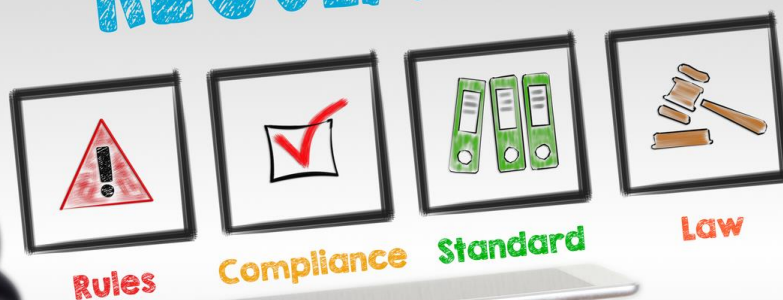


REGULATIONS



News Alert - April No. 2/2021

The Omnibus Law – Tax Implementing Regulations: GR No. 9/2021 & MoF Regulation No. 18/PMK.03/2021

The Omnibus Law – Tax Implementing Regulations

The Law on Job Creation (“Omnibus Law”), Law No. 11/2020, was signed on 2 November 2020 (see our News Alert No. 6/2020 for details). Since then, two implementing regulations have been issued relating to the tax sections of the Omnibus Law:

- Government Regulation No. 9 dated 21 February 2021 (“GR-9”)
- Minister of Finance Regulation No. 18 dated 17 February 2021 (“MoF-18”)

These regulations provide further guidance on definitions, procedures, and other criteria addressed in the Omnibus Law. The major issues are discussed below.

Income Tax

Individual tax subjects

Further guidance is provided on the definition of a resident and non-resident tax subject.

Key Issues

The implementing regulations provide details on a number of issues, including the following:

- Definition of resident and non-resident tax subjects
- Income tax on foreign resident taxpayers
- Reinvestment of dividends to qualify for the exemption from income tax
- VAT during pre-commercial operation

Status	Definition	Details
Resident tax subject	An Indonesian citizen or foreigner who is present, resides, or intends to reside in Indonesia for more than 183 days in a 12-month period.	<p>A person “resides” in Indonesia if at least one of the following criteria are met:</p> <ul style="list-style-type: none"> ▪ Lives in a place (can be used at any time; is owned, rented, or available for use; and is not a stopover) ▪ Has a main activity center ▪ Carries out daily activities <p>A person “intends to reside” in Indonesia if s/he has one of the following:</p> <ul style="list-style-type: none"> ▪ A KITAP (permanent stay permit) ▪ A VITAS or KITAS (limited stay visa or permit) which is valid for more than 183 days ▪ A contract to work (or other activity) for more than 183 days ▪ Other documents (such as a lease) of more than 183 days
Non-resident tax subject	<ul style="list-style-type: none"> ▪ An individual who does not reside in Indonesia ▪ A foreigner in Indonesia for less than 183 days ▪ An Indonesian citizen who resides outside Indonesia for more than 183 days in a 12-month period who meets certain requirements 	<p>An Indonesian citizen must meet the following requirements to qualify:</p> <ul style="list-style-type: none"> ▪ Resides permanently overseas ▪ Has a main activity center overseas ▪ Carries out daily activities overseas ▪ Is subject to tax overseas ▪ Has settled all Indonesian tax obligations while a resident tax subject ▪ Obtains a Certificate of Indonesian Citizen Who Meets the Requirements to Become a Foreign Tax Subject from the DGT

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Income tax for foreign citizens

Under the Omnibus Law, foreign citizens who are resident taxpayers are taxed only on Indonesia-sourced income, for four tax years. Indonesia-sourced income includes income paid outside Indonesia in relation to work performed in Indonesia.

The above treatment is only available to foreigners who have certain expertise and includes foreigners who occupy certain positions and researchers. The skills require expertise in science, technology, or mathematics, as evidenced by a certificate issued by certain institutions, a diploma, or at least five years of relevant work experience. The individual must also engage in a transfer of knowledge.

An application to the DGT is required in order to be granted this tax treatment. Qualifying foreigners who became Indonesian tax subjects before 17 February 2021 can apply to be granted this treatment provided the four year time period has not been exceeded.

The four years is calculated from the time the foreigner first became an Indonesian tax resident. The withholding tax on Indonesia-sourced income applies from 2 November 2020 (issuance date of the Omnibus Law) until the end of the four years.

This treatment is not applicable for foreigners who choose to utilize a tax treaty benefit between Indonesia and the country where they receive overseas income.

Exemption from income tax on dividends or other income

Dividends and certain other offshore income can be exempt from income tax. In most cases this requires the dividends or other income to be reinvested in Indonesia for a certain period of time. Below is a summary of the requirements and income tax treatment.

No.	Type of Income	Requirements for Exemption	Income Tax Treatment
1	Domestic dividends received by a company	None	Exempt
2	Domestic dividends received by an individual	Reinvest for three years	Reinvested dividend is exempt
3	Offshore dividends from a listed company	Reinvest for three years	Reinvested income is exempt
4	Offshore dividends from an unlisted company	<ul style="list-style-type: none">- Distribution of dividend and reinvest at least 30% of profit after tax, which should be invested before the DGT issues a tax assessment relating to Article 18.2 of the Income Tax Law (controlled foreign company)- Reinvest for three years	<ul style="list-style-type: none">- If 30% distributed and reinvested: Fully exempt- If <30% distributed or reinvested:<ol style="list-style-type: none">1. The amount reinvested: Exempt2. The difference between 30% and the amount reinvested: Subject to tax3. The remaining profit after tax (after deducting points 1 and 2): Exempt
5	Offshore income after tax from a PE	Reinvest at least 30% profit after tax for three years	Same as 4 above
6	Offshore income not from a PE or subsidiary	Reinvest for three years	Reinvested income is exempt

Approved areas for reinvestment

Reinvestment can be in any of a number of approved areas:

- State securities, bonds, other financial instruments
- Infrastructure under a public-private partnership
- Real sector based on government priorities
- Equity participation in a new or existing Indonesian company
- Cooperation with the Sovereign Wealth Fund
- Lending to micro and small businesses in Indonesia

Timing

Reinvestment must be made by the end of the third or fourth month after the end of the tax year for individual and corporate taxpayers, respectively.

The investment cannot be transferred, unless converted to an approved investment.

Reporting

Taxpayers who are exempt from tax must submit an annual realization report for three years beginning from when the dividend or other income is received or earned (exception for corporate taxpayers receiving domestic dividends).

Foreign tax credit

Any foreign tax which was paid for exempt income cannot be credited, deducted, or refunded. If overseas dividends or other income were not fully invested in Indonesia, the tax credit on offshore withholding is done on a proportional basis.

Withholding tax on bonds

Withholding tax on bond interest income paid to a non-resident (other than a permanent establishment) is reduced to 10%, unless a lower tax treaty rate applies. This goes into effect on 2 August 2021 (six months after the effective date of GR-9).

VAT

Pre-commercial operation period

Before the Omnibus Law, a VATable entrepreneur (“PKP”) not yet in production could only claim input VAT on the purchase of capital goods.

Under the Omnibus Law, a PKP who has made no delivery of VATable goods or services can credit all types of input VAT related to that company’s activities. A refund can be requested for any VAT overpayment at the end of the fiscal year.

A PKP is considered to have made no delivery if it has not delivered or exported VATable goods (trading company) or VATable services (service company), or has not delivered or exported VATable goods that are self-produced (manufacturing company). Certain deliveries are not considered when determining if a PKP has conducted delivery, such as:

- A delivery for the PKP’s own use or free gift
- Delivery to the head office or another branch
- Delivery of assets which were not originally for sale
- Delivery is not related to the main business activity

If within three years from the first crediting of input VAT there has been no delivery of VATable goods/services:

- Input VAT which has been credited but not refunded cannot be credited any longer, and the credit should be cancelled.
- Input VAT which has already been refunded or offset against output VAT must be repaid.

The three year limit is increased to five years for the manufacturing sector and six years for businesses deemed a National Strategic Project.

The input VAT that was already refunded shall become payable when the relevant time period (3, 5 or 6 years) ends, upon liquidation of the business or revocation of the PKP, or if there are changes in business activities.

If a PKP changes business activities within the relevant time period, input VAT which was credited but not refunded can still be credited as long as taxable goods/services or intangible goods are utilized for the new business activities. Otherwise, it cannot be credited and should be repaid if already refunded.

Crediting of input VAT

Below is further clarification of the rules for crediting input VAT in certain cases.

Description	Omnibus Law	Implementing Regulations
Input VAT obtained before company obtained a VAT ID (PKP)	Can be credited at 80% of output VAT	Input VAT can be credited against output VAT that should be collected by a PKP on delivery of taxable goods/services from the time the entrepreneur should have been registered as a PKP. Input VAT that can be credited is calculated using a crediting mechanism at 80% of output VAT that should have been collected. Such credited input VAT cannot be treated as an expense or capitalized.
Input VAT which was not reported in the VAT return and/or found during a tax audit	Can be credited	Provided the notification of tax audit result (SPHP) has not been delivered to the taxpayer.
Input VAT charged from a tax assessment letter (SKP)	The principal amount can be credited provided the assessment has been paid and no legal dispute is pursued	Tax assessment is for acquisition of taxable goods/services, import of taxable goods, utilization of offshore services or intangible goods. The principal amount of the tax can be credited if: <ul style="list-style-type: none">– SKP is issued only to collect input VAT– PKP has agreed to the tax audit result in full– The full amount (principal + sanctions) has been paid– No legal dispute is pursued– All is conducted in accordance with tax laws This is creditable even if the SKP was issued before 2 November 2020, provided it was paid after 1 November 2020.

Other matters

- *Under the Omnibus Law, a transfer of taxable goods for the purpose of capital injection (in-kind capital contribution) is not subject to VAT, provided both parties are PKPs.* If the transferor is not a PKP, the VAT is payable but not collected. GR-9 clarifies that if the criteria are not met, VAT will be due when the in-kind capital contribution is agreed or the deed is signed by the notary.
- Details on the information required in a VAT invoice are provided. Note that an individual's resident identity number (NIK) (for residents) or passport number (for foreigners) can be used in place of a tax identification number (NPWP).
- A retail PKP is defined as one who delivers VATable goods or services to end-consumers, including through e-commerce. An end-consumer is one who directly uses the goods/services and does not use them for business purposes. A VAT invoice does not need to include the buyer's identity or seller's name and signature, and can be in the form of a receipt or other proof of delivery or payment.
- The timing for a delivery on consignment is further explained in GR-9. For a consignor this is at the time taxable goods are recognized as income or the invoice is issued; for a consignee this is at the time taxable goods are delivered to the buyer, the price of goods is recognized as income, or the consignee issues an invoice.

General Tax Provisions and Procedures

Bookkeeping by individuals

Bookkeeping is required for individuals engaged in business or independent work/freelance. However, certain individuals only need to keep records, namely individual taxpayers who:

- Calculate net income by using the net income calculation norm
- Do not engage in business or independent work/freelance
- Meet certain criteria (e.g., business capital, gross turnover, year of establishment)

Electronic submissions

Taxpayers can exercise their rights and obligations electronically through certified or non-certified certificates. Certified certificates are issued by MoF appointed operators.

The DGT can issue and sign decisions and other decrees electronically, and this has the same legal force as written documents.

Further details are to be provided by the MoF.

Other

- A request to pay in installments or to delay tax payment on the annual income tax return is to be made no later than the date the return is submitted. The length of the installment or deferral is up to the deadline for submission of the next year's return.
- An extension of a preliminary evidence audit (BUPER) is reduced from 24 to 12 months, unless there is evidence of a tax crime. A BUPER can be conducted even though a tax assessment letter (SKP) has been issued if it is based on new information.
- More detailed procedures regarding interest compensation are provided. Of note, interest compensation must now be paid not later than one month from when the application was submitted.
- Transitional periods for various changes were not provided in the Omnibus Law. Based on the implementing regulations, changes apply from 2 November 2020.

For additional information, please contact us:

Sony B. Harsono, Managing Partner
sony.harsono@harsono-strategic.com

Dwi Ary Retnani, Senior Partner
dwiary.retnani@harsono-strategic.com

Julius Hardianto, Senior Partner
julius.hardianto@harsono-strategic.com

Suhartono Maridjan, Senior Partner
suhartono.maridjan@harsono-strategic.com

Budi Harnata, Partner
budi.harnata@harsono-strategic.com

Richard William, Partner
richard.william@harsono-strategic.com

Roedy Andrianto, Director
roedy.adrianto@harsono-strategic.com

Terri Shreve, Technical Advisor
terri.shreve@harsono-strategic.com

Toshihiro Asai, Technical Advisor
toshihiro.asai@harsono-strategic.com



Harsono Strategic Consulting
Sudirman Plaza, Plaza Marein 9th Floor
Jl. Jend. Sudirman Kav. 76-78
Jakarta 12910, Indonesia
ph. +62 21 5793 6777
fax. +62 21 5793 6778
www.harsono-strategic.com