Tax Aspects of Government Regulation in Lieu of Law No. 1/2020

THE POWER OF BEING UNDERSTOOD

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The Government of Indonesia has issued a wide-ranging regulation as part of additional steps to support the economy in the face of COVID-19. Government Regulation in Lieu of Law No. 1 Year 2020 ("Perppu-1/2020") technically is a temporary measure that must then be approved by Parliament ("DPR") in the next session of DPR otherwise it ceases to have effect. In such a case, the consequences for actions already undertaken would be determined in the law that is passed by DPR to revoke the Perppu-1/2020.

In addition to addressing finance policy and financial system stability in the handling of COVID-19, Perppu-1/2020 has brought forward several tax measures that were initially part of the proposed Omnibus Law Tax. These are:

- A reduction to the rates for corporate income tax
- Taxation of e-commerce

Perppu-1/2020 also extends the deadlines for both the taxpayer and the Tax Office to fulfil certain tax obligations and provides a framework for the Minister of Finance to make decision on reductions or exemptions from customs duty for imports related to the fight against COVID-19.

Some of these will reduce tax and tax compliance burdens, however, the inclusion of taxation of e-commerce is intended to address the fiscal hole arising from the reduction in business activities and profits.

Perppu-1/2020 is effective from 31 March 2020.

KEY TAX RELATED MATTERS

REDUCTION TO THE RATES FOR CORPORATE INCOME TAX

- **Reduction of general rate of corporate income tax**

  Perppu-1/2020 stipulates the following reductions to the existing general rate for corporate income tax:

  ⇒ From 25% to 22% for the 2020 Tax Year and 2021 Tax Year

  ⇒ From 22% to 20% for the 2022 Tax Year and future years

  This applies for both permanent establishments ("BUT") and all domestic taxpayers that are classified as "badan" in the Income Tax Law.

- **Reduction of rate of corporate income tax for certain Go Public companies**

  In recognition of the existing preferential corporate income tax rate to encourage companies to list on the Indonesian stock exchange, Perppu-1/2020 provides an additional reduction of 3% (i.e. to 19% for the 2020 Tax Year and 17% for the 2022 Tax Year onwards) for companies that have listed at least 40% of their paid up shares on the Indonesian stock exchange and that also fulfil certain requirements. These requirements will be stipulated in future government regulations.

- **Implications for Article 25 income tax instalments**

  The regulation does not specifically address any Article 25 corporate income tax instalments that are currently due in accordance with the previously lodged corporate income tax return. These are calculated using the 25% rate. Therefore, all things equal, taxpayers should lodge their 2019 corporate tax return as soon as possible to ensure the Article 25 instalment due on 15 May 2020 is calculated using the 22% rate and does not continue to use the existing instalment reflecting the prior year's profit and 25% rate.

TAXATION OF E-COMMERCE

Perppu-1/2020 seeks to raise revenue by imposing VAT and income tax on foreign e-commerce businesses.

- VAT

  The use in Indonesia of intangible goods and/or services from overseas e-commerce businesses will be subject to VAT.

  The VAT should be collected, paid and reported by the foreign seller, foreign service provider, the foreign e-commerce marketplace provider, and/or the domestic e-commerce marketplace provider, as appointed by the Minister of Finance.

  In this regard the e-commerce marketplace provider is defined as a business that provides electronic communications facilities (a platform) for trading.

  Foreign sellers or service providers are defined as individuals or organisations that are resident or domiciled outside the Indonesian customs area and that undertake transactions with buyers/service users inside the customs area via electronic systems.

- Income tax on e-commerce

  Foreign sellers or provider of services, or foreign e-commerce marketplace providers that meet the criteria for significant economic presence can be considered to have a Permanent Establishment ("PE") in Indonesia and therefore subject to income tax in accordance with the existing rules and regulations.

  "Significant economic presence" is not exactly defined, but will take into consideration:
  a) Consolidated gross revenue of the group
  b) Revenue from Indonesia, and/or
  c) Number of active digital users in Indonesia

  Additional details regarding what will constitute significant economic presence shall be regulated by the Minister of Finance.

  The rate of tax, tax base and method for calculating the tax for the PE will be regulated under a future government regulation. This suggests the taxation of an e-commerce PE could be different to other PE.

  If the application of a tax treaty prevents a PE being deemed to exist then an electronic transactions tax will apply instead.

  The electronic transactions tax will apply whether the transaction is directly between the buyer/user and the foreign seller or service provider or via a foreign e-commerce market-place.

  The electronic transactions tax should be paid and reported by the foreign seller, service provider and/or e-commerce marketplace.

  The rate of tax, tax base and method for calculating the electronic transactions tax will be regulated under a future government regulation, and the Minister of Finance shall regulate the payment and reporting of income tax and electronic transactions tax.

  It is noted, however, the introduction of this electronic transactions tax may or may not be consistent with the recommended approach suggested by the OECD in Action 1 of the BEPS Project. A country may take a unilateral approach under its domestic tax law system, but this should respect its existing bilateral tax treaties. We would anticipate there may be potential tax disputes if the foreign company is resident of a treaty country, and the Indonesian Tax Office imposes this tax.

Foreign e-commerce businesses can appoint a representative in Indonesia to attend to their tax collection, payment and reporting of VAT, income tax and/or the electronic transactions tax.

Non-compliance will result in penalties as per the existing tax laws and regulations. In addition, Perppu-1/2020 authorises the Minister of Finance to coordinate with the Ministry for Communications & Informatics to disconnect the foreign e-commerce business' access to the market if it does not comply with its obligations. This will be further regulated through a Minister of Finance regulation.

It is clear that Perppu-1/2020 attempts to establish a new regulatory structure for taxing foreign e-commerce businesses.

The effectiveness of this will depend on the implementing regulations and any complications arising from applicable tax treaties. As they say "the devil is in the detail". We will provide further updates as and when these regulations are issued.

EXTENSION OF TIME TO FULFIL TAX OBLIGATIONS

Perppu-1/2020 extends the deadlines for various processes if the original due date falls within the period of force majeure/state of emergency due to the COVID-19 pandemic:

a. The deadline for submission of objections shall be extended by a maximum of 6 months
b. The deadline for payment of tax refunds shall be extended by a maximum of 1 month
c. The deadline for decisions from the Director-General of Taxation regarding:
    i. Requests for refund of overpaid tax (i.e. the tax audit process for a refund),
    ii. Objections, and/or
    iii. Requests under Article 36(1) of the KUP Law for reduction or elimination of administrative sanctions, reduction/cancellation of an incorrect Tax Assessment Letter, or request for cancellation of a tax audit result, shall be delayed by up to 6 months.

The period of force majeure is based on announcement by the Head of the National Disaster Management Authority. The latest announcement on 29 February stipulates the state of emergency has been extended until 29 May 2020.

CUSTOMS FACILITIES

The Minister of Finance is authorised to grant reductions or exemptions for customs duty with regard to handling COVID-19 or anticipating threats to the national economy or stability of the financial system.

For further information please contact:

RSM INDONESIA
Plaza ASIA Level 10
Jl. Jend. Sudirman KAV.59
Jakarta 12190
+62 21 5140 1340
contact@rsm.id
www.rsm.id