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OMNIBUS BILL: IS IT TIME TO INVEST IN INDONESIA?

THE SOUTHEAST ASIAN COUNTRY'S PLAN TO CREATE A UNIFIED REGULATORY FRAMEWORK FOR TAXATION SEEKS TO SIMPLIFY DOING BUSINESS IN THE NATION

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As the largest economy in Southeast Asia and with a growing market, global profile and affordable labour incentives, Indonesia should be one of the most popular investment destinations. Yet Indonesia only ranks in 73rd place on the 2019 ease of doing business survey prepared by the World Bank.

In order to improve its ranking, the Indonesian government continues to create new regulations that ease investment procedures and provide more incentives for investors. Recently the government drafted the Bill on the Taxation Provisions and Facilities for Strengthening the Economy, commonly known as the taxation omnibus bill. The bill is still under discussion in the legislative body, but once approved and issued as a new law, it will provide unification as the regulatory framework for taxation in Indonesia.

The contents of the bill look promising for investors as it: (1) aims to minimize overlapping regulations in the field of taxation; and (2) provides many incentives, including adjustments on the corporate income tax rate and the dividend tax rate.

Current regulation

Taxation regulations are spread out in many applicable laws and regulations in Indonesia. The general provisions regarding taxation are regulated under: Law No. 6 of 1983 concerning General Procedures and Provisions for Taxation, last amended by Law No. 16 of 2009 (Taxation General Provisions Law); (2) Law No. 7 of 1983 on Income Tax Law, last amended by Law No. 36 of 2008 (Income Tax Law); and (3) Law No. 8 of 1983 on Value Added Tax of Goods and Services and Sales Tax on Luxury Goods, last amended by Law No. 42 of 2009 (VAT Law).

In addition to these regulations, there are a few other implementing regulations that are governed under the regulation of the Ministry of Finance and the Directorate General of Tax, within the Ministry of Finance.

Omnibus bill

Once approved and issued as the new law, this bill will impact tax regulations that were previously regulated in, among others: (1) the Taxation General Provisions Law; (2) the Income Tax Law; (3) the VAT Law; (4) Law No. 10 of 1995 concerning Customs, amended by Law No. 17 of 2006; and (5) Law No. 11 of 1995 concerning excise, amended by Law No. 39 of 2007.

This article highlights key points in the bill that are most likely to affect investment in Indonesia.

(1) Income tax tariff and imposition. The taxation omnibus bill provides adjustment on the tariff of some taxable income objects, i.e., adjustment on the tariff for: (i) the corporate income tax rate; (ii) interest payments; and (iii) dividend payment.

(i) The corporate income tax rate. The bill will gradually reduce the income tax rate of a domestic legal entity from 25% to 22% for the 2021-2022 fiscal year. This decrease, which was planned to take effect in 2021-2022, is expedited to take effect from the 2020 fiscal year due to the COVID-19 situation. This rate will be further reduced to 20% for the 2023 fiscal year. (See recent updates, below).

In addition to this decrease, qualified public companies that trade at least 40% of their shares on the Indonesian stock exchange, and have fulfilled certain additional requirements, will obtain a 3% lower rate compare to the regular above-mentioned corporate income tax rate. This decrease will make Indonesia more competitive with neighbouring countries.

(ii) Interest payment. In order to provide stimulus for foreign lenders, the tax omnibus bill will reduce the rate of income tax coming from interest repayment (including premiums, discounts and rewards). The new rate will be determined in the implementing regulations. The current interest tax rate to be paid by foreign lenders is 20%, which is quite high compared with other ASEAN countries.

(iii) Dividend payments. With a goal of increasing investment in Indonesia, the tax omnibus bill will free dividend payments from income tax, as long as this amount is re-invested in Indonesia.

(2) Taxation facilities. The tax omnibus bill extends the scope of tax facilities. Indonesia currently has a tax holiday incentive given to companies in pioneer industries that have a wide range of connections, provide additional value and high externalities, introduce new technologies, and have strategic value for the national economy. The tax omnibus bill extends the criteria for tax holiday incentives to: (i) taxpayers conducting business activities in special economic zones; and (ii) operators or investors of certain industrial areas.

The bill also regulates other tax facilities, inter alia, gross income deductions (super deductions), certain facilities for investment in major activities in special economic zones, and exemptions/deductions of income tax on the interests or discounts on government securities (surat berharga negara) in the international market.

(3) Tax of foreign traders and service providers, and trading providers through electronic systems (electronic trading platforms, or ETPs). The government will provide a basis for imposing income tax on ETPs. Under regulation in the bill, physical presence is not the only basis for imposing income tax to foreign taxpayers. Under some circumstances, foreign entities can be deemed as having significant economic presence in Indonesia – and therefore be subject to Indonesian income tax.

In addition to the imposition of income tax, the omnibus tax bill regulates that taxable goods and/or services of a domestic or foreign ETP will be subject to VAT, subject to provisions of this tax omnibus bill and VAT Law.

The new provision is intended to provide clear tax regulations for foreign entities that earn income by doing transactions in the Indonesian market, but do not have a physical presence in the country. Considering that ETP businesses (such as marketplace and streaming subscription services) are growing rapidly in Indonesia, the government sees this as a new tax opportunity, and intends to make the tax omnibus bill the underlying regulation. Implementation of this ETP taxation will be expedited due to the Covid-19 situation (see recent updates below).

(4) Others. The tax omnibus law also regulates other provisions including: (i) stipulations on regional taxes and levies, among others, tariffs on regional taxes and levies that will be imposed nationally; (ii) relaxation for companies to credit the input VAT; (iii) adjustment on administrative tax sanctions that are currently calculated at a flat rate of 2% – to be based on flexible interest rate; and (iv) the determination of domestic and foreign tax subjects for private individuals based on a time test mechanism.

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The provisions of the tax omnibus bill show the commitment of the Indonesian government to provide facilities and ease investment in the field of taxation. However, given that this bill is still in the process of being discussed in the legislative body, there is no certain schedule for promulgation. The previously discussed provisions may also differ in the final product, as the legislatives are still in the process of discussing this bill.

Recent updates

Tax incentives given due to COVID-19. COVID-19, which has been declared a pandemic by the World Health Organization, has impaired the world's economies, including Indonesia's. In consideration of this, the Indonesian government has issued two regulations that have an impact on taxation:

(i) Regulation of Minister of Finance No. 23 of 2020 on Tax Incentive for Taxpayers who are Affected by Corona Virus (PMK 23). Pursuant to PMK 23, the government provides some ease for taxpayers due to the COVID-19 situation, among others: (a) the government will bear the Pph 21 (Pajak penghasilan, or individual income tax) of employees who work in certain industries (mostly manufacturing companies); (b) the exemption on Pph 22 (import tax) for certain industries; and (c) acceleration of the VAT restitution for 19 types of industries.

(ii) Government regulation in lieu of Law No. 1 of 2020 on the State Finance Policy and Stability of Economic System for Handling the 2019 Corona Virus Disease and/or for Handling Threat to National Economic and/or Economic System Stability (Perpu).

Pursuant to Perpu, the government accelerated the decrease on the corporate income tax rate, which was originally planned for the fiscal year of 2021-2022 by the tax omnibus bill, to be 22% for the financial year of 2020-2021, and 20% for the financial year of 2022. The qualified public companies may obtain a 3% lower rate previously mentioned.

The Perpu also accelerates the taxation of foreign ETPS. The Ministry of Finance stipulates that one of the reasons for the acceleration was the increase in demand for such providers due to this situation. The Perpu needs to be approved by the House of Representatives, but it has already had a binding effect.

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