

## 2016 Asia Pacific tax update

### Indonesia

#### 1. Highlights of Tax Amnesty

On 1 July 2016, the Indonesian Government issued Law No. 11 of 2016 on Tax Amnesty.

The Tax Amnesty is a limited-time opportunity for a specified group of taxpayers to pay a defined amount, in exchange for forgiveness of tax liabilities (including interest and penalties) relating to a previous tax period or periods and without fear of criminal prosecution. In Indonesia the defined amount to be paid is called a Redemption Charge.

The Redemption Charge is significantly lower than the amount of tax that would have been paid if the tax had been paid using the tax rates applicable when the income should have been reported. Currently, under the normal regime, individual taxpayers are subject to a progressive tax rate with a maximum rate of 30%, and corporate taxpayers are subject to a flat rate of 25%. The Redemption Charge is calculated by multiplying the relevant rate by the amount of declared additional net assets.

The rate of the Redemption Charge depends on the period in which taxpayers join the Tax Amnesty program. There are three periods to submit the application for the Tax Amnesty:

##### 1. 1 July 2016 to 30 September 2016.

- For offshore assets that are not repatriated to Indonesia, the rate is 4%.
- For offshore assets that are repatriated to Indonesia and invested in Indonesia for a minimum of 3 years, the rate is 2%.
- For onshore assets that are retained in Indonesia for a minimum of 3 years, the rate is 2%.

##### 2. 1 October 2016 to 31 December 2016.

- For offshore assets that are not repatriated to Indonesia, the rate is 6%.
- For offshore assets that are repatriated to Indonesia and invested in Indonesia for a minimum of 3 years, the rate is 3%.
- For onshore assets that are retained in Indonesia for a minimum of 3 years, the rate is 3%.

##### 3. 1 January 2017 to 31 March 2017.

[www.bakermckenzie.com](http://www.bakermckenzie.com)

For further information please contact

Ponti Partogi  
Tel: +62 21 2960 8888  
Tel: +62 21 2960 8999  
[Ponti.Partogi@bakernet.com](mailto:Ponti.Partogi@bakernet.com)

Ria Muhariastuti  
Tel: +62 21 2960 8888  
Tel: +62 21 2960 8999  
[Ria.Muhariastuti@bakernet.com](mailto:Ria.Muhariastuti@bakernet.com)

- For offshore assets that are not repatriated to Indonesia, the rate is 10%.
- For offshore assets that are repatriated to Indonesia and invested in Indonesia for a minimum of 3 years, the rate is 5%.
- For onshore assets that are retained in Indonesia for a minimum of 3 years, the rate is 5%.

Taxpayer whose annual turnover is not more than Rp 4.8 billion in 2015 are entitled to a rate of 0.5% if the assets declared are not more than Rp 10 billion, and a rate of 2% if the assets declared are more than Rp 10 billion. These rates are applicable for all three types of assets and all three periods of time above.

The Tax Amnesty is more directly related to income tax obligations, but the scope of the program also covers value added tax and luxury goods sales tax obligations.

### 1.1 Implications for Taxpayers

All taxpayers (individual and corporate taxpayers) are entitled to participate, except for those:

1. whose tax crime investigation cases have been declared completed by the public prosecutor;
2. that are undergoing court proceedings for a tax crime; and
3. that are undergoing criminal sanctions due to a tax crime.

Taxpayers who want to join the Tax Amnesty program must report the assets that they own. If the assets are located in Indonesia, then after the declaration the assets can not be transferred and invested outside Indonesia. For assets that are located outside Indonesia, the taxpayers have the option to transfer the assets to Indonesia or not. If the assets are transferred back to Indonesia, the assets will be subject to a lower Redemption Charge rate than if they are not.

Benefits obtained by taxpayers include the following:

- A waiver of the tax due, administrative sanctions and criminal sanctions on the tax obligations in or prior to 2014 or 2015.
- Exemption from tax audit, preliminary evidence tax audit and tax crime investigation for all tax obligations for fiscal years up to and including 2014 or 2015.
- Discontinuation of ongoing tax audits, preliminary evidence tax audits and tax crime investigations for all tax obligations for fiscal years up to and including 2014 or 2015.

But taxpayers who participate in the Tax Amnesty program would forfeit certain of their taxation rights including the right to use remaining tax losses carried forward, and to ask for a refund for the years up to and including 2014 or 2015. Also, if a taxpayer is in a dispute resolution process with the Director General of Tax, e.g., there is an ongoing tax objection process or tax appeal process, it has to revoke the claim related to the process and pay all the outstanding tax liabilities.

Taxpayers can join the Tax Amnesty during the period mentioned above. The steps to participate in the Tax Amnesty are as follows:

1. The taxpayers prepare a Declaration Letter and its attachments.
2. The taxpayers ask the tax office for an explanation on filing and completion of documents to be attached to the Declaration Letter.
3. The taxpayers pay the Redemption Charge and settle all outstanding tax liabilities.
4. The taxpayers submit the Declaration Letter and its attachments (including evidence of the assets being disclosed).
5. The Director General of Tax issues the receipt.
6. The Minister of Finance issues the Notification Letter within 10 working days after the date of receipt. If the Minister of Finance does not issue the Notification Letter within 10 days, the Declaration Letter is deemed as the Notification letter.

The Declaration Letter is the letter that will be used by the taxpayers to apply for the Tax Amnesty. In this letter, the taxpayer, among other things, has to disclose all of its assets (including those that have not been reported in the latest tax return). The Notification Letter is the letter issued by the Minister of Finance as evidence of the Tax Amnesty granted.

#### 1.1.1 Taxpayer's Repatriated Assets

Assets that are repatriated are subject to lower Redemption Charge rates than non-repatriated assets. The repatriated assets must be transferred to Indonesia through a designated bank and invested in Indonesia for a minimum of 3 years. The assets may be invested in the financial market or non-financial market.

Repatriated assets can be in the form of cash or debt securities/*sukuk* issued by the Indonesian Government or an Indonesian issuer in foreign currency in the international primary and/or secondary markets. If they are in the form of debt securities, the debt securities are repatriated by transferring the administration from the overseas custodian to a custodian in the Perception Banks appointed as the Gateway.

##### (i) Investment in the Financial Market

If the repatriated assets are invested in the financial market, taxpayers should open special accounts at the designated bank. The investment will be conducted through a special account in the gateway. The gateway can be banks, investment managers, or brokers.

Investment in the financial market can be conducted in the form of:

- Indonesian commercial paper
- Bonds of State-Owned companies
- Bonds of State-Owned financing institutions
- Financial investments in designated banks
- Bonds of private companies whose trade is supervised by the Financial Services Authority

- Infrastructure investment through government cooperation with business entities
- Investment in the real sector based on the priorities set by the Government
- Other forms of financial market investments that are in accordance with the law.

(ii) Investment in the Non-Financial Market

If the repatriated assets are invested in the non-financial market, the assets should be transferred to Indonesia through a special account in the designated bank. The designated bank will then be the gateway for taxpayers to invest the assets in Indonesia.

Investment in the non-financial market can be conducted in the form of:

- Infrastructure investment through a Public Private Partnership scheme
- Government priority sector
- Land and buildings
- Direct investment in Indonesian companies
- Gold bars/bullion
- Other forms of non-financial market investments that are in accordance with the law.

#### 1.1.2 Special Purpose Vehicle (SPV)

An SPV is defined as an intermediary company that is established solely to perform special functions for the interest of its founder and does not conduct active business activity.

There are two possible options for taxpayers who hold assets through an SPV. The taxpayers can either release the ownership of the SPV or retain the ownership.

Taxpayers can release their ownership by dissolving the SPV or transferring the taxpayers' ownership rights. This can be done by transferring the assets which are held by the SPV under the taxpayer's name or under a limited liability company in which the taxpayer is the shareholder.

If the taxpayers want to retain their ownership of the SPV, it is also possible. However, the assets will be subject to the higher Redemption Charge rate.

### 1.2 Realization of the Tax Amnesty at the beginning of November 2016

The realization of the Tax Amnesty at the beginning of November 2016 was as follows:

1. The total amount of declared assets is Rp 3,887 trillion, which consists of Rp 2,761 trillion domestic declaration; Rp 983 trillion offshore declaration; and Rp 143 trillion repatriation.

2. The total Redemption Charge amount paid is Rp 94.2 trillion, which consists of Rp 80.3 trillion from individual non-Small Medium Enterprises; Rp 10.4 trillion from corporate non-Small Medium Enterprises; Rp 3.35 trillion from individual Small Medium Enterprises; Rp 215 billion from corporate Small Medium Enterprises.
3. The total number of taxpayers that participated in the Tax Amnesty is 433,464.

The collected Redemption Charge is 57% of the target, i.e., Rp 165 trillion.

The Indonesian Government set a revenue target from tax of Rp 1,355.2 trillion, equivalent to 75.87% of all of the State's revenue for 2016. By the end of October 2016, the State's revenue from tax was Rp 948.6 trillion or 70% of the target. The Tax Amnesty program provided significant revenue from Tax to the State.

## 2. New Indonesia - India Tax Treaty

The current Indonesia - India Tax Treaty which was signed on 7 August 1987 will be replaced with a new Tax Treaty which was signed on 27 July 2012. The new Tax Treaty will come into effect on 1 January 2017 for Indonesia and 1 April 2017 for India.

The changes in the new Tax Treaty are as follows:

No.	Description	The Current Tax Treaty	The New Tax Treaty
1	Withholding Tax Rate on Dividends	- 10% for a company that holds at least 25% of the shares - 15% in all other cases	10% in all cases
2	Withholding Tax Rate on Royalties and technical service fees	Royalties: 15%	- Royalties: a maximum of 10% - Service fees, including technical, management, and consulting services: 10%
3	Branch Profit Tax Rate	10%	A maximum rate of 15%. This rate is not applicable for Oil and Gas PSC
4	Tax on the operation of ships in international traffic	Not specifically stipulated	- Profits from the operation of ships in international traffic are taxable only in the resident State in which the place of effective management of the enterprise is situated. - The tax imposed should be reduced by 50%.

No.	Description	The Current Tax Treaty	The New Tax Treaty
5	Tax on capital gains on shares	Not specifically stipulated	Gains derived from the alienation of shares deriving more than 50 per cent of their value directly or indirectly from immovable property situated in the source State may be taxed in the source State.

### 3. Exchange of Information (EOI) on Foreign Customers

In accordance with the tax information exchange agreements that Indonesia has committed to, the Financial Services Authority (*Otoritas Jasa Keuangan/OJK*) issued Regulation No.25/POJK.03/2015 (POJK-25) dated 11 December 2015 regarding exchange of information on foreign customers to partner countries/partner jurisdictions. Therefore, certain financial institutions are obliged to submit financial information on foreign customers to partner countries/partner jurisdictions. There are several key points of the regulation.

#### 3.1 Scope

The definition of foreign customers is individuals or foreign corporations who meet the criteria stipulated in the EOI agreements and who are taxpayers of partner countries/partner jurisdictions who:

- have a bank account and/or use banking services;
- have a security account or directly use security companies and/or custodian banking services (as direct customers);
- are policy holders or participants in a life insurance company; and/or
- are customers (other than the above) who meet the criteria stipulated in the automatic EOI, to be stipulated further in OJK's circular letter.

Foreign corporations include:

- A company established or domiciled in other countries (foreign company).
- A branch or representative office of a foreign company.
- A company owned by foreign individuals and companies with a percentage of ownership that is stipulated in the EOI agreements, which are established or domiciled in or outside of Indonesia (foreign subsidiary).
- A branch or representative office of foreign subsidiaries.

#### 3.2 Reporting mechanism

The reports should contain information on the foreign customers and their financial information. The information should be submitted to the Indonesian tax authority or OJK at least 60 days before the reporting deadline under the EOI agreement. The financial institutions should submit the name of the

officer who will be responsible for reporting on the foreign customers' information.

### 3.3 Due diligence process

In relation to the submission of the foreign customers' information, financial institutions must:

- identify which customers or prospective customers meet the criteria as foreign customers;
- request the relevant information and/or documents to verify that the customer meets the criteria as a foreign customer;
- request voluntary written consent from the foreign customers or prospective foreign customers for the financial institutions to provide their information to the Indonesian tax authority, which will then relay the information to the partner countries/partner jurisdictions; and
- conduct screening of foreign customers who have an account balance or a minimum amount determined in the EOI agreements.