Dear Members, dear Readers,

In line with the theme of Healthcare adopted by our Chamber magazine in this edition, we would like to draw your attention to this sector. Frost & Sullivan estimates that the total healthcare expenditure as a percentage of GDP would increase by 4.3% to reach US$50.8 billion (Rp 687.6 trillion) in 2020. Meanwhile, with a turnover of 337 billion euro – growing at a rate of 4% annually – and an export rate of 64%, the medical technology business in Germany is among the largest in the world. To say Indonesia, with its over 260 million population and growing middle class, is a prospective market for German medical technology may be an understatement.

Furthermore, the Indonesian Government launched its universal healthcare program or JKN (Jaminan Kesehatan Nasional), in 2014. Within its arrangement is the Healthcare and Social Security Agency, locally known as BPJS (Badan Penyelenggara Jaminan Sosial). These institutions have improved public access to health services, expanding to reach approximately 67.6% of the population within two years. Meanwhile, government spending accounts to a mere 38% of total healthcare spending currently as it seeks to achieve 100% coverage by 2019. The data clearly indicates that the market is receiving a strong drive forward by both public and private institutions.

As for the day-to-day business, especially when implementing special projects between Indonesia and Germany, companies are confronted with diverse, often unexpected, legal and tax matters – not to mention various bureaucratic obstacles. In this regard, I would like to draw your attention to our Network Law & Taxes, which is done in close cooperation between the German-Indonesian Chamber of Industry & Commerce (EKONID) and selected high profile and experienced law firms, tax consultants and auditing firms from Indonesia and Germany.

By integrating the expertise of our Network Law & Taxes cooperation partners, German and Indonesian companies gain a 360°-consulting service in law and tax matters and can rely on compliance with high standards for seriousness, specific expertise and experience. For more information of the Network Law & Taxes we cordially invite you to visit our website www.ekonid.com.

On behalf of the management and team, I would like to say Happy New Year. May 2018 be a prospective year for us all.

Cassandra S. Paulira
Head of Corporate Services
According to the current import system in Indonesia, so-called “Specific Products” are only allowed to be imported through designated seaports, dry ports or airports by importers which have the required General Importer Identification Number (Angka Pengenal Importir Umum – “API-U”). The Specific Products are listed in the Appendix to Regulation 87/2015. For example, food and beverages, traditional medicines, health supplements, cosmetics, household first-aid kits, apparel, footwear, electronic devices and toys belong to the Specific Products.

The Ministry of Trade has promulgated on October 27, 2017 the Regulation 81/2017 as the second amendment of Regulation 87/2015. According to this amendment, now it is also allowed to import all kind of Specific Products from the seaport Bitung by holders of API-U. Therefore, after the amendment the following ports are – with some restrictions – open for import of Specific Products:

1. Every import of Specific Products may only be conducted through the following port of destination:
   a. Seaport: Belawan in Medan, Tanjung Priok in Jakarta, Tanjung Emas in Semarang, Tanjung Perak in Surabaya, Soekarno Hatta in Makassar, Dumai in Dumai, Jayapura in Jayapura, Tarakan in Tarakan, Krueng Geukuh in North Aceh, and Bitung in Bitung;
   b. Dry port: Cikarang Dry Port in Bekasi; and
   c. Airport: Kualanamu in Deli Serdang, Soekarno Hatta in Tanggerang, Ahmad Yani in Semarang, Juanda in Surabaya, and Hasanuddin in Makassar.

2. Import of Specific Products which are conducted through the sea port of Dumai in Dumai, Jayapura in Jayapura, and Tarakan in Tarakan is only for food and beverages products.

3. Import of Specific Products which are conducted through the sea port of Krueng Geukuh in North Aceh may only for food and beverages products, apparel and other finished textile goods, electronics and footwear.

The Ministry of Manpower has promulgated on November 6, 2017 the Regulation Number 18 of 2017 on the “Procedure for the Mandatory Online Reporting of Employment by Companies” (“Regulation 18/2017”). The Regulation has been in force since promulgation date and has replaced the previous Regulation 14/2006. One of the biggest changes compared to the Regulation 14/2006 is that now reports can only be submitted online. The Report has to be submitted on an annual base each December, and in case of the following events 30 days before or after the respective event occurs:

1. After establishing, re-operating, or transferring of a company; or
2. Before transferring, suspending, or dissolving a company.

The following information has to be provided online depending on the respective event:

1. Annual report, establishment, re-operating, or transferring of a company:
   - Company codification;
   - Company condition including industrial relation, employment protection, work opportunities and employment condition.

2. Transferring, suspending, or dissolving a company:
   - Name and address of the company or company’s division;
   - Name and address of business;
   - Name and address of company’s manager;
   - Date of the transfer, suspension or dissolution of the company;
   - Reason for transferring, suspending or dissolving the company;
   - Obligations which have or will be conducted to workers, in accordance with the law, contract of work, employment contract and local customs; and
   - Number of workers who will be dismissed.

In case that these reporting obligations are not met, the person in charge will face legal sanctions.

Dr. Mario Feuerstein, MBA
Partner
+68 21 6219 8370
snb.indonesia@snblaw.com

Dr. Mario Feuerstein, MBA
Partner
+68 21 6219 8370
snb.indonesia@snblaw.com
Intellectual Property Rights

Ratification of the Madrid Protocol

Indonesia has ratified the “Protocol Relating to the Madrid Agreement Concerning the International Registration of Mark” on September 30, 2017. Consequently, as of January 2, 2018, Indonesia will become the 100th member of the Madrid System of trademark protection (“Madrid System”). As of that date, foreign trademark owners can use the Madrid System to protect their trademarks in Indonesia and Indonesian trademark owners to protect their trademarks in a member jurisdiction of the Madrid System. According to the Madrid System, the owner of a trademark application or registration in a member jurisdiction (“basic application or registration”) can obtain an international registration for its trademark with the World Intellectual Property Organization (“WIPO”).

Based on this international registration, the trademark owner can extend the trademark protection to one or more member jurisdictions. That means that additional local trademark applications in different countries may not be necessary. However, one possible disadvantage of the Madrid System is that in case of any refusal, withdrawal or cancellation of the basic application or registration, such refusal, etc. will affect the international registration in the same way. Therefore, it should be reviewed in each case whether the Madrid System should be used for the application and registration respectively, or whether a local application/registration in the foreign country is preferable.

Dr. Mario Feuerstein, MBA
Partner
+68 21 6219 8370
snb.indonesia@snblaw.com

Schulz Noack Bärwinkel

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.
Implementing Regulation on Border Measures Came Into Force

The Implementing regulation for the Customs Law provision on control of import or export of goods resulting from intellectual property (“IP”) infringement recently came into force. Government Regulation No. 20 of 2017 on the control on import or export of goods suspected of infringing IP rights (“GR 20/2017”) clarifies various practical issues.

Will Customs act ex officio?
Customs officials may detain goods suspected of infringing IP already registered in the Directorate General of Customs & Excise (DGCE) recordation system. Thus, registration for recordation with the DGCE is necessary for the customs to act ex officio. There are two possible grounds for customs to exercise control on allegedly infringing goods: (1) ex officio, upon which they can detain suspect goods; and (2) seizure based on a court order (with some exceptions).

New Regulation on Hospital Accreditation

The Ministry of Health of the Republic of Indonesia (“MOH”) recently issued the Minister of Health Regulation No. 34 of 2017 on Hospital Accreditation (“MOHR 34/2017”). The regulation is an update of the Ministry of Health Regulation No. 12 of 2012 which regulated the same matter. By introducing the MOHR 34/2017, the MOH has simplified hospital accreditation process by a single mandatory process, whereas the previous regulation divided hospital accreditation process into (i) mandatory national accreditation and (ii) optional international accreditation.

Under the MOHR 34/2017, all hospitals must undertake the mandatory accreditation process in no later than 2 (two) years after securing its operational license. Such accreditation shall be organized regularly at least every 3 (three) years.

The accreditation shall be performed by independent institutions determined by the MOH which specifically conducts accreditation, from within and outside the country. The aforementioned institutions must already be accredited by the International Society for Quality in Health Care (ISQua). The accreditation process consists of 3 (three) stages:

1. Accreditation preparation
Hospitals are required to (i) conduct self-assessment, (ii) organize workshops and (iii) participate in accreditation tutoring.

2. Accreditation implementation
The accreditation is conducted by independent institutions which consist of (i) accreditation survey and (ii) determination of accreditation.

3. Post-accreditation
Post-accreditation activity shall be conducted by way of verification surveys and shall only be conducted by the institution who has determined accreditation status for such Hospital.

The accreditation process is supervised by the relevant governor, regent/mayor and/or by the MOH according to its respective duties and authority, through the Director General of Healthcare Services (“DGHS”). The DGHS is entitled to impose administrative actions to hospitals and can also involve independent accreditation institution to re-assess the conformity between such hospital’s compliance and the accreditation status which have been previously obtained by the hospital.

Recordation, detention & seizure
The DGCE shall grant or reject the application within 30 (thirty) days upon receipt. The recordation approval is valid for a maximum of 1 (one) year since the approval date and is renewable.

The DGCE officer must notify the relevant right holders of allegedly infringing goods based on prima facie evidence. The right holders must confirm the filing of seizure order request within 2 (two) days afterwards. The right holders, must then (1) prepare the administrative requirements and file the application to the commercial court; and (2) submit to the DGCE an operational cost security deposit amounting IDR 100,000,000 (approximately USD 7,500) in the form of a bank guarantee or bond insurance. The right holders may file a seizure order request by filing an application to the relevant court. If the right holder initiates seizure order, the claimant must submit an operational cost security deposit within 2 (two) business days upon DGCE’s receipt of the detention court order.
New Guidelines on Mandatory Reporting of Employment by Companies

The Ministry of Employment (“MoE”) has issued Regulation No. 18 of 2017 on Procedures for Mandatory Online Reporting of Employment by Companies (“MoE Regulation 18/2017”) which is the implementation of Article 9 of Law No. 7 of 1981 on the Mandatory Reporting of Employment by Companies. The MoE Regulation 18/2017 serves as guidelines which are to be followed by companies in relation to the submission of mandatory employment reports (“Reports”). Prior to the issuance of the MoE Regulation 18/2017, these matters were previously regulated under the MoE Regulation No. PER.14/MEN/IV/2006 on Procedures for the Mandatory Reporting of Employment by Companies (“MoE Regulation 14/2006”).

MoE Regulation 18/2017 generally addresses the following matters:

1. Online Reporting
   Businesses or company managers are required to submit Reports online via the designated website (http://wajiblapor.kemnaker.go.id – “Website”) on an annual basis (“Annual Reports”). With this MoE Regulation 18/2017, it is expected that this mandatory reporting can facilitate the company that will do the reporting.

2. Reporting Procedures
   Prior to the submission of any Reports online, businesses or managers are required to first undertake a registration process via the Website to obtain an account. Once the relevant registration process has been completed, then businesses or managers may continue to the Report submission process.

MoE Regulation 18/2017 no longer incorporates any manual submissions procedure. Thus, any businesses which have submitted Reports manually will be required to re-submit their Reports online via the Website within one year after this regulation entering into force.

3. Utilization and Management of Data
   With mandatory reporting of this online system, it is expected that the data of employment in the region and the center will be more integrated. Thus, it can be used for the progress of employment control in Indonesia.

The MoE Regulation 18/2017 has been in force since 6 November 2017 replacing the MoE Regulation 14/2006.

Adhindra Ario Wicaksono, S.H.
Associate
+62 21 2903 5900
adhindra@lsmlaw.co.id
Administrative and Criminal Liability in Case of Non-Compliance

This brief overview shall discuss the potential liability of a company, its management and its shareholders for non-compliant actions of the company, especially for the two non-civil types of liability: (a) administrative liability, resulting in sanctions such as the revocation of a business license or payment of fines to government agencies, and (b) criminal liability, resulting in imprisonment/payment of fines to the state treasury.

Under several Indonesian laws and regulations, a company may be subject to criminal sanctions. This includes e.g. the Anti-Corruption Law, the Anti-Money Laundering Law and the Environmental Law. While these laws foresee the criminal liability of a company, in practice criminal prosecution of companies is rarely seen.

Companies are however given administrative sanctions for non-compliance with a legal or regulatory requirements on a regular basis. Such sanctions will impede or stop business operations and include suspension or revocation of business licenses, withdrawals of goods/services from the market or exclusion from government tenders. In a typical procedure the company will first receive warning letters from the relevant government authority before actual sanctions are imposed.

In performing its duties, the Board of Directors (BoD) and its individual members are jointly and/or severally empowered to represent the company according to the respective articles of association (AoA).

Further, directors may grant powers of attorney in order to delegate their authority. In doing so, directors remain legally responsible for actions of the persons given power of attorney. In order to limit such exposure, powers of attorney are usually specific in nature. Directors can be held personally responsible or prosecuted for non-compliance with relevant laws and regulations if the respective sanctions provide for that. This is the case e.g. in the Anti Money Laundering and Anti-Corruption laws. Depending on the wording and interpretation of the specific regulation, the “management” of a company may include a company’s board of commissioners in addition to the BoD.

In terms of responsibility, the general provisions on the responsibility of directors under the Company Law provide some guidance although these may be applied stricter in terms of administrative and criminal liabilities. According to the Company Law, directors will not be held personally liable if they can prove that: (i) losses were not the result of their negligence; (ii) they managed the company prudently, in good faith and in the interests of the company; (iii) losses were not due to conflicts of interests which affected their managerial responsibilities; and (iv) they took action to prevent said losses from occurring and continuing.

Investment in BPJS

BPJS Ketenagakerjaan - Newcomers with Golden Achievements in the Investment Sector

Social Security Administration Body for Employment or BPJS Ketenagakerjaan (BPJSTK) was established in 1 July 2015 pursuant to Law number 24 of 2011 on National Social Security Agencies. As the successor to the previous agency Jamsostek, BPJSTK has a motto of “Being the Bridge towards Workers Welfare”. Contribution to BPJSTK is made mandatory not only for Indonesian workers but also foreign workers working for at least 6 months in Indonesia. BPTJSTK offers 6 programs; provident fund benefit, work related accident benefit, death benefit, pension benefit, construction service and non-wage earner, and it also creates a social security scheme paid with contributions from both employers and employees.

The issuance of OJK Regulation No. 1/POJK.05/2016 on the Investment in Government Securities by Non-Bank Financial Services Institutions create obligations for BPJSTK to place investment in state securities. Article 2 (e) of the regulation requires BPJSTK to invest at least 50% of the the whole of the Social Security Guarantee Fund and at least 30% of the total investment by BPJSTK in government securities no later than 31 December 2016. The principle of prudence must be applied in every decision to invest.

According to the Director of Investment Development of BPJSTK Mr. Amran Nasution, until 2017 BPJSTK has made investments in several investment sectors; 52% in government, 9% in bonds of state-owned enterprises (BUMN), 1% in private corporate bonds, 16% in shares, 14% in deposits, 7% in mutual funds (reksadana), and 1% in direct investment. The agency’s mid-year report shows that it managed IDR 293 trillion of funds from January 2017 to June 2017, with approximately 24 million registered members. In 2016, BPJSTK gained investment returns of IDR 22,55 trillion and this year, they initially set up a target of IDR 24 trillion which was raised to IDR 27 trillion.
Company Law

The Reduction of Capital in a PT

Capital reduction means the reduction of authorized capital, issued capital and paid-up capital. According to the Company Law, a capital reduction can be reached by way of redemption of shares or a reduction of the nominal value of shares. If there are different classes of shares, the resolution on capital reduction may only be adopted by a general meeting of shareholders (“GMS”) if it is approved by all shareholders within the class or classes of shares whose rights are adversely affected by that resolution.

A reduction of nominal value can be executed with or without payment being made to the shareholders. If no payment is made to shareholders, the reduction of the nominal value must be done proportionately for all classes of shares.

Redemption of shares can be conducted by way of: (a) a share buyback; or (b) redeeming shares which are redeemable as provided in the articles of association.

In case the articles of association of a company do not define redeemable shares, the company cannot elect the shares redemption method. If a share buyback is envisaged, the company will be required to comply with the provisions on share buyback in the Company Law as follows: (a) the share buyback must not result in the net asset value of the company becoming smaller than the paid up capital plus the mandatory reserves; (b) the nominal value of the shares repurchased and the value of any share pledge or fiduciary security over shares which are held by the company and/ or by other companies whose shares are owned directly or indirectly by the company must not exceed 10% of the paid-up capital of the company; (c) the repurchased shares are not entitled to receive dividends and cannot be used to vote at a GMS of the company.

The capital reduction must be approved by the GMS or a circular resolution in lieu of a GMS in accordance with the articles of association of the company. Within 7 days after the GMS approves the capital reduction the board of directors must notify all creditors of the company accordingly. The announcement must be made in at least 1 daily newspaper in the Indonesian language having nationwide circulation. Creditors of the company may raise objections to the proposed capital reduction by submitting written objections to the company within 60 days after the announcement. The company will have 30 days from the date of receipt of an objection to give a response to the objection in writing.

A capital reduction is one of the amendments to the articles of association of a company that must be approved by the MOLHR. According to the Company Law, the MOLHR will only approve a capital reduction if: (a) no written objection is received from the company’s creditors; (b) any objections raised by creditors have been settled by the company; or (c) any objections filed by creditors at the relevant District Court have been rejected by the District Court by virtue of a final and binding court decision. For a foreign investment (“PMA”) company, after the approval from MOLHR is obtained, the company must also obtain approval of the capital reduction from the Capital Investment Coordinating Board (“BKPM”).

Zuhesti Prihadini
Senior Associate
+62 21 3911191
zuhesti.prihadini@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.
**Company Taxation**

Last July the Ministry of Finance issued Regulation PMK-107/PMK.03/2017 (“PMK-107”), which amends the Indonesian Controlled Foreign Company (“CFC”) rules. The main definition of CFC remains the same: a non-listed foreign company, which is at least for 50% owned by an Indonesian taxpayer (company or individual), or a group of Indonesian taxpayers.

The most important change under PMK-107 is that also indirectly owned CFCs will fall under the CFC rules. An indirectly owned CFC is defined as a foreign company, which is held for at least 50% by: (i) another CFC, or (ii) various CFCs held by Indonesian taxpayers, or (iii) various CFCs held by the same or more Indonesian parent companies. The 50% threshold requirement should be fulfilled as per the end of the fiscal year of the Indonesian taxpayer.

For the indirect CFCs the threshold is determined based on the ownership of the indirectly held CFC. If the indirect CFC is held for at least 50% by another CFC, it will be regarded as an indirectly owned CFC. If an Indonesian taxpayer owns a CFC through a trust or foundation, a “look-through” approach will be applied. The Indonesian taxpayer has to recognize a deemed dividend from a CFC by the end of the fourth month after the CFC had to submit its local tax return. In case the CFC is not required to submit a tax return, the deadline for the Indonesian taxpayer is the end of the seventh month after the end of the CFC’s fiscal year. The deemed dividend is calculated based on the effective ownership of the Indonesian taxpayer in the CFC (i.e., proportionally). If a CFC does actually pay a dividend, this amount can be offset against the previously reported deemed dividend (with a five years limitation).

**Tax Treaty**

Last June the Director General of Tax (“DGT”) issued Regulation PER-10/PJ/2017 (“PER-10”) that introduced the new certificate of domicile (“CoD”) for non-resident taxpayers. PER-10 is applicable as of August 1, 2017. Under PER-10 there are still two types of CoDs, one for banking institutions (“form DGT-2”) and one for non-banking institutions (“form DGT-1”). Form DGT-2 remained largely the same, whereas form DGT-1 has been amended more drastically. The CoD (page 1 of the form) is still valid for 12 months.

However, the format (part III of the form) now specifies the validity period. This may create issues for taxpayers in countries of which the tax authorities do not want to specify a specific period. Under the new form DGT-1 various new residency tests are added (under Part VI), and a new set of beneficial ownership tests is introduced (under Part VII), which only have to be filled in case the non-resident taxpayer receives Indonesian dividends, interest or royalties. The form seems to incorporate the principle purpose test and a simplified limitation of benefits test (“simplified LOB”), as Indonesia announced to use when signing the MLI. In general it can be said that the tests of Part VI are aimed at the use of SPV structures for investments and financing in Indonesia. Companies have to make sure that the entity they use for investments in Indonesia also has other functions and ideally also has investments in other countries. The beneficial ownership test of Part VII is quite straightforward. Like in the old form DGT-1, there still is an anti-base erosion test (i.e., not more than 50% of the recipient entity’s income is used to satisfy claims by other persons). However, the requirement that the Indonesian income is subject-to-tax at the level of the recipient company has been removed.
**Withholding Tax on Payments to Non-Residents**

WHT is imposed at 20% on various amounts payable to non-residents, unless the non-resident has a PE in Indonesia, whereby the rates applicable to payments to residents apply. The WHT may be reduced if the foreign resident is exempt or eligible for a reduced WHT rate by virtue of a Tax Treaty ("DTA"). In order to qualify for any relief under a relevant DTA, non-residents must provide a certificate from the tax authority in their country of residence (Form DGT-1 for most taxpayers). Banks, pension funds and certain others using custodian banks may use an alternative form (Form DGT-2), which requires only certification of the tax residency status, without the above additional declarations regarding the business or transaction.

WHT applies to the following:
- Dividends
- Interest, including premiums, discounts and compensation for loan guarantees
- Royalties
- Rent and other income connected with use of property
- Cross border leases
- Gifts and awards
- Compensation for work by individuals or services or activities by overseas entities (applies irrespective whether services are performed outside or inside Indonesia)
- Insurance premiums (the rate of tax is reduced depending on the nature of the transaction)
  - Insured - 10%
  - Insurance company - 2%
  - Reinsurance company - 1%
- Disposals of shares in unlisted Indonesian companies. The effective rate of tax is 5% of the gross transfer value. If a foreigner is buying the shares in a company, the company must pay the WHT before the transfer of ownership can be recorded.

**Branch Profits Tax**

PE’s of foreign enterprises are subject to 20% WHT on their after-tax income unless eligible for a reduced rate by virtue of a DTA.

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**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.

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**KPMG Advisory Indonesia**

33th Floor, Wisma GKBI 28 Jl Jend Sudirman
Jakarta 10210 - Indonesia

Phone : +62 21 570 4888
Fax : +62 21 570 5888
Website : www.kpmg.com/id/en/pages/default.aspx
Transfer Pricing Documentation for Loss-making Companies

The Indonesian government is now putting significant attention on transfer pricing (TP) practices. In December 2016, the Minister of Finance issued a regulation governing taxpayers under specific circumstances to maintain TP documentation to meet the arm's-length principle (ALP) for any related party transactions. Even if taxpayers do not fall under the criteria required to maintain TP documentation, they must be able to demonstrate observance of ALP in every related party transaction.

In TP methodology, it is common to use the profit level indicator (PLI) of operating margin in comparing a company with independent comparable companies from a commercial database provider; also called as transactional net margin method. If a company's PLI is profitable and falls within the interquartile range of the comparables, it means that the company has been consistent with ALP. But what happens if the company suffer losses in the period?

Operating loss could trigger the profit level indicator to fall outside the interquartile range, even after adjustments. The tax authority has the right to adjust operating margin to return the profit inside the interquartile range and issue a tax assessment. However, the loss situation can be of normal business cycle. A negative PLI doesn't always mean that the company violates the ALP. However, a taxpayer must formulate argumentation to be disclosed in the documentation, by reference of the prevailing OECD TP Guidelines, that the loss is attributable to factors outside the company's control and is not intentionally-repeatedly made.

Intercompany Loan from Transfer Pricing Perspective

Interest from a loan transaction is now in the loop of Indonesian transfer pricing (TP) practices. In accordance with the Minister of Finance Regulation No 213/PMK.03/2016, if a company incurred interest in the preceding fiscal year exceeding IDR 5 billion, it is required to prepare TP documentation in the current year. The documentation should allow to examine the existence of the loans, the debt-to-equity ratio (thin capitalization rule), and the nature of arm's-length principle (ALP).

Determining the ALP for a loan transaction is practically not easy. It is not sufficient to only compare the rate quoted in the loan agreement with the domestic bank reference rate or any other market rates. In some cases, even if the affiliated rate is higher than the reference rate, this does not necessarily mean that the transaction has been consistent with the ALP.

Theoretically, an interest rate is comprised of a base rate and lending margin. From TP analysis standpoint, the lending margin should be used as comparable factor rather than the whole interest rate. The lending margin itself is reflecting the risk associated with a company, and may vary for different companies.

When analyzing the ALP, the Comparable Uncontrolled Price (CUP) method is commonly selected as most appropriate method for loan transactions. It compares the affiliated rate with comparable independent rates from unrelated parties, which can be obtained from a commercial database provider. Different conditions of the comparables may arise, such as loan term, amount, currency, tenor, and country. As the CUP method requires a high degree of comparability, OECD has imposed that reasonably accurate adjustments can be made to eliminate the material effects of such differences. In addition, a borrower's credit rating also plays an important role when searching the comparables, making it necessary to determine the credit rating in the very beginning. In conclusion, taxpayers should now pay more attention to disclose its arm's length nature for intercompany loan transactions.
The Indonesian government has been making a strong commitment to enhance its business climate. In this respect, the Minister of Finance issued regulations for Bonded Logistics Centers (BLC). The BLC is intended to make logistics costs and efforts efficient by lowering dwelling time in ports, ensuring continuous availability of raw material, improving investment climate and becoming a national as well as regional logistics hub.

A BLC is defined as an area in Indonesian customs territory where companies can store their goods for up to three years, with deferment of custom and import taxes. The goods should only be subject to limited additional activities and may be owned by supplier, BLC operator or importer. Although there are tax and customs deferments, companies need to be aware of Permanent Establishment (PE) risks when maintaining stocks in the BLC, which later has consequence to pay respective income tax in Indonesia.

Hence, companies should consider supply-chain arrangements that mitigate PE exposures in maintaining stock in BLC.

Wahyu Indradi
Licensed Tax Advisor
+62 537 6225
wahyu.indradi@roedl.pro

PT Roedl Consulting
Rödl & Partner is active at 108 locations in 50 countries. The integrated professional services firm for audit, legal, management and tax consulting owes its dynamic success to 4,500 entrepreneurial minded partners and colleagues. With the strong network of our worldwide offices we have professionals who possess extensive international expertise to support our consulting works. Our presence in Asia/Pacific spans over 15 offices in China, Hong Kong, India, Indonesia, Malaysia, Myanmar, 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.

Rödl & Partner
PT Roedl Consulting
GOP 9, Jl. Grand Boulevard
BSD Green Office Park,
BSD City, Tangerang 15345
Indonesia
Phone : +62 21 505 60405
Fax : +62 21 505 60412
Email : jakarta@roedl.pro
www.roedl.com
Real Estate

New Regulation on Procedures for Land Freeze and Land Seizure

On August 9, 2017, the Minister of Agrarian Affairs and Spatial Planning ("Minister") issued Regulation No. 13 of 2017 on Procedure for Land Freeze and Land Seizure ("Regulation") with a perspicuous rule to ensure an orderly administration of land that is related to land freeze, seizure or the recording disputes and cases concerning land rights.

Under the Regulation, a land freeze is conducted on the request of (i) individual or legal entity having legal connection to the land; or (ii) law enforcer in relation to criminal investigation and prosecution. Additionally, it may also be conducted by the head of Land Office upon instruction of Minister, Head of Land Regional Office or in urgency situation. No changes to the land title can be made during the land freeze period, i.e.:

(i) 30 calendar days and its extension by a court order or decision for the freeze initiated by individual or legal entity;
(ii) until the cessation of investigation or prosecution or the removal of the freeze by the legal enforcer;
(iii) removal instruction from the Minister, Head of Regional Land Office or Head of Land Office for the freeze conducted by the Head of Land Office.

As for the land seizure, it is performed by the head of Land Office to record any authorized seizures by investigator or judicial body in a court case, investigation (criminal seizure) or tax (tax seizure). During the period of land seizure, the land title cannot be transferred and become the object of mortgage, but it can still be extended, renewed or the subject of mortgage discharge applications (roya).

The procedure for initiating the land freeze and seizure are similar, i.e., by filing an application and the required documents to local Land Office who will then undertake administrative examination. The applicant thereafter has to pay assessment and record-keeping fee and following the assessment of Land Office, the land freeze or seizure will be granted and recorded by the head of the Land Office and on measurement certificate.

Further Regulation on Property Ownership for Foreigners

Minister of Agrarian Affairs and Spatial Planning/Head of National Land Agency of The Republic of Indonesia has issued a further regulation on property ownership for foreigners which has been set out in Minister Regulation No. 29 of 2016 concerning Procedures for Granting, Relinquishing or Transferring Land Rights over Residential House to Foreigners Domiciled in Indonesia ("MR 29/2016"). MR 29/2016 is the implementing regulation to the Government Regulation No. 103 of 2015 on the Ownership of Residential House by Foreigners Domiciled in Indonesia ("GR 103/2015").

Under MR 29/2016, it is stipulated that a foreigner may own a residential house with Right to Use (or as known as Hak Pakai) which is possessed by virtue of an agreement that grants the Right to Use over Right of Ownership in a deed made by Land Deed Officials; or c. Right to Use which is derived from the conversion of Right of Ownership or Right to Build (also known as Hak Guna Bangunan/HGB).

2. An apartment built on the land:
   a. Under a Right to Use; and
   b. Which is derived from the conversion of Right of Ownership on Apartment Unit.

The residential house that may be purchased and owned by foreigner must be more than the minimum price limitation determined in MR 29/2016. The minimum price limitations is varied which is depending on the province where the house is located. In Jakarta, the minimum prices for the house and apartment unit are 10 billion Rupiah and 3 billion Rupiah respectively.
New Constitutional Court Decision on the Antitrust Law


1. The broad scope of the phrase “other parties” in Article 22, Article 23 and Article 24;
2. The potential multiple interpretations of the phrase “investigation” in Article 36 (c), (d), (h), and (i), and Article 41 paragraph (1-2); and
3. Criminal law as primum remidium under Antitrust Law in Article 44 (4-5).

All of the aforementioned provisions in the Antitrust Law were reviewed against the following provisions of the 1945 Republic of Indonesia Constitution. The Petitioner argued that such a broad interpretation had ended up creating legal uncertainty which could in turn lead to multiple interpretations and conflicts in regard to any authentic reading of the phrase “other parties”. Toward this legal reasoning, MK has now ruled out that the phrase “other parties” and now scaled-down the scope phrase “other parties” to mean only “other businesses and/or business-related parties”.

Afterward the Petitioner argued that phrase “investigation” does not offer any clear definition of whether such investigations refer to administrative or criminal investigations. MK decided the phrase “investigation”, should be interpreted to mean “gathering evidence to be used as proceeding materials”. Thus, the phrase “investigation” now refers to administrative investigations and not criminal investigations (pro justitia). MK also decided that any investigation undertaken by the KPPU should be categorized as an administrative investigation, because of its status as a state auxiliary organ and KPPU is prohibited from undertaking any criminal investigation.

MK has rejected the petitioner argument, which stated that the Antitrust Law emphasized criminal law as primum remidium (first resort). In contrast, MK argued that criminal sanctions can only be imposed after administrative sanctions have already been ignored (last resort).

Arief Octovian, S.H.
Associate
+62 21 522 5453
a.octovian@kndlawyers.com

On Pg. 12, in the previous edition of Newsletter Law & Taxes, we mistakenly used the wrong photo of the writer, Arief Octovian, S. H. Above is the correct photo. We apologize for this error.
SAVE THE DATE

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German-Indonesian Chamber of Industry and Commerce (EKONID)
Jl. H. Agus Salim No. 115 | Jakarta 10310
PO 3151 | Jakarta 10031 Indonesia
Tel. + 62-21 3154685 | Fax. + 62-21 3157088, 3155276
Email: info@ekonid.id
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