

## Client Alert



July 2016

### Tax Amnesty Law: An Opportunity for Taxpayers to Clean Up Their Unsettled Tax Obligations

#### Recent Development

After long discussion since 2015, the Indonesian House of Representatives and the President finally passed the tax amnesty law on 28 June 2016. No official copy of the law has yet been issued by the Government.

It is our understanding that potentially the Government will obtain short term and long term benefits from this law. In the short term, the Government will receive immediate revenue in the form of a Redemption Charge from the taxpayers that participate in the tax amnesty program. In the long term, the Government will receive tax revenue from the additional economic activities related to the repatriated offshore assets.

We have been monitoring the discussion on the draft of the tax amnesty law since last year. During that time, changes from one draft to another were quite significant. We note that at least three versions of the draft law have been circulated to the public. Therefore, to ascertain that taxpayers are referring to the correct text of the law, they should read the official copy of the law once it is issued.

Notwithstanding the above, we set out below our view of the law based on the latest draft in our possession.

#### Implications for Taxpayers

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 following table summarizes the rates used to calculate the Redemption Charge.

Type of assets	Applicable rate in		
	Jul - Sep 2016	Oct - Dec 2016	Jan - Mar 2017
Offshore assets - not repatriated to Indonesia	4%	6%	10%
Offshore assets - repatriated to Indonesia and invested in Indonesia for a minimum of three years	2%	3%	5%
Onshore assets - retained in Indonesia for a minimum of three years	2%	3%	5%

Taxpayers whose annual turnover is not more than Rp4.8 billion in 2015 are entitled to a rate of 0.5% if the assets declared are not more than Rp10 billion, and a rate of 2% if the assets declared are more than Rp10 billion. These rates are applicable for all three types of assets and all three periods of time above.

Taxpayers who join the tax amnesty program will obtain benefits such as:

- 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; and
- 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.

As reported in the news, there will be amendments made to the tax laws (e.g., the General Tax Provision and Procedure Law, the Income Tax Law and the Value Added Tax Law) after the implementation of the tax amnesty. The era of exchange of information will start due to the Base Erosion and Profit Shifting action plan made by G20 countries. Indonesia has committed to participate in the exchange of information in 2018. These may mean that the Indonesian tax authority will have more powers or sources of information to collect taxes.

Having said the above, 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 from 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.

In general, we believe this tax amnesty program is a good opportunity for some taxpayers to regularize their tax affairs, and have a fresh start where they can be in compliance with their tax obligations. However, of course, the interests of each taxpayer may be different from one to another. Therefore, the specific interests of each taxpayer should also be taken into account before participating in this program.

## What the Law Says

We set out below some essential provisions under the latest draft law.

### What is the scope of tax amnesty?

Even though the tax amnesty program should be more directly related to income tax obligations, the scope of this program also covers value added tax (*Pajak Pertambahan Nilai/PPN*) and luxury goods sales tax obligations (*Pajak Penjualan atas Barang Mewah/PPnBM*). It seems to us that this is aimed to encourage taxpayers to join this program provided the that amount of tax liability from value added tax and luxury goods sales tax obligation is significant as well.

### Who is entitled to participate?

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

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

### When to participate?

The deadline of the tax amnesty program is 31 March 2017. This will be divided into three periods, i.e. (i) July - September 2016, (ii) October - December 2016, and (iii) January - March 2017. These periods affect the amount of Redemption Charge to be paid. The quicker the taxpayers apply for the tax amnesty, the lower the amount of the Redemption Charge to be paid. (Please refer to the table on Redemption Charge rate above.)

### How to participate?

In general, the following are the steps to participate in the tax amnesty program:

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 the 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 in 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,

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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.

## Actions to consider

In our view, it is of course prudent to wait for the issue of the official copy of the law and its possible implementing regulations before making any decisions. Taxpayers should carefully review the law and its implementing regulations once they are issued, and seek professional advice and assistance.

Some provisions of the law as set out in the latest draft are not quite clear, and could create grey areas in the implementation stage, e.g., on the definition of market value used to disclose assets, and the confidentiality of the information when taxpayers ask the tax office for an explanation at the initial stage to participate in the tax amnesty program. Based on our strict reading of the latest draft, there is no definition of market value. The latest draft also does not provide a clear procedure for requesting an explanation from the tax office on filing and completion of documents to be attached to the Declaration Letter in the initial step. Further, it is our understanding that the confidentiality provision in the latest draft only covers the Declaration Letter and its attachments that have been submitted to the Minister of Finance. Therefore, it is not quite clear whether the information disclosed during the initial step to ask for explanation will be protected by the confidentiality clause as well.

For the time being, taxpayers can review their previous tax reports to determine whether the reports have been in compliance. If not and they would like to participate in the tax amnesty program, the taxpayers can start to prepare the list of assets that they have not disclosed in their tax return, and prepare the supporting documents.