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NEW TAX LAW ON HARMONIZATION OF TAX REGULATIONS

Background: Government's need for increased tax revenue

The pandemic has changed almost every aspect of human life, and government fiscal policy is no exception.

The pandemic served as a wake-up call for the government to revisit its fiscal policy with respect to taxation. The government faces a dilemma – it needs to increase its spending to propel economic growth (Covid recovery programs, continued development of infrastructure projects, social safety net, etc.) but must also reduce the budget deficit back to 3% of GDP by 2023 (pre-pandemic level). This was a driving force for the government to amend the current tax laws.

The tax laws were amended in the Omnibus Law in November 2020. However, the 3% fiscal deficit requirement coupled with the pandemic resulted in the government having to revisit the changes made in order to increase tax revenue as its current level is not sufficient to sustain the state budget/APBN. It is also important to note that Indonesia's tax to GDP ratio for 2019 was the lowest of the ASEAN-5 countries (Indonesia 11.6%, Malaysia 12.4%, Singapore 13.3%, Thailand 17.2%, Philippines 18%).

KEY ISSUES:
The New Tax Law was approved by Parliament. Among the more significant issues are:

- The corporate income tax rate will remain at 22%.
- Certain tax brackets and rates for individuals are changed, including a new highest rate of 35%.
- VAT: A higher rate of 11% will begin April 2022.
- KUP: Various tax audit and tax dispute resolution sanctions are changed.
- A Voluntary Disclosure Program is introduced (similar to tax amnesty).
- A carbon tax is introduced.

The current tax laws have been amended to respond to the new paradigm. This resulted in Parliament passing the Law on Harmonization of Tax Regulations on 7 October ("New Tax Law"). This will come into effect and be enforceable once the President signs it. The New Tax Law amends three tax laws (Income Tax, VAT, and General Tax Provisions and Procedures ("KUP")) and the Excise Law. It also introduces a new Voluntary Disclosure Program (essentially a new name for the 2016 Tax Amnesty) as well as a carbon tax. Among the more significant changes introduced are:

- Abandons the reduced corporate income tax rate which was to take effect in 2022
- Changes the tax brackets and rates for individuals
- Increases the VAT rate beginning in April 2022
- Changes various tax audit and tax dispute resolution sanctions

It has been reported that these changes should increase the annual tax collection over the next four years by 9.23%–17.94%.

The following high-level discussion explains the changes in the New Tax Law and its ***potential impact on your business.***

Income Tax

Corporate income tax

To counter the negative impact on government revenue resulting from the pandemic and to increase state revenue to meet its budget requirements, the promised decrease in the corporate tax rate from 22% to 20%, scheduled to take effect in 2022, has been cancelled. Although this will be disappointing for corporate taxpayers, the 22% rate is still slightly lower than the average ASEAN corporate income tax rate of 22.17%.

The cancellation of the corporate income tax rate reduction will require companies to recalculate their budgeting and forecasting for next year and beyond.

Individual income tax

To promote greater fairness and protect small businesses, several changes are made to individual income tax.

- The lowest income bracket, with the rate of 5%, is increased from IDR 50 million to IDR 60 million. A rate of 35% is introduced on income exceeding IDR 5 billion.

INCOME TAX LAW		NEW TAX LAW	
INCOME RANGE (IDR)	RATE	INCOME RANGE (IDR)	RATE
0–50 million	5%	0–60 million	5%
>50–250 million	15%	>60–250 million	15%
>250–500 million	25%	>250–500 million	25%
>500 million	30%	>500 million–5 billion	30%
		>5 billion	35%

- To help small businesses, taxpayers who have calculated income tax with a final rate of 0.5% will not be subject to tax on the first IDR 500 million of gross turnover.
- The current non-taxable income limit of IDR 54 million/year (4.5 million/month) and IDR 4.5 million/year for dependents is unchanged.

These changes should help mitigate the negative impact from the downturn in the economy on low income taxpayers and small businesses. The introduction of the higher tax rate of 35% on high-net-worth individuals should help offset the impact of the other changes and promote fairness.

Benefits-in-kind

The treatment of benefits-in-kind ("BIK") will change. BIK have been non-deductible for the company and not taxable as income to the employee. Under the New Tax Law BIK will be deductible for the company and taxable to the employee, i.e. subject to employee income tax withheld by the employer (WHT Art. 21). However, certain BIK will continue to be treated as non-taxable income for the employee:

- Provision of food/beverages for all employees
- BIK in certain areas
- BIK required for work, such as safety equipment or uniforms
- BIK sourced from the state budget
- BIK of certain types or limitations

The changes to the corporate and individual tax rates combined with the changes to BIK will have an impact on how a company manages compensation to its employees as BIK will become assessable income at the employee level, and a deductible expense at the corporate level.

Agreement with other tax jurisdictions

The New Tax Law states that the government is authorized to form or implement agreements with other governments with regards to avoiding double taxation and preventing tax evasion, preventing base erosion and profit shifting (BEPS), exchanging tax information, and assisting in tax collection, among others. (See the KUP section below for further detail on assistance with tax collection.)

Value Added Tax

To boost state revenue, the VAT base is expanded and the rate is increased. The following are the more critical changes:

- On 1 April 2022, the VAT rate will be increased to 11% and to 12% by 1 January 2025. This is higher than the VAT/GST rate for most other ASEAN-5 countries (Singapore 7%, Thailand 7%, Malaysia 6% (services)/10% (goods), Philippines 12%).
- In order to expand the VAT base, the number of goods and services which are not subject to VAT will be reduced. This includes mining and basic needs as well as various services including health and education. However, certain basic-needs goods and services that previously were not subject to VAT will be exempt by Government Regulation.

The increase in the VAT rate will certainly increase the price of goods. If consumers' income remains the same, this could impact their purchasing power, which could reduce consumption and the aggregate volume of goods purchased.

General Tax Provisions and Procedures

A number of changes were made to the KUP Law. Some of the more significant are noted below.

- An individual's identity number (NIK) can be used as their tax identification number (NPWP). Individuals earning above minimum taxable income are subject to tax, and this is a mechanism to capture those who have not previously registered for tax purposes. Whether this can be easily implemented in practice, however, remains to be seen.
- The government can appoint a party as a VAT withholder/collector for transactions with other parties. This is expected to apply, for example, to those who provide goods through electronic means.
- Certain sanctions arising from an audit or dispute are changed.
- A power of attorney may be given to anyone with competence in the field of tax. An exception is given for a spouse or relative of two degrees.
- Indonesia will cooperate with other countries regarding tax collection assistance.

Sanctions changed

Certain sanctions arising from a tax audit or dispute resolution case will be changed as follows:

DESCRIPTION		KUP LAW	NEW TAX LAW
Taxpayer does not submit a return or does not maintain bookkeeping	Underpaid income tax	50%	Monthly MoF benchmark interest rate + 20% (max. 24 month)
	Under withheld income tax	100%	Monthly MoF benchmark interest rate + 20% (max. 24 month)
	Income tax withheld but not deposited	100%	75%
	Underpaid VAT and Luxury Sales Tax (PPnBM)	100%	75%
After dispute resolution in which the objection decision/tax court strengthens the DGT's decision	Objection	50%	30%
	Appeal	100%	60%
	Judicial Review	—	60%

A taxpayer who is being investigated for a tax crime can voluntarily pay taxes which were owed even if the case has been taken to court. The taxpayer must pay sanctions but will not be subject to imprisonment. The sanctions for a tax crime are as follows:

ACTION	KUP LAW	NEW TAX LAW
Negligent tax crime	3x underpaid tax	1x underpaid tax
Deliberate tax crime	3x underpaid tax	3x underpaid tax
Submitting a fictitious VAT invoice or WHT slip	3x underpaid tax	4x underpaid tax

Assistance in tax collection with other tax jurisdictions

The MoF can cooperate with other countries regarding assistance in tax collection. This change is in line with the OECD Convention of Mutual Administrative Assistance in Tax Matters. According to the New Tax Law, a request can be made to or by another country for assistance in tax collection, through a tax claim, based on a reciprocal bilateral or multilateral agreement such as a tax treaty or convention of mutual administrative assistance in tax matters. A number of tax treaties, including the Netherlands, contain a specific provision regarding assistance in tax collection.

Companies should be aware of the potential aggressiveness of the government to cooperate with other countries regarding the exchange of taxpayer information and collection assistance.

Voluntary Disclosure Program

To broaden the tax base, particularly to capture noncompliant high-net-worth individuals and companies, the Voluntary Disclosure Program ("VDP") is in place. Despite the difference in the name, in substance, VDP is similar to Tax Amnesty ("TA") which was introduced in 2016. The concept is essentially to pardon previous noncompliance (no investigation or criminal prosecution) and collect tax on future earnings on the previously undisclosed assets.

VDP provides an opportunity to taxpayers to disclose assets before the Director General of Tax ("DGT") proceeds with any legal action. It applies to undisclosed assets as far back as January 1985 (for those who already participated in TA). Although the previous TA failed to reach its target, it did succeed in getting a large number of taxpayers to participate. It is expected that VDP will encourage more noncompliant taxpayers to participate and fulfill their tax obligations going forward.

Under VDP, from 1 January to 30 June 2022, taxpayers can voluntarily report previously undisclosed assets which have not been discovered by the tax office. The VDP tax rate is significantly lower than the normal income tax rates.

Below is a summary of the program.

DESCRIPTION	POLICY 1	POLICY 2
Subject	Taxpayers who participated in the previous TA	Individual taxpayers
Asset Base	Assets acquired 1 Jan 1985–31 Dec 2015	Assets acquired 1 Jan 2016–31 Dec 2020 which were not reported in the 2020 annual tax return
Final Income Tax Rate	▪ 6% for repatriated offshore assets and onshore assets, invested in SBN (government securities)/ downstream/renewable energy ▪ 8% for repatriated offshore assets and onshore assets ▪ 11% for offshore assets not repatriated	▪ 12% for repatriated offshore assets and onshore assets, invested in SBN/downstream/renewable energy ▪ 14% for repatriated offshore assets and onshore assets ▪ 18% for offshore assets not repatriated

An additional final income tax in the range of 3%–8.5% will apply if the taxpayer fails to transfer or invest the assets as agreed.

Information or data disclosed by taxpayers through VDP cannot be used as a basis for investigation or criminal charges, whether related to tax crimes or *other crimes*. "Other crimes" could have a very broad scope and the New Tax Law does not provide further clarification as to what this covers. *Therefore, it remains to be seen how this will be interpreted and applied in practice.*

The following is an example to illustrate how VDP could be useful in practice:

- High-net-worth individuals who have assets overseas, such as shares or other investments, which are not repatriated will make a one-time payment when the asset is declared, providing the government with additional revenue.
- In exchange, the government will forgive the taxpayer's prior noncompliance in failing to disclose those assets.
- Those previously unreported assets can be monitored by the DGT and the government will be able to tax any future income arising from the disclosure of such assets, such as:
  - Rental income
  - Capital gain on the sale of property
  - Dividends
  - Other forms of income arising from offshore investments (shares, bonds, etc.)
- From the taxpayer's perspective, tax which is paid overseas can be claimed as a foreign tax credit.

The introduction of VDP will make the use of Trusts as a structure for holding overseas investments on behalf of Indonesian tax residents less beneficial, from a disclosure point of view.

VDP offers a chance to individuals who have held significant unreported assets to start afresh. From the government's perspective, the tax base will be broadened, with the expectation of receiving minimal tax up-front, but any earnings on the disclosed assets will be taxable going forward.

Carbon Tax

As evidence of its commitment to reduce its global emissions, Indonesia signed the Paris Agreement in April 2016. Now, as part of its effort to develop a regulatory platform to help control greenhouse gas emissions and encourage the development and use of green technology, the New Tax Law introduces a carbon tax of at least IDR 30/kilogram (IDR 30,000/ton) of carbon dioxide equivalent (CO2e). This will apply beginning 1 April 2022 to the coal-fired power plant sector according to a carbon tax roadmap. Other goods and sectors will be subject to the carbon tax beginning in 2025.

The introduction of this carbon tax is expected to reduce the consumption of carbon/fossil-based energy and promote the use of renewable energy.

Excise Law

A few changes are made to the Excise Law. These include:

- If an administrative sanction is paid during the review of certain alleged criminal offenses relating to excise, no further investigation will take place. The sanctions are:

RECOVERY OF STATE REVENUE LOSS	EXCISE LAW	NEW TAX LAW
During review of alleged criminal offense	—	3x underpaid excise
During investigation	4x underpaid excise	4x underpaid excise

- The government can submit an addition to or reduction in excisable goods to Parliament for its consideration and approval during state budget preparation.

We anticipate that there will be more aggressive investigations and audits to ensure compliance in excise related matters.

Effective Date

Below are the effective dates of the various laws and programs under the New Tax Law:

DESCRIPTION	EFFECTIVE DATE
Income Tax Law	Fiscal year 2022
VAT Law	1 April 2022
KUP Law	From date of promulgation
Excise Law	From date of promulgation
Voluntary Disclosure Program	1 January to 30 June 2022
Carbon Tax	1 April 2022

Implementing regulations will need to be issued in order to properly implement the New Tax Law. We will provide updates on any significant changes when they are issued.

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