DEEP DIVE: INDONESIA’S TAX HARMONIZATION LAW – WHAT COMPANIES SHOULD KNOW AND DO FROM A LEGAL PERSPECTIVE

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LEGAL BASIS ON THE OMNIBUS METHOD

The Tax Harmonization Law marks the second use of the omnibus method in the Indonesian legal system, whereby a single piece of legislation revises multiple laws and regulations at once. The first one being the Law No. 11 of 2020 on Job Creation (Job Creation Law).

- In 2021, the Constitutional Court of Indonesia (*Mahkamah Konstitusi* or MK) made a decision on the juridical examination of the Job Creation Law, which stipulates that the law is deemed conditionally unconstitutional.
- As a result of the decision, MK has ordered the government of Indonesia and lawmakers to revise the law within a period of two years and delay the issuance of any new implementing regulation.
- One of the main issues discussed in the decision is the lack of legal basis of the omnibus method that is used in formulating the law.
- In 2022, the Law No. 12 of 2011 regarding Formulation of Laws and Regulations has been amended by Law No. 13 of 2022, and now serves as the legal basis to use the omnibus method.
- Since the Tax Harmonization Law is passed before the enactment of Law No. 13 of 2022, there is still a chance of it being challenged to the Constitutional Court. However, we are not aware on such challenge.

NEW VERSION OF NPWP

DOMESTIC INDIVIDUAL TAXPAYER

- An Indonesian taxpayer will now use their National Identity Number (NIK), an identification number contained in the Indonesian National Card (KTP), as their Tax Identification Number (NPWP).
- Previously, a taxpayer had to register with the relevant Tax Office to obtain an NPWP. By integrating the NIK and NPWP, the government intends to simplify the tax administration system.

FOREIGN INDIVIDUAL TAXPAYER AND CORPORATE TAXPAYER

- A foreign individual taxpayer and a corporate taxpayer will use a 16-digits NPWP, obtained by adding the number ‘’0’’ in front of the existing 15-digits NPWP.

NEW VERSION OF NPWP (CONTINUED)

The Activation of the New NPWP

- To use the new NPWP, the taxpayers' data must be conformed with the population data in the Ministry of Home Affairs (*Kementerian Dalam Negeri*) through the Directorate General of Residency and Civil Registrations (*Direktorat Jenderal Kependudukan dan Pencatatan Sipil*).
- Based on Ministry of Finance (MOF) Regulation No. 112/PMK.03/2022, the Directorate General of Taxation (DGT) will submit a request for clarification on the data conformity to the taxpayers if the taxpayers' data is deemed invalid.
- In practice, taxpayers can actively update their own data to activate the NPWP no later than December 31, 2023 via:
    - DGT website (https://djponline.pajak.go.id/);
    - DGT contact center (Kring Pajak 1500200); or
    - The Tax Office where the taxpayers reside.

Required Documents

- ✓ data of e-mail address and cellular phone number;
- ✓ data of taxpayers' address;
- ✓ data of Business Field Classification; and
- ✓ data of family unit (*Kartu Keluarga*), for individual taxpayer.

GENERAL TAXATION LAW

Changes in the General Taxation Law include:

Amendment of Tax Returns

Taxpayers can now amend their tax returns without any conditions, even though tax audit has been commenced, provided that the DGT has not issued any tax audit findings notification letter (SPHP).

Any correction causing tax underpayment will be subject to interest penalty based on a monthly benchmark rate determined by MOF plus 10% divided by 12 for a maximum of 24 months, where part of a month is calculated as one month.

The tax underpayment and the interest penalty must be paid before the submission of the self-report and the tax audit process will continue according to the self-report.

[Article 8(4)]

GENERAL TAXATION LAW

Changes in the General Taxation Law include:

Reduction of Administrative Sanctions Relating to Underpaid Tax Assessment Letter

- The DGT may only issue an Underpaid Tax Assessment Letter within a period of 5 (five) years statute of limitation after conducting a tax audit.
- The administrative sanctions relating to Underpaid Tax Assessment Letter are as follows:
  a. Interest from the unpaid or underpaid income tax within one fiscal year (previously 50% of the unpaid or underpaid income tax within one fiscal year);
  b. Interest from the un-withheld or under-withheld or un-collected income tax (previously 100% of the un-withheld or under-withheld, un-collected or under-collected, unpaid or underpaid, withheld or collected but unpaid or underpaid income tax);
  c. 75% increase from the unpaid or underpaid VAT and LGST (previously 100% of the unpaid or underpaid VAT and LGST); or
  d. 75% increase from the income tax that is withheld or collected but unpaid or underpaid.
- Interest penalty relating to Underpaid Tax Assessment Letter for points (a) and (b) is stipulated based on a monthly benchmark rate determined by the MOF, plus 20%, divided by 12 for a maximum of 24 months and part of a month is calculated as one month.

[Articles 13(1), 13 (3), 13(3b) and (3c)]

GENERAL TAXATION LAW

Changes in the General Taxation Law include:

Additional Case for DGT to Issue Notice of Tax Collection Letter

- The DGT can now issue a Tax Collection Letter if there is unpaid or underpaid tax within the period in accordance with the agreement to make payment in installment or postpone the tax payments as referred in Article 9(4).

[Article 14(1)(i)]

GENERAL TAXATION LAW

Changes in the General Taxation Law include:

Partnering with Other Countries for Tax Collection Assistance

- The DGT is granted the authority to provide tax collection assistance to a partner country or jurisdiction and vice versa by way of executing a reciprocal international agreement.

[Article 20A]

GENERAL TAXATION LAW

Changes in the General Taxation Law include:

Reduction of Fines Related to Tax Objections

- The Taxation Harmonization Law amends the provision of the General Taxation Law which previously imposed a fine of 50% of the payable tax on a taxpayer whose tax objection was dismissed or only partially granted.
- The Tax Harmonization Law reduces that fine to 30% of payable tax. Note that if the taxpayer or the DGT appeals the tax objection decision, this 30% fine will not be imposed until the appeals process is completed.

[Article 25 (9) & (10)]

GENERAL TAXATION LAW

Changes in the General Taxation Law include:

Reduction of Fines Related to Tax Appeal

- The Tax Harmonization Law amends the provision of the General Taxation Law which previously imposed a fine of 100% of payable tax on a Taxpayer whose tax appeal was dismissed or only partially granted.
- Tax Harmonization Law reduces the fine to 60% of payable tax.

[Article 27 (5d)]

GENERAL TAXATION LAW

Changes in the General Taxation Law include:

Mutual Agreement Procedure

- The DGT is authorized to implement Mutual Agreement Procedure (MAP) in order to prevent or settle any problems which arise in the implementation of tax treaty.
- The MAP may be proposed by:
  - ✓ a domestic taxpayer;
  - ✓ the DGT;
  - ✓ authorized official of the partnering countries or partnering jurisdictions for double taxation avoidance agreement; or
  - ✓ Indonesian citizens through the DGT in relation to discriminatory treatment in partnering countries or partnering jurisdictions of the double taxation avoidance agreement.

[Article 27C]

GENERAL TAXATION LAW

Changes in the General Taxation Law include:

Appointment of Other Party Involving in or Facilitating Transactions to Conduct Tax Obligations in Relation to the Transactions

- The MOF can now appoint other parties who directly involved in or facilitating transactions between transacting parties, to withhold, collect, deposit, and/or report taxes in accordance with provisions of laws and regulations.
- Failure to conduct the obligations may result in imposition of sanctions in accordance with the prevailing tax laws.
- If the appointed party is an electronic system provider, other than tax sanctions applicable as above, it can also be sanctioned with disconnection from internet access after being warned.

GENERAL TAXATION LAW

Changes in the General Taxation Law include:

Termination of Tax Criminal Case

A tax criminal case can be terminated if the taxpayer or the suspect pays:

a. the State loss as stated in Article 38 plus one time fine of the State loss;

b. the State loss as stated in Article 39 plus three times fine of the State loss;

c. tax amount in the tax invoice, proof of tax collection, proof of tax withholding and/ or proof of tax payment as stated in Article 39A plus four times fine of the said tax amount.

[Article 44B(2)]

GENERAL TAXATION LAW

Changes in the General Taxation Law include:

Termination of Tax Criminal Case Investigation (continued)

- In the event that a tax criminal case has been referred to the court, the taxpayer can still pay:
  - ✓ the State loss plus administrative sanctions and the payment will be taken into consideration to prosecute the taxpayer without imprisonment; or
  - ✓ the tax amount in the tax invoice, proof of tax collection, proof of tax withholding, and/or proof of tax payment added with the administrative sanctions.
- If the payment made during the investigation until the trial stage does not cover the respective amount, then it can be considered as prepayment of the criminal fine imposed on the convict.

GENERAL TAXATION LAW

Changes in the General Taxation Law include:

Payment of Criminal Fine in Articles 39 and 39A

- The criminal fine as referred to in Article 39 and Article 39A cannot be replaced by imprisonment and must be paid by the convict.
- Failure to settle the criminal fine within 1 (one) month at the latest after the final and binding court decision will result in the confiscation and auction of the convict's asset.

[Article 44C]

GENERAL TAXATION LAW

Changes in the General Taxation Law include:

Implementing Regulations

Based on Article 44E, further provisions regarding certain matters will be governed by the following implementing regulations:

A. Government Regulation (*Peraturan Pemerintah*)

Provision of data for the purpose of integration of the population database with the taxation database [Article 2 (10)]

B. MOF Regulation (*Peraturan Menteri Keuangan*)

a. the registration and reporting period as well as the registration and confirmation procedures [Articles 2 (1), (2), (3), (4)], including the use of NIK as NPWP, the revocation of NPWP and/or revocation of the VAT-able Entrepreneur Number (*Pengukuhan Pengusaha Kena Pajak);*

b. the granting and request of tax collection assistance [Article 20A (2)];

c. the collection and delivery of tax collection results for tax claims [Article 20A (9)];

d. the implementation of the mutual agreement procedures [Article 27C (1)];

GENERAL TAXATION LAW

Changes in the General Taxation Law include:

Implementing Regulations (continued)

e. the implementation of the tax rights and obligations by a proxy [Article 32 (3)] as well as certain competencies that must be owned by the proxy [Article 32 (3a)];

f. the appointment, withholding, collection, deposit, and/or reporting of tax which has been withheld or collected by other parties [Article 32A (2)];

g. the assessment, collection and legal remedies [Article 32A (3)];

h. the imposition of reprimand [Article 32A (4)] as well as request for disconnect and restoration of access [Article 32A (7)]; and

i. the request to stop tax criminal investigation [Article 44B (1)] and settlement [Articles 44B (2) & (2a)].

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Thank you!

Contact us if there are any questions.

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