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Taxation and Investment in Indonesia 2011

Reach, relevance and reliability



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1.0 Investment climate

1.1 Business environment

The Republic of Indonesia is a constitutional democracy with an executive presidency.

Indonesia has a well-balanced economy, in which all major sectors play an important role. Agriculture historically has been the dominant sector in terms of both employment and output. The country has a vast range of mineral resources, which have been exploited over the past four decades, enabling the mining sector to make an important contribution to the balance of payments.

Indonesia has a well-diversified trading economy. Oil and gas are the country's largest export category, followed by coal (and other mining products), palm oil, agricultural products, electrical machinery and equipment, mineral fuels and fish.

As a founding member of the Association of South-East Asian Nations (ASEAN), Indonesia is committed to ASEAN's aim of liberalizing trade and investment (by 2010 for the first six member countries and by 2015 for the remaining four member countries). Together with two other founding members, Malaysia and Singapore, Indonesia called for ASEAN to create a single market earlier than the 2020 target. Indonesia joined the ASEAN-China free trade agreement (ACFTA) in 2003 and the ASEAN-South Korea Free Trade Agreement in 2005. Indonesia and Japan signed the Indonesia and Japan Economic Partnership in 2007.

Price controls

A few commodities and services remain classified as "administered prices." These include petroleum, electricity, liquefied petroleum gas, rice, cigarettes, cement, hospital services, generic medicine, potable/piped water, city transport, air transport, telephone charges, trains, salt, toll road tariffs and postage.

Intellectual property

Indonesia's intellectual property laws recognize patents, trademarks, copyrights and industrial designs. Both the licensor and licensee may sue for infringement. The laws assign civil cases to the commercial court and establish a mechanism for alternative settlement by arbitration, as well as allowing for court-ordered injunctions against infringement.

Under the Trademark Law, registration of a licence with the directorate-general is mandatory. Trademark protection is valid for 10 years and can be extended for an additional 10-year period. Patent is valid for 20 years while simple patent is valid for 10 years.

The Copyright Law extends protection to creations in science, art and literature.

1.2 Currency

The currency in Indonesia is the Rupiah (IDR).

1.3 Banking and financing

The Banking Law of 1992, as amended in 1998, permits two categories of traditional banks: general commercial banks and "people's credit banks" (BPRs). The only functional distinction that remains is between banks that offer current accounts and those that do not (primarily the BPRs). BPRs, which undertake simple kinds of banking activities, operate on a small scale and target their services to lower income individuals. Commercial banks are free to offer various banking services, although foreign exchange transactions require special qualifications and a permit.

Bank Indonesia is the central bank.

Indonesia's main financial centers are Jakarta, Semarang, Bandung and Surabaya (on the main island of Java), Medan, Palembang (on the island of Sumatra), Denpasar (in Bali) and Makassar (in Sulawesi). Singapore functions as Indonesia's offshore banking center.

1.4 Foreign investment

The Investment Co-ordinating Board (BKPM) is responsible for promoting foreign and domestic investment and approving most project proposals in Indonesia. Other government agencies or ministries handle investments in the oil and gas, banking and insurance industries. The BKPM or the corresponding provincial board approves foreign and domestic investment in all other sectors.

Foreign investors that wish to carry out operations in Indonesia must form a limited liability company.

The Foreign Investment Law includes a guarantee that that foreign investors will be treated equally to domestic investors and that the Indonesian government will not nationalize a foreign investment or revoke the investor's rights to control a foreign investment, unless it is in the national interest to do so and compensation is paid.

1.5 Tax incentives

A corporate taxpayer (limited liability company) investing in certain industries (high priority economic sectors on the national scale as stipulated by government regulation) and/or areas (high economic potential to be developed) may be entitled to income tax benefits in the form of:

- An additional reduction of taxable income up to 30% of the amount invested;
- Accelerated depreciation or amortization;
- Extension of the tax loss carryforward for up to 10 years; and
- A reduced (10%) withholding tax on dividends paid to nonresidents, or less if so provided under a tax treaty. A request for this facility must be submitted by the taxpayer to the Minister of Finance, who will issue a decision on whether to approve the request after considering recommendations from the Head of the BKPM within 10 days at the latest.

The Ministry of Finance is expected to announce a new tax holiday in the near future, which will be available to taxpayers that make a new pioneer industry investment. Pioneer industries are industries that bring strategic value to the national economy, have broad connections, bring new technology, and provide value added and high externality.

1.6 Exchange controls

The rupiah, the local currency, is freely convertible, although approval of Bank Indonesia must be obtained before more than IDR 100 million is taken out of the country. Authorization of Bank Indonesia may be provided only for the purpose of testing of cash machines, overseas exhibitions and other purposes that according to the bank, serve the public interest.

A person carrying IDR 100 million or more into Indonesia must verify the authenticity of the funds with Indonesian customs upon arrival. A bank in Indonesia that is requested to make a wire transfer with value not exceeding IDR 100 million must be accompanied by a formal declaration signed by the customer. A wire transfer with a value of USD 100,000 or more to a nonresident must supported by a statement and supporting documentation obtained from the customer for the underlying transaction.

Indonesia does not restrict the transfer of foreign currency funds to or from foreign countries, but inbound investment capital requires approval. Offshore loans must be registered with Bank Indonesia, with subsequent movements reported monthly to enable the bank to monitor the country's foreign exchange exposure.

Domestic commercial banks must submit monthly reports to Bank Indonesia on their foreign exchange transactions. A detailed per transaction report is required for transactions exceeding USD 10,000, while transactions less than US 10,000 may be aggregated. Late submissions of the monthly foreign exchange transaction report will be subject to an IDR 5 million per day fine; failure to report the foreign exchange transaction be subject to an IDR 100 million fine. A license will be cancelled if the bank does not submit the report for six consecutive months. Financial institutions are also required to submit monthly reports on their foreign currency transactions; the penalty for late submission is IDR 1 million per day and IDR 20 million for failure to report.

Non-financial institutions must report the movement of financial assets (such as equity in overseas companies and savings at overseas banks) and liabilities (such as overseas loans and trade payables) between residents and nonresidents, including overseas transactions by residents. The requirement, applicable to companies with total assets of at least IDR 100 billion or annual sales of at least IDR 100 billion, is for transactions that are not conducted through a domestic bank or financial service company.

Investment Law No. 25 of 2007 guarantees foreign investors the right to transfer (in the currency of the original investment) all after-tax profits, certain costs and (in the event of nationalization) compensation. In certain circumstances, convertibility is guaranteed for capital repatriation.

A new foreign currency law will be introduced in the near future, under which local transactions will have to be made in IDR.

2.0 Setting up a business

2.1 Principal forms of business entity

The Company Law No. 40 of 2007 regulates limited liability (*Perseroan Terbatas*, or PT) companies. This is the most common form of business organization and the one to which foreign investors are restricted under the Investment Law. Branches of foreign corporations are normally not permitted outside of the banking and oil and gas sectors.

Formalities for setting up a company

To set up a company with foreign equity (PMA company), a letter of registration approval must be obtained from the BKPM. A deed of establishment and articles of association also are necessary. It is standard practice to employ the services of a notary public to draft the articles of association, who will then undertake the steps to obtain the necessary legal documents.

The draft deed must set out the firm's purpose, location, capital and management rules in accordance with the provisions of the Investment Law or relevant regulation and the final terms of the individual foreign investment agreement. It must include details of the proposed company's founders, first directors and commissioners, and shareholders.

The registration approval is valid for six months after it is granted. The PMA company must be established within that six-month period, the PMA must be formed and approval from the Ministry of Justice and Human Rights, as well as Regional Justice and Human Rights offices, obtained. Once approved, the PMA company is considered to be established. Issuance of a Certificate of Company Registration by the Ministry of Trade takes an additional week. Although an Indonesian corporation's capital must be denominated in rupiah and so stated in the articles of association, the foreign currency equivalent may be stated in brackets for purposes of future capital repatriation. Equity capital owned by foreign shareholders, which may be up to 100%, must equal the value in rupiah of the government-approved foreign investment, calculated at the foreign exchange rate prevailing on the date the investment permit was issued.

Company books are ordinarily kept in rupiah, in the Indonesian language. Subject to the approval of the Directorate-General of Taxation (DGT), however, books may be kept in U.S. dollars, using English. The DGT also sets the exchange rate used for accounting and tax payments on a weekly basis. Books, records, annual balance sheets and copies of correspondence must be retained for 10 years.

A portion of profits must be retained each year until a minimum reserve of 20% of issued capital has been attained.

Forms of entity

Requirements for a limited liability company

Capital. The minimum authorized capital for a foreign investment company depends on the type of business activity (e.g. trading company, USD 250,000; freight forwarding company, USD 2 million; etc.); at least USD 100,000 or 25% must be issued and paid up. Higher minimums apply in certain sectors. All issued capital must be paid up and evidence of payment submitted to the Ministry of Justice and Human Rights to obtain approval for the deed of establishment containing the articles of association. All shares issued subsequently must be fully paid up upon issue.

For foreign investment companies, the rupiah value of capital is assigned at the foreign exchange rate prevailing at the time the investment licence was granted. However, the rupiah value of payments of capital in foreign currency is calculated at the exchange rate prevailing at the time of payment. This calculation applies to payments in kind, which must be valued by an independent appraiser.

A company may repurchase its shares if (1) payment is made out of net profits and does not cause the company's net assets to fall below the total of subscribed capital plus the required reserve; and (2) the aggregate nominal total shares owned by—or pledged in favor of—the company or its subsidiary does not exceed 10% of the total subscribed capital.

Increases and decreases of capital must be approved at a general meeting of shareholders; a reduction of capital also requires that there be no objection from a creditor.

Founders, shareholders. At least two shareholders are required at all times which may be two individuals, two companies or a combination thereof in certain sectors. A foreign investment company may be 100% foreign-owned, whereby the minority shareholder must hold at least 1% or have an investment of USD 1,000. There are restrictions on foreign ownership in certain business sectors. Investment in infrastructure requires a joint venture company, with the Indonesian partner holding at least 67% equity.

Board of directors/management. Companies must have at least one director and one commissioner. Certain companies, notably public companies, must have at least two directors and two commissioners, while a bank must have at least three directors and two commissioners. When there is more than one director, each is entitled to represent the company (subject to exceptions stated in the articles of association). In foreign/domestic joint ventures, the composition of the board of directors generally reflects the ratio of foreign to local shareholdings.

Directors must carry out their duties in good faith and a disposal or encumbrance of substantial company assets must be approved at a general meeting of shareholders. At least 75% of issued shares must be represented at the general meeting at which such approval is sought. One or more shareholders representing, collectively, at least one-tenth of a company's total issued shares may, in the name of the company, file a civil complaint against a director or commissioner on the grounds that the company was harmed as a result of mismanagement or negligence.

General shareholder meetings must be held at least once a year to approve the annual report and determine whether profits will be retained or distributed as dividends. The meeting must be held within six months of the closing of the company's financial year. Decisions are taken by majority vote or as provided for in the articles of association. Functions of the general meeting of shareholders that cannot be delegated to the directors or commissioners include amendments to the articles of association, appointment and dismissal of members of the board of directors and commissioners, and mergers, consolidations and dissolutions.

Taxes and fees. Notary fees amount to 0.1%-1% of a company's authorized capital, but are negotiable. A nominal stamp duty is charged on the deed of establishment.

Types of shares. The company's capital may be issued in several classifications of equity shares, at least one of which must have the characteristics of ordinary shares. Shares may be registered or bearer, but bearer shares may not be issued until the full value has been paid up. In practice, all shares held by foreign investors must be in registered form. Both common and preferred shares are permitted, but subsequent issues of preferred shares may be sold only to those already holding preferred shares. Each share normally has one vote, unless otherwise provided in the articles of association.

Branch of a foreign corporation

The Investment Law requires that a foreign-owned enterprise operating wholly or mostly in Indonesia as a separate business unit be organized under Indonesian law and resident in Indonesia. Branches are, therefore, not normally permitted, except by foreign banks and oil and gas companies. Other businesses such as trading, construction or foreign news agencies may be established as representative offices.

Representative office

A foreign company can set up a trading representative office, but it must obtain approval from the Ministry of Trade and Industry. A trading representative office can only perform business promotion or market research. A regional representative office, other than one in the financial sector, must obtain approval from the BKPM to set up. Its activities are limited to supervision and coordination; they may not own or maintain production facilities or operational activities and, therefore, cannot accept orders, participate in tenders, sign contracts or engage in the importation of goods. A foreign construction service representative office may conduct construction project through joint operation by obtaining approval from the Department of Public Works.

2.2 Regulation of business

Mergers and acquisitions

The Company Law regulates mergers, consolidations, acquisitions and splits of companies. Mergers generally are permitted with the consent of 75% of the shareholders. Some protection for minority shareholders is provided, particularly with respect to the share sale price, which must be "fair." Unless retained by the surviving company, a merged entity must adopt a new name and management; otherwise, the surviving company's name and management should be used.

Mergers of limited liability companies are possible where one or more companies is merged into a single surviving company (with the simultaneous dissolution of the other company or companies). In a consolidation, two or more companies merge into a new entity and each of the original companies is dissolved; in an acquisition, an individual or legal body takes over all or most of the shares of a company, resulting in a transfer of control.

Monopolies and restraint of trade

The Anti-Monopoly and Unfair Competition Law prohibits a company from holding more than a 50% share of the domestic market or two or three companies from holding 75% of the market between them. Market share is determined by sales value rather than volume. The law prohibits vertical restrictions on competition and any deals or contracts allowing for monopolies, oligopolies, price fixing, cartels, trusts and geographical designations of markets between suppliers. Small enterprises and cooperatives are exempt, as are the production and marketing of goods and services deemed "vital" to public welfare, and state companies. Companies violating the law are subject to maximum fines of IDR 100 billion and six-month prison terms for their executives.

2.3 Accounting, filing and auditing requirements

A company must maintain a register of shareholders, as well as a special register for members of the board of directors and commissioners and their family members, detailing share ownership within Indonesia. Changes of share ownership must also be recorded in the register of shareholders and special register. Each year, within six months of the closing of a company's books, the board of directors must submit an annual report to a general meeting of shareholders. The report must contain at least: (1) a consolidated balance sheet and profit and loss statement for the preceding financial year and comparative figures from the previous year, audited by a registered public accountant in certain instances; and (2) a report on the condition and performance of the company.

Five types of limited liability companies (banks and financial institutions, publicly listed companies, companies issuing debt, state-owned companies and companies having assets of at least IDR 50 billion) must publish audited financial statements that have been approved by the general meeting of shareholders. Annual reports should be prepared in accordance with generally accepted accounting principles in Indonesia.

In the past, companies followed the Indonesian Generally Accepted Accounting Principles (GAAP) called "PSAK." As accounting standard bodies have worked to create a single high quality global standard, the Indonesian Institute of Accountants (IAI) has launched the International Financial Reporting Standards (IFRS) convergence program. The aim is that by 1 January 2012, PSAK will adopt all IFRS that were issued as of 1 January 2009.

3.0 Business taxation

3.1 Overview

The principal taxes applicable to companies doing business in Indonesia are the corporate income tax, branch profits tax, resource royalty tax, withholding tax, value added tax (VAT) and various other indirect levies, such as tax on land and stamp duty. There is no excess profits tax or alternative minimum tax.

3.2 Residence

A company is considered resident in Indonesia if it is established or domiciled in Indonesia.

3.3 Taxable income and rates

Resident companies are taxed on worldwide income. Nonresident companies are taxed only on Indonesia-source income, including income attributable to a permanent establishment (PE) in Indonesia.

Companies pay tax on taxable profits at a flat rate of 25%. Resident corporate taxpayers with gross revenue up to IDR 50 billion receive a 50% reduction in the corporate tax rate imposed on the taxable income for their gross revenue up to IDR 4.8 billion. PEs are subject to a branch profits tax of 20% (or a lower rate under a tax treaty) on net after-tax profits, in addition to the corporate income tax rate. A public company that has at least 40% of its total paid-up shares traded on a stock exchange in Indonesia and that complies with other requirements can obtain a 5% reduction in the income tax rate.

Taxpayers engaged in certain business sectors, such as construction and shipping, pay income tax at certain percentage of gross income.

Taxable income defined

Taxable net income is defined as assessable income minus tax-deductible expenses. Exempt income includes contributions to capital, dividends from domestic companies, and certain income from investment funds and venture capital companies.

Deductions

Most expenses incurred in deriving business income may be deducted, including wages, fees, interest, rent, royalties, travel expenses, bad debts (subject to certain qualifications), insurance premiums, administration costs and levies, depreciation and amortization, operating losses and contributions to approved pension funds.

Nondeductible items include the payment of dividends, unapproved reserves, fringe benefits, charitable contributions and the income tax itself.

Depreciation

Assets with a beneficial life of more than one year may be depreciated using the straight-line or declining balance method, as follows:

- **Category 1:** 50% (declining balance) or 25% (straight-line) on assets with a useful life of four years (furniture/equipment constructed of wood/rattan, office equipment, computers, printers, scanners, special tools for related industries/services, motor vehicles for transport, warehousing and communications).
- **Category 2:** 25% (declining balance) or 12.5% (straight-line) on assets with a useful life of eight years (furniture and equipment constructed of metal, air conditioners, cars, buses, lorries, containers, light industrial machinery, logging equipment, construction equipment, heavy vehicles for transport, warehousing and telecommunications equipment).
- **Category 3:** 12.5% (declining balance) or 6.25% (straight-line) on assets with a useful life of 16 years (machinery for general mining other than oil and gas; machinery for textiles,

chemicals and machine-building industries; heavy equipment, docks and vessels for transport and communications; and assets not included in other categories).

- **Category 4:** 10% (declining balance) or 5% (straight-line) on assets with a useful life of 20 years (including heavy machinery for construction, locomotives, railway coaches, heavy vessels and docks).
- **Building category:** 5% (straight-line) on permanent buildings with a useful life of 20 years, or 10% (straight-line) on non-permanent buildings with a useful life of 10 years.

Decreases issued by the Ministry of Finance specify which assets are included in each category. Separate lists of assets and depreciation rates apply for the oil and gas sector and special options apply to investment in remote locations. Investors need approval from the DGT to change from the straight-line to the declining balance method, and vice versa. Assets may be revalued. Revalued assets begin depreciating from their new value.

Establishment and expansion expenditure can either be expensed or amortized at the rates prescribed by law (that is, four classes of intangible assets with useful lives of four, eight, 16 or 20 years, and different depreciation rates depending on the method—straight-line or declining balance). Tax incentives providing for accelerated depreciation are available for businesses that locate in certain regions.

Losses

Losses may be carried forward for five years following the year the loss was incurred and 10 years for certain industries that benefit from tax incentives. The carryback of losses is not permitted.

3.4 Capital gains taxation

Capital gains are taxable as ordinary income, and capital losses are deductible. However, the sale of shares listed on the Indonesian stock exchange are subject to a tax of 0.1% of the transaction value. Founder shares also are subject to an additional final tax of 0.5% on the share value at the time of an initial public offering, regardless of whether the shares are held or sold following the offering.

The sale or transfer of land and/ or buildings is subject to a 5% income tax on the sales proceeds.

Capital gains derived from the sale of Indonesian assets held by foreigners are taxable at a rate of 5% of the gross proceeds, unless the rate is reduced under a tax treaty.

3.5 Double taxation relief

Unilateral relief

Resident companies deriving income from foreign sources are entitled to a unilateral tax credit for foreign tax paid on the income. The credit is limited to the amount of Indonesian tax otherwise payable on the relevant foreign income. A country-by-country limitation applies, i.e. the credit for foreign tax paid on income from one country is limited to the amount of Indonesian tax otherwise payable on the income from the same country. Indonesia does not grant credit for underlying tax.

Tax treaties

Indonesia has a reasonably broad tax treaty network.

To claim relief under a tax treaty, the foreign taxpayer must complete and submit to the Indonesian tax authorities a specific document issued by the Indonesian Tax Office in lieu of a Certificate of Domicile, and Form DGT-1 or Form DGT-2. Form DGT-2 is specifically for a company that is a banking institution or earns income from bonds or stocks listed on the Indonesian stock exchange. The Certificate of Domicile must be endorsed by the tax authorities of the tax treaty partner country. If the foreign taxpayer is unable to obtain the endorsement, the foreign taxpayer can use any form of Certificate of Domicile commonly verified or issued by the tax treaty partner's tax authorities, provided certain requirements are met. This form must be attached to a completed Form DGT-1 or Form DGT-2. Treaty relief will be denied if the foreign taxpayer fails to fulfill this requirement.

Indonesia Tax Treaty Network			
Algeria	Hungary	Norway	Sweden
Australia	India	Pakistan	Switzerland
Austria	Iran	Philippines	Syria
Bangladesh	Italy	Poland	Taiwan
Belgium	Japan	Portugal	Thailand
Brunei	Jordan	Qatar	Tunisia
Bulgaria	Korea (DPRK)	Romania	Turkey
Canada	Korea (ROK)	Russia	Ukraine
China	Kuwait	Seychelles	United Arab Emirates
Czech Republic	Luxembourg	Singapore	United Kingdom
Denmark	Malaysia	Slovakia	United States
Egypt	Mexico	South Africa	Uzbekistan
Finland	Mongolia	Spain	Venezuela
France	Netherlands	Sri Lanka	Vietnam
Germany	New Zealand	Sudan	

3.6 Anti-avoidance rules

Transfer pricing

The DGT requires that related party transactions or dealings with affiliated companies (including profit sharing by multinational companies) be carried out in a “commercially justifiable way” and on an arm’s length basis. Taxpayers are required to maintain supporting documentation on related party transactions, which at a minimum should cover the taxpayer’s transfer pricing policy, comparability analysis, selected comparables and explanation on determination of arm’s length price or profit (including transfer pricing methodology). A detailed transfer pricing guideline has been issued along the lines of the OECD approach to transfer pricing issues.

Thin capitalization

Indonesia does not have specific thin capitalization rules, although the income tax law authorizes the Ministry of Finance to determine the debt-to-equity ratio of companies for tax calculation purposes.

Controlled foreign companies

A CFC is a foreign company in which an Indonesian resident company or an individual holds at least 50% of the registered capital (either alone or together with other resident taxpayers). The CFC rules apply only to unlisted foreign companies. Indonesia does not have a white or black list of countries.

If the CFC rules apply, the Minister of Finance is authorized to determine when a dividend is deemed to be derived by the Indonesian resident shareholder if no dividends are declared. Dividends are deemed to be derived from a foreign company where an Indonesian resident taxpayer holds at least 50% of the paid-up capital of the foreign subsidiary or, together with other resident taxpayers, holds at least 50% of the paid-up capital. This applies only if the foreign company does not trade its shares on the stock exchange. If no dividends are declared or derived from the offshore company, the resident taxpayer must calculate and report the deemed dividend in its tax return; otherwise, the Ministry of Finance will do so. The dividend is deemed to be derived either in the fourth month following the deadline for filing the tax return in the offshore country or seven months after the offshore company’s tax year ends if the country does not have a specific tax filing deadline.

General anti-avoidance rule

While Indonesia does not have a general anti-avoidance rule, in 2009, the DGT issued a regulation on the tax treaty abuse. The regulation requires an income recipient (beneficial owner) to satisfy certain requirements to benefit from a reduced rate under a tax treaty.

3.7 Administration

Tax year

Tax year for corporate shall follow accounting/ financial year.

Bookkeeping

For tax purposes, Foreign investment (PMA) companies, PEs and certain entities with foreign affiliations may maintain English language and U.S. dollar bookkeeping, provided approval from the Minister of Finance is obtained, while for contractors of oil and gas PSAs and companies operating under Mining Contracts of Work, only a notification is required. A change in the method of bookkeeping is possible, subject to approval from the DGT.

Filing and payment

All taxpayers carrying out a business or an independent profession must maintain regular and proper accounting records, on which periodic tax payments are based. A foreign company carrying out business activities through a PE in Indonesia generally has the same compliance obligations as a resident taxpayer. A foreign company that does not have a PE settles its Indonesian tax obligations on Indonesian-source income when an Indonesian payer withholds income tax.

Tax collection operates under a self-assessment system. Corporate tax is payable in monthly installments, with tax due on the 15th day of the calendar month following the tax assessment month. Tax returns (as opposed to actual tax payment) must be filed by the 20th of the following month. The annual corporate tax return must be filed within four months of the end of the book year. There are also schedules for the payment of other taxes. Overpayments of tax may be recovered, but only after a tax audit has been carried out.

The collection of tax from dividends, interest, royalties, rentals, professional service fees, technical and management service fees, construction service fees, etc. is via withholding at source. If the recipient is an Indonesian resident, the tax withheld is considered a payment on account of the company's final tax liability, but if the recipient is nonresident, the tax withheld represents a final tax. Tax withheld from dividend, interest, royalty and other payments must be paid on the 10th day of the calendar month following the tax assessment month.

Payment of income tax that has been deducted from employees' wages must be paid by the 10th day of the following calendar month.

Consolidated returns

There is no provision for the filing of consolidated returns or for group relief.

Statute of limitations

The statute of limitations with respect to the assessment and collection of tax is five years each.

Tax authorities

Income tax and VAT are administered centrally by the DGT, while regional taxes are administered and collected by regional governments, such as provinces and districts.

The DGT is a department under the Ministry of Finance that formulates technical guidelines and procedures for fiscal policy. The DGT has various units that administer taxpayer obligation (e.g. monitor tax compliance, tax collection, counseling, conducting tax audit, etc.), which are further classified as small, medium and large tax offices. An account representative from the tax office is assigned to serve every taxpayer.

Rulings

A taxpayer may request a confirmation from the DGT if the application of the tax law and procedure is unclear. There is no timeframe for the DGT to respond to such a request. A tax ruling applies only to the taxpayer that filed the request and generally can be used only to support that

taxpayer's position in the event of a tax audit or tax objection. Such a ruling may not be used by other taxpayers.

3.8 Other taxes on business

Tax on oil and gas contracts

Oil and gas activities are controlled by the state and conducted by the government as the holder of the Mining Authority. The most common form of cooperation contract is the Production Sharing Contract (PSC). Investment and operating expenses incurred under a PSC must be approved by the Oil and Gas Upstream Regulator and Implementing Agency ("BP Migas"). The contractor recovers the expenses it incurred to carry out the exploration and exploitation activities in line with the work plan and budget and the authorization of financial expenditure approved by BP Migas after the start of commercial production ("cost recovery" mechanism).

A cooperation contract generally will override the general principles of Indonesian income tax law, because these contracts have the status of *lex specialis*. Reference to the general tax laws will be made only on matters not specifically mentioned in the contract.

An entity can only enter into one PSC or have a participating interest in one PSC, and that entity must obtain a tax registration number ("ring fence policy"). In general, foreign investors usually set up a subsidiary abroad and conduct oil and gas operations in Indonesia through a PE of the foreign subsidiary. Under the ring fence principle, exploration costs or losses incurred by an entity that enters into a PSC cannot be transferred, used or carried over by another entity in another PSC. There are no group relief facilities available in Indonesia; losses or preproduction costs carried forward from one business entity/PE cannot be used to relieve the tax obligations of another company in the same group.

The taxation provisions of a PSC usually override the general tax law, especially with regard to corporate tax. The corporate tax and final tax on profit after tax (i.e. branch profit tax) rates of a PSC usually refer to the Income Tax Law prevailing on the date the PSC was signed and remain valid throughout the life of the PSC.

Tax on mining

Under the mining law introduced in 2008, the Indonesian government issues mining licenses.

Similar to the oil and gas Industry, a contract of work generally will override the general principles of Indonesian income tax law. Reference to the general tax laws will be made only on matters not specifically mentioned in the contract. The taxation provisions of the contract of work usually stipulate the corporate tax calculation on profits (such as corporate tax rates, deductible expenses, etc.) that will remain valid throughout the life of the contract. Other contracts would be subject to the general principles of the income tax law. A detailed analysis of each contract is necessary to determine the applicable tax treatment of a specific mining contract.

Under the mining law, an entity can enter into only one agreement and there are no group relief facilities available in Indonesia; losses or pre-production costs carried forward from one business entity cannot be used to relieve tax obligations of another company in the same group.

4.0 Withholding taxes

4.1 Dividends

Dividends received by a resident company from a shareholding in another Indonesian company are exempt from tax provided the dividends come from retain earnings and the recipient company holds at least 25% of the capital of the payer company. If the the recipient company holds less than 25% of the capital of the payer company, the dividends, are subject to a 15% withholding tax. This represents an advance payment of tax liability.

Dividends paid to a nonresident are subject to a 20% withholding tax, unless the rate is reduced under a tax treaty. The tax is considered final.

4.2 Interest

Interest paid to a resident bank or financial institution is exempt from tax.

Interest on a savings and deposit account paid to a nonresident is subject to a 20% withholding tax, unless the rate is reduced by a tax treaty. Interest from Indonesian banks and Indonesian branches of foreign banks is subject to a final 20% tax for both companies and individuals.

4.3 Royalties

Royalties paid to a resident are subject to a 15% withholding tax; the rate is 20% on remittances abroad, unless reduced under a tax treaty. For tax purposes, royalties include any charge for the use of property or know-how in Indonesia and the transfer of a right of the use of property or know-how in Indonesia.

A special 10% "resource royalty" tax applies to timber companies in Indonesia.

4.4 Branch profits tax

A branch of a foreign company in Indonesia is taxed at the standard corporate income tax rate, and in addition, a 20% branch profits tax is levied on net profits after income tax. An exemption from the branch tax is available if all of the profits are reinvested in Indonesia, or if so provided under a tax treaty.

4.5 Wage tax/social security contributions

The employer is responsible for calculating, deducting and remitting tax due on employees' salaries and other remuneration. The employer must file a tax return based on the calendar year for all employees no later than 31 March following the calendar year end.

The employer is required to contribute to the general social security scheme, as follows: 3% to 6% of wages for the health scheme, 3.7% of wages to the retirement scheme, 0.24% to 1.74% to the accident compensation fund and 0.3% to the death compensation fund. The employee also makes a contribution.

4.6 Other

A 2% withholding tax applies on domestic payments made for technical, management and consulting services and rentals (except for land and building rentals).

5.0 Indirect taxes

5.1 Value added tax

VAT is levied at each stage of the production and distribution chain. VAT is levied on the supply of goods and the provision of services at a standard rate of 10%. Certain goods and services are exempt. Exports of taxable goods, intangibles and certain taxable services are zero rates.

VAT applies to intangible goods (including royalties) and to virtually all services provided outside Indonesia to Indonesian businesses (i.e. imported services). VAT applies equally to all manufactured goods, whether produced locally or imported. Manufacturing is defined as any activity that changes the original form or nature of a good, creates a new good or increases its productivity. This includes fabricating, cooking, assembling, packing and bottling.

The VAT on inputs is creditable against the VAT on outputs.

Indonesia does not have a VAT grouping concept. If a company has one or more branches situated in different tax office jurisdiction, the company can file a request for centralization of VAT payment and the filing of VAT return. The centralization is usually made to the main/ head office, but it can also be centralized to the active branch provided certain criteria are met.

5.2 Capital tax

There is no capital tax, but Indonesia levies a capital gains tax on the sale of shares.

5.3 Real estate tax

Land and building tax is payable annually on land, buildings and permanent structures. The rate is typically not more than 0.3% of the value of the property, although higher rates apply to certain high value housing and large estates.

A land and building acquisition duty of 5% is payable when a person obtains rights to land or a building with a value greater than IDR 60 million. Various exemptions apply, including on transfers in connection with a merger and transfers to relatives.

5.4 Transfer tax

The sale of shares listed on the Indonesian stock exchange are subject to a tax of 0.1% of the transaction value. Founder shares also are subject to a final tax of 0.5% on the share value at the time of an initial public offering, regardless of whether they are held or sold following the offering. The transfer of a resident company's shares by a nonresident is subject to a withholding tax equal to 5% of the transfer value unless otherwise provided under a tax treaty.

5.5 Stamp duty

Stamp duty applies to financial transactions, deeds and receipts, at rates ranging from IDR 3,000 to IDR 6,000, depending on the amount of the transaction and type of document.

5.6 Customs and excise duties

Any goods coming from overseas into the Indonesian customs area are treated as "imports" and generally are subject to import duty and import taxes. The importer must register with the Minister of Trade to obtain an Importer Identification Number known as an API and register with the Directorate General of Customs and Excise to obtain a Customs Identification Number (NIK).

Certain exemptions apply (e.g. goods in a bonded zone or warehouse, goods in an import facility for export purposes, etc.).

Preferential tariff rates are extended to countries that have signed Free Trade Agreements (FTA) and Economic Partnership Agreements (EPA). This means that customs duties for selected imported goods that originate from the FTA/EPA partner countries are lower or totally eliminated. Currently, Indonesia has preferential tariffs in the following schemes:

- ASEAN Trade in Goods Agreement (ATIGA): A preferential tariff based on an agreement between Indonesia and ASEAN Countries. This tariff is applicable for the import of goods from ASEAN countries into Indonesia.
- ASEAN-China FTA (AFTA): An agreement between the ASEAN countries to build a free trade area with China. China refers to the Mainland and excludes the Special Administrative Regions (Hong Kong and Macau) and Taiwan.
- ASEAN-Korea FTA (AKFTA): An agreement between the ASEAN countries and Korea to build the economic partnership between the countries.
- Indonesia-Japan Economic Partnership Agreement (IJEPA): An agreement between the governments of Indonesia and Japan to build the economic partnership between the two countries, and increase trade and investment in both countries.

Excise duties also imposed on certain goods as part of the government's effort to curb the distribution of such goods in Indonesia. A number of excise duties are levied, primarily on alcohol and tobacco products.

Customs, import taxes and exise duty payables should be settled before goods are released from the customs area (ports). Failure to comply can give rise to an administrative penalty of 10% of the customs duty payable.

5.7 Environmental taxes

The central government does not have any specific environmental taxes. However, in certain regions, a permit to dump liquid waste into certain water resources is subject to a retribution collected by the regional government.

5.8 Other taxes

A luxury goods tax is levied on a variety of goods at rates ranging from 10% to 200%. The tax is levied upon importation or, in the case of manufacturing, at the time of the delivery of the luxury goods by the producing company.

6.0 Taxes on individuals

6.1 Residence

Residents are defined as individuals who are present in Indonesia for 183 days or more in any continuous 12-month period, or who reside in Indonesia during the fiscal year and intend to remain there. Nonresident taxpayers are individuals present in Indonesia for fewer than 183 days with no intention to reside in Indonesia. Nonresidents need not register for tax purposes.

Nonresident employees in the oil and gas sector are taxed on deemed salaries based on job titles.

6.2 Taxable income and rates

Resident individual taxpayers are taxed on their worldwide gross income less allowable deductions and nontaxable income. Nonresident individuals are taxed on Indonesian-source income.

Taxable income

Personal income taxes in Indonesia are levied only at the national level. Taxable income includes employment income, income from the exercise of a business or profession and other income, such as passive income (dividends, interest, royalties), capital gains, etc. Benefits in kind received by employees housing are not taxable on the employee (or deductible for the employer).

Tax relief is available for contractors and suppliers under grant-funded government projects, although taxes apply on their personnel, subcontractors, subconsultants and subsuppliers.

Deductions and reliefs

Deductions are generally available for expenses incurred in generating income.

Basis of deduction	Deductible amount (per year)
Taxpayer	INR 15,840,000
Spouse	INR 1,320,000 (additional INR 15,840,000 for a wife whose income is combined with the husband)
Dependents	INR1,320,000 each (up to a maximum of three individuals related by blood or marriage)
Occupational support	5% of gross income up to a maximum of INR 6 million
Pension cost (available to pensioners)	5% of gross income up to a maximum of INR 2,400,000
Contribution to approved pension fund, e.g. Jamsostek	Amount of self-contribution

The Minister of Finance is authorized to re-determine the amounts of the personal deductions.

Rates

The personal tax rates are 5% on the first IDR 50 million of annual taxable income, 15% on amounts exceeding IDR 50 million up to IDR 250 million, 25% on amounts exceeding IDR 250 million up to IDR 500 million and 30% on amounts exceeding IDR 500 million.

Dividends received from Indonesian companies are subject to a 10% final withholding tax. Payments to nonresident individuals in the form of salary, dividends, interest, royalties, rents for property, prizes or awards, and payment for technical, management and other services wherever performed are subject to a 20% withholding tax, subject to any reduced rates under a tax treaty.

Individual capital gains are taxed as income at the normal rates; gains on shares listed on the Indonesian stock exchange are taxed at 0.1% of the transaction value. (An additional tax of 0.5% applies to the share value of founder shares at the time of an initial public offering.) Gains on the disposal of land are taxed at a final 5% of transaction value.

6.3 Inheritance and gift tax

Indonesia does not levy inheritance or gift tax.

6.4 Net wealth tax

Indonesia does not levy a net wealth tax.

6.5 Real property tax

Land and building tax is payable annually on land, buildings and permanent structures. The rate is typically not more than 0.3% of the value of the property, although higher rates apply to certain high value housing and large estates.

The sale of land and/or buildings by an individual (other than the sale of a simple house and basic apartment by taxpayers whose main business the transfer of land/buildings) is subject to a tax of 5% of the gross proceeds. Exemptions are granted for the transfer of land and/or buildings as part of a grant or inheritance and the sale of land valued at less than IDR 60 million by an individual taxpayer whose annual income does not exceed the nontaxable income threshold.

A land and building acquisition duty of 5% is payable when a person obtains rights to land or a building with a value greater than IDR 60 million. A number of exemptions apply, including on transfers in connection transfers to relatives.

6.6 Social security contributions

The general social security scheme (JAMSOSTEK) covers all employees. For healthcare coverage through JAMOSTEK, the employer contributes 6% for married employees and 3% for unmarried employees. For the retirement scheme, the employer contributes 3.7% of wages (all regular earnings), and the employee 2%. If the participant dies before retirement for any reason except occupational accident, beneficiaries may claim a life insurance benefit and a burial allowance.

6.7 Other taxes

The rental of land and/or a building by an individual is subject to a 10% withholding tax and a 20% tax is withheld on interest paid on a savings and fixed deposit account.

6.8 Compliance

The tax year is the calendar year.

Indonesia has a self-assessment system, under which individuals are required to compute their tax liability and file a return. However, employee taxes are withheld by the employer, and employee whose income is under nontaxable income threshold are not required to file an annual return. The return is due on 31 March following the end of the tax year.

Self-employed individuals must make monthly advance tax payments based on the previous year's tax liability. The payment is due on the 15th day of the month following the income month.

7.0 Labor environment

7.1 Employee rights and remuneration

Manpower Law No. 13 of 2003 governs the bargaining power of workers, specifies minimum standards for working conditions, and sets rules for severance and compensation payments. Although the law recognizes workers' right to strike, it also restricts strike action, including a requirement that strikes be legal, orderly and peaceful.

Indonesia has ratified the main conventions of the International Labor Organization (ILO), including conventions on the rights of assembly and collective negotiation; on equal wages for men and women for the same work; and on forced labor, freedom of association and protection of the rights of association. ILO Convention 138 on the minimum age for employment is incorporated in Indonesian law, and ILO Convention 182 on the elimination of the worst forms of child labor was ratified and incorporated into law in 2000.

The government has issued several regulations that expand or modify labor laws, including decrees on the employment of foreigners, occupational health and safety, work competency standards and overtime standards and pay.

7.2 Wages and benefits

Provincial wage councils set minimum wage levels for each province and for each of the districts within the province. These councils comprise representatives from the Ministry of Manpower and Transmigration, the All-Indonesia Workers' Union, employers' associations and academia. Wage levels have been increasing over the past few years in line with inflation. District level minimum wages can be substantially higher than provincial wages.

Wages include a minimum wage, overtime pay, sick pay and holiday pay. Cash wages must constitute 75% of the minimum wage, with the remainder typically allotted for food and transport. Foreign firms typically start employees at salaries that are double the minimum wage. Most local firms pay rates slightly above the minimum wage.

Fringe benefits include annual holiday (typically 12 days a year) and paid leave for national holidays, religious obligations, family obligations (including marriage), paid maternity leave and sick leave. Severance compensation is required upon termination or retirement. Employees receive a one month's bonus before the Lebaran holiday (Ramadan). The extra month salary is to be paid before Lebaran for Muslims, before Christmas for Christians, before Nyepi Day for Hindus and before Buddha's Enlightenment Day for Buddhists.

Pensions and social insurance

A workers' insurance scheme, including occupational accident, health and life insurance, exists for companies with more than 10 employees or a monthly payroll exceeding IDR 1 million. Jamsostek, the state-run workers' insurance fund, administers the scheme. Other than the retirement plan, employer contributions entirely fund benefits.

For healthcare coverage through Jamsostek, employers contribute 6% for married employees and 3% for unmarried employees. For the retirement scheme, the employer contributes 3.7% of wages (all regular earnings), and the employee contributes 2%. If the participant dies before retirement for any reason except occupational accident, beneficiaries may claim a life insurance benefit and a burial allowance.

Other benefits

Individual negotiations or collective bargaining determine other fringe benefits. They usually include family and cost-of-living allowances, free medical care (including dental care) for the employee and his/her family, housing, transport and work clothes. Many firms offer pension schemes. Senior executives often receive additional benefits such as a company car and annual home leave.

7.3 Termination of employment

There are legal restraints on the dismissal of a worker who has been employed continuously for at least three months. Even if a production cutback is needed or the worker is deemed unfit, the employer may not discharge the worker without a severance-pay settlement agreed between the employee and employer. If an agreement cannot be reached, the employer must obtain the approval of the Ministry of Manpower and Transmigration.

Severance payments consist of one to nine times the employee's last monthly salary (depending on the length of service), and a gratuity payment at double (after at least three years of service) the employee's last monthly salary. Other entitlements upon termination of employment include cash payments for accrued annual leave, and housing and medical benefits equal to 15% of the severance and gratuity payments.

7.4 Labor-management relations

Labor contracts are common, and typically cover employees who enter a firm within a certain time period. Contracts can be renewed for one to three years. Collective bargaining is typically conducted at the company level if a union represents or gains the approval of at least 51% of the workforce. Labor disputes are addressed by a special provincial-level commercial court.

7.5 Employment of foreigners

Employment of foreigners is allowed only in positions that Indonesians cannot fill and only if regular and systematic training is provided so that Indonesians can eventually replace the expatriates. There are normally no difficulties in obtaining permission to employ foreign managers and technicians if the government believes no Indonesians are available to fill the positions. However, foreigners are not eligible to fill certain positions (e.g. personnel managers).

Foreigners fall into four classes: professionals, managers, supervisors and technicians/operators. Work permits are required for all four classes.

Firms must submit a manpower report for approval to the BKPM and to the Ministry of Manpower and Transmigration. The report should state all positions to be filled by expatriates during a one-year period, the qualifications for each position and plans for training Indonesian staff. The ministry grants individual work permits based on approved manpower plans. Approval for work-permit applications can take up to three months.

Non-directorship positions and others not included in the BKPM plans need approval from the Ministry of Manpower and Transmigration's Office for Placement of Foreign Workers.

8.0 Deloitte International Tax Source

Professionals of the member firms of Deloitte Touche Tohmatsu Limited have created the Deloitte International Tax Source (DITS), an online resource that assists multinational companies in operating globally, placing up-to-date worldwide tax rates and other crucial tax material within easy reach 24/7.

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9.0 Office locations

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