Indonesian tax news
Highlight
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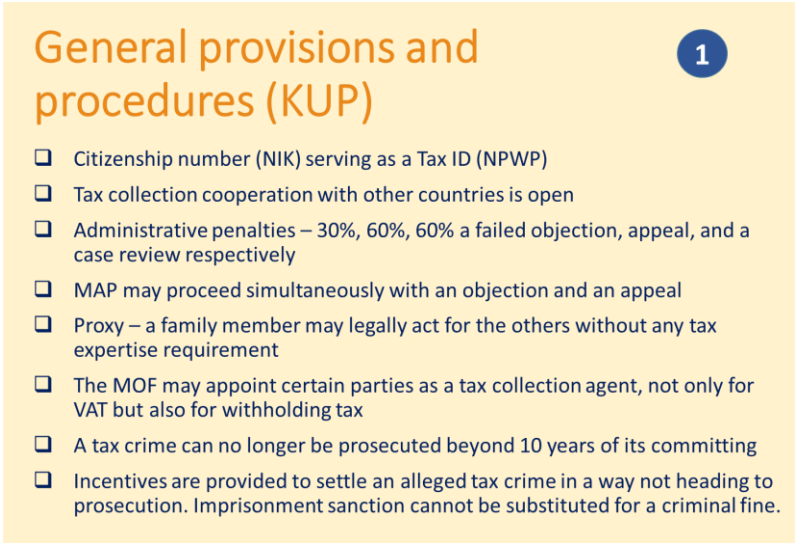
Making tax regulations in harmony
And reformation in tax continues

Law No. 7/2021 regarding tax regulations harmonization (TRH Law, or "UUHPP") came into force on 29 Oct. 2021, the same day as enacted. The law is part the tax reformation package which includes Law No. 2/2020 dealing with state fiscal policy and financial system stabilization enacted in the face of raging COVID 19 pandemic in March 2020 and Law No. 11/2020 regarding job creation which came into force in Nov. 2020. Like its immediate predecessor, the TRH law amends the prevailing taxation laws (dealing with general provisions, income tax, and VAT). In addition, it introduces carbon tax and amends the excise law.

What follows is an overview of the main amendments of the taxation and excise laws and the introduction of the carbon tax.

General tax provisions and procedure (KUP)

Under the TRH law, citizenship number ("NIK") will serve as a Tax ID Number ("NPWP") for domestic individual taxpayers. The Minister of Finance (MOF) will have to cooperate with the Home Affair Minister to realize the change.



The law provides a foundation for the MOF to cooperate with other jurisdictions for the collection of unpaid tax. A reciprocal assistance agreement, either of a bilateral or multilateral type, should be put in place before the cooperation can operate.

A failed tax objection and tax appeal will trigger an administrative penalty if some part of the disputed amount is left unpaid before objection submission. However, the penalty is reduced to 30% (down from 50% of the unpaid disputed amount) for a failed objection, and to 60% (down from 100%) for a failed appeal. A failed case review which ends up in an additional

underpaid tax will also cause another administrative penalty of 60% of the additional underpaid tax, something not addressed under the current law.

With regard to a tax dispute pertaining to tax treaty implementation, a mutual assistance procedure (MAP) may proceed simultaneously with a corresponding objection and appeal. While all refer to the same and single tax assessment letter, each of the MAP and the objection and appeal may deal with different tax disputes. An appeal verdict should not stop an on-going MAP process unless the verdict covers tax disputes dealt with in the MAP.

A member of an (extended) family of up to the second level (i.e. a grandchild) may act as a proxy for the other members for the performance of tax rights and obligations. Unlike a tax consultant, such a proxy does not need to prove their competence in tax.

The MOF may appoint certain parties facilitating or involved directly in inter-party transactions, e.g., online trading via an electronic platform, as a tax collection agent, not only for VAT but also income tax arising from the transaction.

Tax crime provisions

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Provision/Case	Imprisonment		Criminal fine*)	
	Min (Mt)	Max (Yr)	Min	Max
1. Negligently not file a tax return or file incorrect one, causing state revenue loss (38)	3	1	1X	2X
2. Intentionally not file a tax return or file an incorrect one, or commit any other specified tax crime acts, causing state revenue loss (39, let. a)	6	6	2X	4X
3. Attempt to abuse NPWP/NPPKP, submit incorrect tax return to get tax refund, compensation, tax credit (39, let. b)	6	6	2X	4X
4. Issue/use tax invoice, WHT or tax payment slips not based on a genuine transaction (factitious tax documents) (39A, let. a)	24	6	2X	6X
5. Issuance of a tax invoice by a person not yet confirmed as taxable enterprise (39A, let. b)	24	6	2X	6X

*) **Notes:**
Each of the minimum and maximum of criminal fines is a multiplication of:
- The **unpaid tax due** for case 1 and case 2;
- The amounts of tax **refund, tax compensation, or tax credit sought** for case 3; or
- The amounts **of tax stated in the improper/factitious tax documents** (tax invoice, WHT slips, tax payment slips) for case 4 and case 5

With regard to tax crimes, the general provisions and tax procedures law (KUP) addresses several types in Articles 38, 39, and 39A (Box 2). An act of each exposes the perpetrator to a criminal sanction consisting of imprisonment and a criminal fine. Depending on the type, imprisonment may last from three months to six years and a criminal fine may range from as much as the unpaid tax due or the potential tax loss to six times as much.

The Director General of Taxation (DGT) may conduct a preliminary investigation ("*BUPER*") to identify an act of tax crime, and an investigation (*penyidikan*) to identify the perpetrator for indictment. If a prosecution proceeds following an investigation and a conviction results, the defendant taxpayer will inevitably suffer a criminal sanction imposed by the court.

For the sake of *ultimum remedium* principle, the TRH law provides alternatives to pursuing measures heading to prosecution. A preliminary investigation ("BUPER") of an alleged tax crime, for instance, can be stopped by the taxpayer paying the amount of tax due plus an administrative penalty of 100% of the underpaid tax. At the request of the MOF, the Attorney General may stop an on-going investigation of a tax crime, if the taxpayer pays the state revenue loss brought about by the crime plus a prescribed administrative penalty. The settlement amounts for cases of the types above are set out in Box 3.

If a criminal case is ultimately brought to court, the taxpayer can still pay the settlement amounts summarized in Box 3. A full payment of the settlement amounts may serve as a basis to prosecute the taxpayer (defendant) without imprisonment sanction. By comparison, a payment of less than the required amounts will be considered a payment of the criminal fine imposed to the taxpayer.

The settlement amounts to enable the Attorney General to stop an investigation

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Types of tax crime	Settlement*)	
	State rev. loss	Admin. penalty
1. Negligently not file a tax return or file incorrect one, causing state revenue loss (38)	Yes	1X
2. Intentionally not file a tax return or file an incorrect one, or commit any other specified tax crime acts, causing state revenue loss (39, let. a)	Yes	3X
3. Attempt to abuse NPWP/NPPKP, submit incorrect tax return to get tax refund, compensation, tax credit (39, let. b)	Yes	3X
4. Issue/use tax invoice, WHT or tax payment slips not based on a genuine transaction (factitious tax documents) (39A, let. a)	Yes	4X
5. Issuance of a tax invoice by a person not yet confirmed as taxable enterprise (39A, let. b)	Yes	4X

*) **Notes:**
- Included as "state revenue loss" for this presentation is the amounts of tax refund, tax compensation, and tax credit sought by the perpetrator in case 3 and the tax amounts stated in the improper/factitious tax documents in cases 4 and 5
- Admin. penalty is a multiplication of the state revenue loss

Income tax

Corporate income tax rate will remain 22% beyond 2021. The 20%-reduced rate supposed to take effect in 2022 pursuant to Law No. 2/2020 is cancelled.

Domestic individual taxpayers are taxed at 35% for income above IDR5 billion a year. The current progressive rates (5%, 15%, 25%, and 30%) remain applicable for income up to IDR 5 billion with minor changes in the brackets.

Income tax

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- Corporate income tax rate will remain 22% beyond 2021, nullifying the 20%-reduced rate supposed to take effect from 2022
- Individual taxpayers taxed at 35% for income above IDR5 billion, minor changes in tax brackets for the amounts below
- Benefits in kind (BIKs) are assessable in the hands of recipients, deductible for providers
- Individual domestic taxpayers with certain gross turnover will have their income up to Rp500 million non-assessable. Final income tax applies for the income above IDR 500 million.
- Permanent buildings can be depreciated in accordance with their actual useful life if the life span exceeds 20 years
- The MOF may regulate the amount of deductible interest expense, not only by way of DER but also by some other means
- Constructive dividends may arise from a primary transfer pricing adjustment. Comparable uncontrolled transaction (CUT), tangible/intangible asset valuation, and business valuation methods can be used for benchmarking.

Benefits in kind being employment or service compensation are assessable in recipients' hands and deductible for the providers. Exceptions apply to limited situations, subject to further provisions of a government regulation.

Domestic individual taxpayers with certain turnover will have their income up to IDR500 million untaxed. Subject to a government regulation, final tax will apply to income above IDR500 million.

Permanent buildings with a useful life of more than 20 years do not need to be depreciated strictly for 20 years for tax. Depreciation for such assets may follow the actual useful life in accordance with that for accounting.

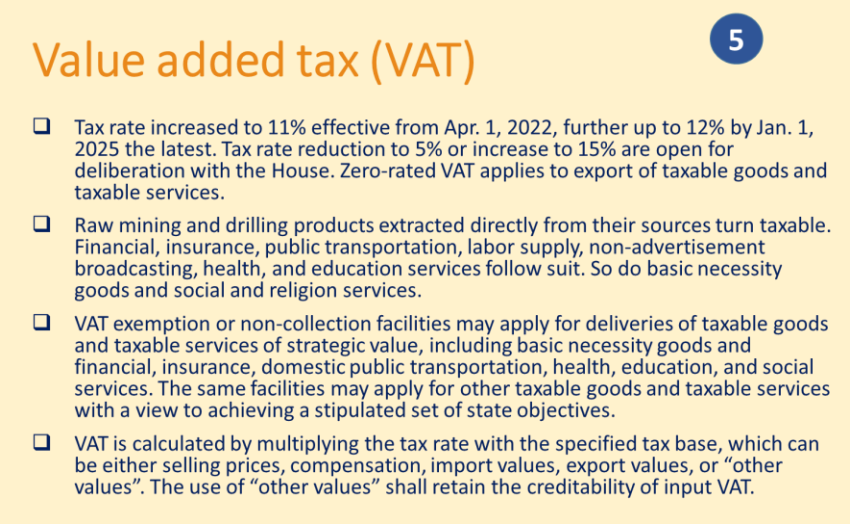
The MOF is authorized to regulate the amount deductible interest expense by a method commonly used in international practice. Besides a specified debt-to-equity ratio (DER) currently in place, the methods may include, among others, a reference to financial cost-to-EBITDA ratio.

The comparable uncontrolled transaction (CUT), tangible/intangible asset valuation, and business valuation methods may be used to benchmark the arm's length nature of a related party transaction in addition to the methods recommended by the OECD Transfer Pricing Guidelines (CUP, resale price, cost plus, TNMM, and profit split methods). A primary transfer pricing adjustment may lead to a constructive dividend.

Value added tax (VAT)

The standard tax rate will increase to 11% effective from Apr. 1, 2022 from 10% currently applicable and further up to 12% by 2025 the latest. Reductions to a minimum of 5% or further increases to a maximum of 15% are possible, by a Government Regulation.

Raw mining and drilling products extracted directly from their sources turn taxable. Certain business services (financial insurance, public transportation, labor supply, non-advertisement broadcasting, health, and education) follow suit. So do basic necessity goods and social and religion services.



Being of strategic value, basic necessity goods and financial, insurance, public transportation, health, education, and social services may enjoy VAT exemption or non-collection facilities upon delivery, either permanently or temporarily, partly or wholly. The same facilities may apply for other taxable goods and taxable services with a view to achieving a stipulated set of state objectives consisting, among others, of:

- Promoting export and downstream industry activities;
- Accommodating international agreements or conventions on trade and investment ratified by the Government
- Ensuring the performance of foreign grants/loans-supported government projects
- Ensuring availability of public air transportation for certain areas and/or situations
- Following international common practice.

With the redefinition of the strategic taxable goods (and taxable services), the counterpart provided by MOF Regulation No. 115/PMK.03/2021 which came into force on 30 Aug. 2021, just

two months before the enactment of the TRH law, needs a revisit. Clarification is awaited from the MOF.

VAT is calculated by multiplying the tax rate with the specified tax base ("DPP"), which can be either the selling price, the compensation, the import value, or the export value of the taxable goods or taxable services concerned or some "other values". The use of "other values" as a tax base shall retain the creditability of the relevant input VAT

Voluntary declaration program

Based on the 2016 tax amnesty law, a tax amnesty program participant is required to a file declaration letter of assets acquired in 1985-2015 span still owned by the taxpayer in 2015. Missing qualifying assets may cause a harsh financial consequence to the related participant. If found by the Director General of Taxation (DGT), based on Article 18 of the tax amnesty law, the missing assets are deemed as income earned by the taxpayer in the year they are found and taxed in accordance with the then applicable tax rate. In addition, an administrative penalty is due at 200% of the underpaid tax amount.

Final tax on net assets not covered in the 2016 tax amnesty declaration or the 2020 individual income tax return, voluntarily declared under the 2022 Voluntary Declaration Program (VDP) — 6

Asset location	Commitment	Final tax rate		Surcharge-VD[3]		Surcharge-SKPKB[4]	
		2016 TA partcpt.[1]	Indiv.[2]	2016 TA partcpt.	Indiv.	2016 TA partcpt.	Indiv.
Indonesia	Invest[5]	6%	12%	3%	3%	4.5%	4.5%
	-	8%	14%	-	-		-
Abroad	Repatriate, Invest[5]	6%	12%	3%/6%	3%/7%	4.5%/7.5%	4.5%/8.5%
	Repatriate	8%	14%	4%	5%	5.5%	6.5%
	-	11%	18%	-	-		-

Notes:
1 Applicable for participants of the 2016 tax amnesty (TA) program in respect of net assets acquired in 1985-2015 not covered in the 2016 TA declaration
2 Applicable only for individual taxpayers in respect of net assets acquired in 2016-2020 not covered in the 2020 individual income tax return
3 Additional tax for failures to meet one or both commitments stated in the 2022 Declaration, voluntarily disclosed before found by the DGT
4 Additional tax for failures to meet one or both commitments stated in the 2022 Declaration, found by the DGT and covered in the tax underpayment assessment letter (SKPKB)
5 Only investments in state securities (SBN) and natural resources processing and renewable energy business areas in Indonesia are counted

The TRH law provides an option to the harsh financial consequence in the form of Voluntary Declaration Program (VDP). The program calls for a participant to declare voluntarily the missing assets to the DGT and paying a specified amount of final tax. In this way, one is protected against assessment risk brought about by Article 18 of the 2016 tax amnesty law.

The tax rates for the VDP vary (Box 4), depending on the location of the missing assets (Indonesia or abroad), and the participant's commitment pertaining to those assets (invest in Indonesia, repatriate only, or both).

A VDP participant needs to submit an asset declaration notification letter (ADNL) to the DGT from 1 Jan. up to 30 Jun. 2022. For each completed ADNL filed, the DGT will issue a "Statement Letter", acknowledging the filing of the ADNL.

Any data or information covered in the ADNL cannot be used as a basis for conducting an inquiry, investigation and/or prosecution of a criminal act over the taxpayer.

If the commitment covered in the ADNL includes repatriation of assets located abroad, the repatriation must be realized no later than 30 Sept. 202. If it also includes “invest in Indonesia”, the investment must be made in state securities (SBN) or natural resources processing and renewable energy business areas and realized no later than 30 Sept. 2023. The investment must be maintained for at least five years of the investment year.

A failure to meet commitments will cause the net assets attributable to the missing commitment be deemed as income earned in 2022 subject to additional final tax (surcharge). Different tax rates apply for the surcharge depending on whether the failure is voluntarily disclosed by the taxpayer to the DGT or found by the DGT and covered in a tax underpayment assessment letter (Box 4).

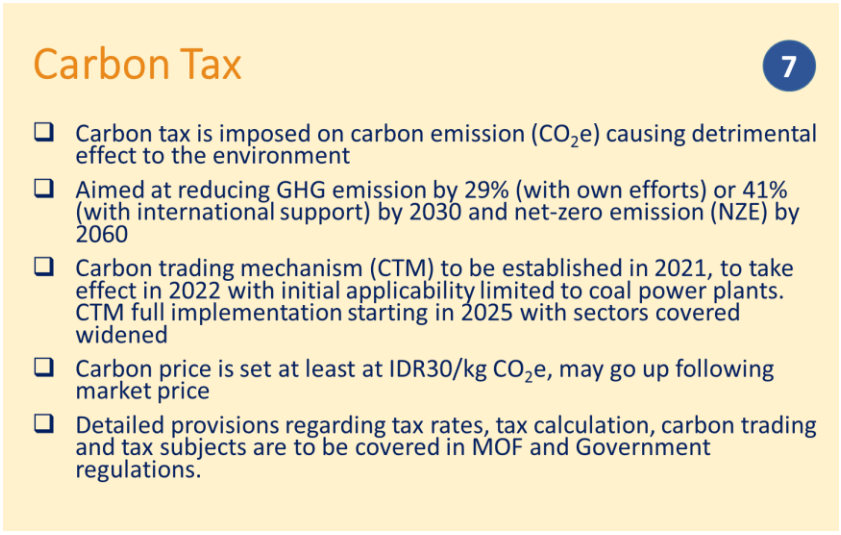
For an individual taxpayer, a separate VDP is available for net assets acquired in 2016-2020 not covered in the 2020 individual income tax return (Form 1770) which were still owned on 31 Dec. 2020. Instead of revising each of the 2016-2020 tax returns, possibly with additional tax payments for additional income attributable to the missing net assets, the taxpayer may submit a duly completed ADNL to the DGT with a relevant tax payment slip attached to it.

The final tax rates vary depending on the asset location and the taxpayer’s commitment related to the assets (Box 4). Failures to meet commitment will also cause additional final tax. (Box 4).

Carbon tax

With a view to contributing to the international efforts to reduce greenhouse gas (GHG) emission and achieve net-zero emission (NZE) goal, the TRH law introduces carbon tax.

The law is set to impose carbon tax on carbon emission or its equivalent gases (CO_2e) causing detrimental effect to the environment. It accordingly establishes that tax shall be due on purchases of goods containing CO_2e or activities emitting such gases. The parties purchasing the goods or conducting such activities are specified as tax subjects with priority put on corporate body persons.

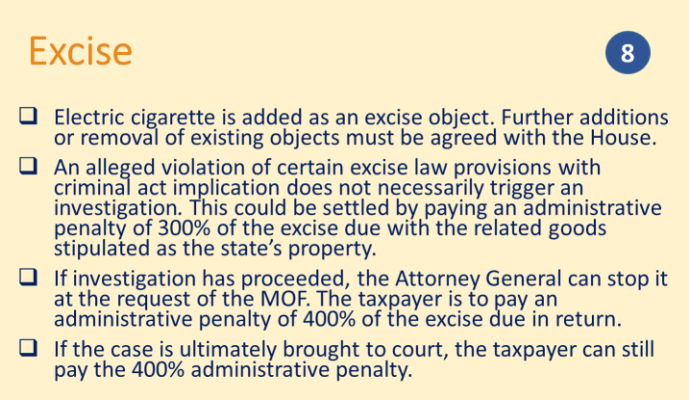


A significant part of the tax arrangement including details of the tax object, tax subject, tax rates and carbon trading mechanism need to be elaborated on MOF and government regulations. Certain provisions visible in the law include:

- Implementation of carbon tax provisions will be performed in three phases. Carbon trading mechanism will be developed (and completed) in 2021. Performance of the mechanism will start in 2022, to be applied only to coal steam power generators up to 2024. Full performance of the mechanism will take place in 2025 with business sectors included therein in phases taking into account the economic conditions and the players' readiness;
- Carbon price is set to follow market price, IDR30/kg CO_2e at the minimum.
- Energy, transportation, and forestry sectors are prioritized for carbon tax implementation given that the three together account for 97% of the total GHG emission reduction target stated in the Nationally Determined Contribution (NDC). According to the NDC Indonesia aims to reducing GHG emission by 29% of the business-as-usual level (with own efforts) or by 41% (with international support) by 2030, and reaching NZE level by 2060 the latest.

Excise

Electric cigarettes are included as an additional excise object in the TRH law. The law states that further additions or removals of existing excise objects must be covered in a government regulation agreed with the House.



An (alleged) violation of certain excise law provisions which implicate an excise crime, such as manufacturing, importing, storing, or taking out from the warehouse goods subject to excise without proper license, may trigger an investigation from the part of the excise office. However, an investigation may not proceed if the taxpayer pays an administrative penalty amounting to 300% of the excise due and the related goods turn the state's property.

If investigation inevitably comes into play, the Attorney General can stop it in a maximum of six months of the MOF's request, if the taxpayer pays an administrative penalty amounting to 400% of the excise due. If the case is ultimately brought to court, the taxpayer can still pay the administrative penalty, but the payment cannot stop the prosecution process. However, a full payment of the 400%-administrative penalty may serve as a consideration for not prosecuting the taxpayer with imprisonment sanction.

Please contact us to get more insight about the TRH law.

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