HARSONO STRATEGIC CONSULTING

NEWS ALERT

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- Draft Omnibus Tax Law
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Draft Omnibus Tax Law

The government intends to provide a draft omnibus tax law to Parliament by January 2020, with the aim of becoming effective in 2021. An omnibus law acts as an umbrella law and this one will revise 28 articles in 7 laws including various provisions from the Income Tax Law, VAT Law, General Tax Provisions and Procedures Law, and Regional Taxes and Retribution Law. A more complete revision of the tax laws will be made at a later time.

The purpose of the omnibus tax law is to:

- Provide a more attractive business climate for investors
- Increase economic growth
- Increase legal certainty and encourage foreigners to work in Indonesia to transfer expertise and knowledge to improve the quality of Indonesian human resources
- Encourage voluntary compliance of taxpayers
- Create fairness between domestic and foreign business actors

Below are highlights of the main changes provided in the draft omnibus law.

1. Improve Investment Climate

a. *Corporate income tax rate reduced*

Corporate income tax rates will be reduced in order to increase domestic and foreign investment.

Current Law	Proposed Change
– 25% for resident taxpayers – 20% for listed companies	– Gradually reduced to 22% in 2021-22 and 20% beginning in 2023 – Newly listed companies receive an additional 3% reduction for five years (19% in 2021-22; 17% from 2023)

b. *Exemption from income tax on dividends*

Dividends will be exempt from income tax if the dividends are reinvested in Indonesia for a certain period of time (yet to be determined). This is expected to increase domestic and foreign investment.

Description	Current Law	Proposed Change
Indonesian-sourced dividends received by a resident taxpayer	a) corporate shareholder with ≥ 25% ownership: not subject to income tax b) corporate shareholder with ≤ 25% ownership: normal rate c) individual shareholder: 10% final	a) corporate shareholder with ≥ 25% ownership: not subject to income tax b) corporate shareholder with ≤ 25% ownership : normal rate, but *exempt* if dividends are reinvested in Indonesia for a certain period of time c) individual shareholder: 10% final, but *exempt* if dividends are reinvested in Indonesia for a certain period of time

Description	Current Law	Proposed Change
Foreign-sourced dividends received by a resident taxpayer (corporate or individual shareholder)	Subject to normal rate	Normal rate, but *exempt* if dividends are reinvested in Indonesia for a certain period of time

c. *WHT rate on interest reduced*

The plan is to reduce the withholding tax rate to less than 20% on interest received by foreign taxpayers from Indonesia-sourced interest.

2. Territorial System to Determine Taxable Income for Individuals

Individuals who are resident in Indonesia are currently taxed on their worldwide income. Under the draft omnibus law this is changed to a territorial system, where only income received or obtained from Indonesia will be taxed. The expectation is that this change will help curtail tax evasion and tax avoidance practices.

Current Law	Proposed Change
Individuals subject to tax in Indonesia on worldwide income: – Indonesian citizens – Foreign citizens who are present or reside in Indonesia for more than 183 days	– Indonesian citizens and foreign citizens who are present or reside in Indonesia for more than 183 days will be subject to tax in Indonesia, but only on income received or obtained from Indonesia. – Indonesian citizens and foreign citizens who are present in Indonesia for less than 183 days will be treated as non-resident tax subjects.

3. Encourage Compliance

a. *Easing of creditability of input VAT*

To provide fairness, encourage compliance, and reduce investment barriers, rules regarding crediting of input VAT will be relaxed.

Description	Current Law	Proposed Change
Input VAT obtained before company obtained a VAT ID (PKP)	Cannot be credited	Can be credited based on the VAT invoice (*faktur pajak*)
Input VAT which was not reported in the VAT return but is found during a tax audit	Cannot be credited	Can be credited based on the VAT invoice
Input VAT charged from a tax assessment letter	Cannot be credited	Principal amount can be credited
Input VAT which was obtained before the company started producing VATable goods/services	Can only be credited if they are capital goods	Can be credited. An overpayment can be carried over and a refund requested at the end of the financial year.

b. *Changes to administrative sanctions*

The changes to the administrative tax sanctions are expected to increase voluntary compliance.

Description	Current Law	Proposed Change
Interest penalty due to a correction to a tax return	2%/month of underpaid tax	Monthly fine calculated as (current market interest rate + 5%)/12*
Interest penalty due to tax assessment	2%/month of underpaid tax	Monthly fine calculated as (current market interest rate + 10%)/12*
Improper or late issuance of a VAT invoice (*faktur pajak*)	2% of VAT base	1% of VAT base
Failure to register as a PKP	None	1% of VAT base (to be treated the same as those who registered as PKP but issued an improper or late VAT invoice)

**The amount of the monthly interest rate will be provided by the MoF.*

4. Tax Facilities

At present, various tax facilities are provided under several different regulations. For consistency, these will be covered in a specific section of the omnibus law.

Facility	Current Law	Proposed Change
Reduction or exemption of income tax (tax holiday)	Awarded to taxpayer in a pioneering industry	• Given to taxpayer in a pioneering industry • For main activities in special economic zones • Development of certain industrial areas
Reduction of gross income (super deduction)	Given to taxpayers who: • Engage in vocational and R&D activities • Invest in labor-intensive industries	No change
Income tax facilities in special economic zones	• Reduction in net income up to 30% • Accelerated depreciation • Additional loss compensation period up to 10 years • 10% income tax on dividends	No change
Income tax on government securities traded in the international market	Lower rate or exemption from income tax/discount based on reciprocity	Exemption or reduction of income tax on interest/discount

5. Tax on E-Commerce Activities

There is currently no regulation regarding taxation of income related to electronic transactions conducted in Indonesia. In order to provide a level playing field for conventional and electronic trading transactions, several changes are proposed.

Description	Current Law	Proposed Change
Taxation of non-resident taxpayer with no physical presence in Indonesia on income from electronic business	Not regulated	A permanent establishment will be expanded to cover companies which have a significant economic presence in Indonesia, even if they have no physical presence.
Collection of VAT on import of intangible goods and services	Self-assessed (collected by local consumer)	Non-resident taxpayer to collect, pay and report VAT. An agent in Indonesia can be appointed to do this on behalf of the non-resident.

The changes in the draft law should be viewed positively. When passed, it is expected to harmonize and synchronize various policies and regulations to simplify them and make them more effective. It should also provide a more fair and transparent tax system and greater legal certainty. We will provide an update once the final law is passed.

Tax Incentives

Government Regulation No. 78/2019

Government Regulation No. 78/2019 ("GR-78") amends the tax facilities available to companies which invest in certain business sectors or regions. In addition, the application for the facility is now to be made through the On-line Single Submission ("OSS") system. GR-78 becomes effective on 13 December 2019 and revokes GR No. 18/2015 as amended by GR No. 9/2016 ("GR-18"). A summary of the major changes is provided below.

Qualifying business sectors and regions

The lists of business sectors eligible for the tax facilities have been consolidated and simplified from the earlier regulation:

- There are now 34 business sectors, subdivided into 166 sectors, which are eligible for tax facilities with no restriction as to where the business is located. The main business sectors include forestry, geothermal mining, metal ore mining, pharmaceutical manufacturing, base metals manufacturing, electrical equipment manufacturing, and computer, electronic and optical equipment manufacturing.
- There are now only 17 business sectors which must be located in designated regions in order to be permitted the tax facilities. This includes a few new sectors, such as 4 and 5 star hotels and theme parks.

Similar to the previous regulation, these investments must meet at least one of the following criteria:

- High investment value or goods for export
- High number of workers
- High local content

Tax facilities

The general tax facilities granted are unchanged, but certain details have been modified. The facilities are set out below. (New changes are in bold italics.)

- A reduction in taxable income of up to 30% of the investment amount (fixed assets plus land) prorated over six years from commercial production (5% per year). However, the following three conditions must be met:
  - ***A new asset, unless it is wholly relocated from another country***
  - ***Listed in the business license as the basis for the tax facility***
  - ***Owned and used for the main business activity***
- Accelerated depreciation and amortization.
- Withholding tax on dividends paid to non-resident shareholders is reduced to 10% (or lower treaty rate).
- Tax loss carry forward for up to 10 years, with an additional period if certain criteria are met:

Description	Criteria
A new investment or expansion of an existing main business in an approved business sector or region	***One additional year***
Eligible investment is carried out in an industrial estate or bonded zone	One additional year
Investment in new and renewable energy	***One additional year***
Developing economic or social infrastructure of at least IDR 10 billion	One additional year

Description	Criteria
At least 70% of raw materials or component parts are made in Indonesia	One additional year if use local products from the ***second year***
Employ Indonesian workers	– One additional year if employ an ***additional 300 people for at least 4 consecutive years*** – Two additional years if employ an ***additional 600 people for at least 4 consecutive years***
R&D in Indonesia where the cost for product development or production efficiency is at least 5% of the investment for 5 years	Two additional years
Exports make up at least 30% of total sales for investment carried on outside a bonded zone	Two additional years

The facilities under GR-78 are not available if the taxpayer has already been granted any of the following:

- Tax facility in an Integrated Economic Development Zone (KAPET) under GR-20/2000
- Tax holiday under GR-94/2010
- Super deduction facility for labor-intensive industries under GR-94/2010

Application

The application for these tax facilities is to be made before the start of commercial production. The application is to be made through the OSS system:

- When obtaining the business registration number for new taxpayers; or
- No later than one year after issuance of a new business or expansion license.

The decision on the application is made by the Minister of Finance. Further details on the process will be provided in a future MoF regulation.

Transitional Period

Approvals which were obtained under the old regulations remain valid until the end of the facility period.

Applications for a facility under GR-18 which were submitted before 13 December 2019 will be processed under GR-18.

Taxpayers who obtained an investment license between 12 December 2015 and 12 December 2019 can be granted the facility under GR-78 provided each of the following conditions are met:

- The investment approval has not been approved or rejected under GR-18
- The criteria of GR-78 are met for the designated business sector/region
- The company has not started commercial production
- The application is submitted by 12 December 2020

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