

October 2020

Tax Alert

Important tax provisions in the Omnibus Law on Job Creation

Executive Summary

On 5 October 2020, the Indonesian Parliament passed an Omnibus Law, covering numerous topics including employment law, foreign investment and taxation. Chapter Seven of the Omnibus Law contains various changes in the tax laws, including some Articles in the Income Tax Law ("ITL"), Value Added Tax ("VAT") Law, General Tax Provisions and Procedures ("KUP Law") and Regional Tax and Retribution Law ("Regional Tax Law").

This tax alert highlights the key changes in the above tax laws. Many of these had been covered in a previous Draft Tax Omnibus Law. These changes will be relevant to all Indonesian taxpayers and will have wide reaching implications.

This tax alert is prepared based on draft Omnibus Law consisting of 812 pages, which has been confirmed by the Deputy Speaker of the Indonesian Parliament on 12 October 2020 as the final draft of the Law. However, readers should review the final version signed by the President in due course.

A. Income Tax Law ("ITL")

The key changes in the ITL are:

1. **The Omnibus Law includes the concept of citizenship for non-resident individuals in Article 2 definition of residency in the ITL.** New criteria are set out for qualification as a non-resident taxpayer, whereby an Indonesian citizen who resides outside of Indonesia for more than 183 days within 12 months period and met certain conditions (i.e. place of residency, place of main activity, place of habitual abode, tax subject status and/ or other certain conditions) is considered as a non-resident taxpayer.
2. **An exemption from Indonesian income tax for foreign-sourced income of certain expatriate individuals.** The definition of income tax objects in Article 4(1) of the ITL will now exclude foreign sourced income earned or received by foreign citizen individuals, who are resident taxpayers, from income tax within 4 years of them becoming a tax resident if they possess certain expert skills (to be determined by a Minister of Finance regulation). Included in the income earned or received from Indonesia by foreign citizens are income earned or received in relation to employment, services or activities carried out in Indonesia that are paid outside of Indonesia. However, the exemption does not apply to foreign citizens who claim benefits under tax treaty provisions.
3. **Expanded exemptions for dividend income and certain foreign source income.** Exempted income in Article 4(3) of the ITL will now include:
 - a. a dividend paid by a domestic company, which is received by a domestic individual taxpayer provided such dividend is invested in Indonesia for a certain period of time;
 - b. a dividend paid by a domestic company received by a corporate tax resident (without any condition). Note, this is a significant expansion given that previously the intra-group dividend exemption was only available for domestic dividends paid out of retained earnings, received by an Indonesian company owning at least 25% of the paid-up capital of the company paying the dividend.
 - c. A foreign dividend paid by an offshore company, and after-tax profit from an offshore permanent establishment, which is received by a corporate or individuals tax resident if such incomes are invested in Indonesia or used to support other businesses in Indonesia for a certain period of time and satisfy the following conditions: (i) the invested dividend and after-tax income represent at least 30% of the after-tax profit; or (ii) the dividend from a non-listed offshore company is invested in Indonesia before the issuance of tax assessment letter due to enforcement of Article 18 (2) of the Income Tax Law (CFC Rule). NB If the invested amount is less than 30% of the after-tax profit, the difference between 30% of the after-tax profit and the invested amount will be taxable and the rest of the after tax profit will be exempted. No tax credit, deduction or refund will be allowed on any foreign tax paid on the exempted portion of the after-tax profit.
 - d. Foreign source income that is received or earned by a corporate or individual taxpayer **not** from a permanent establishment if such income is invested in Indonesia for certain period of time and meets the following conditions: (i) the income relates to an active business in overseas; and (ii) the income is not generated from an overseas company owned by the taxpayer.

The Minister of Finance will issue regulations stipulating the specific criteria, procedures and time period for the investment in Indonesia and the procedures for the tax exemption and amendment to the dividend threshold that must be invested.

4. **Potential decrease in cross-border interest WHT.** The Omnibus Law provides for a reduction in the Article 26 withholding tax ("WHT") rate from the current tax rate of 20%, to be regulated by a Government Regulation, on interest including premium, discount and guarantee fee. This is to help reduce the cost of funds on foreign debts.

B. VAT Law

The key changes in the VAT Law are:

1. The Omnibus Law now excludes delivery of taxable goods under consignment from the definition of taxable goods delivery in Article 1A(1) of the VAT Law.
2. The Omnibus Law amends Article 1A(2)(d) of the VAT Law whereby the delivery of taxable goods as equity contribution for paid up capital in the new shares of a company shall not be regarded as a taxable delivery if both the transferor and transferee are registered for VAT.
3. Coal products from coal mining, which were previously exempt from VAT under Article 4A(2) of the VAT Law, are no longer exempt. This allows coal miners to start claiming input VAT on their purchases.
4. Amended Article 9(2a) of the VAT Law states that a VAT-able Entrepreneur in pre-operating phase can now credited all of its input VAT on the purchases of taxable goods and/ or services (i.e. no longer limited to capital goods only) provided the input VAT meet the creditable input VAT provisions. This is also confirmed in the amended Article 9(8) of the VAT Law stated in item 11(e) below.
5. A VAT-able Entrepreneur in pre-operating phase that could previously apply for a VAT refund on a monthly basis under Article 9(4b) of the VAT Law can no longer apply for monthly VAT refunds.
6. Under the new Articles 9(6a) and 9(6c) of the VAT Law, if within three years after the first time the input VAT was credited, the VAT -able Entrepreneur is not yet in an operating phase, the input VAT that has been credited within those three years becomes un-creditable, and refunds may need to be returned to the State. The three-year timeframe can be extended for certain business sectors.
7. New Article 9(6d) of the VAT Law states that input VAT that has been credited becomes uncreditable for VAT-able Entrepreneur who conducts a business liquidation, revocation of VAT-able Entrepreneur status, or having its VAT-able Entrepreneur status revoked ex-officio, within three years after the first time the input VAT was credited.
8. New Article 9(9a) of the VAT Law states that input VAT on purchases before the entrepreneur is confirmed as a VAT-able Entrepreneur can be credited up to 80% of the output VAT that should be collected.
9. New Article 9(9b) of the VAT Law states that input VAT on purchases which are not reported in the monthly VAT return but are voluntarily disclosed and/ or discovered during a tax audit can be credited by a VAT-able Entrepreneur provided the input VAT meets the requirements of creditable input VAT.
10. New Article 9(9c) of the VAT Law states that input VAT on purchases, which are assessed by tax assessment letter can be credited as much as the VAT amount (without penalties and interest) that is stated in the tax assessment letter, provided the tax assessment is paid and any legal challenges are no longer being pursued, and the input VAT meets the requirements of creditable input VAT.
11. Input VAT that previously could not be credited due to being related to:
 - a) purchases before the entrepreneur is confirmed as a VAT-able Entrepreneur;
 - b) utilization of intangible taxable goods or taxable services from overseas before the entrepreneur is confirmed as a VAT-able Entrepreneur;
 - c) input VAT assessed by tax assessment letter;
 - d) purchases where the input VAT was not reported in the monthly VAT return and is discovered during a tax audit;
 - e) purchase of non-capital goods or services in the pre-operating phase;can now be credited with certain conditions under new Article 9(8) of the VAT Law.

12. The Omnibus Law changes Article 9(9) of the VAT Law to state that creditable input VAT that has not yet been credited against output VAT in the same tax period can be credited up to three tax periods after the end of the tax period when the VAT invoice was made, provided it is not yet expensed and not yet capitalized in the taxable goods or taxable services' acquisition costs and met the creditable tax invoice provisions. The old Article 9(9) of the VAT Law prohibits the crediting of input VAT if a tax audit has commenced.
13. New Article 13(5a) of the VAT Law states that a retailer VAT-able Entrepreneur can prepare a tax invoice without stating the identity of the buyer and the name and signature of the seller if it delivers the taxable goods and/ or service to the buyer with end-customer characteristic (which will be further regulated under the Minister of Finance regulation).

C. KUP Law

The key changes in the KUP Law are:

1. The Omnibus Law changes the existing penalty of 2% per month interest, with a 24-month cap in the KUP Law into various rates of interest penalty for tax, all of which are calculated based on monthly interest rate determined by the Minister of Finance, but which carry different premiums depending on the situation. They apply for a maximum of 24 months, with part of a month calculated as one full month. The interest penalty is calculated as follows:
 - a) Based on the benchmark interest rate divided by 12, applicable to:
 - (i) Late payment of tax underpayment based on underpayment tax assessment letter or additional tax assessment letter (Article 19(1));
 - (ii) Late payment of tax underpayment based on correction assessment letter, tax objection decision letter, appeal decision or judicial review decision (Article 19(1));
 - (iii) Tax underpayment based on tax installment or tax deferment decision (Article 19(2));
 - (iv) Tax underpayment based on the difference between the tax payable in the extension of annual tax return and the tax payable in the final annual tax return (Article 19(3)).
 - b) Based on the benchmark interest rate plus 5% and divided by 12, applicable to:
 - (i) Late payment of tax payable based on monthly tax return (Article 9(2a));
 - (ii) Late payment of tax payable based on annual income tax return (Article 9(2b));
 - (iii) Tax underpayment due to amendment of annual tax return (Article 8(2));
 - (iv) Tax underpayment due to amendment of monthly tax return (Article 8(2a));
 - (v) Tax underpayment on current year income tax as stated in a tax collection notice (Article 14(1)(a));
 - (vi) Tax underpayment stated in the tax collection notice due to typo or miscalculation based on the evaluation from the tax office (Article 14(1)(b)).
 - c) Based on the benchmark interest rate plus 10% and divided by 12, applicable to tax underpayment arising from disclosure of incorrect statement in the tax return during tax audit pursuant to Article 8(4) of the KUP Law (Article 8(5)).
 - d) Based on the benchmark interest rate plus 15% and divided by 12, applicable to underpaid tax assessment letter:
 - (i) arising from tax audit (Article 13(1)(a));
 - (ii) when Tax ID Number or VAT-able Entrepreneur status is given ex-officio (Article 13(1)(e); or
 - (iii) due to late re-payment of un-creditable input VAT by pre-operating VAT-able Entrepreneur pursuant to the new Article 9(6e) of the VAT Law (Article 13(1)(f)).

- e) With regard to VAT Audit, based on Article 13 paragraph (3a), should there be administrative sanction in the form of interest and additional sanction referred to in Article 13(1) points a and c, then only one administrative sanction shall be charged being the highest sanction in amount.
 - f) The provisions regarding fines due to the issuance of tax collection letter are adjusted to reduce the fine percentage to be 1% (from current rate of 2%) of the VAT base to cover the following:
 - (i) For entrepreneur that has been confirmed as a VAT-able Entrepreneur but does not issue a VAT invoice or late in the issuance of VAT invoice (Article 14(1)(d)); and
 - (ii) For entrepreneur that has been confirmed as a VAT-able Entrepreneur but does not fill in the VAT invoice with complete requirements as stated in Article 13(5) and 13(6) of the VAT Law (Article 14(1)(e)).
 - g) The interest reward payable to taxpayers refer to a monthly interest rate determined by the Minister of Finance, which is based on the benchmark interest rate divided by 12, for a maximum of 24 months with part of a month being calculated as 1 month. This is applicable:
 - (i) due to refund of the overpaid tax (Article 11(3));
 - (ii) due to the late issuance of overpaid tax assessment letter (Article 17B(3));
 - (iii) due to the issuance of overpaid tax assessment letter related to a preliminary investigation audit, which does not proceed to a tax investigation; or continued to a tax investigation but does not proceed to a tax criminal prosecution; or continued to a tax investigation and tax criminal prosecution but the taxpayer is acquitted from all prosecution by the court (Article 17B(4));
 - (iv) due to the tax objection, appeal or judicial review decisions that are partly or wholly granted, limited to the overpaid tax amount in the tax return agreed in the final discussion of tax audit result (Article 27B(1));
 - (v) due to the application on correction, reduction or cancellation of tax assessment letter; or reduction or cancellation of tax collection letter that is partly or wholly granted (Article 27B(3)).
2. The provisions regarding 48% interest penalty on tax assessment letter and additional tax assessment letter for taxpayer committing tax crime after the five years statute of limitation in the previous Articles 13(5) and 15(4) of the KUP Law and 200% fine on tax assessment letter for taxpayer who neglects to submit tax returns or submit tax returns with incorrect or incomplete information for a first time in Article 13A of the KUP Law have been revoked under the Omnibus Law. On the other hand, the Omnibus Law amends Article 38 of the KUP Law to penalize a taxpayer who neglects submitting its tax returns or submitting tax returns with incorrect or incomplete information (whether for a first time or second time onwards) with fine of a minimum of one time and a maximum of two times of the tax underpayment; or imprisonment with a minimum of three months or a maximum of one year.
 3. The provisions regarding fines due to voluntary disclosure if the taxpayer is already subject to preliminary investigation audit (for potential tax criminal act) are amended to reduce penalties from 150% to 100% (Article 8(3a)).

The Omnibus Law amends Article 44B(2) of the KUP Law to reduce the fine from four times to three times for the investigation on tax criminal act that is terminated for the benefit of State revenue, when the taxpayer pays the underpaid tax in full.

D. Regional Tax Law

Central Government to stipulate a single regional tax rate

1. At present, different regions may set various tax rates on the regional taxes. The Omnibus Law provides that due to the national fiscal policy, the Central Government can adjust the Regional Government's tax and levy policy by stipulating one tax rate for regional tax and regional levy, to be implemented nationally; and
2. Central Government can monitor and evaluate the regional tax and regional levy, which prevents ease of doing business.

E. Closing provisions

1. At the time the Omnibus Law is enacted:
 - a) The Government Regulation and the Presidential Decree as the implementing regulations of this Law must be issued within three months; and
 - b) The implementing regulations of the Laws that have been amended by this Law are still valid provided they are not in conflict with this Law and they must be rectified within three months.
2. The Omnibus Law shall enter into force at the date of enactment.

To be enacted, the draft Law that has been agreed between the Government and the Parliament must be sent by the Parliament to the President within 7 days after it is agreed by both parties. The draft Law must then be signed by the President within 30 days after the draft Law is agreed by the Government and the Parliament. If within 30 days the President does not sign the draft Law, the draft Law will legally become Law and must be enacted.

Our Values

Who we are:

At EY, everything starts with our people:

- ▶ People who demonstrate integrity, respect and teaming.
- ▶ People with energy, enthusiasm and the courage to lead.
- ▶ People who build relationships based on doing the right thing.

What we stand for:

Achieving Potential - Making A Difference

We are committed to helping our people, our clients and our wider communities achieve their potential.

Sectors we serve in Indonesia

- ▶ Banking & capital markets
- ▶ Asset management
- ▶ Insurance
- ▶ Power & utilities
- ▶ Mining & metal
- ▶ Oil & gas
- ▶ Media & entertainment
- ▶ Telecommunications
- ▶ Technology
- ▶ Public infrastructure
- ▶ Transportation
- ▶ Real estate
- ▶ Consumer products
- ▶ Pharmaceuticals
- ▶ Plantation
- ▶ Industrial & manufacturing
- ▶ Automotive
- ▶ Government & public sector
- ▶ Not-for-profit organizations

Contact us

Tax Services Leader	Phone	Mobile	E-mail
Santoso Goentoro	+62 21 5289 5584	+62 816 893 648	santoso.goentoro@id.ey.com

Partner / Director / Senior Advisor	Phone	Mobile	E-mail
A. Business Tax			
Yudie Paimanta	+62 21 5289 5585	+62 816 893 687	yudie.paimanta@id.ey.com
Dodi Suryadarma	+62 21 5289 5236	+62 815 10000 490	dodi.suryadarma@id.ey.com
Bambang Suprijanto	+62 21 5289 5060	+62 811 326 597	bambang.suprijanto@id.ey.com
Nathanael Albert	+62 21 5289 5265	+62 811 950 926	nathanael.albert@id.ey.com
Sri Rahayu	+62 21 5289 5485	+62 816 883 281	sri.rahayu@id.ey.com
Henry Tambingon	+62 21 5289 5033	+62 816 166 1142	henry.tambingon@id.ey.com
B. International Tax and Transaction Services			
Ben Koesmoeljana	+62 21 5289 5030	+62 819 0569 8899	ben.koesmoeljana@id.ey.com
Triadi Mukti	+62 21 5289 5090	+62 816 186 0037	triadi.mukti@id.ey.com
Prasetya H. Lam	+62 21 5289 5022	+62 812 9900 8168	prasetya.h.lam@id.ey.com
Peter Ng	+62 21 5289 5228	+62 815 1800 790	peter.ng@id.ey.com
Jonathon McCarthy	+62 21 5289 5599	+62 815 1909 0233	jonathon.mccarthy@id.ey.com
Peter Mitchell	+62 21 5289 5232	+62 813 8185 4671	peter.mitchell@id.ey.com
Micky M Soeradiredja	+62 21 5289 5245	+62 812 8007 510	micky.mintarsyah@id.ey.com
Ryosuke Seto	-	-	ryosuke.seto@id.ey.com
C. Indirect Tax			
Iman Santoso	+62 21 5289 5250	+62 811 884 267	iman.santoso@id.ey.com
Elly Djoenaidi	+62 21 5289 5590	+62 816 893 689	elly.djoenaidi@id.ey.com
D. People Advisory Services			
Kartina Indriyani	+62 21 5289 5240	+62 811 868 336	kartina.indriyani@id.ey.com
Lusi Lubis	+62 21 5289 5262	+62 811 875 479	lusi.lubis@id.ey.com
E. Japanese Client Contact			
Yuichi Ohashi	+62 21 5289 4080	+61 821 1895 3653	yuichi.ohashi@id.ey.com

EY | Assurance | Tax | Transactions | Advisory

About EY

EY is a global leader in assurance, tax, transaction and advisory services. The insights and quality services we deliver help build trust and confidence in the capital markets and in economies the world over. We develop outstanding leaders who team to deliver on our promises to all of our stakeholders. In so doing, we play a critical role in building a better working world for our people, for our clients and for our communities.

EY refers to the global organization, and may refer to one or more, of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. For more information about our organization, please visit ey.com.

© 2020 Purwantono, Suherman & Surja Consult
A member firm of Ernst & Young Global Limited
All Rights Reserved.

APAC No. 00000473

ey.com/id