

## New Regulation in Mineral Mining Sector Issued Provide Legal and Tax Certainty to Various Mineral Miners

Investment in mineral mining sector is an investment that need large amount of funds, high failure risk and long term investment return. Therefore, certain fiscal stability including taxation is very important.

On 1 August 2018, the President of the Republic of Indonesia signed the Government Regulation (Peraturan Pemerintah) No. 37 year 2018 (PP-37) on the basis of Article 31D of the Income Tax Law, to regulate treatment of Taxation and Non-Taxation State Revenue (Penerimaan Negara Bukan Pajak, "PNBP") in the Mineral Mining Sector.

Law No. 4 year 2009 (Mining Law) governs the Mineral and Coal Mining activities. The introduction of Mining Law brought a significant change to the previous Indonesian mining regulatory regime –it removed the concept of 'contractual-based' license format, i.e. Contract of Work (CoW), for new mining projects.

Under the Mining Law, three categories of mining licenses emerged:

- Mining Business License (Izin Usaha Pertambangan / "IUP")
- People's Mining License (Izin Pertambangan Rakyat/"IPR")

- Special Mining Business License (Izin Usaha Pertambangan Khusus/"IUPK")

Special rules are stipulated under PP-37 for a Special Mining Business License for "Production Operations" (IUPK-OP) issued up to 31 December 2019, in modifying certain treatment of corporate income tax, providing terms for other taxes / PNBP obligations and administrative requirement.

### Main features of PP-37 and investors' concerns

PP-37 sets the tone that the *lex specialis* tax clauses would no longer be recognized for the new licenses issued – prevailing income tax regulations should apply in general.

However, certain exceptional provisions exist which are not as per general tax rules. For example, PP-37 stipulates that in determining the gross income of mining production, the amount subject to tax should be based on higher of actual price or market price,

unless the actual price is not more than 3% lower than the market price or the market price is unavailable. This is seen as a deviation from general tax principle and general accounting treatment for revenue recognition.

Also, there are concerns over the central and regional government shares payment as 'profit sharing' and hence non-deductible, which is again, seen as not aligning with the general tax principles.

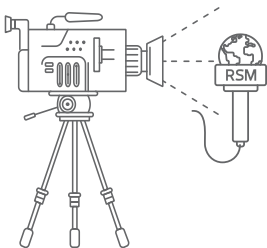
Mining companies with CoW provision has concern also over the withholding tax provisions whether it follows general rules or CoW provision which had been disputed by the tax office for many years. It is also noted that the application of maximum 5 years tax loss carry forward provision may not be sufficient to compensate the significant preliminary investment in mineral mining activities.



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### KEY POINTS

- A Contract of Work with *lex specialis* tax clauses are no longer recognized for new mining licenses issued in mineral mining sector.
- Withholding tax obligations under prevailing income tax regulations will be applicable to all forms of mineral mining license holder, including the existing Contract of Work companies with *lex specialis* tax provision.
- PP-37 is certainly a step forward in building sector-relevant tax framework for mineral miners, however the government may still need to provide the need for bespoke tax reliefs / incentives to attract new investors.



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