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TAX AMNESTY LAW

The long debated Tax Amnesty Bill was finally enacted by the Parliament (DPR). The enactment of this Bill is considered crucial to support the missing gap in the tax revenue target for the 2016 Revised State Budget (APBN-P). It is also believed that the Tax Amnesty will have a positive impact on the development of the national economy. However, careful attention needs to be given to the implementation of this Tax Amnesty Law, in particular how to ensure the repatriation of funds from offshore. Below we discuss the Tax Amnesty Law and what is needed to ensure its success.

THE IMPORTANCE OF THE TAX AMNESTY LAW

On 28 June 2016 the DPR finally approved the revised 2016 Revised State Budget (APBN-P) and the long awaited Tax Amnesty Bill.

State revenue (plus grants) of IDR 1,786.2 trillion (approx. USD 137.4 billion, using exchange rate of IDR 13,000) was approved, while spending was set at IDR 2,082.9 trillion (approx. USD 160.2 billion). *The Tax Amnesty Law is expected to help the State fill the gap with additional tax income of IDR 165 trillion (approx. USD 12.7 billion) from Redemption Payment, and also to act as the reform momentum for a comprehensive and integrated tax implementation system*.

The Tax Amnesty Law is expected to benefit the financial, property market and industrial/real sectors in Indonesia which, through various financial and investment instruments, are in the best position to absorb the repatriated funds.

TARIFF ON REDEMPTION PAYMENT

According to the Law, the tariff on redemption is as follows:

Redemption Tariff (%)	Period for Submission of Statement Letter		
	Jul-Sep 2016	**Oct-Dec 2016**	**Jan-Mar 2017**
Declaration and repatriation	2%	3%	5%
Declaration but no repatriation of offshore assets	4%	6%	10%
Taxpayer with turnover up to IDR 4.8 billion:			
-Declaration of assets up to IDR 10 billion	0.5%	0.5%	0.5%
-Declaration of assets > IDR 10 billion	2%	2%	2%

These tariffs are expected to encourage people to apply for Tax Amnesty as they are significantly lower than the normal income tax rates of 25% for corporate taxpayers and up to 30% for individual taxpayers.

HOW TO CALCULATE REDEMPTION PAYMENT

Net Asset X Redemption Tariff

Net Asset = Additional Un-reported Assets – Any Liabilities that are related with the acquisition of such Additional Un-reported Assets, which have not been reported in the Last Year Tax Return

The Last Year Tax Return is:

- **The 2015 Income Tax Return** for taxpayer whose fiscal year is ended in the period from 1 July 2015 up to 31 December 2015; or
- **The 2014 Income Tax Return** for taxpayer whose fiscal year is ended in the period from 1 January 2015 up to 30 June 2015

HOW TO DECLARE ASSETS AND LIABILITIES IN STATEMENT LETTER

Taxpayers that will apply for Tax Amnesty must submit a *Statement Letter* to declare their additional assets and liabilities that have not been reported in the Last Year Tax Return.

Additional Assets that have not been reported in the Last Year Tax Return: ▪ Assets in the form of cash : Nominal value ▪ Assets other than cash : Fair value <u>Note:</u> ▪ Assets declared in the Statement Letter should be denominated in IDR currency using the exchange rate set by the Minister of Finance at the end of the Last Year Tax Return ▪ Fair Value is defined as the value that reflects the situation and condition of assets based on the assessment of the Taxpayer. How taxpayer can assess the fair value of asset is still unclear. We expect the implementing regulation will elaborate further on this matter.
The amount of Liabilities that are related with the acquisition of Additional Assets, which can be deducted against Additional Assets is determined below: ▪ For corporate taxpayer : maximum 75% of additional asset value; ▪ For individual taxpayer : maximum 50% of additional asset value

REQUIREMENTS, BENEFITS AND COSTS FOR TAXPAYER

Every Indonesian Taxpayer has the right to apply for Tax Amnesty, except a Taxpayer which is currently under legal process in the court or is in prison for a tax crime. The application for Tax Amnesty is carried out by submission of a Statement Letter and meeting the following requirements:

- Obtain a Tax ID
- Pay the Redemption Payment
- Settle all outstanding tax payable
- Submit the Last Year Tax Return
- Cancel application of any outstanding tax refund request, objection, appeal, judicial review, request for reduction/cancellation of administrative sanction and tax assessment letter, etc.

The scope of the Tax Amnesty is the tax obligations up to the Last Year Tax Return which have not been or have not been entirely completed by the Taxpayer. The tax obligations that are the object of Tax Amnesty are:

- Income Tax
- Value Added Tax or Value Added Tax and Sales Tax on Luxury Goods

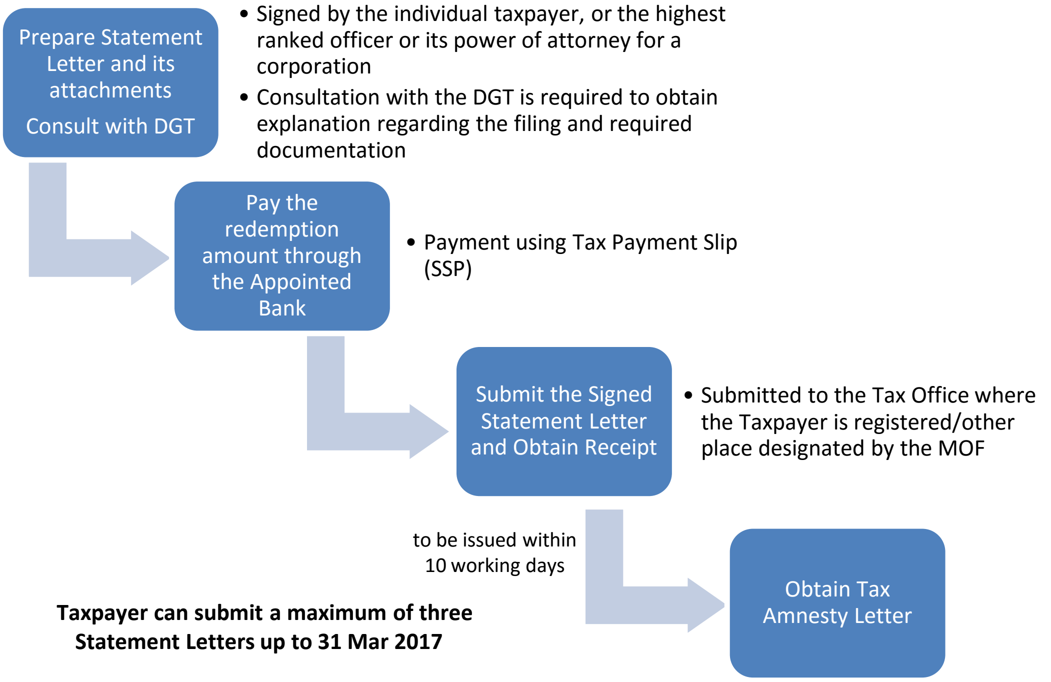
Benefits and Costs to Taxpayer

In essence, Tax Amnesty allows the taxpayer to “start a new life” in full compliance with the tax laws.

Benefits	▪ Open tax years up to the Last Year Tax Return will not be audited, audited for preliminary evidence, and/or investigated as a criminal offense in the field of taxation. ▪ An audit, audit for preliminary evidence, and/or investigation of a criminal offense in the field of taxation which is in process will be stopped. ▪ Tax payable on which a tax assessment letter has not been issued as well as administrative sanction for tax obligations up to the Last Year Tax Return are eliminated. ▪ Data and information obtained from the Statement Letter and its attachments cannot be used as the basis for criminal investigation.
Costs	▪ Cannot carry forward tax losses up to the Last Year Tax Return to the following year’s Tax Return. ▪ Cannot credit overpayment of income tax and VAT up to the Last Year Tax Return to the following year’s Tax Return. ▪ Cannot request a refund for the period up to the Last Year Tax Return. ▪ Cannot amend Tax Returns for years up to Last Year Tax Return.

MECHANISM FOR TAX AMNESTY

Procedures for Applying for Tax Amnesty by the Taxpayer



INVESTMENT OBLIGATION FOR REPATRIATED FUNDS AND OTHER SANCTIONS

The repatriation of funds must be carried out through the Appointed Banks appointed by the Minister of Finance.

For assets using the redemption tariff of 2% and 3%, the funds must be repatriated and invested by 31 December 2016. For the assets using the redemption tariff of 5%, the funds must be repatriated and invested by 31 March 2017.

The minimum period for investment is three years from when the funds are repatriated. The repatriated assets can be invested through the following instruments:

- Government marketable securities
- State-owned company (BUMN) bonds
- Bonds of financial institutions owned by the Government
- Financial investment in the Appointed Banks
- Bonds of private companies on which the trading of bonds are supervised by the Financial Service Authority (“OJK”)
- Infrastructure investment through cooperation between the Government and private sector
- Industrial/real sector investment according to the priority set by the Government
- Other investments in accordance with the prevailing laws and regulations

If the Taxpayer declares its assets in Indonesia, the Taxpayer is not allowed to transfer the declared assets overseas for at least three years from the issuance of the Tax Amnesty Letter.

If the above conditions cannot be met by the Taxpayer, either because (i) the assets are not repatriated and invested in Indonesia; or (ii) it would be a violation of the prohibition to transfer the declared assets overseas, then the assets will be treated as taxable income in Fiscal Year 2016 and subject to normal income tax and administrative sanction. The Redemption Payment paid can be offset as a prepayment of the income tax.

In the event the Taxpayer has obtained a Tax Amnesty Letter but it is subsequently discovered that there is information regarding the assets that was not reported in the Statement Letter, then the said assets will be considered as additional income received by the Taxpayer on the date it is discovered.

If the following conditions apply:

a) Taxpayer has not submitted a Statement Letter until the end of Tax Amnesty period; and

b) Directorate General of Taxation obtains information regarding assets which were acquired from 1 Jan 1985 until 31 Dec 2015 and not yet declared in the Tax Return,

then, the above assets will be considered as additional income to the Taxpayer from the date the information regarding the above assets was discovered up to three years from when the Tax Amnesty Law passed.

KEY POINTS

In our view, the Government's objectives for the Tax Amnesty Law include the following:

Fiscal Impact	▪ Immediate: Approval of the 2016 Revised State Budget; there is potential additional tax revenue of IDR 165 trillion from the Tax Amnesty program. ▪ Medium and long term: Expansion of tax information base for future potential tax revenue.
Monetary Impact	▪ Capital inflow to the domestic financial system as well as the capital market.
Driver for economic growth	▪ New investment in the industrial/real sectors as well as in infrastructure projects which will help develop the overall economy.

The success of the Tax Amnesty Program and the ability to achieve the above objectives are *highly dependent on whether significant repatriation of offshore assets in addition to revenue from Redemption Payment of IDR 165 trillion as intended by the Government will be achieved* and that it does not become a mere declaration/legalization of unreported assets/income.

Further implementing regulations on the Tax Amnesty Program are needed. The main challenges are to ensure Taxpayers not only enter into this program, but that they are willing to repatriate assets from offshore. If these are unsuccessful, the Tax Amnesty Law may be perceived as a mechanism which was created simply to pardon past tax evasion.

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