

Shortening of Preliminary Investigation Period

The Ministry of Finance issued Minister of Finance Regulation (MoF Reg) Number 177 of 2022¹ which contains new guidelines on procedures for the Preliminary Investigation of criminal acts in the field of taxation. This regulation is made to provide legal certainty related to the implementation of the Preliminary Investigation as well as to provide clear and firm instructions on how to collect and examine the Preliminary Evidence in cases of criminal acts of taxation. MoF Reg No. 177 revokes MoF Reg No. 239² and several articles in MoF Reg No. 18³.

¹ Minister of Finance Regulation Number 177/PMK.03/2022, effective as of February 3, 2023, or 60 days after it was promulgated on December 5, 2022

² Minister of Finance Regulation Number 239/PMK.03/2014 regarding the Procedures for the Preliminary Investigation of Criminal Acts in the Field of Taxation

³ Article 107 and Article 114 of Minister of Finance Regulation Number 18/PMK.03/2021

MoF Reg No. 177 outlines the steps that must be taken by investigators in conducting a Preliminary Investigation. MoF Reg No. 177 also explains the rights and obligations of the parties involved in the Preliminary Investigation and the examiner's responsibilities in carrying out the process. This is done to ensure that the Audit process is carried out fairly and in accordance with applicable regulations.

In this Tax Update, we highlight MoF Reg No. 177 rules which add new substances to the previous provisions, namely:

- The provision that notification of Preliminary Investigation Results must be submitted no later than one month before the Preliminary Investigation period ends. This provision was not present in the previous regulations.⁴
- Confirmation that the Tax Return (SPT) reported and/or corrected after the Preliminary Investigation notification letter is sent, the Tax Return is considered not submitted.⁵
- Addition of disclosure provisions of misconduct that must attach a Tax Payment Slip (SSP) or other means, as well as addition of information on sanctions in the form of fines under Article 8 paragraph (3) of the General Tax Provisions and Procedures (KUP Law), namely 100% of the amount of underpaid tax or lower than the previous rule of 150% of the underpaid tax.⁶
- As the *ultimum remedium* effort to restore state losses, Taxpayers can still disclose their misconduct, provided that the start of the investigation has not been notified to the public prosecutor, and a notification of the follow-up Preliminary Investigation changes is issued. This can be done even if the Preliminary Investigation Report has been issued.⁷
- Affirming the delegation of authority from the Director General of Taxes to the Law Enforcement Unit or Administrator Officer for certain matters, such as issuing investigation notification letters, notify extending investigation periods, and others.⁸

⁴ Article 19

⁵ Article 24

⁶ Article 25

⁷ Article 26

⁸ Article 28

As for changes or adjustments to the previous provisions, they include:

- Preliminary Investigation can be carried out based on development and analysis through other activities, namely supervision, investigation, Preliminary Investigation development, or investigation development, resulting in a report that contains Preliminary Investigation proposals.⁹
- For time efficiency, the Preliminary Investigation extension period is changed to a maximum of 12 months, from the previous provision of 24 months.¹⁰
- Notification of Preliminary Investigation and other related notifications must be delivered to individual or corporate taxpayers who undergo Preliminary Investigation, not their representatives.¹¹
- Adjusting that disclosure of misconduct can be carried out under Article 38 or 39 paragraph (1) letters c or d of the KUP Law regarding the failure to submit SPT or submitting SPT but with incorrect/incomplete information, both standing alone or related to tax-related crimes such as Article 39 paragraph (1) except letters c and d, Article 39 paragraph (3), Article 39A, and Article 43 of the KUP Law, as well as Article 24 and Article 25 of the Land and Building Tax (PBB) Law.¹²
- Adjusting the administrative sanction changes for the disclosure of misconduct to 100%, payment for the disclosure of misconduct that does not reflect the true condition is considered as a deduction of loss value during investigation of 1/2 of the payment amount, an increase from the previous regulation which was only 2/5.¹³

MoF Reg No. 177 assists investigators and legal practitioners in ensuring that Preliminary Investigation is conducted effectively and efficiently, as well as in compliance with applicable rules and procedures. This guide is also expected to improve the integrity and accountability in handling tax crime cases. It is important to comply with these regulations so that the law enforcement process in taxation can be carried out fairly and in accordance with applicable rules.

⁹ Article 3

¹⁰ Article 6

¹¹ Article 11

¹² Article 20

¹³ Article 29

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