AHK EKONID

NEWSLETTER

LAW & TAXES

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Dear Members, dear Readers,

It is my pleasure to welcome you again to the 7th edition of Newsletter Law and Taxes.

The beginning to the second half of 2017 is marked by a number of interesting developments, but perhaps the most recent and interesting development is the upgrade of Indonesia investment grade by the last of the three major rating agencies, Standard and Poor's (S&P). The agency upgraded Indonesia's sovereign rating to investment grade on May 19, citing reduced risks regarding the country's fiscal condition due to an increased focus on realistic budgeting. This upgrade follows Fitch, which upgraded Indonesia to investment grade in December 2011, and then Moody's in January 2012.

It is not immediately clear how the upgrade will affect Indonesia's foreign direct investment. Many analysts have understandably concluded that foreign direct investment to Indonesia will see an increase. But as Indonesia has had investment grade status from the other two major agencies for over five years, the question has been less about "when", but more about "how much exactly". Whatever the case may be, Indonesia's macroeconomic outlook remains stable, if not positive.

In this edition of Newsletter Law & Taxes our cooperation partners share their expertise on recent Indonesian legal and tax developments including but not limited to the Banking and Finance, Corporate Law, Tax Audit, Corporate Taxation, Intellectual Property Rights, Arbitration, Infrastructure, Natural Resources, Labor, Access to Financial Information for Tax Purposes, Tax Treaty, Trade Law, and Power Projects.

We have also published, in cooperation with our partner Schulz Noack Bärwinkel, our first Network Law and Taxes "Compliance in Indonesia 2017: A Guide into Compliance Practice in Indonesia". The Publication offers firsthand analysis and testimonies from corporate legal experts who are active in Indonesia on the topic of compliance. I urge you give this publication a read and I hope that it can be of some assistance to you in your future endeavors.

I would like to thank our cooperation partners who shared their valuable insight. We hope that you find this edition of EKONID's Newsletter Law & Taxes to be both informative and interesting.

Cassandra S. Paulira

Head of Corporate Services

Power Projects

Indonesia Pushes Renewable Energy Sector

With Decree No. 12/2017 the Energy and Mineral Resources Ministry of Indonesia conducts one important step to reach its target to procure 23 percent of all energy from new and renewable energy sources by the year 2025. The aimed 23 percent stand in a strong contrast to the current proportion of around 7 percent - showing that there is still a long way to go.

The new Decree requires the state electricity company PLN to purchase electricity power generated by power plants that utilize renewable energies (*i.a.* solar energy, wind, hydroelectric power, biomass, biogas, urban waste as well as geothermal energy). The power is purchased in one of the following two ways: either through an auction system (where the power plants utilize advanced technology, are of variable efficiency and/or highly dependent on local weather conditions), or by using a benchmark price or direct appointment mechanism (where the criteria above do not apply).

Selection criteria for power plant tenders will be *i.a.* the company's financial strength, the company's ability to develop IPP projects and its experience in power generation. The purchase price should be calculated from the basic cost incurred by the PLN from the generation of electrical power by power plants, which is known as the Basis Production Price (BPP), and which excludes the costs involved in the distribution of electrical power. The auction system especially offers German companies with their advanced technology a chance to sell power plants to Indonesia on a large scale. Following the issuance of the Decree, PLN has announced the first package of competitively tendered solar PV projects only couple of days ago. *E.g.* because of the low ceiling price that was set, the tender was accompanied by the question if this will be attractive enough for project developers in the future.

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Corporate

Government Assistance for Start-Ups

Indonesia with a steadily growing number of mobile and internet users and a young, creative population is considered as one of the promising future countries for the international start-up scene. But potential founders keep on pointing out that more support by the government would be required to fulfill Indonesia's full potential in this area in the future, especially in order to create new technology in Indonesia.

Following this appeal by potential founders, the Head of the Creative-Economy Agency (*BEKRAF- Badan Ekonomi Kreatif*) recently issued a Regulation on the Granting of Government Assistance for Startups in order to promote the start-up scene in Indonesia. According to this Regulation, any startup which is eligible to apply for assistance in the form of grants from the government must have been or must currently be undergoing an incubator program organized by the government.

Priority will be given to any start-ups which have enrolled with the BEKRAF for a Pre-Start-Up program. To apply for grant assistance, a startup must satisfy the relevant requirements and also undergo a certain procedure set out in the appendix to the regulation. Then a Proxy Agency of the BEKRAF determines which startups are eligible.

The Government grants will be sourced from the State Budget of the BEKRAF and are to be used for the following purposes: 1) Capital development; 2) The development of infrastructure and facilities; and/or 3) The enhancement of human-resource capacities. Even though the new regulation is considered as a step into the right direction by potential founders, it is criticized at the same time as being too inflexible and not sufficient to protect the Indonesian start up landscape in the ongoing international competition for start-ups and new technologies.

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M&A

New Requirements for Mergers and Consolidation Proposals

The Financial Services Authority (*OJK – Otoritas Jasa Keuangan*) recently issued Regulation No. 74/POJK, 04/2016 on Mergers and Consolidations Involving Publicly-Listed Companies. This regulation adds five documents that must be included in any merger or consolidation process proposal (M/C) made to the Financial Services Authority. The following documents and information are additionally required since the regulation came into effect on 28 December 2016: 1) Business activities, capital and shareholder structures, and information relating to management and supervision; 2) Summary of an assessment undertaken by assessors relating to share value and auditing opinions as regards the M/C; 3) Future business plans after the M/C; 4) Information relating to any new controlling shareholders; and 5) Management analysis and discussion of the companies which will undertake the M/C.

Furthermore, the new regulation provides that after an M/C has been approved by the Financial Services Authority, Public Companies are required to hold a General Meeting of Shareholders. This meeting is required to secure shareholders' approval in regard to the M/C. In this context special attention is being paid to any transactions which involve any conflicts of interests. Please note that where the General Meeting of Shareholders rejects the M/C, a new proposal may only be submitted to the General Meeting of Shareholders after a 12-month period has elapsed, making a solid preparation of the General Meeting of Shareholders even more important than before.

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Schulz Noack Bärwinkel (SNB) is a German law firm based in Hamburg, which was established in 1929. Over the years we developed a strong focus on the Asian markets, especially China, Vietnam and Indonesia. Today SNB maintains offices in China and Southeast Asia with an international team led by highly experienced German attorneys.

Through our partnership with a leading Indonesian commercial and corporate law firm, we provide our clients with high quality legal services.

Our team consists of German-speaking attorneys with substantial Asia experience and language skills, combined with a thorough understanding of the Indonesian business environment.

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Intellectual Property Rights

Trademark Law Implementing Regulation Enhances Well-known Brands Protection

The long-awaited trademark law implementing regulation has finally been issued. Minister of Law & Human Rights Regulation No. 67 of 2016 on Marks Registration ("Regulation 67") addresses several crucial issues, including well-known marks protection for both similar and dissimilar goods or services, particularly matters relating to bad-faith registration based on similarities to registered or well-known trademarks.

Regulation 67 provides that one of the factors in determining whether a mark is well known is the degree of recognition it enjoys in the relevant sector of the public - whether at the level of production, promotion, distribution or sale of goods or services bearing the mark. The regulation further sets out other factors to be considered in determining whether a mark is well known, including (i) sales volume and profit; (ii) brand's market share; (iii) geographical extent; (iv) duration of use; (v) promotion; (vi) international registration; (vii) trademark enforcement; and (viii) brand value.

These factors are also key in determining refusal of an application due to similarities to well-known marks for both identical or similar goods or services and dissimilar goods or services. For dissimilar goods, however, Article 19(3) of Regulation 67 sets out two additional requirements: the well-known mark owner's written opposition to the application at issue and registration of the well-known mark.

Prior registration is thus paramount for mark owners if they are to argue their case against potentially infringing applications for dissimilar goods or services. Otherwise, there may be little to no basis for the examiners to deny such applications filed in different class(es) despite any bad-faith red flags. Also, brand owners that fail to register their marks and file an opposition action may stand little chance in litigation involving dissimilar goods, as the judges will consider those two requirements when deciding on such case.

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Arbitration

Inconsistency in the Indonesian Court's View on the Enforcement of International Arbitration Awards Containing Injunction Order

On 7 May 2009, in the case between Astro Overseas Limited et al. (the Claimant) and PT Direct Vision et al. (the Respondent), SIAC Arbitration Tribunal rendered an Award under SIAC Rules Number: 62 of 2008 containing injunction order which essentially orders the Respondent to cease all relevant ongoing and future legal actions taken by the Respondent. On 28 October 2009, the Central Jakarta District Court issued a decree stipulating that, among others, such SIAC Award is not executable because the merits of the SIAC Award intervenes the Indonesian legal process under the prevailing laws and regulations ("Astro Decree"). This Astro Decree was affirmed by the Supreme Court of Indonesia in its Judgment No. 01 K/Pdt.Sus/2010 stating that the injunction order contained in the SIAC Award violates the souvereignty of the Republic of Indonesia because no foreign power can intervene an ongoing legal process in Indonesia, thus it violates the public order.

However, on 12 December 2011, the Central Jakarta District Court issued the exequatur decree No. 125/2011.Eks stipulating that the SIAC Award ARB 102/10/MXM, in the case between Newmont Indonesia Limited et al. (the Claimant) and PT Pukuafu Indah et al. Respondent), is executable ("Newmont Decree"). It is interesting because one of the dictas of the foregoing award is to order the Respondent ceasing all relevant ongoing and future legal actions taken by the Respondent. This order is basically the same with the injunction order in Astro Decree, but the Central Jakarta Distric Court (being the same court rendering the Astro Decree) does not provide any elaboration on this order and eventually declares the SIAC Award ARB 102/10/MXM is executable.

The above shows that there is still an inconsistency among the Indonesian courts (at least the Central Jakarta District Court) in viewing the enforceability of injunction order in Indonesia.

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Infrastructure

New Regulation on Construction Services

Indonesia has recently issued Law Number 2 of 2017 on Construction Services (New Construction Law). The New Construction Law revokes Law Number 18 of 1999 on Construction Services which had been implemented for almost 18 years. The main purposes of the New Construction Law are to boost the development of domestic construction technology and prioritizing domestic materials in construction purposes. As the implementation of those purposes, the New Constriction Law adds a new chapter regarding responsibilities and authorities of the Central Government. To date, the Central Government has the authority to publish domestic construction technology to all stakeholders (whether national or international) in the framework of boosting domestic construction potential.

The New Construction Law has changed names of types of construction services to become (i) construction consultation business, (ii) construction work business, (iii) and integrated construction work business, whereas it is further divided to several categories. The amendment to the types of construction services is conducted by taking into account to the evolution and development of international construction services. The detailed regulation on the types of construction services will be regulated in implementing regulation. However, the Government of Indonesia has not issued implementing regulation of the New Construction Law, so that the previous implementing regulations are still valid. Government of Indonesia will issue the implementing regulation no later than 2 years since the issuance of the New Construction Law.

With regards to the obligation and licenses of construction companies, the New Constriction Law still obliges foreign companies undertaking construction service in Indonesia to establish a representative office and/or form a joint venture scheme with a domestic construction company. In addition, companies engaging on construction services are still required to obtain construction business licenses and corporate certificate. In conclusion, the New Constriction Law contains more detail and comprehensive provisions compared to the previous Law.

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Natural Resources

A Lifting of the Export Ban but a Changed Framework Altogether

The combination of Government Regulation 1/2017 (GR 1/2017) and Ministry of energy and Mineral Resources Regulation 9/2017 (MEMR 9/2017) may lead to heavier restrictions on foreign-owned companies in terms of divestment and is a setback for refineries and smelters that have been planning for the mineral export ban that had been set to take effect in mid-2017.

According to GR 1/2017, foreign-owned companies holding a IUP (Mining Licence) or IUPK (Special Mining Licence) must – regardless of the applied mining method and/or associated or integrated smelting capacities – divest their ownership as follows after the 5th year of production (percentage indicates required Indonesian shareholding): 6th year: 20%; 7th year: 30%; 8th year: 37%; 9th year 44%; 10th year: 51%. This is an outlook far different from that to be expected according to IUP holders under GR 77/2014 that offered far more beneficial shareholding which would not ultimately lead to a loss of control. Share divestment is to be conducted by way of a staged offer to (in order of priority): the central government, the provincial government as well as by tender to: SOEs, ROEs and lastly to private entities. Should this mode of divestment be unsuccessful, IPO/public offerings may be undertaken.

While GR 1/2017 is silent on whether current holders of CoW (Contracts of Work) fall under the same divestment requirements as holders of IUP/IUPK, MEMR 9/2017 stipulates that the divestment requirement is applicable to CoW holders as well. This creates uncertainties for CoW holders who are not planning to convert their CoW into a IUP/IUPK since the CoW itself typically provides more or less detailed stipulations on when and how divestment shall take place.

The MEMR has practically and selectively lifted the export ban that was to take effect in mid-2017 for CoW holders who change the CoW into a IUP/IUPK or whose product has been processed until the minimum threshold. Still, an export approval from the Ministry of Trade as well as an export recommendation from the MEMR are required. The latter will continue to be based on progress in smelter/refinery development.

There will be a number of CoW holders who contemplate the change to IUP/IUPK while others will be able to retain their CoW due to progress in their value-adding capacities in Indonesia.

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Labor

Outsourcing Practice in Indonesia – the Never Ending Battle

Outsourcing in Indonesia is often portrayed as robbing workers of their basic rights for the sake of increasing company profits. On the other hand however, when done properly and in accordance with the prevailing laws and regulations, outsourcing can help absorb a large number of workers to reduce unemployment and informal workers in the country.

Indonesian law recognizes and regulates 2 types of outsourcing; business process outsourcing (*pemborongan pekerjaan*) and labor supply (*penyediaan jasa pekerja/buruh*). In business process outsourcing, the work that can be outsourced by a user company to a service provider must not be the main (core) business of the user company as determined in the production process flowchart by its business sector association. For labor supply outsourcing, a licensed labor supply company is limited to supply labor for the following activities: (i) cleaning services; (ii) catering services; (iii) security services; (iv) supporting services in the oil and gas sector; and (v) transportation services.

The purpose of both outsourcing services regulated under Indonesian law is to support companies in delegating their non-core business process to external companies. Outsourcing should not be seen only as an attempt to reduce costs with the aim to increase profit; because by delegating to companies more capable of carrying out its non-core business (such as administration for payroll & accountings), a user company will also enjoy the benefits of better quality labor.

However, there are still many oversights in the use of outsourced labor in Indonesia. To avoid disputes adversely affecting a user company and its outsourced employees, an outsourcing company must comply with employment regulations generally applicable in Indonesia; including minimum wage, Transfer of Undertaking Protection of Employment (TUPE) for those employed under employment agreements for a specific period (*perjanjian kerja untuk waktu tertentu* or PKWT) as well as various social security schemes (i.e. BPJS) for outsourcing employees. When outsourcing companies obey these laws and regulations, the outsourcing process is better managed, companies are encouraged to ensure the welfare of their employees and any discontent can be better contained.

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Labor

Religious Holiday Allowance

Indonesia is a multi-ethnic and multi-religious nation in which most of the relevant celebrations observed by major religions are national holidays. Labor regulations meanwhile provide a clear guidance on employers' obligations and employee's rights in terms of calculation and timing of religious holiday allowances.

According to Ministry of Manpower Regulation 6/2016 (MOM 6/2016), which revoked and replaced the preceding regulation from 1994, permanent and temporary as well as freelance employees are entitled to a religious holiday allowance, provided they fulfil the entitlement threshold. This means the employee must have been employed at least for 1 full month (previously 3 months). Permanent employees who are terminated less than 30 days prior to the relevant holiday are entitled to receive an allowance. The allowance is one monthly salary for employees with a tenure of 12 or more months and it is to be pro-rated for employees with a tenure below 12 months. Since freelance employees receive no fixed salary, the allowance amount is calculated based on the average monthly remuneration during the past 12 months or less in cases of a lesser tenure.

MOM 6/2017 clearly states that higher allowances may result from individual employment contracts or collective labor agreements as well as company regulations such as employee handbooks etc.

The far more relevant point in this regard however is that the entitlement to a higher allowance amount may result from customary practices in determining the allowance amount. This means that even in the absence of any written guidelines, employees may be able to argue that their allowance has always been calculated to exceed statutory minimums in a certain way. Unfortunately MOM 6/2016 does not include any guiding on the aspects that would constitute a customary practice in this sense.

The allowance is payable at least 7 days before the relevant holiday which is Idul Fitri (Eid Al-Fitr) for Muslims, Christmas Day for Christians; Seclusion Day (Nyepi) for Hindus; Vesak Day for Buddhists and Chinese New Year's Day for Confucians. For any other religions, the relevant holiday may be agreed upon between employer and employee.

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Luther LLP in collaboration with Maqdir Ismail & Partners

Luther LLP is one of the largest continental European lawfirms in Singapore. With our further lawfirms in Yangon and Shanghai as well as our corporate services offices in Kuala Lumpur, Delhi-Gurgaon, Shanghai and Singapore, we offer a comprehensive range of services to our clients. In Indonesia we have formed a strong collaboration with Maqdir Ismail & Partners in order to service our clients in their ventures in this interesting market. Maqdir Ismail & Partners are highly regarded for their expertise particularly in litigation, corporate law as well as in mergers and acquisitions.

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Tax Audit

Tax Audit Procedures in Indonesia

Indonesia has a self-assessment tax system, meaning that taxpayers have the obligation to declare and pay their taxes in accordance with the Indonesian tax laws and regulations. In order to be able to test this self-assessment compliance, the Indonesian Tax Authorities ("ITO") can conduct tax audits. Companies (and individuals, which will not be discussed) can be audited for all relevant taxes or for a particular tax (e.g., VAT) over a certain period (i.e., a month or a year). The audit can take place at the premises of the company, at the tax office or at both. The ITO can initiate tax audits for various reasons. One important reason to start a full tax audit (i.e., covering all taxes) is a corporate tax refund request in case the company is in an overpayment situation. A VAT refund request will trigger a VAT audit.

However, the ITO can always broaden the tax audit to other taxes. Other reasons for a tax audit can be: company in a loss position, revaluation of assets, etc. Taxpayers have to submit requested documents (e.g. Transfer Pricing documentation) and information within one month after the request. Information provided after the one month period will not be taken into account by the ITO. At the end of the tax audit the ITO will issue a tax audit letter with their findings and the proposed tax audit corrections. In case the taxpayer disagrees with the findings, he should respond in writing within 7 to 10 working days prior to the so-called closing conference with the ITO. The ITO may amend their tax audit corrections due to the information provided by and discussion with the taxpayer. The final results are summarized in a closing conference document, which has to be signed by both parties.

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Corporate Taxation

Tax Incentives for New Enterprises

New entities established under the Foreign Investment Law may apply for an exemption from tax payable on the importation of capital goods and raw materials. New enterprises must secure an exemption certificate from the Indonesian Tax Office ("ITO") where the new entity is registered. The exemption is granted for capital goods indicated in the BKPM Master list and must be applied for each year. For investments in certain businesses and or certain regions corporate income tax relief is available. It regards investments in 25 selected sectors (52 sub-sectors) and/or 15 selected locations (77 sub-locations), effective as per 22 December 2011. Investors should consult with the ITO or their tax advisors as qualifying sectors and geographical regions change from time to time. The tax relief for the selected sectors/ regions comprise of four incentives:

- Additional tax deduction of 5% of the realized capital investment (depreciable and non-depreciable assets) each year up to six years (revoked if the assets are transferred during facility period);
- Option to use accelerated tax depreciation at double normal rates;
- The period for tax loss carry forward may be extended to 10 years (instead of five years);
- WHT on dividends to non-resident shareholders is reduced to 10% (or a lower DTA rate).

The selected business sectors are economic sectors that have high priority on a national scale, particularly in respect of boosting exports. The selected regions are remote regions, which are economically potentially worthy of development but whose economic infrastructure is generally inadequate and where access by public transport is difficult. The regions include maritime waters with a depth of over 50 meters where the seabed has mineral reserves, including natural gas.

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Corporate Taxation

New Transfer Pricing Tax Reporting Compliance Requirements in Indonesia

In December 2016, Indonesia issued Regulation PMK-213, which implements the OECD BEPS Action 13 initiative. These TP reporting requirements may be applicable to German groups with activities in Indonesia. It requires the preparation of three documents regarding related party transactions:

i. A Master File ("MF");
ii. A Local File ("LF"); and
iii. A Country by Country Reporting file ("CBCR").

The MF and LF must be available four months after fiscal year-end, in either Bahasa or English (English version must be accompanied by Bahasa translation). The CBCR submission is due within one year after fiscal year-end. A MF and LF are mandated if a Taxpayer conducts:

1. Any related-party transactions and its gross revenue wasabove IDR 50 billion in the previous year (in this case 2015); or
2. Related-party tangible goods transactions of more than IDR 20 billion; or
3. Related-party non-tangible goods transactions of more than IDR 5 billion, or Related party transactions of any amount with a party in a jurisdiction with a lower corporate tax rate than Indonesia (25%). A list of these jurisdictions has been published by the Tax Authorities.

A CBCR is mandated if a taxpayer:

1. Is a parent entity with consolidated group revenue of more than IDR 11 trillion (which applies to Indonesian group companies); or
2. Is a part of a foreign parent entity that:
   i. is not required to submit a CBCR, or
   ii. is in a country that does not have an information exchange agreement with Indonesia, or
   iii. if the ITO is unable to obtain a CBCR through an information exchange agreement.

The ITO has published a list of countries that have a suitable exchange of information arrangement. PMK 213 includes an extensive list of information to be disclosed in the CBCR.

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KPMG Advisory Indonesia (KAI) has been providing business advisory services focusing on taxation and related business issues since 1957. KAI is one of the largest practices in the country, providing services to multinational corporations, joint ventures and domestic companies operating in a wide range of business sectors. Our experienced tax professionals are drawn from a wide number of countries and backgrounds. Industry specialization, service line expertise and international exposure, together with continuous advanced training, equips them to work with our clients and to be their professional tax advisors in a wide spectrum of business matters.

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Tax Crime

Access to Financial Information for Tax Purposes

With reference to the Global Forum on Transparency and Exchange of Information for Tax Purposes and Automatic Exchange of Financial Account Information/AEOI, sponsored by OECD and G20, the Indonesian government, issued Government Regulation in Lieu of Law *(Peraturan Pemerintah Pengganti Undang-Undang)* No.1/2017 ("Perpu") on 8 May 2017. This Perpu is issued to fulfil Indonesia's commitment to the AEOI by 30 June 2017.

The Perpu removes the long protected bank secrecy rule in Indonesia. Based on the request of the Director General of Tax (DGT), the bank is now obliged to provide information for the purpose of a tax audit, collection or tax crime investigation of any person. It also eliminates the DGT's obligation to have written approval from the Minister of Finance (MoF) to request the information for the purpose of such tax audit, collection or tax crime investigation. The Perpu effectively grants the DGT direct access to the relevant information from financial institutions.

The exchange of financial information also covers information of accounts which based on international taxation agreements are mandatory to be reported. Implementing regulations on the Perpu have not yet been issued.

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International Tax Law

Cross Border EPC Contracts under German–Indonesian Tax Treaty

Engineering, Procurement and Construction (EPC) Contracts are widely adopted by Indonesia customers to govern the purchase of equipment or machineries required for their production processes or other industrial purposes. In the light of the prevailing Indonesian final tax on construction services as well as the German-Indonesian double taxation treaty, German suppliers have distinctive benefits in taxation matters pertaining to EPC contracts with Indonesian customers.

The Protocol of the tax treaty stipulates that *"(...) If machinery or equipment is delivered from the head office or another permanent establishment of the enterprise or a third person in connection to those activities or independently therefrom, there shall not be attributed to the profits of the building site or construction, assembly or installation project, the value of such deliveries."*
Based on the above treaty provision, the supply of equipment (Engineering and Procurement) sourced directly from overseas shall not be taxable in Indonesia. Installation of equipment (Construction) might give rise to a permanent establishment (PE) implication in Indonesia, if onshore installation work lasts more than six (6) months.

The recent enactment of the Construction Service Law provides various administrative and organizational requirements for a PE to obtain the proper business registration, being a representative of a foreign construction company, so called "BUJKA". The requirements as well as potential alternative options should be carefully considered to achieve an optimum tax and legal structure.

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Trading PMA Company

Appointment of local distributors – Policy Update

The Ministry of Trade (MoT) has recently commented on *Regulation No. 22/M-DAG/PER/3/2016 of 2016 regarding General Provisions on Goods Distribution* (Regulation 22), issued in March 2016 as implementing regulation of *Law No. 7 of 2014 on Trade*.

The new legislation does not revoke *Regulation No. 11/M-DAG/PER/3/2006 regarding Requirement and Procedure for the Issuance of Registration Letter for Agent or Distributor of Goods or Services* (Regulation 11), which provides that foreign investment companies carrying out trading activities as distributor or wholesaler need to appoint a national trading company as agent, sole agent, distributor or sole distributor to sell goods to consumers. Accordingly, an appointed national trading company must register the agency or distributorship agreement with a foreign investment company at the MoT and obtain a registration certificate (STP). The STP is valid for two years from the date of issuance unless the agency/distribution agreement provides for a shorter appointment period.

Pursuant to Regulation 22, trading activities within Indonesian territory need to be conducted through indirect or direct channels. While the indirect channel consists of (i) distributor network, (ii) agent network or (iii) franchise scheme, the direct channel includes single-level and multi-level marketing, both to be further specified by separate ministerial decree.

According to Article 22 manufacturers/distributors may supply or distribute goods destined as raw materials or auxiliary materials to other producers without involvement of distributors or agents. However, subsequently to the enactment of Regulation 22, MoT issued statements concerning the requirement for a foreign trading company to appoint a local distributor. While some official letters from MoT appeared to confirm that distributors may sell raw materials or supporting goods directly to a producer without going through the indirect channel, other letters recently stated that foreign trading companies must appoint a local distributor to sell such goods to producers or interim consumers.

Due to the currently unclear policy of MoT, foreign trading companies should take a cautious approach by appointing a local trading company to distribute goods within Indonesian territory and request such local distributor to obtain STP from MoT as evidence of compliance with the requirements under Regulation 11.

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Banking and Finance

New Regulation on Access to Financial Information for Tax Purpose

On 8th May 2017, Indonesian Government has issued a new Government Regulation in Lieu of Law No. 1 of 2017 on Access to Financial Information for Tax Purpose ("**Perppu 1/2017**"). This regulation sets out the main legal framework for the implementation of Automatic Exchanges of Financial Information ("**AEoI**") in order to ensure compliance with the various tax provisions set out under the prevailing laws and regulations, as well as various tax treaties which are applicable to Indonesia.

Perppu 1/2017 requires that access to financial information must now be opened up. In this context, Director General of Tax ("**DGT**") has now been authorized to access financial information held by financial service institutions ("**FSI**") such as banking, capital market, insurance sector or other financial institution. In Perppu 1/2017, FSI are no longer bound by the obligation to keep such information confidential (secrecy obligation).

FSI now must provide the following documents to the DGT such as:
1. Reports containing financial information, in accordance with standards for the exchange of financial information (i.e. common reporting standards – "**CRS**") for all financial accounts which are identified as reportable accounts ("**CRS Reports**"); and
2. Reports containing financial information for tax purpose ("**Tax Reports**").

DGT may also request additional information and/or evidence or statements from the relevant FSI to be included in the taxation database under the control of the DGT. Moreover, the Ministry of Finance ("**MoF**") may exchange any of the information, evidence and/or statements supplied by FSI with competent authorities located in other countries.

Prior to the issuance of Perppu 1/2017, exchanges of financial information for tax purpose were primarily aimed at foreign customer, which were already regulated under the following regulations:
1. Ministry Regulation No. 39/PMK.03/2017 on Procedures for the Exchange of Information Based on International Treaties; and
2. Financial Service Authority ("**OJK**") Regulation No. 25/POJK.03/15 on the Submission of Foreign-Customer Taxation Information to Participating Countries or Jurisdictions though OJK Circular Letter No. 16/SEOJK.03/2017.

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Corporate Law

New Regulations on Trade Business License and Company Registration Certificate

Ministry of Trade of the Republic of Indonesia ("**MoT**") has issued new regulations regarding the re-registration of Trade Business Licenses or as known as SIUP and the administrative cost for the renewal of Company Registration Certificate or also known as TDP.

As per Article 7 paragraph (2) of the new MoT Regulation No. 7/M-DAG/PER/2/2017 on the Third Amendment of MoT Regulation No. 36/M-DAG/PER/9/2007 on the Issuance of Trade Business Licenses ("**MoT Regulation 7/2017**"), the business actors, which were previously required to make the SIUP re-registration in every 5 (five) years, are no longer obligated to do the re-registration. Moreover, in Article 16 MoT of Regulation 7/2017, the companies filing for new SIUP, amendment and/or replacement of their lost and damaged SIUP are not required to pay any retribution to the MoT.

Similarly, the MoT also releases the company to pay administrative fee for the renewal of TDP. Pursuant to Article 9A of the new MoT Regulation No. 8/M-DAG/PER/2/2017 on the Second Amendment of Ministry Regulation No. 37/M-DAG/PER/9/2007 on the Organization of Company Registration ("**MoT Regulation 8/2017**"), the companies which are required to make a renewal of their TDP is not charged with administrative fee.

MoT Regulation 8/2017 also simplifies the process for the extension of TDP. Before the issuance of MoT Regulation 8/2017, a company wishing to extend their TDP is required to fill up several prescribed forms. Now, they only have to submit a notification letter along with copy of valid TDP to Head of Company Registration Office. Such notification letter can be submitted either manually or online using the prescribed format.

Furthermore, MoT Regulation 8/2017 also gives more certainty to the company on the renewal of their TDP. It is now stipulated that the Company Registration Office shall issue a new TDP within 3 (three) business days since receiving the renewal notification letter. If the new TDP has not been issued within such time, the current TDP would be considered valid and automatically be re-registered.

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Restructuring and Insolvency

The New Requirements in Petitioning a Suspension of Debt Payment Obligation by the Debtor

The Supreme Court of the Republic of Indonesia ("SCRI") has issued a new requirement on the filing of PKPU petition. In Indonesian language, PKPU stands for suspension of debt payment obligation which is basically a court supervised debt restructuring. Petition of PKPU is filed in order for the debtor to suspend the payment of its debt and to propose a debt restructuring plan that include an offer to pay the entire of part of their debts to creditors, and such petition may be filed either by the creditor or the debtor itself.

Under Circular Letter of SCRI No. 2 of 2016 dated 25 April 2016 regarding the Increase of Efficiency and Transparency of Bankruptcy Case Handling and Suspension of Debt Payment Obligation Cases by Courts ("**SEMA 2/2016**"), SCRI now requires that the filing of PKPU petition by the debtor must be accompanied with approval letter from the creditors on the proposed name(s) of the administrator that will be appointed to jointly manage the debtor's asset with the debtor upon the granting of PKPU petition by the commercial court. The existence of this approval letter is mandatory as SEMA 2/2016 stipulates that the letter is a formal requirement for the acceptance of PKPU petition. Should the approval letter from the creditor is not obtained by the debtor then the PKPU petition filed by the debtor shall not be acceptable.
With this new requirement, the SCRI seems to have the intention to ensure that the debt restructuring process under the PKPU shall be conducted and facilitated by the administrator independently and protecting both the interest of creditor and the debtor.

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