

Super tax deduction for research and development activities in Indonesia



On 9 October 2020, the Indonesian Minister of Finance issued Regulation No 153/PMK.010/2020 (“PMK-153”) regarding a 300% super tax deduction for research and development (“R&D”) activities conducted in Indonesia. PMK-153 is the implementing regulation of Article 30(d) of Government Regulation No 45/ 2019 (“GR-45”). PMK-153 became effective on the date of issue.

The key aspects of PMK-153 are as follows:

A. Details of super tax deduction on R&D

A taxpayer can be given a maximum of a 300% deduction, via a reduction to gross revenue, for costs incurred to conduct eligible R&D activities in Indonesia. The maximum 300% reduction of gross revenue covers:

1. 100% reduction on the gross revenue for the costs incurred to conduct R&D activities (i.e. the normal deduction); and
2. A maximum of 200% additional reductions to gross revenue for the accumulated costs incurred to conduct R&D activities within a certain period. The potential 200% additional reductions require various criteria to be met:
 - a) 50% if the R&D generates intellectual property (“IP”) rights in the form of patent or plant variety protection rights¹ (“PVT rights”) that is registered in the local patent or PVT office;
 - b) 25% if the R&D generates IP rights in the form of patent or PVT rights that is registered in both local and overseas patent or PVT offices;

¹ Plant variety protection rights (“PVT rights”) is a special right given by the State to the breeders and/ or to the holders of the PVT rights to use his own breeding results or provide a consent to other people or company to use the rights for certain period.

- c) 100% if the R&D reaches commercialization² stage; and/ or
 - d) 25% if the R&D that generates the IP rights in the form of patent or PVT rights (as defined in (a) and (b)), and/ or reaches commercialization stage (as defined in (c)) is carried out by collaborating with government R&D institution and/ or higher education institution in Indonesia.
- 4. Is within a priority R&D area, with industrial focus and content as stated in the Attachment of PMK-153 (which among others are food, pharmaceuticals, cosmetics and medical equipment, military equipment, textile, leather, energy, and agroindustry).

The amount of additional reductions to gross revenue that can be utilized by the taxpayer is the percentage of additional reduction as stated in item A(2) above multiplied by the accumulated R&D expenses for five fiscal years prior to the earlier of the time the taxpayer registered the IP rights (in the form of patent or PVT rights); or reaches commercialization stage. The additional reduction on gross revenue shall be charged starting from when the taxpayer obtains the IP rights and/ or reaches commercialization stage.

B. Eligible R&D activities

The R&D activities that are eligible for the bonus deductions are R&D that:

- 1. Is carried out by a taxpayer, other than a taxpayer who conduct its business based on a production sharing contract, contract of work, or mining work cooperation agreement for which the taxable income is calculated based on special provisions in the contract that are different from the general provisions in the Income Tax Law;
- 2. Started to be implemented after the time GR-45 was enacted;
- 3. Meets the following criteria:
 - a) It is intended to obtain a new invention;
 - b) It is based on a concept or an original hypothesis;
 - c) It has an uncertainty on the final result;
 - d) It is planned and has a specific budget; and
 - e) It is intended to create something that can be freely transferred or traded in the market; and

C. Non-eligible R&D activities

Certain R&D activities that are not eligible for a maximum of 200% additional reduction on gross revenue are:

- 1. Engineering applications in respect of the production process, in the early stage of commercial production;
- 2. Quality control during commercial production, including routine testing on the products;
- 3. Repair of damage occurring during commercial production;
- 4. Repair, addition, enrichment and other routine quality improvement of the existing product;
- 5. Adjustments to the existing capabilities to meet specific requests or customer needs as part of continuous commercial activities;
- 6. Seasonal or periodical changes on the design of the existing products;
- 7. Routine design of the equipment and mold;
- 8. Construction engineering and design in relation to construction, relocation, rearrangement, or start-up of facilities and equipment; and/ or
- 9. Market research.

D. R&D expenses eligible for additional reduction on gross revenue

Certain R&D expenses that are eligible to obtain a maximum of 200% in bonus deductions are:

- 1. Assets other than land and buildings, in the form of:
 - a) Fixed assets depreciation expense and/ or intangible assets amortization expense; and
 - b) Fixed assets supporting expenses such as electricity, water, gasoline and maintenance expenses;

² Commercialization is a production activity in Indonesia and the sale of goods and/ or services as a result of the R&D.

These expenses are not entitled to obtain additional reduction on gross revenue if the assets used are part of the investment that has obtained tax allowance incentive or income tax incentive for labor intensive industry.

2. Goods, and/ or material;
3. Salary, honorarium, or other similar remuneration paid to the employees, scientists, and/ or engineers employed;
4. Arrangement to obtain the IP right in the form of patent or PVT right; and/ or
5. Fee paid to R&D institutions and/ or higher education institutions in Indonesia that is contracted by the taxpayer to carry out R&D activities without having any rights on the results of the R&D that is being carried out.

The above R&D expenses shall be charged based on each R&D activity proposal. If such expenses cannot be separated for each proposal, the charges for each R&D proposal shall be allocated proportionally based on the time of utilization or assignment.

In case the R&D is carried out through a collaboration between one or more taxpayers and each taxpayer bear part or all of the R&D expenses, the team of taxpayers that carried out the R&D should together prepare a proposal for the R&D. The proposal, among others, should contain the activity plan and expenses borne by each member of the team. Each member shall apply for the tax incentive as stated in item G below. The amount of additional reduction on gross revenue for each member/ taxpayer shall be determined based on:

- a) Accumulated R&D expenses borne by each member/ taxpayer; and
- b) Percentage of additional reduction on gross revenue as stated in item A(2) above, according to the IP rights (in the form of patent or PVT rights) ownership and/ or condition to reach commercialization stage for each member/ taxpayer.

E. IP right registration

To obtain additional reduction on the gross revenue as stated in item A(2)(a)(b) and/ or (d) above, a taxpayer that carries out R&D activities must register the IP rights (in the form of patent or PVT rights):

- a) in the name of the taxpayer who receive the additional reduction on gross revenue; or
- b) in the names of taxpayers who jointly conducted the R&D activities in Indonesia.

The IP rights in the form of patent and/ or PVT right resulting from the R&D that receives additional reduction on gross revenue cannot be transferred to other parties, except if the transfer is carried out after the term of the IP right protection has expired, based on the prevailing regulations. If the taxpayer transfers the IP rights from the R&D activities for which bonus deductions have been claimed, the additional reduction that has been utilized by the taxpayer is taxable at the time the IP rights is transferred.

F. Commercialization stage

The commercialization stage can be carried out by the taxpayer who conducted the R&D; or another taxpayer. If the commercialization stage is carried out by another taxpayer, the additional reduction on gross revenue as stated in item A(2)(c) and/ or (d) is given to the taxpayer who conducted the R&D if that taxpayer:

- a) has obtain the IP rights in the form of patent or PVT rights; and
- b) has obtained revenue with an actual amount or an amount that it should have been received on the utilization of the IP rights (in the form of patent or PVT rights) from the other taxpayer who conducts the commercialization.

G. Application to obtain a maximum of 200% additional reduction on gross revenue

To obtain a maximum of 200% additional reduction on gross revenue, a taxpayer must file an online application via OSS by attaching (i) a proposal for the R&D activities and (ii) a fiscal statement letter ("SKF"). If OSS is not available, the application can be submitted offline to the Research and Technology Ministry by using a prescribed form as attached in PMK-153.

The Research and Technology Ministry shall evaluate the conformity between the submitted proposal with the proposal criteria and R&D criteria. The Research and Technology Ministry shall coordinate with the ministries and/ or government institutions, which supervise the relevant R&D field covering the activities in the taxpayer's application. The result will be notified to the taxpayer through OSS (for an online application) or a notification letter (for an offline application). The notification on the evaluation result shall be copied to the Director General of Tax ("DGT") as well as the ministries and/ or government institutions, which supervise the relevant R&D field.

H. Application to utilize a maximum of 200% additional reduction on gross revenue

To utilize the additional reduction on gross revenue, the taxpayer should submit a notification along with supporting documents via OSS that the R&D has obtained an IP rights (in the form of patent or PVT rights) and/ or has reached commercialization stage to the Research and Technology Ministry.

The Research and Technology Ministry shall evaluate the conformity between the submitted proposal and the realization of R&D by coordinating with other ministries and/ or government institutions, which supervise the relevant R&D field that has been applied by the taxpayer. The result on whether the taxpayer can utilize the tax incentive shall be notified via OSS to the taxpayer and copied to DGT.

I. Obligation to report

A taxpayer that has received a notification (as stated in item G above) must submit an annual R&D expenses report via OSS to the DGT and the Research and Technology Ministry. While a taxpayer that can utilize the additional reduction on gross revenue (as stated in item H above) must submit an annual report via OSS for the calculation on the utilization of additional reduction on gross revenue to DGT. Both reports must be submitted by using prescribed formats as attached in PMK-153 at the latest along with the submission of the taxpayer's annual corporate income tax returns for the relevant fiscal year.

If OSS system is not available, the annual R&D expenses report can be submitted offline to DGT through the head of tax office where the taxpayer is registered by copying Director of Tax Regulation II and the Research and Technology Ministry.

J. Prior R&D

A taxpayer which had conducted R&D activities in Indonesia before PMK-153 was enacted can be given a maximum of 200% additional reduction on gross revenue if the results of the R&D had not been registered to obtain the IP rights (in the form of patent or PVT rights); and/ or had not yet reached the commercialization stage.

The taxpayer must submit an application (as stated in item G above) within three months since the enactment of PMK-153 by attaching (i) a proposal on the R&D supported by additional information on the activities and the temporary result from the R&D activities that have been conducted until the time the proposal is submitted; and (ii) SKF.

The taxpayer must submit an R&D expenses report for 2019 fiscal year at the latest along with the submission of R&D expenses report for 2020 fiscal year.

The amount of additional reduction on gross revenue that can be utilized by the taxpayer is the percentage of additional reduction as stated in item A(2) above multiplied by the relevant accumulated R&D expenses within the time since the R&D activities are conducted until the earlier of the time the taxpayer registered the IP rights (in the form of patent or PVT rights); or reaching the commercialization stage. If the accumulated R&D expenses is for more than five fiscal years, the amount of additional reduction on gross revenue that can be utilized by the taxpayer is limited to the accumulated expenses for the last five fiscal years.

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