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# Indonesia Tax Laws Harmonization

ICCC – Sharing Session

20 September 2022



# Basis and Use of the presentation

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In providing this presentation, we have relied upon our understanding on the Omnibus Law and Tax Law Harmonization with their implementing regulations as published by the Indonesian Finance Minister as of this date.

Should the legislation change, some of the issues/conclusions discussed in this communication may change as well. We will not be responsible for updating the information herein, unless we are specifically requested to do so under a separate arrangement.

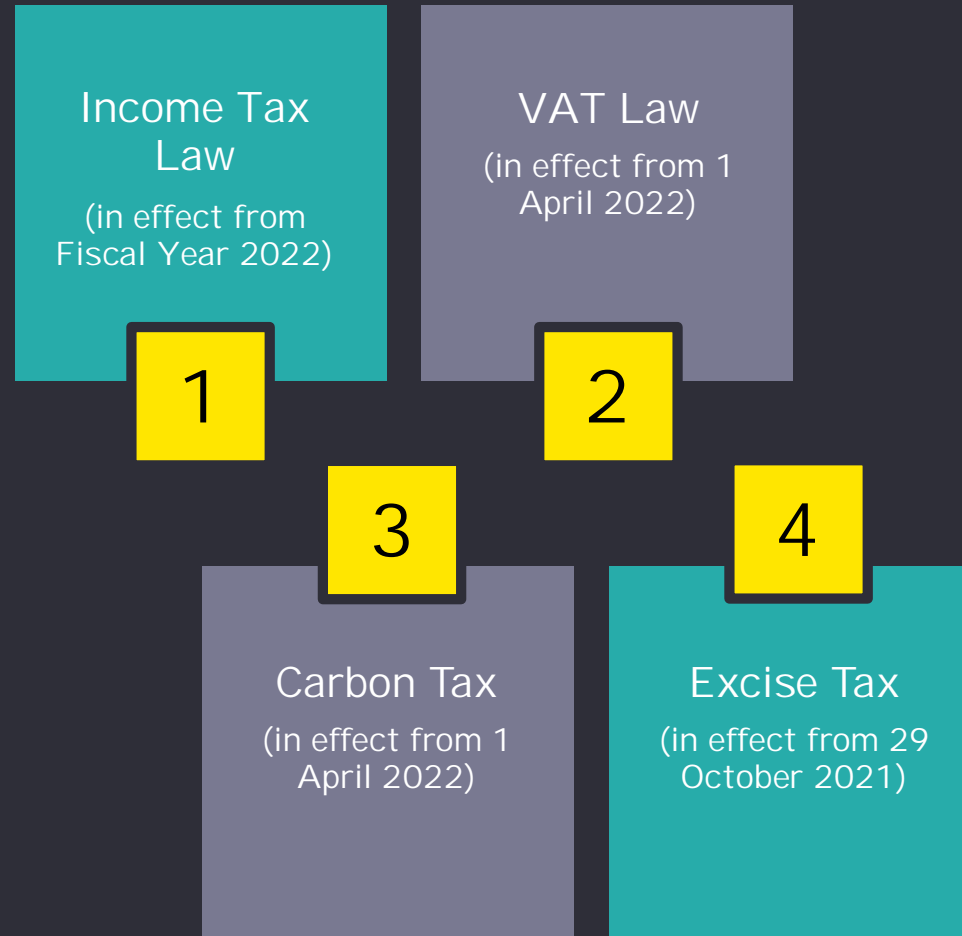
Please also note that our comments and conclusions have been put together on the basis of our understanding of the facts as discussed above. Please let us know if our understanding of any of the facts is incorrect as this may affect our conclusions.

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# Tax Laws Harmonization (“HPP Law”)

## HPP Law developments

- ▶ Enacted on 29 October 2021 which harmonized six Indonesian Taxation and Excise Laws
- ▶ Each amended Laws has its own effective date
- ▶ Accommodates key taxation changes in Omnibus Law (e.g., dividend exemptions regime)



# Key taxation changes in HPP Law

## Income Tax

- Changes in Individual and Corporate Income Tax Rate and/or Bracket;
- Exemption of foreign sourced income for Qualified Expatriates;
- New rules on the taxability and deductibility BIK;
- More leniency on depreciation and amortization;
- Introduction of *Substance over form* principle;
- Addition of calculation methods to determine the maximum borrowing costs;
- Expansion of TP methods and enactment of Secondary Adjustment.

## VAT

- Reduction of types of Non-Taxable Goods and/or Services and inclusion of some of these items in the provision on Exempted and Non-collected VAT;
- Exclusion of alienation of Taxable Goods in exchange for shares in a framework of capital participation ("*inbreng*" mechanism) from the definition of delivery of Taxable Goods that is subject to VAT;
- Updates on the scope of claimable Input VAT for Taxable Entrepreneur who has yet to make any export / local delivery of taxable goods and/or services;
- New treatment on some of the Input VAT which was previously not claimable;
- New rules for sales made under consignment arrangement;
- New rules on Final VAT for Qualified Taxable Entrepreneur;
- Addition of minimum information to be stated in the Tax Invoice

## Carbon Tax

- Stipulation on the subject, object, tax rate and timing of the tax payable of the Carbon Tax

- Inclusion of electric cigarette in the definition of goods subject to excise duty

## Excise Tax

# Key taxation changes in HPP Law

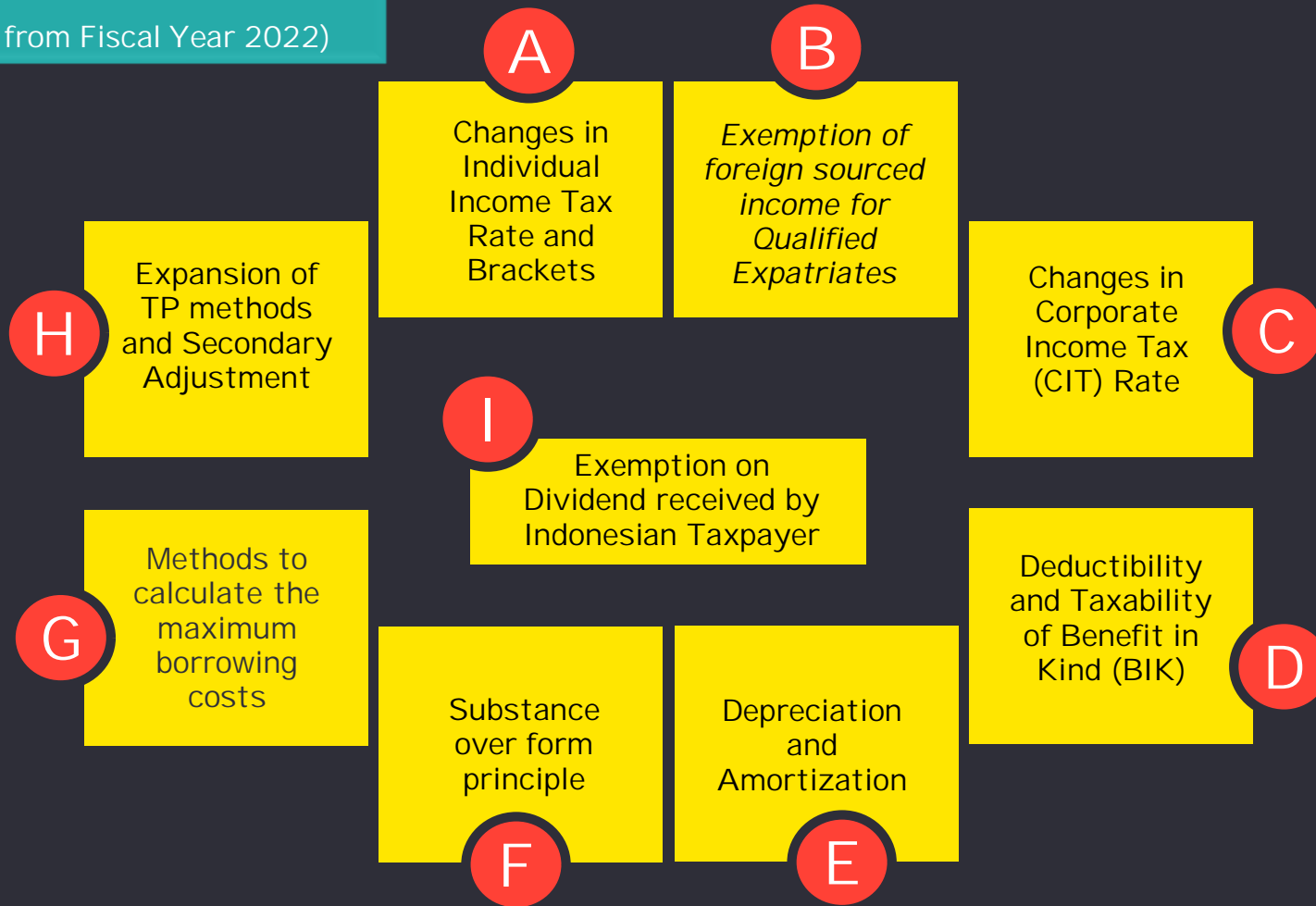
## Income Tax Law

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### Income Tax Law

(in effect from Fiscal Year 2022)



# Key taxation changes in HPP Law

## Income Tax Law

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### Changes in Individual Income Tax Rate and Brackets

Article 17 paragraph (1)

#### Before Amendment

IDR 0 to IDR 50 Million	5%
IDR 50 Million to IDR 250 Million	15%
IDR 250 Million to IDR 500 Million	25%
IDR 500 Million to IDR 5 Billion	30%

#### After Amendment

IDR 0 to <b>IDR 60 Million</b>	5%
<b>IDR 60 Million</b> to IDR 250 Million	15%
IDR 250 Million to IDR 500 Million	25%
IDR 500 Million to IDR 5 Billion	30%
More than IDR 5 Billion	<b>35%</b>

Individual Taxpayers with a certain gross turnover (*Wajib Pajak Orang Pribadi yang memiliki peredaran bruto tertentu*) less than IDR 500 million in a Fiscal Year will not be subject to Income Tax.

# Key taxation changes in HPP Law

## Income Tax Law

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### Exemption on foreign-sourced income for expatriate tax resident

Article 4 Paragraph (1a)

- ▶ Worldwide Income principles will not be applicable for Qualified Expatriate who possess certain expertise\* as endorsed by the Indonesian Ministry of Human Resources or Ministry of Research. This facility will only be applicable for only 4 (four) Fiscal Years since the Qualified Expatriate become an Indonesian Domestic Taxpayer.

\*Certain recognized expertise should fulfill the following conditions:

- ▶ Foreign nationals;
- ▶ Expertise in Science, Technology, and/or Mathematics indicated by:
  - ▶ Certificate by Government-Approved Institution;
  - ▶ Diploma; and/or
  - ▶ At least 5 years of working experience in related field.
- ▶ Obligated to conduct transfer of knowledge

# Key taxation changes in HPP Law

## Income Tax Law

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### Changes in Corporate Income Tax (CIT) Rate

Article 17 paragraph (1) point b and Paragraph (2b)

- 1) Corporate taxpayers and permanent establishments are subject to Corporate Income Tax rate of 22% starting from the 2022 fiscal year. This effectively cancels the previous plan to reduce the rate to 20%
- 2) The CIT rate for qualified public listed company\* can be reduced by 3%. Compared to the previous tax facility of 5% income tax reduction.

*\*Listed Limited Liability Company ("PT") that is held by minimum 300 individuals with each maximum ownership of 5%.*



# Key taxation changes in HPP Law

## Income Tax Law

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### Taxable Benefit in Kind (BIK)

Article 4 Paragraph (1)

Article 4 Paragraph (1) point a

“Reimbursement or remuneration received or obtained in connection with work or services including salaries, wages, allowances, honoraria, commissions, bonuses, gratuities, pensions, or compensation in other forms including in-kind and/or benefits, shall be taxable unless otherwise stipulated in this Law”

- ▶ Under UU HPP, in-kind and/or benefits are considered as taxable object for the receiver and can be deducted for the purpose of Income Tax calculation at the hands of the giver as long as it is business-related. However, Article 4 Paragraph (3) point d, as can be viewed in next slide, lists certain non-taxable BIK.
- ▶ The implementing regulation (i.e., PER 16/2016) on the technical guidelines to calculate the Individual Income Tax Art. 21 has not been updated to be aligned with this new provision.

Under this implementing regulation, in-kind and/or benefits still not subject to withholding Art. 21. Hence, it is unclear on how the in-kind and/or benefits will be taxed at the level of individual who receives it (i.e., whether it will be taxed accordingly in the Individual Income Tax Return).

# Key taxation changes in HPP Law

## Income Tax Law

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### Non-taxable Benefit in Kind (BIK)

Article 4 Paragraph (3)

#### Article 4 Paragraph (3) point d

“Reimbursement or remuneration received or obtained in connection with the work or service in the following forms shall not be taxable:

1. Food, food ingredients, beverage ingredients, and/or beverages for all employees;
2. BIK(s) and/or benefits provided in certain regions;
3. BIK(s) and/or benefits that must be provided by the employer related to the performance of work;
4. BIK(s) and/or benefits sourced or financed by the State Budget (APBN), Regional Budget (APBD), and/or Village Revenue and Expenditure Budget ( APBDesa); or
5. BIK(s) and/or benefits of certain types and/or limitations.”

# Key taxation changes in HPP Law

## Income Tax Law

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### Depreciation and Amortization

Article 11 and Article 11A

- ▶ According to Article 11 of pre-HPP Law, Immovable Assets (i.e., Permanent Building) can be depreciated at the maximum rate of 5% per Fiscal Year (i.e., the useful life of such assets are assumed by Indonesia Income Tax Law of 20 years regardless of the financial accounting treatment).
- ▶ However, Article 11 of HPP Law provides a more lenient tax treatment for which the Taxpayer is given an option in depreciating the Immovable Assets (i.e., Permanent Building) that have commercial useful life of more than 20 years to either:
  - a. follow the above treatment (i.e., maximum depreciation rate at 5% per Fiscal Year); or
  - b. follow the financial accounting treatment.
- ▶ Nearly the same treatment is also applicable for amortizing the intangible assets. In expensing the amortization of intangible assets which has useful life of more than 20 years, HPP Law provides that the taxpayer can choose to either use the maximum useful life of 20 years or use the useful life based on its financial accounting treatment.

# Key taxation changes in HPP Law

## Income Tax Law

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### Substance over form principle

Article 18

#### Interpretation:

The ITO will have the authority to prevent a tax avoidance practice as a mean used by the taxpayer to reduce, avoid or postpone the tax payment that should have been payable which is in contrary to the purpose and objective of the prevailing tax laws. One of the ways to avoid tax is by conducting a transaction that is not in line with the actual transaction, which is in contrary to the substance over form principle. Therefore, the ITO may enforce its power to put more emphasis on the economic substance rather than that the legal form of the transaction.

- ▶ Indonesian GAAR was one of the newly introduced provision in the elucidation of Article 18. Since it is a new provision with no further implementing regulation, we are still observing until which extent the tax authority can utilize this provision to evaluate taxpayer's structure or transaction.

# Key taxation changes in HPP Law

## Income Tax Law

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### Introduction of new method to calculate deductible interest expenses

Article 18 paragraph (1)

#### Article 18 paragraph (1)

“The Minister of Finance has an authority to regulate the maximum amount of borrowing cost for tax purpose “

#### Interpretation:

*In determining the maximum amount of borrowing cost for tax purposes, the internationally recognized methods are used for instance the debt-to-equity ratio, certain percentage of borrowing cost compared to the earnings before interest, taxes, depreciation and amortization (percentage to EBITDA) or other methods.*

- ▶ Other than using DER, Indonesian government allows the application of EBITDA or other methods to determine the maximum amount of borrowing cost. This will further be regulated by Government Regulation which until this moment has not been issued yet.

### Expansion of the TP Methodology and Secondary Adjustment

- ▶ Under HPP Law, the TP Methodology is expanded from the initial five methods (CUP, RPM, CPM, PSM and TNMM) to cover additional methods such as *Comparable Uncontrolled Transaction Method, Tangible Asset and Intangible Asset Valuation, and Business Valuation*.

#### *Elucidation of Article 18 paragraph (3)*

*“The difference between the transaction price under special relationship which does not conform with the arm’s length principle with the transaction price under special relationship that conform with the arm’s length principle is deemed as dividend which is subject to income tax according to the prevailing taxation regulations.”*

- ▶ The above secondary adjustment (i.e., a following correction resulting from the primary correction made on the related party transaction) in the form of deemed dividend has already been incorporated in the taxation regulation No. PMK-22/2020 regarding Advance Pricing Agreement. To legally strengthening this concept, the Indonesian government incorporates such provision in the HPP Law.

# Key taxation changes in HPP Law

## Income Tax Law

### Exemption on Dividend received by Indonesian Taxpayer

#### Dividend\* distributed by local company



Received by individual tax resident

- ▶ Tax exempt if it is **invested** in Indonesia



Received by corporate tax resident

- ▶ Tax exempt **without** any further criteria

Other offshore income **not** from permanent establishment

Tax exempt if it is **invested** in Indonesia and the offshore income is:

- ▶ From active business
- ▶ Not distributed by a subsidiary

#### Dividend\* distributed by offshore listed corporation



Received by individual & Corporate tax resident

- Tax exempt if it is **invested** in Indonesia

#### Dividend\* distributed by offshore non-listed corporation and after-tax profit of permanent establishment



If **at least** 30% of net income after tax is distributed and invested in Indonesia

- ▶ The invested dividend is tax exempt
- ▶ The remaining balance of net income after tax is not subject to tax



If **less than** 30% of net income after tax is distributed and invested in Indonesia

- ▶ The invested dividend is tax exempt
- ▶ The balance between 30% net profit after tax and invested dividend is taxable income
- ▶ The remaining balance of net income after tax is not subject to tax

\*Dividend distributed should be based on General Meeting of Shareholders or Interim Dividend and other similar meeting / distribution mechanism.

# Key taxation changes in HPP Law

## VAT Law

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VAT Law  
(in effect from 1  
April 2022)

2

Changes of effective VAT Rate

10%

>>

11%

Will be effective from 1 April 2022

>>

12%\*

\*Will be effective at the latest  
from 1 January 2025

## Other key changes

- ▶ Reduction of Types of Non-Taxable Goods and/or Services and inclusion of some of these items in the provision on Exempted and Non-collected VAT;  
Most of the implementing regulations related to this treatment (i.e., if the VAT for these goods and/or services has the characteristics as exempted or non-collected) have yet to be issued.
- ▶ Alienation of Taxable Goods in exchange for shares in a framework of capital participation (*"inbrenng"* mechanism) is excluded from the definition of delivery of Taxable Goods (i.e., such will be classified as non-VAT-able transaction).



### Other key changes (Cont'd)

- ▶ Update on the scope of claimable Input VAT for Taxable Entrepreneur who has yet to make any export / local delivery of taxable goods and/or services. Previously, it was only limited to the Input VAT related to the capital goods, but it is now expanded to cover all of the Input VATs as long as they are directly related to the said export / local delivery.

The respective input VAT cannot be credited and the taxpayer has to remit it to the DGT if after three fiscal years (could be more for certain business sectors) since the first time VAT was credited, the Taxable Entrepreneur still has not made any export / local delivery of taxable goods and/or services.

- ▶ Some Input VAT which was previously not claimable can now be (fully or partially) credited. It covers (i) Input VAT that was found under Tax Audit process; (ii) input VAT paid by the entrepreneur prior to its registration as taxable entrepreneur; and (iii) input VAT assessed via the issuance of tax assessment letter.

For (ii) Input VAT paid by the entrepreneur prior to its registration as taxable entrepreneur, input VAT can be credited at the maximum of 80% of the VAT Output that should have been collected. For (iii) Input VAT paid via tax assessment letter can be credited at the amount as stated in the tax assessment letter as long as the tax due mentioned in such letter has been paid accordingly and the Taxpayer does not contest the said letter to the higher legal stage.

### Other key changes (Cont'd)

- ▶ Sales made under consignment arrangement are no longer recognized as taxable delivery of goods.
- ▶ New regulation on Final VAT for Qualified Taxable Entrepreneur. Final VAT is a treatment where the Output VAT is determined in a certain amount by the DGT and the related Input VAT is uncreditable.

A Qualified Taxable Entrepreneur is the Taxable Entrepreneur who:

- a. has annual gross turnover less than certain amount;
  - b. conducts certain type of businesses; and/or
  - c. performs delivery of certain taxable goods and/or services.
- ▶ Minimum information to be stated in the Tax Invoice (i.e., this includes TIN / Indonesia Citizen Number ("NIK")). However, Taxable Entrepreneur who performs delivery to consumer with a characteristic of end customer, is allowed to not to follow this requirement (i.e., not obliged to include the buyers' identity (name, address and TIN) and the seller's name and signature).

## Recently issued VAT Law's implementing regulations

- ▶ Several implementing regulations on this amended VAT Law were just recently issued as follows:
  - VAT on Self Building activities (*Kegiatan Membangun Sendiri*);
  - VAT on the delivery of Certain Liquified Petroleum Gas (LPG);
  - VAT on the delivery of Tobacco products;
  - VAT on the delivery of Certain Agricultural Products;
  - VAT on the delivery of Insurance Agency Service, Insurance Broker Service and Reinsurance Broker Service;
  - VAT on Crypto Assets Trading Transaction;
  - VAT on the Implementation of Financial Technology;
  - VAT on the delivery of Certain Taxable Services;
  - VAT on the Utilization of Offshore Intangible Taxable Goods and/or Taxable Services within Indonesia Customs Area Through Electronic Commerce.

# Key taxation changes in HPP Law

## Carbon Tax and Excise Duty

- ✓ An individual or a corporate that **acquires goods containing carbon and/or carry out activities resulted to carbon emission** on certain period is **subject to Carbon Tax**
- ✓ The Carbon Tax rate is **proposed to be higher than or equivalent to the carbon price rate at carbon market** per kilogram of carbon dioxide equivalent (CO<sub>2</sub>e) or its equivalent unit (**minimum IDR 30 per kilogram of CO<sub>2</sub>e or its equivalent unit**).
- ✓ The Carbon Tax **will be payable** at the **a) purchase** of goods containing carbon; **b) at the end of calendar year** from activities producing carbon emissions in certain amount; or **c) other time** determined by the Government.
- ✓ The Carbon Tax will initially be applied to coal fired power producers ("CFPP").
- ✓ The implementation of Carbon Tax in Indonesia has been postponed twice (initially from April 2022 to July 2022 and from July 2022 to non-specific time) and we are still waiting for the implementing regulations.

Carbon Tax  
(in effect from 1  
April 2022)

3

Excise Duty  
(in effect from 29  
October 2021)

4

- ✓ An inclusion of **electric cigarette in the definition of goods subject to excise duty on tobacco products** to strengthen the imposition of excise duty to the electric cigarette



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———— Thank You ————

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