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Indonesia

EMPLOYEE INCENTIVES

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This country-specific Q&A provides an overview of employee incentives laws and regulations applicable in Indonesia.

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INDONESIA

EMPLOYEE INCENTIVES



1. What kinds of incentive plan are most commonly offered and to whom?

In Indonesia, incentives can be usually accepted based on personal or individual areas of a company, incentive is the amount of financial reward that the employees receive. The most common from the employer is overtime incentive. The Circular of the Minister of Manpower number SE-07 /MEN/1990 On Wage Grouping have specifically described about fixed allowances, facilities, bonus. The regulations explains that there are group of wage components consisting of basic wages, fixed allowances, non-fixed allowances and non-wage income namely facilities, bonuses and holiday allowances, both of which are incentives that can be received by employees.

2. What kinds of share option plan can be offered?

Indonesia does not recognized share option plan specifically to the employee, therefore it will be subject to the company policy.

3. What kinds of share acquisition/share purchase plan can be offered?

We refer to Regulation of Directorate General of Taxation No. SE-13 / Pj.43 / 1999 dated 22 March 1999 regarding Tax on Share Options ("SE-13"), stock options is an offer from a foreign company whose agreement is listed on a foreign stock exchange, to employees of a company in Indonesia that has a special relationship with that company, buy stock at a certain time, price within a certain period. If employees exercise their options under this offering, and the share price increases the employees can sell shares immediately for a profit or save the stocks as an investment and sell them later on for more profit.

4. What other forms of long-term

incentives (including cash plans) can be offered?

The forms of long terms incentives that can be offered is in the form of retirement plans which is included in social security which aims to maintain a decent life by paying an amount of money every month. The long-term incentives offered are contained in the Republic of Indonesia Government Regulation No. 45/2015 Concerning The Implementation Of The Pension Guarantee Program.

5. Are there any limits on who can participate in an incentive plan and the extent to which they can participate?

No. It will be subject to company's policy.

6. Can awards be made subject to performance criteria, vesting schedules and forfeiture?

Yes. The company can make a specific regulation related the bonus/award given to the employees based on their performance criteria, vesting schedules and forfeiture.

7. Can awards be made subject to post-vesting and/or post-employment holding periods. If so, how prevalent are these provisions both generally and by reference to specific sectors?

Yes. In general, these provisions are prevalent and enforceable. However, since there are no specific laws that regulates the issue, the exercise of such provisions depends on what is regulated within the company's regulations.

8. How prevalent malus and clawback

provisions are and both generally and by reference to specific sectors?

In Indonesia, the Malus and Clawback provisions are generally regulated in the banking sector.

9. What are the tax and social security consequences for participants in an incentive plan?

i) on grant;

Based on Law Number 36/2008 Concerning Income Tax Article 4 Paragraph 3 which are exempted from tax objects are:

Grant assets received by blood relatives in a straight line of one-degree, religious bodies, educational bodies, social agencies including foundations, cooperatives, or individuals running micro and small businesses, which are regulated by or based on a Regulation of the Minister of Finance,

As long as there is no relationship with business, work, ownership, or control between the parties who handle it.

ii) on vesting;

The vesting condition is divided into two, the first if not taken into account when estimating the fair value of the payment based on shares which is measured in cash at the time of measurement, then the vesting condition which is calculated by adjusting the amount of awards arising from the transaction.

iii) on exercise;

The imposition of taxes on the stages obtained from the ESOP transaction when the option rights are exercised has been exercised by many countries. What becomes the advantage of taxation when the ESOP is exercised is that the tax is imposed at a certain stage, namely the difference between the fair market price and the exercise price based on the employee. However, in reality, the imposition of PPh at the time of the exercise of the statement on the actual tax imposition has been realized.

The exercise of selling the shares shall be seen as a capital gain for that person and is therefore subject to income tax as pursuant to Law Number 36/2008.

iv) on the acquisition, holding and/or disposal of any underlying shares of securities; and

If a company acquires another company, the transaction

may or may not be taxable. In the event of a taxable acquisition, the shareholders of the acquired company sell the shares they own and will get capital gains or capital losses which will be taxed. In the event of a taxable acquisition, the acquiring company may carry out a revaluation of the acquired company's property, plant and equipment.

v) in connection with any loans offered to participants (either by the company operating the incentive plan, the employer of the participant (if different) or a third party) as part of the incentive plan. It is quite common for a company to make loans available to its employees in order to enable them to participate in share offers.

10. What are the tax and social security consequences for companies operating an incentive plan?

i) on grant;

As part of the tax object, presenting in the form of a grant may be taxed. Grant is giving from one person to another, and acceptance of a grant can be called a stage. Actually, not all grants are categorized as tax objects. There are receipts of grants that are not subject to tax, there are also those who present grants that become tax objects, so that the recipient is obliged to pay the stage tax (PPh).

ii) on vesting;

Income tax normally only becomes due on the realization of a profit after sale of the shares, the income shareholder derives from the sale of shares derived from a share option plan can be in the form of a divided or a capital gain. Profits made from a sale of shares are considered a capital gain and are subject to income tax.

iii) on exercise;

In one person is not much different from the goals of financial management. In essence, tax management is not to avoid paying taxes, but for tax assistance that is not more than the amount it should be.

iv) on the acquisition, holding and/or disposal of any underlying shares of securities;

In the acquisition, there are provisions that discuss tax treatment of the full process, namely:

- Income Tax (PPh)
- Value Added Tax (VAT)
- Fees for Acquisition of Land and Building Rights or BPHTB

v) in connection with any loans offered to participants (either by the company operating the incentive plan, the employer of the participant (if different) or a third party) as part of the incentive plan

Several kinds of incentive plans that can be given to employees, among others.

1. A material push for money or goods
2. Opportunities for honor, achievement and power individual
3. Pride in work, service to the family, and patriotism or religious feelings
4. Individual enjoyment and satisfaction in relationships social and organizational

11. What are the reporting/notification/filing requirements applicable to an incentive plan?

Applicable reporting, notification and/or filing requirements which may apply to an incentive plan will depend on the type of such plan. For example, there are Revenue reporting requirements for both employers and employees in an unapproved share option scheme on certain events.

12. Do participants in incentive plans have a right to compensation for loss of their awards when their employment terminates? Does the reason for the termination matter?

Participants of the incentive plan also has the right to compensation when their job is terminated. As regulated by the aforementioned regulation, the reason behind the termination is not a factor to be weighed upon when giving compensation. All terminated employees have the right to compensation up to the calculation provided by the Law Number 13/2003 Concerning Manpower.

13. Do any data protection requirements apply to the operation of an incentive plan?

In regard with a relation between data protection requirements and operation of an incentive plan, the law is unspecific regarding this matter. However, as stated in the Article 1 point (1) of Regulations of Communications and Informatics No. 20/2016 On Data Protection within Electronic System, it is stipulated that the personal data shall be protected. Here, the data shall be protected against any act of data transferred which is carried out

based on the principles of good personal data protection as follows :

(b) confidential personal data according to agreement and / or based on the provisions of laws and regulations;

Herewith, since the corporation and the employee was already signed an employee agreement, therefore the employee personal data shall not be disclose without the consent from both parties.

14. Are there any corporate governance guidelines that apply to the operation of incentive plans?

There is no specific Regulation related to this matter. However, on 2018, the Financial Services Authority released a guidance called Indonesia Corporate Government Manual 2nd Edition. This regulation compiled all of the regulation and the commercial activity within Indonesia.

In regards with the manual, they are not specifically ruled concerning the operation of incentive plans. Therefore in our view, the guidelines will be subject to each company policies.

15. Are there any prospectus or securities law requirements that apply to the operation of incentive plans?

Yes. All companies offering shares to employees resident need to comply the application of the Prospectus Rules which stated under Regulations of Financial Service Authority No. 8/POJK.04/2017 On Form and Content of the Prospectus and Prospectus for a Public Offering of Equity Securities.

16. Do any specialist regulatory regimes apply to incentive plans?

Indeed. The practice of Incentive Plans in Indonesia must be in accordance with Law No. 40 /2007 Concerning Incorporated Company and their subsidiaries concerning ESOP & MSOP, as stated in POJK No. 14 /POJK.04/2019. Subsequently, the practice also shall be in accordance with Law No. 13/2003 Concerning Employment and the subsidiaries, as stated in Circular of the Minister of Manpower number SE-07 /MEN/1990 On Wage Grouping, company given fixed allowances, facilities, and bonus.

17. Are there any exchange control

restrictions that affect the operation of incentive plans?

There are no foreign exchange controls in Indonesia. The Indonesian Rupiah is freely convertible into any currency and vice versa. However, Indonesia Central Bank Regulation No. 16/16/PBI/2014 Regarding Foreign Currency Transactions Against the Rupiah by Banks with local parties prohibits the purchase of foreign exchange against the Rupiah from the commercial banking system in Indonesia by any person for amounts in excess of \$100,000 USD per month in the absence of an underlying transaction. This regulation provides that Indonesian nationals and legal entities purchasing foreign currencies in excess of \$100,000 USD or the equivalent in the Indonesian banking system must provide certain documents to Bank Indonesia including the underlying transaction documentation.

18. What is the formal process for granting awards under an incentive plan?

The law is unspecific about this matter. It will be subject to the company's policy.

19. Can an overseas corporation operate an incentive plan?

Indeed. Any corporation are eligible to operate an incentive plan if they obtained the policy about it.

20. Can an overseas employee participate in an incentive plan?

It depends on the Company Policy. If, the corporate enabled some kind of incentive plan, such as transportation, living allowance, etc., the overseas employee can definitely participate.

21. How are share options or awards held by an internationally mobile employee taxed?

As stated under Regulation of The Directorate General of the Taxation No. PER-16/PJ/2016 dated 29 September 2016 (PER-16) is that income tax coming from an income obtained from the work, services and activities of a party

in or outside Indonesia, including:

Salary, Wage, Remuneration, Allowance, and Other payments related to a person's work or office, services or activities.

The income of a shareholder comes from a dividend or a capital gain from the sales of the shares. The dividend is becoming a subject of tax, which defined as an income tax. The calculation would be :

Up to IDR 50 million: 5%.

From IDR 50 million to IDR 250 million: 15%.

From IDR2 50 million to IDR 500 million: 25%.

Above IDR 500 million: 30%.

The above rates apply to taxpayers who have a Tax Registration Number (NPWP). If the employees do not have NPWP, then the Tax would be 20% or depends on a tax treaty between Indonesia and Other countries.

22. How are cash-based incentives held by an internationally mobile employee taxed?

Please refer to answer number 21.

23. What trends in incentive plan design have you observed over the last 12 months?

There are no major trends appear during last 12 months.

24. What are the current developments and proposals for reform that will affect the operation of incentive plans over the next 12 months?

There are no significant changes regarding incentive Plan. The newest design would be an additional incentives for the some employee which has a salary under Rp 5.000.000,00, which will get a direct incentives from the government due to Covid 19 situation.

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