Client Alert

November 2021

Indonesia: Tax Harmonization Law

On 7 October 2021, the Indonesian House of Representatives (DPR) passed the Tax Regulation Harmonization Law, known as the HPP Law. The President of Indonesia signed the HPP Law on 29 October 2021 as Law No. 7 Year 2021. The HPP Law will enhance Indonesian fiscal policy with the aim of accelerating economic recovery in hand with tax reform that will come into effect in 2022 that is expected to lead to an increased tax ratio and better tax compliance.

The HPP Law provides changes to the current tax laws, and introduces provisions on a Voluntary Disclosure Program ("VDP") and a Carbon Tax. The introduction of the Carbon Tax shows the government is making efforts to support a green economy to reduce the world's carbon emissions and mitigate climate change. Meanwhile, the VDP includes two schemes for the disclosure of taxpayers' assets. The program will run from 1 January 2022 to 30 June 2022.

Income Tax Law

Changes in the Income Tax Law include:

Treatment of benefits-in-kind

- Benefits-in-kind in the form of compensation or remuneration in relation to work or services are now subject to income tax. The income tax is exempted on the following expenses, among others:
    - food and/or beverages and their ingredients for all employees
    - benefits-in-kind provided in certain areas, provided by the employer in carrying out work, sourced or financed by the State Revenue and Expenditure Budget and with certain types and/or limitations
- On the other hand, benefits-in-kind can be treated as deductible expenses.

Depreciation of buildings and amortization for intangible assets with a useful life of more than 20 years

- If a permanent building has a useful life of more than 20 years, the depreciation is carried out in equal amounts in accordance with the actual useful life based on the taxpayer's bookkeeping.
- If an intangible asset has a useful life of more than 20 years, the amortization is carried out according to the useful life of group 4 (20 years) on intangible assets under the Income Tax Law or in accordance with the actual useful life based on the taxpayer's bookkeeping.

Income tax rate

- The first and second bands of taxable income are updated, and the lowest individual income tax rate of 5% that initially applied for taxable income up to IDR 50 million is now extended to income up to IDR 60 million.
- There is a new individual income tax rate, i.e., 35% for taxable income above IDR 5 billion.
- The corporate income tax rate will be 22% for FY 2022 onwards. This cancels the initial plan as stated in Law No. 2/2020 that stipulates the corporate income tax rate is 20% for FY 2022 onwards.

Value Added Tax ("VAT") Law

Changes in the VAT Law include:

- Some goods and services that previously were not subject to VAT are reclassified as VAT objects in which the VAT will not be collected in whole, partly collected or exempted from tax imposition either temporarily or permanently with the purposes of:
  - Encouraging export and downstream industry, which is a national priority
  - Accommodating the possibility of agreements with other countries in the field of trade and investment, international conventions that have been ratified, as well as other international customs
  - Support the availability of certain strategic goods and services in the context of national development, i.e., essential commodities greatly needed by the public, certain medical health services and national health insurance program, social services, financial services, insurance services, etc.
- Effective from 1 April 2022, the VAT rate will no longer be 10%, but will increase to 11%. From 1 January 2025, the VAT rate will be 12%.

General Tax Provisions and Procedures ("GTP") Law

Changes in the GTP Law include:

- A taxpayer who is an Indonesian resident will use their National Identity Number (NIK) as their Tax Identification Number (NPWP).
- There are changes to the administrative sanctions for certain wrongdoings by taxpayers:
  - interest on income tax that is not paid or is underpaid within one fiscal year (previously there was a 50% penalty of the income tax not paid or underpaid, but there is no longer a penalty)
  - interest on income tax that is not withheld, not collected, or underwithheld (previously there was a penalty of 50% of the amount of income tax not withheld, not collected, or underwithheld, but there is no longer a penalty)
  - 75% increase of VAT that is not paid or underpaid (previously 100%)
  - 75% increase of VAT that is withheld or collected but not remitted or under remitted VAT (previously 100%)
- Changes in the tax objection provisions include:
  - The administrative sanction imposed if a taxpayer's objection is rejected or is partly approved is 30% of the amount of tax based on the objection decision less the tax paid before filing the objection (previously 50%).
  - The Director General of Taxes must provide a written statement of the basis matters of the objection decision letter issued no later than one month after the request by the taxpayer for appeal purposes.
- Changes in the tax appeal and civil review provisions include the following:
  - The administrative sanction imposed if a taxpayer's appeal is rejected or partly approved is reduced from 100% to 60% of the amount of tax based on the appeal decision less the tax paid before filing the objection.
  - If a civil review decision causes an increase in the amount of tax to be paid, the administrative sanction imposed will be 60% of the tax amount based on the civil review decision less the tax paid before filing the objection.
  - If the taxpayer or the Director General of Taxes submits an application for a civil review, the implementation of the tax court decision is not suspended or stopped.
  - The notice of tax collection on administrative sanctions is issued by the Director General of Taxes by the latest two years after the receipt of a civil review decision.
- The Minister of Finance may appoint another party to withhold, collect, deposit, and/or report tax. Another party may be a qualified Electronic Business Player regulated further under certain Minister of Finance regulations.
- The appointed party can be subject to penalties under the Indonesian tax law and termination of access. The administrative penalties that may be imposed on the appointed party are as follows:

    - Late tax payment is subject to a penalty based on the tariff according to current interest rates determined by the Minister of Finance, and will be imposed for a maximum of 24 months.
    - Late filing of VAT tax return is subject to penalty of IDR 500,000.
    - The amount of unpaid or underpaid tax penalty is subject to a 100% increase of the tax payable.
- The HPP Law also updates the provisions related to taxation criminal acts as follows:
    - Criminal acts in the field of taxation cannot be prosecuted later than 10 years after the time the tax becomes liable, the end of the tax period, the end of part of the tax year, or the end of the tax year concerned.
    - At the request of the Minister of Finance, the attorney general is able to stop the investigation of taxation criminal acts by no later than six months after the date of a request letter, after the taxpayer/suspect has paid the amount of state revenue loss plus the sanction.
    - Tax penalties cannot be replaced by confinement and must be paid by the taxpayer. If the fine is not paid within one month after the court decision, the prosecutor will confiscate and auction the underlying taxable assets.

Carbon tax

- A carbon tax is imposed on carbon emissions that have a negative impact on the environment. The imposition of a carbon tax will be carried out taking into account the carbon tax roadmap and/or carbon market roadmap.
- Carbon tax will be imposed on individuals or entities that buy goods containing carbon and/or carry out activities that produce carbon emissions.
- Carbon tax is payable by:
    - the time of purchase of goods containing carbon
    - the end of the calendar year for activities that produce a certain amount of carbon emissions
    - other times, which are further regulated by or based on a government regulation
- The carbon tax rate is set to be higher than or equal to the carbon price rate in the carbon market per kilogram of carbon dioxide equivalent (CO_2e) or its equivalent unit.
- If the carbon price rate on the carbon market is lower than IDR 30 per kilogram of carbon dioxide equivalent (CO_2e) or equivalent units, the carbon tax rate is set at a minimum of IDR 30 per kilogram of carbon dioxide equivalent (CO_2e) or equivalent units.
- Carbon tax will be applied starting on 1 April 2022 for coal fired power plants.

Taxpayer's Voluntary Disclosure Program

The VDP will be implemented from 1 January to 30 June 2022. The program is divided into two schemes.

1. The VDP on assets obtained between 1 January 1985 and 31 December 2015
    - Taxpayers who participated in the 2016 Tax Amnesty may disclose their net assets that were not disclosed in the 2016 Tax Amnesty. The assets will be considered as additional income and are subject to final income tax as follows:
        - 6% for net assets that originated from within or outside the territory of the Republic of Indonesia that are invested in State obligations and/or natural resource processing or renewable energy business sectors (assets from abroad must be transferred and invested in Indonesia).
        - 8% for net assets that originated from within or outside the territory of the Republic of Indonesia that are not invested in State obligations and/or natural resource processing or renewable energy business sectors (assets from abroad must be transferred and invested in Indonesia).
        - 11% for net assets that originated from outside the territory of the Republic of Indonesia that are not transferred to Indonesia.

2. The VDP on assets obtained by an individual tax resident between 1 January 2016 and 31 December 2020
    - Individual taxpayers fulfilling certain requirements may disclose their net assets that were not disclosed in the 2020 Individual Annual Tax Return. The undisclosed net assets will be considered as additional income and are subject to final income tax as follows:
        - 12% for net assets that originated from within or outside the territory of the Republic of Indonesia that are invested in State obligations and/or natural resource processing or renewable energy business sectors (assets from abroad must be transferred and invested in Indonesia).
        - 14% for net assets that originated from within or outside the territory of the Republic of Indonesia that are not invested in State obligations and/or natural resource processing or renewable energy business sectors (assets from abroad must be transferred and invested in Indonesia).
        - 18% for net assets that originated from outside the territory of the Republic of Indonesia that are not transferred to Indonesia.

The Notice of Asset Disclosure and its attachments are to be submitted between 1 January and 30 June 2022, after which the Director General of Taxes will issue a statement letter. Assets from abroad must be transferred by 30 September 2022, and must be invested by 30 September 2023 for at least five years from the start of the investment.

Actions to consider

While the aim of the enactment of this new HPP Law is to create a more just taxation system as well as to ensure legal certainty, some of the tax provisions in the HPP Law will only be effective when the implementing regulations are issued. Further review of these implementing regulations may be required to fully understand the impact of the HPP Law on your business.

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