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IMPLEMENTING REGULATION ON BENEFITS IN-KIND

Government Regulation No. 55/2022 (“GR-55”) covered a number of issues relating to the income tax treatment of benefits in-kind (“BIK”). (See *our News Alert No. 1/2023 for details*.) The recently issued Minister of Finance Regulation No. 66/2023 (“MoF-66”), as the implementing regulation of article 31 of GR-55, provides further guidance. MoF-66 is effective from 1 July 2023 and revokes MoF Regulation No. 167/2018. Below we discuss the more significant issues addressed in MoF-66.

BIK exempt from income tax

As stated in GR-55, the following BIK are not subject to income tax:

- a. Food, beverages, and their ingredients given to all employees
- b. BIK provided for employees and their families in remote areas
- c. BIK which are required for work
- d. BIK sourced from the state, regional or village budget
- e. BIK of certain types or with limitations

MoF-66 provides further details on (a), (b), and (e), which are discussed below.

Food and beverages

Food and beverages which are provided to all employees at the workplace are exempt from income tax. However, meal coupons given to employees who must work away from the workplace (such as marketing employees) are exempt up to the higher of (i) IDR 2 million/month/employee or (ii) the value provided per employee at the workplace. Coupons are non-monetary instruments such as vouchers that can be exchanged for food/drink and reimbursement of expenses incurred by the employee. The excess coupon value (difference between the actual coupon and the limit) is treated as taxable income.

BIK in remote areas

MoF-66 provides further guidance on what qualifies as a certain area (remote area). This is an area that has the potential to be developed, but the economic infrastructure is inadequate and the area is difficult to reach by public transportation, including sea water area with a depth of more than 50 meters in which there are mineral reserves on the seabed.

Economic infrastructure includes:

1. Electricity
2. Clean water
3. Housing that can be rented by employees
4. Hospitals or polyclinics

News Alert

July No. 4/2023

5. Schools
6. Permanent sports or entertainment venues
7. Places of worship
8. Markets

Public transportation infrastructure includes:

1. Roads or bridges
2. Sea ports or docks, river ports or docks, or airports
3. Public transportation by land, sea, or air

To be designated as a remote area, at least six of the above categories of infrastructure (one of which must be a type of public transportation) must be unavailable or unfeasible.

The approval to be designated as a remote area is granted by the Director General of Taxes ("DGT"). A company that obtained a mining license can be approved for the validity of its contract, in five-year intervals; a non-mining company can be granted approval for five years, which can be extended for five years. Application procedures and transitional provisions are provided in the regulation.

BIK of certain types or with restrictions

The following BIK are not treated as taxable and are exempt from income tax:

No.	Type of BIK	Restrictions
1	Gifts from the employer for religious holidays, limited to Idul Fitri, Christmas, Nyepi, Vesak, and Chinese New Year	Received by all employees
2	Gifts from the employer given other than for religious holidays	a. Received by an employee b. Maximum IDR 3 million/year per employee
3	Work equipment and facilities from the employer, including computers, laptops, or cellular phones along with supporting costs such as credit (<i>pulsa</i>) or internet connection	a. Received by an employee b. Supports the employee's work
4	Health care and medical facilities from the employer	a. Received by an employee b. Given to handle: – work accident – occupational disease – life-saving emergency – follow-up care and treatment from a work accident or occupational disease
5	Sports facilities from the employer other than golf, horse racing, motorized boat racing, gliding, or automotive sports	a. Received by an employee b. Maximum IDR 1.5 million/year/employee
6	Shared (communal) housing facilities from the employer, such as dormitories, boarding houses, or barracks	Received by an employee
7	Housing facilities from the employer whose utilization rights are held by individuals, including apartments or landed houses	a. Received by an employee b. Maximum IDR 2 million/month/employee
8	Vehicle facilities from the employer	Received by an employee who: a. does not have equity participation in the employer; and b. has an average gross income in the last 12 months of up to IDR 100 million/month from the employer
9	Employer contribution to a pension fund authorized by the Financial Services Authority (OJK)	Received by an employee
10	Religious facilities such as prayer room, mosque, chapel, or temple	Intended solely for religious activities
11	All BIK received in 2022	Received by an employee or service provider

Valuation of BIK

There are two types of employee benefits: (i) goods given other than in money (in-kind/*natura*) and (ii) facilities or services (*kenikmatan*), which is the more common type of BIK provided by employers. The difference is relevant when determining the value of the BIK:

- In-kind (*natura*): The value of the benefit is based on the market value of the goods provided. However, if the goods were originally intended to be sold by the employer to other customers (inventory), the value is based on:
 - Market value, for land and buildings
 - Cost of goods sold, for other than land and buildings
- Facilities or services (*kenikmatan*): The value is based on the actual cost or the cost that should have been incurred by the employer to provide the facility or service. Valuation is determined on a monthly basis. If the benefit is given to more than one recipient, the value is allocated proportionally to each recipient.

Calculation examples are provided in MoF-66.

Taxability of BIK for the employee

Under GR-55, BIK received in 2022 for which tax was not withheld by the employer were to be calculated, paid, and reported by employees in their 2022 annual tax return. However, under MoF-66, all BIK received in 2022 by an employee or service provider are treated as non-taxable. This treatment was confirmed by the DGT during the socialization of MoF-66.

If the employer already withheld WHT Art. 21 on BIK for 2022, the employer can amend the Art. 21 return and the overpayment can be carried forward to the next tax period. The respective employees should also amend their 2022 individual tax returns if their 1721-A1 from the employer is changed.

An employee who received BIK in 2022 and reported the BIK as other income in their individual tax return can amend the tax return. However, this will cause an overpayment and be subject to a tax audit.

Deductibility of BIK for the employer

If the BIK has a useful life of less than one year, it is deducted in the year the cost is incurred. If the useful life of a benefit (*kenikmatan*) is more than one year, it is deducted through depreciation or amortization.

The treatment of BIK as a deductible expense for the employer depends on when fiscal year 2022 started:

FY 2022 Bookkeeping	BIK Becomes Deductible
Before 1 January 2022	From 1 January 2022
On or after 1 January 2022	Start of FY 2022

BIK reporting for the employer

The employer is required to declare the BIK given and the recipients in the annual corporate income tax return. MoF-66 does not provide any guidelines on how to report this.

Employer's withholding requirement

The WHT Art. 21 requirement for the employer is as follows:

- The WHT Art. 21 on BIK is conducted at the end of the month:
 - In-kind (*natura*): At the time the income is transferred or payable, whichever is earlier
 - Facilities or services (*kenikmatan*): At the time of transfer of rights or part of rights to use the facility or service
- The obligation to withhold WHT Art. 21 by the employer applies to BIK received **from 1 July 2023**. (Note that this is different to GR-55 which said the employer's withholding obligation was from 1 January 2022.)
- For BIK received by an employee from 1 January–30 June 2023 for which WHT Art. 21 has not been withheld, the income tax must be calculated, paid and reported by the employee in their 2023 individual income tax return. If the employer already withheld WHT Art. 21 on BIK for the period 1 January–30 June 2023, the employer can amend the WHT Art. 21 return to adjust the calculation by referring to MoF-66.

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