

In order to provide the legal certainty, simplification of tax administration, to facilitate and ensure fairness for taxpayers who have certain gross circulation of business (sales revenue) within a certain period of time, and to execute international agreements in the field of taxation with due observance of the good governance principle, it is necessary to provide fiscal policy through adjustments to the regulations in the field of income tax, the Indonesian government has issued *Peraturan Pemerintah/PP* (government regulation) Number 55 Year 2022 concerning Adjusted Regulations in the Field of Income Tax which came into effect on December 20, 2022. The provisions on Income Tax were most recently amended by *Undang-undang/UU* (Law) Number 7 Year 2021 concerning Harmonization of Tax Regulations which took effect as from tax year 2022.

Among the adjustments in PP 55/2022 is regarding the stipulation on benefits in kind and/or enjoyment, which were previously characterized as non-deductible and nontaxable, now they have become deductible and taxable.

BENEFITS IN KIND AND/OR ENJOYMENT ARE NOW INCOME AND TAXABLE



Under the provisions stipulated in Article 3 (Chapter III) of UU 7/2021 and Articles 23 to 31 (Chapter VI) of PP 55/2022, it can be concluded that benefits in kind and/or enjoyment considered as income and which become tax object (taxable) are any compensation or reward in non-currency nominal form, i.e. directly in the form of goods (benefits in kind) and/or facilities (enjoyment) received or obtained by employee from the employer in connection with the work or service.

NEVERTHELESS, THERE ARE EXCEPTIONS FROM INCOME TAX OBJECT ON THE TYPES OF BENEFITS IN KIND AND/OR ENJOYMENT, NAMELY AS FOLLOWS:

- 1) Food, food ingredients, beverages and/or drinks for all employees,
- 2) benefits in kind and/or enjoyment provided in certain regions,

- 3) benefits in kind and/or enjoyment that must be provided by the employer in the implementation of work,
- 4) benefits in kind and/or enjoyment that are sourced from or funded by the state budget, regional budgets, and/or village budgets,
- 5) benefits in kind and/or enjoyment with certain types and/or limits.

The cost of benefits in kind and/or enjoyment may be deducted from the employer's or entity's gross income (deductible) insofar as it constitutes an expense to obtain, collect, and maintain the income. The valuation of benefits in kind goods is based on the market value, while the valuation of enjoyment facilities is based on the amount of expense incurred.

Employers are required to withhold income tax on benefits in kind and/or enjoyment as a component of Article 21 Income Tax. The withholding starts on January 1, 2023, which is carried out simultaneously and in an integrated manner with reward/compensation in monetary form. For benefits in kind and/or enjoyment during tax year 2022 the tax on which were not withheld by the employer, the employee must calculate and pay the tax payable by themselves, and report it on the individual income tax return (*SPT Orang Pribadi*).



IGTax T-Plan had recently organized several tax webinars and seminars discussing PP 55/2022 which were attended by enthusiastic participants. There were Q&A sessions at the end of the events, among the participants' questions was regarding the tax on benefits in kind and/or enjoyment.

The stipulations on taxing benefits in kind and/or enjoyment are yet uncomprehended by taxpayers, both employers and employees. This is understandable because the imposition of tax on benefits in kind and/or enjoyment starting from tax year 2022 was indeed in a situation when its derivative regulations are to be issued later. PP 55/2022 was issued on December 20, 2022, and its *Peraturan Menteri Keuangan/PMK* (ministerial regulation) is not yet issued.

The taxpayers' point of concern regarding the tax obligation on benefits in kind and/or enjoyment is the certainty of taxable object from the benefits in kind given. The explanation in PP 55/2022 only details the negative list or the types that are not subject to tax, thus it is important for us to elaborate in order to show the clear boundaries.

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OBSTACLES IN APPLYING THE TAX ON BENEFITS IN KIND

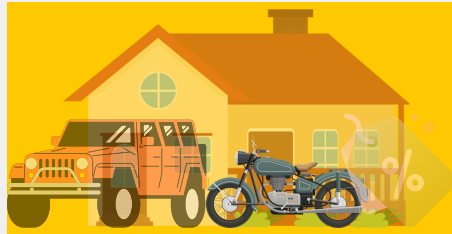
With regard to employees, all goods and/or facilities given by the employer may be referred to as benefits in kind and/or enjoyment, and are generally deductible. However, in relation to the employee Income Tax (Article 21), it must be identified based on the purpose, which can be divided into 3 (three):

- 1) For work, such as uniform and office laptop, operational vehicle, food and drinks for all employees, work permit, etc.
- 2) Due to work and for reward, such as work cellphone, phone credit, employees' dormitory, official vehicle, official house, health insurance, glasses, sport facility and outing (team building), family gathering, professional membership, courses, best employees' shopping voucher, etc.



- 3) As reward, such as gift, prize, parcel, employee's birthday cake, banquet for certain employees, basic necessities, supports for family, vehicle and house, pilgrimage trip, etc.

By such identification, those which can be referred to as income and become tax object (taxable) are only the provision or part of provision which constitutes reward. In appraising the goods and/or facilities from the part of provision of reward, employers must exclude the part of provision due to work, therefore, the fiscal cost provision for expenses such as vehicle and phone is 50%.



Appraising the goods and/or facilities would not be perfect as well. The appraisal based on market price is ideal but complex to undertake, while appraisal according to actual cost is simple but prone to the employer's subjectivity. Taxing benefits in kind and/or enjoyment reward is not quite easy to implement.

Although the calculation of its tax is in combination with other types of income into Income Tax Article 21, for benefits in kind and/or enjoyment reward, it is advisable to set some non-taxable limits. This is considering the equity principle and for convenience, given that benefits in kind and/or enjoyment itself has weaknesses to be considered as tax object, among them:

- a) the employee's additional economic capacity from such reward is only for the goods and/or facilities provided,
- b) the benefits in kind and/or enjoyment reward may not yet be needed/wanted thus not fully utilized, while its income tax will still be imposed on,
- c) the benefits in kind and/or enjoyment reward may be given collectively, which can complicate its attribution.

The analysis above can serve as a consideration for the government in determining which objects from benefits in kind and/or enjoyment reward are subject to income tax, using the positive list approach, instead of using the negative list but with further exceptions and still leave a large group of unclear objects.

A positive list approach is also in line with the practices in many countries. A positive list approach with limitations is more likely to be prioritized because it provides further certainty for all employees.

Hopefully in its further technical arrangements in a ministerial regulation, it will accommodate the demand for fairness on benefits in kind and/or enjoyment. We hope that the tax on benefits in kind and/or enjoyment will be accurately calculated and administratively easy, and the withholding thereof will not negatively impact employees' productivity and motivation, as well the employment relationship with the employer.



SIMPLIFICATION TO THE CALCULATION OF ARTICLE 21 INCOME TAX

The government plans to simplify the calculation of Article 21 Income Tax. The current mechanism which is deemed complex with around 400 income scenarios will be changed using an tax effective rate (TER) scheme. The effective rate will be available in three tables that take into account the non-taxable income for each type thereof. This scheme will ease the taxpayers because they only need to multiply the effective rate with the gross income for each tax period.

VALIDATE THE TAX ID NO. (NPWP) AND FILE THE INDIVIDUAL TAXPAYER RETURN

The DGT (Directorate General of Taxes) encourages domestic individual taxpayers whose NPWP (taxpayer identification number) has not been validated with the NIK (national identity number) to do it promptly through the DJPOnline portal, in order that they can file the annual SPT (tax return) more conveniently and are able to access all available services, thus obtaining the benefits of such integration.