

A nominative list is required for promotion expenses

A claim for promotion expenses for tax purposes must be supported by a nominative list detailing the types of promotion, the parties to which payments have been made, dates of payments, payment amounts, etc (Ref. to Table 1). The list must be attached to the corporate income tax return (CITR) filed with the tax office. Failure to attach the list will render the promotion expense non-deductible.

The rule is set out in Reg. 02/PMK.03/2010 issued by the Minister of Finance (MoF) on 8 January 2010 which has a retrospective effect from 1 January 2009. By virtue of Reg. 02, the previous regulation addressing the same subject, Reg. 104/2009, is cancelled. Reg. 104 has triggered controversies primarily because of the discriminatory treatment of companies engaged in pharmaceutical and cigarette industries. In contrast, Reg. 02 provides a single rule for all parties regarding promotion expenses, treating all taxpayers on the same footing.

Promotion is regarded as activities of encouraging the use of particular products and must aim at maintaining or increasing the products sale. Promotion expenses accordingly must refer to the amounts spent for these activities including advertising on electronic and printing communication media, product exhibitions, new product introductions, and product-related sponsorships.

Where sales of particular products do not constitute income tax objects or are subject to final income tax, the promotion expenses cannot be claimed as deductible expenses. This may give rise a question on whether the criteria is applicable for a company exclusively engaged in advertising activities for the benefit of other companies. As the products belong to other companies, including in some cases foreign companies, sales of the products promoted would never constitute income and accordingly a tax object of the advertising company. It would not make sense to deny the deductibility of the expenses spent by such a company merely on the basis that sales of the products promoted never constitute a tax object of the company.

Samples of products distributed to customers or potential customers can be accounted for as promotion expenses provided that they have not been charged to cost of sales. In this respect, the products must be charged at cost. Where withholding tax is due, this must be dealt with properly.

Given the retrospective effect of Re. 02, companies will need to prepare a nominative list for their 2009 promotion expenses to be attached to the 2009 CITR. As the filing deadline is drawing closer, early preparation should reduce tension in the last few days before the deadline.

Table 1
Nominative list of promotion expenses

Name of taxpayer :
NPWP :
Address :
Tax year :

No	Payment recipient-related data							Withholding tax	
	Name	NPWP	Address	Date	Types	Amount	Remarks	Amount	Wht slip no.

PT PRECIOUSNINE CONSULTING

Cyber 2 Tower, 18th Floor
Jl. HR Rasuna Said Blok X-5 Kav. 13,
Jakarta Indonesia
Phone: +62 21 5799 8778, +62 21 8378 6430

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Your PreciousNine Contacts

Lili Tjitadewi
lili.tjitadewi@preciousnine.com

Lina Rosmiana
lina.rosmiana@preciousnine.com

Noviana Tan
noviana.tan@preciousnine.com

Robertus Winarto
robertus.winarto@preciousnine.com