

Ini Ketentuan Umum Perpajakan yang Dirombak Omnibus Law

These General Provisions on Taxation are Overhauled in the Omnibus Law

Undang-Undang (UU) Cipta Kerja, yang mengusung konsep Omnibus Law, turut merombak substansi Undang-Undang Nomor 28 tahun 2007 tentang Ketentuan Umum dan Tata Cara Perpajakan (KUP).

Perubahan paling mendasar adalah Menteri Keuangan diberikan kewenangan untuk menetapkan besaran sanksi administrasi berupa bunga dan denda menjadi lebih tinggi dari tingkat suku bunga acuan. Dengan diskresi tersebut maka besaran sanksi menjadi lebih fleksibel tergantung perkembangan suku bunga acuan yang dinilai lebih mencerminkan kondisi ekonomi saat itu.

Sanksi Pembetulan SPT

Wajib Pajak yang berinisiatif melakukan pembetulan SPT Tahunan maupun SPT Masa sehingga mengakibatkan utang pajak menjadi lebih besar, dikenakan sanksi administrasi berupa bunga sebesar 5% plus suku bunga acuan dibagi 12 bulan. Sanksi tersebut dihitung sejak jatuh tempo hingga pembayaran, maksimal 24 bulan.

Penetapan sanksi administrasi oleh Menteri Keuangan tersebut berpotensi lebih tinggi atau bisa lebih rendah dari sanksi bunga 2% per bulan yang berlaku sebelumnya.

Pengungkapan Ketidakbenaran

Wajib Pajak yang mengungkap ketidakbenaran penyampaian SPT setelah pemeriksaan bukti permulaan dan mengakibatkan kurang bayar pajak, dikenakan denda

The Job Creation Law, which carries the concept of Omnibus Law, also changes the substance of Law Number 28 Year 2007 on Taxation General Provisions and Procedures (KUP).

The most fundamental change is that the Minister of Finance is given the authority to set the amount of administrative sanctions in the form of interests and fines higher than the benchmark interest rate (BI 7-Day Repo Rate). With this discretion, the amount of interest sanctions becomes more flexible, depending on the development of the benchmark interest rate considered to reflect the current economic condition more accurately.

Tax Return Revision Sanctions

Taxpayers who take the initiative to revise their Annual and Periodic Tax Returns resulting in larger tax payable are subject to an administrative sanction in the form of a 5% interest plus the benchmark interest rate divided by 12 months. The interest sanctions are calculated from the maturity to the payment, in a maximum of 24 months.

The administrative sanctions determined by the Minister of Finance may be higher or lower than the 2% per month interest penalty applied previously.

Voluntary Disclosure

Taxpayers who voluntarily disclose an error in a Tax

sebesar 100% dari jumlah pajak yang kurang dibayar. Sanksi administrasi tersebut lebih rendah dibandingkan dengan denda semula 150% dari jumlah pajak yang kurang dibayar.

Konsekuensinya berbeda jika pengungkapan ketidakbenaran penyampaian SPT dilakukan Wajib Pajak setelah proses pemeriksaan. Sepanjang belum terbit Surat Ketetapan Pajak (SKP), atas kurang bayar pajak yang timbul dikenakan sanksi denda sebesar 10% lebih tinggi dari suku bunga acuan dibagi 12 untuk jangka waktu paling lama 24 bulan. Sebelumnya, sanksi administrasi yang berlaku untuk kondisi ini berupa denda 50% dari pajak yang kurang dibayar.

Lewat Jatuh Tempo

Dalam hal Wajib Pajak membayar pajak terutang setelah tanggal jatuh tempo pembayaran yang ditetapkan Menteri Keuangan, dikenai sanksi administrasi berupa bunga sebesar 5% ditambah suku bunga acuan dan dibagi 12 untuk jangka waktu maksimal 24 bulan. Untuk kondisi serupa, sanksi bunga semula 2% per bulan.

Aturan sebelumnya, Direktur Jenderal Pajak dapat mempertimbangkan permohonan Wajib Pajak untuk mengangsur atau menunda pembayaran pajak terutang paling lama 12 bulan. Namun, klausul tersebut dihapuskan di UU Cipta Kerja.

Pidana Pajak

UU Cipta Kerja juga mempertegas penegakan hukum atas pelanggaran perpajakan yang dapat merugikan negara. Sebelumnya sanksi pidana dijatuhkan atas pelanggaran perpajakan yang sifatnya berulang atau lebih dari satu kali, sedangkan dalam Omnibus Law kesalahan perdana pun bisa disanksi denda atau pidana kurungan.

Sebagai catatan, pelanggaran yang bisa dibawa ke ranah pidana pajak ini meliputi kelalaian dalam menyampaikan SPT, atau menyampaikan tetapi isinya tidak benar dan tidak lengkap sehingga negara dirugikan. Adapun ancaman sanksinya bisa berupa denda paling satu sampai dua kali jumlah pajak terutang yang tidak atau kurang dibayar, atau pidana kurungan paling singkat tiga bulan atau paling lama satu tahun.

Ini merupakan imbas dari dihapusnya Pasal 13A yang sebelumnya menegaskan, Wajib Pajak yang untuk pertama kali tidak menyampaikan SPT atau menyampaikan SPT tetapi isi atau keterangannya tidak benar atau tidak lengkap, sehingga dapat menimbulkan kerugian pada pendapatan negara, tidak dikenai sanksi pidana. Namun, dalam hal terjadi kurang bayar pajak maka Wajib Pajak harus melunasinya plus sanksi administrasi berupa kenaikan sebesar 200% dari jumlah pajak yang kurang dibayar.

Surat Ketetapan Pajak Kurang Bayar (SKPKB)

Selain itu, Omnibus Law Cipta Kerja juga menghapus frasa "keterangan lain" di Pasal 13 ayat (1) huruf a dan huruf c, yang menjadi salah satu dasar penerbitan SKPKB dalam jangka waktu lima tahun sejak terutang pajak atau berakhirnya masa pajak.

Return submission after the preliminary evidence audit resulting in a tax underpayment will be subject to a fine of 100% of the underpaid tax. The administrative penalty is lower than the original penalty of 150% of the underpaid tax.

The consequence is different if the Taxpayers voluntarily disclose the error after the audit process. As long as the Tax Assessment Notice (SKP) has not been issued, the underpaid tax arose will subject to a fine of 10%, which is higher than the benchmark interest rate divided by 12 for a maximum period of 24 months. Previously, the administrative sanction applied to this condition was in the form of a 50% fine of underpaid tax.

Overdue Tax Payment

In the case that Taxpayers pay the tax payable after the payment due date determined by the Minister of Finance, the Taxpayers will be subject to an administrative sanction in the form of 5% interest plus the benchmark interest rate divided by 12 for a maximum period of 24 months. For the similar condition, the previous interest penalty was 2% per month.

In the previous rule, the Director General of Taxes might consider the Taxpayer's application to pay in installments or to delay the payment of the tax payable for a maximum of 12 months. However, this clause was taken out in the Job Creation Law.

Tax Crime

The Job Creation Law also strengthens the law enforcement for tax abuses that could harm the state. Previously, criminal penalties were imposed for repeating or more than once tax violation. Meanwhile, in the Omnibus Law, the initial offence can also be penalized for fines or confinement.

For the record, abuses that can be brought to the tax court include negligence in the Tax Return submission or Tax Return submission with incorrect and incomplete contents disadvantaging the state. The threat of sanctions can be in the form of a fine of at least one to two times the amount of unpaid or underpaid taxes, or a confinement minimum of three months or a maximum of one year.

This is the result of the elimination of Article 13A which previously emphasized that Taxpayers who do not submit a Tax Return or do submit the Tax Return with incorrect or incomplete content or information, so that they cause losses to state revenue, for the first time are not subject to criminal sanctions. However, in the case of a tax underpayment, the Taxpayers must settle it and pay the administrative sanction in the form of a 200% increase of the underpaid tax.

Tax Underpayment Assessment Notice (SKPKB)

Moreover, the Omnibus Law on Job Creation removes the phrase of "other information" in Article 13 paragraph (1) letters a and c, which is one of the bases of SKPKB issuance within five years from the time the tax becomes payable or the end of the tax period.

Thus, the Director General of Taxes can no longer issue

Dengan demikian, Direktur Jenderal Pajak tidak bisa lagi menerbitkan SKPKB dalam hal sebagai berikut:

1. Apabila berdasarkan keterangan lain pajak yang terutang tidak atau kurang dibayar;
2. Apabila berdasarkan keterangan lain mengenai PPN & PPnBM ternyata tidak seharusnya dikompensasikan selisih lebih pajak atau tidak seharusnya dikenai tarif 0%.

Sebagai tambahan, Direktur Jenderal Pajak dapat menerbitkan SKPKB jika Pengusaha Kena Pajak (PKP)--setelah mengkreditkan pajak masukan--tidak melakukan penyerahan atau ekspor barang atau jasa.

Menyusul terbitnya SKPKB, atas pajak terutang yang kurang bayar dikenai sanksi administrasi berupa bunga sebesar suku bunga acuan ditambah 15% dibagi 12 untuk jangka waktu paling lama 24 bulan. Sebelumnya, sanksi administrasi untuk kasus semacam ini sebesar 2% per bulan.

Apabila terdapat penerapan sanksi berupa bunga dan kenaikan berdasarkan pemeriksaan PPN dan PPnBM, hanya satu jenis sanksi administrasi dengan nilai tertinggi yang berlaku.

UU Cipta Kerja juga menjamin kepastian jumlah pajak terutang dalam jangka 5 tahun sejak terutang pajak atau berakhirnya masa pajak, kecuali Wajib Pajak melakukan tindak pidana perpajakan selama kurun waktu tersebut.

Surat Tagihan Pajak (STP)

Berkaitan dengan kurang bayar PPh, UU Cipta Kerja menambah sejumlah kondisional yang menjadi dasar penerbitan STP sebagai berikut:

1. PKP tidak menerbitkan dokumen tertentu yang kedudukannya dipersamakan dengan faktur Pajak (Pasal 13 Ayat 6 UU PPN); dan
2. Terdapat imbalan bunga yang seharusnya tidak diterima Wajib Pajak.

Di sisi lain, Omnibus Law juga menghapus dua ketentuan terkait penerbitan STP berikut:

1. PKP yang melaporkan faktur pajak tidak sesuai dengan masa penerbitan faktur pajak; dan
2. PKP yang gagal berproduksi dan telah diberikan pengembalian Pajak Masukan.

SKPKB in the following terms:

1. If based on other information the tax payable is not paid or underpaid; and
2. If based on other information on Value Added Tax (VAT) and Sales Tax on Luxury Goods (SLTG), the tax overpayment discrepancy should not be carried forward nor subject to a 0% rate.

Besides, the Director General of Taxes can issue SKPKB if the VAT-Registered Persons (PKP)--after crediting the VAT In--does not deliver nor export the goods or services.

Following the issuance of the SKPKB, the underpaid tax payable is subject to an administrative sanction in the form of interest equal to the benchmark interest rate plus 15% divided by 12 for a maximum period of 24 months. Previously, the administrative sanction for a similar case was 2% per month.

If there is an application of sanctions in the form of interest and increment based on the VAT and SLTG audits, only one type of administrative sanction with the highest value applies.

The Job Creation Law also guarantees the certainty of the amount of tax payable within five years from the time the tax becomes payable or the end of the tax period, unless The taxpayer commits a tax crime during that period.

Tax Collection Letter (STP)

Related to underpayment of income tax, The Job Creation Law adds several conditionals being the basis of STP issuance, as follows:

1. The VAT-Registered Person does not issue certain documents whose positions are equivalent to a tax invoice (Article 13 Paragraph 6 of the VAT Law); and
2. There is an interest compensation that should not be received by the Taxpayer.

On the other hand, the Omnibus Law also eliminates two provisions related to the issuance of STP, as follows:

1. a VAT-Registered Person reporting tax invoices that do not comply with the tax invoice issuance period; and
2. a VAT-Registered Person failing to produce and has been given a VAT In refund.

Apabila berdasarkan STP terdapat kurang bayar PPh, termasuk akibat salah tulis atau salah hitung, Wajib pajak dikenakan sanksi administrasi berupa bunga sebesar 5% dibagi 12 dan dikenakan paling lama 24 bulan. Sebelumnya, sanksi yang berlaku adalah denda 2% per bulan.

Khusus bagi PKP yang tidak atau terlambat menerbitkan faktur pajak, atau menerbitkan faktur pajak namun tidak lengkap, diwajibkan menyetero pajak terutang plus denda 1% dari Dasar Pengenaan Pajak (DPP) atau lebih rendah dari sanksi semula 2% dari DPP.

Omnibus Law juga menegaskan, penerbitan STP paling lama lima tahun setelah saat terutangnya pajak atau berakhirnya masa pajak, bagian tahun pajak, atau tahun pajak. Namun, terdapat pengecualian untuk kondisi tertentu:

1. STP diterbitkan paling lama sesuai daluwarsa penagihan jika jumlah pajak yang harus dibayar bertambah berdasarkan SKPKB, SKPKBT, Surat Keputusan Pembetulan, Surat Keputusan Keberatan, Putusan Banding, serta Putusan Peninjauan Kembali.
2. STP atas sanksi administrasi diterbitkan paling lama lima tahun setelah tanggal penerbitan Surat Keputusan Keberatan jika Wajib Pajak tidak mengajukan banding.
3. STP atas sanksi administrasi diterbitkan paling lama lima tahun sejak tanggal Putusan Banding diucapkan oleh Majelis Hakim Pengadilan Pajak.

Selain itu, UU Cipta Kerja juga menghapus Pasal 15 ayat (4) UU KUP, yang sebelumnya mengatur tentang penerbitan Surat Ketetapan Pajak Kurang Bayar Tambahan (SKPKBT) yang mengenakan sanksi bunga tambahan sebesar 48% dari nilai kurang bayar pajak setelah jangka waktu lima tahun Wajib Pajak dipidana. Dengan dihapusnya klausul tersebut maka Direktur Jenderal Pajak tidak dapat menerbitkan SKPKBT setelah jangka waktu lima tahun berakhir.

Imbalan Bunga

Wajib Pajak juga berhak atas imbalan bunga atas keterlambatan pengembalian lebih bayar pajak yang dilakukan otoritas. Apabila sebelumnya besaran imbalan bunga ditetapkan 2% per bulan, dengan terbitnya Omnibus Law Cipta Kerja besar imbalan bunga disesuaikan dengan suku bunga acuan dibagi 12 untuk jangka waktu paling lama 24 bulan.

Namun, Imbalan bunga tidak akan diberikan jika pemeriksaan bukti permulaan tindak pidana perpajakan tidak dilanjutkan dengan penyidikan karena Wajib Pajak mengungkapkan ketidakbenaran perbuatannya dengan kemauan sendiri.

If there is an income tax underpayment based on the STP, including due to writing errors or miscalculations, the Taxpayer will be subject to an administrative sanction in the form of 5% interest divided by 12 for a maximum of 24 months. Previously, the applicable sanction was 2% fine per month.

Especially for VAT-Registered Persons who do not or are late in issuing tax invoices, or issuing tax invoices that are incomplete, they are required to remit the tax payable plus a fine of 1% of the Tax Base (DPP) or lower than the original sanction of 2% of the DPP.

The Omnibus Law also affirms that the issuance of an STP is not more than five years after the time the tax becomes payable or the end of the tax period, the part of the fiscal year, or the fiscal year. However, there are exceptions to certain conditions, as follows:

1. *The STP is issued no later than the billing expiration if the amount of tax to be paid increases based on SKPKB, Additional Tax Underpayment Assessment Letter (SKPKBT), Revision Decision Letter, Objection Decision Letter, Appeal Decision, and Judicial Review Decision.*
2. *The STP for administrative sanctions is issued no later than five years after the date of Objection Decision Letter issuance if the Taxpayer does not file for an appeal.*
3. *The STP for administrative sanctions is issued no later than five years after the date the Appeal Decision is pronounced by the Panel of Judges of Tax Court.*

Also, the Job Creation Law removes Article 15 paragraph (4) of the KUP Law, which previously regulated the issuance of SKPKBT imposing an additional interest penalty of 48% of the tax underpayment after five years since the Taxpayer is convicted. With the removal of the clause, the Director General of Taxes cannot issue the SKPKBT after the five-year period ends.

Interest Compensation

Taxpayers are also entitled to an interest compensation for the late refund of tax overpayments done by the authorities. If previously the interest rate was set at 2% per month, with the issuance of the Omnibus Law on Job Creation, the amount of interest compensation was adjusted to the benchmark interest rate divided by 12 for a maximum period of 24 months.

However, the interest compensation will not be given if preliminary evidence audit of a tax crime is not followed by an investigation because the Taxpayers have voluntarily disclose their error on their own accord.

Apabila keberatan, banding, atau peninjauan kembali dikabulkan pengadilan dan hasilnya terdapat lebih bayar pajak, Wajib Pajak berhak atas imbalan bunga sebesar jumlah lebih bayar yang disetujui dalam pembahasan akhir hasil pemeriksaan.

*Catatan:

Ketentuan ini mengacu pada draft Undang-Undang Cipta Kerja yang naskah resminya masih dalam tahap finalisasi di Badan Legislasi DPR. Semua kebijakan baru yang tertulis di atas masih mungkin berubah mengingat Mahkamah Konstitusi membuka ruang uji materi UU Cipta Kerja.

If the objection, appeal, or judicial review is granted by the court and resulting in a tax overpayment, the Taxpayer is entitled to an interest compensation in the amount of the overpayment agreed in the closing conference.

**Disclaimer:*

These provisions refer to the draft of the Job Creation Law the official text of which is still in the finalization process at the House of Representatives (DPR) Legislation Body. All new policies mentioned may still change considering that the Constitutional Court has opened the possibility of review for the Job Creation Law

Need our services?

MUC's Tax Compliance Division provides variety services to assist clients in fulfilling their tax obligations. Our team is supported by consultants who own Brevet C, B & A certifications and are experienced in handling clients from many sectors of industry.

TAX BLITZ is a publication of MUC Consulting to provide our clients, contact, and business relations with information of tax news and latest tax regulation. The materials within are limited to the purpose of providing information and should not be treated similarly as professional advice or basis in formulating strategic business decisions. For subscription of TAX BLITZ, please send your request by email to publishing@mucglobal.com. For more information about MUC Consulting, please visit www.mucglobal.com



Follow us @muconsulting
www.mucglobal.com

Sugianto
Tax Partner
Sugianto@mucglobal.com

Meydawati
Tax Partner
Meydawati@mucglobal.com