

DOING BUSINESS

IN INDONESIA



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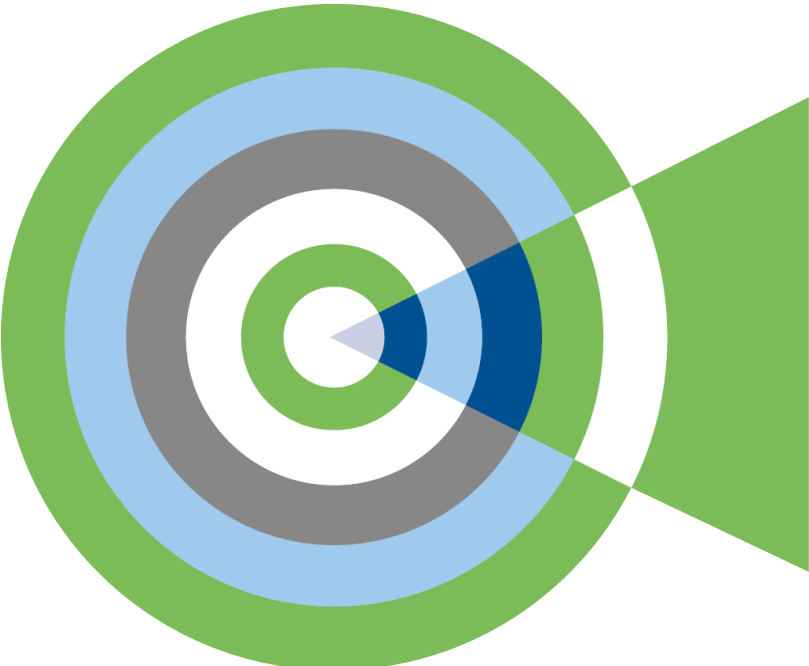
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1 – INTRODUCTION

UHY is an international organisation providing audit, accountancy, business management and consultancy services through financial business centres in over 100 countries worldwide.

Business partners work together throughout the network to conduct transnational operations for clients as well as offering specialist knowledge and experience within their own national borders. Global specialists in various industry and market sectors are also available for consultation.

This detailed report providing key issues and information for investors considering business operations in Indonesia has been provided by the office of UHY's representatives:

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A detailed firm profile for UHY's representation in Indonesia can be found in section 8.

Information in the following pages has been updated so that they are effective at the date shown, but inevitably they are both general and subject to change and should be used for guidance only. For specific matters, investors are strongly advised to obtain further information and take professional advice before making any decisions. This publication is current at November 2020.

We look forward to help you do business in Indonesia.

KAP Hananta Budianto & Rekan (the 'Firm') is a member of Urbach Hacker Young International Limited, a UK company, and forms part of the international UHY network of legally independent accounting and consulting firms. UHY is the brand name for the UHY international network. The services described herein are provided by the Firm and not by UHY or any other member firm of UHY. Neither UHY nor any member of UHY has any liability for services provided by other members.

2 – BUSINESS ENVIRONMENT

Indonesia is located in the south-east Asian Pacific region and the country is now classified as being in the 'lower middle income' category.

Indonesia is Southeast Asia's largest economy with impressive political and economic track record over the past 10 years. Indonesia is south-east Asia's largest economy.

Indonesia has nearly 267 million citizens, with 68.75% of whom in productive age. This productive population is relatively highly adaptive to new technology and has a low dependency ratio among its workforce. Indonesia is entering a 'sweet spot' as a convergence of its young, working population with that of relatively stable inflation and sustained economic growth is fuelling consumer spending.

Indonesia is a group of democratic nations with significant regional autonomy. It is located along the world's major trade routes and has extensive natural resources.

It is a top-ten market for US agricultural products and within the top 30 overall markets for US exports. Indonesia has ratified the Cape Town Treaty, which gives US aircraft exporter's access to financing through international protection and registration of financial interests.

Indonesia can be considered one of the richest countries on earth in terms of its biological diversity. The country is located between Asia and Australia, and comprises more than 17,000 islands that stretch 5,000 km from east to west. Because of its complex geographical make-up and unique bio-geographical position, Indonesia has enormous ecosystem diversity as well as a fascinating history and heritage.

Its climate and highly fertile soil due to volcanic activity make it suitable for the cultivation of high value agricultural commodities such as palm oil, rubber, coffee, and cocoa. The huge availability of land and the low levels of productivity in many of these key crops give the scope for increased output.

Indonesia has undertaken business registration reforms in stages making it easier to start a business. Starting 2015, the Ministry of Law and Human Rights is allowed to electronically issue the approval letter for the deed of establishment. This reform applies to both Jakarta and Surabaya.

POPULATION AND CULTURE

The country is unique in many ways as the biggest archipelago in the world. In terms of human diversity, with nearly 268 million inhabitants, the country ranks as the fourth most populous nation in the world and the third largest democracy. It is also the world's largest Islamic nation, where a constitutional freedom to practice other religions sees major groups of Christians, Buddhists, Hindus and other faiths existing side by side.

There are approximately 336 distinct recognised cultures that share more than 250 spoken languages. The lingua franca, Bahasa Indonesia, was adopted 92 years ago and is now widely used throughout this vast land, serving as a means of communication and as a unifying factor.

Indonesia is diverse and is among the most culturally rich countries on earth. Add to this its enormous mineral, marine and natural resources and it is evident that it ranks as a major economic force in the region.

FOREIGN INVESTMENT

Following the economic and financial crisis that hit the country in 1997, the Indonesian government recognised the important role foreign investment needed to play in the reconstruction of the Indonesian economy. During the following years, successive governments enacted legal and regulatory reforms designed to make Indonesia a competitive destination for foreign direct investment.

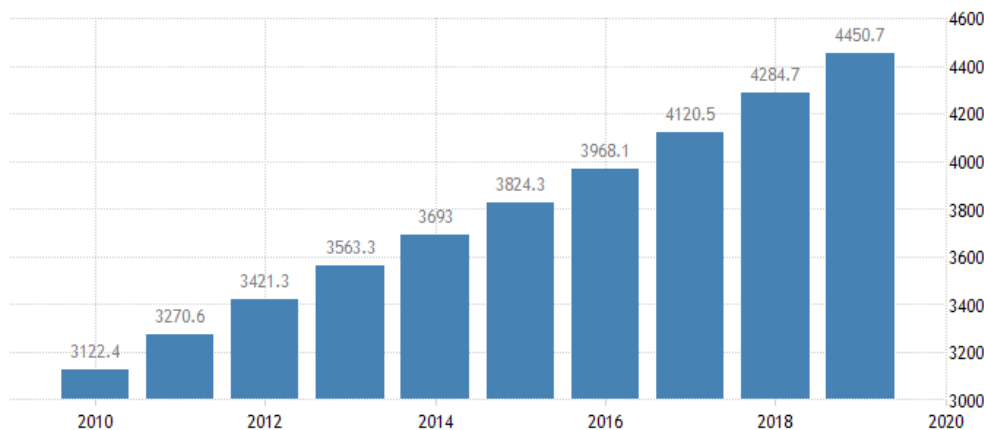
ECONOMY

The currency in Indonesia is the Indonesian Rupiah (IDR).

The Gross Domestic Product per capita in Indonesia was last recorded at 4,450.7 US Dollars in 2019. The GDP per capita in Indonesia is equivalent to 35 percent of the world's average. GDP per capita in Indonesia averaged 1,896.40 USD from 1960 until 2017, reaching an all-time high of 4450.70 USD in 2019 and a record low of 657.00 USD in 1967. (*Trading Economic*)

TABLE 1

Indonesia's GDP per capita



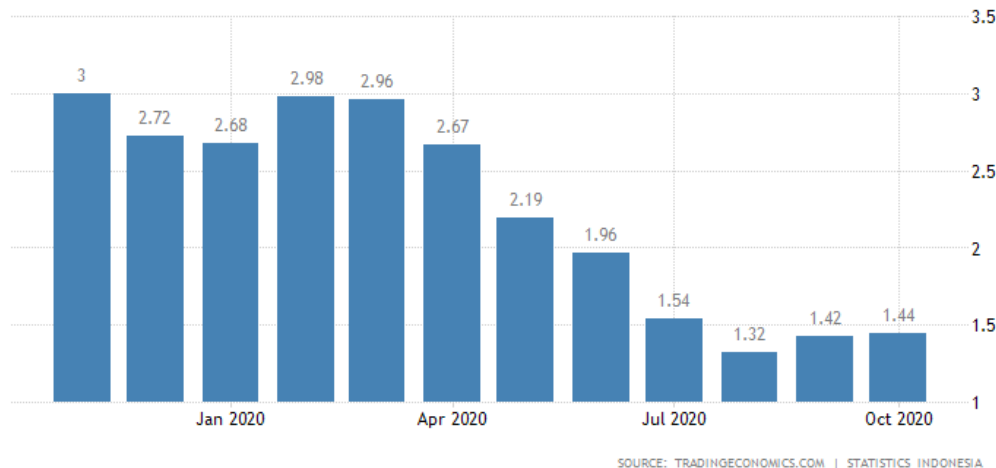
SOURCE: TRADINGECONOMICS.COM | WORLD BANK

INFLATION

Annual inflation rate in Indonesia stood at 1.44 percent in October 2020, little-changed from 1.42 percent in September and compared to market expectations of 1.45 percent. Annual core inflation rate edged down to 1.74 percent, the lowest since the series began in 2008 and compared to forecasts of 1.82 percent.

However, the inflation trend in 2020 cannot be tracked by previous years' trend as Covid-19 pandemic struck Indonesia since early March 2020. The Covid-19 pandemic has globally affected market within various sectors.

TABLE 2
Inflation in Indonesia quarterly



NATURAL RESOURCES

Indonesia is gifted with diverse natural resources. In energy and mining, Indonesia is the world's leading thermal coal exporter, the largest tin exporter and home to deposits of precious metals such as gold, silver and copper. Located on the Asia Pacific 'Ring of Fire' with over 40% of the world's proven geothermal energy reserves, Indonesia has access to huge renewable energy sources to meet its domestic needs. Indonesia was the only South East Asian member of OPEC until 2008 and continues to be a major liquid natural gas (LNG) exporter.

BATAM FREE TRADE ZONE (FTZ)

For many years, there has been special treatment for Batam as a special bonded zone (BZ) with more value added tax (VAT) facilities than are awarded to ordinary BZs. The entire Batam area is denominated as a special BZ. A company here can only have a BZ status based on specific approval by the Ministry of Finance (MoF).

These Batam BZ companies are entitled to the same VAT (and customs) facilities as BZ companies outside Batam. However, the VAT and luxury of sales tax (LST) in Batam are levied gradually on a selective basis on taxable goods and services purchased or consumed by Batam companies.

Currently, there are several taxable goods that have been imported and delivered in/to Batam companies and these will attract VAT:

- Motor vehicles
- Cigarette and tobacco products
- Alcoholic drinks
- Electronic goods.

Since 1 January 2004, the utilisation or consumption of foreign taxable services or foreign taxable intangible goods has been subjected to self-assessed VAT. As of 1 January 2006, the delivery of taxable services within or to Batam, has not yet attracted VAT.

The government decided against a proposal to turn the entire Batam Islands area into a single free trade zone (FTZ). Instead, it will specify bonded zones into which businesses can import goods duty free. The government also noted that export businesses outside the bonded zones could still make use of bonded warehouses, since the status of the neighbouring Rempang and Galang Islands (the islands closest to Batam) has been decided by the government.

The Batam Authority, which governs Batam and has overseen its rapid economic development, argued that the bonded zone scheme would confuse investors and lead to a heavy local government workload. However, local authorities claimed that bonded zones would enable them to better govern Batam as mandated under Indonesia's decentralisation laws.

LEGAL SYSTEM

The Dutch legal system played an important role in influencing the history of the Indonesian legal system. The Netherlands-Indies government applied the *concordantie* principle in the legal sector of Indonesia during the colonial period. Based on this principle, every law that was passed by the Netherlands parliament would have some influence in the Indonesian territory a few years later, perhaps with just minor changes.

When Indonesia became independent, its 1945 Constitution in Article II of the Transitory Provisions specified that all laws and legislations existing under the Dutch colonial administration automatically became the laws and legislation of the Republic of Indonesia, until such laws were repealed, revoked, amended or found to be contradictory to the constitution. As a result, the business regulations governing Indonesia after independence remained the same as the legislation enacted in colonial times, such as parts of the Civil Code (*Burgerlijk Wetboek*), the Commercial Code (*Wetboek van Koophandel*) and the Bankruptcy Ordinance (*Faillissement Verordening*), until amended by new laws introduced in 1960–2004.

In the 1960s, the government of Indonesia ordained several laws intended to foster investment, such as the Basic Agrarian Law (*Hukum Agraria*) and the Foreign Investment Law (*Hukum Penanaman Modal Asing*).

In the period of 1980–2000, a major overhaul of the laws governing Indonesian business practices resulted in the enactment of several more modern laws, such as the Mortgage Law, the Company Law, the Capital Market Law, the Bankruptcy Law, the Fiduciary Transfer Law and the Arbitration Law, as well as several intellectual property laws including laws on copyrights, patents, marks, industrial designs, integrated circuits and plant varieties.

Similarly, the rules governing commercial litigation procedures under Indonesian law are found in the Indonesian civil procedure law derived from the Dutch colonial civil procedure codes (*Herziene Indonesisch Reglement* – HIR and *Rechtsreglement Buitengewesten* – RBG).

The Indonesian judicial system is organised into three levels. The lower court is the district court (*pengadilan negeri*) established in all districts and municipalities (*kotamadya or kabupaten*) in Indonesia. The first appellate court is the high court (*pengadilan tinggi*) established in all provinces in Indonesia. The highest court is the Supreme Court (*mahkamah agung*). Unlike common law systems, Indonesian civil law does not adhere to strict doctrines of precedent. Every case has to be determined on its own facts and merits. Meanwhile consideration is given to academic theories and prior decisions in similar cases, especially decisions of the Supreme Court.

Indonesia also has separate three-tiered structures or courts for handling disputes in administrative law, military law and Islamic family law. Since 1998, a number of specialised courts have been added to the Indonesian judicial system, including the commercial court, handling bankruptcy and intellectual property matters, the anti-corruption court, the human rights courts and special tribunals for tax, labour and fisheries disputes. Based on recent amendments to the constitution, a constitutional court was established in 2003 and a judicial council is currently in formation. In 2004, the Indonesian Supreme Court began to implement a set of blueprints for a comprehensive judicial reform and has been supported by the Indonesian public and the international community for this effort.

The court system does not provide effective recourse for resolving commercial disputes. The judiciary is nominally independent under the law; however, legal practitioners fear that irregular payments and other collusive practices often influence case preparation and the judicial ruling.

The government recognises the need for judicial reform but has not yet taken action. In several instances the local courts accepted jurisdiction over commercial disputes despite contractual arbitration clauses calling for adjudication in foreign venues.

Indonesia is a signatory to the Convention on the Settlement of Investment.

DISPUTES BETWEEN STATES AND NATIONALS OF OTHER STATES (ICSID)

So far only one American investment company has brought a case to the ICSID, which ruled in its favour. Indonesia's Arbitration Law recognises the right of parties to apply any rules of arbitration that they may mutually agree upon and provides default procedural rules if no other rules have been designated.

An Indonesian commercial arbitration board (BANI) is available if both parties agree. Companies have resorted to ad hoc arbitrations in Indonesia using the United Nations Commission on International Trade Law (UNCITRAL) arbitration rules, as well as others. Other companies in Indonesia have used International Criminal Court (ICC) arbitrations.

On 12 August 1999, Indonesia's parliament passed Arbitration Law Number 30, endowing the district court of central Jakarta with the power to enforce international arbitration awards. Before passage of the new arbitration law in 1999, enforcement lay with the Supreme Court, which was slow to act on decisions. Since 1999, Indonesian courts have swiftly enforced international arbitration awards – some have been executed within a month of the request for enforcement. The new law greatly reduces instances where district courts fail to apply the law, and legal practitioners predict that the process should improve as more judges educate themselves about arbitration.

Since 1981, when Indonesia joined the 1958 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York), fewer than two dozen foreign awards have been registered with Indonesian courts (most of which have been enforced). The domestic and international press have widely publicised recent cases where those awards have not been enforced.

RIGHT OF OWNERSHIP (*HAK MILIK*)

The right of ownership is the most entire right (land tenure) of ownership a person can own over land in Indonesia. This right of ownership has several specific characteristics such as:

- It has no time limit
- It covers all fixtures on the land
- Only Indonesian citizens and certain Indonesian legal entities (*badan hukum*) may have right of ownership
- It can be transferred freely among Indonesian citizens and certain legal persons.

There is a possibility for having horizontal separation between the proprietor with right of ownership and the owner of a building on the land. The holder of this right of ownership can transfer the land to others.

Under certain special conditions, the right of ownership has to be converted to other rights, such as a right to build, right of use, or right of cultivation if the holders are foreigners or foreign investment companies.

RIGHT TO BUILD (*HAK GUNA BANGUNAN – HGB*)

The right to build is a right of leasehold for the period of 30 years or less and gives authorisation to build and possess a building on land for the holder. This right to build has several characteristics such as:

- There is a possibility that the right to build can be extended for an extra 20 years with the opportunity for renewal
- The title is granted by and registered at the Land Office
- Only Indonesian citizens and Indonesian corporations incorporated in Indonesia and having their legal domiciles in Indonesia (also foreign investment companies) may hold the right to build
- It is intended for land utilisation as the location for buildings or facilities
- The right to build can be transferred to third parties during its existence
- Right to build is transferred by performing a sale and purchase agreement in the form of a notarial deed and it must be registered with the Land Office.

Generally, investors constructing industrial projects on industrial land in Indonesia look for a right to build title over the land.

The right to private ownership and establishment in the private sector are assumed as the principal engine of economic growth in Indonesia.

State-owned enterprises (SOEs) also play a dominant role in many sectors, including oil and gas retail and distribution, electric power generation and transmission, civil aviation, banking, and fertiliser production and wholesale distribution.

During the last three years, Indonesia has promoted competition in several sectors and reduced the privileges awarded to SOEs.

The State Ministry for SOEs was formed in 1998 by the parliament. Privatisation plays an important role in its mandate but political opposition has effectively hindered many attempts at privatisation. For the purpose of minimising losses and preparing themselves for privatisation, several provincial governments have made some improvement in their management and transparency of provincially owned firms (BUMDs).

RIGHT TO CULTIVATE (*HAK GUNA USAHA – HGU*)

The specific characteristics of the right to cultivate are outlined below:

- It is issued for state-owned land specifically for estate or plantation activities
- Generally, its duration is limited to 25 years and at most 35 years and there is possibility of renewal at maximum of 25 years afterwards.
- It is granted and registered with the Land Office
- Right to cultivate is transferable to third parties by performing a sale and purchase agreement in the form of a notarial deed. It must be registered with the Land Office afterwards for the completion of transfer registration
- This right to cultivate can be held by Indonesian individuals or legal entities, including foreign investment companies.

RIGHT OF USE (*HAK PAKAI*)

The specific characteristics of the right of use are outlined below:

- It is a right to use and/or collect produce from land administered by the state or owned by another person
- It is limited in duration by the contract or decree
- It is usually for a 25-year period with the possibility of renewal and subjected to specific restrictions on the intended use of the land
- Indonesian citizens, Indonesian corporations, foreign residents and foreign corporations under the Basic Agrarian Law can hold a right of use
- It needs permission of the relevant authorised officer for the transfer the right of use over state land
- If it is accorded with a contract granting the right, transfer of right of use over land owned by private citizens can take place.

OBTAINING LAND TITLES BY FOREIGN INVESTMENT COMPANIES

One important procedure has to be followed by a new prospective PMA company which needs land or real estate to perform its business – the processing of the location permit.

With a location permit, a PMA company is allowed to acquire the land that is needed for its operation. The location permit also allows for the transfer of rights and for utilising the land for its investment.

The location permit has to be obtained from the Regent with jurisdiction where the land is located. The PMA Company has to process the relinquishing of the land from its original land owners within 12 –36 months (depending on the acreage of land) after the issuance of the location permit.

The company permit needs to be carefully observed if a location permit was previously obtained, for example, the property purchase should be in compliance with it. The investment licence also needs to have a provision on the land. Thus, if the properties that have been purchased by the company have more than the acreage stated in its investment licence, this action will not be permitted unless the company first submit an application with the Investment Coordinating Board (BKPM) for a revision of its investment licence to include larger land area. It is expected for a company to use the land in compliance with the terms of the decree and investment approval obtained granting its right to the land.

PROTECTION OF PROPERTY RIGHTS

Foreign entities have no freehold rights to land ownership in Indonesia. Foreign investors' land holdings are usually obtained through long-term lease agreements (normally for 30 years) with the government or private parties. These lease holdings can be used as collateral. Government regulations allow mortgages to be registered against real property and seagoing vessels in their appropriate registries, as well as security interests in chattel, equipment, accounts receivable and insurance proceeds. A search facility currently exists only for mortgages. The lack of transparency in Indonesia's courts means uncertainty whether security interests will be recognised and enforced. Foreign companies may also establish a limited company under Indonesian law that can legally obtain rights to land.

The court system does not provide effective recourse for settling property disputes. The new era government and Indonesia's decentralisation process unleashed a flurry of new land claims by local residents against companies, often operating on government-granted concessions located in their communities. The problem of incomplete or inaccurate record keeping is compounded by an ineffective and corrupt enforcement system.

In May 2003, the US government again placed Indonesia on the Special 301 Priority Watch List for inadequate protection of intellectual property rights (IPR), where Indonesia has been since the 1980s. The Indonesian government has steadily improved the regulatory and legal framework for the protection of IPR; however, enforcement continues to fall short. US businesses reported that Indonesia ranks as the third largest producer of pirated products. They maintain that 90% of all CDs (audio, video and software) sold in Indonesia are pirated and estimate that industry suffered losses in 2002 of USD 253 million, a 33% increase over the prior year.

Indonesia's new copyright law is regulated in the Copyright Act, Act No.28 of 2014. The new law increases fines up to IDR 4 billion and provides for prison terms of up to ten years. The law directs cases of alleged copyright violations to be tried in commercial courts and for the rendering of judgments within 90 days. As part of the law's implementation, the Ministry of Industry and Trade plans to issue optical disc regulations that would enhance the government's ability to identify and prosecute producers of pirated products. In an effort to enhance interagency coordination on enforcement, Indonesia's Ministry of Justice recently formed an IPR task force made up of the national police, customs, attorney general, judiciary, and members of the computer software and entertainment industries. The task force has already conducted a few high profile raids.

Indonesia is a member of the World Intellectual Property Organisation No. 50 and the said treaty entered into force in the Republic of Indonesia on 15 February 2005. Indonesia has acceded to numerous international conventions on intellectual property rights, including the Paris Convention for the Protection of Intellectual Property, the Berne Convention for the Protection of Literary and Artistic Works (with a reservation on Article 33), the Patent Cooperation Treaty, the Trademark Law Treaty and the Nice Agreement for the International Classification of Unclassified Goods and Services.

PATENTS

The current patent law dates from 2016 which is explained in Act No.13 of 2016 as the latest amendment of Act No. 14 of 2001.

The new Patent Law will provide patent holders with some solutions to the shortcomings of the current patent framework and registration procedures. In addition to some improvements to the current law, the new Patent Law will also introduce several new provisions to protect local genetic resources and traditional knowledge, and to reward inventors for any invention produced in official service with government agencies.

Based on the final draft of the new law submitted to the Indonesian Parliament, some of the key changes in the recently enacted new Patent Law are as follows:

Exclusions from Invention

The new Patent Law provides the following revised and new additional areas that are excluded from Inventions:

1. Computer Programmes; Unlike the previous Patent Law, which excluded computer programmes from the definition of invention, the new Patent Law provides that any computer programmes that have characters (instructions), technical effects, and problem-solving features, whether tangible or intangible, are considered as inventions that can be patented. Therefore, any computer programmes that do not meet those criteria can still not be regarded as inventions, and thus cannot be patented.
2. Discoveries of Second Use and Second Form of Patents; The new Patent Law excludes discoveries of (i) new use for any existing and/or known products and (ii) new form of an existing compound that shows no increase of efficacy and changes of chemical structure of the existing compound.

Genetic Resources

The new Patent Law provides an obligation to specify the origin of Genetic Resources (GR) and/or Traditional Knowledge (TK) in the descriptions of those inventions derived from either source. The reasons for specifying origin of GR and/or TK in the descriptions are (i) to avoid any claims made by other countries to the GR and/or TK, and (ii) to support Access Benefit Sharing.

Obligations of Patent Holders

The new Patent Law requires patent holders to manufacture their patented products or to use their patented processes in Indonesia. The manufacture of the products or the use of the processes should support technology transfer, absorption of investment, and/or job opportunities.

Invention Produced in Official Service

An inventor of an invention produced in official service with government agencies, whether a Patent Holder or not, will be entitled to receive reasonable compensation from non-state tax revenue for the patent he/she invented.

If the government agency as a Patent Holder is not able to exploit the patent, the inventor, whether a Patent Holder or not, with permission from the government agency concerned, can exploit the patent with a third party.

More Clarity in the Ruling of Compulsory Licenses and Government Use

The new Patent Law provides more clarity on the ruling of compulsory licenses, including reasons for the State to grant a compulsory license, the record of compulsory licenses, and the implementation of compulsory licenses.

The State may also grant compulsory licenses to export pharmaceutical products for which there is a granted patent in Indonesia to other developing or least developed countries that are in need of those pharmaceutical products for the purpose of treatment of the diseases in human.

As for the ruling regarding government use, the new Patent Law provides that the State itself may exploit a patent in Indonesia that is very important for the conduct of state defence and security, and where there is an urgent need for public interest. The exploitation is limited to domestic needs and non-commercial purposes.

Security Interest over Patent

The new Patent Law also introduces a new provision stating that as intangible assets, patent rights can be put under security interest (fiducia).

There will be an implementing government regulation to stipulate the requirements and procedures on this.

Broader Range of Authority for Patent Appeal Commission

The new Patent Law provides a broader range of authority for Patent Appeal Commission to receive, examine, and decide:

- a. appeal request to application rejection;
- b. appeal request for correction on description, claim, and/or image after an application is given a Patent; and
- c. appeal request to Patent decision.

Maintenance Fees

The new Patent Law shortens the period of the procedure for paying maintenance fees. The first annual fee payment must be conducted within six months at the latest starting when the Patent certificate is issued.

A patent will be deemed cancelled if the annual maintenance fee is not paid by the due date.

Bolar Provision

The new Patent Law amends the time given for a third party to use a patented invention for the purpose of carrying out tests, preparing for production, and seeking regulatory/marketing approval before the patent expires, from two years to five years.

Transitional Provisions

Patent applications which have been filed and processed but not yet completed before the effective date of the new Patent Law will be processed based on the previous Patent Law (Law No. 14 of 2001 about Patent).

TRADEMARKS

Registering a trademark in Indonesia is regulated by Law No. 15 of 2001 (Trademark Act) under the Directorate General of Intellectual Property Rights (DGIP). The Indonesian government recently amended the Trademark Act and passed the New Trademark and Geographical Indication Law (Law No. 20 of 2016) on 27th October 2016. The new law will provide protection to broader types of trademarks as well as streamline the process for trademark owners to obtain registration in Indonesia.

According to the Trademark Law, a ‘trademark’ is defined as a sign in the form of words, numbers, letters, colours, figures, composition, symbols or a combination of the aforementioned that is used to distinguish goods or services produced by the person or legal entity.

The application workflow based on the New Trademark Law is as follows:

Application

- Formality check within 15 working days;
- The application needs to be made in writing in the Indonesian language;
- Complete name, address and nationality of the applicant;
- Description and explanation of the design and colours of the trademark;
- Payment of fees to the Directorate General;
- Minimum requirements to obtain filling date.

Substantive Examination

- If there is no opposition within the publication period, the application will enter an examination stage for 150 working days. The DGIP allows for outsourcing for examinations to experts if necessary. If any opposition occurs, the application will be examined simultaneously;
- The substantive examination is conducted by an examiner who is appointed by the Minister of Law and Human Rights;
- The substantive examination lasts no longer than 9 (nine) months;
- For an application containing elements that can mislead as to the type, quality, intended use of the goods/service, or is already trademark protected; the application is deemed as not registrable;
- If the description of the goods/service is not in-line with the quality or efficacy of the goods/service, the application is not registrable.

Certification

1. If the application passes the examination, the DGIP will issue a certificate of registration and publish the trademark in the official Trademark Gazette;
2. During the period of publication, any person or legal entity may submit a written objection to the Directorate General;

3. In the case of a rebuttal of a trademark, a re-examination period of 2 (two) months shall be imposed and an investigation is conducted.

Law No. 20 of 2016 introduces new forms of trademarks that can be protected under the law. This includes:

- 3-dimensional forms;
- Sound;
- Holograms.

International Trademark Registration

Law No. 20 of 2016 provides provisions for the registration of international trademarks. This will provide for international filing based on the Madrid Protocol – an international treaty that allows the trademark owner to seek registration in any country that has joined the Madrid Protocol.

Infringement of Trademark Law

Trademark infringements will now be fined at the rate of IDR 2 billion. If the infringement results in damage to human health, the environment, or death, a IDR 5 billion fine will be imposed.

REGISTRATION PROCEDURE

For the registration of a mark, an application has to be submitted in the Indonesian language to the DGIPR with the required documents such as a power of attorney, a declaration of ownership and 25 labels of the mark concerned.

The application must be registered through an Indonesian proxy by way of a power of attorney for any applicant with a domicile outside Indonesia.

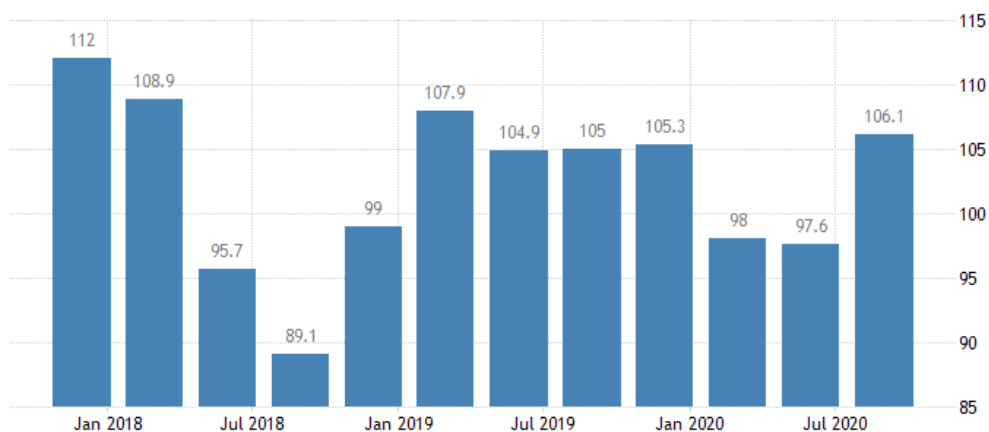
Applications which do not satisfy all of the formal requirements will be returned for completion and/or remedial actions, for which a remedial period of two months (or three months for applications with a priority right) in principle is granted.

Applications that are complete and meet all of the formal requirements will be examined by the DGIPR for approval or rejection. This process should not take longer than nine months. Upon the issuance of the registration approval by the DGIPR, the application is published in the Official Marks Gazette (*Berita Resmi Merek*) for three months. When the application for a mark is rejected then the applicant may submit an objection or a response to DGIPR within 30 days as of the date of the rejection letter. A mark is registered for ten years from the filing date.

3 – FOREIGN INVESTMENT

Foreign direct investment in Indonesia rose 1.1 percent year-on-year to IDR 106.1 trillion (USD 7.24 billion) in the September 2020. It was the biggest amount in one and a half years and the first increase in three quarters, after a 6.9 percent shrink in the previous period. Singapore, China excluding Hong Kong and Japan were among the top sources of investment, with USD 2.5 billion, USD 1.1 billion and USD 0.9 billion in investments, respectively. Base metals and transportation, warehousing and telecommunications and utilities were among the sectors taking beneficiaries. In total, the board recorded IDR 209 trillion of foreign and domestic investment in the third quarter, up 1.6 percent from a year earlier.

TABLE 3
Investment Realization



SOURCE: TRADINGECONOMICS.COM | INVESTMENT COORDINATING BOARD OF THE REPUBLIC OF INDONESIA (BKPM)

Source: Indonesia Investment

TOP INFLOW FDI INVESTORS: INTO INDONESIA, BY COUNTRY

Foreign Direct Investment in Indonesia averaged 78.27 IDR Trillion from 2010 until 2019, reaching an all-time high of 112 IDR Trillion in the fourth quarter of 2017 and a record low of 35.40 IDR Trillion in the first quarter of 2010.

Total Domestic Direct Investment (DDI) realization in 2018 reached IDR 328.6 trillion, showing a solid increase of 25.3 percent on an annual basis. Meanwhile, total foreign direct investment (FDI) realization in 2018 was recorded at IDR 392.7 trillion, down 8.8 percent.

The DDI and FDI realization has been growing rapidly in recent years. Couple of years ago, FDI was usually double the amount of DDI. This trend attributed by the combination of falling FDI ahead of the 2019 elections as well as an increase in DDI on the back of Indonesia's amnesty program in 2016-2017 which resulted in a large portion of funds being repatriated into Indonesia. Some should have found its way into direct investment.

INVESTMENT LAW

Law Number 1 of 1967 governs direct foreign investment in Indonesia and was amended by Law Number 11 of 1970 about Foreign Investment Law, with the last amendment being Law Number 25 of 2007.

These laws stipulate that the Indonesian government requires foreign investors who want to perform operations in Indonesia to form a limited liability company. Generally, this refers to a foreign investment company or PMA (*Penanaman Modal Asing*) company.

The Indonesian government agency which issues investment licences is Foreign Investment Coordinating Board (referred to as the *Badan Koordinasi Penanaman Modal* – BKPM). There are also other Indonesian government agencies which issue import licences and permits to employ non-Indonesian workers. The BKPM does not issue licences for investments in banking, financial institutions, insurance, and oil and gas. Instead, these sectors are dealt with by other government agencies under separate legislation. For instance, the Department of Finance governs foreign investment in banking, insurance and stock broking and the Department of Mines and Energy has a role in approving foreign investment in the oil and gas sector.

An important feature of the Foreign Investment Law is the guarantee that the Indonesian government will not nationalise a foreign investment or revoke the investor's rights to control a foreign investment, except where it is declared under Indonesian law to be in the national interest to do so and then only upon payment of a mutually agreeable compensation determined in accordance with the principles of international law. This guarantee is accompanied by assurances that the foreign investor will have the authority to appoint the management of the foreign investment company and the right to repatriate capital in the form of after-tax profits, reimbursements of expatriate manpower expenses, depreciation of fixed assets, and other items. The Foreign Investment Law also provides for arbitration of investment disputes that may emerge between investors and the government, allowing for such disputes to be submitted to international arbitration under rules of the International Convention for Settlement of Investment Disputes (ICSID).

BUSINESS ACTIVITIES OPEN FOR FOREIGN INVESTMENT

The Government has enacted a new Negative List under Presidential Regulation No. 44 of 2016, which became effective on 18th May 2016 ("2016 Negative List"), although the 2016 Negative List became publicly available only on 23rd May 2016. The 2016 Negative List is the implementation of the 10th Economic Package that was announced by the Government on 11th February 2016 ("10th Economic Package Announcement"). The 2016 Negative List revokes the previous Negative List stipulated under Presidential Regulation No. 39 of 2014 ("2014 Negative List").

Although there are some differences between the information announced in the 10th Economic Package Announcement and the 2016 Negative List, the terms of the 2016 Negative List are generally consistent with the 10th Economic Package Announcement.

As required under Law No. 25 of 2007 on Capital Investment ("Investment Law"), the Government is required to determine the business lines that are closed to all investment (foreign and domestic), and the business lines that are open for investment (foreign and

domestic) with requirements. In principle, all business lines are open to foreign investment, except for those sectors specifically mentioned in a "negative list" and other laws and regulations. This is specifically recognised in article 3 of the 2016 Negative List.

The 2016 Negative List has simplified the categories for the business lines that are open for investment (foreign and domestic) with requirements. The categories are now:

- a. Business lines that are reserved for or subject to partnership with micro, small and medium enterprises ("Local SME") as well as cooperatives ("Koperasi").
- b. Business lines with foreign ownership limitations.
- c. Business lines with location requirements.
- d. Business lines with special licensing requirements.
- e. Business lines reserved for 100% domestic (Indonesian) ownership.
- f. Business lines with a higher foreign ownership in the context of cooperation of the Association of Southeast Asian Nations (ASEAN)

Further, a "partnership" requirement is not intended to limit foreign ownership, but it is a requirement to establish cooperation with a Local SME(s) when implementing investments in Indonesia. The cooperation is implemented based on a mutual agreement.

However, the current negative list may be different with the former one since as 2nd November 2020, the Law No.11 year of 2020 about Copyright Work (a.k.a. Omnibus Law) was starting to be implemented. This new regulation also emphasises to simplify the mechanism of doing business in Indonesia. The current president, Joko Widodo, widely open Indonesia for investment whether it is foreign or domestic. One of his effort is to ease procedures upon the investment hence there are several points in 2016 negative list which were then erased. Joko Widodo will release the President Decree afterwards to detail further.

What the 2016 Negative List Says

Liberalisation of Certain Sectors

There is significant liberalisation under the 2016 Negative List namely:

- a. Opening up of 45 business lines (by removing those business lines from the 2016 Negative List or otherwise requiring partnership or special licenses). These business lines are listed in [Attachment 1](#).
- b. Removing, for 83 business lines, the need for specific recommendation requirements from the relevant Ministries - for example, plantation seeding and plantations above 25 Ha.
- c. Simplifying business lines categories. For example, there were 39 business lines for construction services business lines under the 2014 Negative List (e.g., warehouse construction, building construction, and building reparation) which have been combined into 1 business line of "construction services".
- d. Increasing the permitted foreign shareholding in certain business lines:
 - a. 2 business lines have been increased from 33% to 67%;
 - b. 23 business lines have been increased from 49% to 67%;
 - c. 11 business lines have been increased from 51% to 67%;
 - d. 3 business lines have been increased from 65% to 67%; and

- e. 26 business lines currently not open to foreign investment have been opened in varying percentages.

The above business lines are listed in Attachment 2.

- e. Similar to the 2014 Negative List, the opening of foreign ownership or allowing higher foreign ownership for investors from ASEAN member States is maintained.

The Government has continued to recognise its obligations under the ASEAN Comprehensive Investment Agreement (ACIA) of 2009 under which investors that are natural persons or juridical persons of ASEAN member States ("ASEAN Investor") can enjoy a higher foreign ownership percentage in certain sectors.

A non-ASEAN company which owns or controls an ASEAN company may be able to avail itself of national treatment and investment market access privileges in an ASEAN company. However, a member State (such as Indonesia) may deny the benefits of the ACIA to an ASEAN Investor if, inter alia:

- a. a non-ASEAN investor owns or controls that ASEAN Investor and the ASEAN Investor has no substantive business operation in the territory of the host ASEAN member State;
- b. the ASEAN Investor is owned by an investor of the denying ASEAN member State and the ASEAN Investor has no substantive operations in the territory of the host ASEAN member State; or
- c. The ASEAN Investor is owned by a non-ASEAN investor and the denying ASEAN Member State has no diplomatic relations with the country of the non-ASEAN investor.

Indonesia has limited experience in applying these criteria and it remains to be seen if the Investment Coordinating Board ("BKPM") will look through and seek to deny an application by an ASEAN Investor on the above grounds.

In the immediate term, subject to tax planning and specific advice, (i) it would be appropriate for the ASEAN Investor to be owned or controlled by ASEAN based investors (control is defined as the power to name a majority of directors of the ASEAN Investor or legally direct the actions of the ASEAN Investor), and (ii) the ASEAN Investor should have substantive business operations in its ASEAN country of origin. Sectors with higher foreign ownership limitations under the ASEAN Investor scheme are set out in Attachment 3.

- f. Investments in sectors categorised as open for investment (foreign and domestic) with requirements will be categorised as open to foreign investment if the investment is implemented in special economic zones determined by the Government. However, this treatment will not apply to business lines that have been reserved for Local SME and Koperasi.

Changes from the 10th Economic Package Announcement

As mentioned above, there are several changes between the information in the 10th Economic Package Announcement and the 2016 Negative List. Some of the changes are:

- the business line of staple food plantation seeding with an area of more than 25 Ha is not reserved for Local SMEs, so this business line is still limited to 49% foreign investment; and

- the business line of healthcare research centre is excluded from the 2016 Negative List with the intention that this business line should be conducted by the Government instead of private companies.

Restricted Business Lines

There are business lines which are now specifically closed, have increased minimum project value requirements, or where the permitted foreign investment has been reduced. These include:

- Specifically closing investment for 2 business lines of (i) usage (taking) and distribution of: coral/decorative coral from the nature for aquarium and coral/recent death coral from transplantation/propagation result and (ii) lifting of valuable items from a sunken ship's cargo.
- Providing more protection for Local SMEs and Koperasi, by among other things:
 - a. Reserving additional 19 business lines for Local SMEs under the public work sector (i.e., business service/construction consultant service using low or medium technology and/or low or medium risk and/or the project value is less than 10 billion IDR) - for example, predesign and architecture consultancy services, architecture design services and contract administration services; previously foreign investment was permitted up to 55%.
 - b. Increasing the project values of 39 business lines under the public work sector (i.e., construction services (construction implementation service) using low and medium technology and/or low and medium risk and/or the project value is up to 50 billion IDR) that are reserved for Local SMEs from 1 billion IDR to 50 billion IDR - essentially, this means foreign owned construction services companies can only qualify for projects with a value of over 50 billion IDR.
 - c. Adding 3 business lines that require a partnership with a Local SME or otherwise in the form of a plasma cooperation, namely:
 - i. sugar industry (white sugar, refined sugar, raw sugar);
 - ii. salting/drying fish and other water biota industry; and
 - iii. retail trading through mail order or the internet.

The above business lines are listed in Attachment 4.

- Reducing the permitted foreign investment in 2 business lines. These business lines are:
 - a. Reducing the permitted foreign shareholding in the business line of provision and business for crossing harbours to become 49% - previously 100% foreign ownership.
 - b. Reducing the permitted foreign shareholding in the business line of provision and business for and lake harbours to become 49% - previously 100% foreign ownership.

Grandfathering/Restructurings

The prior grandfathering provisions remain, thereby protecting prior approved investment if there has been a reduction in the permitted level of foreign investment in the 2016 Negative List. The position of BKPM is that business lines that have been grandfathered will still be permitted to conduct a business expansion.

Applicability of the Negative List to Public Listed Companies

The position remains unchanged. The 2016 Negative List does not apply to "indirect or portfolio investment", (being a restatement of the elucidation under article 2 of the Investment Law). Although the 2016 Negative List has tried to emphasise that indirect or portfolio investment in companies (engaged in business lines that are open for investment with requirements) through domestic capital market will be exempted from the requirements (meaning the business lines will be open for investment), there are no provisions in the 2016 Negative List removing the ambiguity of the phrase "indirect or portfolio investment" and how in practice the list is applied. Consequently the current market practice will prevail.

Monitoring, Evaluation and Resolution of Investment Issues

As mentioned in the 10th Economic Package Announcement, to monitor, evaluate and resolve investment issues, the Government will establish, under a separate Presidential Decree, a National Team for the Enhancement of Export and Investment. The National Team will be under the coordination of the Coordinating Minister in the field of Economic Affairs (*Menteri Koordinator Bidang Perekonomian*).

Conclusion

- In general, the Government is giving a positive signal that Indonesia is more open, and the terms of the 2016 Negative List are consistent with what had been previously announced in the 10th Economic Package Announcement.
- For domestic investors, the following should be considered as a result of the proposed foreign investment liberalisation:
 - a. identify any threats that may arise given increased competition;
 - b. identify any new opportunities in establishing a joint venture with foreign investors; or
 - c. Identify any call option(s) under which foreign shareholders may be entitled to, in order to increase their shareholdings in joint ventures.
- For foreign investors, the things to consider are:
 - a. identify opportunities to invest in Indonesia given the additional liberalised sectors (either wholly owned or through joint ventures);
 - b. assess the possibility of increasing shareholdings in existing joint ventures (and for certain business lines this will allow financial consolidation), whether through negotiation or the exercise of call options or the conversion of convertible financing instruments; or
 - c. assess the possibility (if appropriate) to remove the small shareholdings held by Indonesian investors (e.g., where foreign investment is now open 100%).
- Despite various lobbying with the Government to specifically exempt indirect or portfolio investment through the domestic capital market, the Government may have taken a status quo position on this issue by not further clarifying the phrase "indirect or portfolio investment" in the 2016 Negative List. Consequently, current market practice will prevail. However, continuous monitoring is required on how this ambiguity is viewed in the future.
- The effectiveness of the National Team for the Enhancement of Export and Investment will also be a key factor to ensure that the entire economic stimulus packages that have been issued by the Government are monitored and implemented accordingly.

- Hopefully the (i) opening of certain business lines to foreign investors, and (ii) the protection given to businesses conducted by domestic investors, Local SMEs and Koperasi, will provide more certainty when investing into Indonesia.
- Theoretically, the new negative list which will be soon established as President Decree would exclude fourteen sectors from negative list to develop several investment sectors in Indonesia. Hence, the new President Decree will replace the President Decree No.44 year of 2016.

THE BANKING AND FOREIGN EXCHANGE SYSTEM

Exchange rates are issued by the Central Bank on a daily basis for commercial banking purposes. However, for tax purposes (in calculating the Indonesian income tax liability on foreign currency income) the exchange rates are issued on a weekly basis by the Indonesian Ministry of Finance. Foreign exchange controls do not exist currently in Indonesia; however transfers of funds exceeding USD 10,000 from and within Indonesia should be reported to the Central Bank.

INVESTMENT LAW

On 29 March 2007, the parliament passed a new investment law aimed at improving Indonesia's investment climate and attracting greater foreign investment into Indonesia. Law Number 25 of 2007 was signed by the President on 26 April 2007. The law establishes basic investment protections including the following:

- Equal treatment for domestic and foreign investors. However, equal treatment is not applicable to investors from countries which obtain 'special rights based on an agreement with Indonesia'
- The government of Indonesia (GOI) will not undertake any nationalisation action, unless by law. In the event that the GOI 'takes action to nationalise', it will grant compensation with a specified amount based on the market value or arbitration if the two parties do not agree
- Investors may freely transfer assets to other parties, as long as assets are not determined (by law) to be state assets
- Investors may transfer and repatriate capital, profits, royalties, income from asset sales, and other sources, in foreign currency, in accordance with prevailing laws and regulations. However, this does not restrict the right of the GOI to receive taxes or royalties or implement laws and regulations requiring the reporting of the transfer of funds. The GOI may also implement laws to protect the rights of creditors and to avoid losses to the state
- Investment disputes between the government and investors may be settled through international arbitration based upon prior agreement between the parties
- The new law appears to increase the authority of the Investment Coordinating Board (Badan Koordinasi Penanaman Modal / BKPM) in both implementing and proposing investment policy. The BKPM's duties under the law include coordinating and implementing 'one shop' integrated services, developing an investor roadmap, providing consultation to investors seeking capital investments and other investment-related activities. Although the law contains no provision authorising BKPM to approve investments, BKPM approval is needed in order for investors to receive immigration facilities or investment incentives.

THE ROLE OF THE BKPM / INVESTMENT COORDINATING BOARD

Foreign direct investment in the manufacturing, industrial or non-financial services sectors is licensed by BKPM. Investment in the areas of banking, insurance, general mining, oil and natural exploration, production and related activities are licensed by other regulatory bodies.

INVESTMENT APPLICATION

The process of foreign investment begins with the submission of a formal application to the BKPM. The application must include a description of the project including names of participants, total capital required, employment details, a production process description, power requirements and any environmental issues.

An environmental impact study may be required, therefore the articles of association of corporate shareholders, or passports of individuals, should be attached with applications. The BKPM aims to process applications within one month. In practice, approvals may be faster.

CAPITAL REQUIREMENTS

There is a minimum capital requirement for foreign direct investment based on BKPM regulation No. 5 year 2013. The regulation sets out the threshold more than Rp10 billion for PMA establishment. The minimum issued and paid up capital is Rp2.5 billion (25% of authorised capital).

The BKPM will grant approval based on its assessment of the need for the project. Share capital should be paid up in cash or in kind in the form of either tangible or intangible assets. Assets other than cash should be independently appraised. The BKPM can provide a range of facilities including import duty exemptions based on the submission of a 'master list', investment repatriation guarantees and possible tax holidays.

4 – SETTING UP A BUSINESS

In Indonesia, a number of legal entities are recognised for setting up a business.

These business entities are as follows:

- *Persekutuan Perdata* (PP) – a partnership between two or more people in one agreement to make a profit
- *Firma* (Fa) – a partnership between two or more people in one agreement to form a collective name to deal with third parties in making a profit
- *Persekutuan Komanditer* (*Commanditaire Vennootschap* – CV). A partnership between two or more people in one agreement to make a profit. One partner is allowed to invest money into the partnership without having to manage the company.

The above-mentioned types of business are only applicable for local citizens.

For foreign investors, the types of legal entities which apply are outlined below.

REPRESENTATIVE OFFICE

Over recent years, global economic activity has experienced some growth. There are a large number of companies which have expanded their businesses by including operations and offices in foreign countries.

Many companies have their own representative office in other countries (although they may not have production facilities located there) in order to maintain close supervision with the management of foreign business activities.

In Indonesia, a representative office may not own or maintain production facilities or operational activities, and therefore, cannot accept orders, participate in tenders, sign contracts or engage in the importation of goods.

A representative office in Indonesia can be an Indonesian company, an Indonesian individual or an expatriate individual. If the representative office is to be headed by an expatriate, a work permit for the representative has to be applied for together with the application for the representative office licence.

To establish a representative office with permission from the Ministry of Industry and Trade, the company's head office needs to issue three letters:

- i) Letter of intent – stating the intention of the company to establish a representative office
- ii) Letter of appointment – stating the appointment of the chief representative
- iii) Letter of statement – stating that the chief representative will follow Indonesian regulations.

The three letters must be stamped by a notary public and approved by the Indonesian embassy in the home country of the firm. Upon approval, the Indonesian embassy will issue a letter of notification. Upon completion of the four letters the process can continue to the related government ministry in Jakarta, to incorporate a fixed licence for two years.

Other ministries require different types of letters.

LIMITED LIABILITY COMPANY (*PERUSAHAAN TERBATAS – PT*)

Foreign direct investment, often referred to by its Indonesian abbreviation PMA, is governed primarily by the Foreign Capital Investment Law No. 1 of 1967, amended by Law No. 25 of 2007. The law has accommodated various deregulatory policies and measures to date, and should accommodate those that will be taken by the government in the foreseeable future.

In addition to the Investment Law No. 1/1967, PMA companies and other companies are also subject in their business operations to sector/industrial policies as required by corresponding ministries.

ESTABLISHING A COMPANY – INVESTMENT APPROVAL PROCESS

The life of foreign investment companies has been extended by allowing the renewal of the fixed operating licence (IUT) for an additional 30 years. In other words, the initial licences are valid for three years (SPPP BKPM), plus two x 30 years, for a total of 63 years.

The process of incorporation of a new foreign direct investment company involves:

- Requirement for an initial licence (valid for three years)
 - Step 1 – Prepare and send the application with required documentation compiled according to the investment plan, and set up a joint venture agreement if investors plan to make the investment with Indonesian partners
 - Step 2 – Obtain the initial licence (SPPP BKPM), valid for three years
 - Step 3 – Incorporation of SPPP BKPM
 - Establish articles of association with a public notary detailing proof of capital investment, and send this to the Ministry of Justice for approval and issuance in the state Gazette
 - Registration of company address with local council (domicile)
 - Tax identification number (*nomor pokok wajib Pajak – NPWP*)
- Registration with the Department of Industry and Trade (TDP)
 - Step 4 – Key expatriate positions work permits
- Fixed operating licence (30 years)
 - Step 5 – Prepare and send the six-month report (LKPM) to the provincial BKPM office as well as the *Undang – Undang Gangguan* (UUG / HO) nuisance act to the regional office of BKPM
 - Step 6 – Incorporate facilities, master list (*angka pengenal importer terbatas – APIT*) or property ownership
 - Step 7 – Provincial approval for fixed licences (BAP)
 - Step 8 – Fixed licence (IUT) for 30 years is issued.

A limited liability company is established either under foreign shareholders or through a joint venture with Indonesians or wholly owned by Indonesian shareholders and must be approved by the Ministry of Justice. It doesn't matter who the owner of an Indonesian limited liability company is, they must comply with Indonesian law and the entity is considered an Indonesian company. The company can subsequently be changed or sold to the shareholders, foreign or Indonesian.

To get licences for a change of capital and change of owner, applications should be submitted to the BKPM. According to the BKPM, there are no charges to arrange such licences.

Furthermore, Online Single Submission (OSS) is a new licensing application launched by the Indonesian government. This licensing system is a part of the Indonesian government's commitment to improve the ease of doing business in Indonesia. Joko Widodo as the president of Indonesia had authorized the government regulation no.24 of 2018 on 21st June 2018 regarding the Online Single Submission (OSS). OSS would notify the business runner if the business scope does not fulfil the requirements of Negative List of Investment. Eventually, OSS system will publish the *Nomor Induk Berusaha (NIB)* as registered number for the business when all clauses have been comprehensive.

OFFSHORE INCORPORATION

In some situations, it may be to an investor's advantage to incorporate their firm offshore while operations are carried out in Indonesia.

The advantages and disadvantages of remaining offshore usually focus on the facilities offered by tax havens in nations like Mauritius and the Cayman Islands. Your management consultant can assist you in making this important decision.

5 – LABOUR

Indonesia issues a range of different classes of visa depending on the purpose of a foreigner's visit.

VISAS

Short visit visas valid for 60 days may be issued on arrival at an official entry point to passport holders from most developed and neighbouring countries. The passport's validity should be at least six months.

Business visas may be issued for business visits not including work. Business visas are issued by Indonesian embassies overseas, based on a letter of invitation from the party to be visited. Business visas may be renewed once in the country for up to a maximum of six months.

Foreigners intending to take up employment in Indonesia, together with any foreign dependents, should apply for a KITAS or semi-permanent residence visa. While much of the preparatory work is done in Indonesia, the visas are issued by embassies overseas based on a temporary stay visa, or 'VITAS', issued by the immigration authorities in Jakarta. A KITAS visa is issued for a year, but may be renewed for up to four years, after which a fresh application is required.

WORK PERMITS

All foreigners planning to work in Indonesia must obtain a work permit in addition to a KITAS visa. Work permits are issued by the Department of Manpower usually concurrently with the VITAS. Employment of foreigners must be in the context of an approved manpower plan. Many expatriates are employed as technical advisers. The BKPM will approve a certain number of positions for expatriates as contained in the investment application.

OTHER REQUIREMENTS

All foreign residents must also hold a 'police pass'.

Work permit holders must pay in advance an annual training levy of USD 1,200 before issue or renewal of the work permit. All foreigners holding a KITAS visa require a valid exit/re-entry visa to leave and return to Indonesia. A final 'exit permit only' is required when a work permit is to be cancelled or will not be renewed.

The development of Indonesian employment regulations is progressive and further changes are expected in the coming years. Due to the active involvement of various non-governmental organisations (NGOs), awareness of Indonesian labourers and their conditions of work has increased during the last ten years.

EMPLOYMENT AGREEMENTS

Employment agreements in Indonesia are categorised into:

- Employment agreements for a definite period in which an employment relationship has a definite term or is based on the completion of a certain job (e.g. employment between a company and an interim worker, or a contract in which a company employs someone to set up a computer network)

- Employment agreements for an indefinite period in which the employment agreement does not have specific term or require completion of a certain job.

6 – TAXATION

Corporate income tax.

Companies incorporated or domiciled in Indonesia are subject to income tax on worldwide income. Foreign tax may be claimed as a tax credit subject to a limitation rule. Foreign companies' branches are taxed only on those profits derived from activities carried on in Indonesia. However, income accruing from Indonesia to a foreign company having a permanent establishment in Indonesia is taxed as income of the permanent establishment if the business generating the income is of a similar nature to the business of the permanent establishment.

Corporate Tax Rates. Corporate tax is charged normally at a flat rate of 25%. This rate applies to both Indonesian companies and foreign companies that operating in Indonesia through a permanent establishment. The tax rate is reduced by five percentage points for listed companies that have at least 40% of their paid up capital traded on the stock exchange. Small and medium-scale domestic companies (that is, companies having gross turnover of up to IDR50 billion) are entitled to a 50% reduction of the tax rate. The reduced rate applies to taxable income corresponding to gross turnover of up to IDR4.8 billion.

Due to COVID-19 pandemic, the government established a Government Regulation No. 30 year 2020 stating that corporate tax is reduced at the amount of 22% applicable at 2020 and 2021 Fiscal Year, also further reduce of corporate tax at the amount of 20% applicable for 2022 Fiscal Year.

The corporate taxpayer can get a tariff of 3% (three percent) lower than the reduced tariff at the amount of 19% applicable at 2020 and 2021 Fiscal Year also corporate tax for 17% applicable at 2022 Fiscal Year on condition:

- a. In the form of a Go-Public Company
- b. Number of shares around 40% outstanding and traded on the Indonesia Stock Exchange (IDX).
- c. The taxpayer that meet certain requirement as:
 - Shares must be owned by at least 300 (three hundred) Parties;
 - Each Party may only have shares less than 5% (five percent) of the total shares that are placed and fully paid;
 - The provisions must be fulfilled within a minimum of 183 (one hundred and eighty-three) calendar days within 1 (one) year Tax; and
 - Fulfilment of the requirements is carried out by the Public Company Taxpayer by submitting reports to the Directorate General of Tax.

Depreciation. Expenditure incurred that have relation to asset with a beneficial life more than one year are categorized and depreciated form the month of acquisition by using straight-line method or the declining balance method :

For more information about the categories of depreciation, can be access in Minister of Finance Regulation number 96/PMK.03/2009.

Description	Useful Life	Straight Line	Declining Method
Category 1	4 years	25%	50%
Category 2	8 years	12.50%	25%
Category 3	16 years	6.25%	12.50%
Category 4	20 years	5%	10%
Building Permanent	20 years	5%	
Building Non-Permanent	10 years	10%	

Tax Amnesty

Tax Amnesty Program has started from 1 July 2016 to 31 March 2017. For the tax purposes, the new assets declared under this program cannot be depreciated or amortised. The acquisition costs of these assets are based on the value declared in the Tax Amnesty Declaration Letter.

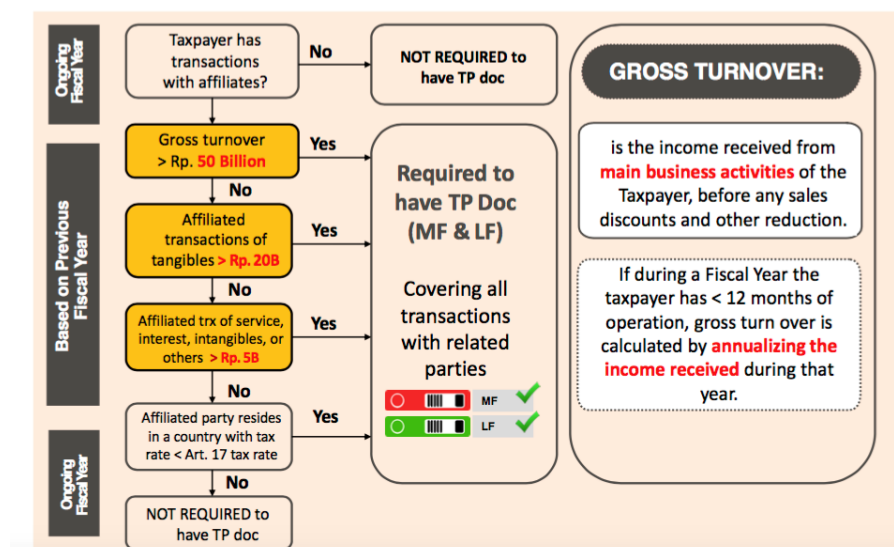
Asset Transfers

Sales of a company's assets (other than land and building) may result in capital gains or losses, and it calculated as the difference between the sales proceeds and the tax written-down value of the assets concerned. Capital gains are assessable whilst a capital loss is tax-deductible only if the asset concerned is used in the running of the business, i.e., for obtaining, collecting, and securing assessable income.

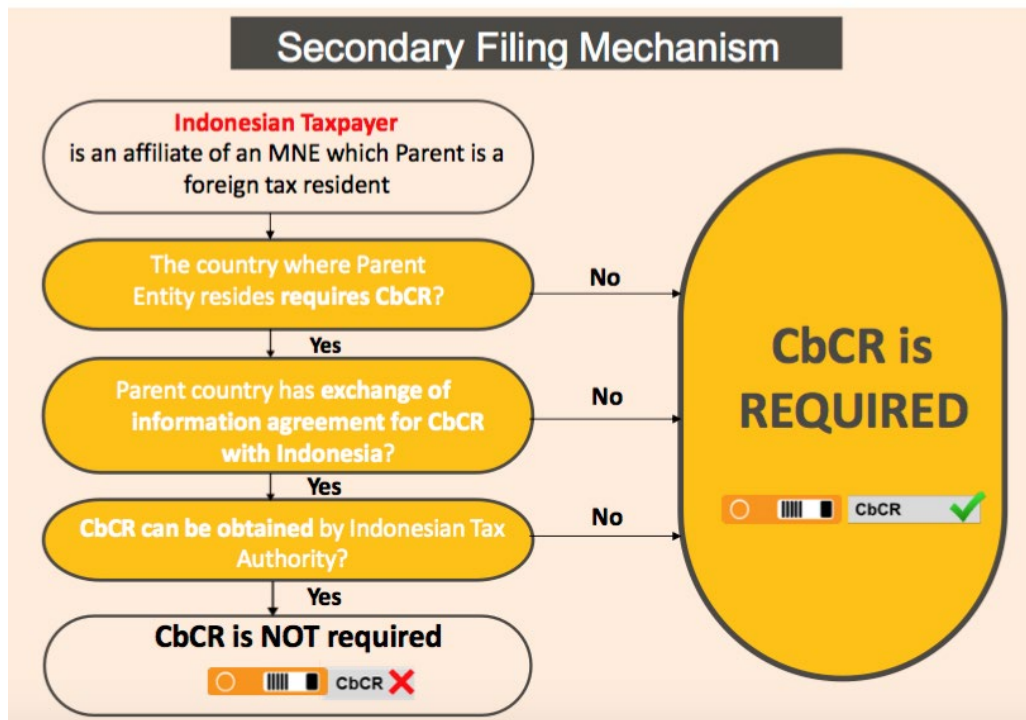
Transfer Pricing

The Ministry of Finance has been issued the new regulation about the transfer pricing that is Minister of Finance Regulation number 213/PMK.03/2016. It implements the guidance on transfer pricing documentation such as who needs to prepare transfer pricing documentation, what comprises transfer pricing documentation, and when transfer pricing documentation needs to be prepared.

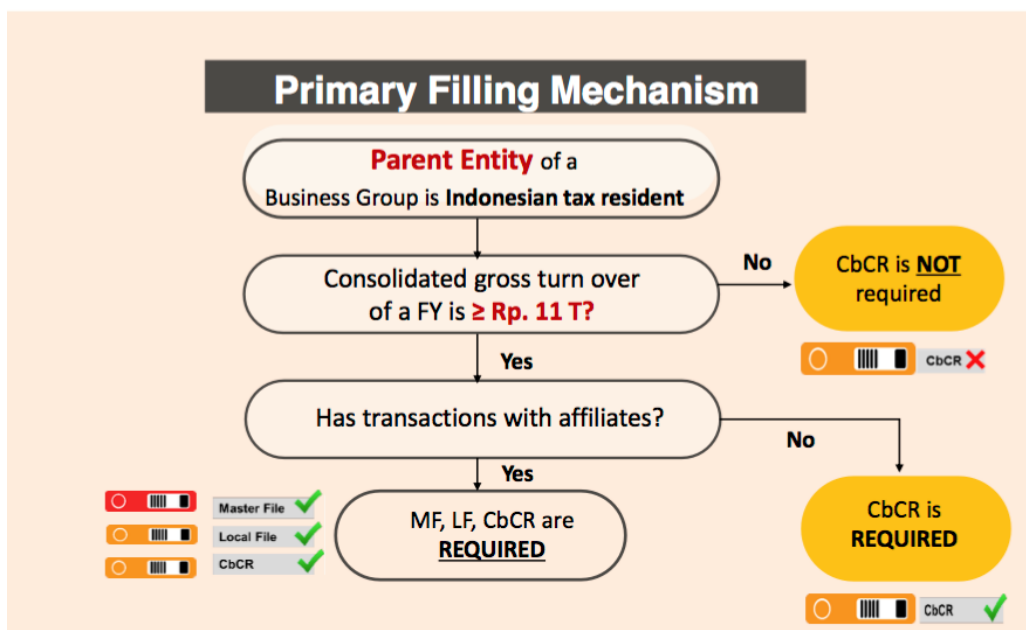
1. Who are required to prepare Master File (MF) & Local File (LF)?



2. Who are required to prepare CbCR? (2)



2. Who are required to prepare CbCR? (1)



More detailed about the transfer pricing can be accessed in Minister of Finance Regulation number 213/PMK.03/2016.

Individual Tax

Individual Tax Rates. Income that earned by individual tax residents is subject to following normal tax rates:

Taxable Income	Rate
< Rp 50.000.000	5%
Rp 50.000.000 - Rp 250.000.000	15%
Rp 250.000.000 - Rp 500.000.000	25%
> Rp 500.000.000	30%

Main Personal Relief. Annual Non Taxable Income that is called Penghasilan Tidak Kena Pajak/PTKP for resident's individuals is as follows:

Description	Rp.
Taxpayer	54,000,000
Spouse	4,500,000
Each dependant (max of 3)	4,500,000
Occupational expenses (5% of gross income, max Rp 500,000/month)	6,000,000
Employee contribution to BPJS Ketenagakerjaan of old age security saving (2% of gross income)	Full Amount
Pension maintenance expenses (5% of gross income, max Rp 200,000/month)	2,400,000

Tax Payers

Taxpayers consist of resident and non-resident. The resident taxpayer is an individual or an entity. The non-resident taxpayer is a Permanent Establishment (PE) or a non-PE. The resident taxpayer and PE must file an annual tax return.

The Indonesian taxpayer according to Law No.11 year of 2020 implemented since 2nd November 2020 are:

- An individual whether foreigner or Indonesia resident who resides in Indonesia or is present in Indonesia for more than 183 days within any 12-month period, or an individual who is present and intend to stay in Indonesia within a particular fiscal year ;
- An entity established or domiciled in Indonesia except for government entity which its budget and report are according to law ; and
- Inheritance not divided yet to the entitled party.

The non-resident taxpayer means:

- An individual who does not domicile in Indonesia;
- A foreigner who is not present in Indonesia for more than 183 days within any 12-month period;
- An Indonesia citizen who is stay abroad for more than 183 days within any 12-month period with further detail in upcoming Finance Minister regulation; and

- An entity which is not established or domiciled in Indonesia or deriving its income from Indonesia other than from conducting business or carrying out activities through a permanent establishment.

WITHHOLDING TAXES

Withholding taxes is the main system by which Indonesian income tax is gathered.

Whenever a specific income item is subject to withholding tax, the taxpayer has the responsibility to withhold or collect the tax.

The rates of withholding tax vary according to the nature of the income source. Rates for domestic payments range up to 15%. Payments made overseas on certain sources of income may be liable to withholding tax of up to 20%. Applicable tax treaties may reduce the rate of withholding tax.

Generally, the payer is held responsible for withholding or collecting the tax. These withholding taxes are referred to by the relevant article of the Income Tax Law, as outlined in the sections below.

- **ARTICLE 21, INCOME TAX**

Taxable income is calculated from the gross revenue less occupation costs (*biaya jabatan*) and pension contributions, including contributions for old age savings.

The regulation of the Director General of Tax PER-16/PJ/2016 about the technical guidelines of withholding, payment and filing of Article 21 Income Tax and / or Article 26 Income Tax relate to work, services and tax payer activity.

Employers are needed to withhold Article 21 income tax from the salaries payable to their employees and to pay the tax to the state treasury on their behalf. The same withholding tax is applicable to other payments to non-employee individuals (e.g. fees payable to individual consultants or service providers). Resident individual taxpayers who don't have a tax ID number (NPWP) are subject to a surcharge of 20% in addition to the standard withholding tax.

PANDEMIC COVID-19

Minister of Finance issued a MoF Regulation No 110/PMK.03/2020 (PMK-110) about tax incentives for taxpayer during pandemic COVID-19 which explains the Article 21 income tax will be borne 100% by the Government for the employee on condition:

- a. The employer has an industry sector classification (Klasifikasi Lapangan Usaha - "KLU") listed in attachment A of PMK-110. The KLU should be in accordance with the ones stated and reported by the employer in its 2018 annual income tax return or data contained in taxation administration (masterfile) of Taxpayers, for Taxpayers who are only registered after 2018 or for Government Agencies. There is total of 1,189 KLU.
- b. The employer has received an Incentive for Inward Processing for Export Purpose (Kemudahan Impor Tujuan Ekspor – "KITE") taxpayer status.

- c. Taxpayer with Bonded Zone Operator permit, a Bonded Zone Entrepreneur license, or Entrepreneurs in the Bonded Zone (Pengusaha di Kawasan Berikat – “PDKB”) permit.
- d. The employee has a tax registration number (“NPWP”)
- e. The employee annual gross income must not exceed IDR 200 million during tax incentive period.
- f. Branch and Central Taxpayer Status.

The objective is to give additional income to the employee at processing industry sector to maintain purchasing power. The incentive is valid until fiscal period of December 2020.

- **ARTICLE 22 INCOME TAX**

Article 22 income tax is applicable to the following:

- The import of goods
- The purchase of goods by the Government requiring payment from the State Treasury and Proxy of Budget User
- The purchase of goods by State Owned Enterprises and some of their subsidiaries
- The sale/purchasing of automotive, steel, cement, cigarettes, and paper products
- The purchase of very luxurious goods.

TABLE 3

Tax rates – imported or purchased goods

	TAX RATE	TAX BASE
Import of goods – using an importer (identification (API))	2.5%	Import value i.e. cost, insurance & freight (CIF) value plus duties payable
Import of goods – without an API	7.5%	Import value i.e. CIF-value plus duties payable
Sale of goods to the government and required payment from the state treasury and proxy of budget user	1.5%	Selling prices
Purchasing of steel products	0.30%	Selling prices
Purchasing of automotive products	0.45%	Selling prices
Purchasing of paper products	0.10%	Selling prices
Purchasing of cement by local distributors	0.25%	Selling prices
Purchasing of luxury goods	5%	Selling prices

Taxpayers without tax registration number are subject to a surcharge of 100% in addition to the standard tax rate.

PANDEMIC COVID-19

Due to COVID-19 pandemic, Minister of Finance issued a MoF Regulation No 110/PMK.03/2020 (PMK-110). There is no longer tax income Article 22 on imports until fiscal period of December 2020.

This incentive is aimed to maintain its import rate and provide cash flow for certain industry as compensation of switching cost transfer from country of origin of import with several condition as:

- a. The taxpayer has an industry sector classification (Klasifikasi Lapangan Usaha - "KLU") listed in Attachment H of PMK-110. The KLU should be in accordance with the ones stated and reported by the employer in its 2018 annual income tax return or data contained in taxation administration (masterfile) of Taxpayers, for Taxpayers who are only registered after 2018 or for Government Agencies. Total of 721 KLU.
 - b. The taxpayer with KITE taxpayer status.
 - c. The taxpayer has obtained a Bonded Zone Operator permit, a Bonded Zone Entrepreneur license, or Entrepreneurs in the Bonded Zone (Pengusaha di Kawasan Berikat – "PDKB") permit at the time of release of goods from a Bonded Zone to other places within the Customs Area. Time of release of goods from a bonded zone to other places within the Customs Area.
 - d. Submit notice on tax exemption letter.
- ARTICLE 4 (2) – FINAL INCOME TAX
Resident companies, PEs, representatives of foreign companies, organisations and particular individuals are required to withhold final tax from the gross payments to resident taxpayers and PEs outlined below.

TABLE 4
Final income tax

DESCRIPTION	TAX RATE
Rental of land and/or buildings	10%
Proceeds from transfers of land and building rights	2.5% (Proceed from the transfer of real estate assets to a Real Estate Investment Fund is subject to 5% tax rate)
Fees for performance of construction work	2% (for a small qualification service provider) or 3% (for other qualification service providers) or 4% (for non-qualification service providers) For contracts signed before 1 January 2008: The new tax rates (as mentioned above) apply for payment contracts or part of the contracts as of 31 December 2008 and onwards The previous tax rates apply for those contracts signed before 1 January 2008
Fees for construction work planning	4% (for a qualification service provider) or 6% (for a non-qualification service provider)
Fees for construction work supervision	4% (for a qualification service provider) or 6% (for a non-qualification service provider)

Interest on time or saving deposits and on Bank Indonesia Certificates (SBIs) other than that payable to banks operating in Indonesia and to government-approved pension funds	20%
Interest on bonds other than that payable to banks operating in Indonesia and government-approved pension funds	15% or if the recipient is a mutual fund registered with the Financial Services Authority (Otoritas Jasa Keuangan/OJK), the tax rate is 5% until 2020 and 10% thereafter. If the recipient is a non-resident taxpayer, the tax rate is 20% or a lower rate in accordance with the relevant tax treaty.
Sale of shares on Indonesian stock exchanges	0.1%
<p>Founder shareholders may opt to pay tax at 0.5% of the market price of their shares upon listing. If they do not opt for this, gains on subsequent sales are taxed under normal rules</p>	
Income from lottery prizes	25%
Certain income received by individuals and corporate (except PEs) with gross turnover of not more than Rp 4.8 billion in one fiscal year	0.5% yet this regime is optional for eligible taxpayers and only applicable for certain period of time depending on the type of taxpayer.

PANDEMIC COVID-19

Due to pandemic COVID-19, Minister of Finance issued a MoF Regulation No 110/PMK.03/2020 (PMK-110) about incentives for Article 4 paragraph (2) final income tax. The incentive is valid until fiscal period of December 2020.

Final Income Tax on income for construction service received or obtained by the P3-TGAI (Program Percepatan Peningkatan Tata Guna Air Irigasi) Taxpayer is borne by the Government.

- **ARTICLE 23 INCOME TAX**

The Regulation of the Ministry of Finance No. 244/PMK.03/2008 Income Tax Article 23 concerns certain types of income paid or payable to resident taxpayers. These taxpayers are subject to Article 23 income tax at a rate of either 15% or 2% of the gross amounts.

Article 23 income tax is due at a rate of 15% for the gross amounts on the following:

- Dividends
- Interest, including premiums, discounts and loan guarantee fees
- Royalties
- Prizes and awards.

Article 23 income tax is due at a rate of 2% for gross amounts on the fees of the following:

- 1) Rentals of assets other than land and buildings
- 2) Technical services

- 3) Management services
- 4) Consulting services
- 5) Appraisal services
- 6) Actuary services
- 7) Accounting services
- 8) Design services
- 9) Drilling services for oil and gas mining except for those performed by a PE
- 10) Support services for oil and gas mining
- 11) Mining services other than oil and gas support
- 12) Flight and airport support services
- 13) Forest felling services
- 14) Waste processing services
- 15) Labour supply/outsourcing services
- 16) Intermediary/agency services
- 17) Custodianship and storage services except for those performed by stock exchanges (KSEI and KPEI)
- 18) Sound dubbing services
- 19) Film mixing services
- 20) Computer and software-related services
- 21) Installation services (for example, of electricity, machinery, or telephone equipment) except for those rendered by qualifying construction companies
- 22) Maintenance and improvement services (for example, for electricity, machinery, or telephone equipment) except for those rendered by licensed construction companies
- 23) Manufacturing services (*maklon*)
- 24) Investigation and security services
- 25) Event organisation services
- 26) Packaging services
- 27) Provision of space and/or time for the dissemination of information
- 28) Pest eradication services
- 29) Cleaning services
- 30) Catering services.

- ARTICLE 26

Resident taxpayers, organisations and representatives of foreign companies are required to withhold tax at a rate of 20% from the following payments to non-residents:

- On gross amounts :
 - Dividends
 - Interest, including premiums, discounts (interest), swap premiums, and guarantee fees
 - Royalties, rents and payments for the use of assets
 - Fees for services, work, and activities
 - Prizes and awards
 - Pensions and any other periodic payments
 - Swap premiums and other hedging transactions
 - Gains from debt write-offs

- After-tax profits of a branch or PE.
- On estimated net income (ENI), being a specified percentage of the gross amount as shown in the table below.
- Law No.11 year of 2020 explains that the tariff for 20% from total gross of party who is obligated to pay interest including premium, discount, and reward in relation with debt repayment guarantee can be reduced as explain in the upcoming Government Regulation.

TABLE 5
Tax rates on estimated net income (ENI)

	ENI	EFFECTIVE TAX RATE
Insurance premiums paid to insurance companies:		
• by the insured		
• by Indonesian insurance companies	50%	10%
• by Indonesian reinsurance companies	10%	2%
	5%	1%
Sale of non-listed Indonesian company shares by non-residents	25%	5%
Sale of a conduit company located in tax haven country where this company serves as an intermediary for the holding of Indonesian company shares or a PE	25%	5%

Where the recipient is resident in a country which has a tax treaty with Indonesia, the withholding tax rates may be reduced or exempted.

PERIOD OF TAX PAYMENT AND TAX RETURN FILING

TABLE 6
Monthly tax obligations

TYPE OF TAX	DEADLINE FOR TAX PAYMENT	DEADLINE FOR TAX RETURN
Article 21/26 Income Tax	The 10th of the following month	The 20th of the following month
Article 23/26 Income Tax	The 10th of the following month	The 20th of the following month
Article 25 Income Tax	The 15th of the following month	The 20th of the following month
Article 22 Income Tax – tax collector	The 10th of the following month	The 20th of the following month
Article 4(2) Income Tax	The 10th of the following month or 15 th of the following month for other specific gross turnover	The 20th of the following month
VAT and LST – taxable enterprise	Before submitting the tax return in the following month	The end of the following month

VAT and LST – taxable collector	Before submitting the tax return in the following month	The end of the following month
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TABLE 7
Annual tax obligations

TYPE OF TAX	DEADLINE FOR TAX PAYMENT	DEADLINE FOR TAX RETURN
Corporate income tax	The ending of the fourth month after the book year end before filing the tax return	The ending of the fourth month after the book year end
Individual income tax	The ending of the third month after the book year end before filing the tax return	The ending of the third month after the book year end
Land and building (L&B) tax	Six months after the receipt of a Tax Due Notification Letter (SPPT) from DGT Office	N/A
Duties on the acquisitions of L&B rights	On the date of acquisition	N/A

EXTENDED FILING DEADLINE

In terms of the annual income tax return, there is a possibility for taxpayers to extend their filing deadline up to two months. This can be done by filing a written notification to the DGT before the deadline and attaching a tentative tax calculation. Based on the tentative calculation, the tax due will have to be settled before submitting the extension notification.

A 2% of interest penalty per month is applicable to the difference until the shortfall is paid whenever the actual tax is due if the final tax calculation is higher than the tentative calculation.

ELECTRONIC CERTIFICATE OF WITHHOLDING INCOME TAX ARTICLE 23 AND 26

Since fiscal period of August 2020, all taxable employers who are registered at Pratama Tax Office must issue certificate of withholding tax article 23 and 26 by e-Bupot as regulated by Directorate General of Taxes Decree No. KEP-269/PJ/2020 in realisation implementation of Directorate General of Taxes Regulation No. PER-04/PJ/2017. The respective taxable employers are as such regulated in Directorate General of Taxes Decree No. KEP-599/PJ/2019. Yet the others must comply start from October 2020 for fiscal period of September 2020. The e-Bupot requires electronic certificate for signature and its serial numbers are centralized. Verification of both certificate of withholding tax article 23 and 26 and its electronic report are by QR Code scan.

INCOME TAX

Income tax is applied to resident corporations and individuals on most sources of increased economic wealth.

For tax purposes, a company is treated as a resident of Indonesia by virtue of its establishment or place of management in Indonesia. A foreign company carrying out business activities through a permanent establishment (PE) in Indonesia will generally have to assume the same tax obligations as a resident taxpayer. Resident taxpayers and Indonesian PEs of foreign companies have to settle their tax liabilities either by direct payments, by withholding by third parties, or a combination of both. Foreign companies that do not have a PE in Indonesia are to settle their tax liabilities in respect of their Indonesian-sourced income by way of the Indonesian party paying the income withholding the tax.

Income tax shall be imposed on any taxpayer in respect of income during a taxable year. Thus, the imposing of income tax is determined by the taxable person/entity and the tax object i.e the income. A taxable year is a certain period for imposing the income tax. The taxable year is the calendar year.

The Income Tax Law governs income tax imposition on taxpayers related to income received or accrued in a taxable year. The taxpayer is subjected to tax if that person receives or accrues income. A person/entity receiving income is called a taxpayer under this law. A taxpayer is taxed on the income received or accrued during a taxable year or a fraction of a taxable year, if the tax obligations commence or end in a taxable year.

TAXABLE OBJECT

The taxable object is income. An increase in economic benefit (income) derived by a taxpayer which may be used for consumption or to increase the wealth of the taxpayer concerned, under any name and form whatsoever, includes:

- Any remuneration / compensation related with work, services or activities gained from employment or an independent profession, including:
 - Wages, salary, honoraria
 - Doctor's, actuarial, accountant's and lawyer's fees
- Any income or compensation from any business or activity
- Any income from capital including from movable and immovable assets, such as rewards and gains from loan 'haircuts' etc.

VALUE ADDED TAX

The Law of the Republic of Indonesia No. 42 of 2009, the third amendment of the Law No 8 of 1983 about the Value Added Tax and Luxury Sales Tax, regulates value added tax (VAT) and luxury sales tax (LST).

VAT is applicable to the import and delivery of most goods and services. Insurance and banking are not subject to VAT.

The standard rate of VAT is 10%. The export of goods is zero-rated.

Effective as of 1 January 2014, a tax subject with a total turnover under IDR 4,800,000,000/year is not subject to VAT registration (being considered a small enterprise)

Taxpayers are required to submit a tax return in the following month and shows details of all output and input VAT. The net output VAT is payable before the end of the following month. Any excess of input VAT may be carried forward to the following month or refunded.

Suppliers who trade with so called 'VAT collectors' will not collect VAT from their customers or clients. The VAT is paid direct to the state treasury. Such suppliers may be in a constant overpayment situation and may be forced to seek regular refunds.

Value added tax (VAT) is typically due on events involving the transfer of taxable goods or the provision of taxable services in the Indonesian customs area. According to Article 4 of the Indonesian VAT Law, VAT is imposed on:

- Deliveries of taxable goods in the customs area
- Importation of taxable goods
- Rendering of taxable services in the customs area
- Use or consumption of intangible taxable goods in the customs area on goods obtained from outside the customs area
- Use or consumption of taxable services in the customs area of services originating from outside the customs area
- Export of taxable goods.

The delivery of taxable goods is defined very broadly and includes the following:

- Deliveries of a title to taxable goods according to an agreement
- Transfers of taxable goods according to a leasing-with- option or a finance-lease agreement
- Deliveries of taxable goods to an intermediary trader or an auction official
- Own-use and/or free gift of taxable goods
- Remaining taxable goods and certain assets, which were originally not for sale, at a company's dissolution
- Deliveries of taxable goods within a company (eg between branches, or between the head office and its branches) unless the company centralises its VAT reporting (subject to the DGT's approval)
- Deliveries of goods on consignment.

NON-TAXABLE GOODS AND SERVICES

There are several kinds of goods which are excluded as taxable goods in Article 4A of Indonesian VAT Law. They are:

- Products of mining and drilling that are extracted directly from the source, for example crude oil, natural gas, geothermal energy, sand and gravel, coal (before processing into coal briquettes), iron ore, tin ore, copper ore, gold ore, silver ore and bauxite ore
- Basic commodities for public consumption e.g. rice, salt, corn, sago and soy beans
- Food and beverages served in hotel, restaurants and other such places
- Money, gold, valuable documents and securities.

NON-TAXABLE SERVICES

There are also several types of services that are excluded from VAT as follows:

- Medical health services
- Social welfare for example orphanages and funeral services
- Postal delivery
- Banking, insurance and financial leasing services

- Religious services
- Education
- Culture and entertainment which has been imposed regionally
- Entertainment tax
- Broadcasting services not including advertising
- Shipping and inland public transportation and international air services
- Transport
- Manpower
- Rendering of services by the government to run the government
- Hotel services.

VAT MECHANISM

In general, taxpayers who provide taxable goods or perform taxable services have to impose VAT to the buyer. The imposing of VAT is performed by withholding a 10% VAT rate of the tax base. VAT on the export of taxable goods is fixed at 0%. The effective VAT rate on deliveries and import of tobacco products is 8.5%.

The taxpayer has to make a tax invoice as evidence for this VAT withholding. The tax invoice is made when selling and it is called the output tax invoice. The VAT withheld is called output tax.

When taxpayers buy taxable goods or taxable services, they have to pay an additional payment of VAT which is withheld by their supplier. This VAT is called the input tax and the withholding proof is called the input tax invoice.

Taxpayers have to calculate how much they withhold in output tax and how much input tax they have in a month period. The output tax in a month is subtracted or credited to the input tax in a month. If the result is positive, taxpayers have to pay in to a government account. If the result is negative, the taxpayer can ask for restitution from the government.

VAT REPORTING

Companies and individuals as taxable enterprises are required to report their business activities and settle VAT liabilities on these every month. VAT is usually to be accounted for on a decentralisation basis. As a result, a company carrying out business activities through a number of business units (branches) in the working areas of different district tax service offices (KPP) must register each unit with the relevant KPP. It is in this context that internal deliveries of taxable goods within a company are subject to VAT.

Subject to DGT approval, a company may centralise its VAT reporting and so may exclude internal deliveries of taxable goods from the scope of VAT. To obtain DGT approval, a company must satisfy a number of conditions, including sales administration centralisation and the removal of the business units to be centralised from any deliveries of taxable goods. However, companies who file e-tax returns may choose to centralise their VAT reporting without satisfying the other conditions; they simply need to submit written notification to the DGT.

Companies registered with certain tax service offices (KPP PMA, KPP Badora, KPP Go Public, LTO, and MTO tax offices) are required to centralise their VAT reporting.

VAT liabilities are typically settled by using an input-output mechanism. A vendor of taxable goods or a taxable service must typically charge VAT to the buyer. From the vendor's perspective, it is an output tax. The buyer has to pay the VAT to the vendor. From the buyer's perspective, it is an input tax. To the extent that the goods are necessary for running the buyer's business, the input tax can be credited against the buyer's own output tax. Similarly, the vendor can also offset the output tax against input tax on the acquisition of taxable goods or taxable services. If the accumulated output tax for a particular month exceeds the accumulated input tax for the same period, the taxpayer in question has to settle the difference by the 15th of the month following. If, however, the accumulated input tax for a particular month exceeds the accumulated output VAT, the taxpayer may ask for a monthly refund or carry over the overpaid VAT to the following months.

Import VAT on goods and self-assessed VAT on the consumption or use of foreign taxable services or intangible goods should be understood in the context of the standard input-output mechanism.

Because a non-resident vendor or service provider cannot charge VAT (cannot, in other words, issue tax invoices) to the Indonesian buyer/importer, the Indonesian buyer/importer has to pay the VAT for and on behalf of the non-resident vendor or service provider. To the degree that goods/services imported or procured are necessary for running the importer/service recipient's business, the input VAT (import VAT and self-assessed VAT) is claimable as a tax credit.

A deviation from the standard mechanism, however, is in force for deliveries of taxable goods and services to VAT collectors. The VAT collector is currently either the state treasury or PSC companies (including Pertamina).

COVID-19: VAT

Due to COVID-19 pandemic, Minister of Finance issued a MoF Regulation No 110/PMK.03/2020 (PMK-110) about VAT refunds restitution. To be eligible, taxpayers should meet criteria below:

- a. The employer has an industry sector classification (Klasifikasi Lapangan Usaha - "KLU") listed in attachment P of PMK-110. The KLU should be in accordance with the ones stated and reported by the employer in its 2018 annual income tax return or data contained in taxation administration (masterfile) of Taxpayers, for Taxpayers who are only registered after 2018 or for Government Agencies. There is total of 716 KLU.
- b. The employer has received an Incentive for Inward Processing for Export Purpose (Kemudahan Impor Tujuan Ekspor – "KITE") taxpayer status
- c. The taxpayer has obtained a bonded zone operator permit, a bonded zone entrepreneur license, or entrepreneurs in the bonded zone (Pengusaha Di Kawasan Berikat – "PDKB") permit at the time of release of goods from a bonded zone to other places within the customs area. Time of release of goods from a bonded zone to other places within the customs area.
- d. Filled overpaid monthly VAT returns with the amount of tax refunds must not exceed IDR 5 billion.

The incentives goals to maintain company's liquidity that affected by the COVID-19 and optimize cash management.

OTHER TAX CONSIDERATIONS

SALES TAX ON LUXURY GOODS

Sales taxes also include a sales tax on luxury goods (PPnBM). This tax applies at the point of import or manufacture and is additional to VAT. It is a non-creditable one-off tax and applies to a wide range of goods.

In addition to VAT, deliveries or imports of certain manufactured taxable goods may be subject to LST (Luxury-goods Sales Tax). A particular item will only attract LST once ie tax will be charged either on importation of the goods or on delivery by the (resident) manufacturer to another party.

LST must be accounted for every month together with VAT. The importer or the manufacturer of the goods is held responsible for the settlement of LST.

To ascertain whether or not a particular item is subject to LST and to identify the LST rate, reference should be made to the Customs Book using the relevant harmonised system (HS) code.

According to the VAT & LST Law, the LST rate may be increased up to 200%, however currently the LST rates are between 10%-125%.

SPECIAL INDUSTRY RULES

Certain industries, in particular production sharing contractors, mining companies under contracts of work and geothermal projects are subject to income tax in accordance with specialist rules. Rates of tax vary according to the generation of each respective contract.

MULTILATERAL CONVENTION TO IMPLEMENT TAX TREATY RELATED MEASURES TO PREVENT BASE EROSION AND PROFIT SHIFTING

Indonesia signed this Convention on 7th June 2017 and it provided a list of reservations and notifications on the same date, which are still subject to ratification. However, Indonesia has brought in 47 tax treaties up to now.

ACT NO. 11 OF 2020: OMNIBUS LAW

Article 113 of Law No.11 of 2020 concerning contains several points of amendment and / or addition of tax provisions from Act Number 6 of 1983 concerning General Provisions and Tax Procedures (State Gazette of the Republic of Indonesia of 1983 Number 49, Additional to the State Gazette of the Republic of Indonesia Number 3262) that has been amended several times, most recently by Act Number 16 of 2009.

The Omnibus Law for Taxation has 3 (three) main points:

GENERAL PROVISIONS AND TAX PROCEDURES

Article 9 : Underpayment Penalty

The Omnibus Law eases the penalty for underpayment due to the revision of the Annual Tax Return (SPT).

Administrative sanctions that were originally in the form of interest at 2% per month from the due date of payment to the date of payment and part of the month is calculated in full for 1 month, now it is reduced pro rata, which is based on the benchmark interest rate in the market plus 5% divided by 12 which applies on the commencement date calculation of sanctions.

Article 27 B : Interest Reward

Taxpayers are given interest compensation in the event that an objection, appeal or request for reconsideration is granted in part or in full, resulting in an overpayment of tax.

Whereas taxpayers who submit objections or appeals or reconsiderations, as well as applications for reduction/cancellation of administrative sanctions, or cancellation of incorrect tax collection documents which are partially or completely granted, resulting in an overpayment of tax will be given interest compensation in accordance with Article 27 B.

The procedure for giving interest compensation will be regulated by or based on a Regulation of the Minister of Finance.

VALUE ADDED TAX

Article 1 : Taxable Goods

Taxable Goods handover on a consignment basis and transfer of Taxable Goods for the purpose of paying for share replacement capital are subjects as Non-Taxable Goods.

Article 4 : Non-Taxable Goods

Coal mining products are subjects as Taxable Goods.

Article 9 : Input Tax

For Taxable Entrepreneurs who have not handover goods / services, Input Tax on the acquisition of Taxable Goods and / or Taxable Services, Import of Taxable Goods, Utilization of Intangible Taxable Goods and / or utilization of Taxable Services from outside of the Customs Area within the Customs Area can be credited as long as it fulfils the crediting requirements in accordance with this Law.

Article 9 : Input Tax Excess

Taxable Entrepreneurs who have not handover goods/services could credit the VAT as long as the goods/services will be handover within a period of 3 (three) years.

VAT credit can be applied for a maximum of 3 (three) months as long as it has not been charged or capitalized in the goods / services cost.

INCOME TAX

Article 2: Taxpayer

The definition of Taxpayer are specified as Indonesian citizens or foreign nationals.

The definition of foreign taxpayer is:

1. Individuals who do not reside in Indonesia,

2. Foreign nationals who are in Indonesia for not more than 183 (one hundred and eighty-three) days within a period of 12 (twelve) months;
3. Indonesian citizens who are outside Indonesia for more than 183 (one hundred and eighty-three) days within a period of 12 (twelve) months and meet the following requirements:
 - a. Residence;
 - b. Main activity centre;
 - c. A place to practice habits;
 - d. Tax subject status; and / or
 - e. Other specified requirements

which further provisions regarding these requirements are regulated in the Minister of Finance Regulation;

4. An agency that is not established and is not domiciled in Indonesia who run a business or carry out activities through a permanent establishment in Indonesia or who can receive or earn income from Indonesia not from running a business or carrying out activities through a permanent establishment in Indonesia.

Article 4 : Income Tax Objects

The Omnibus Law state additional non-object of income tax:

1. The distribution of the remaining revenue of cooperation.
2. Income earned by foreigners who are subject to domestic tax under certain conditions.
3. Foreigners with a Double Tax Avoidance Agreement.
4. Payment (claims) from insurance companies.
5. Deposit funds for hajj pilgrimage costs and profits received by the entity.

Income earned by foreigners who work in Indonesia that is paid outside Indonesia is subject to income tax.

Dividends are classified as dividends originating from within the country and abroad. Dividends originating from abroad and income after tax from a permanent establishment abroad received or obtained by domestic corporate taxpayers or domestic individual taxpayers, as long as they are invested or used to support other business activities in the territory of the Republic of Indonesia within a certain period of time, and meets the following requirements:

1. The invested dividend and income after tax is at least 30% (thirty percent) of the profit after tax; or
2. Dividends originating from foreign business entities whose shares are not traded on a stock exchange are invested in Indonesia before the director general of taxes issues a tax assessment.

In the case of dividends after-tax income from a permanent establishment abroad is invested in the territory of the Unitary State of the Republic of Indonesia less than 30% (thirty percent) of the total profit after tax shall apply:

1. The invested dividends and income after tax are exempted from the imposition of income tax;
2. On the difference of 30% (thirty percent) profit after tax less dividends and / or after-tax invested income is subject to income tax; and
3. The remaining profit after tax is reduced by dividends and / or invested income after tax on the difference is not subject to income tax;

In the case of dividends and income after tax from a permanent establishment abroad, is invested in the territory of the Unitary State of the Republic of Indonesia in the amount of more than 30% (thirty percent) of the total profit after tax, the following conditions apply:

1. for dividends and after-tax income invested, are exempted from the imposition of Income Tax; and
2. the remaining profit after tax is reduced by dividends and / or invested income after tax is not subject to Income Tax.
3. Income tax rates on interest payments including premium, discount, and compensation can be reduced by a Government Regulation.

7 – ACCOUNTING & REPORTING

The history of the Indonesian national GAAP (PSAK) began when the Indonesian Accountants Association (IAI), established in 1957, was appointed by the government of Indonesia in 1984 to develop accounting standards to be used mostly for limited liability partnerships.

The IAI then established a committee to develop accounting standards in Indonesia. This committee, which is responsible for developing and implementing the accounting standards, is called the *Dewan Standar Akuntansi Keuangan* (DSAK).

The Indonesian PSAK (SFAS) are mostly based on the International Accounting Standards (IAS), which were recently changed to the International Financial Reporting Standards (IFRS). Indonesia completed its first phase of convergence to IFRS in 2012 by adopting IFRS as of 1 January 2009 and continued to the second phase of IFRS convergence aiming for full adoption of IFRS. At the second stage, the DSAK is committed to maintain a one year difference with IFRS as issued by the IASB until ready for full adoption. Therefore, the expectation is to converge Indonesian national GAAP (PSAK) with IFRS as they stood on 1 January 2015 as of 1 January 2016, etc. unless there is a reason not to do so.

As well as the IAI, the government of Indonesia appointed the Financial Services Authority (OJK) formerly the Indonesian Securities Exchange Commission (BAPEPAM LK) to establish additional reporting regulations designed specifically for publicly held corporations.

PRESENTATION OF FINANCIAL STATEMENTS

In compliance with government regulation, every limited liability partnership in Indonesia should prepare its financial statements in accordance with the financial accounting standards established by the IAI.

The Indonesian Financial Accounting Standards (IFAS) require that financial statements consist of an income statement, balance sheet, statement of equity, and a note to the financial statement. With the exception of the cash flow statement, financial statements must be prepared based on the accrual basis, and on the assumption that the company will remain in operation for the foreseeable future.

Financial statements should be prepared annually and audited by a registered public accounting firm if the company meets any one of the following criteria:

- The company is utilising public funds
- The company has issued obligations
- The company is a publicly held corporation.

For a company that meets one of the criteria above, the audited financial statements should then be verified and signed by the board of directors and published in the local Indonesian newspaper.

Moreover, the Minister of Trade and Commerce requires the filing of the audited financial statements for every limited liability partnership that meets the following criteria:

- The entity is a publicly held corporation
- The entity is utilising public funds

- The entity has issued obligations or promissory notes
- The entity has total assets exceeding IDR 50,000,000,000.

ACCOUNTING FOR TAX

For tax purposes, a company's books have to be maintained in conformance with the prevailing accounting standards where in many cases according to functional currency unless the tax law states otherwise. The books must be presented in Rupiah, written in Indonesian and stored in Indonesia.

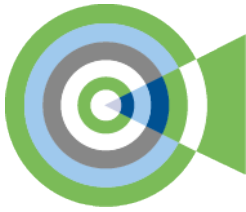
Foreign-investment (PMA) companies, PEs, and subsidiaries of foreign companies can keep their books in USD and compile them in English with specific DGT approval. A collective investment contract (KIK) may permit the usage of USD accounting where it relates to USD-denominated investment funds. A DGT approval application must be submitted with the DGT office no later than three months before the start of the USD accounting year. The DGT is required to decide on the application within a month. If no decision is made within that time, the application is automatically approved.

Companies that are regulated by a production sharing contract (PSC) or a contract of work (CoW) with the government may apply for USD accounting in English by giving some notification to the DGT in writing. This notification has to be submitted to the DGT office no later than a month before the beginning of the USD accounting year. A company can also compile its books in English but keep them in IDR. In this case, the company must submit a written notification to the DGT no later than three months before the beginning of the tax year in which the books are composed in English. The usage of a foreign language other than English and a foreign currency other than USD in a company's books is not allowed.

Irrespective of the currency and the language used, companies typically have to settle their tax liabilities in IDR (except for PSC companies) and file tax returns in Indonesian. For corporate income tax, the assertions must be presented in USD side by side with IDR in the annual corporate income tax returns.

A company that has obtained approval to maintain USD accounting may return to IDR accounting subject to DGT approval. Once approval is granted, the company may not re-apply for USD accounting approval during the five years after the cancellation of the USD accounting.

8 – UHY REPRESENTATION IN INDONESIA



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