



February 2023

Updates to General Provisions and Procedures for Taxation in Government Regulation No. 50/2022 and Government Regulation in Lieu of Law No. 2/2022

(GR No. 50/2022 and Perppu No. 2/2022)

SFC Tax Newsletter

Audit / Tax / Advisory

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In connection with the formal review of the Job Creation Law by the Constitutional Court, on 30 December 2022 the Government issued Government Regulation in Lieu of Law No. 2 of 2022 (Perppu-2/2022). In principle, these improvements do not change the substance that has been regulated in the Job Creation Law, so Perppu-2/2022 must be read and interpreted the same as the Law currently in effect in the context of taxation including General Provisions and Procedures for Taxation. Previously, on 20 December 2022, the Government had also issued Government Regulation No. 50 of 2022 (GR 50/2022) as a replacement for GR No. 74 of 2011 and GR No. 9 of 2021 and as a form of implementation and adjustment of General Provisions and Procedures for Taxation in line with the Tax Harmonization Law.

This newsletter will discuss the main points of changes in the application of General Tax Provisions and Procedures from Perppu-2/2022 and GR 50/2022, as follows:

• Administrative Sanctions on Interest and Interest Compensation for Overpayment

The rate of administrative sanctions in the form of interest penalty and interest compensation for overpayment per month, which previously had a fixed rate of 2%, has changed to refer to the reference interest rate set by the Minister of Finance that applies on the date the penalty calculation starts (since the due date) divided by 12, plus an uplift factor.

Administrative sanctions of interest penalty and interest as compensation for overpayment are set at a maximum of 24 months.

Administrative Sanctions are imposed on interest for collection of payment, installment/postponement of payment of taxes, and underpayments from delays in submitting Annual Tax Returns.

Meanwhile, the interest on overpayment is granted for:

- Refund of tax overpayment that is made after 1 (one) month since the request [Article 11 paragraph (3)];
- Late issuance of Overpaid Tax Assessment Notice (SKPLB) after 1 (one) month from the due date [Article 17B paragraph (3)];
- Issuance of SKLPB on examination of preliminary evidence [Article 17B paragraph (4), if:
 - a. Not continued with criminal investigation
 - b. Continued with criminal investigation, but there is no prosecution of criminal acts of taxation, or
 - c. Continued with criminal investigation and prosecution of criminal acts of taxation, but taxpayer is acquitted or not guilty.

In the event that an objection, appeal, or judicial review results in overpayment of tax, the taxpayer will be given interest as follows:

- Maximum amount of overpayment agreed in the closing conference on audit results on the overpayment of Tax Return for which a Tax Assessment Notice is issued
- The overpaid tax return is a tax return with request for a refund
- Based on the monthly interest rate in effect on the date the calculation of Interest on Overpayment starts
- A maximum of 24 months from the date of issuance of the tax assessment to the date of issuance of the decision/verdict, namely the date the appeal verdict / judicial review verdict was received by the Director General of Taxes; this has changed, as the previous setting was the date the court verdict / judicial review verdict was pronounced.

Apart from that, there is also an additional provision (Article 17B paragraph 5) that interest on tax overpayment is not given in the event that the taxpayer discloses or requests a termination of the investigation. The consideration is that the Taxpayer voluntarily discloses the untruthfulness of his actions or proposes to terminate the investigation.

• Deletion of several articles in the Job Creation Law

The provision of legal certainty for taxpayers in connection with elements of negligence for the first time, which has been difficult to prove in the implementation of the examination of initial evidence (Article 13A), is deleted and the provision that an Additional Underpaid Tax Assessment Notice regarding tax penalties that have been decided can still be issued (Article 15 paragraph 4) is deleted. In addition, the phrase "the action is an act after the first action as referred to in Article 13A" is deleted, in line with the deletion of the provisions of Article 13A in article 38, it becomes: "Any person who due to negligence does not submit a Tax Return or submits a Tax Return but the contents are incorrect or incomplete, or attaches information whose content is incorrect so that it can cause losses to state revenues, shall be fined at least 1 (one) time the amount of unpaid or underpaid tax and a maximum of 2 (two) times the amount of unpaid or underpaid tax, or sentenced to imprisonment for a minimum of 3 (three) months or a maximum of 1 (one) year.

• Single Identity Number (NIK) as Tax ID (NPWP)

There are arrangements regarding the Integration of Population Database and Tax Data, arrangements for Tax ID registration by activating NIK, and cancellation of NPWP and/or revocation of confirmation of Taxable Entrepreneurs by deactivating NIK as NPWP.

There are provisions for registration of NPWP through NIK activation as NPWP for taxpayers who meet the subjective and objective tax requirements, also including:

- Married women who are taxed separately.
- Inheritance that has not been divided and is represented by one of the heirs, executor of the will, or the party managing the inheritance.

There are also provisions for deleting the NPWP and/or revoking the confirmation of a Taxable Entrepreneur by deactivating the NIK as NPWP if the taxpayer does not meet the subjective and/or objective requirements in accordance with the taxation laws and regulations.

- **Amendment of Tax Returns**

Amendment of a tax return can be carried out before an audit or open investigation of preliminary evidence; however, in the case of an overpaid tax return/tax return with loss position it shall be submitted two years before its statute of limitations. Taxpayers may amend their tax returns on fiscal losses that are different from those that have been compensated in the case of receiving a Tax Assessment Notice, Tax Objection Decision, Tax Reduction Decision, Tax Cancellation Decision, Correction on Tax Assessment, MAP Decision, Tax Appeal Verdict, or Judicial Review verdict for a maximum of three months and not more than two years before the statute of limitations for a tax return with loss/overpayment status. If the Taxpayer does not make an amendment, the loss of fiscal compensation is calculated ex officio at the time of issuance of the tax assessment/ decision/ verdict.

- **Voluntary Disclosure**

There is additional scope for voluntary disclosure, whereby a taxpayer may make voluntary disclosure of not submitting a tax return or submitting a tax return but the contents are incorrect or incomplete or attaching information whose contents are incorrect due to negligence (Article 38) or intentionally (Article 39) such as to cause losses to state revenues, attempting to commit criminal acts of abusing or using without rights NPWP or Confirmation as Taxable Entrepreneur, fictitious Tax Invoices, and Land and Building Tax. The Taxpayer may submit voluntarily disclosure of Incorrect Completion of a Tax Return during an Audit as long as the tax audit findings have not been delivered.

- **Basis for Refund of Tax Overpayment**

MAP Decision has been added as a basis for refund of tax overpayment, in addition to Overpaid Tax Assessment Notice (SKPLB), Preliminary Refund of Tax Overpayment (SKPPKP), Objection Decision, Tax Reduction Decision, Administrative Sanction Reduction Decision, Administrative Sanction Cancellation Decision, Tax Assessment Reduction Decision, Tax Assessment Cancellation Decision, Tax Appeal Verdict, Judicial Review Verdict, Decision Letter Granting Interest Compensation on Overpayment (SKPIB).

If the taxpayer has a tax liability, then the overpayment of the tax is directly offset against the tax liability first.

Refund of tax overpayment shall be paid no later than 1 (one) month after the request, issuance of decree/assessment, or receipt of a verdict and interest will also be given if the 1 (one) month period has passed.

• Tax Audit

The Director General of Taxes may cancel a tax assessment notice issued based on an audit that has been performed without going through the procedures for submitting notification of tax audit findings (SPHP) and Final Discussion of Audit Results, and the audit process shall be continued by carrying out the procedures that have not been carried out, in the form of submitting SPHP and Final Discussion of Audit Results.

In the case of an assessment notice that is cancelled based on a refund request as per Article 17B, the period of 12 months for the issuance of the tax assessment is deferred from the issuance date of the assessment notice that is cancelled to the issuance date of the Cancellation Decision. Under the previous regulation, the 12 (twelve) month period was not deferred.

• Determination and Decision

In the event that data and/or information is obtained indicating that there are tax obligations that have not been fulfilled by the Taxpayer prior to the issuance of the NPWP and/or being confirmed as a Taxable Entrepreneur or after the NPWP has been cancelled or the Taxable Entrepreneur's confirmation has been revoked, the Director General of Taxes may issue a Tax Assessment Notice. The Tax Assessment Notice may be issued within 5 years from the time the tax becomes payable or the end of the tax period, part of the tax year or the tax year.

In addition, there are additional criteria for the revocation of certain taxpayers in the case that the taxpayer:

- Is late in submission of an annual tax return
- Is late in submission of monthly tax returns for two consecutive periods
- Is late in submission of monthly tax returns for three period within one calendar year
- Submits unaudited financial statements
- Submits audited financial statements with other than an unqualified opinion
- Is subject to open examination of preliminary evidence or criminal investigation

• Objections and Appeals

There are adjustments to the penalties if an objection, appeal or judicial review is rejected/partially granted/incurs an increase in the addition of tax liability/tax that should be paid, as follows:

Process	Previous Regulations	Harmonization Law & GG No. 50/2022
Tax Objection	50%	30%
Tax Appeal	100%	60%
Tax Reconsideration	Not Regulated	60%

• **Correction of Decision Letter ex officio**

There is an adjustment to the decisions that may be corrected ex officio in the event that there are writing errors, calculation errors, and/or errors in application of regulations, on the request of the Taxpayer or ex officio by the Director General of Taxes as follows: Tax Assessment (SKP), Tax Collection Notice (STP), Tax Correction Decision, Tax Objection Decision, Decision on Reduction of Administrative Sanctions, Decision on Cancellation of Administrative Penalties Decision, Decision on Reduction of Tax Assessment, Decision on Cancellation of Tax Assessment, Confirmation as VAT Entrepreneur (SKPKP), Decision on Interest on Overpayment (SKPIB), Land and Building Tax Return (SPPT), Land and Building Tax Assessment Notice (SKP PBB), Land and Building Tax Notification (STP PBB), Land and Building Tax reduction decision, Reduction of Land and Building Tax administrative penalty, or MAP Decision.

The definition of a calculation error includes:

- Mistakes in addition, subtraction, multiplication and/or division
- Miscalculation due to the issuance of tax assessment, tax notification, decision or verdict

In the case of an error in crediting VAT input tax in a decision letter or stipulation, it can only be done if there is a difference in the amount of Input VAT that serves as tax credit and the input tax does not contain a dispute between the tax authority and the Taxpayer. Such decision shall be issued no later than 6 months from the date the correction request letter is received.

• **Reduction, Elimination, Cancellation, and Lawsuit**

The Director General of Taxes ex officio or upon the request of a Taxpayer may:

- a. Reduce or eliminate administrative sanctions
- b. Reduce or cancel an incorrect Tax Assessment
- c. Reduce or cancel an incorrect Tax Notification
- d. Cancel the Tax Assessments from the result of a tax audit that is carried out without:
 - Submission of notification letter of tax audit result or
 - Final discussion of tax audit results with the Taxpayer

The request as referred to in letter a to letter c may only be submitted by a Taxpayer a maximum of two times, while for letter d it may only be filed by a Taxpayer a maximum of one time.

In the event that there is a lawsuit decision that cancels a Tax Assessment per Article 17B or an Objection Decision, the period of 12 months for issuance of the Tax Assessment or resolution of the objection is deferred from the issuance date of the Tax Assessment or Objection Decision being processed in the lawsuit until the date of issuance of the Lawsuit Decision. This is different from the previous arrangement, as previously the 12-month period was not deferred.

• **Tax Collection**

Tax claims and MAP Decisions are added as bases for tax collections, and there is a change to Tax Collection in Article 14 paragraph (4), where in the previous regulations Tax Collection under Article 14 paragraph (4) for a Tax Assessments that does not yet have binding legal force remains a tax liability but the collection action is deferred.

• **Proxy of the Taxpayer**

There is an affirmation that an attorney must have certain competence in taxation, and the exceptions are only for family (husband, wife, or blood relatives or relatives up to the second degree). Apart from that, there are also requirements that a person may not be a proxy if in carrying out the principal's tax rights and obligations the proxy:

- Obstructs the implementation of the provisions of the Law; or
- Is sentenced for criminal acts of taxation or other criminal acts

• **Non-Disclosure**

There is a regulation that every official and professional is obliged to maintain professional confidentiality in the context of:

1. Criminal investigation,
2. Prosecution, or
3. Cooperation with state institutions, government agencies, legal entities established through laws or government regulations, or other parties

The Minister of Finance has the authority to give written permission to provide information and/or show written evidence from or about taxpayers to certain parties.

• **Mutual Agreement Procedure (MAP)**

There is a Tax Treaty arrangement in accordance with Article 27C of the Tax Harmonization Law, whereby the DGT has the authority to carry out a MAP to prevent/resolve problems in the application of Tax Treaty.

Issuance of a MAP Decision may be requested by:

1. Domestic Taxpayer
2. Director General of Taxes
3. Authorized official of Tax Treaty partner country/jurisdiction
4. Indonesian citizen through the Director General of Taxes regarding discriminatory treatment in partner country/jurisdiction

The Director General of Tax shall issue a MAP Decision as long as it has:

- Received a written notification from the Tax Treaty partner official that the Mutual Agreement can be implemented and
- Submitted a written notification to the Tax Treaty partner official that the Mutual Agreement can be implemented

The requirements for Issuance of a MAP Decision together with domestic legal remedies, in the event that the Mutual Agreement is agreed before:

- Objection Decision is issued
- Reduction/Cancellation of Tax Assessments Decision is issued
- Tax Appeal Verdict is pronounced
- Judicial Review Verdict is issued

In addition to the general requirements, the Director General of Taxes shall issue a MAP Decision as long as it has:

- Received adjustments or revocation of objections from the Taxpayer
- Received the revocation of requests for reduction/cancellation of Tax Assessments
- Received adjustment or withdrawal of appeals
- Received adjustments or revocation of request for judicial review

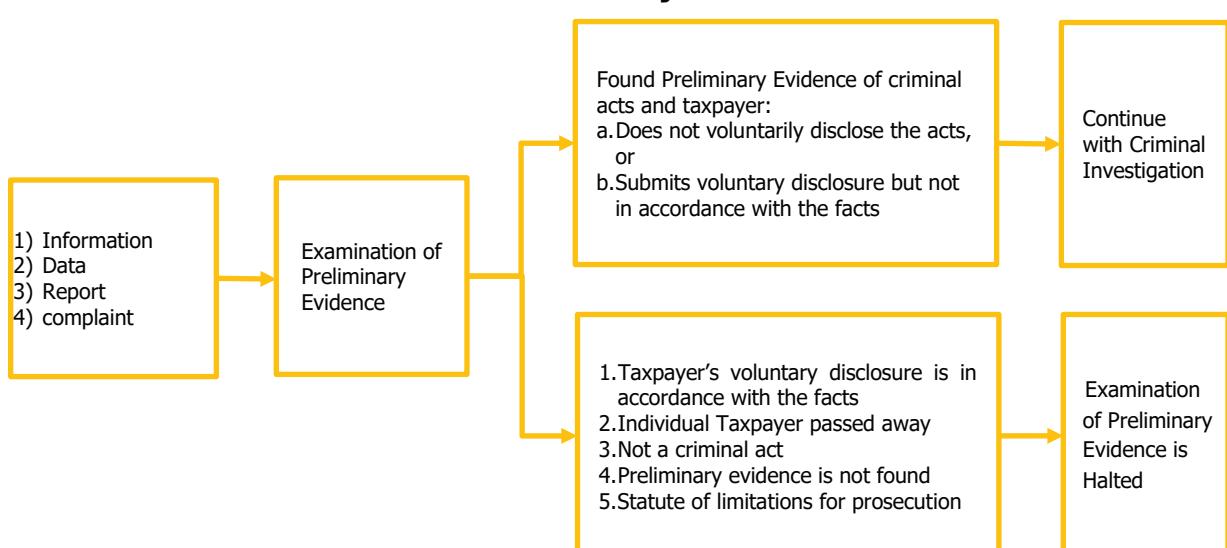
The Mutual Agreement contains an agreement for the disputed material in the event that the WP files a lawsuit. In addition to the general requirements, the Director General of Taxes shall issue a MAP Decision as long as it has received notification of the revocation of the lawsuit.

If the MAP Decision results in Overpayment, it is refunded to the Taxpayer without Interest Compensation. In the event that the MAP Decision is not issued, Tax Assessments, Tax Objection Decisions, Tax Assessment Reduction Decisions, Tax Assessment Cancellation Decisions, Correction Decisions, Tax Appeal Verdicts, or Judicial Review Verdicts shall apply.

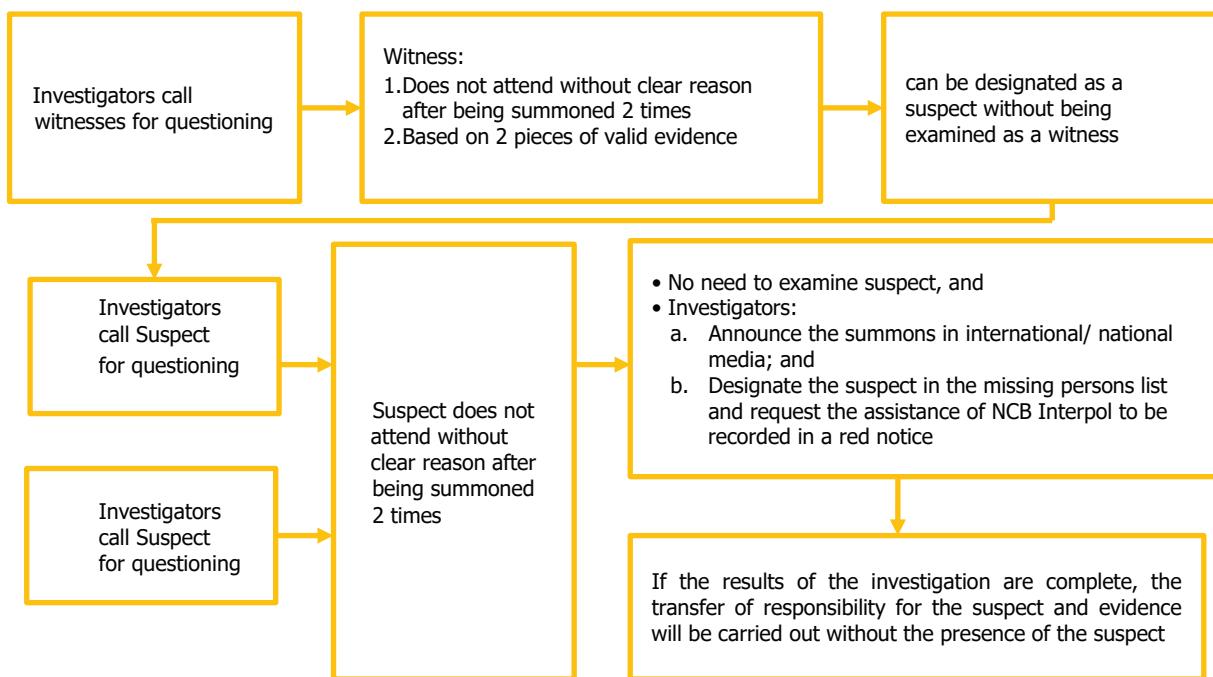
• **Examination of Preliminary Evidence and Criminal Investigation**

There are new arrangements regarding Examination of Preliminary Evidence and Criminal Investigation which were not stipulated in the previous regulations, as follows:

Examination of Preliminary Evidence



Criminal Investigation and In Absentia



• Termination of Criminal Investigations

For the purposes of state revenue, upon request of the Minister, the Attorney General may halt a criminal investigation within a maximum period of 6 (six) months from the date of the request letter, only if the taxpayer settles in full:

- a. State Losses per Article 38 of KUP Law + penalty of 1x
- b. State Losses per Article 39 of KUP Law + penalty of 3x
- c. The amount of tax per Article 39A of KUP Law + penalty of 4x
- d. And the following are applied:
- e. Highest penalty for alternative punishments
- f. Cumulative penalty for cumulative punishments

In the event that the criminal case has been transferred to the court, the defendant may still pay off the loss to state revenue and/or the amount of taxes along with the same administrative sanctions after receiving the information on state losses from the DGT and the settlement shall serve as a consideration for:

- a. Prosecution without imprisonment.
- b. Taken into account as a payment for losses to state revenue or as a fine imposed on the Defendant.

In the case that the payments made by the taxpayer, suspect or defendant at the stage of Criminal Investigation up to the trial do not fulfill the amounts referred to in points a and b, such payments can be taken into account as payment of fines.

The payment is taken into account as a payment for losses to state revenue or a fine if the defendant first:

- a. Applies for a payment certificate to the Director General of Taxes; and
- b. Submits a payment certificate issued by the Director General of Taxes as referred to in letter a to the public prosecutor.

• Implementation of Rights and Fulfillment of Obligations Electronically

Taxpayers can exercise their tax rights and fulfill their taxation obligations electronically and use electronic signatures (either certified by PSrE or not). The Director General of Taxes may issue decisions or other documents in electronic form that have the same legal effect as written decisions or decisions (with either certified electronic signatures or certified electronic seals).

The Minister may cooperate with government agencies, institutions, associations, and other parties:

- To provide facilities for tax rights and obligations electronically; And
- To use of certified & non-certified electronic signatures
- Through an administrative system that is integrated with the system at the Directorate General of Taxes. The sent date or the received date related to the implementation of rights and fulfillment of tax obligations that is carried out electronically is the date of electronic delivery in the DGT administrative system or an administrative system that is integrated with the DGT administration system.

• Carbon Tax

Taxpayers that conduct activities that produce carbon emissions or Collectors of Carbon Tax are required to submit Tax Returns to report the calculation and/or payment of Carbon Tax. The Carbon Tax shall be paid by the Taxpayer himself or collected by a Carbon Tax collector.

Taxpayers conducting activities that generate carbon emissions are required to submit Annual Tax Returns with a maximum deadline of 4 (four) months after the end of the calendar year, while Taxpayers performing collection of Carbon Tax are required to submit monthly tax returns of Carbon Tax with a maximum deadline of 20 (twenty) days after the end of the Tax Period. Taxpayers are required to keep records of the amount of carbon emissions as the basis for calculating the carbon tax payable.

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