Dear Members, dear Readers,

In order to accelerate economic growth, the Indonesian government is taking the development of a conducive investment climate, along with the creation of an acceptable level of legal certainty, very seriously. Therefore, for his second term, Indonesian President Joko Widodo has set his sights on passing the Omnibus Bill, which aims to simplify and consolidate thousands of current applicable regulations. Two Omnibus Bills are currently being drafted: the Omnibus Law draft on Job Creation and the Omnibus Law draft on Taxation.

The Omnibus Law draft on Job Creation addresses the following areas: 1) Simplification of licensing procedures; 2) Investment requirements; 3) Employment; 4) Ease, empowerment and protection of micro, small and medium enterprises; 5) Ease of doing businesses; 6) Support for research and innovation; 7) Government administration; 8) Imposition of sanctions; 9) Land procurement; 10) Government investments and projects; and 11) Economic zones.

The Omnibus Law draft on Taxation addresses the following six pillars: 1) Investment funding; 2) Territorial system; 3) Individual tax subjects; 4) Taxpayer compliance; 5) Business system fairness; and 6) Facilities. We expect the legislation process of the Omnibus Law between the Indonesian Government and DPR to meet the targeted deadline, allowing its implementation to provide a substantial impact in improving the Indonesian economy.

The Omnibus bill has also thus become a trending topic among our law and taxes partners. In this edition, you will find articles such as Share Buybacks in Indonesia, Super Deduction Tax, and Permanent Establishment Under Tax Treaties.

To our valued partners, the Network Law & Taxes could not be completed without your valuable expertise and support. Please know that you have my deepest gratitude and I look forward to continuously working with all of you to move our countries and companies forward. Lastly, I would like to say Happy New Year. May 2020 be a prosperous year.

Cassandra Ismail
Head of Legal & Investment Consultation Services
**Indonesia: Share Buybacks**

**Share Buybacks in Indonesia**

Under certain circumstances and conditions, companies in Indonesia (PT) have the right to repurchase shares issued by themselves. This is called a share buyback. Share buybacks may have a number of corporate governance implications. From a financial planning perspective, fewer funds will be available to the PT following the purchase. If a PT does not provide equal opportunities to all shareholders to sell their shares back, the buyback becomes relevant in terms of shareholder protection.

The Indonesian Company Law (Law No. 40/2007, “ICL”) generally allows share buybacks under certain circumstances and within limits. Art. 37 stipulates the general framework, under which PTs may buy back shares provided that it does not: a. result in the PT’s assets being less than the subscribed capital plus the mandatory reserve; or b. the nominal value of bought back shares does not exceed 10% of the subscribed capital unless otherwise stipulated in capital markets rules. Bought back shares may only be retained by a PT for a maximum period of three years.

Further, the ICL stipulates in Art. 62 that each shareholder is entitled to request a PT to buy back his shares at a fair price in case he does not approve of decisions to: amend the AoA; assign or secure 50% or more of the PTs assets; merge, consolidate, acquire or spin-off. Should the amount of shares in such a requested buyback exceed the legal limit, the PT must endeavor that the remaining shares be bought by a third party.

A share buyback must comply with all formal and procedural requirements of a share transfer under the applicable laws. For share buybacks of public listed PTs (“PT Tbk”), OJK (the Indonesian Financial Services Authority) has issued Regulation No. 30/POJK.04/2017 which includes additional requirements and partly clarifies respective procedures, especially a share buyback:

a. must be completed within 18 months following shareholder approval;

b. may be conducted via the stock exchange or outside it;

c. must not lead to a significant reduction in share liquidity within stock the exchange;

d. must be announced to shareholders together with specific information on the background.

**Indonesia: E-Mobility Regulations**

**New Regulatory Framework for Battery Electric Vehicles**

Indonesian Presidential Regulation No. 55 of 2019 as of August 18, 2019 regarding the Acceleration of Battery Electric Vehicle Programs for Road Transportation (“R55”) aims to incentivize and regulate the building of respective industry and transportation infrastructure in Indonesia.

According to R55, Battery Electric Vehicles (“BEV”) or BEV component companies that wish to operate in Indonesia must do so via a manufacturing facility in the country. Also, a local content requirement is introduced, in the form of a minimum local content of 35% or 40% (depending on the type of BEV) as of 2019, which will be periodically raised to a maximum of 80% by 2026 or 2030 (depending on the type of BEV). Components that cannot be produced domestically may be imported in a full or partial knocked down configuration.

With regard to the required charging infrastructure, R55 stipulates that businesses engaging in the electricity sector may provide BEV infrastructure in cooperating with PT PLN, the state owned electricity provider in the form of battery charging stations. Unfortunately, R55 does not clearly regulate requirements for the provision of infrastructure in the field of battery exchange. The battery waste of BEVs must be recycled and/or managed by a company that is licensed to manage battery waste in accordance to the prevailing regulations.

The government will provide various fiscal and non-fiscal incentives to companies aimed at promoting the acceleration of battery electric vehicles including but not limited to incentives on: import duty, luxury goods tax, production equipment, export finance, construction financing. Local and regional governments have the right to offer additional incentives in order to attract respective investment. Domestically owned companies developing national brands in BEVs by using signs, pictures, logos, names or words with Indonesian characteristics will be eligible for further incentives.
Indonesia: Merger Control

Merger Notification Requirements in Indonesia

A rt. 28 of the Indonesian Competition Law (Law 5 of 1999) forbids businesses to merge or to acquire other businesses if a merger may cause monopolistic practices and/or unfair business competition. In order to be able to monitor respective procedures, Art. 29 of the Indonesian Competition Law states that mergers and acquisitions of shares exceeding certain asset or sales values must be reported to the Commission for the Supervision of Business Competition (“KPPU”). Details of both reporting and thresholds are expressly left to be governed by government regulations.

In the past, several government regulations have been passed that resulted in a sufficiently clear regime on the notification of mergers or acquisitions of shares to KPPU within thirty days from closing (so-called “post-closing reporting”), provided that: (i) the transaction is between unaffiliated companies and (ii) the combined group wide domestic asset value exceeds IDR 2.5 trillion and/or the combined domestic sales value exceeds IDR 5 trillion (higher thresholds apply in the banking sector).

In unclear cases, businesses have the possibility to consult with KPPU on whether or not the transaction shall be notified. Based on the notification, KPPU can find the transaction to have: (i) no anti-competitive effect, (ii) no anti-competitive effect if KPPU’s suggestions are followed or (iii) an anti-competitive effect. Failure to notify KPPU of relevant transactions results in a fine of up to IDR 1 billion per day and up to IDR 25 billion in total.

While so far the regime only covered mergers and acquisitions of shares, KPPU has moved to include so-called “Asset Deals”, i.e. acquisitions in which a business is acquired by buying the entirety or vast majority of its assets as the most prominent part of KPPU Regulation 3/2019 (“New Regulation”), applying the same thresholds but subjecting domestic and non-domestic group wide assets to the calculation. The New Regulation has caused considerable insecurity since it addresses all transaction types and therefore now deems overseas assets relevant not only in Asset Deals but also in share acquisitions. This creates a need for reevaluation for all transactions in ongoing negotiations. It is likely the New Regulation will come under judicial review by the Indonesian Supreme court given the Indonesian Competition Law does not provide an express legal basis for the expansion of acquisitions to Asset Deals.

Philipp Kersting
Registered Foreign Advocate,
Maqdir Ismail & Partners
+62 21 3911191
philipp.kersting@luther-services.com

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.
**Controlled Foreign Company Rules**

**Updated Regulation of Controlled Foreign Companies**

On 26 June 2019, the Minister of Finance (MoF) updated the rules covering the deemed repatriation of profits from Controlled Foreign Companies (CFCs) through the issuance of Regulation No.93/PMK.03/2019 (PMK-93) which is applicable starting fiscal year 2019 (i.e. retroactively). PMK-93 is relevant to Indonesian groups with foreign business activities. The key updates in PMK-93 are summarized below.

**Types of Income**
Deemed profits largely restricted to “passive” income (in contrast to the former “commercial profit after tax” approach): Dividends, except dividends received from other CFCs; Interest income, except interest received by a CFC that is held by a Resident Taxpayer with a banking license (unless related party); Rental income from: land and/or building rental; and Other rent received from related parties; Royalties; Profit from sale or transfer of assets (capital gains).

**Imposition Base of Deemed Dividends**
The imposition base of “repatriable income” is dependent on the nature of the Resident Taxpayers control of the CFC. Resident Taxpayers have direct control of the CFC: The net amount after tax on certain income of the CFC. Resident Taxpayers have indirect control in the CFC: The net amount after tax on certain income of indirectly controlled CFCs multiplied by the effective ownership percentage.

**Calculation of Net Income After Tax**
The repatriable income is calculated proportionally to the Resident Taxpayer’s effective ownership of the CFC. Consequently, repatriable income is the “net income after tax” multiplied by the effective ownership percentage of the relevant CFC. “Net income after tax” is the passive income (see above) after the following deductions:
1. Expenses to obtain, collect, and maintain the passive income; and
2. Any foreign tax due, paid, or withheld on the income (note that foreign underlying tax continues to be deductible rather than creditable).

**Omnibus Tax Law**

Recently the Minister of Finance announced the intention of the Government to amend the key tax laws. Part of the changes focus on making Indonesia a more attractive place to invest in and some changes are focusing on the taxation of international E-Commerce companies (of which the activities in Indonesia may currently remain untaxed). Below three potential changes as mentioned in the latest public draft of the Omnibus Tax Law will be discussed, which may be of importance for foreign investors in Indonesia.

**Corporate tax rate cut**
It is proposed to reduce the corporate income tax rate in steps from 25% to 20%. The first reduction (to 22%) should take place as per January 1, 2021. The reduction to 20% should take place as per 2023.

**Taxation E-Commerce companies**
Indonesia will introduce a digital permanent establishment (PE) concept. A PE should include foreign companies with a significant economic presence in Indonesia. Meaning that even without a physical presence, foreign companies can have a PE in Indonesia. By introducing this concept, the government aims at increasing the tax revenue from E-Commerce activities in Indonesia. However, it should be noted that under tax treaties this new PE concept currently does not exist. Therefore, in a tax treaty situation Indonesia may not be able to levy tax.

**Requirement for digital companies to register for, collect and report VAT in Indonesia**
Under the law proposals foreign E-Commerce companies will be required to register for VAT purposes in Indonesia and to collect VAT on transactions in the Indonesian market. This VAT has to be paid to the Indonesian tax authorities.

The Government is planning to submit a final draft tax law to parliament before the end of this year.
New Regulation on Super Deduction Tax in Indonesia

Deduction Facility for HR Development in Certain Competencies

On September 9, 2019, the Minister of Finance issued regulation PMK-128 regarding “the facility for human resources development in certain competencies.” PMK-128 is an implementing regulation of Government Regulation GR-45, which was issued in June. GR-45 introduced a tax facility in the form of a deduction of up to 200% of the costs incurred in relation to internship programs, and/or vocational training programs in certain competencies. According to PMK-128 the actual costs can be deducted plus an additional 100%. It should be noted that this deduction cannot result in the taxpayer being in a tax loss position. Consequently, the deduction can only result in a taxable income of nil (any additional potential deduction is lost).

Taxpayers, which want to make use of the facility should fulfill certain requirements (and should not make use of a Tax Holiday or Tax Allowance facility). The taxpayer should:

- carry out an internship program and/or a vocational training program in order to develop competency based human resources;
- have a cooperation agreement with certain education institutions;
- not be in a tax loss position; and
- have requested a Tax Clearance Letter from the DGT.

According to PMK-128, the primary fields of competencies are: Manufacturing, Health, Agribusiness, Tourism and Creative industry, Digital economy and Migrant worker.

The eligible costs for the additional deduction include:

a. Cost for training venues;
b. Instructors/teachers;
c. Materials used;
d. Payments to internship participants (unless related to taxpayer’s management);
e. Certification costs for internship participants.

For internships all aforementioned costs are eligible. For training programs only the costs mentioned under b and c. Taxpayers have to attach an annual cost report to their corporate income tax return (PMK-128 contains a template).

Jacob Zwaan LL.M. (taxation)
+62 21 579 95147
jacob.zwaan@kpmg.co.id

KPMG Advisory Indonesia

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.
**New Provisions on the Reporting of Tax-Related Information of Foreign Customers**

The Financial Service Authority (Otoritas Jasa Keuangan/OJK) recently issued a new Regulation, i.e. POJK Number 25/POJK.03/2019. The regulation supports the implementation of an Automatic Exchange Of Financial Information (AEOI), requiring Financial Service Institutions (Lembaga Jasa Keuangan/LJK) in the banking, capital market and insurance sector to report information pertaining to their foreign customers to the Director General of Taxation through the Financial Service Authority.

The required information comprises the identity of the customer holding a financial account in an Indonesian Financial Service Institution, the respective financial account number/s, the identity of the Financial Service Institution, the current balance of the financial accounts as well as an overview of the regular income in connection with these accounts.

The reporting via the Online Foreign Customer Information Reporting System (SiPINA) which is administered by the Financial Service Authority must be submitted no later than 60 days before the AEOI Agreement deadline for the exchange of financial information between the Indonesian government and the government of the respective jurisdiction partners. For example:

If the deadline for the annual exchange of information between Indonesia and the relevant jurisdiction partner is 30 September, the latest submission date for financial information up to 31 December 2019 would be 31 July 2020.

A financial service institution must appoint a person-in-charge for such reporting. If necessary, the person-in-charge may appoint an officer responsible for the report submission. The financial service institution needs to register online in order to obtain access rights to SiPINA from the authority.

Financial institutions which fail to submit such required report shall receive a written warning from the authority. The Regulation Number 25/POJK.03/2019 revokes the previous POJK Number 25/POJK.03/2015 and SEOJK Number 16/SEOJK.03/2017.

---

**Income Tax**

**Income Tax on Foreign Taxpayers’ Dividends**

In Indonesia dividends are generally considered as ordinary income. Dividends received by a resident company holding less than 25 % of the equity of the subsidiary are subject to 15 % of Non-Final Withholding Tax. Such Withholding Tax represents an advance payment of the tax liability. In accordance with the prevailing Income Tax Law Number 36/2008, dividends received by a resident company holding at least 25 % of the equity of the subsidiary qualify for a participation exemption. That said, such dividends are exempted from income tax. Dividends paid to individual resident taxpayers are subject to 10 % of Final Withholding Tax.

There are certain administrative requirements non-residents need to comply with in order to enjoy tax treaty benefits. In order to claim the tax treaty benefit, the non-residents must provide the valid Form DGT-1. The preparation and reporting of the Form DGT-1 needs to comply with the Directorate General of Tax Regulation Per-25/PJ/2018 which became effective as of 01 January 2019.

---

Wahyu Indradi
LICENSED TAX ADVISOR
+62 21 5056 0405
wahyu.indradi@roedl.com

---

Wahyu Indradi
LICENSED TAX ADVISOR
+62 21 5056 0405
wahyu.indradi@roedl.com
As cross-border business models continue to increase, the need for legal certainty for foreign tax subjects carrying out activities in Indonesia is gaining importance. Under the Indonesian Income Tax Law, a Permanent Establishment (PE) is deemed created if a foreign company conducts activities in Indonesia, which may take various forms. The definition has recently been further adjusted in Minister of Finance Regulation No. 35/PMK.03/2019 on Determination of Permanent Establishment. A PE is generally deemed if (i) there is a place of business in Indonesia, (ii) such place of business is permanent and (iii) the place is utilized by a foreign tax subject to carry out business activities in Indonesia. Determination of a PE includes inter alia the place of management, office, factory, warehouse, promotion and selling spaces or furnishing of services by employees or other persons, conducted for more than 60 days within a 12-months period. MoF Regulation 35 further provides that the term "place of business" refers to any fixed place, space, facility or installation, including machinery or equipment, used by a foreign individual/entity to conduct business activities.

In accordance with the respective tax treaties, the Indonesian tax authority does also acknowledge the concept of a business vehicle being used by a foreign company (non-resident) to carry on "preparatory or auxiliary" activities in Indonesia to not create a PE, which in practice is often done by establishment of a representative office.

In case the foreign company is resident in a country holding a tax treaty with Indonesia, the rules on PE creation may differ; usually there is a longer “time test” for certain activities performed in Indonesia. Works assigned to subcontractors also need to be included in the time test calculation and may trigger a PE. Particularly the Indonesia-Germany tax treaty stipulates a longer time-test threshold for building sites, construction and installation projects of up to six months. The time calculation commences at the beginning of the project and ends when the work is finished, delivered or ends otherwise. Under Article 5.3 of the German-Indonesian DTA a building site or construction or installation project constitutes a permanent establishment only if it lasts more than six months. Hence, companies performing an installation project with a shorter duration than the stipulated time-test threshold would usually not create a PE. Please note, however, that the tax authorities might attempt to establish a link between short-term contracts performed by the same company or a closely related entity in the same area within a specific period of time. If such link is found to exist, a PE is possibly assessed because such serial short-time contracts would be treated as one.

Markus Schlueter
Partner
+ 49 221 949 909 342
markus.schlueter@roedl.com

PT Roedl Consulting

Rödl & Partner is active at 110 locations in 50 countries. The integrated professional services firm for audit, legal, management and tax consulting owes its dynamic success to 4,900 entrepreneurial minded partners and colleagues. Rather than create an artificial network of franchises or affiliates, we have chosen to set up our own offices and rely on close, multidisciplinary and cross-border collaboration among our colleagues. As a result, Rödl & Partner stands for international expertise from a single source. Our presence in Asia/Pacific spans over 15 offices in China, Hong Kong, India, Indonesia, Malaysia, Myanmar, Philippines, Singapore, Thailand and Vietnam. Our Indonesian colleagues have vast experience and profound knowledge of the tax and investment environment in Indonesia. For further information, please refer to www.roedl.com.
The Newsletter Law & Taxes December 2019 edition

presents its premiere partners:

Cooperation Partner

Luther.

Newsletter Partner

KPMG
Luther.
Rödl & Partner

Become a Newsletter Law & Taxes Partner
Share your legal expertise with our readers

The Newsletter Law & Taxes reaches more than 3,000 readers across Indonesia, Asia and Europe and more than 20,000 online readers worldwide.

Contact:
cassandra@ekonid.id

German-Indonesian Chamber of Industry and Commerce (EKONID)
Jl. H. Agus Salim No. 115 | Jakarta 10310
PO 3151 | Jakarta 10031 Indonesia
Tel. + 62-21 50985800 | Fax. + 62-21 3155276
Email: info@ekonid.id
Internet: www.ekonid.com

Contents | Links
EKONID has composed the content of this Newsletter diligently and from openly accessible sources. The content of the articles and presentations are the sole responsibility of the Newsletter partners. EKONID cannot grant correctness or completeness of the information provided. EKONID cannot be held liable on any legal ground for the content of this newsletter or linked pages.

Sending Information | Privacy
The information and articles contained in this Newsletter solely serve for informational purposes only. The Data is being processed automatically and optionally. If you would like to subscribe to or unsubscribe from the Newsletter, kindly inform our newsletter team at communication@ekonid.id.