



# WAKE UP CALL

Welcome to issue 59 of Wake Up Call – RSM Indonesia newsletter covering topics on audit, accounting, business, corporate finance, transaction support, governance, internal control, management, risk, and taxation.

In this issue:

- The Future of Tax Treaty—Impact Post Implementation of Multilateral Instrument (MLI)
- Deregulation in Manpower Sector
- Our Activities

# THE FUTURE OF TAX TREATY—IMPACT POST IMPLEMENTATION OF MULTILATERAL INSTRUMENT (MLI)

ICHWAN SUKARDI, TAX PRACTICE

On 12 November 2019, Presidential Regulation Number 77 the Year of 2019 was issued to ratify the MLI provision. The MLI is a multilateral treaty issued by the Organisation for Economic Cooperation and Development (OECD) on 24 November 2016 to implement treaty-related anti-tax avoidance measures under Action 15 of the Base Erosion and Profit Shifting (BEPS) Project. Indonesia participated in signing the MLI on 7 June 2017 in Paris. On 28 April 2020, Indonesia deposited its instrument of ratification for the MLI—the MLI has entered into force since 1 August 2020.

MLI is one of the most revolutionary aspects of the BEPS Project. MLI allows for the inclusion of treaty-related anti-avoidance measures in the existing tax treaties of participating jurisdictions (signatories) without the need for renegotiating each of the bilateral tax treaties separately. It needs to be applied in parallel to existing tax treaties and serves as an addition (like a protocol). To date, 95 jurisdictions have signed up MLI. As MLI's scope of application rapidly expands, it is expected to have a substantial impact on more than 1,650 existing bilateral tax treaties worldwide.

For a specific tax treaty to be affected by MLI provision, both contracting jurisdictions must sign and ratify the MLI, and include the existing tax treaty as one of their Covered Tax Agreement (CTA).

Indonesia currently has 70 tax treaties, but not all of these tax treaties will be affected by the MLI – it has only submitted 47 tax treaties to be included as CTA and out of which, 39 of these jurisdictions have also chosen Indonesia as their CTA. Accordingly, MLI will

not affect the existing tax treaties between Indonesia and those jurisdictions that have not been included in either side of CTA.

On 26 November 2020, Indonesia submitted a notification to the OECD which confirms the completion of internal procedures for the MLI. 22 tax treaties are listed by Indonesia in the notification document (in line with the number of jurisdictions that have chosen Indonesia as their CTA and ratified their MLI).

On 18 February 2021, the Directorate General of Taxes (DGT) issued 21 Circulars from No.SE-05/PJ/2021 up to SE-25/PJ/2021 to announce that the MLI with respective jurisdictions<sup>1</sup> entered into force, entered into effect and implemented key changes to the relevant tax treaty articles (except for Sweden) – MLI-synthesised text is now available as it is attached to each of the DGT Circulars.

Based on the DGT Circulars, the MLI provisions dealing with Indonesian tax came into effect on 1 January 2021 for tax withheld at source and on 1 January 2022 for other taxes. On the other hand, the MLI provisions dealing with the tax for the counterpart jurisdictions also came into effect on 1 January 2021 for tax withheld at source, except for India which came into effect on 1 April 2021. For other taxes, the effectiveness date varies.

One of the mandatory minimum standards and the backbone of the MLI is the "Principal Purpose Test" (PPT) according to Article 7 of the MLI. PPT regulates that tax treaty benefits will be denied if it is reasonable to conclude that one of the principal purposes of a transaction or arrangement is only obtaining that tax treaty benefit.

<sup>1</sup>These countries include Australia, Belgium, Canada, Denmark, Finland, France, India, Japan, Luxembourg, Netherlands, New Zealand, Poland, Portugal, Qatar, Russia, Serbia, Singapore, Slovakia, South Korea, United Arab Emirates, and the United Kingdom

Multinational firms and investors conducting inbound and outbound investment in and from Indonesia should start evaluating the impact and identifying the associated risk plus exposures by assessing:

- i. whether the tax treaties they have been claiming benefits from are one of those 39 CLA as mentioned above and if yes, whether the MLI has been ratified (22 ratified cases) and entered into effect (tax withheld at source would have commenced for the 21 jurisdictions since 1 January 2021),
- ii. what MLI position is adopted by each participating jurisdiction – it is relevant to consider jurisdictions' domestic laws for interpretation of certain ambiguous MLI terms, and

- iii. whether the structure of multinationals or nature of their transaction will likely violate against the MLI provisions and hence prevent them from continuing to claim the benefits.

Regardless of how fast and efficient multinationals take actions, one thing for sure is that there will be more advanced communications between authorities of contracting jurisdictions in a post-MLI era, and more dispute resolution cases are expected to be discussed through domestic, treaty channels and even arbitration.

For further information, please contact:  
[contact@rsm.id](mailto:contact@rsm.id)

## INDONESIA FACTS



### PEMPEK

*Pempek, empek* is a savoury Indonesian fishcake delicacy, made of fish and tapioca, from Palembang, South Sumatera.

*Pempek* is served with rich sweet and sour sauce called *kuah cuka* or *kuah cuko* (lit. vinegar sauce). Sometimes local people also eat the dish with yellow noodles and diced up cucumber to balance out the vinegar's sourness.

*Pempek* is the best known of Palembang dishes. Its origin is undoubtedly Palembang. However, the history behind the creation of this savory dish is unclear. Traditional folklore connects it with Chinese influences. Some suggests that *pempek* probably originated from ancient *kelesan*, a steamed dish made of the mixture of sago dough with fish flesh, dated as early as Srivijayan era circa 7th century CE. Sago flour might be extracted from the trunk of sago palm or *aren* palm.

Another theory suggests that *pempek* was a Palembang adaptation of Southern Chinese *ngo hiang* or *kekian* (fish cake) as a surimi (魚漿, *yújiāng*) based food. But instead of being served in soup or plainly fried, *pempek* is notable for its spicy palm sugar–vinegar based sauce.

Source: Wikipedia

# DEREGULATION IN MANPOWER SECTOR

NICK GRAHAM, BUSINESS SERVICES PRACTICE

Among other objectives, Law No 11/2020 on Job Creation (“UU Cipta Kerja”) is intended to improve the attractiveness of Indonesian labour to investors by simplifying the ability of employers to flexibly adjust their workforce while protecting employees’ rights. Accordingly, UU Cipta Kerja amended Law No. 13/2003 on Manpower (“the Manpower Law”) and the Government has then issued various implementing regulations, including Government Regulations No. 34, 35, 36 and 37 on 2 February 2021.

This article highlights some key aspects of the Manpower Law and its regulations, as amended.

## Fixed Term Contracts (PKWT)

It is still possible to offer fixed term contracts to individuals. These contracts must not relate to positions or activities that are of a permanent nature. PKWT can be offered for temporary positions/activities that have a specific period (e.g., busy season work) or on a project basis (e.g., to set up a new factory or implement a new project). A PKWT that relates to permanent work or is not for a permitted temporary activity or position is, by law, determined to be an agreement for permanent employment.

The maximum period for any PKWT is 5 years inclusive of any extension, as compared to 3 years under the previous regulations.

Similar to the previous regulations, the PKWT must be in Indonesian language at a minimum. In the event it is bilingual then the Indonesian language version shall have priority. The contract also cannot have any probation period – if a probation period is stipulated the probation clause is void by law.

The requirement to register the PKWT to the Department of Manpower (“Depnaker”) is now accelerated to become 3 working days if Depnaker’s

online system is available; it remains 7 working days to manually report if the online system is not available.

In the past, payments for loss (“*ganti rugi*”) were only due if there was an early termination, or if there was a clause in the PKWT providing an amount. Now, there is an obligation to pay compensation (“*uang kompensasi*”) at the end of the contract. This is in addition to any payment due for early termination and/or as provided in the PKWT or other agreements.

## Outsourcing

Previously companies were only permitted to utilise the services of outsourcing companies for their non-core activities. This limitation is now removed. Therefore, companies can outsource any function they wish. The provider of the outsourced services must be a company (PT), be registered with Depnaker and is fully responsible for compliance with the laws and regulations applicable to the individuals engaged by it for their user-clients.

## Leave

There are no changes to the general leave provisions – the statutory minimum leave is still 12 days for an employee. The entitlement is due after the employee has worked for 12 months – and therefore an employer can decide whether to offer leave on an accrued basis, or only after the 12-month anniversary is reached.

Previously, it was not mandatory to offer long service leave (“*cuti besar*”), however, if it was offered then it must meet certain minimum requirements. These requirements are now deleted and therefore employers have complete flexibility to decide if they will offer *cuti besar* and on what basis.

## Terminations

The employer-initiated termination process is generally unchanged compared to the previous regulations. Therefore, it remains important to properly document any disciplinary actions and to involve the local Depnaker office during any employer-initiated termination.

Some key changes are:

- Lower multiples apply for the calculation of severance ("uang pesangon"). For example, the 2x multiplier only applies where the employee dies or is terminated following a prolonged illness or accident at work and the multiplier is now 0.5x or 0.75x for many cases where it was previously 1x
- Deletion of the 15% component for reimbursement of housing and medical ("penggantian perumahan serta pengobatan dan perawatan") that was part of compensation ("uang penggantian hak")

## Unemployment Insurance (JKP)

Unemployment Insurance is a component of BPJS Ketenagakerjaan. It is regulated by Government Regulation No.37/2021. JKP is not yet effective, and BPJS-TK has advised the expected commencement will be around February 2022.

There are no additional employer/employee contributions. The premium is covered by the Government in addition to an internal re-allocation from the monthly contributions for JKK and JKM.

In addition to access to training, an eligible employee can receive a cash benefit for a maximum of 6 months, as follows:

- 45% x salary (ceiling for salary is IDR5,000,000) for months 1-3
- 25% x salary (ceiling for salary is IDR5,000,000) for months 4-6

## SUMMARY

The changes arising from UU Cipta Kerja are generally favourable for employers. However, employers cannot automatically follow the revisions if that matter is covered in an existing agreement, collective labour agreement or Company Regulations that specifies a higher benefit or obligation to that provided under UU Cipta Kerja and its implementing regulations.

For further information, please contact:  
[contact@rsm.id](mailto:contact@rsm.id)

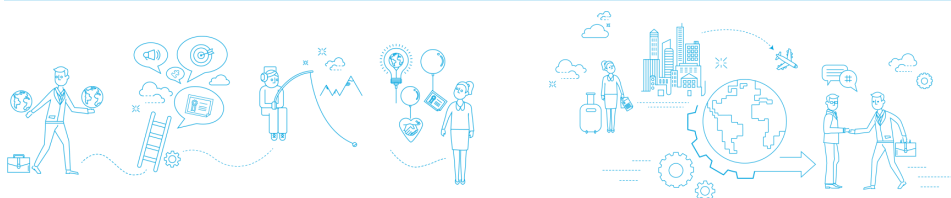
## New Edition: Doing Business in Indonesia



The updated Doing Business in Indonesia is now available.

This publication has been written to provide you with a broad overview of issues relevant to undertaking business activities in Indonesia. It will help to ensure that your business can take advantage of every opportunity to become success in Indonesia.

Click [HERE](#) to learn more or visit [www.rsm.id](http://www.rsm.id).



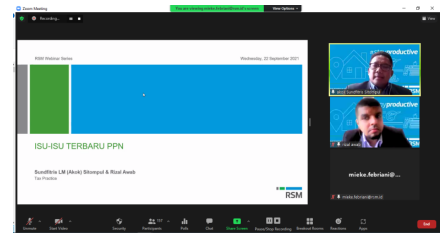
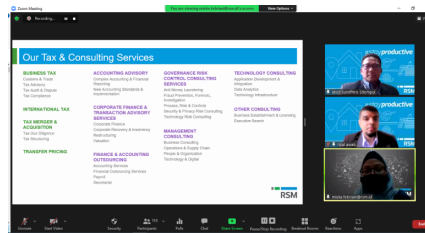
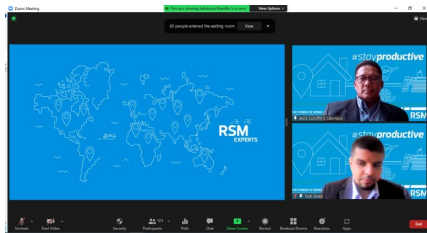
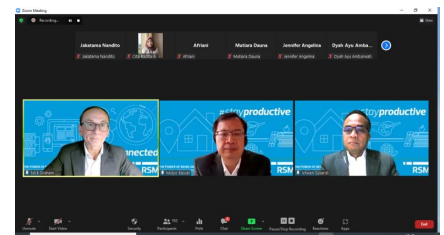
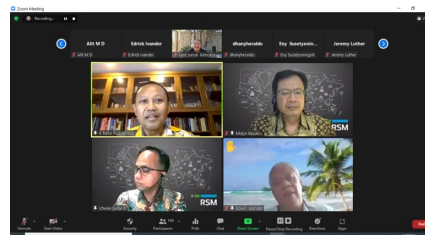
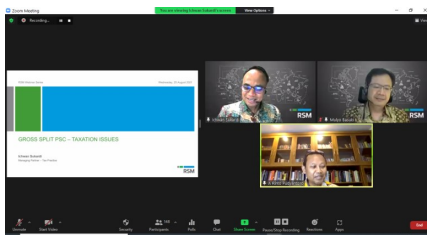


## OUR ACTIVITIES

### RSM Indonesia Webinar



We keep our commitment in updating people on current issues through our webinar. On the 3<sup>rd</sup> quarter of 2021, we successfully conducted several webinars. Topics covered were tax and whistleblowing management system. The webinars were presented by our Senior Managers and Partners and we were delighted that Bapak A. Rinto Pudyantoro from SKK Migas can also share his knowledge as one of the speaker. More than 100 participants attended each webinar. [See you at our next event!](#)



## WELCOMING OUR NEW PERSONNEL



### Ilya Avianti, Senior Advisor



Prof. Dr. Ilya Avianti has joined RSM Indonesia as Senior Advisor. She has almost 30 years of experience in the financial services industry and government sector.

She is the Chairman of the Honorary Board of the Institute of Indonesia Chartered Accountants (IAI) and Professor at the Faculty of Economics and Business Universitas Padjajaran.

Prior to joining RSM Indonesia, she was the Chairman of Audit Board concurrently member of the Board of Commissioner of the Indonesia Financial Services Authority (OJK), Lead Auditor at Audit Board of the Republic of Indonesia (BPK RI) and have served as commissioner in several corporations.

Thank you  
for reading

AUDIT  
TAX  
CONSULTING



Opinions expressed in these articles are the personal view of RSM Indonesia and are not intended as specific business advice. It might contain extracted information from publicly disclosed information. Though this publication was prepared in cautiousness, no warranty is provided for the information it contains and no liability is accepted for any statement or opinion presented. Readers of this material are recommended to seek professional advice before making any business decisions.

Contact us at [newsletter@rsm.id](mailto:newsletter@rsm.id) to [subscribe](#) or [unsubscribe](#) from our quarterly newsletter.  
For general queries, contact us at [contact@rsm.id](mailto:contact@rsm.id)

## RSM Indonesia

Plaza ASIA Level 10  
Jl. Jend. Sudirman Kav. 59  
Jakarta 12190 Indonesia

[www.rsm.id](http://www.rsm.id)

RSM is represented in Indonesia by Amir Abadi Jusuf, Aryanto, Mawar & Rekan; PT RSM Indonesia Konsultan; PT RSM Indonesia Mitradaya; PT RSM Indonesia Mitradana. RSM's Indonesian member firms work closely together within Indonesia. Each firm is a separate and independent legal entity and a member of the RSM network and trades as RSM. The RSM network is not itself a separate legal entity in any jurisdiction.