

# Recent Developments for Indonesian REITs

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On 17 October 2016, President Joko Widodo signed Government Regulation No. 40 of 2016<sup>1</sup> (“**GR 40**”). GR 40 changes the tax rate imposed on the transfer of property (land and building) under the DIRE<sup>2</sup> scheme which regulates Indonesian real estate investment trusts (REITs). GR 40 took effect on 17 October 2016 and is a further step towards implementation of the 11<sup>th</sup> Economic Policy Package announced on 29 March 2016 (“**11<sup>th</sup> Package**”) (please see our client alert “[New Tax Incentives for Indonesian REITs](#)”).

## What’s new?

### Reduced Seller Tax Rate

Under GR No. 40, the central Indonesian Government has applied the Seller Tax<sup>3</sup> at a reduced rate of 0.5 percent for property transaction under the DIRE scheme<sup>4</sup>. The 0.5 percent rate will be calculated using the gross transfer value of the property actually received by the seller. If the parties in the transaction are “related parties”<sup>5</sup>, the gross transfer value will be based on the fair market value or a valuation by an independent appraiser.

Previously, any gain received by the seller from the transfer of properties under the DIRE scheme would be subject to: (i) the normal income tax rate of 25 percent for corporate sellers; or (ii) the progressive tax rate of up to 30 percent for individual sellers, as applicable. These tax rates, which were applied to property transactions under the DIRE scheme set out in MOF Reg. 200<sup>6</sup>, unfortunately seemed to detract from the tax incentives under the 11<sup>th</sup> Package which were intended to, among others, boost the competitiveness of DIRE market.

<sup>1</sup> Government Regulation No. 40 of 2016 on Tax on Income from the Transfer of Real Estate under a Certain Collective Investment Contract Scheme

<sup>2</sup> “Real Estate Investment Funding in the form of Collective Investment Contracts” (*Dana Investasi Real Estat Berbentuk Kontrak Investasi Kolektif* or “**DIRE**”).

<sup>3</sup> Final income tax on the transfer of property (land and building) (*Pajak Pendapatan Untuk Pengalihan Hak Atas Tanah dan Bangunan*) to be borne by the seller (“**Seller Tax**”).

<sup>4</sup> Seller Tax for common sale and purchase of property remains at 2.5 percent (reduced from previous 5 percent), as regulated under Government Regulation No. 34 of 2016, issued on 8 August 2016.

<sup>5</sup> “Related parties” means, among others, (i) a party that has direct or indirect ownership in the other party representing at least 25 percent or (ii) a party that controls the other party or two or more parties that are under common control either direct or indirectly (defined under Law No. 36 of 2008 on the Fourth Amendment to Law No. 7 of 1983 on Income Tax).

<sup>6</sup> Minister of Finance Regulation No. 200/PMK.03/2015 on Tax Treatment of Taxpayers and Taxable Entrepreneurs That Use a Certain Collective Investment Contract Scheme for the Finance Sector (“**MOF Reg. 200**”).

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## Eligibility requirements

To benefit from the reduced Seller Tax rate, there are several steps which a seller in a property transaction under the DIRE scheme must complete before the seller and buyer (i.e. the DIRE owned special purpose company) sign the relevant transfer instrument (e.g. a deed of title transfer in the case of sale and purchase transaction), being:

1. payment of the Seller Tax for transfer of the property to the relevant tax office;
2. giving written notice to the tax office of the proposed transfer of property under the DIRE scheme, together with the following documents:
  - (a) a legalized copy of the letter from the Financial Services Authority (*Otoritas Jasa Keuangan* or “**OJK**”) confirming registration of the DIRE scheme;
  - (b) written clarification from OJK that the transfer of property is made under the DIRE scheme;
  - (c) seller’s statement letter (with stamp duty paid) confirming that the transfer of the property to the buyer is under the DIRE scheme;
  - (d) a copy of the tax deposit receipt evidencing payment of Seller Tax in respect of the transfer; and
3. obtaining a fiscal certificate from the relevant tax office.

The seller and the buyer can only proceed to sign the relevant transfer instrument before an authorised official (such as a Land Deed Official) once items 1. to 3. above have been completed. The Land Deed Official is obliged to report the relevant transfer instrument to the Directorate General of Tax for supervision purposes.

Further details on the payment, filing and reporting requirements relating to the Seller Tax will be stipulated in regulations to be issued by the Minister of Finance.

## What remains unclear?

There have been discussions between the central government and local governments to lower the Buyer Tax<sup>7</sup> from the current 5 percent to become 1 percent, in line with the policy set out in the 11<sup>th</sup> Package. However, GR 40 does not address changes to the Buyer Tax, since this matter is within local governments’ authority.

Apart from the Seller Tax, GR 40 does not address other provisions relevant to DIRE schemes under MOF Reg 200, nor does GR 40 expressly revoke MOF Reg 200. As such, MOF Reg 200 should still be taken into account when transacting with DIRE schemes.

## Concluding thoughts

GR 40 demonstrates the central government’s serious intention to implement the 11<sup>th</sup> Package in order to boost the competitiveness of the DIRE market and encourage domestic listing of Indonesian REITs. It remains to be seen when regulations from local governments will be issued to respond to the central government’s call to reduce the Buyer Tax.

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<sup>7</sup> Land and building acquisition duty (*Bea Perolehan Hak atas Tanah dan Bangunan*) to be borne by the buyer (“**Buyer Tax**”).

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