To obtain a certain area decree and its extension, a taxpayer must file an application to the Director General of Taxation (DGT). The Head of Regional Tax Office, who supervises the tax office where the taxpayer is registered, shall issue the decree on behalf of the DGT.
4. The certain area decree is effective on the month the decree is issued, and the extension on the decree is effective when the period under the previous decree is expired.

D. Implementing regulations

The DGT will issue implementing regulations on PMK-167 regarding technical guidance on the determination of “certain areas”, and the limitations on infrastructure and facilities at the work location.

E. Transitional provisions

At the time PMK-167 is enacted:

1. The certain area decree or its extension that is given under PMK-83, the decree is still valid until the period under the decree or its extension is expired; and
2. In the event that a certain area or its extension application has been received by the DGT before the enactment of PMK-167 but the taxpayer has not yet received any decision regarding the application, then the application will be processed in accordance with the provisions under PMK-167.

The EY logo is positioned in the top right corner of the page. It consists of the letters 'EY' in a bold, white, sans-serif font. Above the 'Y' is a yellow chevron pointing upwards and to the right. The background of the entire page is a photograph of a person's face, partially obscured by numerous soap bubbles that reflect light in various colors.

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