

Non-Taxable BiK and/or Enjoyment Highlight

MoF 66 Year 2023

July 2023

One month after the Minister of Finance of the Republic Indonesia (“MoF”) issued the rules on Benefit in Kind (“BiK”) and/or enjoyment, it is still becoming an interesting discussion since there are some clarity as well as some questions remain.

On 27-June-2023, the MoF issued a MoF Regulation Number 66 Year 2023 which come into force on 1-July-2023 (“MoF 66 Year 2023”). This MoF among others regulates regarding the income tax treatment on replacement or compensation in relation to work or service receive or obtain in kind and/or enjoyment. This regulation gives more clarity on the deductibility and taxability of BiK and/or enjoyment which shall provide more guidance to both employer and employee to take action regarding the treatment going forward.

BiK and/or enjoyment in relation to work or service can be deductible for employer as long as these are related to obtain, collect and maintain employer’s income. However, the employer is obliged to report the amount as well as the recipient of BiK and/or enjoyment in the employer’s Annual CIT Return. This provision may be resulting in an administrative effort for the employer since the employer should maintain the type and amount of BiK and/or enjoyment provided to its employees.

Law Number 36 Year 2008 (“Income Tax Law”) as lastly amended with Law Number 7 Year 2021 (“HPP Law”) and Government Regulation Number 55 Year 2022 (“GR 55 Year 2022”) have already introduced the categories of non-taxable BiK and/or enjoyment for employees, as follows:

- a. Food, food ingredients, beverage ingredients, and/or beverages provided for all employees;
- b. BiK and/or enjoyment in certain areas;
- c. BiK and/or enjoyment necessary to carry out the employees’ work activities;
- d. BiK and/or enjoyment sourced or financed from the regional/state revenue budget; or
- e. BiK and/or enjoyment of certain types and/or thresholds.

MoF 66 Year 2023 gives more clarity regarding food and beverages provided for all employees as mentioned in point a) above as follows in the table below:

| Type of BiK and/or Enjoyment | Threshold |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>Food, food ingredients, beverage ingredients, and/or beverage for all employees covering:</p> <ol style="list-style-type: none"> a. Food and/or beverages provided by the employer at the workplace; b. Food and/or beverage coupons for employees who, due to the nature of their work, cannot enjoy the food and beverages provided by the employer at the workplace mentioned above, i.e. employees of the marketing and transportation departments as well as other out-of-office employees; and/or c. Food and/or beverage ingredients for all employees with certain threshold. | <p>Received or earned by all employees</p> <p>Does not exceed:</p> <ol style="list-style-type: none"> a. IDR 2,000,000/employee/month; or b. The monthly expense per employee for food and beverages provided by the employer at the workplace, if the amount exceeds IDR 2,000,000/employee/month. <p>Please refer to section BiK and/or enjoyment of certain types and/or thresholds below.</p> |

Further, the Appendix of MoF 66 Year 2023 stipulates the BiK and/or enjoyment of certain types and/or thresholds mentioned in point e) on the previous page, as follows:

| No. | Type of BiK and/or Enjoyment | Threshold |
|-----|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1 | Gifts from the employer including food materials, drink materials, food and/or drink for religious celebrations, i.e. Eid al-Fitr, Christmas, Nyepi, Vesak, or Chinese New Year | Received or earned by all employees |
| 2 | Gifts from employers that are given other than for religious celebrations as mentioned in number 1 (one) | a. Received or earned by employees; and b. Maximum IDR 3 million per employee within the period of 1 fiscal year |
| 3 | Work equipment and facilities from employers, including computers, laptops, or cellular phones including support facilities such as phone credit or internet connection | a. Received or earned by employees; and b. Support employee's work |
| 4 | Health and medical treatment facilities from employer | a. Received or earned by employees; and b. Provided for handling: 1. Work accident; 2. Work-related illness; 3. Life-saving emergencies; or 4. Follow-up care and treatment due to work accidents or work-related illness |
| 5 | Sports facilities from employer, other than golf, horse racing, motorised boat racing, gliding, and/or automotive sports | a. Received or earned by employees; and b. Maximum IDR 1.5 million per employee within the period of 1 fiscal year |
| 6 | Communal residential facilities from employers, including dormitories, lodges, or barracks | Received or earned by employees |
| 7 | Residential facilities from employers whose utilisation rights are held by individuals, including apartments or landed houses | a. Received or earned by employees; and b. Maximum IDR 2 million per employee within the period of 1 month |
| 8 | Vehicle facilities from employer | Received or earned by employees who: a. Do not have capital participation in the employer; and b. Have an average gross income within the last 12 months of maximum IDR 100 million per month from the employer |
| 9 | Facility of contribution to pension funds which the establishment has been authorized by the Financial Services Authority (Otoritas Jasa Keuangan) that is borne by the employer | Received or earned by employees |
| 10 | Religious facilities, including musala, mosques, chapels or temples | Intended solely for religious activities |
| 11 | All BiK and/or enjoyment received in 2022 | Received or earned by employees or service providers |

The necessity of an integrated system shall be able to support the Taxpayers in determining and maintaining the type and amount of BiK and/or enjoyment is within or exceed the stipulated threshold to assess whether it is taxable or non-taxable efficiently.

The detailed guideline provided in MoF 66 Year 2023 may give room for interpretations, among others:

1. The format of nominative list may raise many arguments noting that it shall include the amount and employee who receive all BiK and/or enjoyment considering this payroll data shall be treated as confidential.
2. Taxpayers and fiscus may have various interpretation on the term “related to obtain, collect and maintain income” as there is no specific regulation governing the said term. Also, there is no specific limitation in regard to both threshold and type of gifts for religious celebration for all employees.
3. Work-related illness may draw attention since this involves a complex assessment to determine and assurance from the third party (e.g. general practitioners or medical specialist).
4. There are types of BiK and/or enjoyment which may have not yet covered in MoF 66 Year 2023 e.g. outing, gathering, etc. A possible view that any BiK and/or enjoyment outside MoF 66 Year 2023 shall be taxable in the hand of recipient until the issuance of regulation governing the said matter.
5. Several provisions in MoF 66 Year 2023 shall be contrary to the superior law as follows:



a) There is different treatment of BiK and/or enjoyment being taxable between HPP Law and GR 55 Year 2022 vs MoF 66 Year 2023 as seen below.

| HPP Law and GR 55 Year 2022 | MoF 66 Year 2023 |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------|
| <p>BiK and/or enjoyment shall be taxable as of 1 January 2022 (for employers whose Fiscal Year 2022 started prior to 1 January 2022) or when FY2022 begins (for other employers).</p> <p>GR 55 Year 2022 further stipulated that BiK and/or enjoyment received in 2022 must be calculated, paid, and reported by employees in their FY2022 Annual Income Tax Return if tax has not been withheld by the employer.</p> | <p>All BiK and/or enjoyment received or obtained during 2022 by employee or service providers are considered non-taxable.</p> |

b) There is different treatment on who is responsible to withhold tax on BiK and/or enjoyment between GR 55 Year 2022 vs MoF 66 Year 2023

| GR 55 Year 2022 | MoF 66 Year 2023 |
|-------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Employer is obliged to withhold the income tax related to BiK and/or enjoyment for income received or earned since January 1, 2023. | If tax related to BiK and/or enjoyment received or obtained during January 1, 2023 up to June 30, 2023 has not been withheld by the employer, then the tax must be calculated, paid, and reported by employees in their 2023 Annual Individual Income Tax Return. |

The unconformity between the MoF 66 Year 2023 and the superior law may arise a potential dispute in the future.

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