Non-Confidential

Percival Legal

Telephone: +61(0) 425 221 036036
Email: andrew.percival@percivallegal.com.au

Commissioner
Anti-Dumping Commission
55 Collins Street
Melbourne VIC 3001
Australia
By email: operations2@adcomission.gov.au

***Attention**: Mr Tim King, Case Manager*

Re : Anti-Dumping Notice No. 2016/33 in respect of A4 Copy Paper Exported from the Republic of Indonesia

Dear Sir,

1. We refer to the Statement of Essential Facts published by the Anti-Dumping Commission (Commission) in relation to this investigation and to our previous submissions including in relation to the Statement of Essential Facts. We wish to reiterate some of the submissions previously made.

2. The Commission has determined that a 'particular market situation' in relation to domestic sales of A4 Copy Paper exists not through Government regulation of A4 Copy Paper prices but through certain policies of the Government of Indonesia and the log export ban, which export ban did not apply to logs used to produce pulp, that have allegedly artificially lowered prices for timber and pulp used to make A4 Copy Paper. As previously submitted, not only did the export ban not apply to timber used to produce pulp but there were no export or import restrictions on woodchips or pulp.

3. However, how and to what extent Government policies actually 'artificially' lowered prices and whether and to what extent such prices also actually filtered through to A4 Copy Paper has not been investigated by the Commission. The findings of the Commission on this issue were not based on facts and evidence, as required by WTO rules, but mere conjecture and speculation. No facts of evidence has been advanced that the Government policies actually had the effect contended by the Commission (i.e. that there was an oversupply of timber and/or pulp or the extent of any oversupply) or that it was the intention of the Government of Indonesia that that was its intention.

4. Also, what constitutes "artificially" lowering of prices has not been explained. Merely making land available for cultivation does not "artificially" lower the price of products

cultivated on that land, especially when the government has no control over the quantity of products (e.g. trees) produced on such land or which species of trees are cultivated on that land. If mere making available land produces 'artificial' prices, then most if not all of Australia's mineral and agricultural products (i.e. priority industries in Australia) produced from land made available by Australian Governments would be being sold at "artificial" prices, which, of course, is absurd. The Commission's findings in this regard are based on mere conjecture and speculation, contrary to WTO requirements, without any factual analysis supported by evidence.

5. The Commission has stated that the supply of land for timber plantations constitutes a 'subsidy' (see A4.2 of the Statement of Essential Facts). However, nowhere in that section is there any mention of the Government of Indonesia selling or otherwise supplying timber to anyone, let alone those making pulp for use in the manufacture of paper. This is because the Government of Indonesia does not sell or supply timber to anyone. It only makes land available for timber plantations for a fee. Making available land for timber plantations for a fee is not the supply of a good. While making available land for a fee may confer an economic benefit depending on the terms it is made available, that is not the test as to what constitutes a 'subsidy. It is not the sale or supply of a 'good or service', which is a prerequisite for a countervailable subsidy under the SCM Agreement. Accordingly, as previously submitted, the pre-requisite for a subsidy, namely, the supply of 'goods' is not satisfied (see the definition of 'subsidy' in Article 1,1(a)(1)(iii) of the SCM Agreement). Accordingly, again as previously submitted, the so-called Program 1 cannot be a 'subsidy' because the requirements for a 'subsidy' have not been satisfied.

6. Timber for use in the pulp and paper industries is cultivated, maintained, harvested and supplied by privately owned plantation owners and when supplied to third parties, is supplied in competitive market conditions unregulated and uninfluenced by the Government of Indonesia. The same applies in the supply of pulp. Accordingly, it is subject to the usual market conditions of supply and demand as with any other product being supplied in a competitive market. No evidence has been referred to in the Statement of Essential Facts that this is not the case. Similarly, A4 Copy Paper also is sold under competitive market conditions, including imports the import of which is unrestricted. No evidence has been advanced that this is not the case.

7. Further, it is not for any other government, nor an investigating authority, to dictate what amounts should be payable to a government for making land for agricultural or mining purposes or, in this case, establishing timber plantations, or for that matter amount of land to be made so available. That is the sole right of the government in question and this is recognised in the SCM Agreement as the amounts payable to government by users of land has not been included in the definition in 'subsidy' in Article 1 of the SCM Agreement.

8. It also is unclear how making available land for timber plantations results in "artificially" low prices for timber and pulp when the Government of Indonesia has no control over how and which trees are planted. Also, it is unclear what is an "artificially" low price. When there is an over-supply of a commodity, such as iron ore or coal, resulting in a fall in prices to low levels, are those low prices "artificial" because the relevant government has made land available for mining in accordance with its policies on mining? Such a rise and fall in prices is simply the result of supply and demand in a competitive market. The same applies to the supply of timber and pulp and, for that matter, A4 Copy Paper in Indonesia where a competitive market operates. Again, no facts or evidence has been advanced that this is not the case.

9. In any event the Government of Indonesia's objective of making 5.4 million hectares available has not been achieved. Only 14,000 hectares have been developed. Had the

Commission approached the Government of Indonesia, this could and would have been verified. However, it fundamentally contradicts the Commission's speculation that 5.4 million hectares have been made available and cultivated resulting in an oversupply of timber. It is factually incorrect.

10. Further, assuming that government policies have resulted in low costs for certain inputs to manufacture, such as timber and pulp, those products are used to manufacture A4 Copy Paper both for domestic sale and for export sales. Unless the low-cost inputs to manufacture apply only to the production of A4 Copy for domestic sale, then it does not preclude a proper comparison between normal vales and export prices: Article 2 of the WTO Anti-Dumping Agreement. This is the essence of dumping. To determine whether an exporter is selling a product for export at a price less than that which it sells that product in its domestic market. Whether those prices are high or low is irrelevant. The essence of dumping is price discrimination by an exporter between export and domestic sales.

11. If government policies do result in 'artificially' lowering costs of certain inputs to manufacture of products for export, then that is a subsidy issue and should be dealt with as such – i.e. whether it is a countervailable subsidy.

12. Consequently, there is no factual basis supported by positive evidence that a 'particular market situation' exists in relation to the sale of A4 Copy Paper in Indonesia. The Commission's findings in this regard are based on mere conjecture and speculation, not facts supported by positive evidence.

13. Also, a finding of a particular market situation does not entitle an investigating authority to uses surrogate input manufacture costs as the Appellate Body in the *EU – Biodiesel from Argentina c*ase determined. Also, see: "*Debunking the Myth of 'Particular Market Situation' in WTO Antidumping Law*", Dr Weihuan Zhou and Andrew Percival, Journal of International Economic Law, Volume 19(4), December 2016. In this regard, we also endorse the submissions of Dr Brett Williams on behalf of the Sinar Mas Group (Item 146 on the Public File).

14. On the use of so-called 'benchmark prices', as previously submitted, they are not "benchmark" prices for pulp prices in Indonesia. For pricing of a product to be benchmarked against another price or prices, then they must be properly comparable uninfluenced by different factors and have the same purpose. The so-called "benchmark" prices here serve an entirely different purpose, are subject to entirely different regulatory regimes and requirements, different costs and cost structures, different environments and so on, none of which has been investigated or verified by the Commission. At best, all what the so-called "benchmark" prices show for the purposes of this investigation is that there are different prices for pulp in different countries for a variety of reasons, none of which have been investigated or verified by the Commission.

15. That prices in Indonesia for pulp are lower than in other jurisdictions is due to a variety of factors including its comparative advantage in timber production and cultivation, as well as lower cost structures amongst other things. A prerequisite to adopting a benchmarking methodology would be to investigate the relative efficiencies and costs in production and their effect on production to ensure a proper comparison was being undertaken. This was not under taken. Why? Again, the Commission failed to investigate or verify this for reasons that have not been explained, although invited to do so, but instead simply accepted unverified data provided by data subscription companies at face value. No investigation was undertaken as to why there were differences in prices. Hence their unreliability as so called "benchmark" prices.

16. It also gives rise to the question why Indonesian prices are not the appropriate benchmark for timber and pulp prices that timber and pulp producers in other countries ought to aim for by reducing their costs, rendering production more efficient, etc. That is, timber and pulp producers in other countries in the region should be seeking to reduce their costs and corresponding prices against an Indonesian benchmark, as opposed to Indonesian producers being benchmarked against less efficient higher cost and higher priced producers in other countries with a view that Indonesian producers should increase their costs and prices. That is, timber and pulp prices in other countries in the Asia region should be benchmarked against more efficient producers with a comparative advantage, namely timber and pulp producers in Indonesia. Commercially, benchmarks are usually used as measures to increase efficiencies and reduce costs and prices, not to increase them.

17. On debt forgiveness, the Commission considers that it is a subsidy notwithstanding that, as previously submitted, it ended in 2004. The Commission has based its finding that it remains in force by using depreciation schedules of the Australian Tax Office of between 10 to 20 years and, arbitrarily picked a depreciation of 15 years. In its verification of responses to exporter questionnaires, the Commission should be aware of and verified depreciation rates prevailing in Indonesia and not used a depreciation schedule that has no relevance or application to Indonesian companies. In any event the debt forgiveness program ended in 2004 and no longer applies and, therefore, is irrelevant to this investigation, as previously submitted.

18. In relation to the so-called Program 4 – *Preferential Tax Policies (Income Tax Facilities for Capital Investment in Certain Business Fields and/or Certain Regions*), it, as the Commission has noted, applies to certain industries and certain regions. That is, it is not ‘specific’ to the paper and paper products industry alone, although that is one industry that is eligible for such preferential tax treatment. However, other industries and regions also are eligible. The Commission has not explained in the Statement of Essential Facts why the requirement of ‘specificity’ in Article 2 of the SCM Agreement has been satisfied when this tax program is available to other industries and regions. A copy of the relevant legislation is **attached.** It is clear that it is not ‘specific’ to the pulp or paper industry but available to entities that meet the relevant criteria. It does not qualify as a ‘subsidy’ under the SCM Agreement as it is not ‘specific’. It is unclear why the Commission failed to clarify this.

19. The Government of Indonesia is concerned that throughout the Statement of Essential Facts the Commission refers to it “considering” whether a particular situation may or may not exist. That is, its findings are based on mere “conjecture” and “speculation”, not facts and evidence. As its name implies, a Statement of Essential Facts is supposed to set out the Commission’s findings of ‘fact’ and the evidence on which those facts are based. Either the findings are findings of fact based on evidence and absent which they should not be included in the Statement of Essential Facts. Mere ‘consideration’ (i.e. ‘conjecture’ and and ‘speculation’) is insufficient and contrary to WTO requirements in dumping and subsidy investigations.

20. In this context, the Commission refers in the Statement of Essential Facts that it lacked certain information or was unable to verify certain information. However, to the extent that information related to information available to or provided by the Government of Indonesia, no approach was made by the Commission to the Government of Indonesia to remedy this

deficiency. Further, to the extent that information provided by the Government of Indonesia that the Commission failed to verify, then it should be accepted at face value given that it was provided by a sovereign government. It is not for the Commission to question or disregard information provided by a sovereign government or, for that matter, rely on and prefer information provided by an Australian industry or the investigating authority of another jurisdiction operating under a different legal system or a third party (e.g. data subscription companies). This must be so if it has not verified the information. Why the Commission did not approach the Government of Indonesia to remedy deficiencies in the information or to obtain, clarify and verify information is unclear and has not been explained to the Government of Indonesia.

21. For these reasons and for the reasons previously submitted, this investigation in so far as it relates to Indonesia should be terminated.

Yours sincerely,

Principal

Percival Legal

Telephone: 0425 221 036

Email: Andrew.percival@percivallegal.com.au

PRESIDENT
THE REPUBLIC OF INDONESIA

GOVERNMENT REGULATION OF THE REPUBLIC OF INDONESIA
NUMBER 18 YEAR 2015
CONCERNING
INCOME TAX FACILITIES FOR CAPITAL INVESTMENT IN CERTAIN BUSINESS FIELDS AND/OR CERTAIN REGIONS

BY THE BLESSING OF THE ONE AND ONLY ALMIGHTY GOD

THE PRESIDENT OF THE REPUBLIC OF INDONESIA,

Considering :

a. that in order to further enhance the direct investment activities for encouraging economic growth, as well as for the purposes of equitable development and acceleration of development for certain business fields and/or in certain regions, it is necessary to reregulate the provisions concerning Income Tax facilities for capital investment in certain business fields and/or in certain regions as stipulated in Government Regulation Number 1 Year 2007 concerning Income Tax Facility for Capital Investment in Certain Business Fields and/or in Certain Regions as amended several times by Government Regulation Number 52 Year 2011 concerning the Second Amendment of Government Regulation Number 1 Year 2007 concerning Income Tax Facility for Capital Investment in Certain Business Fields and/or in Certain Regions;

b. that under consideration as referred to in letter a, and in order to implement the provisions of Article 31A of Law Number 7

Year 1983 concerning Income Tax as amended several times by Law Number 36 Year 2008 concerning the Fourth Amended of Law Number 7 Year 1983 concerning Income Tax, it is necessary to stipulate a Government Regulation concerning Income Tax Facility for Capital Investment in Certain Business Fields and/or in Certain Regions;

in view of : 1. Article 5 Paragraph (2) of the Constitution of the Republic of Indonesia year 1945;

2. Law Number 7 Year 1983 regarding Income Tax (State Gazette of the Republic of Indonesia Year 1983 Number 50, Supplement State Gazette of the Republic of Indonesia Number 3263) as amended several times and most recently by Law Number 36 Year 2008 regarding Fourth Amendment to Law Number 7 Year 1983 regarding Income Tax (State Gazette of the Republic of Indonesia Year 2008 Number 133, Supplement to the State Gazette of the Republic of Indonesia Number 4893);

HEREBY DECIDES:

Stipulated : THE GOVERNMENT REGULATION CONCERNING INCOME TAX FACILITIES FOR CAPITAL INVESTMENT IN CERTAIN BUSINESS FIELDS AND/OR CERTAIN REGIONS.

CHAPTER I
GENERAL PROVISIONS

Article 1

In this Government Regulation, the terms set out hereunder shall have the following corresponding meaning:

1. Investment shall mean any kinds of investing activities made by both domestic investors and foreign investors to run any business in the territory of the Republic of Indonesia.
2. Certain business fields shall mean any business fields in economic activity sector with high priority of national scale.
3. Certain regions shall mean any regions with economic potential qualified to develop.

Article 2

1. To the Taxpayer of domestic agencies which carry out of the capital investment, in the form of New Capital Investment and expansion from there is business, on:
   a. Certain business fields as referred contained in Appendix I of this Government Regulation; and/or
   b. Certain business fields and Certain regions as referred contained in Appendix II of this Government Regulation,

   can be awarded Income Tax facilities.

(2) Income Tax facilities as referred in paragraph (1) above shall be as follows:
   a. reduction of net income by 30% (thirty percent) of the total Investment in the form of tangible fixed assets, including any land used for the business main activities, shall be charged for 6 (six) years, respectively of 5% (five

percent) per year calculated from the commencement of commercial production.

b. accelerated depreciation on tangible assets and amortization on intangible assets acquired in the framework of new Investment and/or business expansion, with the useful lives and depreciation rates as well as amortization rates as follows

1. for the Accelerated depreciation of tangible fixed asset:

Tangible Fixed Asset Group	Benefit Period Becomes	Depreciation Tariff Based on Method	
		Straight Line	Decreasing Balance
I. Non Building			
Group I	2 Years	50%	100% (charged all at once)
Group II	4 Years	25%	50%
Group III	8 Years	12.5%	25%
Group IV	10 Years	10%	20%
II. Building			
Permanent	10 Years	10%	
Non-Permanent	5 Years	20%	

2. for the Accelerated Amortization of intangible fixed asset:

Intangible Fixed Asset Group	Benefit Period Becomes	Amortization Tariff Based on Method

		Straight Line	Decreasing Balance
Group I	2 Years	50%	100% (charged all at once)
Group II	4 Years	25%	50%
Group III	8 Years	12.5%	25%
Group IV	10 Years	10%	20%

c. the imposition of Income Tax on dividends paid to any Non-resident Taxpayer other than a permanent establishment in Indonesia of 10% (ten percent) or lower tariffs in accordance with any applicable double taxation treaty; and

d. Loss compensation for more than 5 (five) years but not more than 10 (ten) years with the following provisions as follows:

1. 1 year extra : in case the New Capital Investment in business field stipulated in paragraph (1) letter a is conducted in industrial estate and/or bonded zone;
2. 1 year extra : in case the Taxpayer which undertake of New Capital Investment issued of the cost for the economic and/or social infrastructure in business location at the least of Rp10,000,000,000.00 (ten billion rupiah);
3. 1 year extra : in case it uses materials and/or domestic products result component at least 70% (seventy percent) since the 4 (fourth) year;
4. 1 year extra

or 2 years : a) 1 (one) year extra in case it hires at least 500 (five hundred) Indonesian work forces for 5 (five) consecutive years; or

b) 2 (two) year extra in case it hires at least 1000 (one thousand) Indonesian work forces for 5 (five) consecutive years;

5. 2 years extra : in case issued of cost of domestic research and development in order to product development or production efficiency at least 5% (five percent) from the total Capital investment for 5 (five) years period;

6. 2 years extra : in case the Capital Investment this is expansion from there is business in the Certain Business Fields and/or Certain Regions which regulated in the paragraph (1) letter a and/or letter b of the financing source parts coming from earning after tax the Taxpayer in the one of tax year before issued year of principal license of expansion of the capital investment; and/or

7. 2 years extra : in case undertake of export at least 30% (thirty percent) from the sales total value, for the Capital Investment in the business fields which regulated in paragraph (1) letter a which carry out in the outside of bonded zone.

(3) The implementation of provisions as referred to in paragraph (2) letter d item 6 shall be as follows:

a. provided to fiscal losses in the current fiscal year at the commencement of commercial production on Investment in the form of expansion of any existing businesses as referred to in paragraph (2) letter d item 6;
b. the amount of fiscal losses as referred to in letter a above shall be calculated based on the proportion of earning after tax reinvested in the business expansion to the fiscal book value of all fixed assets at the end of the taxable year at the commencement of commercial production as referred to in letter a.

Article 3

Any Taxpayer making Investment as referred to in Article 2 paragraph (1) may be provided with Income Tax facilities as referred to in Article 2 paragraph (2) to the extent they meet the following criteria :

a. have a high investment value or for export;
b. have a high rate of labor absorption; or
c. have a high local content.

Article 4

(1) For any fixed assets provided with Income Tax facilities as referred to in Article 2 paragraph (2) letter a shall be prohibited to be used for any purposes other than for the provision of facilities, or to be transferred, either some or all of them, unless they are replaced by new fixed assets, before the expiration of a longer period between:
    a. 6 (six) years as of the date of commencement of commercial production; or
    b. the useful lives of such assets in accordance with the provisions as referred to in Article 2 paragraph (2) letter b item 1.

(2) For any intangible assets provided with Income Tax facilities as referred to in Article 2 paragraph (2) letter b shall be prohibited to be used for any purposes other than for the provision of facilities, or to be transferred, either some or all of them, unless they are replaced by new intangible assets, before the expiration of the useful lives of such intangible assets in accordance with the provisions as referred to in Article 2 paragraph (2) letter b item 2.

Article 5

For any Taxpayer who has received Income Tax facilities, however, no longer meet the requirements as referred to in Article 2 paragraph (1) and/or Article 4:

a. any facilities provided based on this Government Regulation will be revoked;
b. will be tax and sanctioned according to provision of regulations and legislation on taxation; and
c. no more facilities based on this Government Regulation.

Article 6

1. Provision Implementation of this Government Regulation herein will be evaluated maximum 1 (one) year since the stipulation of this Government Regulation.

(2) Evaluation as referred to in paragraph (1) above will be conducted by Team which stipulated by the Minister of Coordinator of Economics Field.

.

Article 7

For any Taxpayer provided with Income Tax facilities under this Government Regulation, shall be no longer subject to final Income Tax as stipulated by or under

Government Regulation Number 46 of 2013 concerning Income Tax on Business Income Received or Earned by Taxpayers with Certain Gross Turnover.

Article 8

(1) For any business activities in the Integrated Economic Development Zone (*Kawasan Pengembangan Ekonomi Terpadu* – KAPET) that have obtained taxation facilities under Government Regulation Number 20 of 2000 concerning Taxation Treatment in Integrated Economic Development Zone as last amended by Government Regulation Number 147 of 2000 concerning Taxation Treatment in Integrated Economic Development Zone, shall be no longer provided with taxation facilities as referred to in this Government Regulation.

(2) Any Taxpayer who has obtained the facilities of exemption or reduction of corporate Income Tax under Government Regulation Number 94 of 2010 concerning the Calculation of Taxable Income and the Settlement of Income Tax in the Current Year, shall be no longer provided with taxation facilities as referred to in this Government Regulation.

Article 9

(1) The provision of Tax Income facilities as referred to in Article 2 paragraph (1) was stipulated by the Minister of Finance after considering the suggestion of the Chairman of the Indonesia Investment Coordinating Board.

(2) Further provisions on the procedures for applying for Income Tax facilities as referred to in Article 2 paragraph (1) by Taxpayers and any discussion on the fulfilment of facilities criteria and requirements are regulated by the Regulation of the Chairman of the Indonesia Investment Coordinating Board.

(3) Further provisions on the procedures for providing Income Tax facilities as referred to in Article 2 paragraph (1), assigning assets as referred to in Article 4,

and imposing sanctions as referred to in Article 5 are regulated in the Regulation of the Minister of Finance.

(4) Further provisions on the criteria as referred to in Article 3 of and/or the requirements as referred to in Attachment I and Attachment II to this Government Regulation are regulated by the Ministers supervising the relevant sectors in accordance with their respective authorities.

Article 10

When this Government Regulation comes into force:

1. Any Taxpayer that has obtained a decision on the provision of Income Tax facilities under Government Regulation Number 1 Year 2007 concerning Income Tax Facility for Capital Investment in Certain Business Fields and/or in Certain Regions as amended several times by Government Regulation Number 52 Year 2011 concerning the Second Amendment of Government Regulation Number 1 Year 2007 concerning Income Tax Facility for Capital Investment in Certain Business Fields and/or in Certain Regions, may utilize such facilities in accordance with the Legislative Regulations in the field of taxation, until the expiration of the provision of such facilities.
2. Any suggestion of providing Income Tax under Government Regulation Number 52 Year 2011 concerning the Second Amendment of Government Regulation Number 1 Year 2007 concerning Income Tax Facility for Capital Investment in Certain Business Fields and/or in Certain Regions submitted by the Chairman of the Indonesia Investment Coordinating Board to the Minister of Finance up to such time prior to the enactment of this Government Regulation, shall be processed under Government Regulation Number 52 Year 2011 concerning the Second Amendment of Government Regulation Number 1 Year 2007 concerning Income Tax Facility for Capital Investment in Certain Business Fields and/or in Certain Regions.

3. For any Taxpayer whose investment principle license / investment expansion principle license is issued by the Chairman of the Indonesia Investment Coordinating Board or other authorized agencies since the enactment of Government Regulation Number 52 Year 2011 concerning the Second Amendment of Government Regulation Number 1 Year 2007 concerning Income Tax Facility for Capital Investment in Certain Business Fields and/or in Certain Regions up to such time prior to the enactment of this Government Regulation, may be suggested to be provided with Income Tax facilities under this Government Regulation by the Chairman of the Indonesia Investment Coordinating Board to the extent that :
    a. a decision to approve or reject the provision of Income Tax facilities under Government Regulation Number 1 of 2007 concerning Income Tax Facility for Investment in Certain Business Fields and/or in Certain Regions as amended several times by Government Regulation Number 52 Year 2011 concerning the Second Amendment of Government Regulation Number 1 Year 2007 concerning Income Tax Facility for Capital Investment in Certain Business Fields and/or in Certain Regions, has not been issued on such investment principle license / investment expansion principle license;
    b. business fields, standard classification for Indonesian business fields, scope of products, requirements and/or Regions / Provinces are in accordance with Attachment I and Attachment II to this Government Regulation;
    c. has not commercially produced on the effective date of this Government Regulation; and
    d. the suggestion of providing Income Tax facilities as referred to above has been received by the Minister of Finance no later than 1 (one) year after the enactment of this Government Regulation.

Article 11

When this Government Regulation comes into force, any Legislative Regulations that constitute the implementing regulations of Government Regulation Number 1 Year 2007 concerning Income Tax Facility for Capital Investment in Certain Business Fields and/or in Certain Regions (State Gazette of the Republic of Indonesia Year 2007 Number 1, Supplement to the State Gazette of the Republic of Indonesia Number 4657), as amended several times by Government Regulation Number 52 Year 2011 concerning the Second Amendment of Government Regulation Number 1 Year 2007 concerning Income Tax Facility for Capital Investment in Certain Business Fields and/or in Certain Regions (State Gazette of the Republic of Indonesia Year 2011 Number 133, Supplement to the State Gazette of the Republic of Indonesia Number 5264), shall be declared to remain valid provided that they are not contrary to the provisions of this Government Regulation.

Article 12

During this Government Regulation enters into force, Government Regulation Number 1 Year 2007 concerning Income Tax Facilities for Capital Investment in Certain Business Fields and/or Certain Regions (State Gazette of the Republic of Indonesia Year 2007 Number 1, Supplement to the State Gazette of the Republic of Indonesia Year 4675) as amended several times and most recently with the Government Regulation Number 52 Year 2011 concerning Second Amendment of Government Regulation Number 1 Year 2007 concerning Income Tax Facilities for Capital Investment in Certain Business Fields and/or Certain Regions (State Gazette of the Republic of Indonesia Year 2011 Number 133, Supplement to the State Gazette of the Republic of Indonesia Year 5264), shall be revoked and declared as null and void.

Article 13

This Government Regulation shall become effective after 30 (thirty) days as from the date of enactment.

In order to make known to every citizen, it is ordered that the enactment of this Government Regulation be promulgated in the State Gazette of the Republic of Indonesia.

Stipulated in Jakarta
On the date of April 6, 2015
PRESIDENT OF THE REPUBLIC OF INDONESIA

[Signed]

JOKO WIDODO

Enacted in Jakarta
On the date of April 6, 2015
MINISTER OF LAW AND HUMAN RIGHTS
THE REPUBLIC OF INDONESIA

[Signed]

YASONNA H. LAOLY

STATE GAZETTE OF THE REPUBLIC OF INDONESIA YEAR 2015 NUMBER 77

In conformity with the original thereof

MINISTRY OF STATE SECRETARIAT
THE REPUBLIK OF INDONESIA
Assistant Deputy of Law
Economy Fields
[*Signed and sealed*]
Lydia Silvanna Djaman

ELUCIDATION OF
GOVERNMENT REGULATION OF THE REPUBLIC OF INDONESIA
NUMBER 18 YEAR 2015
REGARDING
INCOME TAX FACILITIES FOR CAPITAL INVESTMENT IN CERTAIN BUSINESS FIELDS AND/OR CERTAIN REGIONS

I. GENERAL

In order to encourage economic growth, development distribution, and development acceleration in certain regions, deepening industrial structure, supporting foreign and domestic investments in certain business fields and or certain regions, Taxpayer investing or expanding investment in certain business fields and/or certain regions will be awarded Tax Income facilities.

II. ARTICLE BY ARTICLE

Article 1

Self-Explanatory;

Article 2

Paragraph (1)

Self-Explanatory

Paragraph (2)

Letter a

Net income deduction facility shall be given for 6 (six) years from the year of commercial production of 5% (five percent) of total capital investment in the form of tangible fixed assets including land for main business activities.

Such facility herein shall deduct net income (in case it gets business profit) or increase fiscal loss (in case it gets business loss).

Example:

PT ABC undertakes to capital investment of Rp 100,000,000,000 for purchase of fixed assets in the form of land, building and machine. About PT ABC It may be given investment allowance facility for 5% x Rp 100,000,000,000 = Rp 5,000,000,000 annually for 6 (six) years since the commercial production.

Letter b

Self-Explanatory

Letter c

For example, investor from X country gains dividend from domestic Taxpayer body determined to gain facilities based on this Government Regulation. In case investor X herein is located in a country without Double Taxation Avoid Agreement (P3B) with Government of the Republic of Indonesia, or located in a country with P3B with Government of the Republic of Indonesia with dividend tax tariff for Foreign Taxpayer of 10% (ten percent) or more, thus, dividend herein will only be charged Indonesian Tax Income for 10% (ten percent). However, in case investor X herein is located in a country which have P3B with Government of the Republic of Indonesia with lower dividend tax tariff from 10 (ten percent) then of these dividend will be charged Income Tax in Indonesia according to the tariff as stipulated in these P3B.

Letter d

In accordance with the provisions of Article 6 paragraph (2) of Law Number 36 Year 2008 concerning the Fourth Amended of Law Number 7 Year 1983 concerning Income Tax, any fiscal losses in a taxable year, can be compensated with profits obtained within the next five (5) taxable years. In order to encourage Investment, the period of compensation for such losses may be provided longer than 5 (five) years but no more than 10 (ten) years. The amount of additional period of compensation for such losses may be allowed provided that the following requirements / criteria are fulfilled:

1. An additional period of compensation for losses of 1 (one) year, in the event that new Investments in certain Business Fields as contained in Attachment I to this Government Regulation are made in industrial areas and/or bonded areas;
2. An additional period of compensation for losses of 1 (one) year, in the event that any Taxpayer making new Investments has paid any costs for economic and/or social

infrastructure at the business location not less than Rp. 10,000,000,000.00 (ten billion rupiahs);

3. An additional period of compensation for losses of 1 (one) year in the event that the relevant Taxpayer uses raw materials and/or components of domestic products of at least 70% (seventy percent) since the 4^{th} (fourth) year;
4. An additional period of compensation for losses of 1 (one) year in the event that the relevant Taxpayer employs at least 500 (five hundred) Indonesian workers for 5 (five) consecutive years, or an additional period of compensation for losses of 2 (two) years in the event that the relevant Taxpayer employs at least 1,000 (one thousand) Indonesian workers for 5 (five) consecutive years;
5. An additional period of compensation for losses of 2 (two) years in the event that within a maximum period of 5 (five) taxable years any costs for research and development in the country have been paid within the framework of products development or production efficiency of at least 5% (five percent) of the total Investment;
6. An additional period of compensation for losses of 2 (two) years in the event that some sources of financing for the expansion of any existing business in Certain Business Fields and/or Certain Regions as set forth in paragraph (1) are derived from earning after tax of the relevant Taxpayer in a taxable year prior to the issuance of investment expansion principle license; and/or
7. An additional period of compensation for losses of 2 (two) years in the event that the relevant Taxpayer exports at least 30% (thirty percent) of the total value of sales, for

Investment in certain business fields as referred to in paragraph (1) letter a performed outside the bonded areas.

Social infrastructure as referred to in item 2 shall mean any nonprofits facilities and infrastructure for public interests.

Income Tax facility in the form of an additional period of compensation for losses as referred to in this paragraph shall be provided no later than 5 (five) years.

Paragraph (3)

The examples for calculating the facility of additional period of compensation for losses for any Taxpayer performing business expansion where the sources of financing are derived from earning after tax shall be as follows:

1. For a taxable year ending on December 31, 2015, PT DEF has an earning after tax of Rp. 250,000,000,000.00 (two hundred and fifty billion rupiahs).
2. On May 1, 2016, PT DEF obtaining an Investment Expansion Principle License issued by the Indonesia Investment Coordinating Board with an investment plan of Rp. 500,000,000,000.00 (five hundred billion rupiahs).
3. Sources of financing for investment expansion are derived from earning after tax for the taxable year 2015 of Rp. 220,000,000,000.00 (two hundred and twenty billion rupiahs) and the rest is derived from a loan of Rp. 280,000,000,000.00 (two hundred and eighty billion rupiahs).
4. For such investment expansion, PT DEF obtains an approval on the provision of Income Tax facilities under this Government Regulation on January 2, 2017.

5. On July 31, 2017, PT DEF prepares an investment expansion plan of Rp. 500,000,000,000.00 (five hundred billion rupiahs).
6. PT DEF suffers a financial loss for the taxable year 2017 of Rp. 10,000,000,000.00 (ten billion rupiahs).
7. The fiscal book value of all fixed assets of PT DEF on December 31, 2017 amounts to Rp. 550,000,000,000.00 (five hundred and fifty billion rupiahs) consisting of :
   a. the fiscal book value of fixed assets before expansion of Rp. 100,000,000,000.00 (one hundred billion rupiahs) with the following details :

Acquisition value	Rp. 1,000,000,000,000.00	(one trillion rupiahs)
Minus accumulated depreciation up to December 17, 2017	Rp. 900,000,000,000.00	(nine hundred billion rupiahs)
Book value	Rp. 100,000,000,000.00	(one hundred billion rupiahs)

b. the fiscal book value of fixed assets expansion of Rp. 450,000,000,000.00 (four hundred and fifty billion rupiahs) with the following details :

Acquisition value	Rp. 500,000,000,000.00	(five hundred billion rupiahs)
Minus accumulated depreciation up to December 31, 2017	Rp. 50,000,000,000.00	(fifty billion rupiahs)

Book value	Rp. 450,000,000,000.00	(hundred and fifty billion rupiahs)

8. The amount of fiscal losses obtaining Income Tax facilities :

$$= \text{the taxable year 2017 loss} \times \frac{\textbf{reinvested earning after tax}}{\textbf{fiscal book value of all fixed assets on December 31, 2017}}$$

$$= \text{Rp. } 10{,}000{,}000{,}000.00 \times \frac{\textbf{Rp. 220,000,000,000.00}}{\textbf{Rp. 550,000,000,000.00}}$$

$$= \text{Rp. } 4{,}000{,}000{,}000.00$$

9. Therefore, the taxable year 2017 loss of Rp. 4,000,000,000.00 (four billion rupiahs) can be compensated for a period of 7 (seven) years, as for such loss of Rp. 6,000,000,000.00 (six billion rupiahs) shall only be compensated for 5 (five) years.
10. Any fiscal losses in the taxable year 2018 and the subsequent years shall be no longer provided with any additional period of compensation for losses under the requirements where some of the sources of financing are derived from earning after tax since the fiscal losses that may be calculated are those occur in the taxable year in which the commercial production is commenced, i.e. the taxable year 2017.

Article 3

Self-Explanatory;

Article 4

Paragraph (1)

Any fixed assets provided with investment allowance facilities and accelerated depreciation facilities, shall be prohibited to be used for any purposes other than for the provision of facilities, or to be transferred, either some or all of them, unless they are replaced by new fixed assets, for a longer period of time, between the period of provision of investment allowance facilities, i.e. 6 years from the commencement of commercial production or prior to the expiration of accelerated useful lives of such assets.

Paragraph (2)

Any intangible assets provided with accelerated amortization facilities, shall be prohibited to be used for any purposes other than for the provision of facilities, or to be transferred, either some or all of them, prior to the expiration of accelerated useful lives of such assets.

Article 5

Self-Explanatory;

Article 6

Self-Explanatory;

Article 7

Self-Explanatory;

Article 8

Self-Explanatory;

Article 9

Self-Explanatory;

Article 10

Point 1

Self-Explanatory

Point 2

The “suggestion of providing Income Tax facilities” under Government Regulation Number 52 Year 2011 concerning the Second Amendment of Government Regulation Number 1 Year 2007 concerning Income Tax Facility for Capital Investment in Certain Business Fields and/or in Certain Regions as submitted by the Chairman of the Indonesia Investment Coordinating Board to the Minister of Finance shall mean any suggestion that has been submitted by the Chairman of the Indonesia Investment Coordinating Board to the Minister of Finance and such suggestion is in the process of the provision of Income Tax facilities under Government Regulation Number 52 Year 2011 concerning the Second Amendment of Government Regulation Number 1 Year 2007 concerning Income Tax Facility for Capital Investment in Certain Business Fields and/or in Certain Regions, including any suggestion returned to the Chairman of the Indonesia Investment Coordinating Board and/or any authorized officer, in accordance with the provisions of any applicable Legislative Regulations in order to comply with the required documents completeness to the extent that such suggestion is in accordance with the criteria and requirements under Government Regulation Number 52 Year 2011 concerning the Second Amendment of Government Regulation Number 1 Year 2007 concerning Income Tax Facility for Capital Investment in Certain Business Fields and/or in Certain Regions.

Point 3

Self-Explanatory

Article 11

Self-Explanatory;

Article 12

Self-Explanatory;

Article 13

Self-Explanatory;

SUPPLEMENT TO THE STATE GAZETTE OF THE REPUBLIC OF INDONEISA NUMBER 5688