

Omnibus Law - Major Changes to Tax Laws

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As part of PwC's continuing Omnibus Law coverage, this Flash will go through the major changes to tax laws resulting from the recently signed Omnibus Law.

Three of the major laws relating to taxation are impacted by the Omnibus Law:

1. The General Tax Procedures (*Ketentuan Umum Perpajakan/KUP*) Law;
2. The Income Tax Law (ITL); and
3. The Value Added Tax (VAT) Law.

Some of the important changes to these laws include relaxation of sanctions on taxpayers, exempting certain types of income from tax (including some dividends and offshore income), introduction of a limited territorial taxation concept for expatriates, and also several changes in the VAT rules that offer a more fair and reasonable outcome for taxpayers.

Please note that many aspects of the changes to the law will need to be further supported and elaborated by implementing regulations. As the corresponding regulations are released in the coming weeks and months, we will continue to provide more comprehensive guidance on the issues as they become clearer.

1. KUP Law Changes

The primary changes under the KUP Law have to do with how taxpayer sanctions and interest compensation are calculated and applied. These changes can generally be regarded as favourable for taxpayers and also provide a greater level of certainty for taxpayers over certain areas of their tax affairs.

Changes to the interest rate used in calculating sanctions

The Omnibus Law has introduced the use of the Ministry of Finance (MoF) Interest Rate (MIR) to be used in calculating taxpayer sanctions (and interest compensation, as outlined further below). This MIR (plus additional spread) is to replace the current use of the 2% per month interest rate that

has been used for many years under the existing KUP Law. The Omnibus Law also sets 24 months as a maximum period in determining total sanctions – previously some sanctions could be applied for an unlimited period.

The MIR will be stipulated by the MoF on a regular basis and will be stated as an annual interest rate. For most sanctions an additional spread will be added to calculate the penalty applied.

As the MIR and penalty spread are stated on an annualised basis, the corresponding rate will be divided by 12 to be applied monthly. For example, if the published MIR rate is 8%, and the administrative sanction for a taxpayer's wrongdoing is MIR+10%, the monthly interest rate applied will be 1.5% (18%/12).

The applicable MIR to be used in the calculation is the rate for the period when the event triggering sanction or interest compensation occurred.

As mentioned above, a spread will be added to the MIR when applying sanctions, depending on the cause. The table below shows examples of the changes made by the Omnibus Law compared to the previous law, which now vary depending on the type of wrongdoing.

No.	Clause	Sanction of the underpaid tax	
		Existing Law	Omnibus Law
1	Late payment of monthly tax return	2%	(MIR+5%)/12
2	Voluntary disclosure after a regular tax audit has been started but before a tax assessment is issued	50% Increment	(MIR+10%)/12
3	SKPKB* arising from a tax audit	2%	(MIR+15%)/12
4	Late payment of tax assessment (SKPKB)	2%	MIR/12

*Underpaid Tax Assessment Letter (*Surat Ketetapan Pajak Kurang Bayar/SKPKB*)

Changes in the administration and rate of certain sanctions

Apart from modification of interest rates as discussed above, several provisions in KUP Law concerning sanctions and penalties are also adjusted under the Omnibus Law.

Voluntary disclosure after preliminary evidence tax audit has started

Whilst not entirely clear under the existing KUP Law, in practice a taxpayer under a preliminary evidence of tax crime audit (*Bukti Permulaan* or "Bukper") will not be further subjected to an official investigation of tax crime if they agree to voluntarily disclose and pay the underpaid tax plus a 150% penalty. This can be done after the Bukper tax audit has started but before the official investigation begins.

Noting the spirit of this practice, the Omnibus Law clarifies that the type of ongoing tax audit under this clause is only the Bukper tax audit (i.e. not just a regular tax audit). The applicable penalty is also decreased to 100% of the underpaid tax. Also clarified under the Omnibus Law is the timing of voluntary disclosure/payment – now it is clear that the taxpayer can only carry out a voluntary disclosure provided that the investigation has not already been notified to the prosecutor via the police investigator.

Administrative sanctions on SKPKB arising from a VAT audit

If the tax assessment (SKPKB) resulting from a VAT audit may be subject to two different types of administrative sanctions (i.e. monthly interest sanction or 100% increment of the underpaid tax), the Directorate General of Taxes (DGT) will only apply the sanction with the higher value.

Penalty for not complying with the requirements in issuing and reporting a VAT Invoice

Currently, the DGT may issue a Tax Collection Letter (*Surat Tagihan Pajak/STP*) to impose a 2% penalty of the VAT base if the VATable Entrepreneur (*Pengusaha Kena Pajak/PKP*):

- a. did not issue a VAT Invoice (*Faktur Pajak/FP*);
- b. was late in issuing an FP;
- c. issued an incomplete FP; or
- d. was late in reporting the FP.

Under the Omnibus Law, the penalty rate on the wrongdoing in points a, b, and c is modified to be 1% of the VAT base, whilst the penalty for point d is eliminated.

Changes regarding interest compensation

Interest compensation rate

Similar to the sanctions, the monthly interest rate for calculating interest compensation for taxpayers will now be based on the MIR instead of 2% per month. The monthly rate will be calculated by taking MIR/12 (no additional spread added). Under the Omnibus Law, interest compensation will now in all cases be capped at 24 months (previously in some cases a cap did not apply).

Change in interest compensation clause

Article 27A regarding interest compensation in the existing KUP Law has been replaced with a new Article 27B. In the new article, it is stated that interest compensation is granted if the taxpayer's request for tax objection, appeal, or judicial review is wholly or partially approved and such approval results in a tax overpayment. If such interest is related to a tax assessment issued on an overpayment tax return, the interest compensation granted may only be applied to the tax overpayment portion that was agreed by the taxpayer during a tax audit closing conference.

Repayment of interest compensation that should not have been paid

During the course of a tax dispute, interest compensation that has been paid to the taxpayer may no longer be valid if there is a new unfavourable outcome for the taxpayer during the subsequent phase of the process.

In this situation, an STP to collect interest compensation that should not have been paid to the taxpayer may be issued if:

- a decision (*keputusan* – likely from the DGT) is issued;
- a decision (*putusan* – likely from a Court) has been received; or
- new data or information is found,

which shows that interest compensation should not have been paid to the taxpayer.

This was previously stipulated under a DGT Circular, but now it has been formally put into the KUP Law.

Changes relating to certain Statutes of Limitations (SoL)

SoL for the issuance of STP

In order to provide legal certainty, the Omnibus Law stipulates the SoL for the issuance of an STP, which is at the latest five years upon the tax due date or the end of a tax period, part of a tax year, or a tax year, except for:

- a. An STP on late payment of tax decisions may be issued at the latest by the SoL to collect the relevant decisions (i.e. SKPKB, or Additional Tax Underpaid Assessment Letter (*Surat Ketetapan Pajak Kurang Bayar Tambahan/SKPKBT*), or Decision on Amendment, Tax Objection, Tax Appeal, or Judicial Review) which trigger the tax underpayment;
- b. An STP on the 50% penalty for a taxpayer losing their case at the tax objection level may be issued at the latest five years from the issuance of the Objection Decision if the taxpayer did not file for Tax Appeal; and
- c. An STP on the 100% penalty for a taxpayer losing their case at the tax appeal level may be issued at the latest five years from pronouncement of the Tax Appeal Decision by the judges.

The issuance of tax assessments (SKPKB and SKPKBT) after the SoL

Under the existing KUP Law, the DGT may issue an SKPKB after the five-year SoL has passed if the DGT found that the respective taxpayer had committed a tax crime or other criminal acts. Under the Omnibus Law, this condition is narrowed to cover only tax crime, meaning that the committing of other crimes by a taxpayer after the SoL has passed cannot be used to extend the period to issue an SKPKB.

Under the existing KUP Law, the DGT can issue an SKPKBT even though the general SoL of five years has passed in the case the taxpayer is convicted of a tax or other crime, whereas in the Omnibus Law this provision is removed (so an SKPKBT can no longer be issued after the SoL has expired).



2. ITL Changes

The Omnibus Law introduced a number of changes to the ITL, including a partial territorial taxation concept and an expansion of income items that are not subject to tax. Perhaps a major breakthrough is the relaxation of taxation on certain dividends and offshore income that could encourage taxpayers to keep money invested in Indonesia longer term.

Change in foreign tax subject definition and introduction of territorial taxation

Indonesian citizens as foreign tax subjects

Perhaps to clarify some existing uncertainty, the Omnibus Law added to the definition of “foreign tax subject” Indonesians that are living outside of Indonesia for more than 183 days in 12 months. There are some additional requirements, for example having a permanent home, centre of vital interest, habitual abode, the status of tax subject, or other criteria outside Indonesia.

Territorial taxation for foreigners

The Omnibus Law has added a provision to the ITL stipulating that foreigners who have become domestic tax subject by reason of becoming tax resident in Indonesia can be taxed only on Indonesian-sourced income (including if paid offshore) if they meet certain skill requirements. This will only be available for the first four years they become tax resident.

This territorial taxation system may not be applicable when the foreigner receives income from overseas and he/she utilises the applicable tax treaty between Indonesia and the source country.

Changes that expand the list of non-taxable income objects

The Omnibus Law has changed and added a number of items to the list of non-taxable objects.

Payment from insurance company to individuals

Payments received by individuals from an insurance company will be non-taxable if the payment is triggered by an accident, sickness, death, or for scholarship insurance. This differs from the provisions in the existing ITL which focus more on the type of insurance products (i.e. health, accident, life, dual purpose and education insurance) rather than the triggering events.

Surplus received by cooperative members

The distribution of a surplus received by members of a cooperative is treated as non-taxable under the Omnibus Law changes. Under the existing ITL, it was categorised as taxable under the dividend definition.

Haji payment

The Omnibus Law adds the Deposit Funds for the Administration of Hajj (*Biaya Penyelenggaraan Ibadah Haji*) and the income from the development of Hajj Payment received by the Hajj Financial Management Agency (*Badan Pengelola Keuangan Haji*) as non-taxable objects.

Non-Profit Organisations (NPOs)

The Omnibus Law also adds the surplus received or obtained by NPOs engaged in the fields of social and religious institutions as non-tax objects if the following criteria are met:

- The NPOs are registered with the relevant regulator; and
- The surplus is reinvested in the form of facilities and infrastructure within a maximum period of four years or is allocated as Endowment Fund.

Changes to taxation of dividends and offshore income received by Indonesians

The Omnibus Law makes a significant change to the way dividends (both domestic and foreign) and certain offshore income are taxed in Indonesia. These changes essentially provide a more attractive tax regime especially for investors willing to reinvest these incomes in Indonesia for a certain period.

Taxation of domestic dividends

On dividends received from Indonesian companies, both corporate and individual taxpayers may enjoy tax-free treatment – but in the case of individuals there is an additional requirement that they must reinvest the dividends in Indonesia within a certain period.

All dividends received by Indonesian corporate taxpayers from Indonesian companies will now be exempt from tax (previously 25% ownership was required).

Taxation of offshore income

Domestic taxpayers will be able to exempt income received from offshore if certain conditions are met. The potentially exempt types of income include:

- Income received by an Indonesian taxpayer from a Permanent Establishment (PE) abroad;
- Dividends paid by companies abroad; and
- Active business income received by an Indonesian taxpayer from abroad (not from a PE or foreign subsidiary).

To enjoy the exemption, these incomes must be reinvested or used for business activities in Indonesia within a certain period. Failure to reinvest will result in taxation in the year received.

For the first two categories above, the minimum reinvestment amount is 30% of the profit after tax. If the after-tax income from the PE and dividend paid from the non-listed subsidiary are reinvested in Indonesia less than 30% of profit after tax, the difference between the 30% threshold and the reinvested portion will be subject to income tax.

There are also restrictions on the benefit if the dividend income in question is already subject to tax assessment under Indonesia's Controlled Foreign Corporation rules.

For exempted income items, foreign taxes paid will not be allowed as a credit or deduction or refunded for Indonesian tax purposes.

Potential change to withholding tax rate on interest paid to non-residents

The general Article 26 Income Tax rate on payments to non-residents remains at 20%. However, under the Omnibus Law, the applicable tax rate for interest can be lowered by a Government Regulation.

3. VAT Law Changes

Under the VAT Law before Omnibus Law, there were some provisions which were seen by many to be quite unreasonable and burdensome for PKPs. In particular, many of the provisions hindered the ability of PKPs to claim Input VAT although it was clearly related to an eventual VATable output delivery.



The changes brought about by the Omnibus Law should remove some of these obstacles for PKPs to enjoy the benefit of crediting Input VAT that they have appropriately paid, thus eliminating unnecessary VAT tax leakage and improving the investment environment.

The status of certain deliveries has also been changed, from VATable to non-VATable deliveries.

Changes to allow previously unrecoverable input VAT to be recovered

VAT during pre-production stage

Under the previous VAT Law, input VAT incurred during pre-production was only creditable (for PKPs) if it was incurred for the purchase of capital goods. The Omnibus Law expands the creditable Input VAT in pre-production to include all Input VAT incurred by PKPs during pre-production as long as they fulfilled the crediting requirements.

However, whereas previously PKPs in pre-production were allowed monthly refunds, the provision that allowed the monthly refund has been eliminated under the Omnibus Law.

As in the previous law, if a PKP has not moved beyond pre-production (delivered or exported VATable goods/services) within a certain period of time, the Input VAT that has been credited cannot be claimed.

The previous cut-off period of the pre-production stage was three years, and in the Omnibus Law remains the same for most cases. However, for PKPs in certain sectors (to be determined by the MoF) the cut-off period may be increased beyond three years.

The Omnibus Law also provides the mechanisms for DGT to reverse the Input VAT that has been credited, which is similar to the rules under previous implementing regulations.

Input VAT prior to becoming a PKP

The Input VAT before the entrepreneur becomes registered as a PKP can now be credited using the Input VAT crediting guideline of 80% of the Output VAT that should be collected.

Input VAT found during a tax audit

Input VAT which was not reported in the Monthly VAT Return and is found during a tax audit can now also be credited.

Input VAT collected through an SKP

Input VAT collected by the issuance of an SKP can now also be credited for the VAT principal amount if the SKP has been paid off and there is no further dispute.

Change of VATable delivery status for certain goods

There were certain cases under the prior law where delivery of goods was considered VATable, which are now considered as non-VATable deliveries under the Omnibus Law.

Consignment Goods

The Omnibus Law deletes the delivery of VATable goods under consignment from the definition of delivery of VATable goods. Therefore, the delivery of VATable goods under consignment becomes a non-VATable delivery.

Inbreng and other company restructuring activities

The transfer of VATable goods for the purpose of capital deposit in exchange for shares, or *inbreng*, is now added to the list of corporate actions that are not considered to create a VATable delivery of goods.

Therefore, under the Omnibus Law, the transfer of VATable goods in the context of merger, consolidation, expansion, split, acquisition, and *inbreng* (newly added under the Omnibus Law) are not considered as VATable delivery provided that the transferor and the transferee are both PKPs. In the case that one of those parties is not a PKP, the elucidation of the Omnibus Law provides some clarifications, as follows:

- If the transferor is a non-PKP, the transfer is still included in the definition of delivery of VATable goods and hence, VAT is payable but not collected because the transferor is not a PKP.
- If the transferor is a PKP and the transferee is a non-PKP, the transfer is included in the definition of delivery of VATable goods and hence, VAT is payable and normal VAT treatment is applied.

Coal is now VATable

In the Omnibus Law, coal products are excluded from the negative list of VATable goods, and therefore are now VATable.

Changes to VAT invoice requirements on foreign buyers' data

In the existing VAT Law, when completing the VAT invoice data, the buyer's identity must be completed with the name, address, and Tax ID number, with no exception. The Omnibus Law provides a more relaxed requirement for foreign buyers' identities, as follows:

- For individual foreign tax subjects, Tax ID number can be replaced with citizen ID (*Nomor Induk Kependudukan*) or passport number in addition to name and address information.
- For corporate foreign tax subjects, only name and address are required.

Conclusion

We believe that, from an overall perspective, the tax law changes from the Omnibus Law enhance the business and investment environment. On the KUP front, the changes may lead to less punitive sanctions on taxpayer mistakes. The ITL (combined with earlier ITL changes) provides some significant changes which may further attract investment into Indonesia and provide incentives for reinvestment of profits in Indonesia. Lastly, the changes in the VAT Law should also serve as long-awaited solutions to what have been burdensome practical issues under the current VAT Law, especially during pre-production.

No doubt you or your business will be impacted in some way by these changes. There will be opportunities to change business strategies, structures or processes to better take full advantage of the changes and to maximise the benefits provided by the Omnibus Law. Our tax professionals at PwC remain ready to start the conversation and to assist you as you chart the waters of these new changes.



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