

GRANTING THE EXEMPTION FACILITIES OF INCOME TAX FOR NEW INVESTMENTS IN INDONESIA

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Abstract- Tax Holiday is one form of the investment facilities that was provided by the Government to investors who like to invest in Indonesia. This provision is stipulated in the article 18 of the Law No. 25 Year 2007 on investment. This tax facility is different from those mentioned in the Article 31A of the Law Number 7 of 1983 concerning income tax that has been amended few times into the Act No. 36 of 2008. The facility given is in the form of exemption or reduction of corporate income tax for strategic industries. However, the study that examined the detail of this fiscal policy is limited. For that reason, this study, using legal official documents and other secondary sources, aims at examining and discussing procedures and mechanism to have a granting exemption facility of income tax for the new investment in the pioneer industry. The study found that there are at least seven regulations that support the granting exemption facility of the income tax. The length of corporate income tax exemption was for a maximum period of ten taxable years and the five-year minimum taxable years since the fiscal year when the commercial production begin. The taxpayers will be granted the exemption facility or reduction of corporate income tax if they have fulfilled at least four criteria. There are team and institutions that conduct an evaluation of the use of the exemption facility or reduction of corporate income taxes. Also, the investors must submit periodical report to the Head of The Investment Coordinating Board every 6 months period. Finally, the time length of verification documents to have a granting approval for the exemption facility for the income tax will be within a maximum period of 30 working days after the proposal have been received by the Minister of Industry or the Head of the Investment Coordinating Board.

Index terms- tax holiday, corporate income tax, granting exemption facility, pioneer industry, foreign and domestic investments.

I. INTRODUCTION

Indonesia faces many problems. Of the many problems that were faced by the country is the slowing down of the economic growth after the global financial crisis in 2008. To maintain the level of economic growth of 5 percent, the government introduced 13 economic policy packages since September 2015. Of these 13 economic policy packages, investment has been considered as one of the important factors to boost economic growth. These investments do not only consist of direct physical investment either through foreign investment and domestic investment, but it is also from capital market investment.

Apart from the above 13 economic policy packages, the government of Indonesia has previously issued the Presidential Regulation No. 77 of 2007, particularly at the Article 12, paragraph 4 and the Law No. 25/2007 at the article 13, paragraph (1). With the issuance of these law and regulations, it is expected that the investments will be stimulated and investors will be attracted to invest in this country.

One of the fiscal instruments that was introduced by the government to attract the investors to invest is by providing tax holiday facilities for both foreign investors and domestic investors in certain business/industrial sectors. These sectors should be in the category of a high priority on a national scale, especially in supporting export promotion. These tax facilities are also given to investors who like to invest in the remote development areas located in the Eastern part of Indonesia. These tax facilities are intended to support equitable development and service promotion to the community in this region. Specifically, it aims to:

1. Encourage exports in national priority areas of Bonded Zones and in the entre ports for the purpose of export (EPTE), or to develop other areas in the customs areas which are formed specifically for the purpose of export.
2. Accommodate the execution of agreements with other countries in the field of trade and investment.
3. Accelerate the economic recovery and society in the natural disasters areas.
4. Ensure the availability of affordable housing for the low income society.
5. Encourage national development by helping the availability of strategic goods.
6. Improve education to improve nation's intelligence and the construction of worship places.
7. Encourage improvements in health and the well-being of society.
8. Ensure availability of equipment for National Army / RI Police.
9. Encourage the development of infrastructures.

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Tax Holiday is one form of the investment facilities that was provided by the Government to investors who like to invest in Indonesia. This provision is stipulated in the article 18 of the Law No. 25 Year 2007 on Investment. This tax facility is different from those mentioned in the article 31A of the Law Number 7 of 1983 concerning income tax that has been amended few times into the Act No. 36 of 2008. The facility given is in the form of exemption or reduction of corporate income tax for pioneers industrial companies that perform new investment in Indonesia as set out in Article 29 of the Government Regulation No. 94 Year 2010 concerning the calculation of taxable income and income tax payment in the current year.

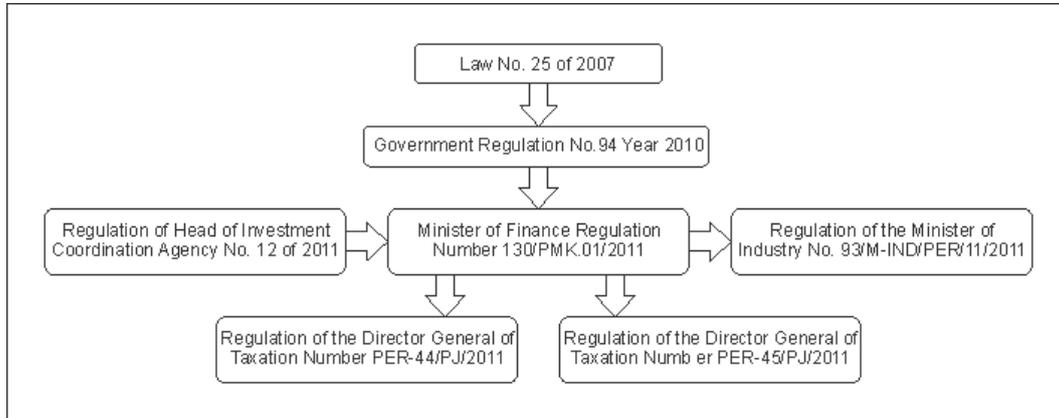
The granting of the exemption or reduction of corporate income tax is expected to increase the volumes and values of foreign investment in Indonesia with the aim to boost the economy in real terms. Several opinions related to the tax holiday have been reported in the media (see, <http://hukumonline.com/berita/baca/1t4e48e65dSOceb/lima-industri-berhak-tax-holiday>). Other media that informed this news can be read in <http://www.tempo.co/read/news/2011/08/26/088353667/Investor-Asing-Pertanyakan-Tax-Holiday>. In fact, it was reported that the realization of the investments since 2011 exceeded the investment target.

As there was limited study examined the detail of the issuance of the tax holiday, this paper aims at discussing procedures and mechanism to have a granting exemption facility or reduction of income tax. However, before this issue examines in detail, the following section 2 deals with the legal aspects that support the granting exemption facility or reduction of corporate income tax as the background analysis. This will be followed by the discussion related with the facility exemption or reduction of corporate income tax and the criteria of taxpayers who will be granted exemption facility of corporate income tax in section 3. Section 4, then, explains the technical part in filing the application form to obtain the exemption facility of income tax and the approval to have the exemption or reduction of the corporate income tax. Section 5 discussed supervision that will be given to taxpayers who have obtained the exemption facility of income tax. Finally, concluding remarks are drawn in section 6. Note that, the data and information used throughout this study are collected from the official legal sources and other secondary sources.

II. LEGAL BASIS OF THE EXEMPTION FACILITY OF INCOME TAX

The legal basis of the taxpayers to obtain the exemption facility of income tax can be seen in the box 1.

Box 1. Laws and Regulation as the basis of the exemption facility or reduction of Income tax



Source: collected from various official legal sources.

As shown in the Box 1 that there are at least seven regulations that support the granting exemption facility of the income tax. Details of the articles in each regulation are as follows.

1. The article 18 in paragraph (5) of the Law No. 25 of 2007 on investment. In this article it was mentioned that the granting exemption or reduction of corporate income tax will be given only to new investments in the pioneer industry. This pioneer industry is defined as the industry that has broad relevance, provide high value-added, introducing new technologies, as well as having strategic values for the economy nationwide.
2. The Government Regulation No. 94 Year 2010 concerning the calculation of taxable income and income tax payment in the current year. The relevant articles in this regulation are :
 - a. The Article 29 in paragraph (1) that mentioned the granting exemption facility will be given to taxpayers who do new investment in the pioneer industry; and taxpayers who did not get the facility as mentioned in the article 31A of income tax law and the article 18 in paragraph (5) of the Law No. 25 Year 2007 concerning investment.

- b. The article 29 in paragraph (2) that stated that the pioneer industry as referred to paragraph (1) is the industry that has a broad relevance, high value-added, able to introduce new technologies, as well as having strategic values for the national economy.
 - c. The article 30, regarding the granting exemption facility or reduction of corporate income tax.
3. The Minister of Finance Regulation No. 130/PMK011/2011 on the granting exemption facility or reduction in corporate income tax. The articles that relates to exemption facility in this regulation are :
 - a. The article 3 in paragraph (4) that mentioned that the exemption facility or reduction of corporate income tax will be given as long as it fulfills the following requirements:
 - 1) has realized all of its investment as described in paragraph (1) letter b, and
 - 2) has produced commercially.
 - b. The article 3 in paragraph (4) that stated that the commencement of commercial production referred to paragraph (4) letter b was determined by the Director General of Taxes, where the ordinances regulated by the Director General of Taxes.
 - c. The article 4 in paragraph (1) that mentioned that to obtain the exemption facility or reduction of corporate income tax, the taxpayers need to convey a request to the Minister of Industry or the Head of the Investment Coordinating Board.
 - d. The article 5 in paragraph (1) which stated taxpayers should submit a proposal concerning tax exemption facility or reduction of corporate income tax to the Minister of Industry, The Head of Investment Coordinating Board as referred to the article 4 in paragraph (2). The Minister of Finance at commissioned the Verification Committee that granting exemption facility or reduction of corporate income tax to help conduct research and verification to consider strategic impact of taxpayers for the national economy.
 - e. The article 5 in paragraph (2), which stated that The Verification Committee of granting exemption facility or reduction of corporate income tax referred to paragraph (1) is formed by the Minister of Finance.
 - f. The article 6 in paragraph (1) that stated that the taxpayers who have obtained Decree of the Minister of Finance to have exemption facility or reduction of corporate income tax should submit periodic reports to the Director General of Taxes and to the Verification Committee of granting exemption facility or reduction of corporate income tax. The type of the report documents submitted include:
 1. The report of Funds used and placed in banks in Indonesia as referred to the article 3 in paragraph (1) letter c, and.
 2. The report of the realization of investments that have been audited.
 - g. The article 6 in paragraph (2) that report procedures referred to paragraph (1) regulated by the Director General of Taxes.
 4. As a technical guide in obtaining the exemption facility or reduction of corporate income tax as mandated in the article 4 in paragraph (1) of the Regulation of the Minister of Finance No. 130/PMK.011/2011 concerning the granting exemption facility or reduction of corporate income tax, the Minister of Industry and Head of the Investment Coordinating Board respectively issued rules as follows:
 - a. The regulation of the Head of the Investment Coordinating Board No. 12 Year 2011 on Guidelines and Procedures for the Submission of Application Tax Exemption Facility or Reduction of corporate income tax.
 - b. The Minister of Industry Regulation No. 93/M-IND/PER/11/2011 on Guidelines and Procedures for the Submission of Application for Exemption facility or Reduction in corporate income tax in industrial sectors.
 5. The article 5 in paragraph (2) of the Regulation of the Minister of Finance No. 130/PMK.011/2011 on granting exemption facility or reduction of corporate income tax, stipulated in the Decree of the Minister of Finance No. 442/KMK.011/2011 about Formation of the Verification Committee the granting of exemption facility or reduction of Corporate income tax.
 6. The article 6 in paragraph (2) of the Regulation of the Minister of Finance No. 130/PMK.011/2011 on granting of exemption facility or reduction of Corporate income tax, stipulated in the Director General of Taxes Regulation No. PER-44/PJ/2011 on Reporting Procedures for Funds Use and investment realizations for the corporate taxpayers in obtaining the exemption facility or reduction of corporate income tax.
 7. The article 3 in paragraph (5) of the Regulation of the Minister of Finance No. 130/PMK.011/2011 on the exemption facility or reduction of corporate income tax, stipulated in Director General of Taxes Regulation No. PER-45/PJ/2011 concerning

procedures of the commencement of commercial productions for the corporate taxpayers in obtaining exemption facility or reduction of corporate income tax.

III. FACILITIES AND CRITERIA OF TAXPAYERS FOR EXEMPTION FACILITY OF INCOME TAX

The exemption facility or reduction of corporate income tax may include:

1. Corporate income tax exemption for a maximum period of ten taxable years and the five-year minimum taxable years since the fiscal year when the commercial production begins.
2. After the expiration of granting exemption facility of corporate income tax. The taxpayer is given the reduction of corporate income tax by 50% of the income tax payable during the two taxable years.
3. Taking into account the benefit of maintaining the competitiveness of the national industry and the strategic value of certain business activities, the Minister of Finance may give exemption facility for a period exceeding ten taxable years or reduction of corporate income tax for a period exceeding two taxable years.

Furthermore, taxpayers may be granted the exemption facility or reduction of corporate income tax if the following criteria were met:

1. The investment is in a pioneer industry;
2. It has a new investment plan that has been approved by the competent authority at least Rp.1.000.000.000.000, 00 (one trillion rupiah);
3. The investors put money in Indonesian banks at least 10% of the total capital investment plan as referred to point b, and should not be withdrawn before the commencement of the implementation of the investment and
4. The investors shall have status as Indonesia legal entity that ratification determined of twelve months before this Minister of Finance Regulation comes into force or endorsement specified on or after the enactment of this Minister of Finance Regulation.

The pioneer industries were defined as the industries that have activities in metal based industry, petroleum refining industry and/or organic basic chemicals derived from petroleum and natural gas, Industrial machinery, Industry in the field of renewable resources, and/or communications equipment industry. However, taking into account the interests of maintaining the competitiveness of the national industry and the strategic value of certain business activities, the Minister of Finance may set the pioneer industry being granted to have exemption facility or reduction of corporate income tax.

If the written request has been submitted to the Director General of Taxes through the Director of Examination and Billing, it is important to attach the following documents.

1. Copy of the application;
2. Copy of the decision that was made by the Minister of Finance regarding the grant exemption facility or reduction of corporate income tax;
3. Financial Statements of the last 3 years that have been audited;
4. Special power of attorney in the event that the application submitted by the taxpayer attorney, and
5. The documents relating to the sale production at least consisting of the sales invoice, tax invoice and proof of goods delivery.

IV. FILLING THE APPLICATION FOR EXEMPTION FACILITY OF INCOME TAX

To obtain the exemption facility or reduction of corporate income tax, taxpayers should submit the application to the Head of the Investment Coordinating Board or to the Minister of Industry. The application will be discussed and process by the following institutions.

1. Head of the Investment Coordinating Board (BKPM)

The application documents that will be examined in this institution are:

- a. Photocopy Card of Taxpayer Identification Number;
- b. New investment approval issued by Head of The Investment Coordinating Board;
- c. Statement of Ability to put the fund at least 10% of the total investment plan in the bank, if the application has been approved by the Minister of Finance;
- d. Company legal approval documents from the Ministry of Law and Human Rights;
- e. Statement of the stipulations of the tax sparing in domicile country which is equipped with regulatory documents;
- f. Application form completed by the applicant as set out in Annex I of The Investment Coordinating Board Regulation No. 12 of 2011.

After the application documents completed, there are teams and institutions that are going to examine the documents. These teams and institutions are as follows:

1. A teams consists of representatives from BKPM, the Directorate General of Industrial Development, and BPKIMI conducting verification activity and application assessment and effectiveness evaluation of the policies established by the Decision to the Head of The Investment Coordinating Board.
2. The Directorate General of Industrial Development consisting of the Directorate General of Agriculture, Directorate General of High Technology-Based Leading Industry and the Directorate General of the Manufacturing Industry Base which carry out the duties and responsibilities in accordance with the industrial development appropriate to the authority.
3. The assessment from the Board of Climate Policy and Industrial Quality, hereinafter abbreviated as BPKIMI, a supporting element which is under and responsible to the Minister of Industry that has duty to carry out the research and study as well as to arrange the macro policy planning for development of medium-and long-term industry, priority industrial master development policy and climate and industrial quality.

The above team and institutions will conduct an evaluation of the use of the exemption facility or reduction of corporate income taxes to measure the effectiveness of policy of exemption facility or reduction of corporate income tax so that the company has gained the decision from the Minister of Finance regarding the grant of exemption facility or reduction of Corporate income tax. The investors must submit periodical report to the Head of The Investment Coordinating Board every 6 months period. The report consists of the following documents :

- 1) Realization of the commercial production,
- 2) Utilization of exemption facility or reduction of corporate income tax,
- 3) Realization of Manpower, and
- 4) Realization and Technology Transfer and Use

The results of the evaluation will be submitted to the Head of The Investment Coordinating Board at least once in a year. However, if the application documents are given to the Minister of Industry, the application must be accompanied by:

- a. Photocopy card of Taxpayer Identification Number;
- b. New capital investment approval letter issued by the Investment Coordinating Board with its details;
- c. Statement of Ability to place funds in banks in Indonesia if the application is approved by the Minister of Finance;
- d. Legalization Document of Company Law Board of the Ministry of Law and Human Rights;
- e. Statement of the stipulations of the tax sparing in original country of company domicile, equipped with supporting documents;
 1. Forms that are filled with the description of the information availability of infrastructure on the investment location;
 2. Domestic employment absorption;
 3. Assessment of the criteria fulfillment as Pioneer industry, and
 4. Stages planning of technological transfer;

Note that, the form appropriate to Annex I of Regulation of the Minister of Industry No. 93/M-IND / PER/11/2011.

Like in the Investment Coordinating Board, there are also a team and institution in the Ministry of Industry which are going to examine the application documents. This team consists of representatives from the Directorate General of Industrial Development, the Assessment Board of Climate Policy and Industrial Quality (BPKIMI), the Secretariat General and the Investment Coordinating Board (BKPM). This team will be led by the Director General of Industrial Development. Whilst in terms of the institutions, these include the Director General of Agriculture, the Director General of High Technology-Based Leading Industry and the Director General of the Manufacturing Industry.

In order to measure the effectiveness of the policy to grant exemption facilities or reduction of corporate income tax, the Directorate General of Industrial Development will do an evaluation. The company that has obtained the Decree of the Minister of Finance regarding the grant of exemption facility or reduction in corporate income tax must submit a report to the Director General of Industrial Development in 6 months period. In this report, the company should report the realization of commercial production, the realization of the exemption facility or reduction utilization of corporate income tax, the realization and Technology Transfer and Use. Note that, each Directorate General of Industrial Development should report the results of the evaluation to the Minister of Industry at least once in a year.

V. GRANTING APPROVAL AND SUPERVISIONS OF THE EXEMPTION FACILITY OF INCOME TAX

The application documents that have been evaluated by Head of the Investment Coordinating Board or the Minister of Industry will have granting approval to the exemption of facility of tax income after it has been verified by the Verification

Committee in the Ministry of Finance. The members of this verification committee consists of : (a) Directing Committee (the Vice Minister of Finance), and (b) the Members of the Committee consisting of the Head of Fiscal Policy Office (Ministry of Finance), Advisor to the Minister of Finance, Director General of Taxes (Ministry of Finance), Deputy Minister of Macro Economic Affairs and Finance (the Coordinating Ministry for Economic Affairs), Deputy of Investment Services (the Investment Coordinating Board), and the head of Policy Assessment of Climate and Industrial Quality (Ministry of Industry).

The Verification Committee for exemption facility or reduction of the corporate income tax (the Ministry of Finance) has the following tasks.

(1) Examines and verifies compliance with the taxpayers criteria and requirements proposed by the Minister of Industry or Head of the Investment Coordinating Board and proposal documents granting exemption facility or reduction in corporate income tax;

(2) Examines the strategic impact of the proposed taxpayer to be granted for exemption or reduction of corporate income tax for the national economy;

(3) Consultation with the Coordinating Minister for Economic Affairs, in order to conduct research and verification as intended in letter a, as well as conduct a study on strategic impact of taxpayers for the national economy as referred to in letter b, in accordance with the Article 5 in paragraph (3) of the Regulation of the Minister of Finance Number 130/PMK. 011/2011 on the Provision of exemption facility or reduction of corporate income tax;

(4) Present the results of research and verification and the results of a study on the strategic impact of taxpayers for national economy as referred to letter c to the Minister of Finance, along with consideration and recommendation, including recommendations regarding the provision period exemption facility of corporate income tax;

(5) Coordination in the implementation of consultation with the Minister of Finance with President relating to granting exemption facility or reduction in corporate income tax, in accordance with the article 5 in paragraph (3) of the Regulation of the Minister of Finance No. 130/PMK.011/2011;

(6) Formulate and convey the concept of the Minister of Finance regarding the granting of exemption facility or reduction of corporate income tax, in case of the exemption facility reduction of corporate income tax has been approved by the Minister of Finance;

(7) Deliver notification in writing to the corporate taxpayers with a copy to the Minister of Industry, the Investment Coordinating Board, the Minister of Finance rejected a proposal to give the exemption facility or reduction in corporate income tax;

(8) Evaluating periodically reports submitted by taxpayers who received the exemption facility or reduction in corporate income tax;

(9) Submit recommendations to the Minister of Finance in order to repeal Decree of the Minister of Finance regarding the grant of exemption facility or reduction in corporate income tax, in case of the taxpayer does not comply with the criteria and requirements as well as provisions on the delivery of periodic reports;

(10) Submit recommendations to the Minister of Finance regarding the granting exemption facility or reduction in the corporate income tax over a period of time, according to the authority of the Minister of Finance as meant in the article 2 in paragraph (4) of the Regulation of the Minister of Finance No. 130/PMK.011/2011, accompanied by assessment on the importance to maintain the competitiveness of the national industry and the strategic value of certain business activities, and

(11) Submit recommendations to the Minister of Finance regarding the scope of Pioneer industry that can be given exemption facility or deduction from corporate income tax, in accordance authority of the Minister of Finance as meant in the article 3 in paragraph (3) of the Regulation of the Minister of Finance No. 130 / PMK.011/2011, with accompanying assessment on importance to maintain the competitiveness of the national industry and the strategic value of certain business activities.

The time length of verification documents to have granting approval for the exemption facility for the income tax will be within a maximum period of 30 working days after the proposal of the Minister of Industry or the Head of the Investment Coordinating Board received completely.

In terms of supervision given to the taxpayer who has obtained the Decree of the Minister of Finance regarding the grant exemption facility or reduction of corporate income tax consists of:

1. Report the funds use placed in banks in Indonesia, at least 10% of the total new capital investment plan that has been approved by the competent authority, and
2. Report on the realization of investments have been audited.

Report of the use of the funds must be submitted on a quarterly basis. This report needs to use the format specified in Annex I to Regulation of the Director General of Taxes Number PER-44/PJ/2011. Whilst the report of the realization of investments shall be on an annual basis since the investment begin. The format that will be used was set out in Annex II to Regulation of the Director General of Taxes Number PER-44/PJ/2011.

The deadline for submission of the reports related to the taxpayers who have obtained the Decree of the Minister of Finance regarding the grant of exemption facility or reduction of corporate income taxes is as follows.

- a. Report of the funds use and report of the realization of investments that are not audited should be submitted to the Director General of Taxes through the Director of Investigation and Tax Billing and the Verification Committee granting exemption or reduction of corporate income tax later than the 5th of the month following the expiration of the relevant quarterly period.
- b. Report of the realization of investments that are audited should be submitted to the Director General of Taxes through the Director of Investigation and Collection and the Verification Committee granting exemption or reduction of Corporate income tax at the latest 4 months after the end of the Fiscal. In terms of capital investment is realized entirely in the current years, the realization report of investments audited should be submitted to the Director General of Taxes through the Director of Examination and Billing and delivery Verification Committee granting exemption or reduction of the corporate income tax of a maximum of four months after the investment was realized entirely.

In the event that the deadline of submission for report coinciding with the holidays including Saturdays or public holidays or days off with a set by the government, the reporting can be done on the next working day. The submission of the report is done by directly conveying to the board or by sending via mail. The date and the proof of mailing shall be deemed as date and receipt so long as reports have been completed.

VI. CONCLUDING NOTES

Tax holiday has been used as the fiscal instruments to attract the investors both from foreign and domestics to invest in Indonesia. The legal basis of the investment in the Law No. 25 of 2007 on Investment and the Government Regulation No. 94 Year 2010 concerning the calculation of taxable income and income tax payment in the current year.

The study found inter alia that there are at least seven regulations that support the granting exemption facility of the income tax. The length of corporate income tax exemption was for a maximum period of ten taxable years and the five-year minimum taxable years since the fiscal year when the commercial production begin. The taxpayers will be granted the exemption facility or reduction of corporate income tax if they have fulfilled at least four criteria. There are team and institutions that conduct an evaluation of the use of the exemption facility or reduction of corporate income taxes. Also, the investors must submit periodical report to the Head of The Investment Coordinating Board every 6 months period. Finally, the time length of verification documents to have a granting approval for the exemption facility for the income tax will be within a maximum period of 30 working days after the proposal have been received by the Minister of Industry or the Head of the Investment Coordinating Board.

REFERENCES

- [1] Law No. 7 of 1983 concerning Income Tax as amended several times by Act No. 36 of 2008.
- [2] Law No. 25 Year 2007 about Investment.
- [3] Government Regulation Number 94 Year 2010 concerning the calculation of Taxable Income and Income Tax Payment in the Current Year.
- [4] Minister of Finance Regulation No. 130/PMK.011/2011 on granting of the exemption facility and reduction of Corporate income tax.
- [5] Regulation of the Head of the Investment Coordinating Board No. 12 Year 2011 on Guidelines and Procedures for the Application Submission on Exemption Facility or Reduction of Corporate income tax.
- [6] Minister of Industry Regulation No. 93/M-IND/PER/11/2011 on Guidelines and Procedures for the Application Submission for Exemption Facility or Reduction in Corporate income tax in Industrial Sector.
- [7] Minister of Finance Decree No. 442/KMK.01/2011 Verification Committee on the Establishment of the Exemption or Reduction of Corporate income tax.
- [8] Regulation of the Director General of Taxes Number: PER-44/PJ/2011 on Reporting Procedures Funds Use and Investment Realization for Corporate Taxpayers are Getting Exemption Facility or Reduction of Corporate income tax.
- [9] Regulation of the Director General of Taxes Number: PER-45/PJ/2011 on Reporting Procedures for Determination of the Commencement of Commercially Production for Corporate Taxpayers are Getting Exemption Facilities and Reduction of Corporate income tax Exemption.