Indonesia Tax Info October 2020

DPR passes draft Omnibus Law for improvement of business climate

On 5 October 2020, the Indonesian People's Representative Council (*Dewan Perwakilan Rakyat* (DPR)) passed the draft Omnibus Law on Employment Creation (*Rancangan Undang-Undang Cipta Kerja*). The draft Omnibus Law is currently waiting for the president's signature. Unlike the version of the draft law that was circulated earlier this year, the draft Omnibus Law as passed comprises all of the laws that the government is amending to improve the ease of doing business as well as the business climate in Indonesia.

The draft Omnibus Law contains the following sections related to taxation:

- Income tax (Article 111);
- Value Added Tax (Article 112);
- Administrative sanctions and interest compensation (Article 113); and
- Regional tax and regional retribution (Article 114).

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Income tax

The draft law contains the following key income tax changes:

Topic	Current Income Tax Law	Draft Omnibus Law
Indonesian citizen as foreign tax resident (*Subjek Pajak Luar Negeri* (SPLN))	An individual continues to be a domestic tax resident (*Subjek Pajak Dalam Negeri* (SPDN)) until he/she passes away/leaves Indonesia permanently.	An Indonesian citizen staying outside Indonesia for more than 183 days can be treated as an SPLN if he/she can fulfill the following requirements, which will be regulated by the Minister of Finance (MoF): • Permanent home; • Place of main activities; • Habitual abode; • Tax resident status; and/or • Other criteria.
Foreigner as SPDN	A foreign citizen staying in Indonesia more than 183 days within 12 months is treated as an SPDN and taxed on worldwide income.	A foreign citizen staying in Indonesia more than 183 days within 12 months is treated as an SPDN and taxed on Indonesia-source income only (territorial basis) if he/she has certain skills. This facility is valid for the first four years. Indonesian income includes income earned in Indonesia but paid offshore. The territorial basis taxation will not apply if the foreigner benefits from a tax treaty. More details on the certain skills and territorial taxation will be regulated further by the MoF.
Dividend income from a domestic source earned by an Indonesian individual recipient	The dividend income is subject to a 10% withholding tax (WHT).	The dividend income is subject to a 10% WHT or is tax exempt if the dividend is reinvested in Indonesia within a certain time period.
Dividend income from a domestic source earned by an Indonesian corporate recipient	The dividend income is subject to current corporate income tax (CIT), or is tax exempt provided certain requirements are met (the dividend is paid from retained earnings and there is a minimum 25% share participation in the entity paying the dividend).	The dividend income is tax exempt.
Dividend income from an offshore company and permanent establishment's (PE's) net profit after tax (NPAT)	The dividend income is subject to the current CIT rate and no exemption is available.	The dividend income is subject to the current CIT rate. However, the income is tax exempt if the dividend/PE's NPAT is reinvested in Indonesia or used to support other business in Indonesia within a certain time period and: • Such reinvested dividend and NPAT is at least 30% of the total NPAT; or • The dividend sourced from the offshore non-listed company is reinvested in Indonesia before the Directorate General of Taxation (DGT) issues a deemed dividend (CFC) tax assessment letter.

Topic	Current Income Tax Law	Draft Omnibus Law
		In respect of dividend from non-listed offshore company and PE's NPAT, if the reinvestment is less than 30% of NPAT, the invested dividend and/or PE's NPAT is still not taxable; however, the difference between the reinvested amount and 30% of NPAT is taxable. The criteria, procedures, and period for reinvestment and income tax exemption will be regulated by the government. Tax that has been paid in the source country cannot be credited against the Indonesian CIT payable, claimed as expense, or refunded. If the dividend or PE's NPAT is not reinvested in Indonesia within a certain period of time, the dividend or PE's NPAT is taxable in the year the income is earned, and any foreign tax that has been paid on that income is tax creditable.
Income from foreign active businesses without a PE	No tax exemption is available.	The current CIT rate applies, or the income is tax exempt if it is reinvested in Indonesia within a certain time period and the following requirements are met: • The income is earned from a foreign active business; and • The income is not derived from an overseas subsidiary.
Interest paid to an offshore party, except to a PE in Indonesia	The payment is subject to a 20% WHT.	The 20% WHT rate can be reduced under a government regulation.

The draft law also makes the following items tax exempt:

- Distributions of net income of a cooperation (*koperasi*);
- Hajj funds (*dana setoran Biaya Penyelenggaraan Ibadah Haji* (BPIH)) and income from hajj financial development by *Badan Pengelola Keuangan Haji* (BPKH); and
- Amounts received by registered social and religious bodies that meet certain criteria.

Comments on income tax changes

- It is unclear how the current controlled foreign corporation (CFC) rules will work in considering the new income tax exemption facility for dividends from offshore listed and non-listed companies and PEs.
- The tax treatment for dividend income from offshore listed companies, which is not reinvested up to the 30% minimum threshold is not covered by the draft Omnibus Law.
- The draft Omnibus Law appears to confirm that if the dividend and PE's NPAT are not reinvested up to certain minimum amount to be determined in the implementing regulation, the tax exemption facility will not apply.
- A decrease in the WHT rate on interest paid to an offshore party will reduce the cost of funds on foreign debts.

Value Added Tax (VAT)

Some of the major changes in the draft law related to VAT are as follows:

Topic	Current VAT Law	Draft Omnibus Law
Deliveries of taxable goods on consignment arrangements	The deliveries are subject to VAT.	The deliveries are not subject to VAT.
VAT treatment on *inbreng* (in-kind capital contributions)	*Inbreng* is subject to VAT.	*Inbreng* is VAT exempt if both the transferor and transferre are VAT entrepreneurs (*Pengusaha Kena Pajak* (PKPs)).
VAT treatment on coal products	Coal that has not been processed to briquette is not subject to VAT.	Coal products extracted directly from the source are subject to VAT.
Creditable input VAT during pre-production	Only input VAT on purchases and/or imports of capital goods are creditable.	The creditable input VAT is for all procurement of taxable goods and/or taxable services, imports of taxable goods, and utilization within the Customs Area of taxable intangible goods and/or taxable services from outside the Customs Area, provided the requirements under the VAT Law are met.
Limitation on creditable input VAT during pre-production	The input VAT that can be credited during pre-production is limited to three years, which may be extended for another two years under certain conditions. A PKP can request a VAT refund in every fiscal period.	The creditable input VAT during pre-production is limited to three years. However, the time period can be more than three years for certain business sectors (to be regulated further by the MoF). If there is no delivery or export of taxable goods and/or taxable services after the three-year time limit has passed, the input VAT can no longer be carried forward and if the input VAT has been refunded, such refund has to be repaid to the State Treasury. This provision also applies to a PKP that undergoes a business dissolution (termination), deregisters its PKP status, or the PKP status is deregistered ex officio within three years after the fiscal period when the input VAT is credited for the first time. An MoF regulation will be issued to regulate the procedures for VAT repayment in the case of failure to carry out taxable delivery.
Input VAT on procurement of taxable goods and/or taxable services before the entrepreneur is registered as a PKP	The input VAT is not creditable.	The input VAT is creditable up to 80% of the output VAT that is supposed to be collected. Procedures for credit are expected to be regulated by the MoF.
Input VAT that has not been reported in the VAT return or notified/discovered in a tax audit, and input VAT collected through a tax assessment	The input VAT is not creditable.	The input VAT is creditable, as long as it meets the general input VAT crediting requirements, the assessment has been paid, and the assessment is not in dispute.

Topic	Current VAT Law	Draft Omnibus Law
Crediting input VAT in a different period	Input VAT can be credited within three months as long as the input VAT has not been expensed or tax audited.	Input VAT can be credited within three months as long as the input VAT has not been expensed or capitalized.
Information required to be disclosed in a VAT invoice in place of a tax identification number (*Nomor Pokok Wajib Pajak* (NPWP))	An NPWP is required to be included in the VAT invoice.	Where the purchaser does not have an NPWP, the following information must be presented: • National identity number (*Nomor Induk Kependudukan* (NIK)), for individual purchasers; • Passport number, for individual foreign nationals; or • Name and address, for foreign corporations.

<u>Comments on VAT changes</u>

- Since coal products are now subject to VAT, the input VAT related to coal mining is now creditable and domestic delivery of coal will be subject to 10% VAT.
- PKPs in pre-production will gain benefits of crediting input VAT that is not limited to procurement or import of capital goods.
- A PKP's right to input VAT that is paid before it is registered as a PKP is confirmed, although the mechanics of the 80% calculation are still unclear.
- There may be resistance from some purchasers to provide the information required in place of NPWPs.
- An MoF regulation will be issued regarding the issuance of VAT invoices by a retail PKP (PKP *pedagang eceran*). It is as yet unknown whether the MoF regulation will broaden the definition of retail.

Administrative sanctions and interest compensation

In general, the draft Omnibus Law lowers the administrative sanctions imposed for tax purposes. Some of the changes made by the draft law are as follows:

Topic	Current General Tax Provisions and Procedures Law	Draft Omnibus Law
Rates of administrative sanction	Monthly sanction: 2% fixed rate (with or without a limitation on months imposed).	Monthly sanction: reference interest rate (*suku bunga acuan*) plus uplift divided by 12 months, for a maximum of 24 months. The uplift can be 0%, 5%, 10%, or 15%.
Incremental penalty for voluntary disclosure during a tax audit	150%	100%
Where under a tax audit there is an imposition of an interest penalty (for VAT underpayment) plus an incremental penalty (for input VAT that should not be credited or subject to 0%)	The two penalties will be imposed.	The higher of the two penalties will be imposed.

Topic	Current General Tax Provisions and Procedures Law	Draft Omnibus Law
Administrative sanction arising from the issuance of an underpaid tax assessment letter or an additional underpaid tax assessment letter after the statute of limitations of five years has passed due to a tax crime	48%	Deleted
Tax penalty arising from the issuance of a tax collection letter (*surat tagihan pajak* (STP)) in the following cases: • A PKP does not/is late in issuing a VAT invoice; or • A PKP issues an incomplete VAT invoice (except for a retail PKP)	2% of the tax imposition base.	1% of the tax imposition base.
Statute of limitations for issuing an STP	N/A	Five years
Penalty arising from requesting to halt a tax investigation	4 times the underpaid tax amount.	3 times the underpaid tax amount.

Similar to administrative sanctions, the rate of interest compensation is changed from 2% per month of the overpaid tax to a reference interest rate divided by 12 months, capped at a maximum of 24 months.

<u>Comments on administrative sanctions and interest compensation changes</u>
- It is currently unclear how the MoF will determine the reference interest rate.
- A lower administrative sanction may not be effective in ensuring the compliance of the taxpayer. Instead, it may lead to a rise in noncompliance, since a lower penalty may not provide a deterrent. Nevertheless, lower administrative sanctions will lessen the cash flow burden of taxpayers.

Regional tax and regional retribution

The following are some of the changes contained in the draft Omnibus Law:
- Nuisance permit retribution (*retribusi ijin gangguan*) has been abolished.
- The central government is authorized to intervene in regional government fiscal and retribution policies to ensure that they are aligned with national fiscal policies, which can be in the form of:
  - Tax and retribution tariffs; and
  - Supervision and evaluation of regional taxes.
- If the regional fiscal and retribution policies are viewed as not aligned with national fiscal policies, the MoF can request the regional regulation to be amended by the regional government through the Ministry of Internal Affairs.
- To enhance the ease of doing business, the regional government may provide fiscal incentives based on applications submitted by taxpayers.

<u>Comments on changes to regional tax and retribution law</u>
- The abolishment of nuisance permit retribution and the provision of fiscal incentives ease burdens of businesses.
- Currently, there are many regional regulations that overlap or contradict each other. The changes in the draft Omnibus Law may provide assurance to the businesses on the rules and regulations that apply in the region, thus expediting the realization of investment.

Overall comments

The draft Omnibus Law must be signed by Indonesia's president within 30 days after approval by the DPR. If 30 days have passed and the president has not signed the draft law, the draft law will legally become law and will enter into effect immediately.

Implementing regulations have to be issued within three months after the law is enacted. Existing implementing regulations that do not contradict with the law will remain in effect, whereas implementing regulations that are not aligned with the law must be amended accordingly.

This Tax Info has been prepared based on the draft Omnibus Law. Taxpayers should refer to the final signed Omnibus Law that will be issued in due course in determining the impact to the business.

Updates on VAT exemption on import or delivery of strategic taxable goods

In an effort to improve the efficiency of the country's electricity supply and maintain affordable electricity pricing for consumers, Indonesia's government issued Regulation Number 48 of 2020 (PP-48) on 24 August 2020.

PP-48 updates the list of strategic taxable goods that are eligible for the VAT exemption facility previously listed in Government Regulation Number 81 of 2015, by adding the following taxable goods:

a. Imports of certain machinery and factory equipment by an integrated construction party (i.e., an integrated Engineering, Procurement, and Construction (EPC) company), excluding spare parts;
b. Imports of liquefied natural gas (LNG);
c. Deliveries of certain machinery and factory equipment by an integrated construction party (i.e., an integrated EPC company), excluding spare parts;
d. Setup costs related to the delivery of electricity, except for houses with electrical power above 6,600 volt-ampere; and
e. Deliveries of LNG.

VAT exemption is provided automatically for imports and deliveries as mentioned in point b, d, and e above, whereas for point a and c, the taxpayer must apply for a VAT exemption letter (*Surat Keterangan Bebas PPN*).

PP-48 applies as from 24 August 2020.

Customs Focus

Updates on ASEAN Trade-in-Goods Agreement provisions for goods originating from Indonesia

Pursuant to the Presidential Regulation Number 84 Year 2020 regarding the Ratification of First Protocol to Amend the ASEAN Trade-in-Goods Agreement (ATIGA), Minister of Trade (MoT) has issued Regulation Number 71 Year 2020 (MoT-71) to introduce new policy to accommodate Indonesian Certified Exporter (CEX) in issuing the Origin Declaration (*Deklarasi Asal Barang*) as an instrument to utilize preferential tariff. Came into force on 20 September 2020, MoT-71 revokes some of the provisions in MoT Regulation Number 24 Year 2018 (MoT-24).

Documents for Goods of Origin and Preferential Rules of Origin for goods originating from Indonesia in the ATIGA scheme is subject to Statutory regulation on Rules of Origin (ROO) of Indonesia and statutory regulation on procedures of origin documents issuance for goods originating from Indonesia, as provided under MoT-71.

Salient changes under MoT-71 are as follows:

1. MoT-71 now adds Origin Declaration (*Deklarasi Asal Barang* (DAB)) as another type of origin documents for goods originating from Indonesia based on the ATIGA. DAB can be issued by CEX subject to meeting the requirements under the prevailing regulations, international agreements and the prescribed format under MoT-71, as substitution to Preferential Certificate of Origin (COO). Therefore, upon the fulfilment of ROO, the exporters may now issue the origin documents in the form of:[1]
   a. COO;
   b. Electronic COO; or
   c. DAB.
2. CEX are now given the authority to issue DAB independently as substitution to COO, in accordance with the format as prescribed under MoT-71. DAB shall be stipulated in the commercial invoice or other commercial documents (e.g. billing statement, delivery order, or packing list). Upon the issuance of DAB, the CEX must submit the DAB to the customs authority of the importing country within 12 months.
3. After 20 December 2020, the existing preferential COO form, which was previously governed under MoT-24, shall be replaced with the new preferential COO form provided under MoT-71. For goods exported from and imported by Cambodia, Indonesia, and Laos, MoT-71 adds provision that requires exporters to provide Free on Board (FOB) value in box (9) of the new preferential COO form.

Questions regarding COO for ATIGA and assistance to the exporters in acquiring CEX status can be addressed to our Global Trade Advisory Team.

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[1] MoT-71 stipulates that the origin documents (i.e. Preferential COO, Electronic COO, and DAB) cannot be applied simultaneously on the same goods in one export transaction.

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