Executive summary

The Indonesian Government has issued Government Regulation No. 37 of 2018 (GR-37). Many mining companies in Indonesia operate under a Contract of Work (CoW) and can be subject to specific CoW tax provisions for the term of the contract that differ from the general Income Tax Law (ITL). In practice, this often leads to tax disputes due to different interpretations of various CoW and ITL provisions. The purpose of GR-37 is to provide legal certainty for holders of mining licenses to enable them to comply with their tax and non-tax state revenue obligations in the mineral mining business sectors.

GR-37 is an implementing regulation of Article 31D of the Income Tax Law and Articles 2 and 3 of Non-Tax State Revenue (PNBP) Law.

This Alert summarizes key tax aspects of GR-37.

Detailed discussion

General overview

GR-37 defines “mineral mining business” as activities within the framework of mineral exploitation that cover the following activities: general investigation, exploration, feasibility study, construction, mining, processing and purification, distribution and selling, and post-mining.
GR-37 is applicable for taxpayers in the mineral mining business who are the holders of:

a) Mining business license
b) Special mining business license
c) Mining license for people
d) Production operation special mining business license for the transformation of mining business from a CoW that is not yet expired (IUPK – OP)
e) CoW that is subject to the ITL
f) CoW that is subject to the CoW provisions

The income tax provisions under GR-37 apply to holders of mining business licenses specified in Items (a) to (e) above. The tax treatments and PNBP provisions under GR-37 are not applicable for coal mining.

Key issues in GR-37

Income tax objectives
Under GR-37, income in any name and form, which is taxable in a mineral mining business consists of business income and non-business income. Business income is the income earned or received from the sale or transfer of production results. GR-37 stipulates that business income for tax purposes must be calculated based on one of the following:

a) Metal minerals' market price published on the market
b) Non-metal minerals' and rocks market price published on the market at the time of the transaction
c) Price that is actually earned or received by the seller, in the cases where metal minerals, non-metal minerals and rocks do not have a published market price

If a market price differs from the actual sales price, business income will be calculated on the actual sales price provided that:

- The actual sales price is lower than the market price by no more than 3% of the market price
- The actual sales price is higher than the market price

Mineral mining license holders should carefully consider the changes, as for corporate income tax purposes, it may no longer be possible to enter into long-term price agreements below the specified spot market price. While for commercial purposes, these contracts may still be workable, there may be a potential tax detriment.

Non-business income will be treated pursuant to the ITL.

Deductible expenses
Taxable income is calculated based on income less deductible expenses. Deductible expenses include but are not limited to general investigation activities, exploration activities, feasibility study activities, production operation activities, and post-mining activities.

GR-37 implements a debt to equity ratio to 4:1 for tax purposes.

Non-deductible expenses will be determined under the ITL.

Corporate income tax calculation
The provisions on the net income calculation, tax loss carry-forwards, taxable income and tax rate for taxpayers in the mineral mining business are under the ITL. For holders of IUPK-OP license, the income tax provisions under the CoW will still apply until the issuance of the IUPK-OP license.

Withholding tax obligation
Taxpayers in the mineral mining business who are under GR-37 must withhold and remit taxes pursuant to the ITL.

Transitional and closing provisions

- The provisions on income tax for CoW holders under CoW provisions continue to apply until the expiration of the contract.
- For taxation and/or PNBP obligations of IUPK-OP license holders, if the obligations are not yet settled before the IUPK-OP license is issued, they must settle their obligations.

Income tax provisions under GR-37 for holders of mineral mining business licenses are applicable for a fiscal year beginning in 2019.

Endnote
1. GR-37 was issued on 1 August 2018 and became effective on 2 August 2018.
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