INDONESIA

Key Highlights

As a developing country, Indonesia has been actively promoting its competitive and comparative advantages with various incentives for the entry of capital investment. In 2018, Indonesia has issued new regulations regarding tax policy with the vision to improve the investment climate together with state revenue, simplify administrative provisions, and provide a clearer guidance for the taxpayer. Some of the key highlights of the new regulations regarding tax policy are shown below.

1 Corporate Income Tax Incentive

The Government of Indonesia through the Minister of Finance issued Minister of Finance Regulation No. 35/PMK.010/2018 on Corporate Income Tax Reduction Facility ("**MoF Regulation 35**"), which came into force on 4 April 2018. This regulation is the basis for the Government to grant more attractive corporate income tax reduction incentive for taxpayers in certain industries.

A taxpayer that meets the following criteria shall be allowed to enjoy a 100% corporate income tax reduction facility.

1. The taxpayer runs business in a pioneer industry.
2. The injection of capital is a new investment.
3. The investment amount is a minimum of IDR 500 billion (approx. USD 35 million).
4. The company meets the debt to equity ratio stipulated under the relevant Minister of Finance regulation (4:1 debt to equity ratio).
5. The taxpayer has not previously had an application for corporate income tax reduction rejected by the Minister of Finance.
6. The recipient of the facility is an Indonesian entity.

Key Tax Contacts

Ponti Partogi
Senior Partner Tax
Tel: +62 21 2960 8888
Tel: +62 21 2960 8999
ponti.partogi
@bakermckenzie.com

Daru Hananto
Associate Partner
Tel: +62 21 2960 8568
Tel: +62 21 2960 8999
daru.hananto
@bakermckenzie.com

Ria Muhariastuti
Senior Tax Specialist
Tel: +62 21 2960 8574
Tel: +62 21 2960 8999
ria.muhariastuti
@bakermckenzie.com

Niken Kristalia
Senior Tax Specialist
Tel: +62 21 2960 8556
Tel: +62 21 2960 8999
niken.kristalia
@bakermckenzie.com

The period of the facility depends on the amount of investment. The details are as follows:

Investment	Facility Period
IDR 500 billion (USD 35 million) to < IDR 1 trillion (USD 71 million)	5 years
IDR 1 trillion (USD 71 million) to < IDR 5 trillion (USD 357 million)	7 years
IDR 5 trillion (USD 357 million) to < IDR 15 trillion (USD 1 billion)	10 years
IDR 15 trillion (USD 1 billion) to < IDR 30 trillion (USD 2 billion)	15 years
≥ IDR 30 trillion (USD 2 billion)	20 years

For the next two fiscal years after the end of the facility period, the taxpayer will receive a 50% reduction of its corporate income tax.

The facility can be enjoyed starting from the fiscal year when the taxpayer starts its commercial production. The commercial production is considered to be started when the product is first sold or self-used. The Director General of Tax will determine the starting time of the commercial production based on a field inspection.

A taxpayer that receives the facility is required to submit an annual report to the Director General of Tax, which explains the taxpayer's production and investment realization. The deadline to submit the annual report is 30 days after the end of a fiscal year.

2 Implementing rules for the Debt to Equity Ratio ("DER")

Based on Minister of Finance Regulation No. 169/PMK.010/2015 ("**MoF Regulation 169**"), Indonesia has set a single Debt to Equity Ratio (DER) of 4:1 for tax purposes. This means that the amount of debt allowable in order to obtain full deductibility of the associated financing costs is limited to four times the equity amount (with an exemption for certain taxpayers). Further, the Director General of Tax issued Regulation No. PER-25/PJ/2017 ("**DGT Regulation 25**") which provides certain details in relation to the implementation of MoF Regulation 169.

Key Tax Contacts

Ponti Partogi
Senior Partner Tax
Tel: +62 21 2960 8888
Tel: +62 21 2960 8999
ponti.partogi
@bakermckenzie.com

Daru Hananto
Associate Partner
Tel: +62 21 2960 8568
Tel: +62 21 2960 8999
daru.hananto
@bakermckenzie.com

Ria Muhariastuti
Senior Tax Specialist
Tel: +62 21 2960 8574
Tel: +62 21 2960 8999
ria.muhariastuti
@bakermckenzie.com

Niken Kristalia
Senior Tax Specialist
Tel: +62 21 2960 8556
Tel: +62 21 2960 8999
niken.kristalia
@bakermckenzie.com

Indonesia

Asia Pacific Tax
Recent Developments and Highlights

In DGT Regulation 25, debt for which the existence cannot be formally verified is not deductible in accordance with DER calculation.

Regarding the reporting requirement, DGT Regulation 25 provides the following standard forms necessary to report DER compliance:

(a) an overall DER calculation

(b) a summary of "offshore" loans

Further, failure to submit the forms will result in the automatic non-deductibility of the relevant financing costs. Both forms are mandatory starting in the 2017 tax year (i.e., filed by April 2018 together with Corporate Income Tax Return ("**CITR**"). If the required forms are not attached in the CITR, the CITR may be treated as incomplete.

3 Implementing rules for the Country-by-Country Report ("CbCR")

On 29 December 2017, the Director General of Tax ("**DGT**") issued Regulation No. PER-29/PJ/2017 ("**DGT Regulation-29**") as the implementing regulation of Ministry of Finance Regulation No. 213/PMK.03/2016, which provides more detailed provisions on CbCR, including its domestic reporting mechanism.

A. Scope of Parent Entity

DGT Regulation-29 stipulates that the Parent Entity[1] of a group business which consist of related parties ("**Group**") must prepare, maintain and submit the CbCR if it meets the following conditions:

---

[1] The Parent entity is one of the group member that meets the following conditions:
  a. It directly or indirectly controls one or more Constituent Entities in a group.
  b. It is required to prepare consolidated financial statements based on the accounting standards and/or based on the provisions that apply for a stock exchange issuer in Indonesia.

Key Tax Contacts

Ponti Partogi
Senior Partner Tax
Tel: +62 21 2960 8888
Tel: +62 21 2960 8999
ponti.partogi
@bakermckenzie.com

Daru Hananto
Associate Partner
Tel: +62 21 2960 8568
Tel: +62 21 2960 8999
daru.hananto
@bakermckenzie.com

Ria Muhariastuti
Senior Tax Specialist
Tel: +62 21 2960 8574
Tel: +62 21 2960 8999
ria.muhariastuti
@bakermckenzie.com

Niken Kristalia
Senior Tax Specialist
Tel: +62 21 2960 8556
Tel: +62 21 2960 8999
niken.kristalia
@bakermckenzie.com

(a) It directly or indirectly controls (for an Indonesian parent entity) or owns (for an offshore parent entity) one or more Constituent Entities2 in a Group.

(b) It is required to prepare consolidated financial statements based on the accounting standards or provisions that apply in its jurisdiction of tax residence.

(c) It is not directly or indirectly owned by another Constituent Entity of a Group, or it is directly or indirectly owned by an other entity, but that other entity has no obligation to consolidate the financial statements of the entity.

(d) It has a current year consolidated gross turnover of a minimum of:

   (i) for an Indonesian parent entity: IDR 11 trillion (approx. USD 785 million)

   (ii) for an offshore parent entity:

      (A) equivalent to € 750 million as of 1 January 2015 if the country or jurisdiction of the parent entity does not require a CbCR submission.

      (B) based on a threshold determined by the country or jurisdiction of the parent entity

In the event that there are multiple Constituent Entities that meet the threshold requirement (including Indonesian subsidiaries with a consolidated gross turnover of a minimum of IDR 11 trillion (approx. USD 785 million), the Group needs to determine which Constituent Entity in the Group should prepare the CbCR.

---

[2] The Constituent Entity is the parent entity and the members of the group that are included in the CbCR.

Key Tax Contacts

Ponti Partogi
Senior Partner Tax
Tel: +62 21 2960 8888
Tel: +62 21 2960 8999
ponti.partogi
@bakermckenzie.com

Daru Hananto
Associate Partner
Tel: +62 21 2960 8568
Tel: +62 21 2960 8999
daru.hananto
@bakermckenzie.com

Ria Muhariastuti
Senior Tax Specialist
Tel: +62 21 2960 8574
Tel: +62 21 2960 8999
ria.muhariastuti
@bakermckenzie.com

Niken Kristalia
Senior Tax Specialist
Tel: +62 21 2960 8556
Tel: +62 21 2960 8999
niken.kristalia
@bakermckenzie.com

B. Scope of Indonesian Subsidiaries

DGT Regulation-29 stipulates that an Indonesian subsidiary can be in one of the following forms:

(a) any separate business unit of an Multi National Enterprise ("**MNE**") Group that is included in the consolidated financial statements of the Group for financial reporting purposes

(b) any such business unit that is excluded from the MNE Group's consolidated financial statements solely on size or materiality grounds

(c) any permanent establishment ("**PE**") of any separate business unit of the MNE Group included in (a) or (b) above, provided that the PE has separate financial statements for financial reporting, regulatory, tax reporting, or management control purposes

The Indonesian subsidiary must submit the CbCR to the DGT if certain conditions prevent Indonesia from obtaining the CbCR. These conditions are if the country or jurisdiction of the parent entity meets one of the below conditions:

(a) does not require a CbCR submission

(b) does not has an Exchange of Information ("**EOI**") agreement with Indonesia

(c) does has an EOI agreement with Indonesia, but the CbCR cannot be obtained by Indonesia from that country or jurisdiction through the automatic EOI mechanism

The DGT will announce a list of countries or jurisdictions that have EOI agreements with Indonesia, but where the CbCR cannot be obtained through the EOI mechanism. If the jurisdiction of the Indonesian subsidiary's Parent Entity is included in this list, the subsidiary must submit the CbCR within three months of the DGT announcement. The DGT will request the CbCR if the taxpayer fails to submit it within the timeline.

Key Tax Contacts

Ponti Partogi
Senior Partner Tax
Tel: +62 21 2960 8888
Tel: +62 21 2960 8999
ponti.partogi
@bakermckenzie.com

Ria Muhariastuti
Senior Tax Specialist
Tel: +62 21 2960 8574
Tel: +62 21 2960 8999
ria.muhariastuti
@bakermckenzie.com

Daru Hananto
Associate Partner
Tel: +62 21 2960 8568
Tel: +62 21 2960 8999
daru.hananto
@bakermckenzie.com

Niken Kristalia
Senior Tax Specialist
Tel: +62 21 2960 8556
Tel: +62 21 2960 8999
niken.kristalia
@bakermckenzie.com

Indonesia

Asia Pacific Tax
Recent Developments and Highlights

Outlook for 2019

The achievement of the optimist target of a tax-to-GDP ratio of 16% by 2019 will require the tax policy and administrative reforms. The Indonesian parliament has been reviewing and discussing the amendment of tax laws to support this target and to accommodate the rapidly changing business environment. The amendments to the three primary tax laws – the General Tax Provisions and Procedures Law, the Income Tax Law, and the Value-Added Tax and Luxury Sales Tax Law will likely be discussed by the parliament over the next several months.

This article was first published on Law360.com.

Key Tax Contacts

Ponti Partogi
Senior Partner Tax
Tel: +62 21 2960 8888
Tel: +62 21 2960 8999
ponti.partogi
@bakermckenzie.com

Ria Muhariastuti
Senior Tax Specialist
Tel: +62 21 2960 8574
Tel: +62 21 2960 8999
ria.muhariastuti
@bakermckenzie.com

Daru Hananto
Associate Partner
Tel: +62 21 2960 8568
Tel: +62 21 2960 8999
daru.hananto
@bakermckenzie.com

Niken Kristalia
Senior Tax Specialist
Tel: +62 21 2960 8556
Tel: +62 21 2960 8999
niken.kristalia
@bakermckenzie.com