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## **TAX CRIME INVESTIGATIONS (MOF REGULATION 17/2025) – GREATER TRANSPARENCY OR INCREASED PRESSURE?**

Minister of Finance Regulation No. 17/2025 (“MoF-17”) regarding Investigation of Criminal Offenses in the Field of Taxation is an implementing regulation to the General Provisions and Tax Procedures Law (“KUP Law”). MoF-17 provides more details on tax investigation procedures, from the issuance of an investigation warrant to the submission of the case file to the public prosecutor, which were only briefly explained in Articles 44 to 44B of the KUP Law. Although tax investigations are not new, the procedures for conducting an investigation were not previously transparent. MoF-17 remedies that by formalizing the tax investigation procedures.

During a tax audit, if a tax auditor discovers information or a third party discloses information indicating that a possible tax crime has been committed, the audit can advance to a preliminary evidence audit (*Pemeriksaan Bukti Permulaan*/"BUPER"). After the Directorate General of Taxes (“DGT”) has found evidence during the BUPER that a tax crime has occurred, a tax investigation (*Penyidikan*) is carried out to seek and collect evidence that could clarify the crime and identify a suspect.

During a tax audit or BUPER, the taxpayer can discuss with the auditor to reach common ground on the disputed issues. However, with MoF-17, there is now a formalized approach for handling tax investigations, and once a tax investigation has begun, **the only way for the taxpayer to stop the investigation is to admit guilt and pay the tax liabilities**, plus sanctions of up to 400% of the tax owed; otherwise, the case will advance to the criminal court. Therefore, taxpayers need to ensure that their financial records and legal documentation are strong enough to defend their position in the event of an audit. And they must take care that their documents and information are handled carefully to avoid a tax audit being escalated into a BUPER, or an even more serious tax investigation.

The **stated intention** for issuing MoF-17 is to provide greater legal certainty, justice for taxpayers, and to protect the state’s right to obtain state revenue. **However, the government is likely to become more serious about investigating potential tax crimes to increase revenue from the taxes recovered.** Taxpayers should try to resolve any issues at the tax audit or preliminary evidence audit level rather than letting the case escalate to a full-blown tax crime investigation.

MoF-17 revokes MoF Regulation No. 55/2016 and Article 108 of MoF Regulation No. 18/2021 regarding termination of tax crime investigations for the interests of state revenue. MoF-17 has been in effect since 25 February 2025.

## Tax Investigation Procedures

The procedures and activities in a tax investigation are summarized below.

### a) Issuance of Investigation Warrant

The issuance of an investigation warrant (*surat perintah penyidikan*) marks the start of a tax investigation and is created based on an incident report resulting from a preliminary evidence audit. This is followed by the issuance of a notification letter of the commencement of an investigation which must be delivered to the public prosecutor (through an investigating officer of the Indonesian National Police) and the suspect within seven days from when the investigation warrant is issued.

### b) Summons & Examination

During the tax investigation, the investigator may summon suspects, experts or witnesses to attend an examination by sending a letter of summons. The summons must be received by the suspect, expert or witness three days before the examination date stated in the summons. If the suspect or witness fails to attend the examination without a proper and justifiable reason, the investigator may send a second summons. Examination of an expert and witness can be done electronically, while examination of a suspect must be done in person. The results of the examination are stated in the minutes of examination.

### c) Arrest & Detention

The investigator has the right to arrest the suspect during the tax investigation. The arrest is carried out with the assistance of the Indonesian National Police. After the arrest, if the investigator determines that the suspect will attempt to escape, damage or destroy evidence or further commit a criminal act, the suspect may be detained. Detention is only allowed for a criminal act which is punishable by imprisonment of five or more years.

### d) Search

To find evidence, the investigator may conduct searches of a house, body, or other objects related to a criminal act, provided they have a search warrant and a search authorization letter from the head of the local district court.

### e) Blocking and Seizure

To find evidence or to secure the recovery of losses to state revenue, the investigator may block assets by submitting a request for asset blocking to the appropriate authority or seize assets with a seizure warrant and a seizure authorization letter from the head of the local district court.

### f) Handling of Electronic Data

To obtain and secure evidence in the form of electronic data, investigators may seek assistance from experts.

### g) Exit Ban

The MoF may issue an exit ban decision to prevent a suspect or witness from leaving the country if there is an indication that the person may leave or if their good faith in the investigation process is in doubt. The exit ban is valid for a maximum of six months and may be extended once for another six months. The exit ban decision must be submitted to the Minister of Immigration and Corrections within three days of issuance and to the suspect or witness within seven days of issuance.

In urgent situations, the MoF may make a request for an exit ban directly to immigration officials by sending an exit ban request letter before issuing the exit ban decision. In this case, the exit ban decision must be issued within 20 days after the exit ban request letter is sent.

### h) Determination as a Suspect

An investigator may designate an individual as a suspect if:

- There are at least two pieces of evidence that support such designation; and
- The individual has been previously examined as a witness in the case.

Notification of this designation must be provided to the public prosecutor (through the Indonesian National Police) and to the suspect within seven days of the designation.

#### i) Filing and Submission of Case Files to the Public Prosecutor

After the tax investigation is completed, the investigator files a report containing a summary and conclusion of the investigation results, which will then be submitted to the public prosecutor. If the public prosecutor declares the case file complete, the investigator submits a notification of the progress of case handling to the suspect within seven days after the case file is declared complete. Once the case file is declared complete, the responsibility for the case, as well as for the suspect and evidence, is transferred from the investigator to the public prosecutor.

#### j) Termination of Investigation

During the tax investigation, the investigator may terminate the investigation based on any of the following grounds:

- The taxpayer admits the error made
- There is insufficient evidence
- The event does not constitute a criminal offense
- For the sake of law

Any evidence or assets that were seized must be returned to the appropriate party.

#### Termination of Tax Investigation in the Interest of State Revenue

During a tax investigation, the taxpayer or suspect may file a request with the MoF (through the DGT) to terminate the tax investigation; the MoF then submits the request to the Attorney General if the responsibility for the suspect and evidence has not been transferred to the public prosecutor.

The application for termination must include a statement of guilt and evidence of settlement of tax owed, including administrative sanctions. The administrative sanction depends on the type of tax crime involved and is calculated at:

- 100% of the losses to state revenue (Article 38 of the KUP Law)
- 300% of the losses to state revenue (Article 39 of the KUP Law)
- 400% of the amount of tax in the VAT invoices and tax collection/withholding/payment slips (Article 39A of the KUP Law)

If the taxpayer or suspect is charged with alternative charges with more than one criminal sanction, the highest administrative sanction will be applied; if charged with cumulative charges with more than one criminal sanction, the administrative sanction will be applied cumulatively.

The taxpayer or suspect must send a request for the amount owed to the DGT and the DGT must respond within one month. If the taxpayer or suspect pays only a portion of the amount, the investigation will continue, and the payment is considered:

- Part of the settlement when responsibility for the suspect is transferred to the public prosecutor
- Part of the settlement when the case is submitted to the court
- Payment of criminal fines

If there is more than one suspect, each has the right to request termination of the investigation and the amount to be paid is calculated proportionally based on:

- Contribution to the loss incurred based on the evidence
- Benefits received
- Degree of fault
- Other considerations describing the role of the suspect in the offense

If the request to terminate the investigation does not satisfy the requirements, the DGT can directly reject the suspect's application and notify the suspect. If the requirements are satisfied, the DGT submits a recommendation to the MoF who submits the request to terminate the investigation to the Attorney General. The Attorney General must accept or reject the request within six months.

If the taxpayer or suspect has received information on the amount to be paid but does not pay, or the DGT or Attorney General reject the request to terminate the investigation, and the file is deemed complete, the responsibility for the suspect is turned over to the public prosecutor. The suspect can still make the settlement if the responsibility for the suspect has been turned over to the public prosecutor or if the case is submitted to the court.

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