Mining in Indonesia

Investment, Taxation and Regulatory Guide

January 2025, 14th Edition

pwc

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The guide

This guide is not intended to be a comprehensive study of all aspects of the mining industry in Indonesia, but rather a general guide to certain key considerations relating to investment and taxation in the sector. Readers should note that the information included herein will require updating as regulations change.

Companies intending to invest in Indonesia will need to carry out further research and obtain updated information about the applicable investment and operational requirements. They should also consider social, political, and economic developments in Indonesia which could have a significant impact on the success of any investment.

PwC Indonesia recommends that investors contact our specialist mining team as they consider investment opportunities. Please see Appendix F for the contact details of PwC Indonesia's mining specialists.

Photo source: PT Sumbawa Timur Mining

Cover photo courtesy of: PwC

Regulatory information is current up to 31 December 2024.

Contents

Glossary

Term	Definition
AMDAL	*Analisis Mengenai Dampak Lingkungan* (Environmental Impact Assessment)
BKPM	*Badan Koordinasi Penanaman Modal* (Indonesia's Investment Coordinating Board)
BI	Bank Indonesia
BIK	Benefit-in-Kind
BUMN	*Badan Usaha Milik Negara* (National state-owned companies)
BUMD	*Badan Usaha Milik Daerah* (Regional government-owned companies)
CbCR	Country-by-Country Reporting
CCA	Coal Co-operation Agreement
CCoW	Coal Contract of Work
CIF	Cost, Insurance and Freight
CIT	Corporate Income Tax
CoW	Contract of Work
CSR	Corporate Social Responsibility
DER	Debt-to-Equity Ratio
DPR	*Dewan Perwakilan Rakyat* (House of Representatives)
DGoFT	Directorate General of Foreign Trade
DGoMC	Directorate General of Minerals and Coal
DGT	Directorate General of Taxation
DHE	*Devisa Hasil Ekspor* (Mining Export Proceeds)
DHE SDA	*Devisa Hasil Ekspor dari Barang Ekspor Sumber Daya Alam*
DMO	Domestic Market Obligation
ESC	Energy, Sustainability and Climate
ESG	Environmental, Social and Governance
Energy Law	Law No. 30/2007
Environmental Law	Law No. 32/2009
E&E	Exploration and Evaluation

Term	Definition
EU&R	Energy, Utilities and Resources
FOB	Free on Board
Forestry Law	Law No. 41/1999, as amended by Law No. 19/2004
Government	Government of Indonesia
GR 22/2010	Government Regulation [Reference Number]/[Issuance Year]
GAR	Gross as Received
GDP	Gross Domestic Product
ha	Hectare
HPB	*Harga Patokan Batubara* (Coal Benchmark Price)
HPM	*Harga Patokan Mineral* (Mineral Benchmark Price)
IDX	Indonesia Stock Exchange
IFRS	International Financial Reporting Standards
Investment Law	Law No. 25/2007
IPO	Initial Public Offering
IPR	*Izin Pertambangan Rakyat* (Peoples' Mining Licence)
ITL	Law No. 36/2008 (the prevailing Income Tax Law)
IOT	Internet of Things
IUJP	*Izin Usaha Jasa Pertambangan* (Mining Services Business Licence)
IUP	*Izin Usaha Pertambangan* (Mining Business Licence)
IUPK	*Izin Usaha Pertambangan Khusus* (Special Mining Business Licence)
IUP-OP	*Izin Usaha Pertambangan Operasi Produksi* (Operation Production Mining Business Licence)
IUPK-OP	*Izin Usaha Pertambangan Khusus Operasi Produksi* (Operation Production Special Mining Business Licence)
KBLI	*Klasifikasi Baku Lapangan Usaha Indonesia* (Indonesian Formal Business Field Classification)
LPEI	*Lembaga Pembiayaan Ekspor Indonesia* (Indonesian Export Financing Agency)
LST	Luxury Sales Tax

Term	Definition
Mining Law	Law on Mineral and Coal Mining No. 4 of 2009, as amended by Law No. 3/2020
MoEMR	Ministry of Energy and Mineral Resources
MoF	Ministry of Finance
MoT	Ministry of Trade
MSME	Ministry of Micro, Small and Medium Enterprises
mt	Metric Tonne
NIB	*Nomor Induk Berusaha* (Business Identification Number)
NPWP	*Nomor Pokok Wajib Pajak* (Tax Payer Identification Number)
OJK	*Otoritas Jasa Keuangan* (Financial Services Authority of Indonesia)
OSS	Online Single Submission
PBB	*Pajak Bumi dan Bangunan* (Land and Building Tax)
PerMen 28/2009	MoEMR Regulation [Reference Number]/[Issuance Year]
PerMenDag 4/2015	*Peraturan Menteri Perdagangan* (MoT Regulation) [Reference Number]/[Issuance Year]
Perpres	*Peraturan Presiden* (Presidential Regulation)
PMA	*Penanaman Modal Asing* (Foreign Investment)
PMDN	*Penanaman Modal Dalam Negeri* (Domestic Investment)
PMK	*Peraturan Menteri Keuangan* (MoF Regulation)
PNBP	*Penerimaan Negara Bukan Pajak* (Non-Tax State Revenue)
PTBA	PT Bukit Asam Tbk, the state-owned coal mining company
PwC	PwC Indonesia, or the PwC global network of firms, as the context requires
RKAB	*Rencana Kerja dan Anggaran Biaya* (Work Plan and Budget)
SFAS	Statement of Financial Accounting Standard
SIPB	*Surat Izin Penambangan Batuan* (Rock Mining Business Licence)
VAT	Value Added Tax
WIUP	*Wilayah Izin Usaha Pertambangan* (Mining Business Licence Area)
WIUPK	*Wilayah Izin Usaha Pertambangan Khusus* (Special Mining Business Licence Area)
WHP	*Wilayah Hukum Pertambangan* (Mining Jurisdiction Area)

Term	Definition
WHT	Withholding Tax
WP	*Wilayah Pertambangan* (Mining Area)
WPN	*Wilayah Pencadangan Negara* (State Reserve Area)
WPR	*Wilayah Pertambangan Rakyat* (Peoples' Mining Area)
WUP	*Wilayah Usaha Pertambangan* (Commercial Mining Business Area)
WUPK	*Wilayah Usaha Pertambangan Khusus* (Special Mining Business Area)

Foreword

Welcome to the 14th edition of PwC Indonesia's ***Mining in Indonesia: Investment, Taxation and Regulatory Guide.***

This edition of the guide updates readers on the latest tax, regulatory and commercial changes since our previous edition. This publication has been written as a general investment and taxation guide for all stakeholders interested in the mining sector in Indonesia, including existing investors, potential investors, and others.

Over the past few years, Indonesia's mining industry has been significantly affected by global and regional factors. Geopolitical flashpoints such as the Russia-Ukraine and Middle East conflicts, with their resulting supply chain disruptions and commodity price volatility, have created a challenging macroeconomic environment. Simultaneously, the global energy transition is having far-reaching effects on the industry, not only in terms of fossil fuels such as coal, but also in the form of increasing demand for critical minerals which are essential to the transition to sustainable energy.

The Indonesian Government has also continued to issue new laws and regulations, which have significantly impacted the mining sector, sometimes creating further uncertainty for mining companies operating in the country. Notably, the Government's issuance of Law No. 3/2020 (the "Amendment to the Mining Law") and Government Regulation No. 96 of 2021 ("GR 96/2021"), which was recently amended by GR 25/2024, have addressed some long-standing concerns while also introducing new dynamics into the regulatory environment. Additionally, the Job Creation Law, enacted through Government Regulation in Lieu of Law No. 2 of 2022 and Law No. 6 of 2023, introduces further changes affecting all industries, including mining.

More than a decade after the Mineral and Coal Mining Law No. 4 of 2009 (the "Mining Law") was promulgated, the Government issued Law No. 3/2020 (the "Amendment to the Mining Law") on 10 June 2020, after the House of Representatives (*Dewan Perwakilan Rakyat* or "DPR") approved the law on 12 May 2020. Investor reaction has generally been positive, with the amendments demonstrating the Government's desire to address some long-standing industry concerns. These include addressing the regulatory certainty over the issuance and extension of mining business licences, dealing with the continuation of operations by Contract of Work (CoW) and Coal Contract of Work (CCoW) holders, dealing with overlapping mining areas, improving coordination between the Central and Regional Governments, promoting investment in exploration activities and dealing with illegal mining.

The issuance of the Amendment to the Mining Law was followed by the issuance of Government Regulation No. 96 of 2021 ("GR 96/2021") on the "Implementation of Mining Business Activities", which has also been generally well received by investors, since it provides foreign investors with a longer period during which to satisfy share divestment


Photo source: PwC

obligations. For instance, for operations which include underground mining with integrated processing and/or refining facilities, foreign investors are now only required to commence divestment from the 20th year of production. Previously, foreign shareholders had to divest their interest in stages, commencing from the fifth year of production, resulting in a shareholding of a maximum of 49% by the tenth year of production.

While there has been some progress in addressing long-standing industry issues, there remains regulatory uncertainty that gives rise to investor concern. For example, the higher royalty rate on the coal and mineral sales of mining companies in Indonesia under GR 15/2022 and GR 26/2022, payment obligations for coal mining companies who do not meet the Domestic Market Obligation (DMO) requirement stipulated in Ministry of Energy and Mineral Resources (MoEMR) Decree No. 267.K/MB.01/MEM.B/2022 (as amended by Kepmen 399/2023), and the issuance of GR 36/2023 which introduces heavier requirements for exporters of natural resources to deposit their export proceeds denominated in foreign currencies (*Devisa Hasil Ekspor dari Barang Ekspor Sumber Daya Alam* or "DHE SDA") in the Indonesian financial system, have further increased investors' perception that regulatory risk in the Indonesian mining industry remains high.

However, as investors view Indonesia as still having significant geological potential, particularly for critical minerals which are essential to the energy transition, there is a real opportunity to attract greater investment to drive this sector's contribution to the economy. This is what all stakeholders should be focused on.

This publication aims to support investors as they navigate the Indonesian mining investment climate, and to support the growth of the industry. Readers should note that the regulatory content in this publication was current up to December 2024. Whilst every effort has been made to ensure that all information was accurate at the time of printing, many of the topics discussed are by their nature subject to interpretation, and regulations are changing continuously. As such, this publication should only be viewed as a general guidebook and not as a substitute for up-to-date professional advice. As such, we recommend that you contact PwC's mining specialists (see Appendix F) as you consider investment opportunities in the Indonesian mining sector.

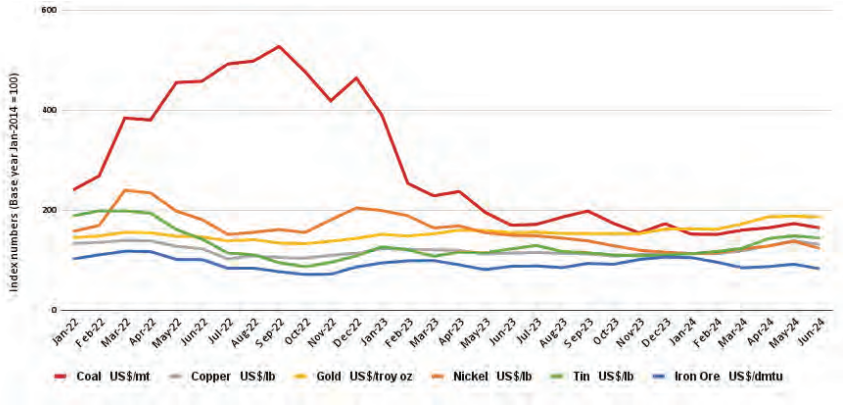
We hope that you find this publication interesting and useful, and we wish all readers success with their endeavours in the Indonesian mining sector.

1 The industry in perspective

1.1 Coal and Mineral Prices

Since reaching record highs in 2022, the price surges that followed the Russia-Ukraine conflict have since been largely wiped out. The rise of the Middle East conflict, a slowing global economy, and shifting global trends contributed to further declines in the average prices of coal and most minerals in 2023. In the first half of 2024, average prices for coal, nickel and iron continued to decrease, while those for copper, gold, and tin increased.

Mineral and Coal Prices



Source: World Bank, PwC Analysis


Photo source: PT Agincourt Resources

Photo source: PT Freeport Indonesia

Coal – Contrary to many market watchers' expectations, the average price of coal rose year-on-year by 127% and 150% in 2021 and 2022, respectively. Increased demand for thermal coal in Asia and Europe, limited supplies of natural gas, and sanctions on Russian coal exports were some of the factors driving higher coal prices during these periods. However, the coal price fell during the fourth quarter of 2022, followed by a sharp decline in 2023. Compared to 2022, the average coal price during the first half of 2023 declined by 42%, with the average coal price in June 2023 representing only one third of the record high seen in September 2022. Several of the supply constraints that led to the sharp coal price surge in 2022 have continued to unwind. In China and India (the world's two largest coal consumers), demand for coal is expected to be lower, as manufacturing producers in both countries, especially steel plants, have completed stockpiling and are thus halting their coal purchases. Supply wise, production by key coal producers such as China, India and Indonesia also increased significantly. In the first semester of 2024, the coal prices largely stabilised, despite still being subject to downward pressure due to the above factors. Currently, consensus forecasts indicate that prices for thermal coal will follow a downward trend over the next decade. With renewable energy becoming increasingly cost competitive, and with net-zero targets set by many countries, more thermal-coal power plants are set to be phased-out over the next decade.

Nickel – The average price of nickel increased by 40% in 2022 but decreased by 6% during the first half of 2023. After reaching its peak in the first quarter of 2022, the nickel price softened during the second and third quarters of 2022 as the price surges that followed the Russia-Ukraine conflict largely unwound. The average price of nickel decreased by 15% in 2023 and continued to decrease by a further 19% in the first half of 2024. The weakening nickel price was driven by an oversupply of nickel and weak demand from China. In the short term, it is estimated that the increase in production from both Indonesia and China will contribute to a higher supply, thus lower global nickel prices. However, in the long term, nickel is projected to trend towards an undersupply, with demand for nickel for batteries expected to outpace production.

Copper – The average copper price decreased by 5% in 2022, and by a further 3% in 2023. However, the first half of 2024 saw a reversal of this trend, with an increase in the average price by 8%. This was aligned with expectations of a tightening of global supply, which put pressure on the availability of refined copper. In the short term, the average price of copper will likely be affected by a turnaround in demand from China's construction sector (a major consumer) and an increased supply from leading producers like Chile, Peru and the Democratic Republic of Congo (contributing roughly 44% of global production). In the long term, the green transition is likely to keep the copper markets in a deficit position, as demand for "green" metals like copper, which is essential to electrification, continues to rise. continues to rise. This undersupply trend is projected to continue for the next decade, with demand outpacing production, increasing the likelihood of copper prices rising in the long term.

Tin – After a price surge that reached its peak in April 2022, the average tin price has softened, experiencing a 17% decline in 2023. However, a notable reversal began in the second quarter of 2024, with the average price rising steadily. By June 2024, it had increased by 30% compared to the same period in 2023. This surge is attributed to a surge in Chinese demand that the supply chain has struggled to meet. Myanmar's tin mining ban, implemented in August 2023, was also a significant contributor to supply-side constraints. In the short term, tin prices are expected to continue rising, albeit modestly, due to the ongoing Myanmar mining ban and a projected continuing increase in demand. The long-term outlook remains positive, with tin prices likely to maintain a firm upward trend. This is because it is estimated that future production growth will lag behind rising demand for tin

for electronics (particularly as electric vehicles (EVs) incorporate more electronics) and solar panels (used in photovoltaic cells), solidifying tin's position as a crucial commodity for the future.

Iron ore – The average price of iron ore increased steadily in the second half of 2023, and in December reached its highest level since April 2022. This surge was mainly driven by iron ore demand from China, fuelled by hopes of stimulus measures. However, this optimism faded in the first quarter of 2024 due to weak demand from Chinese steelmakers. In the short term, the continued weakness in the Chinese property sector is likely to cap iron ore price growth and prices are likely to remain sensitive to any stimulus announcements from the Chinese government. In the longer term, it is estimated that iron ore prices will follow a multi-year downtrend due to a combination of factors: slowing Chinese demand growth, a cooling in steel production growth, and higher iron ore output from global producers.

Gold – Gold's performance remained relatively stable throughout 2022 and 2023, with prices showing minimal year-on-year fluctuations. However, June 2024 saw a significant surge of 14% compared to December 2023. This increase can be attributed to several factors: a weakening USD, interest rate cuts by the US Federal Reserve, ongoing geopolitical uncertainty due to the Russia-Ukraine and Middle East conflicts, and persistently high inflation. These factors have driven some investors to seek gold as a safe haven asset. Looking to the long term, gold prices are expected to fall slightly. This is primarily due to an anticipated change in risk sentiment as the global economy recovers in the latter part of the decade.

1.2 Indonesian Production of Coal and Minerals

Coal – Indonesian coal production has shown steady growth over the last decade. Indonesia consistently recorded coal production increases, except for the years 2014 - 2015 when coal production decreased due to a decline in coal prices and an effort by the Government of Indonesia (the "Government") to limit coal production increases, and in 2020 due to the decline in global and domestic demand for coal during the onset of the COVID-19 pandemic, which led coal producers to cut production and reduce investment. Despite the declining production, the 2020 coal production of 561 million tonnes was still above the target of 550 million tonnes.

In 2021, coal production increased to 614 million tonnes, following a significant increase in demand and prices. In 2022, the coal production target was set at 663 million tonnes. Initially, Indonesian coal miners were expected to struggle to meet this target due to interruptions to their production plans as a result of coal export restrictions imposed by the Government in January 2022 to tackle the issue of inadequate domestic coal supply for power stations. However, coal production reached 687 million tonnes in 2022, comfortably surpassing the target, driven by strong global demand and the tightening of the coal market in 2022 because of the sanctions on Russian coal exports.

In 2023, the Government set a coal production target of 695 million tonnes, with actual production reaching a remarkable 771 million tonnes, exceeding the target by 11%. Much of this growth in production was directed to export markets, driven by increased demand from China and India. In 2024, the Government set a coal production target of only 710 million tonnes even though based on the data from the Indonesian coal miners work plans and budgets (*Rencana Kerja dan Anggaran Biaya* or "RKAB"), Indonesian coal companies planned for production of 922 million tonnes. As of 31 December 2024, total coal production for the year has reportedly reached more than 830 million tonnes, a circa 7.5% increase on 2023.

Non-coal minerals – In 2023, Indonesia was responsible for around four percent of global gold production, of which half originated from the giant Grasberg mine, one of the world's largest copper and gold mines, located in the western half of Papua. As gold production in Indonesia – by far – outpaces domestic gold demand, most of the production is shipped abroad. However, the Government is currently seeking to stimulate the establishment of national processing industries in order to increase domestic profits by exporting products with greater added value.

Since 2013, tin production in Indonesia has significantly decreased as a result of the Government's efforts to limit export quotas to deal with illegal mining and the depletion of reserves, and also due to the suspension of operations at several tin mines due to environmental issues. In the 2016–2018 period, production levels remained steady, but at less than half the level of tin production in 2013. Tin production showed some improvement in 2019, with a 50% increase from 2018, but 2020 and 2021 saw a significant decline, with production in 2021 only representing half of the 2019 production level. However, in 2022 tin production rose back to the 2020 levels, as tin miners increased their production to capitalise on the strong tin price. In 2024, the growing production of clean energy technologies supported increased demand for metals such as copper, tin and nickel. Tin production rose by 66%, driven by the growing demand for semiconductors, photovoltaic panels, and other energy transition technologies. Additionally, higher tin prices in 2024 compared to 2023 further incentivised increased production.

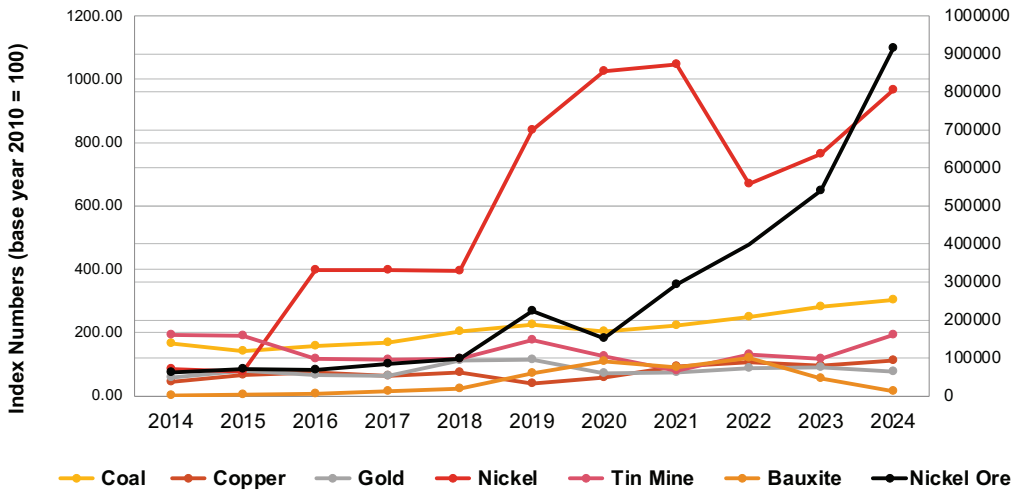
Copper production in Indonesia has been significantly shaped by production at the Grasberg mine. This mine's transition from open-pit to underground mining resulted in a decrease in the copper production in Indonesia in 2019. The Grasberg underground mine started ore extraction in 2020, reaching optimum production in mid-2020 and becoming a major contributor to national copper production. In 2023, copper production decreased by 11% primarily as a result of the government's weighing of a copper export ban. The full operation of Freeport Indonesia's new smelter in Gresik, completed in 2024, will increase the domestic copper processing capacity.

Photo source: PT Tuah Turangga Agung

The production of nickel and bauxite continued to increase after the relaxation of the ban on exports of nickel ore and washed bauxite by the Government in 2017. Another factor contributing to the increase has been production from new nickel smelters that have been coming online since 2017, together with higher global nickel prices driven by increased demand from the EV industry. The significant increase in the production of nickel in 2019 was primarily due to the Government's decision to accelerate the full ban on exports of low-grade nickel ore two years ahead of the initial schedule, which was announced in August 2019 and became effective in January 2020. In 2020, nickel production fell due to the pandemic, but then recovered strongly in 2021 and 2022, supported by increasing demand and the waning impact of the pandemic. In 2023, nickel production increased by 14%, despite the decreased price of nickel in 2023 due to an oversupply of nickel ore from the increase in the number of smelters and in the production of class 2 nickel in Indonesia. The aggressive development of nickel smelters (RKEF and HPAL) over the past few years has created a prolonged supply-demand surplus, leading to a significant drop in LME Nickel prices. This expansion, which contributed to an overall increase in nickel production by 26% in 2024, propelled refined nickel production up by 16% year-on-year in September 2024 to 1.1 million metric tonnes, compared to a global increase outside Indonesia of 4.9% year-on-year.

Bauxite production decreased by 54% in 2023, due to a ban on exports of washed bauxite imposed by the Government in June 2023. In 2024, the production further declined by 74% compared to 2023, in response to the ban.

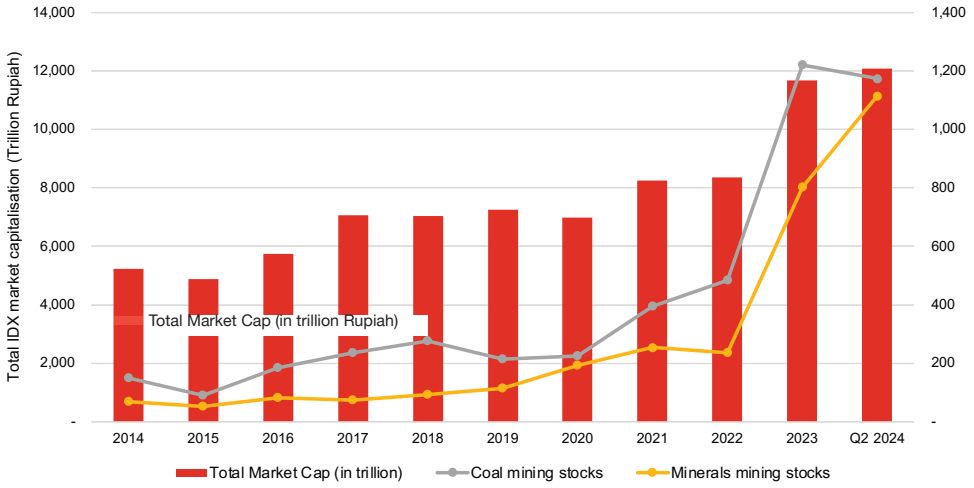
Historical Indonesian coal and mineral production trends are presented in the diagram below (indexed to the base year 2010 = 100).



Source: Ministry of Energy, Mineral and Resources Performance Report (Laporan Kinerja Kementrian ESDM), US Geological Survey, Minerba One Data Indonesia , PwC Analysis

Market Capitalisation of Mining Companies in Indonesia

The movements in the market capitalisation of listed coal and mineral mining companies on the Indonesia Stock Exchange (IDX) have generally followed the fluctuations in mineral and coal prices.



Source: IDX, PwC Analysis

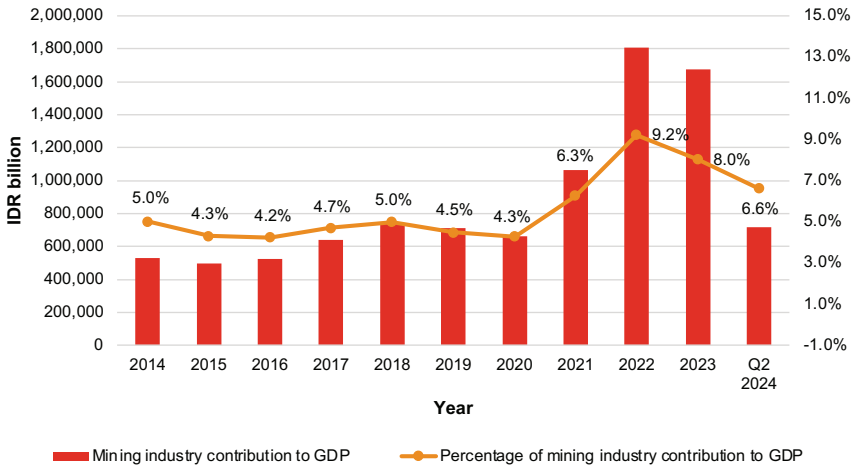
During the period from December 2017 to December 2023, the market capitalisation of listed coal and mineral mining companies on the IDX showed steady growth, in line with the upward trend in mineral and coal prices over the period. The exception was 2019, where the market capitalisation of listed coal and mineral mining companies on the IDX dropped by 11% from IDR 370 trillion at 31 December 2018 to IDR 327 trillion at 31 December 2019. Even at a time when many businesses were heavily impacted by the COVID-19 pandemic in 2020, the market capitalisation of mining stocks on the IDX still increased by 27% from IDR 327 trillion at 31 December 2019 to IDR 417 trillion at 31 December 2020.

From the period of December 2017 to December 2022, the market capitalisation of listed coal mining companies on the IDX increased by 105%, from IDR 236 trillion at 31 December 2017 to IDR 484 trillion at 31 December 2022. This occurred despite the pressures on coal as a result of the global transition to clean energy and rising Environmental, Social and Governance (ESG) expectations from governments and other stakeholders such as employees, local communities and customers. Geopolitical issues experienced in 2022 have confirmed the continuing role played by coal in maintaining energy security in many parts of the world, which has contributed to increases in both demand for coal and the value of coal mining companies. The market capitalisation of listed coal mining companies on the IDX further increased by 152% from IDR 484 trillion at 31 December 2022 to IDR 1,221 trillion at 31 December 2023. This increase was significantly affected by the PT Bayan Resources Tbk stock split in December 2022 and the initial public offering of PT Petrindo Jaya Kreasi Tbk in March 2023. The market capitalisation of other listed coal mining companies on the IDX increased slightly by 5% at 31 December 2023 compared to 2022 following short term market sentiment arising from a recovery in seasonal demand. Subsequently, the market capitalisation of listed coal mining companies on the IDX decreased slightly by 4% to IDR 1,174 trillion as at 30 June 2024.

Over the same period, the market capitalisation of mineral mining companies listed on the IDX increased by 981%, from IDR 74 trillion at 31 December 2017 to IDR 804 trillion at 31 December 2023. The strong performance of nickel, copper and gold prices in the last few years and the important roles played by nickel and copper in the global transition to clean energy have been major factors supporting the remarkable growth of mineral stocks on the IDX in the last few years. It seems that the softening of mineral prices in 2024 has not affected investors' confidence, with many perceiving these green minerals (e.g. copper, nickel, tin, etc.) as the commodities of the future with the market capitalisation of mineral mining companies on the IDX increasing to IDR 1,115 trillion as of 30 June 2024.

1.3 The Mining Industry's Contribution to the Indonesian Economy

Contribution of the Mining Industry to Indonesian Gross Domestic Product ("GDP")

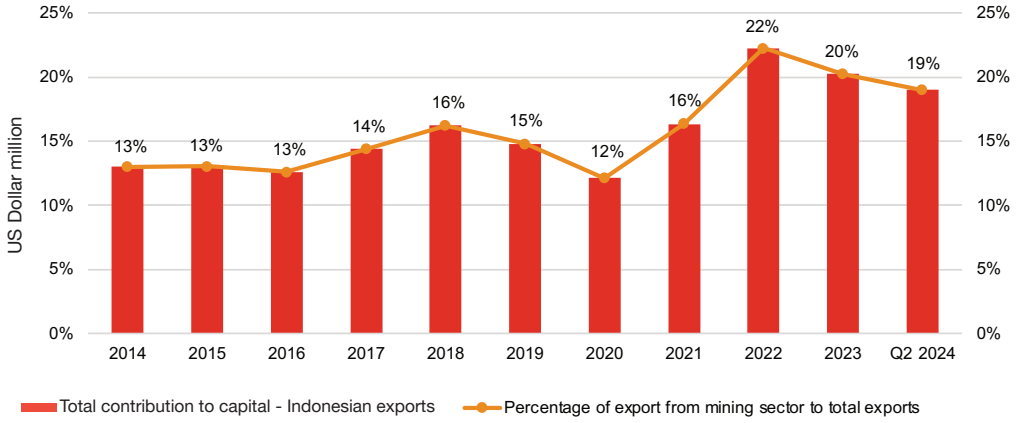


Source: Bank Indonesia, PwC Analysis

The mining sector has been one of the key sectors contributing to Indonesia's economic growth over many decades. The sector has made a significant contribution to Indonesian GDP, exports, Government revenue, employment and, perhaps most importantly, to the development of many remote regions of Indonesia. Mining companies are in some cases the only significant employers in these remote areas.

The mining sector's contribution to Indonesian GDP declined slightly from 4.5% in 2019 to 4.3% in 2020. As Indonesia's coal and metal production and export quantities mostly decreased in 2020, due to the weakening of global demand during the COVID-19 pandemic, the mining industry's contribution to GDP also decreased. However, mineral and coal prices strengthened significantly in 2021 and 2022 following a strong recovery in demand following the COVID-19 pandemic, with commodity prices bolstered further by recent geopolitical tensions. As a result, the mining sector's contribution to Indonesian GDP improved significantly to 6.3% in 2021 and an impressive 9.2% in 2022, before falling slightly to 8% in 2023, mainly due to a 14% decrease in export value due to the lower coal price. In Q2 2024, the mining sector's contribution decreased further to 6.6%. Going forward, the clean energy transition globally is likely to further dampen coal prices, lowering coal's contribution to Indonesian GDP. However, the contribution of minerals to GDP is expected to increase and will partly offset the impact of the decrease in coal's contribution, indicating that critical minerals are increasingly important to Indonesia's economy.

Mining Products as a Percentage of Total Indonesian Exports



Source: Bank Indonesia

The mining sector contributes an even more significant share of Indonesian exports, particularly as mining products are generally priced in USD. After 2014, the mining sector's contribution to Indonesian exports fell off for a few years, following the implementation of the ban on exports of unprocessed (or insufficiently processed) minerals in January 2014 and the introduction of a significant export duty on mineral concentrates. During the period from 2014 to 2016, the mining industry's contribution to Indonesia's total export revenues was consistent at around 13%, down from 17% in 2013.

However, the mining industry's contribution to total exports increased to 14% and then 16% in 2017 and 2018, respectively, primarily due to increased coal export revenue, increasing from USD 14.6 billion in 2016 to USD 20.5 billion in 2017 and to USD 24 billion in 2018 on the back of higher coal prices. The relaxation of the export ban on low-grade nickel ores and washed bauxite, which took effect in 2017, also contributed to improvements in the mining industry's contribution to total exports, with nickel exports providing an additional USD 155 million and USD 628 million in 2017 and 2018, respectively, while bauxite exports posted a remarkable increase of USD 66 million and USD 265 million in 2017 and 2018, respectively, from just USD 430,000 in 2016.

In 2019, nickel and bauxite exports further increased to USD 1.1 billion and USD 468 million, respectively. For nickel, the significant increase in exports was also affected by the Government's decision to accelerate a full ban on exports of low-grade nickel ore two years ahead of the initial schedule. However, despite the improvement contributed by nickel and bauxite exports, the mining industry's contribution to total exports decreased to 15% in 2019 as a result of lower coal exports, which decreased from USD 24 billion in 2018 to USD 21.6 billion in 2019 due to the weakening of global coal prices.

Since January 2020, the Government has officially banned exports of nickel ore. This policy was designed to boost the development of smelter construction and also to preserve the country's reserves of key minerals, especially nickel. Coal export value and quantity decreased by 24% and 11.3%, respectively, in 2020 due to the weakening of global demand in light of the COVID-19 pandemic. As a result of these falls, the mining industry's

contribution to total exports further decreased to 12% in 2020, despite bauxite exports increasing to USD 555 million.

In 2021 and 2022, both mineral and coal prices strengthened significantly following a strong demand recovery after the COVID-19 pandemic. As a result, the mining sector's contribution to total exports also significantly improved, to 16% in 2021 and then 22% in 2022. In 2023, the mining sector's contribution to total exports decreased to 20% and then to 19% in the first quarter of 2024 due to a lower export quantity and average price of coal. For the remainder of 2024, it is estimated that the mining sector's contribution will be similar to that for 2023 (at around 19% - 20% of total exports).

1.4 Provisional Considerations for ESG in the Mining Sector

What is ESG?

Increased sustainability awareness is driving investors, customers, regulators, and thus companies to pay proper attention and respond appropriately to ESG risks. Among the most pervasive risks in the mining sector are: environmental practices, duty of care, climate change[1] and, in some cases, modern slavery.

ESG refers to the three main criteria used in measuring sustainability. Together, ESG comprises a set of sustainability standards of importance to industries. In the business environment, ESG is often adopted as a key metric when making investment decisions. ESG also serves as a reference for companies when reporting the impacts of their business, and has increasingly become a priority for companies' strategic and operational agendas[2].

In the mining industry, the ESG spectrum tracks a number of relevant activities: monitoring energy releases, interactions with local communities, and disclosure[3]. The resulting ESG plans serve as a lever to measure the costs and benefits of investments, and eventually as a prime consideration for securing the social licenses needed to engage[4].

The aim of this section is to provide a brief overview of the concept of ESG, as a way to leverage sustainability into relevant business practices, including in the mining sector.

Disclaimer: This section provides a brief summary to create awareness and trigger actions. Please refer to standard references, such as the Guide for Mineral Explorers on ESG[5], to guide actions.

Photo source: PT Bukit Asam Tbk

ESG Opportunities and Challenges

Opportunities rest in the improvement of decision-making processes which are based on sustainable development assessment. In terms of corporate governance, for instance, investors are driving a shift towards improved ESG management by their investee companies. For energy companies with poor environmental records, investments may be halted until management steps up energy switches and efficiencies, or governments may respond through progressive legislation such as carbon taxes or cap-and-trade schemes[6].

Companies can focus on minimising environmental impact while at the same time enhancing energy efficiency. This can be achieved through:

- Support for collaboration with rural electrification initiatives (thereby allowing more inclusive stakeholder participation);
- Taking part in R&D projects with a focus on environment or ecosystem restoration;
- Testing emissions trading systems or cutting-edge technologies; and
- Publicly endorsing carbon pricing mechanisms.

The use of renewable energy sources, such as through the installation of off-grid wind, solar, or geothermal power systems can also support a more responsible and ecologically sensitive era for coal mining[7], eventually attracting more investors and bringing non-economic benefits to the company in the long term[8].

Ecosystem destruction due to mining also provides opportunities for rehabilitation and restoration, which eventually provide a better delineation of ecosystem goods and services. There are a few Indonesian success stories to draw lessons from[9].

In terms of challenges, financial constraints and the related technical integration, complexities are often at play which create practical constraints, such as in relation to the adoption of technology. Furthermore, policy changes may result in overly stringent regulations with which mining companies need to comply or prepare for in advance, such as carbon pricing methods and more stringent emissions regulations.

ESG Management Cycle

In practice, ESG encompasses a structured cycle of management steps, from planning, to operationalising, measuring, and reporting.

Source: AMEC 2023

Sustainability Reporting as a Means to Integrate Sustainable Practices

ESG reporting acts as both a mirror reflecting current practices and a map guiding companies towards more responsible and sustainable business models. The *Otoritas Jasa Keuangan* (OJK), or Indonesian Financial Services Authority, regulation on Sustainable Finance, POJK 51/2017 made sustainability reporting mandatory for all listed companies in Indonesia indicating a strong political will on the part of the Indonesian government to move in the direction of Sustainable Finance, which will ultimately drive the Sustainable Development agenda in Indonesia. The OJK introduced additional criteria regarding the required content of sustainability reports through SEOJK 16/2021, and is actively monitoring the completeness of disclosure by scanning the sustainability reports submitted by listed companies in Indonesia on an annual basis.

Research has consistently shown that the stock prices of companies with good sustainability implementation outperform their peers. For instance, the NASDAQ OMX CRD Global Sustainability Index, which includes companies with robust ESG practices, outperformed the NASDAQ Composite Index at the height of the pandemic. Similarly, the MSCI World ESG Leaders Index, which tracks companies with high ESG ratings, has consistently outperformed the broader MSCI World Index. Over a five-year period, the MSCI World ESG Leaders Index exhibited higher returns and lower volatility, further illustrating the financial benefits of strong ESG implementation.

ESG Reporting Frameworks vs. ESG Ratings

Sustainability reporting frameworks and ESG ratings play distinct but complementary roles in ESG. This distinction, often overlooked, plays a pivotal role in shaping a company's sustainability narrative and market perception. Understanding the difference between sustainability reporting frameworks and ESG ratings is essential to any entity committed to genuine sustainability.

Table 1.1 Characteristics of SR Frameworks and ESG ratings

	SR frameworks	ESG ratings
Measures	How, What	'Effectiveness' and 'Impact,' providing metrics that investors can use to assess a company's sustainability maturity and commitment.
Functions	Providing companies with a structured approach to disclose their sustainability efforts (in other words, performance expectations).	Offering a comparative analysis of a company's ESG performance against peers (in other words, scoring companies' sustainability efforts).
Standards	POJK 51/2017 with SEOJK 16/2021 and the Global Reporting Initiative ("GRI"), or the International Council for Mining and Metal ("ICMM").	IDX, a member of the Sustainable Stock Exchange, in collaboration with ESG ratings agencies, regularly provide performance and risks of ESG Listed Companies.


Photo source: PT Freeport Indonesia

Frameworks and ratings are complementary in that a robust reporting framework is the bedrock upon which credible ratings are built, while positive ratings can in turn reinforce a company's reputation, attract investors and drive further sustainability initiatives.

Understanding this distinction is imperative, as it can help companies not only document their sustainability journeys, but also in understanding how these efforts are perceived and valued by the outside world, helping them optimise their sustainability impacts for market value and brand reputation.

Tackling the Pain Points. A common challenge faced by companies in implementing and reporting their sustainability performance is the complexity of balancing the requirements of various sustainability reporting frameworks, while also aiming to achieve favourable ESG ratings.

This balancing act introduces significant pain points, particularly for Indonesian companies navigating the intricate landscape of ESG metrics. Different frameworks and ratings agencies emphasise different aspects of sustainability, placing companies in the difficult position of having to meet a wide range of sometimes conflicting stakeholder expectations. This can result in companies, both SMEs and larger corporations, striving to ensure that their genuine sustainability efforts are accurately reflected in their ESG ratings.

Addressing this challenge requires a strategic and multifaceted approach. Companies can begin by aligning their sustainability initiatives with national OJK regulations and globally recognised sustainability standards, as well as any relevant sector standards, such as the ICMM. This can help to ensure consistency and comparability across reports. Next, the adoption of clear processes, roles, responsibility, and the use of technology for efficient data management can significantly streamline the reporting process, accommodating the varied criteria of different ESG frameworks more easily.

The people aspect of sustainability integration is also critical, particularly in building the awareness and competence of people within organisations and companies who execute and oversee sustainability integration and proactive engagement with key stakeholders—ranging from investors and customers to ratings agencies—who can offer critical insights and enable companies to refine their sustainability strategies effectively.

2 Energy transition

2.1 The need for an energy transition and the associated challenges

Energy is a crucial input for all economic activity, and a secure and affordable energy supply has been a key enabling factor for the global economic growth that has lifted millions of people out of poverty. Over the period from 1900 to 2023, global per capita Gross Domestic Product (GDP) has increased from ca. USD 2,200 to ca. USD 13,138[10]. Over the same period, global primary energy consumption increased from ca. 12,000 TWh to ca. 172,119 TWh, with the proportion of fossil fuels in the primary energy supply being ca. 81.5% in 2023[11]. Research indicates that six-fold growth in GDP per capita requires a fourteen-fold increase in energy consumption, underlining the fact that economic growth is correlated with energy consumption growth at a ratio of around 1:2. About three-quarters of global greenhouse gas emissions come from energy use, with around 74% being carbon dioxide (CO_2) and the remainder being gases like methane (CH_4), nitrous oxide (N_2O), and F-gases. Climate science, coordinated by the Intergovernmental Panel on Climate Change, is unequivocal in its conclusion that anthropogenic GHG emissions are responsible for global warming and climate change.

The Paris Agreement at the 21st Conference of the Parties (COP21) calls for global warming to be kept well below 2°C above pre-industrial levels, and for all efforts to be pursued to limit it to 1.5°C above pre-industrial levels, recognising that this would significantly reduce the risks and impacts of climate change. The Glasgow Climate Pact, agreed at COP26, emphasised the urgent need to address global warming and climate change. It reiterated the goals set at COP21, with an additional target of making rapid reductions in global CO_2 emissions of 45% by 2030 compared to 2010 levels, aiming for net zero emissions by around mid-century, and reducing other greenhouse gases[12]. Most countries worldwide have agreed to transition to reduced use of fossil fuels, which are one of the primary drivers of climate change.

This transition requires significantly accelerated action in the current decade, considering that, even with all of the committed policies and actions, the world is estimated to be on track for warming of ca. 2.7°C[13]. Even considering all other current pledges and targets which are yet to be fully translated into specific policies and actions, we remain estimated to hit ca. 2.1°C of warming.

At the same time, energy security remains a major concern across the globe. While the energy transition is key to averting catastrophic global warming and climate change, this cannot be at the expense of the unfinished development agenda in the developing countries of the world, which have historically been and remain below developed countries, and even global averages, in terms of per capita incomes, energy consumption and emissions. It is essential to ensure that the energy transition doesn't reverse decades of progress in economic and social development. Otherwise there is a risk that the loss of social and political license for the many difficult decisions that have to be implemented for a rapid and deep energy transition, will derail the transition.

The B20 Energy, Sustainability & Climate (ESC) Task Force, for which PwC Indonesia was the knowledge partner, highlighted the key areas of focus if a just energy transition is to be achieved, in its policy paper submitted to the G20 in 2022. These areas are summarised in Table 2.1 below.

Tabel 2.1 - B20 ESC TF policy recommendations

Policy recommendation	Policy Action No	Policy Action
Enhance global cooperation on accelerating the transition to sustainable energy use by reducing the carbon intensity of energy use through multiple pathways	1.1	Enhance the pace of energy efficiency improvement across the transport, buildings, and industrial sectors
	1.2	Progressively reduce the carbon intensity of electricity by reducing emissions from coal fired generation and accelerating renewable energy deployment, according to national circumstances
	1.3	Accelerate the mitigation of carbon emissions from hard-to-abate sectors
	1.4	Progressively enhance the quantum, predictability and ease of financing flows to developing countries
	1.5	Support climate technology innovation by supporting start-ups and research universities with technology, financing, skilled manpower, knowledge and facilities sharing
Enhance global cooperation on ensuring a just, orderly, and affordable transition to sustainable energy use across developed and developing countries	2.1	Ensure an orderly transition in primary energy sources
	2.2	Ensure MSMEs' participation in energy transition activities through financing and capacity building
	2.3	Assist with transition readiness by ensuring human capital ability to accommodate change (e.g. knowledge transfer, upskilling and workshops)
	2.4	Ensure sustainable practices for mining of essential minerals for energy technologies
Enhance global cooperation on enhancing consumer level access and ability to consume clean, modern energy	3.1	Accelerate the deployment of integrated electricity access solutions, including off-grid with community participation and grid-based electrification to expand energy access and enhance economic prosperity
	3.2	Facilitate the adoption of technology by households and MSMEs for efficient, clean, modern energy usage
	3.3	Ensure a broad base for the transition by addressing affordability barriers in developing countries

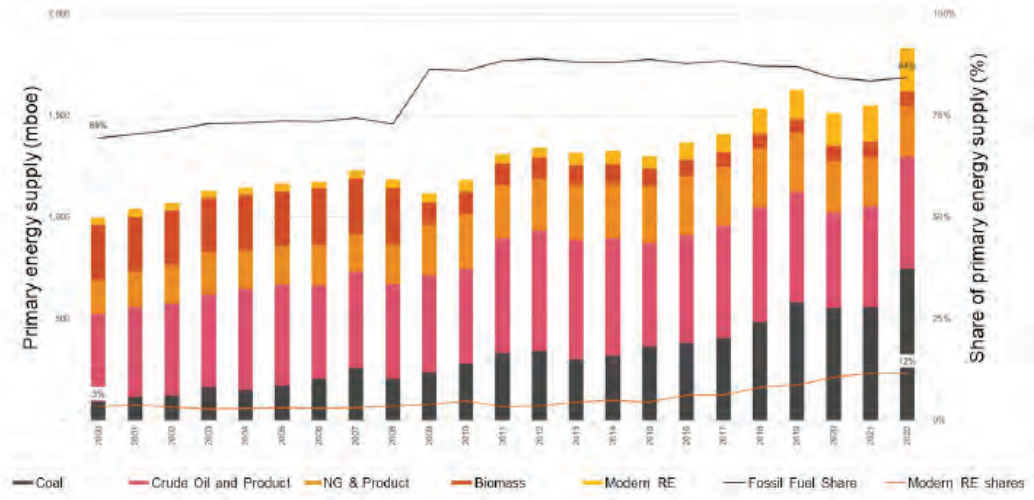
Source: B20 Energy, Sustainability & Climate Task Force ESC TF) , "B20 Summit Indonesia 2022: Energy, Sustainability & Climate Task Force Policy Recommendations", Broadcast November 2022 on YouTube, Kemkominfo, 2022

2.2 The energy transition in Indonesia

Indonesia has demonstrated strong and consistent economic growth so far this century, with GDP at constant 2010 prices increasing from IDR 4.122 trillion in 2000 to IDR 12.301 trillion in 2023[14], supported by a primary energy supply expansion of 1,869 MBOE (Million Barrels of Oil Equivalent). 40% (735 MBOE), 29% (554 MBOE)[15] and 17% (317 MBOE) of this expansion came from coal, oil and gas respectively, reflecting Indonesia's natural resources endowment and a national policy stance favouring the exploitation of these resources for economic development and job creation. This strong and consistent growth has resulted in a more than tenfold increase of per capita GDP over the same period, from ca. USD 770 (IDR 6.5 million)[16] to ca. USD 4,919 (IDR 75 million)[17]. However, this also indicates how much further Indonesia has to go in its ambition to become a developed economy.

In pursuit of the required growth, the country's primary energy supply will have to be expanded. But if this expansion continues on the historical trend of being driven by fossil fuels, the consequent growth in greenhouse gas emissions will lead to Indonesia failing to achieve its international treaty obligations under the Paris Agreement and failing to secure the international support promised for its transition under the Indonesia – Just Energy Transition Partnership.

Primary energy supply mix



Source: PwC, "The Energy Transition," PwC, accessed 2024.

The scale of the challenges faced by Indonesia in planning and implementing its energy transition can be observed from the two graphs below, which show the dependence on fossil fuels of the final energy consumption basket.

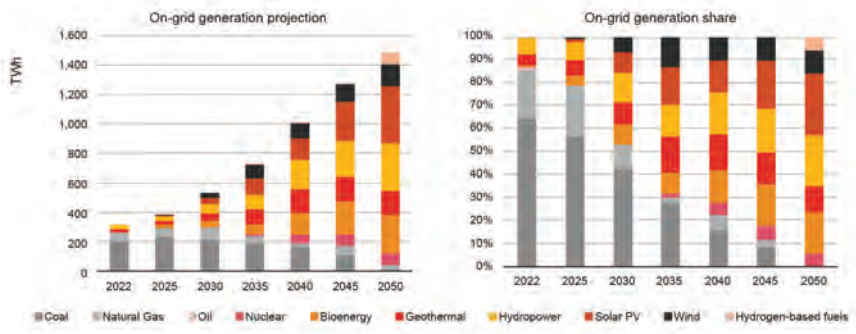
Fossil Fuel Dependence in FEC (2022) and Sectoral Fossil Fuel Dependence (2022)

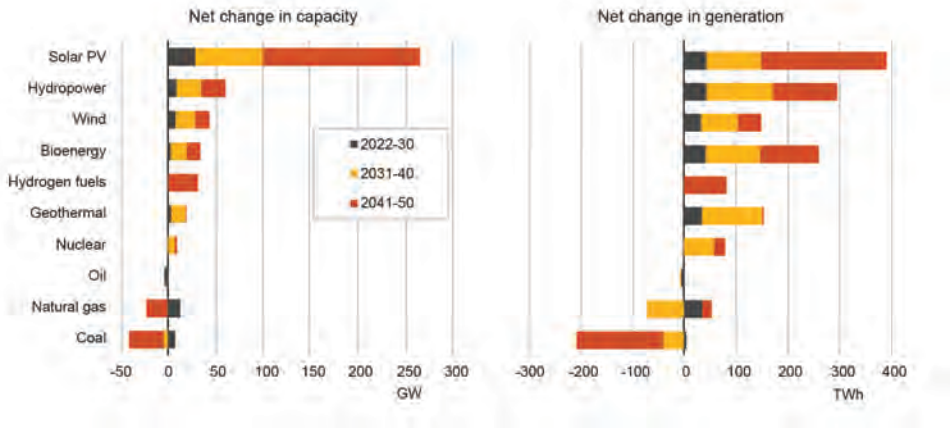
Source: PwC, "The Energy Transition," accessed 2024.

Indonesia will have to simultaneously transition its final energy consumption and primary energy supply mix by applying the four levers of transition – energy efficiency, electrification of the economy, decarbonising electricity generation, and meeting the residual fossil-molecule demand with alternative fuels. The Just Energy Transition Partnership (JETP) scenario finalised in the recently released Comprehensive Investment Policy and Plan includes energy efficiency (minimum energy performance standards for appliances and machinery across households, industry and commercial sectors), the electrification of the economy (transitioning from Internal Combustion Engine (ICE) vehicles to electric vehicles EVs in transport, process heat in industries and the electrification of domestic cooking), and decarbonising electricity generation (a significant shift to baseload and Variable Renewable Energy (VRE), as well as biomass co-firing).

The JETP was established in Indonesia during the G20 Summit in Bali on 15 November 2022, with a catalytic USD 20 billion funding agreement between the government, the International Partners Group (IPG) and the Glasgow Financial Alliance for Net Zero (GFANZ) to transition Indonesia's electricity sector. In Indonesia, JETP has developed the Comprehensive Investment and Policy Plan (CIPP) to guide power sector planning and policymaking.

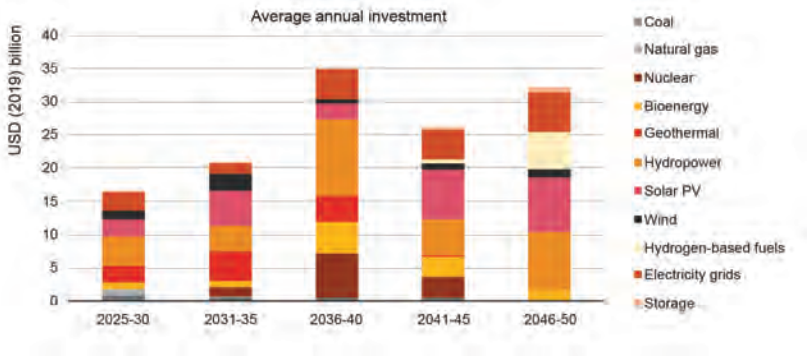
The CIPP outlines a potential pathway for the on-grid system (JETP Scenario) to achieve an emissions target of no more than 250 MT of CO_2 in 2030; a renewable energy generation share of 44% by 2030; and the achievement of net zero emissions in the power sector by 2050. On-grid generation and net capacity changes for each technology are illustrated below.





Source: Just Energy Transition Partnership (JETP) Secretariat and Working Groups, "Just Energy Transition Partnership for Indonesia (JETP Indonesia) Comprehensive Investment and Policy Plan," 2023

In terms of investment costs, at least USD 97.1 billion is required between 2023-2030 and USD 580.3 billion between 2023-2050 to realise the JETP Scenario, excluding the full extent of just transition assessments and interventions, projected to cost at least USD0.2 billion by 2030. The average annual investment for the relevant technologies is shown below.



Source: Just Energy Transition Partnership (JETP) Secretariat and Working Groups, "Just Energy Transition Partnership for Indonesia (JETP Indonesia) Comprehensive Investment and Policy Plan," 2023

To support the power sector, around 6,000 km of additional transmission lines will be required by 2030, increasing to around 15,000 km by 2040. For transmission, around USD 42 billion of cumulative capital investment is projected by 2040, and USD 9 billion needs to be invested in the distribution network.

Specifically for dispatchable renewables: Hydropower is expected to make up 12% of the energy mix by 2030, with its expansion driven by the addition of 8 GW of new plants, reaching a total capacity of 65 GW by 2050. Geothermal capacity is set to expand to 3 GW by 2030 and nearly 22 GW by 2050. Bioenergy is projected to constitute 7% of the total electricity generation mix by 2030, increasing to 9% beyond 2040 as retired coal plants are repurposed. The investment requirements for dispatchable renewable power total almost USD 197 billion cumulatively by 2040, with hydropower alone needing at least USD 100 billion.

Beyond 2030, minimal investment is expected to be directed towards new on-grid fossil-fuel plants, but up to USD 10 billion is projected for repurposing coal power plants to enhance grid flexibility. Repurposing coal and gas plants for bioenergy or hydrogen requires an average annual investment exceeding USD7 billion during 2046–2050.

Meanwhile, VRE accounts for 60% of additional power capacity through 2040, led by the growth of solar PV to 100 GW by 2040 and to close to 265 GW by 2050. Wind power complements this growth, also accelerating to nearly 30 GW in 2040 and almost 45 GW in 2050, although its expansion is limited due to resource availability. Achieving these levels of installed capacity will require nearly USD 25 billion of cumulative investment in solar PV and wind by 2030, and approximately USD 80 billion by 2040.

It should be noted that the success of this pathway is conditional upon integration measures and investments to expand and upgrade transmission grids, and increase the system's flexibility to integrate variable renewables, and upon relevant policy enhancements, among other enablers.

The combined effect of this planned transition is expected to lead to a peak in and then a reduction in demand for all three major fossil fuels – coal, oil and gas. However, the growth of renewable energy will also boost mining minerals such as nickel, lithium and graphite. The energy transition actually necessitates an increase in mining, particularly for critical minerals.

2.3 Energy transition drives the demand for critical minerals

Critical minerals significantly influence the pace and trajectory of the global energy transition, as clean energy technologies require many critical mineral resources, including silica, lithium, and nickel. The growth of aggregate critical mineral demand is driven for the most part by clean energy technologies such as low-carbon power generation, electricity networks, EVs, battery storage and hydrogen[18]. Demand is expected to at least double (under normal projections) or quadruple (under more ambitious projections) in the next 20 years (2020-2040)[19]. It is projected that this demand growth will mostly be driven by EVs, battery storage, and low-carbon power generation[20]. In particular, the production of EVs and battery storage for power generation will be the main contributors to increased demand for three key minerals over the next two decades: lithium, nickel, and graphite. EVs are already the primary driver of the demand growth for these minerals, accounting for half of the total existing demand. Meanwhile, the large-scale capacity addition of low-carbon power generation, particularly wind power, hydrogen fuel cells and PVs, pushes growing demand for silicon, neodymium, copper, nickel, zinc, cadmium, etc. Demand for these minerals, due to the continuing expansion of low-carbon power generation, is expected to double by 2040. Aside from these critical minerals, other commodities including titanium, tellurium, cobalt, and rare-earth elements (REEs), will also play a vital role in supporting the clean energy transition.

In essence, critical minerals will have a vital role in accelerating clean energy transition. As the speed and scale of energy transition increases, the demand and deployment of clean energy technologies will rise, ultimately driving the demand for critical minerals.

2.4 Mineral requirements by application in the energy transition

EVs use critical minerals for two main components: motors and batteries. Permanent magnet motors are the most common type of motor used for EVs, and the minerals needed for such motors include REEs (particularly neodymium), copper, iron, and boron[21]. EVs typically use lithium-ion batteries that require lithium, nickel, cobalt, and manganese for the active cathode material, graphite for the anode, and copper for the current collectors of the battery cells[22]. Aluminium and steel are also needed for the battery modules and packs. In general, it is estimated that EVs require six times more minerals than conventional vehicles, with the most significant portion of these minerals used in motor and battery fabrication.

Like batteries for EVs, the utility-scale battery storage market is dominated by lithium-ion batteries, particularly lithium iron phosphate (LFP). Since lithium-ion batteries are categorised based on the chemistry of their cathodes, the mineral needs will also depend on the battery type (i.e. cathode and anode selections) some battery types may require more cobalt but less nickel, and other types may not require nickel, cobalt, or manganese but more copper.

For solar PV, the module type and the scale of the plant will determine the mineral intensities of the various components. There are two common types of PV module: Crystalline silicon (c-Si) and thin films (cadmium telluride [CdTe], copper indium gallium diselenide [CIGS], and amorphous silicon [a-Si]). Copper is one of the critical minerals used in c-Si PV panels along with silicon, silver, and other metals. In terms of the impact of project scale on copper requirements, hardware for distributed solar PV systems typically requires 40% more copper than for utility-scale projects.

Wind turbines are built using neodymium, copper, REEs, zinc, aluminium, polymers, iron, steel, fiberglass and concrete. Mineral intensities for wind turbines depend on the turbine size and type. Current market trends show that gearbox double-fed induction generators (GB-DFIGs) are currently the leading turbine type in the onshore wind market, with 70% of the lobal market share, whereas the direct-drive permanent-magnet synchronous generator (DD-PMSG) is the preferred turbine type for the offshore wind sector. Both turbine types use REEs (i.e. neodymium, praseodymium, and dysprosium), zinc, and copper, with offshore projects usually requiring more copper for submarine collectors and large cables[23].

The production of low-emissions hydrogen requires the use of electrolysers powered by renewable or nuclear energy, and electrolysers also contain several key minerals. Although it is still uncertain which electrolyser type will be dominant, there are three main types of electrolysers in the current market: alkaline electrolysers, proton exchange membrane (PEM) electrolysers, and solid oxide electrolysis cells (SOECs) electrolysers. Alkaline electrolysers primarily contain nickel and zirconium; SOECs electrolysers contain nickel, zirconium, lanthanum, and yttrium, whereas PEM electrolysers contain platinum, palladium, and iridium. Fuel cell electric vehicles (FCEVs) will also require fuel cells containing platinum to convert hydrogen into electricity.

2.5 Sustainable Mining for Critical Minerals: A New Way of Full Decarbonisation

The Government of Indonesia is now aiming to develop more critical mineral smelting facilities, which require more substantial local and international investment to achieve. The goal is to process all mining products domestically, rather than exporting the raw

materials. Interestingly, while Indonesia moves towards the energy transition by securing critical minerals and their refined outputs, Indonesia still relies on coal-dominated power generation for processing. This presents a setback in Indonesia's energy transition efforts. A coal power plant is indeed currently a favourable option as it provides stable and reliable electricity with no significant land requirements and low upfront investment. In addition, coal is also produced locally, and therefore generates more income for Indonesia's economy, while domestic renewable energy manufacturers are still limited, and imported products are still preferred. Consequently, Indonesia is in a dilemma regarding captive power for the minerals downstreaming programme.

For mining and metals companies, transitioning energy production, supply and consumption away from fossil fuels and towards sustainable energy sources, without derailing economic growth and progressing the unfinished development agenda is the greatest challenge of our times. Achieving this will be an extremely complex endeavour due to the increasingly narrow window of opportunity and the expected disruption to established frameworks, political economy considerations, technology, financial and product markets, supply chains and business models. Such a monumental change to the status quo will impact all stakeholders, and present opportunities and threats.

The utilisation of critical minerals as a bridge to the energy transition (e.g. their processing) can be achieved through a combination of the right policies (e.g. incentives, investments, etc.) and technology optimisation methods. The energy transition for mining facilities can be initiated through small efforts such as using electric trucks or vehicles, infrastructure improvements (e.g. road access), the installation of rooftop solar, biomass co-firing options and gas mix into the complex solutions such as hybrid renewables with existing power plants, grid extensions to distant geothermal or hydropower sources, centralised efficient dispatch, the automation of processes and grid modernisation. Some mining companies have started these kinds of efforts, such as purchasing electric trucks or excavators and charging them using solar power plants. In other countries like China, Iceland and Egypt, some smelters or industrial processing facilities are also powered by hydropower, geothermal and solar PVs with batteries, either at full capacity or at certain capacity levels. These bring the hope that the solutions are on the doorsteps of mining companies, offering them the choice either to seize this opportunity or to continue with business-as-usual, thereby contributing to emissions footprints.

In terms of the regulatory framework, the transformation requires a holistic approach whereby the government, financiers and investors collaboratively establish a friendly environment for the mining and metals sector to achieve their own and national climate targets. The regulations like tax incentives, tax holidays, etc. will de-risk and encourage mining companies to undertake these initiatives even though the required upfront investment by these companies is significant. Despite financing needs and pricing impacts, the value-added of energy transition efforts in critical mining will be advantageous. The energy transition efforts will forge a path towards energy resilience, environmental responsibility, and economic prosperity for generations to come.

3 Regulatory framework

3.1 Introduction

Minerals and coal mining activities are governed by the Mining Law. The introduction of the Mining Law in 2009 marked a significant change to the previous regulatory regime for Indonesian mining.

Contract-based concessions are no longer available for new mining projects, and both the well-regarded CoW and CCoW frameworks for foreign investors, as well as the Mining Rights (*Kuasa Pertambangan* or "KP") framework for Indonesian investors, were replaced by a licensing system based on specified mining areas.

Since its introduction, the Mining Law has encountered a number of issues, including around domestic processing and/or refining requirements, export restrictions for unprocessed and/or unrefined mining products, divestment requirements, domestic market obligations, and the conversion of CoWs and CCoWs to bring them into line with the new licensing system. To address some of these issues, a revision to the Mining Law had been under discussion since 2015.

On 12 May 2020, the House of Representatives (DPR) finally passed the Bill (*Rancangan Undang-Undang*) on the amendment to the Mining Law. On 10 June 2020, Law No. 3 of 2020 on the Amendment to Law No. 4 of 2009 on Minerals and Coal Mining (the "Amendment to the Mining Law") was formally enacted (reference to the Mining Law herein should be read as also covering the Amendment to the Mining Law, unless mentioned or used separately).

The Amendment to the Mining Law amends, clarifies and adds provisions regarding mining business activities, licensing, transfers of mining licences and shares in mining companies, extensions of CoWs and CCoWs, the centralisation of Government decisions regarding the mining sector, and several other matters.

In 2022, other than the issuance of the Amendment to the Mining Law, another significant regulatory change affecting all industries, including the mining sector, was made through Government Regulation in Lieu of Law No. 2 of 2022 on Job Creation ("GR in Lieu of Law 2/2022") which was enacted to become Law pursuant to Law No. 6 of 2023 (the "Job Creation Law").

Previously, Law No. 11 of 2020 on the "Job Creation Law" had been enacted in November 2020. However, on 25 November 2021, the law was declared by the Constitutional Court to be conditionally unconstitutional due to contradicting the 1945 Constitution.

Photo source: PT Sumbawa Timur Mining

As part of its decision, the Constitutional Court stated that the Job Creation Law should be adjusted within two years of the date of the Constitutional Court's decision (i.e. 25 November 2021). As a follow up, the Job Creation Law issued in 2020 was then revoked by GR in Lieu of Law 2/2022, which was issued as an improvement to the Job Creation Law. Later in March 2023, the Government issued Law No. 6 of 2023 on "The Stipulation as a Law of the Government Regulation in Lieu of Law No. 2 of 2022 on Job Creation" which stipulated GR in Lieu of Law 2/2022 as a law.

The Job Creation Law, as outlined in its preamble, is aimed at increasing job opportunities, offering support and small businesses, streamlining business processes and foster investment growth in Indonesia amidst global economic uncertainty. The Job Creation Law amends several laws, including the Mining Law, to which it adds one new article regarding the imposition of royalties for coal, and revises one article regarding sanctions. On the royalty imposition for coal, Government Regulation No. 25 of 2021 on the Implementation of Energy and Mineral Resources Business ("GR25/2021") sets out further provisions which will be elaborated in Section 3.5 of this Guide, "Royalties and the Fiscal Regime".

The key objective of the Mining Law is to support sustainable national development, for which purpose it imposes on investors a requirement to ensure the following in relation to their mining activities:

- Good mining practices;
- Increasing the added value of mining products;
- Improving society;
- Being cautious regarding environmental impacts; and
- Maintaining good governance and bookkeeping.

The Mining Law is dependent upon a significant number of implementing regulations, which provide detailed guidelines regarding how it should be administered. Most of the fundamental implementing regulations have been issued, although some clarifications are still required. At the time of writing, several GRs (including amendments) had been issued relating to the following areas:

- Mining Areas (GR 25/2023);
- Mining Business Activities (GR 96/2021 as amended by GR 25/2024);
- Reclamation and Mine Closure (GR 78/2010);
- Mineral and Coal Mining Direction and Supervision (GR 55/2010);
- Royalty Rates (GR 26/2022 and GR 25/2021);
- Treatment of Taxation and/or Non-Tax State Revenue (*Penerimaan Negara Bukan Pajak* or "PNBP") in the Minerals Mining Businesses (GR 37/2018);
- Treatment of Taxation and/or PNBP in Coal Mining Businesses (GR 15/2022); and
- Obligation to Deposit Foreign Exchange Export Proceeds of Mining Products (GR 36/2023).

Please note that GR 25/2021, GR 26/2022, GR 37/2018, GR 15/2022 and GR 36/2023 were not issued specifically as implementing regulations of the Mining Law, but are still relevant to mining companies operating in Indonesia. For example, GR 26/2022 provides guidance on the rates of production royalties that the holder of IUPK and IUPK as a Continuation of Operation of a CoW/CCoW holder should pay (please refer to the discussion regarding this GR in Section 3.5 of this Guide, "Royalties and the Fiscal Regime"). GR 15/2002 and GR 37/2018 also provide guidance on the treatment of the taxation and/or PNBP of which Indonesian coal and mineral mining companies should be aware (please refer to the discussion regarding this GR in Section 5.2 of this Guide, "The Tax Regime for an IUP, IUPK, People's Mining Licence (*Izin Pertambangan Rakyat* or "IPR"), and Rock Mining Business Licence (*Surat Izin Penambangan Batuan* or "SIPB") Company").

A number of *Peraturan Menteri* (PerMen) and/or decrees have also been issued by the Ministry of Energy and Mineral Resources (MoEMR). Some of the key regulations relate to:

a. The Procedures for the Granting of Areas, Licences, and Reporting of the Business Activities of Mineral and Coal Mining (PerMen 7/2020 as amended by PerMen 16/2021 and as partially revoked by PerMen 10/2023);
b. The Mineral and Coal Mining Business (PerMen 25/2018 as most recently amended by PerMen 17/2020);
c. Determination of Mining Areas (PerMen 37/2013);
d. Delegation of Authority for Issuing Mining Licences (PerMen 25/2015 as amended by PerMen 19/2020);
e. The Supervision of Business Activities in the Sectors of Energy and Mineral Resources (PerMen 47/2017 as partially revoked by PerMen 7/2020);
f. Procedures for the Grant of Areas, License, and Reporting on Mineral and Coal Mining Business Activities in the Sectors of Energy and Mineral Resources (PerMen 7/2020 as amended by PerMen 16/2021 and partially revoked by PerMen 10/2023);
g. The Coal Price Determination for Mine Mouth Power Plants (PerMen 9/2016, as amended by PerMen 24/2016);
h. The Divestment Procedures and the Mechanism for the Determination of the Price of Divestment Shares (PerMen 9/2017, as amended by PerMen 43/2018);
i. The Implementation of Good Mining Practice and the Supervision of Minerals and Coal Mining (PerMen 26/2018);
j. The Completion of Construction of Domestic Metallic Mineral Refinery (PerMen 7/2023 as revoked by PerMen 6/2024);
k. Guidelines on the Preparation, Submission, and Approval of the Work Plan, Budget and Guidelines on Reporting of Mineral and Coal Business Activities (PerMen 10/2023);
l. Determination of the Types of Commodities Classified as Strategic Minerals (MoEMR Decree No. 69/K/MB.01/MEM.B/2024);
m. The Domestic Market Obligation for Coal (KepMen 267/2022 as amended by MoEMR Decree No. 399.K/MB.01/MEM.B/2023).

In addition to the above regulations, several other regulations are also applicable to mining companies operating in Indonesia:

a. GR 36/2023, concerning "Foreign Exchange From Export Proceeds From Natural Resources Business, Management, and/or Processing Activities".
b. Ministry of Finance ("MoF") Regulation (*Peraturan Menteri Keuangan* or "PMK") No. 38 of 2024 concerning "The Determination of Export Goods that are Subject to Export Duty and Export Duty Tariffs" ("PMK 38/2024"). Please refer to Section 3.4 of this Guide, "Mandatory In- Country Processing and Export Restrictions" for further discussion of PMK No. 38/2024.
c. Minister of Trade Regulation (*Peraturan Menteri Perdagangan* or "PerMenDag") No. 40/2020, as amended by PerMenDag 65/2020, concerning the "Provisions for the Use of Sea Transportation and National Insurance for the Export and Import of Certain Goods". Please refer to Section 3.4 of this Guide, "Mandatory In-Country Processing and Export Restrictions", and the sub-section on the "Use of National Sea Transportation and Insurance for Coal Exports", for further discussion of PerMenDag 40/2020, as amended by PerMenDag 65/2020.

Hierarchy of the current regulatory framework

Mining Law No. 4/2009 as amended by the Amendment to Mining Law No. 3/2020

GRs

- **Mining Areas** GR 25/2023
- **Mining Business Activities** GR 96/2021 and GR 25/2024
- **Reclamation and Mine Closure** GR 78/2010
- **Mineral and Coal Mining Direction and Supervision** GR 55/2010
- **Royalty Rates** GR 26/2022, GR 25/2021
- **Treatment of Taxation and/or Non-Tax State Revenue in Minerals Mining Businesses** GR 37/2018
- **Treatment of Taxation and/or Non-Tax State Revenue in Coal Mining Businesses** GR 15/2022

MoEMRs

- **Mining Areas, Licensing and Reporting in Mineral and Coal Mining** PerMen 7/2020 and PerMen 16/2021
- **Determination of Mining Areas** PerMen 37/2013
- **Delegation of Authority for Issuing Mining Licences** PerMen 25/2015 as amended by MoEMR 19/2020
- **Supervision of Business Activities in the Sector of Energy and Mineral Resources** PerMen 48/2017 as revoked by PerMen 41/2018 and PerMen 7/2020
- **Benchmark Pricing** PerMen 7/2017 as amended by PerMen 44/2017, PerMen 19/2018, and PerMen 11/2020
- **Coal Price Determination for Mine Mouth Power Plants** PerMen 9/2016 as amended by PerMen 24/2016
- **DMO** PerMen 25/2018 as amended by PerMen 50/2018, PerMen 11/2019 and PerMen 17/2020
- **Increasing Mineral Value Added Through Processing and Refining Activities** PerMen 25/2018 as amended by PerMen 50/2018, PerMen 11/2019 and Permen 17/2020
- **Restriction on Exports of Processed and Refined Minerals** PerMen 25/2018 as amended by PerMen 50/2018, PerMen 11/2019 and PerMen 17/2020
- **Divestment Procedures and Mechanism for Price Determination** PerMen 9/2017 as amended by PerMen 43/2018
- **Mine Reclamation and Closure** PerMen 26/2018

Photo source: PT Agincourt Resources

Photo source: PT Antam Tbk

3.2 Mining Areas, Mining Licences, and Reporting in relation to Minerals and Coal Business Activities

A. Mining Areas

Based on the Mining Law, there are several terms used to describe mining areas and their categorisation, as follow:

- Mining Jurisdiction Area (*Wilayah Hukum Pertambangan* or "WHP") means the entire land space, or sea space, including the space under the earth as one unit of area, namely the Indonesian archipelago, the land under the water, and the continental shelf;
- Mining Area (*Wilayah Pertambangan* or "WP") means a potential area for the extraction of minerals and/or coal that is not bound by governmental administrative boundaries as part of the national spatial planning;
- Mining Business Area (*Wilayah Usaha Pertambangan* or "WUP") means a part of a mining area for which data, geologicaly potential, and/or information about geology has already been obtained;
- Mining Business Licence Area (*Wilayah Izin Usaha Pertambangan* or "WIUP" means an area for which authorisation has been granted to an IUP or SIPB holder;
- A People's Mining Area (*Wilayah Pertambangan Rakyat* or "WPR") means a part of a mining area where small-scale mining activities are carried out;
- A State Reserve Area (*Wilayah Pencadangan Negara* or "WPN") means a part of a mining area that is reserved for use in the national strategic interest;
- A Special Mining Business Area (*Wilayah Usaha Pertambangan Khusus* or "WUPK") means a part of a mining area for which data, geologicaly potential, and/or information about geology that may be commercialised has already been obtained; and
- A Special Mining Business Licence Area (*Wilayah Izin Usaha Pertambangan Khusus* or "WIUPK") means an area for which authorisation has been granted to a Special Mining Business Licence holder.

The implementing regulations of the Mining Law that provide further guidance about mining areas are GR 25/2023, GR 96/2021 (as amended by GR 25/2024), PerMen 37/2013 and PerMen 7/2020 (as amended by PerMen 16/2021 and as partially revoked by PerMen 10/2023).

Based on the Mining Law and the Amendment to the Mining Law:

- WPs, as part of a WHP, are to be stipulated by the Central Government (i.e. the MoEMR), after being determined by the Regional Government at the provincial level and consulted on with DPR of the Republic of Indonesia;
- Determination of WPs includes the determination of WUPs, WPRs, WPNs, and WUPKs; and
- A WPN can be utilised in part or as a whole upon approval by the DPR of the Republic of Indonesia.

Pursuant to GR 25/2023, the preparation of a WP is to be conducted through investigation and research on a WHP and a preparation plan on the WP. The investigation and research on a WHP are conducted by the MoEMR to obtain data and information on the distribution of carrier rock formations, indications, resources and/or mineral and/or coal reserves. The MoEMR may assign state research institutions and/or regional research institutions to

conduct such investigations and research on a WHP. GR 25/2023 further stipulates that the WP preparation plan shall be prepared by the MoEMR and shall be used as the basis of WP determination.

One WUP may include one or several WIUPs. WIUPs consist of:
- Radioactive mineral WIUPs;
- Metal mineral WIUPs;
- Coal WIUPs;
- Non-metal mineral WIUPs;
- Non-metal mineral of certain type WIUPs; and/or
- Rock WIUPs.

Furthermore, according to GR 25/2023, the MoEMR may assign a state research institution, National State-Owned Company (*Badan Usaha Milik Negara* or "BUMN"), Regional Government-Owned Company (*Badan Usaha Milik Daerah* or "BUMD"), or a private business entity to conduct investigation and research on a WIUP for the preparation of a metal mineral or coal WIUP or a coal WIUP for development and/or utilisation. Such assignment shall be conducted through the offering of assignment areas by the MoEMR to the state research institution, BUMN, or BUMD or the making of applications for assignment areas by BUMNs, BUMDs, or private business entities. The assignment shall be granted for a maximum period of 3 years, and may be extended twice for a period of one year each.

Additionally, pursuant to the GR 25/2023, WUPs, WPRs, WPNs, WUPKs, WIUPs, and WIUPKs determined prior to the issuance of GR 25/2023 shall remain valid and must be adjusted to comply with the provisions under GR 25/2023 within two years of the enactment of GR 25/2023 (i.e. 5 May 2025). At the time of writing, PerMen 14/2023 and MoEMR Decree No. 54.K/MB.01/MEM.B/2024 respectively are the relevant implementing regulations of GR 25/2023.

The Determination and Granting of Non-Metal Mineral and Rock WIUPs

Based on GR 25/2023, the MoEMR determines the total areas and boundaries of non-metal mineral or rock WIUPs, based on the applications submitted by business entities, cooperatives, or individual companies (*perusahaan perseorangan*). Based on PerMen 7/2020, prior to the determination of a non-metal mineral and rock WIUP:
- The MoEMR shall receive a recommendation from the Governor and/or the relevant governmental institution; and
- The Governor shall receive a recommendation from the Regent/Mayor and/or the relevant institution.

The recommendation by the Governor or the Regent/Mayor shall be provided no later than five business days after the date on which the request for such a recommendation was received.

The Directorate General of Minerals and Coal (DGoMC), on behalf of the MoEMR or the Governor, shall perform administrative and technical evaluations on the requests that are submitted by business entities, cooperative, or individuals and, based on the results of the evaluation, the DGoMC, on behalf of the MoEMR or the Governor, shall make a decision to accept or refuse the request for WIUP determination, no later than ten business days after the date on which the request was received.

When the request has been accepted, the DGoMC will issue a payment instruction letter to the requesting party to pay the reserve funds. On behalf of the MoEMR or the Governor, the DGoMC shall provide a determination for a non-metal mineral and/or rock WIUP to the requesting party that provided proof of payment of reserve funds into the state treasury.

Investors should consider the provisions in KepMen 1798/2018 and KepMen 258/2023 which, at the time of writing, provide the implementing guidelines for the determination of non-metal mineral and/or rock WIUPs.

In relation to the WIUP and WIUPK, the MoEMR issued KepMen ESDM No. 284.K/MB.01/MEM.B/2024, which provides the calculation formula for information data compensation for the WIUP and the WIUPK. Investors are now able to access data detailing the location and coordinates of coal and mineral contents, as well as data relating to the exploration stage, covering both coal and mineral reserves.

On 11 April 2022, the Government issued Perpres No. 55/2022 concerning "The Delegation of Granting Business Permits in the Mineral and Coal Mining Sector" which regulates the delegation of authority from the Central Government to Regional Governments, including among other matters:

- Granting and determining the area of business licences for non-metal mineral mining, the mining of certain types of non-metal minerals and rock mining areas; and
- Determination of the benchmark prices for non-metal minerals, certain types of non-metal minerals, and rock mining.

The Evaluation and Granting of Metal, Minerals and Coal WIUPs

Pursuant to the Amendment to the Mining Law and GR 25/2023, WIUPs are stipulated and granted by the MoEMR as follow:

a. The sizes and boundaries of radioactive mineral WIUPs shall be determined by the MoEMR based on the recommendations provided by the relevant Government institution in the nuclear sector;
b. The size and boundaries of metal, minerals and coal WIUPs shall be determined by the MoEMR after being determined by the Governor; and
c. The size and boundaries of non-metal minerals, certain type of non-metal minerals, and rock WIUPs shall be determined by the MoEMR based on the applications submitted by business entities, cooperatives, or individual companies.

A metal mineral and coal WIUP is granted to a business entity, a cooperative, or an individual through an auction. The announcement of the auction shall be made at least one month prior to the auction, based on the following requirements:

- It shall be announced in at least one local newspaper and/or one national newspaper;
- It shall be announced by the office of the MoEMR, or through its official website; and/or
- It shall be announced by the office of the Provincial Government that manages minerals and coal, or through its official website.

The auction shall be performed by:

- The MoEMR, if the metal, minerals and coal WIUP area is located between two provinces or is in a sea area that is more than 12 sea miles from the coastline to the sea and/or archipelagic waters; or
- The Governor, if the metal, minerals and coal WIUP is located in one province, or in a sea area that is less than or equal to 12 sea miles from the coastline to the sea and/or archipelagic waters.

Based on PerMen 7/2020 (as amended by PerMen 16/2021), the types of entities that are allowed to participate in a metal, minerals or coal WIUP auction are determined by the acreage of the WIUP area, as follows:

Table 3.1 Types of Entities

≤ 500 ha	> 500 ha
• Local BUMDs; • (Local) National enterprises;* • Cooperatives; and/or • Individuals (consisting of individual persons, limited partnerships (*perusahaan komanditer*), or firms (*perusahaan firma*))	• BUMNs; • BUMDs • National enterprises*; • Foreign held entities *Penanaman Modal Asing* ("PMA"); and/or • Cooperatives

Note:
**) A national enterprise is defined as a fully Indonesian-owned company*

Auctions of metal, minerals and coal WIUPs are carried out in two stages, as follow:

i. **Pre-qualification**
   During the pre-qualification stage, auction participants are valuated based on the administrative, technical, and financial requirements. The auction participants are required to meet certain administrative, technical, and financial requirements. These technical requirements include experience in mining, the availability of human resources, and work plans.
ii. **Qualification**
   Every auction participant who passes the pre-qualification stage submits an offer price.

Based on PerMen 7/2020 (as amended by PerMen 16/2021), the prospective winner of the auction is determined by the Auction Committee, based on the weighted average results of the evaluations performed at the pre-qualification and qualification stages, with the pre-qualification result weighted at 40% and the offering price at 60%.

Previously, PerMen 11/2018 placed a greater emphasis on the pre-qualification aspects, weighting this result at 70%, with the offer price at 30%. However, PerMen 11/2018 was revoked by PerMen 7/2020, which applied basically the same calculation criteria but with a greater weighting on the offer price.

The guidelines regarding the implementation, organisation, tasks, and authority of the members of the Auction Committee, the terms and conditions applicable to the participants in a metal minerals or coal WIUP auction, and the implementation of the metal, minerals and coal WIUP auctions are stipulated in KepMen 1798/2018 and KepMen 258/2023.

The Evaluation and Granting of Metal, Minerals and Coal WIUPKs

WIUPKs are determined based on WUPKs. Pursuant to GR 25/2023, the MoEMR shall designate WUPKs upon the determination of the WUPKs by the Governor. WUPKs may be determined based on:

a. WPN that will be exploited and determined to be WUPKs;
b. Mining areas of CoWs/CCoWs determined to be WIUPKs;
c. Ex-WIUP or WIUPK determined to be WUPK based on the MoEMR's evaluation; and/or
d. Ex-mining areas of CoWs/CCoWs determined to be WUPK based on the MoEMR's evaluation.

There are two mechanisms for the determination and granting of metal, minerals and coal WIUPKs, as follows:

a. The Determination and Granting of Metal, Minerals and Coal WIUPKs by Priority

The determination and granting of metal, minerals and coal WIUPKs by priority is managed by the MoEMR, and is available to BUMNs and BUMDs. Priority for the granting of WIUPKs shall be given to BUMDs established by the Provincial or Regional/City Government and located at the WIUPK that is going to be offered.

Based on PerMen 7/2020 (as partially amended by PerMen 16/2021), BUMNs and BUMDs may engage private business entities whose capital is wholly sourced from domestic investment as partners in their bids by priority to be granted with metal, minerals and coal WIUPKs. This requirement did not exist under the previous regulation (i.e. PerMen 11/2018).

Based on PerMen 7/2020, a BUMN or BUMD that intends to obtain a WIUPK needs to meet the administrative, technical, and financial requirements. In the event that a private business entity is engaged as a partner by the BUMN or BUMD, this partner must also meet the relevant administrative, technical, and financial requirements.

If there is only one BUMN that is interested and eligible, the WIUPK shall be directly granted to this BUMN. In this case, the DGoMC, on behalf of the MoEMR, shall deliver the direct appointment letter to the BUMN, and shall also instruct the BUMN to provide a share investment for the BUMD of at least 10%, provided that the BUMN can either:

- Form a new joint venture entity no more than 90 calendar days after the appointment date; or
- Appoint an affiliate no more than 60 calendar days after the appointment date.

When providing this share participation, the BUMN shall coordinate with the Provincial and Regional/City Government where the WIUPK is located. If, following such coordination, BUMDs established by both the provincial and the Regional/City Governments are interested in making the share investment, then the share investment shall be divided into:

- 40% of the total percentage share investment for a BUMD that is established by the Provincial Government; and
- 60% of the total percentage of the share investment for a BUMD that has been established by the Regional/City Government.

The share participation by a BUMN and BUMD in a new joint venture entity or in a BUMN affiliate must be at least 51%. Further, based on PerMen 7/2020 (as amended by PerMen 16/2021), a BUMN may offer share participation in the new joint venture entity, or in the BUMN affiliate referred to above, to a private business entity whose capital is entirely generated from domestic investment.

If there is only one BUMD that is interested and eligible, the WIUPK shall be directly granted to this BUMD. In this case, the DGoMC, on behalf of the MoEMR, shall deliver the direct appointment letter to the BUMD, and shall inform it that:

- The BUMD itself can directly carry out mining activities within the WIUPK; or
- The BUMD can form a new business entity as a joint venture within no more than 90 calendar days of the date of the direct appointment letter.

Photo source: PT Sumbawa Timur Mining

A private business entity may have a share participation in the BUMD, or in a new joint venture entity as referred to above, but such participation by a private business entity is capped at 49%.

Further, in accordance with Article 83A of GR 25/2024, a WIUPK may be offered on a priority basis to business entities owned by religious community organisations, provided that:

- The proposed WIUPK is an area that was an ex CCoW;
- IUPK and/or the share ownerships held by religious community organisations in the relevant business entities may not be handed over and/or transferred without prior approval from the MoEMR;
- The religious community organisation must hold a majority an controlling stake in the relevant business entity, and such business entity is prohibited from forming a cooperation with the former CCoW holder and/or its affiliates; and
- The offering of WIUPK by priority for religious community organisation is valid for 5 (five) years from the issuance of GR 25/2024.

b. The Determination of Metal, Minerals and Coal WIUPKs by Auction

The auction process for metal, mineral and coal WIUPKs is conducted by the MoEMR when more than one BUMN or BUMD is interested in the WIUPK being offered.

Auctions of WIUPKs to private business entities engaged in the mineral and coal mining businesses will only be conducted when:

- No BUMN or BUMD is interested in the WIUPK offer; and/or
- No BUMN or BUMD is able to meet the administrative, technical, and financial requirements.

Based on PerMen 7/2020 (as amended by PerMen 16/2021), the auction procedures, evaluation of pre-qualification phase documents, evaluation of bid prices, weighting of the results of the evaluation of the pre-qualification documents and the bid prices, as well as the ranking of the prospective auction winners of the metal, minerals and coal WIUPK are similar to those for metal, mineral and coal WIUP auctions.

The following table summarises the applicable provisions of PerMen 7/2020 (as amended by PerMen 16/2021), when a WIUPK auction is won by a BUMN, a BUMD, or a private business entity:

Table 3.2 Applicable Provision Entities

When a WIUPK auction is won by a BUMN	When a WIUPK auction is won by a BUMD	When a WIUPK auction is won by a private business entity
• The MoEMR shall announce the BUMN as the auction winner, and shall instruct the BUMN to provide a share participation by a BUMD of at least 10%, provided that the BUMN can: i. Form a new joint venture entity within 90 calendar days of the determination of the auction winner; or ii. Appoint an affiliate within 60 calendar days of the determination of the auction winner. • In providing the share participation, the BUMN shall coordinate with the Provincial and Regional/City Governments in the area where the WIUPK is located. • If, following such coordination, both the Provincial and Regional/City Governments are interested in taking the share investment, the 10% share investment shall be divided as follows: - 40% of the total percentage of the offered share investment shall be given to a BUMD established by the Provincial Government; and - 60% of the total percentage of the share investment shall be given to a BUMD established by the Regional/City Government. • The share participation of a BUMN and BUMD in a new joint venture entity, or in the BUMN affiliate, as referred to above, must be at least 51%.	• The MoEMR shall announce the BUMD as the auction winner, and shall inform the BUMD that it can either: i. Directly carry out the mining activities within the WIUPK; or ii. Form a joint venture entity no more than 90 calendar days after the determination of the auction winner. • A private business entity may have a share participation in the BUMD or in a new joint venture entity as referred to above, with a maximum share ownership of 49%.	• The MoEMR shall announce the private business entity as the auction winner, and shall instruct the entity to provide the BUMD with a share participation of 10%, provided that the private business entity can either: i. Directly perform mining activities within the WIUPK; or ii. Form a joint venture entity no more than 90 calendar days after the determination of the auction winner. • In providing the share participation, the private business entity shall coordinate with the Provincial and Regional/City Governments in the area where the WIUPK is located. • If, following such coordination, both the Provincial and Regional/City Governments are interested in taking the share participation, the 10% share participation shall be divided as follows: - 40% of the total percentage of the offered share investment shall be given to a BUMD established by the Provincial Government; and - 60% of the total percentage of the share investment shall be given to a BUMD established by the Regional/City Government.

The implementing guidelines for the granting of metal, minerals and coal WIUPKs by priority and the procedures for metal, mineral and coal WIUPK auctions are stipulated in KepMen 1798/2018 and KepMen 258/2023. Although these guidelines are set out under KepMen 1798/2018, being the implementing regulation of PerMen 11/2018, which was revoked by PerMen 7/2020, PerMen 7/2020 stipulates that any Ministerial decrees issued as implementing regulations of PerMen 11/2018 shall remain valid provided that they do not contradict PerMen 7/2020.

B. Mining Licences

Types of Mining Business Licences

Under the Mining Law, mining licences may be issued to one or more parties within the designated WPs, as follows:

- An IUP is a general licence to conduct mining business activities in a WUP area;
- An IUPK is a licence to conduct mining activities in a specific WPN area within which mining business activities can be carried out; and
- An IPR is a licence for conducting a mining business in a WPR area of a limited size and investment. IPRs are not available to foreign investors.

The implementing regulations of the Mining Law that provide further guidance on mining licenses are GR 96/2021, PerMen 25/2015, and PerMen 7/2020.

Based on PerMen 7/2020, mining business licenses are as follow:

a. Exploration Mining Business Licence ("Exploration IUP")

An Exploration IUP is a mining business licence granted for the performance of general surveys, exploration, and feasibility studies within a WIUP.

b. Exploration IUPK

An Exploration IUPK is a mining business licence granted for the performance of general surveys, exploration, and feasibility studies within a WIUPK.

c. IUP-OP ("*Izin Usaha Pertambangan-Operasi Produksi*")

An IUP-OP is a mining business licence granted for performing production operation activities (i.e. construction, mining, processing and/or refining, transportation, and sales) within the WIUP.

d. IUPK-OP ("*Izin Usaha Pertambangan Khusus Operasi Produksi*")

An IUPK-OP is a mining business licence granted for performing production operation activities (i.e. construction, mining, processing and/or refining, transportation, and sales) within the WIUPK.

e. Mining Business Licence for Production Operation Specifically for Processing and/or Refining ("IUP-OP Specifically for Processing and/or Refining")

An IUP-OP Specifically for Processing and/or Refining is a mining business licence granted specifically for purchasing, transporting, processing, and refining, as well as for selling mineral and coal commodities.

Under Article 104 of the Mining Law, an IUP-OP Specifically for Processing and/or Refining is required for a company, cooperative, or individual entering into a cooperation arrangement to carry out processing and refining for the benefit of the holders of an IUP-OP and an IUPK-OP. However, pursuant to Article 104 (1) of the Amendment to the Mining Law, an IUP-OP Specifically for Processing and/or Refining is no longer required for a non-integrated refining and processing business, or for the benefit of IUP-OP and IUPK-OP holders. Instead, it requires an industrial business licence that is issued based on the laws and regulations in the industrial sector. For existing IUP-OP Specifically for Processing and/or Refining licences issued before the enactment of this law, Article 169C point e of the Amendment to the Mining Law stipulates that such existing licences shall be converted into industrial business licences issued based on the laws and regulations in the industrial sector within one year at the latest from the Law entering into force (i.e. 10 June 2020).

Before the enactment of the Amendment to the Mining Law, a company, cooperative, or individual carrying out processing and refining was also required to obtain an Industrial Business Licence (*Izin Usaha Industri*) in addition to an IUP-OP Specifically for Processing and/or Refining. Following the issuance of the Amendment to the Mining Law, this dual licensing issue. which caused confusion and is presumed to be a brake on the development of the smelter industry, has now been clarified and addressed.

Under GR 96/2021, the MoEMR shall submit a list of holders of IUP-OP Specifically for Processing and/or Refining and IUP-OP Specifically for Processing and/or Refining documents to the Ministry of Industry within a one-year period ending on 10 June 2021, during which the MoEMR shall still be the authorised institution for the monitoring of mining activities carried out by the IUP-OP Specifically for Processing and/or Refining. Afterwards, the supervision of the standalone processing and/or refining activities shall be supervised by and subject to the provisions regulated by the Ministry of Industry.

f. Mining Business Licence for Production Operation Specifically for Transportation and Sales ("IUP-OP Specifically for Transportation and Sales")

An IUP-OP Specifically for Transportation and Sales is a mining business licence granted specifically for purchasing, transporting, and selling mineral and coal commodities.

g. Mining Service Business Licence (*Izin Usaha Jasa Pertambangan* or "IUJP")

An IUJP is a mining business licence granted for performing core mining service business activities in relation to certain phases/parts of the mining process.

Pursuant to the Amendment to the Mining Law, the scope of the mining services business is limited to the implementation of general surveys, exploration, feasibility studies, mining construction, transportation, mining environments, reclamation and post-mining activities, and/or mining.

In order to improve the welfare of the community around the mine site, the holder of an IUP-OP or IUPK-OP may assign alluvial mineral sediment excavation activities to the community through a partnership programme, with prior consent from the DGoMC, on behalf of the MoEMR. The community around the mine site shall have an IUJP issued by the Governor. The partnership programme shall be based on a cooperation agreement between the holder of the IUP-OP or IUPK-OP and the holder of the IUJP, in compliance with the criteria set out under PerMen 7/2020.

PerMen 7/2020 stipulates that business entities that are not engaged in the mining business but intend to sell any minerals or coal excavated (as a by-product of their non-mining activities), are still required to obtain an IUP-OP for Sales. Business entities that utilise such excavated minerals or coal for their own use and/or for non-commercial purposes are not required to have an IUP-OP for Sales.

Based on the Transitional Provisions of PerMen 7/2020:

- Clear and Clean Status and/or the Clear and Clean Certificates that were issued before the enactment of PerMen 7/2020 shall remain valid;
- Non-metal minerals and rock IUPs issued before the enactment of PerMen 7/2020 do not require Clear and Clean Status or a Clear and Clean Certificate; and
- An IUP issued after the enactment of PerMen 7/2020 does not require Clear and Clean Status.

In addition to these mining business licences, the 2020 Amendment to the Mining Law introduces the following mining business licences:

a. SIPB

A SIPB is a mining business licence granted to allow engagement in the mining of certain types of rock for construction needs, or for the purpose of supporting the development of projects funded by the Central Government and/or Regional Government. The coverage of SIPB includes planning, mining, processing, transportation and sales.

b. Assignment Licence (*Izin Penugasan* or "IP")

An IP is a mining business licence granted for the exploitation of any radioactive mineral in accordance with the provisions of the laws and regulations governing the nuclear sector.

c. IUPK as a Continuation of Operation of a CoW/CCoW (IUPK *sebagai Kelanjutan Operasi Kontrak/Perjanjian*)

An IUPK as a Continuation of the Operations of a CoW/CCoW is a mining business licence granted as an extension of a CoW or CCoW upon the expiry of the respective CoW or CCoW. Although the Mining Law does not mention the IUPK as a Continuation of the Operations of a CoW/CCoW, this licence was introduced through the previous implementing regulations of the Mining Law to accommodate the ongoing operations of CoW/CCoW holders. The issuance of an IUPK as a Continuation of the Operations of a CoW/CCoW is elaborated further in subsequent sections of this guide.

Ownership of Mining Business Licences

Based on the Mining Law, the Amendment to the Mining Law, and PerMen 7/2020 (as amended by PerMen 16/2021 and as partially revoked by PerMen 10/2023), mining business licences may be issued to the following parties:

Exploration IUP and IUP OPs	Exploration IUPK and IUPK-OPs	IUP-OP Specifically for Transportation and Sales	IUJP
• Business entities • Cooperatives • Individuals	• Business entities	• Business entities • Cooperatives • Individuals	• Business entities • Cooperatives • Individuals*

**) Individuals who are holders of IUJPs may engage only in the mining services business only in relation to consultancy and/or planning activities.*

In the above table, business entities include BUMNs, BUMDs, and private business entities. PerMen 7/2020 does not further define private business entities. However, based on GR 96/2021, as amended by GR 25/2024, private business entities include Domestic Investment companies (*Penanaman Modal Dalam Negeri* or "PMDN") and PMAs. Under the previous Mining Law 11/1967, a CoW/CCoW could be held by either foreign or domestic investors, whilst a KP could be issued only to domestic investors.

The Mining Law therefore removes some of the distinctions between Indonesian and foreign investors in the mining sector, and is consistent with the current Positive List of Foreign Investment issued by Indonesia's Investment Coordinating Board (*Badan Koordinasi Penanaman Modal* or "BKPM"), which allows 100% foreign investment in the mining sector, subject to the share divestment rules discussed in Section 3.6 of this Guide, "Divestment of Foreign Shareholdings".

Authority to Issue IUPs

One of the key points of the 2020 Amendment to the Mining Law is the greater control on the part of the Central Government over mining activities. Pursuant to Article 35 of the Amendment to the Mining Law, mining business licences shall be issued by the Central Government. The Central Government may delegate its authority to grant mining business licences to Provincial Governments. Article 169c of the Amendment to the Mining Law further stipulates that the authority of the Provincial Government granted under the Mining Law and other laws regulating the authority of the Provincial Government in mining activities must be interpreted as the authority of the Central Government unless otherwise stipulated in the Amendment to the Mining Law. For instance, based on Perpres 55/2022, the Central Government delegates the authority to grant business licences of non-metal mineral mining to the Provincial Government.

In 2022, following the issuance of Perpres 55/2022, the MoEMR issued Circular Letter No. 1.E/HK.03/MEM.B/2022 on the Guidance for the Implementation of Presidential Regulation No. 55 of 2022 regarding the Delegation of Authority for the Issuance of Business Licensing in the Mineral and Coal Mining Sector ("Circular Letter 1/2022"). Circular Letter 1/2022 includes the following key provisions:

1. Perpres 55/2022 shall come into force as of 11 April 2022;
2. Starting from 11 April 2022, the authority of the Central Government in relation to the management of mineral and coal mining passes to the provincial Regional Government, which includes among others:

a. Granting non-metal mineral WIUPs and rock WIUPs;
b. Services related to the issuance of certain IUPs, SIPBs, IPRs, Transportation and Sales Business Licences, IUJPs, and IUP-OPs for Sales; and
c. Stipulating the benchmark prices for non-metal minerals, certain types of non-metal minerals and rocks; and

3. The above licences shall be applied for through the Online Single Submission ("OSS") system as a one-door integrated service, and the applicants must obtain a Business Identification Number (*Nomor Induk Berusaha* or "NIB") in accordance with the correct Standard Indonesian Business Field Classifications (*Klasifikasi Baku Lapangan Usaha* or "KBLI").

Based on PerMen 7/2020 and the Amendment to the Mining Law, the issuance of IUPs is performed as follows:

Table 3.4 The Issuance of IUPs

Exploration IUP*	
Grantor	**Condition**
MoEMR	If the WIUP is located: • Across more than one province; • In ocean territory that is more than 12 miles from the shoreline towards open sea and/or towards archipelagic waters; or • Directly adjacent to another country. An Exploration IUP is also granted by the MoEMR if: • The application for the Exploration IUP is made by a listed/public company; and • The application for the licence relates to more than one metal, minerals or coal IUP.
Governor	If the WIUP is located: • Within one province; or • In ocean territories that are up to 12 miles from the shoreline towards the open sea and/or towards archipelagic waters.

**According to Circular Letter 1/2022, the provincial regional government issue IUPs to a PMDN company (Penanaman Modal Dalam Negeri or domestic investment company) engaging in non-metal minerals, certain types of non-metal minerals, and rock mining business activities if the WIUP is located within one province or in ocean territories that are up to 12 miles from the shoreline.*

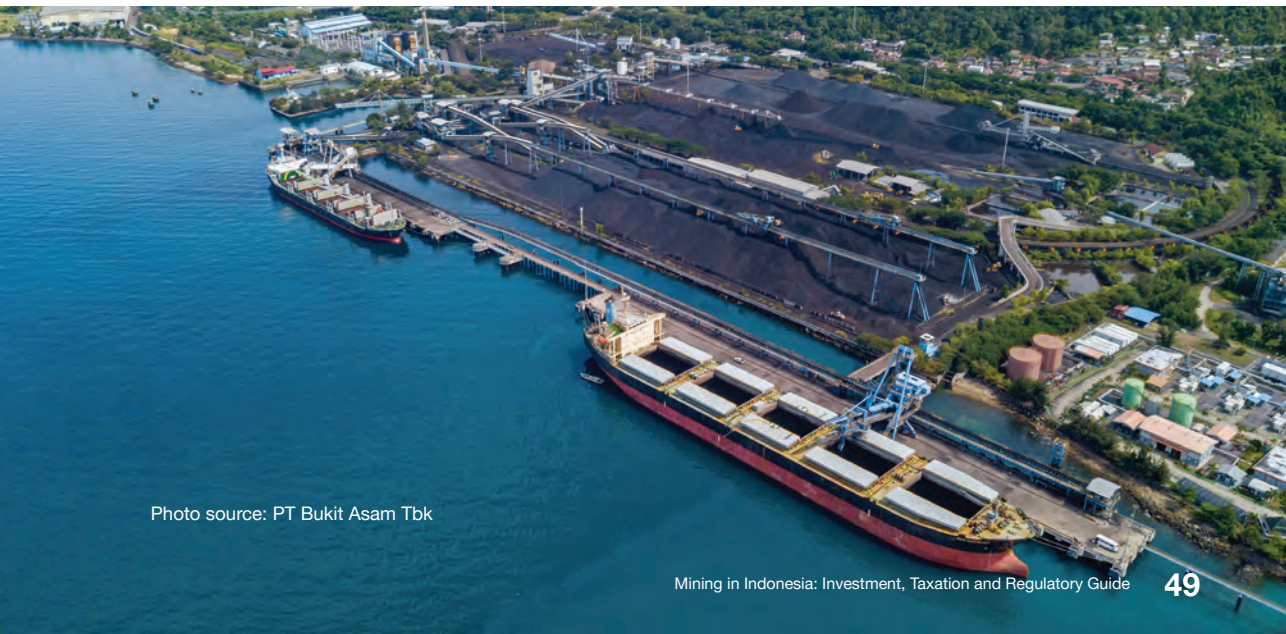


Photo source: PT Bukit Asam Tbk

IUP-OP	
Grantor	**Condition**
MoEMR	If the mining location, processing and/or refining location, as well as the special port location are located: • Across more than one province; or • Directly adjacent to another country. The IUP-OP is also granted by the MoEMR if: • The application for the IUP-OP is made by a listed/public company; and • The application for the licence is made for more than one metal mineral or coal IUP.
Governor	If the mining location, processing and/or refining location, as well as the location of the special port, are within one province.

Exploration IUPK and IUPK-OP	
Grantor	**Condition**
MoEMR	An Exploration IUPK and IUPK-OP can only be granted by the MoEMR.

IUP-OP Specifically for Processing and/or Refining*	
Grantor	**Condition**
MoEMR	If: • The mining commodities to be processed are from a different province to the location of the processing and/or refining facilities; • The mining commodities to be processed are from abroad; and/or • The processing and refining facilities are located across more than one province.
Governor	If: • The mining commodities to be processed are from the same province as the location of the processing and/or refining facilities; and/or • The location of the processing and/or refining facilities is within one province.

IUP-OP Specifically for Transportation and Sales	
Grantor	**Condition**
MoEMR	If transportation and sales are carried out between provinces and/or nations.
Governor	If transportation and sales take place in one province.

IUJP	
Grantor	**Condition**
MoEMR	If mining service business activities are conducted throughout Indonesia.
Governor	If mining service business activities are conducted in one province.

**According to Article 169C point 3 of the Amendment to the Mining Law, an existing IUP-OP Specifically for Processing and/or Refining licences issued before the enactment of the Amendment to the Mining Law shall be converted into an industrial business licence based on the laws and regulations in the industrial sector within one year of the Amendment to the Mining Law coming into force (i.e. no later than 10 June 2021).*

The authority of the Governor to issue each of the above-mentioned mining business licences must be interpreted in line with the delegation of authority by the Central Government (authority for managing the issuance of certain mining business licences has been delegated to the provincial regional government as stipulated in Circular Letter 1/2022, as elaborated above). As discussed above, this is because authority to issue mining

business licences pursuant to Article 35 of the Amendment to the Mining Law is now under the sole authority of the Central Government. Article 169C of the Amendment to the Mining Law stipulates that governors must hand over to the MoEMR all IUP Exploration, IUP-OP, IPR, IUP-OP Specifically for Transportation and Sales, and IUJP licences that fell within their authority before the Law was issued within two years of the law coming into force, in order for those mining business licences to be updated and evaluated by the MoEMR. The implementing guidelines for the evaluation of those mining business licences are stipulated in MoEMR Decree No. 78.K/MB.01/MEM.B/2022 issued in April 2022.

While the Governor as the head of the Provincial Government may still have the right to issue a mining business licence, that is not the case for Mayors/Regents. All relevant provisions of the Mining Law granting authority to Mayors/Regents to issue mining business licences based on the locations of the mining areas have been removed.

Such authority was removed from PerMen 11/2018 (as amended by PerMen 22/2018 and PerMen 51/2018) and continues under PerMen 7/2020. There is no provision stipulating that the Mayor/Regent can grant mining business licences. Authority for issuing IUPs under PerMen 7/2020 is only given to the MoEMR and the Governor. This is in line with the provisions of the Regional Autonomy Law No. 23/2014 and amendments thereto, which stipulate that Regencies/Municipal Governments do not have the authority to issue IUPs.

Following this change, the Central Government now has greater control over the process of issuing mining business licenses.

Following the issuance of the Amendment to the Mining Law, GR 96/2021 as amended by GR 25/2024, also stipulates that IUPs shall be granted by the MoEMR and the Governor. An IUP shall only be issued provided the applicant has met the administrative, technical, environment, and financial requirements. Under GR 96/2021 as amended by GR 25/2024, holders of Exploration IUPs may carry out operation production activities after obtaining approval from the MoEMR to upgrade their Exploration IUPs to IUP-OPs.

Through PerMen 25/2015 as amended by PerMen 19/2020 (“PerMen 25/2015”), the MoEMR has delegated to BKPM the authority to issue the following licences (on behalf of the MoEMR):

- IUPs, including extensions;
- IUPKs, including extensions;
- IUPKs as a Continuation of Operations under a CoW/CCoW;
- Termination/revocation of, or adjustments to, certain licences;
- IUPs Specifically for Transportation and Sale, including extensions;
- SIPB, including extensions;
- IUP for Sales;
- IPRs, including extensions; and
- IUJPs, including extensions.

Licence Terms and Extensions

Based on the Amendment to the Mining Law, mining business licences are now issued and extended as follows:

Types of Licences	Licence Terms		Extensions	Notes
Exploration IUPs	Coal	7 years	1 year (please see notes)	• Pursuant to Article 42a on the Amendment to the Mining Law, the exploration period may be extended for one year for each extension, provided that all of the requirements are met. • Pursuant to Article 41 paragraph (1) of GR 96/2021, the holder of an Exploration IUP may conduct the Production/Operations stage of activities after obtaining approval for the application to increase to the Production Operation stage of activities from the MoEMR. Such approval is only granted after the Exploration IUP holder has fulfilled the administrative, technical, environmental, and financial requirements. The request to change the stage from Exploration to Production/Operations activities shall be submitted to the MoEMR no later than 30 calendar days before the end of the Exploration stage.
	Metal Minerals	8 years	1 year (please see notes)	
	Non-Metal Minerals	3 years *)	N/A	
	Rocks	3 years	N/A	
Exploration IUPKs	Coal	7 years	1 year (please see notes)	• Pursuant to Article 83a of the Amendment to the Mining Law, the exploration period may be extended for one year for each extension, provided that all of the requirements are met. • Pursuant to Article 97 paragraph (1) of GR 96/2021, applications to change an Exploration IUPK to an IUPK-OP should be submitted no later than 30 calendar days before the expiration of the Exploration IUPK.
	Metal Minerals	8 years	1 year (please see notes)	
IUP-OPs	Coal	Maximum 20 years ***)	2 x 10 years	Applications for extensions of licences should be submitted: • No earlier than five years, and at the latest one year prior to the expiration of the IUP-OP (for metal minerals, non-metal minerals of certain types, or coal); and/or • No earlier than two years, and at the latest, six months before the expiration of the IUP-OP (for non-metal minerals or rock).
	Metal Minerals	Maximum 20 years ****)	2 x 10 years	
	Non-Metal Minerals	Maximum 10 years **)	2 x 5 years **)	
	Rocks	Maximum 5 Years	2 x 5 years **)	
IUPK-OPs	Coal	Maximum 20 years ***)	2 x 10 years	Applications for extensions of licences should be submitted no earlier than five years, and at the latest one year prior to the expiration of the IUPK-OP.
	Metal Minerals	Maximum 20 years ****)	2 x 10 years	

Types of Licences	Licence Terms		Extensions	Notes
IUP-OP Specifically for Processing and/or Refining		30 years	10 years for each extension	Applications for extensions of licences should be submitted no earlier than five years, and at the latest one year prior to the expiration of the IUP-OP Specifically for Processing and/or Refining. However, it should be noted that any existing IUP-OP Specifically for Processing and/or Refining licences issued before the enactment of the Amendment to the Mining Law shall be converted into an industrial business licence based on the laws and regulations in the industrial sector within one year at the latest from this Law coming into force.
IUP-OP Specifically for Transportation and Sales		5 years	5 years for each extension	Applications for extensions to licences should be submitted no earlier than six months, or at the latest one month, prior to the expiration of the IUP-OP Specifically for Transportation and Sales.
IUJPs		5 years	5 years for each extension	Applications for extensions of licences should be submitted, at the latest, one month prior to the expiration of the IUJP.

**) Certain non-metal mineral companies may be granted an Exploration IUP for a period of seven years.*
***) Certain non-metal mineral companies may be granted an IUP-OP for a maximum of 20 years, which is extendable twice, for a period of ten years per extension.*
****) Pursuant to the Amendment to the Mining Law, coal operation production activities that are integrated with development and/or utilisation activities (activities to increase the value of the coal) may be granted for a maximum of 30 years, which is extendable for ten years per extension.*
*****) Pursuant to the Amendment to the Mining Law, metal and minerals production activities that are integrated with processing and/or refining facilities may be granted for a maximum of 30 years, which is extendable for ten years per extension.*

Once the second extension of an IUP-OP expires, the relevant WIUP must be returned to either the Central or the Regional Government. If the WIUP relates to metal minerals and coal, then it could be deemed either a WPN or WIUP/WIUPK. The WIUP would be offered via an auction, while the offering of a WIUPK would be via priority or auction (where the previous IUP-OP holder would have the right to match the tender offer).

Procedures for the Issuance of an IUPK-OP as a Continuation of CoW/CCoW Operations

The procedures for the issuance of an IUPK-OP as a continuation of the operations of a CoW/CCoW are stipulated in PerMen 7/2020 (as amended by PerMen 16/2021 and as partially revoked by PerMen 10/2023).

Based on PerMen 7/2020, a holder of a metal or minerals CoW can request the conversion of the CoW into an IUPK-OP prior to the expiration of the CoW. An application for the conversion of a CoW to an IUPK-OP must be submitted to the MoEMR, through the DGoMC, with the following documents attached:

- Area maps and coordinate borders, according to the provisions of the applicable rules and regulations;
- Proof of the full payment of any fixed fees and production fees; and
- A Work Plan and Budget ("RKAB").

Photo source: PT Aneka Tambang Tbk

The DGoMC, on behalf of the MoEMR, shall evaluate any applications submitted by the holders of metal minerals CoWs, and the MoEMR shall issue the IUPK-OP based on the results of an evaluation performed by the DGoMC.

The IUPK-OP shall be issued for a period of time in accordance with the remaining validity period for the metal and minerals CoW, and may be extended twice, for two periods of ten years each. The holder of the IUPK-OP has rights and obligations according to the provisions of the applicable rules and regulations.

Under PerMen 7/2020, all approvals issued by the Central Government and the Regional Government shall remain valid so long as they comply with the prevailing laws and regulations.

The implementing guidelines for the application, evaluation, and approval of IUPK-OPs resulting from the conversion of metal or minerals CoWs are stipulated in MoEMR Decree No. 1796 K/30/MEM/2018 (“KepMen 1796/2018”).

The DGoMC, on behalf of the MoEMR, shall evaluate applications submitted by the holders of metal or minerals CoWs. Based on the DGoMC’s evaluation, the MoEMR may approve or reject the application for an IUPK-OP as a continuation of the operation of a CoW/CCoW up to two months prior to the expiration of the CoW or CCoW, at the latest.

The issue of an IUPK-OP as a continuation of the operation of a CoW/CCoW is considered as:

- The first extension of an IUPK-OP, in the case of an application submitted by the holders of a CoW or a CCoW who have not previously obtained an extension; or
- The second extension of an IUPK-OP for an application submitted by the holders of a CoW or a CCoW who have previously obtained an extension of such CoW or CCoW.

An IUPK-OP as a continuation of the operation of a CoW/CCoW is issued for a period of ten years. The first extended IUPK-OP may be extended for another ten years, based on the provisions of the applicable rules and regulations. An IUPK-OP as a continuation of the operation of a CoW/CCoW is subject to rights and obligations according to the provisions of the applicable laws and regulations.

PerMen 7/2020 provides that the MoEMR may stipulate other provisions for the holder of an IUPK-OP, as a continuation of the operations of a CoW or a CCoW, in order to guarantee the effectiveness of the implementation of mineral and coal mining business activities and to ensure a conducive business climate, by taking into account:

- The scale of the investment;
- The operational characteristics;
- The volume of production; and/or
- The environmental carrying capacity.

For an IUPK as a continuation of the operations of a CoW or a CCoW, the Amendment to the Mining Law regulates that a CoW/CCoW is guaranteed to be extended in the form of an IUPK as a Continuation of the Operation of a CoW/CCoW by taking into account increments in the state revenue through the rearrangement of tax and non-tax state revenue, as well as by ensuring the mining area according to the development plan for all contract areas approved by the MoEMR. The period of an extension granted for a CoW or CCoW under the Amendment to the Mining Law is ten years; however, for a CoW/CCoW that has not previously been extended, up to two extensions may be granted, each for a maximum of ten years.

An application for the IUPK as a Continuation of the Operations of a CoW/CCoW shall be submitted at the earliest five years and at the latest one year prior to the expiration of the CoW or CCoW. This provides a longer period for extension applications by CoW or CCoW holders to by the MoEMR. Applications will be evaluated by considering the continuation of the applicant's operations, the optimisation of the potential of mineral or coal reserves as well as the national interest. The MoEMR has a right to reject the application if the evaluation results do not indicate good performance.

Rights, Obligations and Prohibitions of Holders of Mining Business Licences

The rights, obligations, and prohibitions applicable to each type of IUP holder are stipulated in PerMen 7/2020. There are extensive lists of rights, obligations and prohibitions of holder of mining business licences in PerMen 70/2020. Some examples of these rights, obligations and prohibitions are explained in the table below.

Table 3.6 Rights, Obligations and Prohibitions of Holders of Mining Business Licences

Holders of	Rights	Obligations	Prohibitions
IUPs and IUPKs	• To conduct mining business activities at a WIUP or a WIUPK in accordance with the provisions of the applicable laws and regulations; • To own the minerals, including associated minerals or coal produced, after fulfilling the production dues, except for radioactive minerals; • To build facilities and/or infrastructure to support the mining business activities; • To sell minerals or coal, including selling overseas after the fulfilment of domestic needs, and to sell minerals or coal that have been excavated during exploration activities or feasibility study activities, in accordance with the provisions of the legislation; • To obtain rights to the land, in accordance with the provisions of the legislation; • To use foreign workers in accordance with the approval of the agencies that administer manpower matters, in accordance with the provisions of the applicable legislation; • To make any changes to investment and financing sources, including the charging of paid-up capital, and placing them in accordance with the approval of the RKAB.	• To conduct all mining business activities in accordance with the provisions of the applicable legislation; • To prepare and submit the RKAB as a guideline for the implementation of mining business activities to the MoEMR; • To prioritise the fulfilment of domestic coal and mineral needs, and to adhere to the applicable controls over production and sales; • To prepare and obtain approval for reclamation and post-mining plans and introduce reclamation and post-mining guarantees; • To increase the added value of mineral or coal mining products in the country, in accordance with the provisions of the relevant laws and regulations; • To prepare, implement, and submit reports on the implementation of the community development and empowerment programmes; • To submit all the data obtained from the activities of the exploration and production operations to the MoEMR or the Governor; • To prioritise the utilisation of local Indonesian manpower, goods, and services, in accordance with the provisions of the legislation; • For PMA IUP and IUPK holders, to divest shares to Indonesian participants, in accordance with the provisions of the legislation; • To pay financial obligations, in accordance with the laws and regulations.	• Selling the mining products abroad, before processing and/or refining the products domestically in accordance with the provisions of the laws and regulations; • Selling mining products that have not been produced by its own mining concessions; • Performing blending activities for coal originating from the holders of an IUP-OP, IUPK-OP or an IPR, without approval from the DGoMC or the Governors in accordance with their level of authority; • Processing and/or refining of the mining products, without having the IUP, IPR, or IUPK; • Engaging subsidiaries and/or affiliates as mining service providers, without receiving approval from the DGoMC on behalf of the MoEMR; • Having an IPR, an IUP-OP Specifically for Processing and/or Refining*), an IUP-OP Specifically for Transportation and Sales, and an IUJP; • Pledging the IUP/IUPK and/or mining commodities to other parties; • Performing any general inspection or exploration, or conducting a feasibility study, before the RKAB for the Exploration IUP has been approved.

Holders of	Rights	Obligations	Prohibitions
IUPs and IUPKs (continued)	• To apply to the Minister or Governor, depending on the applicable level of authority, for an IUP or IUPK in order to search for other mining commodities in the WIUP or WIUPK area, by forming a new business entity in accordance with the applicable legislation; • To build transport facilities, storage/ stockpiling facilities, and to purchase and use explosives in accordance with the approval of the RKAB; and • To propose a request to use the area outside of the WIUP or WIUPK to the MoEMR or the Governor to support mining activities.	• To obtain approval from the MoEMR or the Governor for any changes to the shareholders and the Boards of Directors/ Commissioners; • To pay adequate compensation to communities, directly negatively impacted by any errors in the conduct of the mining business activities; • (Pursuant to the Amendment to Mining Law) to construct or cooperate with other IUP/IUPK holders who construct mining roads or other parties which own roads that may be utilised as mining roads; and • (Pursuant to the Amendment to the Mining Law) to provide a mineral and coal reserves resistance budget for the mining of coal or mineral reserves.	• Performing any construction, mining, processing and/or refining activities, or any transportation and sales activities, including advanced exploration, before the RKAB for the IUP-OP is approved; • Performing mining business activities in areas that are prohibited by the legislation; • Transferring the IUP or IUPK to other party without prior approval from the MoEMR; • Transferring shares, such that the BUMN and BUMD ownership share in a business entity that holds an IUPK becomes less than 51% for IUPKs obtained through the granting of WIUPK with priority given to BUMN; and • To encumber the IUP/ IUPK, including its commodities, in favour of another party.

Photo source: PT Agincourt Resources

Holders of	Rights	Obligations	Prohibitions
IUP-OP Specifically for Processing and/or Refining*	• To process and/or refine mining commodities from the holders of: 1. IUP-OPs; 2. IUPK-OPs; 3. IUP-OPs Specifically for Processing and/or Refining; 4. IPRs; 5. IUP-OPs Specifically for Transportation and Sales; 6. CoWs; and 7. CCoWs. • To enter into cooperative agreements with other parties for the utilisation of the residual and/or by-products of the processing and/or refining of domestic industrial raw materials; • To mix mining commodity products in order to meet the buyer's specifications; and • To utilise public facilities and/or infrastructure to support its business activities, in accordance with the provisions of the applicable legislation.	• To prepare and submit the RKAB to the MoEMR or the Governor, in order to obtain the necessary approval; • To obtain approval for the use of foreign workers, from the agencies that administer affairs in the field of manpower; • To obtain approval for any changes in investment and financing sources, including changes to the paid-up capital and issued capital in accordance with the RKAB approval; • To comply with any restrictions on processing and/or refining in order to make overseas sales in accordance with the provisions of the applicable legislation; • To comply with the benchmark prices for mineral or coal sales, in accordance with the provisions of the applicable legislation; • To prioritise the fulfilment of domestic mineral and coal needs; • To prepare, implement, and submit reports on the implementation of any community development and empowerment programmes; • To prioritise the utilisation of local manpower, goods, and services in the country; and • To obtain approval from the MoEMR or the Governor for any changes to the shareholders.	• Undertaking the processing and/or refining of mining products that do not originate from the holders of: 1. IUP-OPs; 2. IUPK-OPs; 3. IUP-OPs Specifically for Processing and/or Refining; 4. IPRs; 5. IUP-OPs Specifically for Transportation and Sales; 6. CoWs; or 7. CCoWs • Holding an IUP, IPR, IUPK, or IUJP; and • Transferring the IUP-OP specifically for Processing and/or Refining to another party.

Holders of	Rights	Obligations	Prohibitions
IUP-OP Specifically for Transportation and Sales	• To buy, transport, and sell the mineral and coal mining commodities from and to IUP holders (i.e. the holders of IUP-OP, IUPK-OP, IUP-OP Specifically for Processing and/ or Refining, IPR, CoW, CCoW, and other holders of IUP-OPs Specifically for Transportation and Sales); and • To construct and/ or use transportation and sales facilities and infrastructure, including stockpiles, ports, or special ports, in accordance with the provisions of the applicable legislation.	• To submit copies of sales plan documents every time they carry out the addition of cooperation periodically through the information system; • To comply with legislation in the field of traffic and road traffic, if the holder uses public road facilities, which includes complying with the load capacity level requirements adjusted by the class of the road, the traffic on the roads, and the traffic accident risks; • To file a periodic report on its business operations with the MoEMR or the Governor every three months, or whenever necessary; • To submit periodic activity implementation reports through the Sales Verification Module periodically; and • To file a report on the Verification Results issued by the surveyor on a monthly basis to the MoEMR or the Governor, no later than ten days after the end of the month.	• Performing any transportation or sales activities relating to any minerals or coal commodities that did not originate from the areas of IUP holders (i.e. the holders of an IUP-OP, IUPK-OP, IUP-OP Specifically for Processing and/ or Refining, IPR, CoW, CCoW, and any other holders of IUP-OPs (Specifically for Transportation and Sales); • Performing any transportation or sales activities relating to any mineral or coal commodities between provinces and/or states for the holder of an IUP-OP Specifically for Transportation and Sales issued by the Governor; • Purchasing minerals or coal commodities in the mine mouth; • Transferring the IUP to another party; and • Holding an IUP, IPR, IUPK, IUJP or IUP-OP Specifically for Processing and/or Refining.

Holders of	Rights	Obligations	Prohibitions
IUJPs	• To perform activities in accordance with the scope of the business; • To change the scope of the business activities by filing a request for a change to the MoEMR or the Governor; and • To obtain an extension of the IUJP once all of the requirements have been fulfilled.	• To prioritise the use of local products; • To prioritise the use of local subcontractors pursuant to their competencies; • To prioritise the use of local workers; • To perform activities in accordance with the scope of the business activities; • To perform environmental management measures in accordance with the provisions of the laws and regulations; • To optimise the use of either local mining equipment or local services that are required during the course of the provision of services and performance of business activities; • To perform the mining safety requirements in accordance with the provisions of the applicable laws and regulations; • To prepare and submit a report of the activities to the MoEMR or the Governor according to the holder's level of authority and through a holder of the IUP/IUPK, in accordance with the provisions of the applicable laws and regulations; • To appoint the person in charge of operations as the supreme leader in the field; and • To have competent mining technical personnel in accordance with the provisions of the applicable laws and regulations.	• Holding an IUP, IPR, IUPK, IUP-OP Specifically for Processing and/or Refining, or an IUP-OP Specifically for Transportation and Sales; and • Performing activities that are not in accordance with the IUJP.

**) It should be noted that an existing IUP-OP Specifically for Processing and/or Refining licences issued before the enactment of the Amendment to the Mining Law shall be converted into an industrial business licence issued based on the laws and regulations applicable to the industrial sector within one year of the Law coming into force.*

Prohibition Against Receiving Fees from a Mining Services Company

An IUP/IUPK holder is prohibited from receiving any fees from a mining services company. This provision appears to have been introduced to eliminate practices whereby the mining licence owner assigns all of its mining operations to a third party, then receives compensation based on a share of the profits or of the coal/minerals produced.

One Mining Licence per Company

A key feature of the Mining Law is that a privately held company can only hold one licence (i.e. one IUP/IUPK), and that only companies listed on the IDX and companies that have been granted non-metal mineral and/or rock WIUPs are entitled to hold more than one licence.

Pursuant to the Amendment to the Mining Law, an IUP holder may hold more than one IUP and/or IUPK. However, this provision is only applicable for IUPs and/or IUPKs owned by a BUMN or for non-metal minerals or rock IUPs. It should be noted that GR 96/2021, as amended by GR 25/2024, stipulates that mining licences held by a company listed on the IDX holding more than one IUP prior to the enactment of the Amendment to the Mining Law shall remain valid until their expiry dates, and extensions may be granted in accordance with the provisions set out in GR 96/2021, as amended by GR 25/2024.

Adjustment of Licence Areas

One of the key aspects of GR 96/2021, as amended by GR 25/2024, is that the size of an Exploration IUP may be reduced based on an application submitted by the IUP and IUPK holders to the MoEMR, or based on an evaluation by the MoEMR. Previously, under GR 23/2010, the size of an Exploration IUP for coal and metal minerals had to be reduced as set out below:

Table 3.7 Adjustments of to Licence Areas

Exploration IUP Area		Reduction after three years of exploration (under GR 23/2010)	Production IUP
Coal	5,000 ha - 50,000 ha	Must be reduced to a maximum of 25,000 ha	Max 15,000 ha
Metal minerals	5,000 ha - 100,000 ha	Must be reduced to a maximum of 50,000 ha	Max 25,000 ha
Non-metal minerals	100 ha - 25,000 ha	12,500 ha (applies after 2 years)	Max 5,000 ha
Rocks	5 ha - 5,000 ha	2,500 ha (applies after 1 year)	Max 1,000 ha

Exploration IUPK		Reduction after three years of exploration (under GR 23/2010)	Production IUPK
Coal	Max 50,000 ha	Must be reduced to a maximum of 25,000 ha	Max 15,000 ha
Metal minerals	Max 100,000 ha	Must be reduced to a maximum of 50,000 ha	Max 25,000 ha

Pursuant to the Amendment to the Mining Law, an Exploration WIUP no longer requires any minimum area to be granted to the licence holder. The Amendment to the Mining Law also stipulates that the size of an individual WIUPK for the Operation Production of metal, minerals or coal shall be granted based on the MoEMR's evaluation of the development plans for all of the areas proposed by the IUPK holder(s).

Regarding reductions in mining areas, GR 25/2023 provides that the MoEMR shall conduct evaluations of reduced or returned WIUPs. Based on the results of such evaluations, the WIUPs can be re-determined by the MoEMR as WUPs, WPRs, WUPKs, and/or WPNs.

Additionally, it is worth noting that GR 96/2021, as amended by GR 25/2024, stipulates that metal minerals or coal IUP-OP and IUPK-OP holders may apply to the MoEMR to expand their WIUPs and WIUPKs for the purposes of mineral and coal conservation. Such expansions must fulfil the following criteria:

a. The total area of the WIUP or WIUPK resulting from the expansion shall be as follows:
    1. A maximum of 25,000 hectares ("ha") for a metal mineral WIUP;
    2. A maximum of 15,000 ha for a coal WIUP;
    3. In accordance with the MoEMR's evaluation for a WIUPK;
b. The expanded areas are close to the initial WIUP or WIUPK; and
c. The expanded areas have sustainability potential for the minerals or coal.

MoEMR Decree No. 375.K/MB.01/MEM.B.2023 on Guidance for the Application, Evaluation and Processing of WIUP and WIUPK Areas Expansion for the Conservation of Mineral and Coal ("KepMen 375/2023") has been issued further to regulate applications to expand the WIUPs and WIUPKs. Pursuant to KepMen 375/2023, IUP or IUPK holders must obtain approval for their WIUP or WIUPK Expansion Workplans from the DGoMC prior to submitting the application for expansion approval.

An IUP or IUPK is issued for a particular type of mineral or coal. If other minerals are discovered in the licence area, the relevant government authority would need to issue further IUPs or IUPKs for those other minerals. The holder of an Exploration IUP will be given priority to acquire a licence to mine the additional mineral(s), before the relevant government authority grants a mining licence to another investor. Pursuant to Article 40 paragraphs (2) and (3) of the Amendment to the Mining Law, an IUP holder may be granted another IUP and/or IUPK, subject to the provision that the holder is a BUMN or the IUP is for non-metal minerals and/or rocks.

Transfer Restrictions

a. Transfers of Licences

The Amendment to the Mining Law addresses this issue through Article 93, which allows the holders of IUP and IUPK licences to transfer licences to other parties with the approval of the MoEMR. Under GR 96/2021 as amended by GR 25/2024, such MoEMR approval will be granted if the following requirements are satisfied:

(i) The holder of the licence has completed the exploration activities, as evidenced by data on the relevant resources and reserves;
(ii) In compliance with all administrative, technical, environmental and financial requirements.

Under GR 96/2021 as amended by GR 25/2024, parts of the WIUP/WIUPK of a BUMN at the operation production stage can be transferred to another entity that is at least 51% owned by a BUMN which holds an IUP/IUPK subject to approval from the MoEMR. Note that the ownership of such BUMN in the transferee entity cannot be diluted to less than 51%.

On 12 November 2021, the MoEMR issued MoEMR Decree No. 221.K/HK.02/MEM.B/2021 as further guidance on IUP/IUPK and WIUP/WIUPK transfers. Based on this decree, approval to transfer a WIUP/WIUPK partially at the stage of operation production for a BUMN is subject to the following conditions:

(i) The transfer is intended to support the implementation of a national strategic program, a national priority program or a coal and mineral added value project that requires a capital investment of at least IDR 1,000,000,000,000 (one trillion Indonesian Rupiah);
(ii) The transferred WIUP/WIUPK has resources and reserves data;
(iii) The development plan on top of the transferred WIUP/WIUPK has been approved; and
(iv) The transferee is at least 51% owned by a BUMN.

The MoEMR may also impose additional requirements that must be satisfied by the transferor and/or transferee.

b. Transfers of Shares

The Amendment to the Mining Law addresses this issue through Article 93A, which allows the holders of IUP and IUPK licences to transfer shares to other parties with the approval of the MoEMR. Under GR 96/2021, as amended by GR 25/2024, such MoEMR approval will be granted if at least the following requirements are satisfied:

(i) The holder of the licence has completed the exploration activities, as evidenced by data on the relevant resources and their reserves; and
(ii) In compliance with all administrative, technical, environmental and financial requirements.

The Amendment to the Mining Law does not further elaborate on the types of IUPs and IUPKs that allow the holder to transfer its shares. The Amendment to the Mining Law further clarifies that "shares" shall mean shares that are not listed on the IDX. This implies that transfers of shares listed on the IDX do not require approval from the MoEMR. The holder of the IUP/IUPK must report to MoEMR if it makes a transfer of shares by way of an Initial Public Offering (IPO) on the IDX.

The requirements regarding transfers of the shares of certain mining companies are set out in PerMen 48/2017. Please note, however, that PerMen 48/2017 only applies to the holders of:

- IUPs issued by the MoEMR;
- IUPKs; and
- CoWs or CCoWs.

It is not clear why the scope of PerMen 48/2017 is limited to holders of the above types of licences. No explanation for this narrow scope is provided in PerMen 48/2017.

Based on PerMen 48/2017, the transfer of shares in the above types of IUP, CoW or CCoW must be approved by the MoEMR prior to transfer. In order to obtain approval, an application must be submitted to the MoEMR through the DGoMC, with certain administrative and financial requirements being met. The DGoMC shall then evaluate the application, and based on the results of the evaluation the MoEMR will make a decision within 14 business days of receipt of the application.

Based on MoEMR Regulation No. 10 of 2023 on the Procedures for the Drafting, Submission and Approval of Work Plans and Funding Budgets, and the Procedures for the Reporting of the Implementation of Mineral and Coal-Mining Business Activities ("PerMen 10/2023"), IUP and IUPK holders are required to prepare, submit, and obtain approval for the RKAB for the Exploration stage or the RKAB for the Production Operation stage. Other than the RKAB, IUP and IUPK holders must also submit periodic written reports on the implementation of their mining activities. These two documents need to be submitted regularly to the MoEMR (through the DGoMC) or the Governor.

Photo source: PT Vale Indonesia Tbk

C. Reporting of Mineral and Coal Business Activities

Pursuant to PerMen 10/2023, an RKAB for Exploration shall cover the mining business plan for one year, while a RKAB for Production Operations shall cover the mining business plan for three years.

The key provisions regarding RKAB submission as stipulated under PerMen 10/2023 can be summarised as follows:

Table 3.8 The Key Provisions of RKAB

Aspects	Key Provisions
The types of IUPs that are subject to the RKAB submission and approval	• Exploration IUPs and IUPKs; • IUP-OPs and IUPK-OPs; and • IUPKs as the Continuation of the Operations of a CCoW or CoW.
The timeframe for the submission of the RKAB	• RKAB for Exploration: no later than 30 calendar days from the issuance of the IUP for the Exploration Activities phase and no earlier than 90 calendar days and no later than 45 calendar days from the end of the calendar year for the RKAB for Exploration activities phase of the next year, to obtain approval; • RKAB for Production Operations: no later than 30 calendar days from the issuance of IUP-OPs, no earlier than the date of submission of the second quarter report in the current year, and no later than 45 calendar days before the end of the calendar year for the RKAB for Production Operation activities phase of the next period, to obtain approval; and • In the event of an IUP being issued after the 45 calendar days period before the end of the calendar year, the IUP holder must submit RKAB to the MoEMR through DGoMC to obtain approval within the period of no later than before the end of the calendar year for the next RKAB.
The Evaluation and Approval Process for the RKAB	• On behalf of the MoEMR or the Governor, the DGoMC shall perform an evaluation of the RKAB and issue approval for, or a response to the RKAB; • IUP holders may submit a correction based on the response from the DGoMC; and • The DGoMC shall approve or reject the revised version of the RKAB no more than 30 business days from the date when the application is duly received.
Amendments to the RKAB and Reports (Subsequent to Obtaining Approval from the MoEMR or the Governor)	• Holders of Exploration IUPs and IUPKs, IUP-OPs, or IUPK-OPs may apply for one amendment to the RKAB in the current year. The application for an amendment to the RKAB must be submitted after the IUP holder has submitted its Q1 Quarterly Report, which must be submitted, at the latest, by 31 July of the current year; • In the event that any *force majeure* event, environmental capacity condition, or other difficulty arises, an amendment to the RKAB may be applied for by the holders of IUP-OPs, or IUPK-OPs, more than once; and • The evaluation and approval process for an amendment to the RKAB follows the procedure explained in the previous point.

The Government has demonstrated its commitment to simplifying the licensing regime in the coal and mineral sectors through the issuance of the Mining Law and the Amendment to the Mining Law, including its implementing regulations. Going forward, the MoEMR will optimise the use of the RKAB as a source of information to streamline the process for obtaining licences and/or recommendations.

This initiative is expected to reduce bureaucracy, shortening the time required for industry players to obtain a particular licence/recommendation, and thus increase the attractiveness of the mining industry for potential investors. Below are several examples of licences/ recommendations that were previously required to be obtained individually, but have now been revoked by the Government and replaced with approvals which are now granted in conjunction with the approval of the RKABs submitted by the IUP holders:

- Approvals for Exploration Reports;
- Approvals for Changes to Investment Plans and Financing Sources, including Changes to the Issued and Paid-Up Capital;
- Approvals for Blending Coal from the holder of the IUP-OP or IUPK-OP;
- Approvals for Carrying Out Sleep Blasting;
- Approvals for the Operation of Dredger/ Suction Boats;
- Permits and Recommendations for the Loading, Storage, and Usage of Explosives;
- Recommendations for Facilities for the Import, Re-Export, Temporary Import, or Transfer of Goods; and
- A recommendation from the DGoMC is no longer necessary to be acknowledged as a Registered Coal or Pure Lead Bar Exporter by the Ministry of Trade ("MoT"). Instead, IUP holders can use their RKAB to apply directly to the DGoMC for this licence.

In addition to the RKAB submission requirement, PerMen 10/2023 also requires IUP holders to submit three additional reports: (a) a Periodic Report; (b) a Final Report; and (c) a Special Report, with various levels of requirements, depending on the type of IUP holder, as summarised below:

Table 3.9 Required Reports from IUP Holders

Mining Licence **)	Periodic Reports	Final Reports	Special Reports
Exploration on IUPs and IUPKs	• RKAB; • Report on Mining Water Waste Quality; • Statistical Report on Mining Accidents and Dangerous Events; • Statistical Report on Workers' Diseases; • Report on Reclamation in relation to the Release or Closure of the Reclamation Facility; and • Internal Audit Report on the Implementation of the Safety Management System for Minerals and Coal Mining.	• Complete Report on Exploration; and • Report on the Feasibility Study.	• Report on Early Notification of Accidents; • Report on Early Notification of Hazardous Incidents; • Report on Early Notification of Incidents due to Worker Diseases; • Report on Occupational Diseases; • Report on Environmental Cases; • Report on Mining Technical Review; and/or • Report on the External Audit on the Application of the Mineral and Coal Mining Safety Management System.

Mining Licence **)	Periodic Reports	Final Reports	Special Reports
IUP-OPs and IUPK-OPs	• RKAB; • Report on Mining Water Waste Quality; • Statistical Report on Mining Injuries and Dangerous Events; • Statistical Report on Workers' Diseases; • Report on Reclamation for the Release or Closure of the Reclamation Facility; • Internal Audit Report on the Implementation of the Safety Management System for Mineral and Coal Mining; • Report on Conservation; and • Report on the Post-Mining Activities to close the Post-Mining Facility.	• Report on the Boundary Installation; and • Final Report on the Production Activities of Operations.	• Report on Early Notification of Accidents; • Report on Early Notification of Hazardous Incidents; • Report on Early Notification of Incidents due to Worker Diseases; • Report on Occupational Diseases; • Report on Environmental Cases; • Report on Mining Technical Review; and/or • Report on the External Audit on the Application of the Mineral and Coal Mining Safety Management System.
License for Transportation and Sales	• Realisation Report for Mineral or Coal Purchases; and • Realisation Report for Mineral or Coal Sales.	Not applicable.	Not applicable.
IUJPs	• Report on the Implementation of Mining Service Business Activities.	Not applicable.	Not applicable.

**) As stated previously, according to Article 169C point 3 of the Amendment to the Mining Law, an existing IUP-OP Specifically for Processing and/or Refining issued before the enactment of this Law shall be converted into an industrial business licence based on the laws and regulations in the industrial sector within one year of the Law coming into force.*
***) Please note that other licence holders are also required to submit periodic reports under PerMen 10/2023 (i.e. IUPK as a Continuation of the Operations of a CCoW or CoW, IPR, and SIPB).*

Photo source: PT Freeport Indonesia

Set out below is a summary of the reporting timeframe for each of the reports mentioned in the previous table:

Type of Report	Report Submission Period
Periodic Reports	• The monthly reports need to be submitted to the MoEMR (through the DGoMC) or the Governor no later than five calendar days after the end of a fiscal month, and 15 calendar days after the end of a fiscal month for the Report on Mining Water Waste Quality, specifically; and • Quarterly reports need to be submitted to the MoEMR (through the DGoMC) or the Governor, no later than 30 calendar days after the end of the last month in the quarter.
Final Reports	• PerMen 10/2023 has yet to set out a specific timeframe for the submission of this type of report; and • A MoEMR Decree will be issued setting out further guidelines for the implementation, drafting, delivery, evaluation, and/or acceptance of the Final Reports.
Special Reports	All types of Special Report need to be submitted immediately after the occurrence of the triggering events. For example: • Early Notification of Accident and Early Notification of Dangerous Events reports need to be submitted immediately after the occurrence of the accident or incident; • Reports on Illnesses Caused by Work need to be submitted immediately after the diagnosis and inspection results have been issued; and • Reports on Environmental Incidents need to be submitted within 24 hours of the occurence of the environmental incident.

The DGoMC (on behalf of the MoEMR) or the Governor evaluates and may provide a response to the submitted periodical reports. PerMen 10/2023 does not stipulate a specific deadline by which the government must provide its response, but does stipulate a maximum time frame of no more than five working days for the IUP holders to reply to the DGoMC and/or the Governor.

Based on the Transitional Provisions of PerMen 10/2023:

- A RKAB that has been approved by the MoEMR through the DGoMC before the enactment of PerMen 10/2023 shall remain valid as the basis for the implementation of mining activities; and
- Application for the approval of the RKAB including its amendments that were submitted to the MoEMR through DCoMG before the promulgation of PerMen 10/2023 shall be processed in accordance with the provisions and mechanisms applicable before the promulgation of PerMen 10/2023.

The implementing guidelines for the preparation, evaluation, and approval of the RKAB, as well as the reports on minerals and coal mining business activities, are stipulated in MoEMR Decree No. 373.K/MB.01/MEM.B/2023.

3.3 Controls Over the Production and Sale of Mineral and Coal Products

Due to the non-renewable nature of coal and mineral resources, which are essential to national development, and in order to guarantee sufficient supplies to fulfil domestic needs for these resources, the Central Government considers it important to limit the rate of coal and mineral production.

The MoEMR, in coordination with the relevant Government Agencies and/or Provincial Governments, may determine the national production volume of minerals and coal in the national interest. The MoEMR may also determine the volumes and types of minerals and coal required to fulfil the DMO, and thus the volumes and types of minerals and coal that can be exported.

DMO

Neither PerMen 34/2009 nor PerMen 25/2018 set a specific DMO percentage. Rather, the decision for each particular year is made by the MoEMR through the issuance of a MoEMR Decree, which is typically issued annually. At the time of writing DMO has only been applied to coal for the provision of electricity for public and personal use, and for raw materials/fuel for industry.

The latest annual determination is referred to in MoEMR Decree No. 399.K/MB.01/MEM.B/2023 ("KepMen 399/2023"), in which it amends MoEMR Decree No. 267.K/MB.01/ MEM.B/2022 dated 21 November 2022 concerning the "Coal Domestic Market Obligation" ("KepMen 267/2022"), stipulates that the holders of Operation Production stage CCoWs, coal IUP-OPs and coal IUPK-OPs, and IUPK-OPs as a continuation of the operations of a CCoW licence are required to meet the minimum coal DMO of 25% of the realisation of coal production in the current year, with no certain coal specification is required.

Previously, KepMen 267/2022 stipulated that the implementation of the determined DMO at 25% must be carried out based on the planned amount of coal production set out in the approved RKAB on yearly basis. Additionally, the coal specifications was also required. Failure to meet these requirements, KepMen 267/2022 may impose penalties and compensation funds, in which the penalties derived from the loss amount of domestic coal obligation as referred to in the approved RKAB on yearly basis. Upon issuance of KepMen 399/2023, however, all these provisions are invalid, including the removal of such penalties and coal specifications for the purpose of DMO compliance since KepMen 399/2023 only requires the DMO compliance to be fulfiled only based on the realisation of coal production, without applying certain coal specifications.

Under KepMen 399/2023, in the event that based on the evaluation results of the report on the realization of the fulfillment of domestic coal needs does not meet the percentage of sales, it is subject to the obligation to pay compensation funds calculated using the following formula:

Compensation Funds = A x (P-R)

Notes:
A: Compensation Tariff (USD/tonne) based on coal quality and changes to the Reference Coal Price (HBA).
P: Obligation to sell coal for domestic needs (tonnes) based on the percentage of sales obligations for domestic needs to the total realisation of coal production in the current year.
R: Realisation of domestic coal demand (tonnes).

Since KepMen 399/2023 only amends the quantity of the DMO yet it did not revise the domestic price ins applicable and has retained the coal sales price for coal supply of electricity for public use capped at USD70/mt with certain coal specifications.

Further, KepMen 399/2023 stipulates that the coal mining companies that do not fulfil their obligation to pay compensation funds are subject to administrative sanctions in the form of (imposed in stages):

- Prohibition to export coal for a maximum period of 30 (thirty) calendar days in the event that the compensation funds is not paid on the due date.
- If during such 30 (thirty) calendar days the licence holder does not perform their obligation to pay the compensation funds, the licence holders will be imposed administrative sanction in a form of temporary suspension of all production operations for a maximum period of 60 (sixty) calendar days.
- If during such 60 (sixty) calendar days the licence holder remains non-compliant with its obligation to the compensation fund, the IUP/IUPK shall be revoked or CCoW shall be terminated (as relevant).

The monitoring of the realisation of coal sales for DMO is based on the results of the evaluation of the coal sales report submitted by the coal mining companies every month, which is to be submitted no later than ten calendar days after the end of each month.

Coal and Minerals Price Benchmarking

PerMen 7/2017 (as most recently amended by PerMen 11/2020) and PerMen 25/2018 (as most recently amended by PerMen 17/2020) set out the framework authorising the MoEMR to set the minerals and coal sales benchmark prices.

Under PerMen 25/2018, the metal Mineral Benchmark Prices (*Harga Patokan Mineral* or "HPM") and the Coal Benchmark Prices (*Harga Patokan Batubara* or "HPB") are determined by the MoEMR for each type of metal, mineral or coal commodity. The HPM and HPB are the floor prices for the calculation of the production fee (*iuran produksi*). The MoEMR is generally authorised to set the selling price formula for coal and metal minerals intended for certain uses; for example, in the national interest and for in-country value added activities.

DGoMC Regulation No. 999.K/30/DJB/2011 (as amended by DGoMC Regulation No. 644.K/30/DJB/2013) concerning the "Procedures for Determining the Adjustment Costs of the Coal Benchmark Price" was issued to provide guidelines for the determination of the allowable adjustment costs to the benchmark price, for the purpose of implementing PerMen 17/2010, which was revoked by PerMen 25/2018. Under this regulation, the allowable adjustments to the benchmark prices include transhipment, barging, surveyor and insurance costs. Interestingly, MoEMR Decree No. 1823 K/30/MEM/2018, concerning the "Guidelines on the Implementation of the Imposition, Collection, and Payment of Mineral and Coal Non-Tax State Revenue" as partially revoked by MoEMR Decree No. 18.K/HK.02/MEM.B/2022 stipulates that the allowable standard adjustment to the benchmark prices only includes transhipment and barging costs. This represents an inconsistency between DGoMC Regulation No. 999.K/30/DJB/2011 (as amended by DGoMC Regulation No. 644.K/30/DJB/2013) and MoEMR Decree No. 1823 K/30/MEM/2018 with regard to the allowable adjustment costs to the benchmark price.

The benchmark prices for metal minerals may include the following commodities:

a. Nickel, in the form of nickel ore; ferronickel; mixed hydroxide precipitate; mixed sulphide precipitate; nickel metal shots; nickel pig iron; nickel ingots; and/or nickel-matte;
b. Cobalt, in the form of cobalt ore; cobalt concentrate; cobalt ingots; and/or cobalt sulphide;
c. Lead, in the form of lead ore; lead concentrate; lead ingots; and/or lead bullion;
d. Zinc, in the form of zinc ore; zinc ingots; zinc concentrate; and/or zinc oxide;
e. Bauxite, in the form of bauxite ore; aluminium ingots; chemical grade alumina; and/or smelter grade alumina;
f. Iron, in the form of iron ore; iron concentrate; iron sand; iron sand pellets; sponge iron; and/or pig iron;
g. Gold, in the form of gold metal;
h. Silver, in the form of silver metal;
i. Tin, in the form of tin ingots;
j. Copper, in the form of copper ore; copper concentrate; and/or copper metal;
k. Manganese, in the form of manganese ore; and/or manganese concentrate;
l. Chromium, in the form of chromium ore; and/or chromium metal;
m. Titanium, in the form of ilmenite concentrate; and/or titanium concentrate; and
n. Certain other metal minerals.

The benchmark prices for metal minerals and coal are based on the benchmark price formula, which takes certain factors into account. For metal minerals, these factors include, but are not limited to, the value/content of the metal minerals; the Mineral Reference Price (*Harga Mineral Acuan* or "HMA"); corrective factors; treatment costs and refining charges; and/or mineral payables. The Metal HPM also applies to holders of metal or minerals IUP-OPs who sell nickel ore to their affiliates.

The benchmark price will be updated on a monthly basis, and will be determined in accordance with market prices (based on a basket of recognised global and Indonesian coal indices, in the case of coal). Under PerMen 7/2017 (as most recently amended by PerMen 11/2020), the following aspects need to be considered in the determination of the benchmark prices for metal, minerals and coal:

a. The market mechanism, and/or the price should be in accordance with generally applicable international market prices;
b. The increment of in-country value added to minerals or coal; and/or
c. The implementation of good mining principles.

In February 2023, the MoEMR issued MoEMR Decree No. 41.K/MB.01/MEM.B/2023 concerning the Guidelines for the Determination of Benchmark Prices for Coal Sales ("KepMen 41/2023"), which was then revoked by MoEMR Decree No. 227.K/MB.01/MEM.B/2023 concerning the Guidelines for the Determination of Benchmark Prices for Coal Sales ("KepMen 227/2023") issued in August 2023. Both regulations set out guidelines for the determination of the benchmark prices for coal sales and stipulates the HPB formula and the Coal Price Reference (*Harga Batubara Acuan* or "HBA") formula, although the HPB and HBA formulae are different under KepMen 41/2023 and KepMen 227/2023.

In addition, KepMen 227/2023 stipulates the reference specifications and calculations to be used to determine:

(i) The selling price of coal for supply of electricity for public interests, and
(ii) The selling price of coal to meet domestic industrial raw materials/fuel needs other than metal or minerals for processing and/or for the refining industry, shall refer to the reference specifications and calculations regulated in the relevant MoEMR Decree stipulating the selling price of coal for such purposes. KepMen 41/2023 did not stipulate this provision.

Pursuant to PerMen 11/2020, the requirements relating to the verification of the quantity and quality of minerals and coal must be implemented prior to the sale of such minerals and coal. Furthermore, the holders of metal-mineral IUP-OPs and IUPK-OPs must appoint a third party as an umpire (*wasit*) for sale and purchase contracts that are entered into with domestic buyers, as mutually agreed with the domestic buyer.

It is important to note that any instances of non-compliance with the requirement to refer to the benchmark prices for the sale of metal, mineral or coal commodities will be subject to the following administrative sanctions:

1. Written warning;
2. Temporary partial or full suspension of mining activities; and/or
3. Revocation of the IUP-OP or the IUPK-OP.

Coal Price for Electricity that is Supplied in the Public Interest

On 9 September 2021, GR 96/2021 on "Implementation of Mineral and Coal Mining Business Activities" was issued. Under GR 96/2021, the MoEMR shall determine the selling prices of coal supplied specifically for the fulfilment of domestic needs.

Furthermore, based on PerMen 19/2018, the MoEMR shall determine the selling price of coal to meet domestic needs based on the quality of the coal. The MoEMR considers the public interest when determining the coal price. On 9 March 2018, KepMen 1395/2018, concerning the “Coal Selling Prices for Electricity Supply in the Public Interest”, was issued as an implementing regulation of PerMen 19/2018. However, on 26 December 2019, KepMen 1395/2018 was revoked by Kepmen 261/2019.

The key provisions of KepMen 261/2019 are as follows:

1. The selling price of coal for electricity supplied in the public interest is set at USD 70/mt, Free on Board (FOB) Vessel, for coal that meets the following specifications: calorific value of 6,322 kcal/kg Gross as Received (GAR); total moisture of 8%; total sulphur of 0.8%; and ash content of 15%. The royalty to be paid to the Government on coal sales is calculated by multiplying the applicable royalty tariff by the sales volume and selling price.
2. If the coal specifications differ from those above, and the HBA for this coal is equal to or exceeds USD 70/mt, then the selling price of coal for electricity supplied in the public interest to be based on the formula set out in Annex of KepMen 261/2019. The royalty to be paid to the Government on the coal sales is calculated by multiplying the applicable royalty tariff by the sales volume and the selling price.
3. If the coal specifications differ from those set out above, and the HBA is lower than USD 70/mt, then the selling price of the coal shall be based on the formula set out in the Annex to KepMen 261/2019. The royalty to be paid to the Government from coal sales is calculated by multiplying the applicable royalty tariff by the sales volume or the selling price or the coal benchmark price, whichever is higher.
4. The coal benchmark price used to determine the selling prices of coal to be used for the generation of electricity for supply in the public interest for spot transactions is the coal benchmark price at the time of the transaction.
5. The coal benchmark price used to determine the selling price of coal for the generation of electricity supplied in the public interest for a term (fixed period) transaction is calculated based on 50% of the coal benchmark price for the month of the contract signing, plus 30% of the coal benchmark price one month before the contract signing, plus 20% of the coal benchmark price two months before contract signing, and can be reviewed at the earliest every three months.
6. KepMen 261/2019 shall become effective from 1 January 2020.

Coal Price for the Fulfilment of Domestic Industrial Raw Materials/Fuel Needs

On 23 March 2022, MoEMR issued Ministerial Decree No. 58.K/HK.02/MEM.B/2022 ("KepMen 58/2022") regarding the Selling Price of Coal for Fulfilling Domestic Raw Materials/Industrial Fuel Needs, and revoked Ministerial Decree No. 206.K/HK.02/MEM.B/2021 which established the coal sales price for domestic raw materials or fuel supply for all domestic industries (except the metal minerals processing and/or refining industry (smelters)) of USD 90/mt FOB Vessel, with benchmark specifications of 6,322 kcal/kg GAR, total moisture of 8%, total sulphur of 0.8% and ash of 15%. Previously, the coal price of USD 90/mt was only applicable to the cement and fertiliser industries. KepMen 58/2022 became effective from 1 April 2022.

Coal Price Determination for Mine Mouth Power Plants

PerMen 9/2016, as amended by PerMen 24/2016 ("PerMen 9/2016"), sets out guidance regarding the supply and pricing of coal for mine mouth power plants.

Under PerMen 9/2016, the coal price for mine mouth power plants is based on the basic coal price plus the exploitation fee/royalty. The basic coal price is based on the agreement between the coal mine owner and the power plant company, and is calculated based on the production cost formula plus a margin (from 15% to 25%), and in consideration of an escalation factor. The escalation factor is adjusted on an annual basis, based on the changes in the USD/Rupiah exchange rate, fuel prices, the consumer price index, and the regional minimum wage. The margin is based on the agreement between the coal mine owner and the power plant company, within the range provided for in PerMen 9/2016. The basic coal price must be communicated to the MoEMR. The basic coal price is valid for the duration of the Power Purchase Agreement. Transport costs are excluded, except for the transportation of coal from the mine to the power plant's stockpiling facility.

Mines supplying mine mouth power plants must be listed on the Clean and Clear list, and must have a reserve allocation and the quality of coal required by the power plant. PerMen 9/2016 also requires the mine owner to hold a minimum of 10% of the equity of the power plant company. The distance between the mine and the power plant must be a maximum of 20 kilometres. It should however be noted that, based on PerMen 7/2020, a Clean and Clear certificate is no longer required.

Photo source: PT Bukit Asam Tbk

3.4 Mandatory In-Country Processing and Export Restrictions

Holders of coal IUPs and IUPKs are required to carry out processing in order to increase the value added to the coal they produce, either directly or in cooperation with other companies, IUP holders, or IUPK holders.

- "Processing" by a holder of a coal IUP-OP or a coal IUPK-OP covers the following activities:

Coal upgrading	Coal briquetting	Coke making
Coal liquefaction	Coal gasification, including underground coal gasification	Coal slurry/coal water mixture

- "Processing" by a holder of a coal Processing IUP-OP covers the following activities:

Coal blending	Coal upgrading	Coal briquetting	Coke making
Coal liquefaction	Coal gasification	Coal slurry/coal water mixture	

The holders of mineral IUPs and IUPKs are required to carry out in-country processing and refining to increase the value added to the minerals they produce, either directly or in cooperation with other companies, IUP holders, or IUPK holders. PerMen 25/2018 specifically sets out the requirements for in-country mineral processing and refining.

Minerals for which the added value can be increased in this way include:
- Metal minerals;
- Non-metal minerals; and
- Rocks.

Processing covers activities that improve the quality of the minerals or rocks, without changing their physical and chemical properties, such as conversion into metal mineral concentrates or polished rocks. Refining is defined as covering any activities that improve the quality of metal minerals, through an extraction process or by increasing the purity of the mineral, to produce a product with different physical and chemical properties from the original, such as metals and alloys.

Increases in the value added to minerals shall be achieved through the following activities:
- Processing and refining of metal minerals;
- Processing of non-metal minerals; and
- Processing of rocks.

Holders of an IUP-OP, IUPK-OP, or of a Processing and Refining IUP are required to meet minimum in-country processing and refining requirements for various types of metal minerals, non-metal minerals, certain rocks, as well as the by-products and residues from the refining of metal mineral mining commodities (in the form of copper, tin, lead, and zinc), and the by-products or residues from the refining of lead concentrates in slag form.

These specific minimum in-country processing and refining requirements are detailed in Attachments I to IV of PerMen 25/2018 (see Appendix A of this Guide for the minimum in-country processing and refining requirements for metal minerals prior to export).

The requirement to meet the minimum in-country processing and refining standards, as outlined in PerMen 25/2018, does not apply if the products are used directly in the national interest or if the minerals are exported for research and development purposes. This exemption is subject to a recommendation from the DGoMC on behalf of the MoEMR and requires Export 39 approval from the DGoFT.

Following the end of the COVID-19 pandemic, the MoEMR issued Decree No. 89.K/MB.01/MEM.B/2023 regarding Guidance on the Imposition of Administrative Penalties for Delays to the Construction of Metal Mineral Domestic Smelter Facilities ("KepMen 89/2023"). Pursuant to KepMen 89/2023, the holders of IUP-OPs or IUPK-OPs that export certain types of metal minerals must meet a certain percentage of physical progress on the construction of refining facilities of not less than 90% every six months, based on the report on the results of the verification of physical progress issued by an independent verifier. If this requirement is not fulfilled, such IUP-OP or IUPK-OP holders must pay an administrative fine of 20% of the cumulative value of metal mineral exports for each delay period, based on a certain calculation formula stated under KepMen 89/2023.

Administrative fines are applicable to the holders of IUP-OPs or IUPK-OPs for metal minerals who experienced delays in the construction of refinery facilities during the period from October 2019 to June 2023. KepMen 89/2023 revoked MoEMR Decree No. 154.K/30/MEM/2019 regarding Guidance on the Imposition of Administrative Penalties for Delays in the Construction of Smelter Facilities ("KepMen 154/2019"). However, it should be noted that under KepMen 89/2023, holders of IUP-OP or IUPK-OP who have yet to fulfill their obligations under KepMen 154/2019 are still required to provide security deposits as a guarantee for smelter construction projects.

In May 2024, the MoEMR issued PerMen 6/2024, which annulled the previous PerMen 7/2023. The latter governed the ongoing construction of domestic metal-mineral processing facilities by holders of IUP and IUPK for copper, iron, lead, and zinc. Under the new regulation, IUP/IUPK holders who meet specific criteria are permitted to export their semi-processed mining product until 31 December 2024, on the condition that they are constructing the smelter either themselves or as part of a partnership and have started the commissioning process. This new regulation effectively extends the former export deadline from 31 May 2024 to the end of the year.

Processing and refining can be conducted in cooperation with other IUP and IUPK holders, as well as the holders of Processing and/or Refining IUPs. This cooperation may take the form of:

a. Sales and purchases of ore/concentrates; or
b. Processing and/or refining activities.

The cooperation plans must be submitted to the MoEMR, for the attention of the DGoMC (or the Governor), for approval. A holder of an IUP-OP or IUPK-OP that supplies ores, concentrates, or intermediate mineral products to other processing and/or refining parties must submit its sales plans to the MoEMR, for the attention of the DGoMC (or the Governor).

Following the enactment of the Amendment to the Mining Law which no longer requires an IUP-OP Specifically for Processing and/or Refining, such cooperation on processing and refining activities may be conducted by IUP-OP or IUPK-OP holders with another party who holds the licence required under the industrial sector.

Pursuant to Article 104 of the Amendment to the Mining Law, IUP-OP and IUPK-OP holders may conduct independent processing and/or refining activities integrated with or in cooperation with:

a. Other holders of IUPs or IUPKs in the stage of Production Operation activities who own integrated processing and/or refining facilities; or
b. Other parties who conduct processing and/or refining business activities that are not integrated with mining activities with licenses issued based on the provisions of the laws and regulations in the industrial sector.

Furthermore, the Amendment to the Mining Law stipulates that coal development and/or utilisation may be conducted in cooperation with other holders of IUPs and IUPKs in the stage of Operation Production activities or other parties who conduct coal development and/or utilisation activities. Development and/or utilisation includes activities carried out to increase the quality of coal without changing the physical or chemical characteristics of the coal. Coal development and/or utilisation shall be carried out to increase the added value of the coal.

Investment Considerations for Building In-Country Refining Facilities

In the event that a mining company intends to build a smelter in Indonesia, some key considerations for investors considering investments in processing/refining facilities and associated infrastructure are as follow:

a. Whether it is more favourable to hold the processing/refining facilities and infrastructure within the company holding the IUP-OP (i.e. the mining company) or under a separate company holding an industrial business licence;
b. If a separate company is to be established, the most beneficial arrangement with the mining company, whether trading or a processing service arrangement;
c. Whether any tax facilities are available, such as income tax holiday (including the potential impact of Global Minimum Tax under Pillar Two rules) or import facilities;
d. The relevant tax considerations in relation to the Engineering, Procurement, and Construction (EPC) contract;
e. How financing can be arranged in the most tax-efficient manner; and
f. The right model for cooperation between shareholders (mining companies, off takers, financial investors, domestic, foreign, etc.).

PwC Indonesia recommends that investors contact our specialist mining team should they require further advice. Please see Appendix F for the contact details of PwC Indonesia's mining specialists.

Relaxation of the Ban on Exports of Unprocessed Minerals

In an attempt to alleviate the impact on miners and the country's export revenue of the ban on exports of unprocessed or insufficiently processed minerals, the Government issued PerMen 25/2018, which allowed mining companies to continue exporting semi-processed products and certain types of ores up to 11 January 2022.

Following the payment of export duties based on the relevant laws and regulations, and the fulfilment of the minimum domestic processing and refining requirements, and having obtained an Export Approval from the DGoFT and an Export Recommendation from the MoEMR, the holders of metal or mineral IUP-OPs, metal or mineral IUPK-OPs, and processing and/or refining licences for anode mud were allowed to export certain approved quantities of their semi-processed products until 10 June 2023.

Based on PerMen 25/2018, there are specific rules applicable to metal minerals with particular criteria (i.e. nickel with a content of < 1.7% and washed bauxite with an Aluminium Oxide content of ≥ 42%). The holders of IUP-OPs, IUPK-OPs, or IUP-OPs Specifically for Processing and/or Refining licences, as well as other parties that are engaged in metal mineral processing and/or refining, are required to utilise metal minerals with particular criteria produced from domestic mining to meet domestic utilisation goals, by:

a. Processing and refining metal minerals with particular criteria in their own processing and/or refinery facilities;
b. Supplying metal minerals using particular criteria for processing and/or refining facilities built by other holders of IUP-OPs, IUPK-OPs, IUP-OPs Specifically for Processing and/or Refining licences, and other parties engaged in metal mineral processing and/ or refining; or
c. Receiving a supply of metal minerals with particular criteria from other holders of IUP-OPs, IUPK-OPs, IUP-OPs Specifically for Processing and/or Refining licences, and other parties that are engaged in metal minerals processing and/or refining.

The holders of IUP-OPs, IUPK-OPs, or IUP-OPs Specifically for Processing and/or Refining licences were allowed to export certain approved quantities of product that did not meet the mineral content requirements, including nickel with a content of < 1.7% and washed bauxite with an Aluminium Oxide content of ≥ 42% until 11 January 2021, provided they had constructed or were in the process of constructing a refining/smelting facility, either individually or jointly with other parties, and had paid export duties under the relevant laws and regulations.

However, due to concern around the depletion of the country's nickel reserves, in August 2019 the Government of Indonesia announced its decision to accelerate a full ban on exports of low-grade nickel ore by two years compared to the initial schedule. This was then followed with the issuance of PerMen 11/2019, the second amendment to PerMen 25/2018, by the MoEMR, which effectively prohibited nickel mining companies in Indonesia from exporting unprocessed nickel ore from 1 January 2020.

In November 2020, the Government introduced a further relaxation through the issuance of PerMen 17/2020, the third amendment to PerMen 25/2018. Based on PerMen 17/2020, the holders of an IUP-OPs/IUPK-OPs for metal minerals were allowed to continue exporting semi-processed products and certain types of ores (excluding nickel ore) until 10 June 2023, subject to the conditions set out in the implementing regulations. The holders of existing processing and/or refining licences were allowed to export products at a certain amount up until the expiry date of its export licence (which pursuant to GR 96/2021 as amended by GR 25/2024, would have been 10 June 2023 at the latest).

The above export relaxation under PerMen 17/2020 was stipulated following the issuance of the Amendment to the Mining Law under which unprocessed metal minerals (at a certain level and with a total volume of processed metal minerals) may continue to be exported for three years from the enactment of the Amendment to the Mining Law (i.e. until June 2023) for mining companies which have conducted processing and refining activities (and/or are constructing facilities and/or are cooperating on processing and refining activities).

Later in May 2024, the MoEMR issued PerMen 6/2024, which revokes the previous regulation (PerMen 7/2023) by providing a further relaxation of the export ban (Pursuant to PerMen 6/2024, certain IUP/IUPK holders, subject to fulfilling the requirements thereunder, may export their semi-processed mining product (copper, iron, lead, zinc) until 31 December 2024 to encourage the completion of smelter construction. PerMen 6/2024 came into effect from 1 June 2024.

In order to conduct exports, such IUP/IUPK holders must obtain export approval from the DGoFT and a recommendation from the MoEMR. As set out in PerMen 25/2018, in order to obtain a recommendation, mining companies must apply to the MoEMR for the recommendation, for the attention of the DGoMC.

The DGoMC shall evaluate the application for an export recommendation and, based on this evaluation, the DGoMC, on behalf of the MoEMR, will approve or reject the application within 14 working days of receiving the application. The implementing guidelines for the application, evaluation, and approval of recommendations for export are stipulated under MoEMR Decree No. 1826 K/30/MEM/2018.

The DGoMC, on behalf of the MoEMR, shall supervise the implementation of mineral export sales and shall monitor the progress of the development of the refinery facilities (including the physical progress of the refinery facilities and the value of the development costs incurred to build the refinery facilities).

The physical progress of the development of the refinery facilities must reach at least 90% of the approved plan for any given month, cumulatively calculated up to the last month by an Independent Verifier.

In the event that, based on a six-monthly review, the percentage of physical progress of the development of the refinery facilities does not reach 90%, the DGoMC, on behalf of the MoEMR, shall issue a recommendation to the DGoFT to revoke the previously granted export approval.

Other than the revocation of the recommendation for export approval, the holders of metal or minerals IUP-OPs, IUPK-OPs, and IUP-OPs Specifically for Processing and/or Refining may be subject to administrative fines amounting to 20% of the cumulative value of their mineral export sales.

If the administrative fine is not paid within one month of imposition, the holders of metal or minerals IUP-OP, IUPK-OP, and IUP-OP Specifically for Processing and/or Refining licences may be subject to further administrative sanctions in the form of the temporary suspensions of some or all of their business activities, for at most 60 days, by the MoEMR or the Governor, as applicable.


Photo source: PT Musi Prima Coal

PMK 38/2024 sets out the rates of export duty for the various forms of processed metal minerals. Under PMK 38/2024, the export duty rates are calculated based on the following:

- In the event that the Export Duty Rate is determined based on a set percentage of the Export Price (advalorem), the Export Duty is calculated based on the following formula: Export Duty Rate x Number of Units of Goods x Export Price per Unit of Goods x Currency Exchange Rate; and
- In the event that the Export Duty Rate is specifically determined, the Export Duty is calculated based on the following formula: Export Duty Rate per Unit of Goods in a Specific Currency Unit x Number of Units of Goods x Currency Exchange Rate.

Note that, in accordance with the new approach set out in PMK 38/2024, the Export Price is determined by the Customs and Excise Directorate General c.q. the Minister of Finance in accordance with the Export Benchmark Price.

Use of National Sea Transportation and Insurance for Coal Exports

The requirement to use Indonesian sea transportation and insurance for coal exports is set out in PerMenDag 40/2020 (as amended by PerMenDag 65/2020) on "Provisions for the Use of Sea Transportation and National Insurance for Exports and Imports of Certain Goods" and DGoFT Regulation No. 2/DAGLU/PER/1/2019 concerning "Technical Guidance on Implementing the Requirement for the Use of National Insurance for Exports and Imports of Certain Goods" ("DGoFT Reg. 02/2019").

Based on PerMenDag 40/2020, coal exporters are principally required to use domestic sea transportation companies, and to obtain insurance from domestic insurance companies or from a consortium of domestic insurance companies. The obligation to utilise domestic sea transportation companies and domestic insurance applies to coal exporters that transport coal with a capacity of up to 10,000 (ten thousand) deadweight tonnage using sea transportation. Domestic sea transportation companies are defined as marine transportation companies incorporated in Indonesia and that carry out sea transportation activities within the territorial waters of Indonesia and/or to and from ports abroad.

Under DGoFT Reg. 02/2019, insurance is defined as an agreement between two parties, namely an insurance company and a policyholder, that serves as the basis for the receipt of premiums by an insurance company in return for:

a. Providing compensation to the insured party or policyholder due to losses, damages, costs incurred, loss of profits, or legal responsibility to third parties that may be experienced by the insured party or policyholder due to the occurrence of an uncertain event; or
b. Providing payment upon the death of the insured party or a payment based on the life of the insured party with a benefit at an amount established and/or based on the results of fund management.

National (domestic) insurance companies are defined as any general insurance company or Sharia general company incorporated in Indonesia that has already secured a licence from the FSA/OJK. The type of insurance must be for marine cargo insurance, and the insurance company or consortium of insurance companies issuing such insurance must be registered with the Ministry of Trade (MOT).

Under PerMenDag 40/2020, coal exporters are also required to submit a report on the use of sea transportation and national insurance to the DGoFT via Inatrade, an integrated online platform hosted by the MoT (*http://inatrade.kemendag.go.id*). This report must include the scanned copy of the Exporter/Importer's tax invoice and at least the following:

(i) The name of the domestic sea transportation company;
(ii) The company's identification number from the International Maritime Organisation;
(iii) The name of the domestic insurance company or government-owned export financing institution; and
(iv) The number and the policy date or on the insurance certificate.

Exporters and importers who fail to comply with the mandatory use of domestic sea transportation companies and domestic insurance companies and the related reporting obligations will be subject to an administrative sanction in the form of a recommendation to suspend their NIB.

Obligation to Deposit Foreign Exchange Export Proceeds of Mining Products

Previously, under PerMenDag 94/2018 (as amended by PerMenDag 102/2018), exports of coal and minerals must use an L/C. In December 2023, the MOT issued PerMenDag 33/2023 which revoked PerMendag 94/2018 based on the consideration that the government has issued Government Regulation No. 36 of 2023 on Foreign Exchange Export Proceeds from Business, Management, and/or the Processing of Natural Resources ("GR 36/2023"), which provides more comprehensive provisions on the use of natural resources export proceeds, including mining products. GR 36/2023 stipulates that export proceeds are utilised by exporters for the payment of export duties and other levies in the fields of exports, loans, imports, profits/dividends, and/or for other capital investment purposes.

To implement GR 36/2023, the Central Bank of Indonesia and the MoF issued the following regulations which further regulate the requirements relating to DHE SDA:

a. Central Bank of Indonesia Regulation No. 7 of 2023 regarding Foreign Exchange on Exports and Foreign Exchange on Import Payments ("BI Regulation 7/2023");

b. Decree of the Minister of Finance No. 272 of 2023 regarding the Stipulation of Types of Natural Resource Export Goods subject to an Obligation to Deposit Foreign Exchange Export Proceeds into the Indonesian Financial System ("MoF Decree 272");
c. Regulation of Minister of Finance No. 73 of 2023 regarding the Imposition and Revocation of Administrative Sanctions for Violation of Provisions on Foreign Exchange Export Proceeds from Business, Management and/or Processing Activities of Natural Resources ("PMK 73/2023"); and
d. Regulation of the Members of the Board of Governors of the Central Bank of Indonesia No. 4 of 2023 regarding Foreign Exchange Proceeds from Export and Import Payments as amended by Regulation of the Members of the Board of Governors of the Central Bank of Indonesia No. 6 of 2024 ("PADG 4/2023").

Pursuant to GR 36/2023, in conjunction with BI Regulation 7/2023, exporters of natural resources (*Sumber Daya Alam* or "SDA") must deposit or place their DHE SDA into a special account opened at (i) the Indonesian Export Financing Agency (*Lembaga Pembiayaan Ekspor Indonesia* or "LPEI"), and/or (ii) banks conducting activities in foreign currency (a "DHE SDA Special Account").

The obligation to deposit or place DHE SDA in a DHE SDA Special Account is applicable to SDA exporters based on the following criteria:
a. Having a DHE SDA with an export value of at least USD 250,000 (or equivalent) stated in its Export Customs Notice (*Pemberitahuan Pabean Ekspor* or "PPE"); and/or
b. Exporters of commodities in the mining, plantation, forestry, and fishery sectors of the types stipulated in MoF Decree 272.[1]

Administrative sanctions, in the form of the suspension of export services/facilities, will be imposed on exporters of natural resources for non-compliance with the following obligations:
- Failure to deposit DHE SDA in special accounts;
- Failure to deposit DHE SDA of at least 30% of their export proceeds or for less than three months; and/or
- Failure to create an escrow account with, or transfer an overseas escrow account to LPEI and/or certain banks conducting activities in foreign exchange.

Monitoring and supervision of compliance with these regulations will be carried out by the Financial Services Authority (OJK) and BI. PMK 73/2023 stipulates that OJK and/or BI may revoke the administrative sanction imposed on an exporter upon the fulfilment of the outstanding obligations by the exporter.

The requirement for exporters to deposit at least 30% of their DHE SDA for a minimum of three months may give rise to concerns for the exporters (including Indonesian mining companies) in managing their cash flow. Further monitoring on the developments related to the proposed extension of the DHE SDA period will take place. At the time of writing, Government Regulation No. 36 of 2023 remains in effect.

GR 36/2023, in conjunction with BI Regulation 7/2023, further stipulates that exporters with an export value of less than USD 250,000 (or equivalent) may deposit or place its DHE SDA into the DHE SDA Special Account on a voluntary basis. For such exporters, the DHE SDA Special Account shall be opened at a foreign exchange banks.

Additionally, GR 36/2023 also provides that the depositing or placement of DHE SDA is not required for the following:

a. Exports not conducted for the purpose of carrying out business activities listed in the provisions of the laws and regulations in the trade sector, in which there is no foreign exchange traffic; or
b. Trade compensation (*imbal dagang*) in the form of barter in accordance with the provisions of the applicable laws and regulations.

Furthermore, at least 30% of the DHE SDA must continue to be held in one of the following financial instruments for at least 3 months after being deposited:

- A special account opened at the Indonesian Export Financing Agency ("LPEI") or at a foreign exchange bank;
- Banking instruments, e.g. foreign exchange time deposits;
- Financial instruments issued by LPEI, i.e. promissory notes in foreign exchange; and/or
- Financial instruments issued by BI, i.e. conventional open market term deposits in foreign exchange with BI.

Pursuant to BI Regulation 7/2023, DHE SDAs invested and/or placed in the banking and financial instruments mentioned above have several benefits for exporters. Funds deposited into a DHE SDA Special Account could be used for forex swap transactions between the exporters and banks, or used by the exporters as security for loans (denominated in Rupiah). They also can be used by banks as underlying transactions for hedging swap transactions between banks and the BI. Furthermore, according to GR 36/2023, DHE SDAs deposited and/or placed in the DHE SDA Special Account can be used by exporters for the payment of export duty and other levies in the export sector, loans, imports, profits/dividends, and/or for other investment needs (i.e. the ransfer of DHE SDAs to another party). The use of DHE SDAs deposited and/or placed in the DHE SDA Special Account must take into account the requirement to deposit and/or place at least 30% of the DHE SDA in the DHE SDA Special Account for at least three months.

3.5 Royalties and the Fiscal Regime

Royalties and Non-Tax State Revenue

All IUP/IUPK holders are required to pay production royalties at varying rates, depending on the mining scale, the production level, and the mining commodity price. GR 26/2022 imposes a significantly higher royalty rate compared to the previous regulation (i.e. GR 81/2019) and came into effect from 15 September 2022. Currently, under GR 26/2022, different percentages of the sales proceeds apply to different types of coal and minerals (please refer to below table summarising the GR 26/2022 rates for each commodity).

However, specifically for coal, Article 39 of the Job Creation Law adds Article 128A to the Mining Law, which stipulates that business owners who conduct activities to add value to the coal shall be eligible for certain state income incentives. Such incentives may be in the form of the imposition of a 0% royalty rate. GR 25/2021 has been issued as an implementing regulation of the Job Creation Law, which stipulates that the incentive is granted by taking into account the energy independence and the fulfilment of demand for industrial materials. Prior approval of the amount, requirements, and procedures for the 0% royalty rate must be obtained from the MoF.

As contemplated by the 2009 Mining Law, the holders of an IUPK are required to pay an additional levy (or "profit share") of 10% of the net profits. Based on GR 15/2022, the Central Government is entitled to receive 40% of this additional levy, while the remaining is to be shared between the relevant provinces and regencies. Since this additional charge is determined based on the net profit, it is expected that the Government will take a greater interest in monitoring the capital expenditure and mining operating costs of IUPKs.

The current production royalty rates for key Indonesian commodities are set out in the table below. For the rates applicable under a CoW/CCoW, reference should be made to the relevant agreement (see Chapter 3 and Appendix E for further details of the CoW terms).

Table 3.11 Production Royalty Rates for Key Indonesian Commodities

IUP Royalty Rates	
Commodity	**Production Royalty Rate**
Coal a) Open pit coal • HBA < USD 70 • USD 70 < HBA < USD 90 • HBA >= USD 90 b) Open pit coal • HBA < USD 70 • USD 70 < HBA < USD 90 • HBA >= USD 90	 5% - 9.5% 6% - 11.5% 8% - 13.5% 4% - 8.5% 5% - 10.5% 7% - 12.5%
Nickel	1% - 10%
Zinc	2% - 4%
Tin	1% - 4%
Copper	2% - 10%
Iron	2% - 10%
Gold • Price <= USD 1,300/ounces • USD 1,300/ounces < Price <= USD 1,400/ounces • USD 1,400/ounces < Price <= USD 1,500/ounces • USD 1,500/ounces < Price <= USD 1,600/ounces • USD 1,600/ounces < Price <= USD 1,700/ounces • USD 1,700/ounces < Price <= USD 1,800/ounces • USD 1,800/ounces < Price <= USD 1,900/ounces • USD 1,900/ounces < Price <= USD 2,000/ounces • Price > USD 2,000/ounces	 3.75% 4% 4.25% 4.50% 4.75% 5% 6% 8% 10%
Silver	3.25%
Iron Sand	2% - 10%
Bauxite	1 % - 7%

Note: The Job Creation Law, through GR 25/2021, allows for a 0% royalty rate for coal business owners who conduct activities to add value to the coal.

Guidance on the imposition, collection, and payment of royalties is set out in MoEMR Decree No. 1823 K/30/MEM/2018 concerning the "Guidelines on the Imposition, Collection, and Payment of Mineral and Coal Non-Tax State Revenue", as partially revoked by MoEMR Decree No. 18.K/HK.02/MEM.B/2022 ("KepMen 18/2022"). Pursuant to KepMen 18/2022, the payment of dead rent and royalty fees shall be made through the electronic system of non-tax state revenue or e-PNBP and can only be processed after the taxpayer is registered with the DGoMC.

On 11 April 2022, the Government issued GR 15/2022 to provide special rules on both the tax and royalty arrangements for the coal mining sector. GR 15/2022 introduces a new royalty per tonne on coal sales by holders of an IUPK as a continuation of a CCoW. The royalty is calculated based on a certain formula at progressive rates according to fluctuations in the coal benchmark price. This calculation involves multiplying the progressive rate by the sales price, and the result is deducted with the royalty and the fee for the utilisation of Government-owned assets ex CCoW.

The royalty progressive rates under GR 15/2022 are as follows:

Table 3.12 Royalty Progressive Rates

Coal benchmark price	Royalty Rates	
	IUPK Continuation with *lex-specialis* provisions[1]	IUPK Continuation without *lex-specialis* provisions[2]
<USD 70	14%	20%
USD 70 up to < USD 80	17%	21%
USD 80 up to < USD 90	23%	22%
USD 90 up to < USD 100	25%	24%
> USD 100	28%	27%

1) An IUPK Continuations with lex specialis provisions is an IUPK Continuation of a CCoW where the tax provisions are nailed down.
2) An IUPK Continuation without lex specialis provisions is an IUPK Continuation of CCoW where the tax provisions follow the prevailing tax regulations.

For coal sales for which the price is specifically regulated (specific coal sales), the PNBP rate is fixed at 14%. The specific coal sales refer to sales:

- Within one island in accordance with the provisions under the Mining Law;
- Of certain coal types (i.e. fine coal, reject coal, coal with certain impurities) and needs, as stipulated in the provisions of the Mining Law;
- To fulfil domestic needs where the coal price or formula is determined by the MoEMR; and
- For certain transactions as stipulated in the provisions of the Mining Law.

Fiscal Regime

There are no specific articles outlining the details of the tax or other fiscal provisions in the Mining Law. However, the Government issued GR 37/2018, concerning “The Treatment of Taxation and/or Non-Tax State Revenue in the Mineral Mining Business” in August 2018, setting out special rules on both tax and PNBP arrangements for the mineral mining sector. In April 2022, the Government issued GR 15/2022 setting out special rules on both tax and PNBP arrangements for the coal mining sector.

Please refer to Chapter 5 for further details regarding GR 37/2018 and GR 15/2022 and mining-specific taxation matters.

3.6 Divestments of Foreign Shareholdings

Under GR 96/2021, the maximum shareholding a foreign investor can hold in a company that holds an IUP/IUPK depends on the relevant mining activities carried out by the mining company and whether it has integrated processing and/or refining facilities. The share divestment requirements stipulated under GR 96/2021, are as follows:

Table 3.13 Share Divestment Requirements

Operation Production IUP and IUPK	Integrated Processing and/or Refining Facilities	Divestment Share Obligation (applicable from the production stage)
Surface mining	No	10th year: 5% 11th year: 10% 12th year: 15% 13th year: 20% 14th year: 30% 15th year: 51%
Surface mining	Yes	15th year: 5% 16th year: 10% 17th year: 15% 18th year: 20% 19th year: 30% 20th year: 51%
Underground mining	No	15th year: 5% 16th year: 10% 17th year: 15% 18th year: 20% 19th year: 30% 20th year: 51%
Underground mining	Yes	20th year: 5% 21st year: 10% 22nd year: 15% 23rd year: 20% 24th year: 30% 25th year: 51%

Under GR 96/2021, the holders of an IUP or IUPK whose foreign shares are above 49% may transfer such shares to other parties before the stipulated year set out in the table above, provided that such foreign shares are first offered to a BUMN.

In addition to the restrictions above, PerMen 9/2017 (as most recently amended by PerMen 43/2018) stipulates the following:

- Holders of an IUP-OP or IUPK-OP licence for which shares must be divested are prohibited from providing loans to Indonesian parties for the purpose of acquiring the divestment shares. This provision is likely to be intended to prevent foreign shareholders from maintaining control through nominee arrangements;
- Holders of an IUP-OP or IUPK-OP licence are prohibited from pledging shares that are obliged to be divested; and
- In terms of the issuance of new share capital that dilutes the Indonesian shareholder's ownership percentage, the entities holding IUP-OP and IUPK-OP licences should in the first instance offer the new shares to the existing Indonesian shareholder, or to other Indonesian participants (the Central Government, the Provincial Government, a BUMN, a BUMD, or a domestic private business entity), if the existing Indonesian shareholder does not opt to exercise these rights.

The divestment procedures, including the timeline, the divestment price, the approval processes, and the payment mechanism should follow the requirements of PerMen 9/2017 (as amended by PerMen 43/2018). On 8 April 2020, the MoEMR issued MoEMR Decree No. 84 K/32/MEM/2020, which stipulates the detailed requirements for the divestment.

Divestments are to be made (in order of preference) to the Central Government, the Provincial Government, Regency/Municipal Government, a BUMN or BUMD, or a domestic private business entity (referred to collectively as the "Indonesian Participants"). Divestment may be conducted through the issuance of new shares and/or the transfer or sale of existing shares, either directly or indirectly.

The Central Government, through the MoEMR, must provide a written response to the divestment offering no later than 30 calendar days after the expiration of the period for the evaluation and negotiation of the divestment share price.

If the Central Government is not interested, or does not provide a written response to the divestment offering within the required timeline, the next divestment offering is to be made (in order of preference) to the Provincial Government or Regency/Municipal Government, a BUMN or BUMD, or a domestic private business entity. The Provincial Government or Regency/Municipal Government must be the Provincial Government or Regency/Municipal Government where the mining business activity takes place.

The holders of IUP-OP or IUPK-OP licences must offer share divestments to the Provincial Government or Regency/Municipal Government within a period of no more than seven calendar days following either: (i) the Government's confirmation that it is not interested; or (ii) the Government not providing a written reply to the divestment offering within the required timeline. MoEMR Decree No. 84 K/32/MEM/2020 stipulates the supporting documents that are to be provided as part of such offerings to the Provincial Government or Regency/ Municipal Government. The Provincial Government or Regency/Municipal Government must provide a written reply to the divestment offering no later than 30 calendar days after the date of the offer.

In the event that the Provincial Government or Regency/Municipal Government is not interested, or does not provide a written reply within the required timeline, PerMen 9/2017 stipulates that the holders of IUP-OPs or IUPK-OPs are required to offer share divestments to BUMNs and BUMDs by way of a tender. Based on PerMen 43/2018, divestment offers to BUMNs and BUMDs are no longer conducted through a tender. In the event that more than one BUMN or BUMD expresses interest in the divestment offer, the MoEMR shall coordinate the determination of the number of divested shares to be purchased by the BUMN or the BUMD. The offer should be made by the BUMN or BUMD no more than seven calendar days after the Provincial Government or Regency/Municipal Government has confirmed that it is not interested or has not providing a written reply to the divestment offering within the required timeline. The BUMN or BUMD must provide a written reply to the divestment offering no more than 30 calendar days after the offer date.

In the event that a BUMN or BUMD is not interested, or does not provide a written reply within the required timeline, the holders of IUP-OP or IUPK-OP licences are required to offer the share divestment to domestic private business entities, through a tender, no more than seven calendar days after the BUMN or BUMD confirming that they are not interested, or after the deadline for providing a written reply has passed.

Domestic private business entities must provide a written reply to the divestment offering no more than 30 calendar days after the offer date.

During the implementation of the divestment procedure, the holders of IUP-OPs or IUPK-OPs must grant access for Indonesian Participants to conduct due diligence procedures.

In the event that the divestment offering to Indonesian Participants is not implemented, the share divestment can be carried out by offering the divestment shares on the IDX.

Pricing of Shares that are Subject to Divestment

PerMen 9/2017 stipulates that the divestment share price is based on the "fair market value", without considering the value of the mineral or coal reserves at the time when the divestment is conducted. This pricing mechanism could be a significant concern for foreign investors, given that it is likely to result in a price that is lower than the fair market value, which is generally understood to include the net present value of the cash flow generated from the exploitation of the reserves over the remaining life of the mine.

However, the above provisions regarding the divestment share price has been changed by PerMen 43/2018. Based on PerMen 43/2018, the fair market value shall not include mineral or coal reserves, except those that may be mined within the period of the IUP-OP or IUPK-OP. Furthermore, the fair market value shall be calculated using the discounted cash flow method, based on the economic benefits within the divested implementation period until the end of the IUP-OP or IUPK-OP, and/or market data benchmarking.

Based on PerMen 9/2017, the regulated divestment share price would be:
a. The maximum price offered to the Central Government, Provincial Government or Regency/Municipal Government; or
b. The minimum price offered to a BUMN, BUMD, or domestic private business entity.

PerMen 43/2018 amended the above provision, and stipulates that the regulated divestment share price would now be:
a. The maximum price offered to the Central Government, Provincial Government or Regency/Municipal Government, BUMN, BUMD, or a special purpose vehicle that has been established or appointed by the Government through the MoEMR, together with the Provincial Government or Regency/Municipal Government, BUMN and/or BUMD; or
b. The minimum price to be offered to a domestic private business entity through a tender.

PerMen 43/2018 states that the calculation of the fair market value may use the discounted cash flow method and/or the market data benchmarking method. MoEMR Decree No. 84 K/32/MEM/2020 explains the use of the discounted cash flow method in greater detail, including the financial assumptions that should be considered.

The Government (via the MoEMR) may engage an independent valuer to evaluate the divestment share price. If agreement cannot be reached regarding the divestment share price, PerMen 9/2017 stipulates that the divested shares are to be offered based on the divestment share price calculated with reference to the evaluation performed by the Government. This provision has now been removed from PerMen 43/2018. However, based on MoEMR Decree No. 84 K/32/MEM/2020, the Government can check whether the holder of the IUP-OP or IUPK-OP has used the predetermined method and, if not, the Government may return the offer to the holder to be revised in accordance with the predetermined method.

Divestment via IPO

PerMen 27/2013 stated that a divestment via the Indonesian capital market will not be treated as satisfying the divestment requirements. However, this provision was removed following the revocation of PerMen 27/2013 by PerMen 9/2017 (as amended by PerMen 43/2018). Instead, PerMen 9/2017 stipulates that divestment can be carried out by offering shares on the IDX in the event that none of the Central Government, the Provincial Government or Regency/Municipal Government, a BUMN, a BUMD, or a domestic private business entity is interested in purchasing the divested shares. This provision was also included in GR 96/2021, as amended by GR 25/2024. This implies that divestment via the Indonesian capital markets can be treated as satisfying the divestment requirements.

3.7 Reclamation and Mine Closure

On 20 December 2010, the Government released GR 78/2010, which deals with reclamation and post-mining activities for both IUP-Exploration and IUP-OP holders. On 29 February 2014, the MoEMR issued PerMen 7/2014 (the implementing regulation for GR 78/2010), which details the requirements and guidelines for the preparation of reclamation and post-mining plans. PerMen 7/2014 has been revoked by PerMen 26/2018, and the guidelines regarding reclamation and mine closure are now set out in PerMen 26/2018.

An Exploration IUP/IUPK holder must include a reclamation plan in its exploration RKAB, among other requirements, and must provide a reclamation guarantee in the form of a time deposit placed at a state-owned bank. The reclamation plan for the exploration phase needs to be prepared before any exploration activities are undertaken. After an application for an IUP-OP has been submitted, the reclamation plan for the production phase and the post-mining plan must also be prepared by the IUP/IUPK holder, covering a five-year period (or the remainder of the mine life, if shorter).

On 21 May 2024, MoEMR Decree No. 1827 K/30/MEM/2018 concerning Guidelines for the Implementation of Good Mining Techniques (“KepMen 1827/2018”) was partially revoked by MoEMR Decree No. 111.K/MB.01/MEM.B/2024 concerning the "Guidelines for Application, Evaluation and Approval for Reopening of Areas of Reclamation in Mineral and Coal Mining Business Activities" as one of the implementing guidelines for the provisions under PerMen 26/2018 (“KepMen 111/2024”), specifically in Appendix VI of KepMen 1827/2018 related to the reopening of reclamation areas.

Based on PerMen 26/2018 and KepMen 1827/2018, an IUP-OP/IUPK-OP holder must provide the following, among other requirements:

- A five-year reclamation plan;
- A post-mining plan;
- A reclamation guarantee, which may be in the form of: (i) a joint account, a time deposit placed at a state-owned bank in IDR or USD for a reclamation guarantee at the exploration stage; and/or (ii) a time deposit placed at a state-owned bank in IDR or USD for a reclamation guarantee at the operation production stage;
- A post-mining guarantee, in the form of a time deposit with a state-owned bank in IDR or USD; and
- Filling a periodical report on the implementation of reclamation and post-mining activities.

The requirement to provide reclamation and post-mining guarantees does not release the IUP holder from the requirement to perform reclamation and post-mining activities. PerMen 26/2018 and KepMen 1827/2018 also set out the procedures for the preparation of the reclamation and post-mining activities report, which must be submitted to the MoEMR periodically. Reclamation and post-mining activities will be evaluated for the release of the reclamation guarantee and the post-mining guarantee. In the event that the reclamation and post-mining criteria are not met, the MoEMR or governor shall appoint a third party to carry out reclamation or post-mining activities.

Please refer to the Annex to KepMen 1827/2018 for the detailed requirements and procedures of the reclamation plan, post-mining plan, placement and release of guarantees, and the associated reporting obligations.

The transitional provisions in GR 78/2010 and PerMen 26/2018 make it clear that CoW/CCoW holders are also required to comply with this regulation.

Aside from the above, pursuant to the Amendment to the Mining Law, prior to the WIUP or WIUPK area being reduced or returned, reclamation and mine closure activities must be implemented, and must reach 100% completion. Ex-holders of IUP or IUPK licences that have expired must achieve 100% completion of reclamation and mine closure activities.

3.8 Penalty Provisions and Dispute Resolution

Penalty Provisions

The Mining Law also regulates the consequences of infringement of the Law by the IUP/IUPK holder and illegal miners.

A breach of the Mining Law can be punished by both administrative and criminal sanctions, including the revocation of the IUP/IUPK, the imposition of fines, and prison terms. The Job Creation Law includes a minor additional provision whereby anyone who hinders or interferes with the mining business activities of IUP, IUPK, IPR or SIPB holders will be included as a subject of sanctions for causing a nuisance to mining activities.

Dispute resolution

Disputes regarding IUPs/IUPKs should be settled through court procedures and domestic arbitration, in accordance with the prevailing laws and regulations.

3.9 Transitional Provisions

CoWs/CCoWs/Coal Co-Operation Agreements ("CCAs")

The 2020 Amendment to the Mining Law confirms that all existing CoWs/CCoWs/CCAs (collectively referred to hereafter as the "contract(s)") will continue until their expiry dates, and may be extended without the need for a new tender (where further extensions are still available under the contracts).

However, such extended licences will be granted under the IUPK system, rather than under the CoW framework. If a licence has been extended once, the second extension will also be granted without the need for a tender. Before issuing the IUPK, the MoEMR should already have issued its approval for the relevant mine area as a WIUPK OP. Failure to fulfil these requirements may result in the mine area being reopened for tender.

Detailed guidance on applications for extensions of IUPK-OPs is outlined in GR 96/2021 (as amended by GR 25/2024) and PerMen 7/2020 (as amended by PerMen 16/2021 and partially revoked by PerMen 10/2023).

Although the terms of existing contracts will be honoured, the Law specifically provides that holders of existing contracts must, within five years of the enactment of the Law, comply with the obligation under the Law to conduct onshore processing and ore refining.

Contract holders who have already commenced some form of activity are required, within one year of the enactment of the Mining Law, to submit a mining activity plan for the entire contract area. If this requirement is not fulfilled, the contract area may be reduced to the permitted size for IUPs under the new Law.

Furthermore, the Mining Law indicates that the provisions of existing contracts must be amended within one year to conform to the provisions of the new Mining Law, other than the terms relating to state revenue (which is not defined, but presumably includes State Tax Revenue and PNBP, such as royalties). The Mining Law does not state which provisions the existing contracts must conform to, but this could include alignment with the Mining Law's provisions on divestment obligations, the resizing of mining areas, reduced production periods, prohibitions on using affiliated mining contractors, and the like. Many of these matters were raised by the Government during the contract renegotiations with the holders of the contracts. At the time of writing, all CCoW holders and substantially all CoW holders have completed the negotiation process and signed amended contracts with the Government.

Photo source: PT Vale Indonesia Tbk

4 Contracts of work

4.1 General Overview and Commercial Terms

CoW

The CoW system for regulating mining operations has played a key role in the success of Indonesia's mining industry. This system, which was introduced in 1967, has been gradually refined and modernised over the past 40 years to reflect changing conditions both in Indonesia and abroad. To date, there have been seven generations of CoWs. A comparison of the various generations is provided in Appendix E.

After the 2009 Mining Law was amended by the new Mining Law, several articles were amended, with one of the most significant amendments being that regarding the Government guarantee for CoW and CCoW extension. Under the Amendment to the Mining Law, the Government created a new type of licence, an "IUPK as a continuation of CoW/CCoW operations". This allows holders of a CoW/CCoW to extend their mining activities for up to 20 years (in the form of two ten-year extensions), or offers a ten-year licence if the CoW or CCoW has previously been extended prior to the Amendment to the Mining Law.

CoWs were previously regulated by MoEMR Decision Letter No. 1614/2004, which has been revoked by PerMen 8/2018. In essence, a CoW is a comprehensive contract between the Government and an Indonesian company. While this company could be 100% foreign-owned, such company might be subject to divestment requirements at a later date. In practice, most CoWs have some level of Indonesian ownership.

The CoW sets out the company's rights and obligations with respect to all phases of mining operations, including exploration, pre- production development, production, and mine closure. A CoW applies to a specifically defined geographical area (the contract area).

The CoW company is the sole contractor for all of the mining activities in the CoW area, other than for oil and gas, coal, and uranium. The CoW company has control over, management of, and responsibility for all of its activities, which include all aspects of mining such as exploration, development, production, refining, processing, storage, transport, and sales.

Photo source: PT Bukit Asam Tbk

The CoW outlines a series of stages with defined terms:

Table 4.1 CoW Stages

Stage	Term (Years)	Available Extension[1]
General survey [1]	1	6 months – 1 year
Exploration [2]	3	1 – 2 years
Feasibility study	1	1 year
Construction	3	-
Production	30	20 years or another period as approved by the Government

Notes:
1) Dependent on the CoW generation. For details, refer to Appendix E.
2) For the first generation, the maximum period from the general survey to the feasibility study was 18 months, which could be extended by a maximum of 6 months.

Some of the important considerations covered by a CoW include: expenditure obligations; import and export facilities; marketing; fiscal obligations; reporting requirements; records; inspections; work programmes; employment and training of Indonesian nationals; preference to be given to Indonesian suppliers; environmental management and protection issues; regional cooperation in relation to infrastructure; provision of infrastructure for the use of the local population; and local business development. It is a tribute to the Government and to the industry that these important matters are able to be appropriately addressed in a concise legal contract.

The CoW covers all tax, royalty, and other fiscal charges, including: dead rent in the contract area; production royalties; income tax payable by the company; employees' personal income tax; withholding taxes (WHT) on dividends, interest, rents, royalties, and similar payments; VAT; stamp duty; import duty; and Land and Building Tax (*Pajak Bumi dan Bangunan* or "PBB").

CCAs and CCoWs

CCoWs were regulated under MoEMR Decision Letter No. 1614/2004. Since November 1997, coal mining has been brought more into line with general mining through the CoW structure. There have been two generations of CCA (first generation and second generation contracts) and one generation of CCoW, which is typically referred to as a third generation CCoW.

The first generation of CCAs was regulated under Presidential Decree No. 49/1981, dated 28 October 1981, regarding the Principal Regulation for CCAs signed between PT Tambang Batubara Bukit Asam (now PT Bukit Asam Tbk or "PTBA"), the state-owned coal mining company, and the contractor. Presidential Decree No. 49/1981 was replaced by Presidential Decree No. 21/1993, dated 27 February 1993, which regulated the second generation of CCAs. The third generation of CCoWs were issued pursuant to Presidential Decree No. 75/1996, dated 25 September 1996.

CCAs

The key difference between the CCA and CoW systems is that, under a CCA, the foreign mining company acted as a contractor to the Indonesian state-owned coal mining company PTBA. However, further legislation has since been enacted, and CCAs have been amended to transfer the rights and obligations of PTBA under the CCAs to the Government, represented by the MoEMR.

Under a CCA, the coal contractor is entitled to an 86.5% share of the coal produced from the mining area, and the contractor bears all of the costs of mine exploration, development, and production. The Government (previously PTBA) retains its entitlement to the remaining 13.5% of production. However, in accordance with Presidential Decree No. 75/1996, dated 25 September 1996, the contractors pay the Government's share of the production in cash, which represents 13.5% of sales after the deduction of the selling expenses.

Under the first generation of CCAs, equipment purchased by the coal contractor became the property of the Indonesian Government (previously PTBA), although the contractor had the exclusive right to use the assets and was entitled to claim depreciation. For the second and third generations of CCA and CCoW, the equipment purchased by the contractor remains the property of the contractor.

Foreign shareholders that own 100% of a first generation CCA are required to offer shares to Indonesian nationals or companies so that, after ten years of operating, foreign ownership in the company is reduced to a maximum of 49%.

CCoWs

Under CCoWs, the mining company is, in effect, entitled to 100% of the coal production. However, a royalty of 13.5% of the sales revenue is paid to the Government.

CCAs and CCoWs outline a series of stages with defined terms:

Table 4.2 CCAs and CCoWs Stages

Stage	Term (Years)	Available Extension (Years)
General survey	1	1 year
Exploration	3	2 years for the third generation, but not specifically mentioned in other generations
Feasibility study	1	1 year for the third generation, but not specifically mentioned in other generations
Construction	3	-
Production	30	-

Pre-Contract Expenses

The shareholder of the contract company typically incurs significant expenditure before the contract company is incorporated and the contract is signed. This pre-incorporation expenditure may be transferred from the shareholder to the contract company in the form of deferred pre-operating costs, and will be amortised starting from the period in which production commences. These expenses are subject to an audit by a public accountant and approval by the Minister and the Directorate General of Taxation (DGT).

Exploration and Development

These stages coincide with the decision points regarding reductions in the contract area. This section deals with the general survey, exploration, feasibility, and construction stages.

Following the signing of the contract, the company is required to lodge a security deposit, in USD, in a state-owned bank account. The security deposit is released in two tranches, following:

- The satisfactory completion of the General Survey period (50% of security deposit amount); and
- The submission of a general geological map to the Ministry within 12 months of the completion of the Exploration Stage (50% of security deposit amount).

For the seventh generation of CoWs, or the third generation of CCoWs, the security deposit is released in three tranches, following:

- The satisfactory completion of the General Survey period (25% of security deposit amount);
- The end of the first year of exploration (25% of security deposit amount); and
- The submission of a general geological map within 12 months of the completion of the Exploration Stage (50% of security deposit amount).

During the pre-production stage, all of the companies signing the contract are required to submit detailed quarterly progress reports to the MoEMR. Under the contracts, these companies have responsibility for all the financing requirements of the project, and details are to be reported to the MoEMR.

Obligations are imposed throughout the life of the contract with respect to environmental restoration, the employment and training of Indonesian nationals, preference for Indonesian nationals, preference for Indonesian suppliers, the provision of infrastructure for use by the local community, as well as the following obligations:

Table 4.3 CoW and CCA/CCoW Obligations

CoW	CCA/CCoW
• General Survey Stage The company is obliged to spend an agreed amount during the General Survey stage. At the end of the period, the company must submit a report detailing the expenditure items and amounts, and is required to relinquish at least 25% of the original contract area.	• General Survey Stage The company is obliged to spend an agreed amount during the General Survey stage. At the end of the period, the company must submit a report detailing the expenditure items and amounts, and it is required to relinquish at least 25% of the original contract area for the second and third generation contracts, and 40% for first generation.

CoW	CCA/CCoW
• Exploration Stage During the Exploration Stage, the company is obliged to spend an agreed amount per year on exploration activities. At the commencement of this stage, the company must submit an annual programme and budget to the MoEMR. At the end of the Exploration Stage, the company is required to file the following with the MoEMR: - A summary of its geological and metallurgical investigations and all the data obtained; and - A general geological map of the contract area. On or before the second anniversary of the commencement of the Exploration Stage, the company is required to have reduced the contract area to not more than 50% of the size of the original contract area.	• Exploration Stage During the Exploration Stage, the company is obliged to spend an agreed amount per year on exploration activities. At the commencement of this stage, the company must submit an annual programme and budget to the MoEMR. At the end of the Exploration Stage, the company is required to file the following with the MoEMR: - A copy of the drill holes, pits, and assays of the samples; and - A copy of the geophysical or geological maps of the contract area. On or before the second anniversary of the commencement of the Exploration Stage, a third-generation company is required to reduce the contract area to not more than 25% of the size of the original contract area. First and second generation contractors are required to reduce the contract area to not more than 20%.
• Feasibility Study Stage At the end of the Feasibility Study Stage, the company is required to submit a feasibility study, including environmental impact studies, to the MoEMR, and to design the facilities. At the end of the Feasibility Study stage, the company is required to have reduced the contract area to not more than 25% of the size of the original contract area.	• Feasibility Study Stage At the end of the Feasibility Study Stage, the company is required to submit a feasibility study, including environmental impact studies, to the MoEMR, and to design the facilities. At the end of the Feasibility Study, the third generation CCoW companies are required to reduce the contract area to not more than 25,000 ha.
• Construction Stage The company undertakes the construction of the facilities.	• Construction Stage The company undertakes the construction of the facilities.
• Dead Rent Throughout the life of the CoW, the company is required to pay dead rent. This is an annual amount that is based on the number of hectares in the CoW area and the stage of the CoW.	• Dead Rent Throughout the life of the contract, the company is required to pay dead rent. This is an annual amount that is based on the number of hectares in the approved area and the stage of mining.

Production

During the production phase, the company is required to submit the following Exploitation reports to the MoEMR:

- A fortnightly statistical report;
- A monthly statistical report;
- A quarterly report concerning the progress of operations;
- An annual report; and
- Other reports to various departments.

The company may export its production, but is encouraged to meet domestic demand first. Sales to associates are required to be at arm's length prices. Sales contracts with terms exceeding three years are subject to Government approval.

The contract also requires contractors to submit the following reports to the MoEMR:

- A monthly statistical report;
- A quarterly report concerning the progress of operations; and
- An annual report, for the third generation of CCoWs.

The contract company may choose to operate the mine itself, or to sub-contract the operations of the mine, but the outsourcing of mining operations should now be considered in light of the rules set out in the Mining Law and its implementing regulations, which may be applicable to contracts.

Because a company can be party to only one contract (either a CoW, CCA, or CCoW), it is common for mining groups to own more than one company in Indonesia. Group overheads can be borne by yet another company, which has been formed to service the group contract companies. This type of arrangement can offer operational efficiencies, but its tax implications should be considered further.

Other Financial Obligations

Royalties

Royalties are payable quarterly to the Government based on the actual volume of production or sales, according to the provisions set out in the contract. However, in practice the royalty is currently to be paid to the Government prior to shipment.

Dead Rent and PBB

The company is required to pay dead rent and PBB as set out in the contract. Dead rent is an annual charge based on the number of hectares in the mining area. During the pre-production stage, the PBB is equal to the amount of dead rent. Once the operating stage commences, the PBB for the mining area is equal to the amount of dead rent plus a certain percentage of gross revenue from mining operations. The PBB for the area outside the mining area used by the company for its facilities, but which will be closed to the public, will be calculated based on the method outlined in the relevant contract.

4.2 The Fiscal Regime Under CoWs, CCoWs, and CCAs

All generations of contracts, except for second generation CCAs, are based on the taxation and other laws and regulations that were in place at the time of the agreements being signed. In many circumstances, this means that the regulations affecting the mining companies operating under such contracts differ from the current regulations. This often creates difficulties with interpreting the agreements and doing business with other companies. Potential investors in mining properties covered by earlier generation contracts should seek professional advice regarding these issues.

Many earlier generation contracts also include divestment requirements for foreign shareholders.

Please note that contract renegotiations (see Section 4.5 of this Guide, "CoW and CCoW renegotiations" and Section 5.3 of this Guide, "Tax Regime for a CoW/CCoW/CCA Company", below) generally require the adoption of the prevailing fiscal rules effective from 1 January 2019. Nevertheless, the fiscal regime for each contract should be reviewed on a case-by-case basis.

4.3 Termination of the Contract

If at any time during the term of a contract the company believes that the contract area is unworkable, it may terminate the contract. The procedures for terminating contracts can be summarised as follows (this matter is not specifically mentioned in first and second generation CCoWs):

- Submit a written notice to terminate the contract, attaching a closure plan, related documents, maps, plans, worksheets, and other technical data and information.
- Provided that the data provided and the company's fulfilment of its other obligations are considered acceptable to the MoEMR, the MoEMR will issue confirmation within six months of the date when the company submitted the notice. Otherwise, the contract is automatically considered to be terminated, and the company shall be relieved of its obligations.

A general summary of the implications of the termination of a contract, at the various stages of the contract, is set out below. All sales, removals, or disposals of property will be subject to the tax rules set out in the respective contract:

a. General Survey and Exploration Period

- The company has a period of six months to sell or remove its property, before it becomes the property of the Government; and
- The company is required to provide any information that has been gained through the work that it has performed to the Department of Mines and Energy.

b. Feasibility Study Period

- The company is required to offer all of the property located in the contract area to the Government at its market value;
- The above offer shall be valid for 30 days; and
- If the Government accepts the offer, it is required to settle within 90 days, and if the Government does not accept the offer, the company then has six months to sell or remove its property, otherwise the property reverts to the Government without any compensation paid to the company.

c. Construction Period

- The conditions are identical to those for the Feasibility period except that, if the Government does not accept the offer, the company has 12 months to remove or sell its property.

d. Operating Period or Expiration of the contract

- The company is required to offer all of its property located in the contract area to the Government at its market value;
- The offer is valid for 30 days. If the Government accepts the offer, then it is required to settle within 90 days; and
- If the Government does not accept the offer, the company then has 12 months to sell or remove its property, otherwise the property reverts to the Government without any compensation paid to the company.

Following the termination of the contract, any property that is used for public purposes, such as roads, schools, and hospitals, and any associated equipment, immediately becomes the property of the Government, without any compensation paid to the company.

4.4 Transfer of a Contract

The Purchase and Sale of Shares in a Contract Company

Due to the difficulties involved in transferring a direct interest in a contract (see below) it is common for such interests to be transferred indirectly, through a transfer of shares in the company holding the contract, or through a transfer of shares in the holding companies above the company holding the contract.

However, the shareholders of the contract company cannot transfer any shares prior to the commencement of the operating period without the written consent of the Government.

The shareholders in the contract company also require the prior written consent of the MoEMR to transfer the shares of the contract company after the commencement of the operating period. Under the terms of the contract such consent shall not be unreasonably withheld or delayed.

Consent is not required in the case of a transfer of shares to:
- Indonesian Participants (as defined); or
- An affiliate or subsidiary of the shareholder

The Purchase and Sale of Direct Interests in a Contract

The contract does not allow CoW/CCA/CCoW companies to transfer or assign all or any part of their interest in the contract without the prior written consent of the Government (which is very unlikely to be granted). In any such transfer, the company is not relieved of any of its obligations under the contract except to the extent that the transferee or the assignee assumes and performs such obligations.

Farm-Ins

Neither the contracts nor the income tax legislation specifically address farm-ins, *per se*. As a commercial matter, a typical farm-in to a minerals mining property involves the eventual transfer of an interest in the property. Accordingly, the farm-in arrangement, and the tax treatment thereof, must be considered by the Minister in conjunction with the approval of the transfer. A farm-in can usually be achieved more easily through a transfer of shares in the holding company or offshore investing company.

4.5 CoW and CCoW Renegotiations

As discussed above, pursuant to the Mining Law of 2009 as amended by the new Mining Law, it is intended for the terms of the existing mining contracts (CoWs and CCoWs) to be brought into line with the provisions of the Mining Law. Accordingly, the Government has approached all CoW and CCoW holders in order to amend the terms of their contracts.

The renegotiation process began in 2010 with 31 CoW and 68 CCoW holders.

Based on the MoEMR's press releases, six strategic issues were being negotiated and included in the contract amendments. These issues included the size of the mining areas; the continuation of the mining operations; the state revenue; the obligation to process and refine minerals in Indonesia; the obligation to divest shares; and the obligation to utilise local goods and services.

Our understanding is that most fiscal matters have been renegotiated on a "prevailing law" basis, other than the Corporate Income Tax (CIT) tax rate in certain cases.

5 Tax regimes for the Indonesian mining sector

5.1 General Overview of the Indonesian Tax System

On 2 November 2020, the Government issued Law No. 11 Year 2020 concerning Job Creation (the "Job Creation Law"), which introduced relevant changes including the exemption of dividends from tax, the inclusion of coal as a VAT-able product (previously exempted) and several changes to the VAT rules that are more favourable to taxpayers.

The Government issued the following implementing regulations of the Job Creation Law:

a. Government Regulation No. 9 Year 2021 ("GR 9/2021") which has been effective since 2 February 2021; and
b. MoF Regulation No. 18/PMK.03/2021 ("PMK 18/2021") which has been effective since 17 February 2021.

On 29 October 2021, Law No. 7 Year 2021 concerning the Harmonisation of Tax Regulations (the "HPP Law") was passed, stipulating, amongst other things, that the CIT rate is to remain at 22% from 2022 onwards, that all provisions of Benefits-in-Kind (BIK) are deductible for the provider but taxable for the employee, that a useful life of longer than 20 years will be used for permanent buildings and intangible assets, that there will be a further limitation on interest deductions, that there will be an increase in the VAT rate from 10% to 11% (from 1 April 2022) and to 12% (from 1 January 2025), that certain mining products taken directly from the source will become VAT-able, and that a carbon tax will be introduced. The effective date of the income tax-related provisions is 1 January 2022, whilst the provisions related to VAT and carbon tax became effective on 1 April 2022.

PwC Indonesia publishes an annual Indonesian Pocket Tax Book which provides a general guide to the prevailing Indonesian tax laws, which were most recently amended by the HPP Law and its accompanying regulations. The Indonesian Pocket Tax Book is freely available on PwC Indonesia's website (*https://www.pwc.com/id/en/pocket-tax-book/english/pocket-tax-book-2024.pdf*).

Photo source: PT Bukit Asam Tbk

5.2 The Tax Regime for an IUP, IUPK, IPR, and SIPB Company

General

The Mining Law stipulates that any IUP, IUPK, IPR, and/or SIPB is subject to the prevailing Income Tax Law (ITL) and its accompanying regulations.

The IUP, IUPK, IPR, and SIPB company is required to register for tax and to obtain a taxpayer identification number, called a *Nomor Pokok Wajib Pajak* (NPWP), and also to register for a VAT-able Entrepreneur Identification Number (*Nomor Pokok Pengusaha Kena Pajak*, "NPPKP"). Such companies are also required to register for tax with the local tax office in the jurisdiction in which the mine operates. This includes the company meeting its VAT obligations (if applicable and not centralised at the head office) as well as its WHT obligations.

CIT – General

The prevailing ITL stipulates that the Government will issue Government Regulations that cover the specific tax provisions applicable for each type of mineral and coal mining business activity.

Minerals

The Government issued GR No. 37 Year 2018 ("GR 37/2018"), which sets out specific rules covering both the tax and PNBP arrangements that are generally applicable from 2019 onwards for the following mineral mining "concession" holders:

a. IUPs;
b. IUPKs;
c. IPRs;
d. IUPK-OPs, being a mining business licence that is granted for this stage of the activities (i.e. not just the actual mining, but also construction, processing and/or refining, transportation, and sales) within a State Reserve Area. The IUPK-OPs referred to in GR 37/2018 are limited to those relating to the conversion of an "active" CoW that has not expired into an IUPK-OP (which is directly relevant to a number of the historical concessions that are now being converted from CoWs); and
e. A CoW with tax provisions that follow the prevailing tax regulations (i.e. with no *lex specialis* provisions).

Coal

On 11 April 2022, the Government issued GR No. 15 Year 2022 ("GR 15/2022") which sets out specific rules covering both the tax and PNBP arrangements that are generally applicable from the 2023 tax year onward for the following coal mining "concession" holders:

a. IUPs;
b. IUPKs;
c. IUPKs as a continuation of CCoW Operations, being a mining business licence that is granted for this stage of the activities (i.e. not just actual mining, but also construction, processing and/or refining, transportation, and sales) within a State Reserve Area. The IUPKs as a continuation of CCoW Operations are referred to in GR 15/2022 are limited to those relating to CCoWs that have expired and been given an IUPK as a continuation of CCoW Operations; and
d. CCoWs, with tax provisions that follow the prevailing tax regulations (i.e. with no *lex specialis* provisions).

CIT Rate

Under the prevailing ITL, as most recently amended by the HPP Law, a company is subject to CIT on its net taxable profit. The net taxable profit is calculated as the gross income less the allowable expenditure. The CIT is imposed at a rate of 22% on the net taxable profit for all mineral and coal concession holders.

A 3% income tax reduction is applicable for companies that are listed on the IDX, subject to meeting certain requirements around trading liquidity.

However, GR 37/2018 stipulates that a CIT rate of 25% applies to mineral IUPK-OP holders.

General Expenses

Deductible expenses are expenses that have been incurred in order to generate, maintain, and collect taxable income, and generally include amounts that have been paid or accrued for expenditure that: (a) is attributable to the company's operations, and (b) has a useful life of less than one year.

The specific operating expenses relating to a mining operation may include supplies, contracted services, insurance, royalties on intellectual property, processing expenses, repairs and maintenance, etc. These should be deductible in the year in which they are incurred.

Selling and general and administrative expenses are generally tax deductible in the year in which they are incurred.

Income

Gross income usually represents income from sales of mining products as well as any other income that has been earned by the mining company.

Minerals

Under GR 37/2018, the values of mineral mining product sales are to be based on one of the following prices at the time when the sale occurs:

a. The market price of the "metal" mineral in question (e.g. aluminium as per the London Metal Exchange, zinc as per the Asian Metal Exchange, etc.);
b. The market price of the "non-metal" mineral in question (e.g. iron and steel as per the prices published on international or domestic commodity markets);
c. The market price of the relevant "rock-like" material in question (e.g. as per the prices published on international or domestic commodity markets); or
d. The actual selling price (but only if there is no market price reference).

Notwithstanding this, if the actual selling price is higher than the published market price, the actual selling price should be used. However, taxpayers can only use the actual selling price if the discrepancy is within the margin of 3% of the relevant published market price.

Coal

Under GR 15/2022, the values of coal mining product sales are to be determined at the time when the sale occurs, based on the higher of:

a. the lower of the coal benchmark price (HPB) stipulated by the MoEMR or the coal price index (e.g. Indonesia Coal Index, Newcastle Export Index, Globalcoal etc.); or
b. the actual selling price that is supposed to be received by the seller.

However, if the HPB or coal price index is not available, the values are calculated based on the actual selling price that is intended to be received by the seller.

The above approach to determining the taxable value for mineral and coal miners represents a significant departure from general income tax principles.

Exploration and Development Expenses

Exploration and development expenses include expenses relating to camp construction, drilling, access roads, project communication facilities, etc.

On-site exploration expenses are generally deductible in the year in which they are incurred, provided the expenses meet the general deductibility criteria.

Major exploration and mine development expenses should generally be capitalised as intangible assets and amortised upon spending rather than during the production stage.

Under the HPP Law, intangible assets with a useful life of more than 20 years can be amortised using either a diminishing balance or straight-line approach over a useful life of 20 years or over the actual useful life of the asset based on the taxpayer's bookkeeping.

Stripping/Overburden Removal Costs

Minerals

Under GR 37/2018, stripping costs that were incurred prior to the start of production operations by mineral mining companies should be capitalised and:

- Amortised proportionally over the contract period; or
- Amortised according to the units of production method over the contract period.

Amortisation starts from the month in which production operations are approved by the MoEMR.

Stripping costs that are incurred during production operations, such as the cost of overburden removal, the cost of opening underground pits (including to find new reserves), etc. should be deducted outright.

These rules are also applicable to taxpayers that hold more than one mining licence and simultaneously carry out both pre-production and production operations.

Overall, these stripping arrangements could result in pre-production spending being recoverable (in terms of tax) over a longer period. This could be problematic for projects with mine lives that are significantly shorter than the concession period. The recovery of any post-production spending is also effectively subject to the five-year limit on tax losses carried forward.

Coal

Under GR 15/2022, for coal mining companies that follow the prevailing ITL (e.g. coal IUPs), pre- operating expenditure with a useful life of more than one year (which arguably includes stripping costs incurred during pre-production) should be capitalised and amortised starting from the month in which production operations are approved by the MoEMR, either: proportionally over the contract period; or based on the units of production method over the contract period.

Since stripping costs incurred during the production/ operations are not specifically regulated under GR 15/2022, if such costs have a useful life of more than one year, these cost should be capitalised and amortised starting in the year in which the expense is incurred, using either a diminishing balance or straight-line approach over their useful life.

Depreciation of Fixed Assets

Fixed assets are categorised into four categories based on the nature of the asset and its expected useful life. The rate at which assets can be depreciated will depend upon the category of the asset. Assets are generally depreciated over four, eight, 16, or 20 years, and taxpayers may apply a diminishing balance or a straight-line approach.

The HPP Law distinguishes between non-permanent buildings and permanent buildings, which have useful lives of 10 years and 20 years respectively.

The HPP Law stipulates that if a permanent building has a useful life of more than 20 years, the depreciation can be carried out using the straight-line method, using either a useful life of 20 years or the actual useful life based on the taxpayer's bookkeeping.

On 17 July 2023, Minister of Finance Regulation No. 72 Year 2023 ("PMK 72") was issued as an implementing regulation of the HPP Law pertaining to the depreciation of tangible assets (i.e. fixed assets and buildings) and/or the amortisation of intangible assets. PMK 72 allows that permanent building owned and used prior to 2022 and that have been depreciated based on a useful life of 20 years can be depreciated over more than 20 years, provided that the taxpayer had submitted a notification to the DGT by 30 April 2024.

Another key feature of PMK 72 is the capitalisation of the costs of repairing tangible assets. These costs are added to the tax net book value of the underlying assets repaired, resulting in an "adjusted tax net book value amount". The repair costs start to be depreciated in the month of disbursement or the month in which the repair process is completed. If the repair costs:

a. Do not increase the useful life of the fixed asset or building – then the adjusted tax net book value amount is depreciated for the remaining useful lives of the underlying assets; or
b. Increase the useful life of the fixed asset and building – then the adjusted tax net book value amount is depreciated over the remaining useful life of the underlying assets plus the additional useful life, up to the maximum useful life of that asset category. This excludes buildings that use the actual useful life (i.e. more than 20 years), which can be depreciated using the actual useful life.

However, capitalisation only applies to repair costs which were incurred after the initial acquisition and that provide future economic benefits in the form of additional capacity, production quality, or improved performance standards or that can extend the useful life of the asset.

Expenditure is not categorised as a capitalised repair cost if it is a substitute for routine maintenance performed once or more than once a year, e.g. spare parts replacement during a regular service.

Minerals

Specifically for holders of IUPK-OPs that have been converted from CoWs, fiscal depreciation and/or amortisation under GR 37/2018 shall be calculated in accordance with the following:

a. For assets that were obtained prior to the issuance of the IUPK-OP:
    i. The depreciation or amortisation rules outlined in the original CoW (except for buildings) apply until the end of the fiscal year in which the IUPK-OP was issued;

ii. The prevailing depreciation or amortisation rules apply (except for buildings) for fiscal years following the issuance of the IUPK-OP, with depreciation or amortisation over the remaining useful lives based upon the tax book value at the beginning of the fiscal year following the issuance of the IUPK-OP;
iii. There is an entitlement to depreciate or amortise the residual tax book value of assets with useful lives that end in the fiscal year following the issuance of the IUPK-OP; and
iv. The depreciation rules outlined in the original CoW apply to existing buildings over the life of the IUPK-OP;

b. Assets obtained after the issuance of the IUPK-OP follow the prevailing depreciation or amortisation rules; and
c. If the IUPK-OP for whatever reason ends prior to the date set out in the IUPK-OP, the residual value may be deducted.

Coal

Specifically for holders of an IUPK as a continuation of CCoW Operations, the fiscal depreciation and/or amortisation under GR 15/2022 shall be calculated in accordance with the following:

a. For assets obtained prior to the issuance of the IUPK and that are still owned by the IUPK holders or that have become the property of the State:
    i. There is an entitlement to depreciate all of the residual tax book value of the tangible assets in the fiscal year in which the IUPK was issued;
    ii. The amortisation rules outlined in the original CCoW apply until the end of the fiscal year in which the IUPK was issued;
    iii. There is an entitlement to amortise the residual tax book value of intangible assets with useful lives that end in the fiscal year following the issuance of the IUPK;
    iv. The prevailing amortisation rules apply to fiscal years following the issuance of the IUPK, with amortisation over the remaining useful lives being based upon the tax book value at the beginning of the fiscal year following the issuance of the IUPK; and
b. Assets obtained after the issuance of the IUPK follow the prevailing depreciation or amortisation rules.

Amortisation of Intangible Assets

Intangible assets include pre-operating costs, patents, rights, licences, etc. Intangible assets can be amortised over an effective life of either four, eight, 16 or 20 years, using either a diminishing balance or the straight-line approach. The HPP Law stipulates that intangible assets with an actual useful life of more than 20 years can be amortised using either a diminishing balance or straight-line approach over a useful life of 20 years, or over the actual useful life based on the taxpayer's bookkeeping. Furthermore, intangible assets owned and used prior to 2022 and that have been amortised based on a useful life of 20 years can be amortised over more than 20 years, provided that the taxpayer has submitted a notification to the DGT by 30 April 2024.

Any costs that are incurred for the acquisition of mining rights with a beneficial life of more than one year should be amortised using the units of production method, at a rate not exceeding 20% per annum.

Mine Closure

The prevailing ITL is not clear on whether provisions for mine closures (e.g. mine infrastructure demobilisation costs) are deductible. Since mine closure costs usually occur in the later stages of a mine's life, when the company is earning little or no income, proper planning is necessary to ensure the utilisation of the tax deductions arising from these costs. The current regulations relating to reclamation reserves are silent on the question of mine closure reserves, meaning that these reserves are unlikely to be deductible until the related costs are actually incurred.

Reclamation Reserve

For accounting purposes, a mining company is usually required to maintain a reclamation reserve in its accounts to cover the environmental management and reclamation work that is to be conducted during the mining stage and at the end of the life of the mine.

The reclamation reserve should be deductible, provided that it is calculated in accordance with the prevailing energy/mineral resources sector laws/regulations. If the actual costs exceed the value of the reserve, then the balance will generally be deductible.

Non-Interest-Bearing Loans

It is common for a shareholder not to charge interest on loans to mining companies during the exploration and development stages. However, care should be taken to structure the terms and conditions of the loan to ensure that they observe the applicable transfer pricing rules. Non-interest-bearing loans from shareholders are only allowed if certain requirements are met.

Thin Capitalisation Rule

Effective from the fiscal year 2016 onwards, the MoF has put in place "thin capitalisation" rules under Regulation No. 169/PMK.010/2015 (PMK 169). PMK 169 provides for a maximum Debt-to-Equity Ratio (DER) of 4:1 for the deduction of interest expenses.

PMK 169 disallows deductions on interest expenses in the following circumstances:

- Entirely, if the equity is zero or negative;
- Partly, according to the portion of the loan exceeding the DER;
- Partly, according to the portion of the loan that is associated with the generation of income subject to final tax (e.g. land and/or building rentals);
- Entirely, for the non-reporting of private offshore loans.

PMK 169 defines interest as including discounts or premiums, arrangement fees, interest on leases, compensation for loan guarantees, and any related foreign exchange expenses. Even when the DER is within the permitted level, the ITL requirements should still be complied with – meaning that a challenge to interest deductions would still be possible if, for example, the loan was used to generate Indonesian bank interest income; the interest rate was not at arm's length; or the related party's loan leverage was outside of industry norms.

Director General of Tax Regulation No. PER-25/PJ/2017 ("PER 25"), as the implementing regulation for PMK 169, provides the DER calculation form and the Foreign Loan Report form that should be attached to the annual CIT return of a company subject to DER. The requirement to submit the forms in the CIT return applied from the fiscal year 2017.

The HPP Law has now expanded the acceptable methods for calculating the deductible financing costs to include other methods which are commonly used internationally, such as the use of the Percentage of Earnings Before Interest, Taxes, Depreciation and Amortisation (EBITDA).

The details of these changes are yet to be provided, but both could substantially impact project economics. Further details of the new Thin Capitalisation Rules shall be stipulated in a Government Regulation. As GR 37/2018 and GR 15/2022 stipulate that the deductibility of interest expenses in the mining sector shall also follow the prevailing ITL, developments around interest deductibility, in particular, will need to be monitored going forward, although a move away from the current "one-size-fits-all" 4:1 ratio would generally be welcomed.

BIKs

Prior to the enactment of the HPP Law, BIKs provided by employers were typically not taxable in the hands of employees and did not constitute deductible expenses for employers. However, BIKs required for the execution of a job, for example protective clothing, uniforms, transportation costs to and from the place of work, the cost of providing food and beverages to all employees, and BIKs provided in remote areas were still not taxable in the hands of employees but could be treated as deductible expenses by employers.

Companies located in remote areas were required to submit an application to the DGT to obtain validation that their place of business was indeed located in a remote area.

However, under the HPP Law, BIKs are generally now deductible expenses for employers starting from 1 January 2022, and are taxable in the hands of employees starting from 1 January 2023, except for the following BIKs which are deductible for employers but not taxable in the hands of employees:

- Food and beverages provided to all employees;
- BIKs provided in certain areas (generally remote areas);
- BIKs necessary to carry out work;
- BIK financed by the regional/state, revenue/budget, or
- Certain other BIKs, subject to the fulfilment of certain requirements, such as gifts, work equipment and facilities, health and medical treatment, sports facilities, communal residential facilities and vehicles for specific employees.

Transactions with Related Parties

Payments to affiliates may be deductible if they are directly attributable to mining operations. However, the deduction is limited to the amount that would have been paid to a non-related party for the same service.

The DGT has increased its audit focus on Related-Party Transactions. Taxpayers must make detailed disclosures in their CIT return regarding the number of their Related-Party Transactions, and also be able to justify the use of a particular pricing methodology. The DGT has been actively performing transfer pricing audits, meaning that taxpayers with Related-Party Transactions must carefully consider their TP positions. In addition, the DGT now requires the preparation of standard TP documents, i.e. a Master File and a Local File, as well as Country-by-Country Reporting (CbCR).

The Master File and the Local File should be submitted by the filing deadline for the CIT return. Should an Indonesian company be a parent entity of a business group whose consolidated gross turnover amounts to at least IDR 11 trillion, the

CbCR should also be filed with the Tax Office. Otherwise, such company is only obliged to submit a CbCR notification. For the fiscal year 2023, the CbCR or CbCR notification should be filed by 31 December 2024 at the latest.

On 29 December 2023, Minister of Finance Regulation No. 172 Year 2023 (PMK 172) regarding the implementing guidelines for the application of the Arm's Length Principle (ALP) on Related-Party Transactions was issued.

Several key features of PMK 172 are as follow:

1. The DGT is authorised to request TP documentation, and the taxpayer must provide it within one month of the request. This is applicable not only during a tax audit, but also during compliance monitoring processes. A taxpayer who does not fulfil their obligation to provide TP documentation shall be subject to sanctions in accordance with the provisions of the taxation laws and regulations.
2. TP adjustments made by the DGT are considered as indirect profit repatriations to the affiliated party, and are treated as taxable dividends that are subject to tax upon the payment date, or when they are available to be paid, or when they are due. However, PMK-172 also regulated that a TP adjustment will not be considered as a dividend if there is an addition/deduction of cash (or cash equivalents) in the amount of the TP adjustment prior to the issuance of the Tax Assessment Letter (*Surat Ketetapan Pajak* or "SKP") and/or if the taxpayer has agreed with the transfer price determined by the DGT.
3. The DGT is authorised to adjust the VAT tax base based on the arm's length market price if the selling price to the related party is lower than the arm's length market price. PMK 172 also highlights that any form of TP adjustment performed by the DGT can be allocated to each transaction involving the delivery of taxable goods and/or taxable services. However, such a correction will not result in any additional creditable Input VAT to the buyer, and any creditable Input VAT will still refer to the pre-adjustment price stated in the original VAT Invoice.

Tax Losses Carried Forward

Tax losses can be carried forward for up to five years under the prevailing ITL, and they are recouped on a first-in-first-out basis. Tax losses cannot be carried back.

Article 22 Income Tax Collection

Purchases of coal and minerals from an entity (or individual) holding an IUP are subject to a requirement to collect and remit Article 22 income tax at 1.5% of the purchase price at the time of purchase. Article 22 income tax at 1.5% is also applicable to exports of coal and minerals by IUP companies (which is remitted upon export).

The sale of gold bars, other than for sale to BI or for processing into jewellery for export is subject to Article 22 income tax at a rate of 0.25%, which is collected by the gold producer.

Article 22 income tax constitutes a CIT prepayment, and therefore only represents a cash flow matter.

Bookkeeping in USD

For tax purposes, a Foreign Investment (*Penanaman Modal Asing* or "PMA") company may request authorisation to carry out its bookkeeping in USD and in the English language. The company must request approval no later than three months after its establishment, or no later than three months before the commencement of the USD accounting year (for an already-established company).

Following the adoption of accounting standards regarding the use of an appropriate functional currency (consistently with the International Financial Reporting Standards (IFRS)), wholly Indonesian-owned entities, in addition to PMA companies, can now opt to use the USD rather than the IDR as their bookkeeping currency for tax purposes when a currency other than the IDR is their functional currency. The same deadlines apply to these applications.

The USD is the only alternative to the IDR for tax purposes.

Pillar Two GloBE Rules

On 31 December 2024, MoF regulation No. 136 Year 2024 was issued to implement the Top-up Tax mechanism under the Global Anti-Base Erosion ("GloBE") Rules in Indonesia. The regulation is designed to be aligned with the Organisation for Economic Co-operation and Development ("OECD") GloBE Rules.

GloBE Rules are aimed at implementing global minimum tax rules that enforce a global tax framework ensuring a minimum taxation of 15% for Multinational Enterprises operating in low-tax jurisdictions. There are three charging mechanisms of Top-up Tax adopted by Indonesia, namely Income Inclusion Rule ("IIR"), Undertaxed Payment Rule ("UTPR"), and Domestic Minimum Top-up Tax ("DMTT"). The rule applies in Indonesia to fiscal years starting on or after 1 January 2025 for IIR and DMTT and for fiscal years starting on or after 1 January 2026 for UTPR.

GloBE Rules apply to CEs of a Multinational Enterprise Group with annual gross turnover of at least EUR 750 million based on the Consolidated Financial Statements ("FS") of the Ultimate Parent Entity for at least two out of four fiscal years preceding the GloBE fiscal year. Special rules apply on the threshold calculation where there is a merger and demerger transaction occurring within the past four-year period.

Tax Holidays

On 24 September 2020, the MoF issued Regulation No. 130/PMK.010/2020 ("PMK 130") as the latest update/revision to the Tax Holiday incentive for substantial new investment in designated Pioneer industries.

Table 5.1 Tax Holiday Incentive

No.	Investment (in IDR)	Period (in years)
1	500 billion up to < 1 T	5
2	1 T up to < 5 T	7
3	5 T up to < 15 T	10
4	15 T up to < 30 T	15
5	≥ 30 T	20

The available tax facilities under PMK 130 are set out below.

Provision	Capital Investment Plan	
	IDR 100 billion – IDR 500 billion	≥ IDR 500 billion
CIT reduction rate	50%	100%
Concession period (from the start of commercial production)	5 years	5 – 20 years, depending on the investment value:
Transition	25% CIT reduction for the next 2 years	50% CIT reduction for the next 2 years

The available tax holidays are applicable to relevant pioneer industry taxpayers that have new capital investment plans of at least IDR 100 billion that meet the 4:1 DER, that have committed to start realising the investment plan at the latest one year after the issuance of the Tax Holiday approval, and that have not received any of the following:

a. Decision on approval or notification of rejection of the provision of the tax holiday facility;
b. Decision on approval of the granting of the tax allowance facility;
c. Notification of granting of additional net income deduction based on being either a new investment or a certain business field expansion, in a labour-intensive industry; and
d. Decision on the provision of an income tax facility in a Special Economic Zone.

PMK 130 does not require investors to make a time deposit in an Indonesian bank that is equal to 10% of the planned investment value. However, PMK 130 does require a taxpayer applying for a tax holiday to demonstrate that its domestic shareholders have fulfilled their tax obligations in Indonesia by presenting a Tax Clearance Letter (*Surat Keterangan Fiskal*) issued by the DGT.

For the mining sector, a tax holiday is available for the integrated upstream basic metal industry (with or without integrated derivative product processing facilities). Many smelter companies thus expect to be eligible for a tax holiday facility. However, by including the smelter business in the (separate) tax allowance incentive, the Government wishes to encourage investors in smelters (only) to apply for the tax allowance (and not for the tax holiday).

The tax holiday facility is available based on recommendations generated by the Online Single Submission (OSS) system, or applications submitted by BKPM to the MoF via the DGT for up to four years following the effective date of PMK 130, i.e. until 8 October 2024.

On 9 October 2024, Minister of Finance Regulation No. 69 Year 2024 (“PMK 69”) was issued as amendment to PMK 130. This regulation extends the above deadline up to 31 December 2025.

Whilst the eligibility and benefits of the Tax Holiday facility remain largely the same as in PMK 130, PMK 69 added new provisions related to the implementation of Pillar Two, as follows:

- A taxpayer who has obtained a Tax Holiday facility but also falls under a qualifying taxpayer being part of a multinational enterprise group that is subject to Global Minimum Tax under Pillar Two rules, is subject to an additional domestic top up tax under this rule.
- This domestic top up tax would also apply to those who have obtained the Tax Holiday facility prior to the effective date of PMK-69.

Tax Allowances

The Government issued Regulation No.78 Year 2019 ("GR 78/2019"), regarding the tax allowances that are available for companies that invest in certain business sectors and/or regions. GR 78/2019 revokes a series of previous GRs (i.e. GR No. 18 Year 2015 which was amended by GR No. 9 Year 2016).

The package of tax facilities consists of:

- A reduction in net taxable income of up to 30% of the amount invested, in the form of qualifying fixed assets (including land), prorated at 5% for six years, provided that the assets invested in are not being misused or transferred out within a certain period.
  The assets in question must satisfy the following conditions:
  i. They are new, unless originating from a complete relocation from another country;
  ii. They are listed on the principal licence, investment licence and investment registration, issued by BKPM and the provincial/regional one-stop service agency or on the business licence issued by the OSS agency as a basis for obtaining a tax allowance facility; and
  iii. They are directly owned by the taxpayer (not through a lease) and are utilised for the taxpayer's main business activity.
- Accelerated depreciation and amortisation for assets acquired for investment purposes;
- WHT on dividends paid to non-residents at a rate of 10%; and
- A longer tax loss carry-forward period, from five years to a maximum of ten years.

Mining sector tax incentives are also available, subject to the satisfaction of certain criteria for the following activities:

- Basic iron and steel manufacturing;
- Iron sand processing and refining;
- Gold and silver processing and refining;
- Certain brass, iron ore, uranium, thorium, tin, lead, copper, bauxite/aluminium, zinc, manganese, and nickel processing and refining activities; and
- Coal in the form of coal gasification, coal liquefaction, and coal upgrading.

Particularly with regard to coal liquefaction and coal upgrading, these income tax incentives are generally only applicable to activities undertaken outside Java.

GR 78/2019 sets out the criteria for each designated business sector and/or region regarding the investment value, the number of Indonesian workers, and the level of local content. This regulation only sets out the high-level criteria for enjoying the tax incentives, and leaves the detailed requirements to be determined by the relevant Ministers.

GR 78/2019 confirms that taxpayers who obtain this tax allowance facility cannot enjoy other tax facilities, such as:

- Tax facilities for Integrated Economic Development Zones (*Kawasan Pengembangan Ekonomi Terpadu* – "KAPET");
- Tax holiday facility; and
- Taxpayers granted a super deduction facility on labour-intensive industries, as provided for under GR No. 94, Year 2010, as amended by GR No. 45, Year 2019.

VAT

The delivery of goods and services in Indonesia is generally subject to VAT, except for the delivery of certain pre-determined types of goods and services. Companies delivering VAT-

able products are entitled to claim input VAT on goods and/or services, provided that the goods and/or services are necessary for the companies' business activities.

Apart from mining companies that produce gold bars for the Government's foreign exchange reserve, mining companies generally need to register for VAT purposes.

VAT Rate

Under the HPP Law, the VAT rate is to be increased from the previous rate of 10% to:
a. 11% - from 1 April 2022.
b. 12% - starting from 1 January 2025.

On 31 December 2024, MoF Regulation No.131 Year 2024 stipulating new VAT rate of 12% applicable from 1 January 2025. The 12% VAT rate is applicable to the import and domestic delivery of taxable goods. The VAT treatments are as follows:
a. VAT Treatment for delivery of luxurious goods
    - From 1 January to 31 January 2025 – the 12% rate is applied on a Tax Base using Other Value (*Dasar Pengenaan Pajak/DPP Nilai Lain*). The *DPP Nilai Lain* is set at 11/12 of the selling price, which renders the "effective" VAT rate to be 11%; and
    - Starting 1 February 2025 – the 12% rate is applied on the normal Tax Base in the form of the selling price.

b. VAT treatment for delivery of services and non-luxurious goods
    For taxable goods (that is not luxurious) and services, the 12% rate is applied on the *DPP Nilai Lain*, which is set at 11/12 of the import value, selling price, or compensation, which renders the "effective" VAT rate to be 11%.

As with the general rule, the Input VAT related to these transactions can be credited.

VAT Object in the case of Mining Products

Pursuant to the Job Creation Law, the supply of coal, even in an unprocessed state, is now a VAT-able supply. As a result, coal miners need to register for VAT purposes. The miner should then be entitled to an input credit for the VAT incurred on relevant costs, but also needs to add VAT to the sales prices of its coal supplies at the prevailing VAT rate. The rate is currently 11% for domestic supply and 0% for exports.

On 28 June 2021, the Government of Indonesia issued GR No. 70 Year 2021 ("GR 70"), which stipulates that gold granules remain subject to VAT but not collected (previously VAT collected). Such facility can be obtained by fulfilling the following requirements::
a. Having a diameter of at least 7 (seven) millimeters;
b. Having a refinement purity of 99.99% based on the Indonesian National Standards and/or accredited by the London Bullion Market Association Goods Delivery; and
c. Constituting production proceeds and being delivered by CoW, IUP, IUPK or IUPR holders to entrepreneurs, who will further process the gold granules to produce main products in the form of gold bars and/or gold jewellery.

Upon failure to fulfil the above requirements, VAT will be collected accordingly.

On 7 December 2023, Minister of Finance Regulation No. 133 Year 2023 ("PMK 133") was issued as an implementing regulation of GR 70. PMK 133 further elaborates that gold granules transferred to other entrepreneurs (who do not process gold granules into gold bars) either within the customs area or for export purposes shall be subject to the collection of VAT.

Under the HPP Law and GR No. 49 Year 2022, the following VAT treatments have been in effect since 1 April 2022:

a. Minerals (except for those mentioned in point b) below) are subject to effective VAT rate at 11%;
b. Iron ore, tin ore, gold ore, copper ore, nickel ore, silver ore and bauxite ore are subject to VAT but are exempted;
c. Gold bars having a gold content of at least 99.9% (proven by a certificate) including gold bars the ownership of which is digitally recorded, other than those for the Government's foreign exchange reserve are subject to VAT but not collected; and
d. Gold bars for the Government's foreign exchange reserve are not subject to VAT.

Pre-Production VAT

During the pre-production stage, under the VAT Law, as most recently amended by the HPP Law, subject to the fulfilment of the creditability criteria, all of the input VAT that has been incurred is creditable. Furthermore, since the company will not have impose any output VAT during the pre-production period, a VAT overpayment position is likely.

Claims for refunds of pre-production VAT overpayments should be requested at the end of the fiscal year (previously these could be refunded on a monthly basis). Further, if the company fails to commence production (defined as the delivery and/or export of VAT-able goods/services) within three years (five years for certain sectors, including the mining sector, that produce taxable mining goods) from the date on which the company first credited the input VAT, then the company must repay the VAT refund and penalty by the end of the month following such failure to deliver the VAT-able goods/services. This timing requirement obviously presents a problem for long-term mining projects, which may take several years to enter into production.

IUPK-OP Holders as VAT and Luxury Sales Tax Collectors

On 19 December 2018, the Government issued MoF regulation No. 166/PMK.03/2018 ("PMK 166"), which appoints the holders of mineral IUPK-OPs originating from the conversion of "active" CoWs that were issued no later than 31 December 2019 as Collectors of VAT and Luxury Sales Tax (LST).

Being a VAT and LST Collector requires the holder of the mineral IUPK-OP to remit VAT and LST on purchases/imports directly to the State Treasury. Supplies of up to IDR 10 million per annum (inclusive of VAT and/or LST) and payments for purchases of oil and non-oil fuels from Pertamina are exempted.

Where an entity is exempt from its obligations as a VAT Collector, the standard VAT mechanism applies, meaning that the vendor in question will charge and collect VAT and/or LST from the IUPK-OP holder.

WHT

Mining companies are obliged to withhold tax on payments for dividends, interest, royalties, and most types of services.

WHT is payable on interest and royalty payments to Indonesian companies at a rate of 15%.

WHT of 2% is applicable to payments for most types of services made to Indonesia-resident entities. If payments are made to non-residents, the WHT rate is 20%. A tax treaty may provide outright relief on service payments and reduce the WHT on payments of dividends, interest, and royalties (generally to 10% or 15%). The DGT- regulated procedures must be followed in order to access the benefits of a tax treaty, including a pre-determined disclosure form and measures to prevent tax treaty abuse.

The Job Creation Law outlines a number of changes to the tax treatment of dividends:

a. Income tax and WHT will no longer be imposed on dividends paid to Indonesian companies.
b. Foreign-sourced dividends have become non-taxable, provided that at least 30% of the profits are reinvested in Indonesia.

Final Tax on Interest on Deposits of Mining Export Proceeds (*Devisa Hasil Ekspor* or "DHE")

Interest income, either in foreign currency or in IDR, on DHE deposits that have been placed domestically with a bank that is incorporated or domiciled in Indonesia, or with a branch of a foreign bank in Indonesia, shall be subject to final income tax at certain rates (0% – 10%) depending on the time period of the deposit, as shown in the tables below:

Table 5.3 Final Tax on Interest of Mining Export Proceeds

Funds denominated in foreign currency		Funds converted from foreign currency to Rupiah	
Rates	Placement Period	Rates	Placement Period
0%	> 6 months	0%	≥ 6 months
2.5%	6 months	2.5%	3 months up to < 6 months
7.5%	3 months up to < 6 months	5%	1 months up to < 3 months
10%	1 months up to < 3 months		

PBB

Under MoF Regulation No. 186/PMK.03/2019 concerning the classification and procedures for determining the sales value of PBB objects for certain sectors, including the mining sector (minerals and coal) ("PMK 186"), PBB in the mining industry generally covers land and/or buildings located in the mining areas, including locations both within the mining licence area and outside the mining licence area that are used for mining activities. PBB is applicable to both onshore and offshore activities.

PMK 186 defines PBB objects as follows:

- Land surfaces, including: (1) onshore areas (such as reserve production areas, unproductive areas, emplacement areas, security areas, etc.); and (2) offshore areas;
- Earth bodies; and
- Building structures that are permanently attached to the land, and that are used for mining activities.

The PBB rate is 0.5% of the taxable sale value of the PBB object. The taxable value for mining assets is stipulated as a proportion of the sales value of the PBB object, i.e. 40% of the sale value for PBB objects.

The sale value of PBB objects is determined by the DGT on behalf of the MoF, and updated periodically, depending on the stage of economic development of the region in question.

PMK 186 stipulates the following:

- For land surfaces, the sales value of PBB objects will vary according to the characteristics of their use (e.g. not yet utilised, production reserve area, unproductive area, safety area and emplacement area). This is obviously relevant to mineral and coal mining.
- For earth bodies, the sales value of PBB objects will depend on the net operating revenue from mining (which is determined based on the actual sales price or benchmark price, whichever is higher) from the previous year if the mine is already in the production stage. Otherwise, the sales value of PBB objects will be determined by the DGT.
- For buildings, the sales value of PBB objects is based on the "New Acquisition Price". This is defined as all of the costs incurred to acquire the PBB object at the time of its assessment, less depreciation, based on the physical condition of the PBB object.

5.3 Tax Regime for a CoW/CCoW/CCA Company

One of the key features of these contracts is their *lex specialis* status, meaning that the terms in the contract override the generally prevailing law. For example, when special tax rules are set out in a contract, these tax rules generally take precedence over the prevailing Tax Laws.

Generally, the tax rules in a contract will reflect those that were in force at the time when the contract was signed, although there may be some exceptions. Typically, a contract fixes the tax rules for the duration of the contract (with the exception of second-generation coal contracts, which generally follow the prevailing tax regulations).

Taxation matters that are not governed by the contracts should follow the prevailing Tax Laws and regulations.

The advantages of having *lex specialis* tax rules in a contract include tax stability and predictability throughout the life of the project, or at least until the end of the contract term.

The disadvantage of *lex specialis* tax rules is that the mining company may not always be able to take advantage of favourable changes in the wider ITL, such as reductions in income tax rates or introductions of tax incentives. Despite this, *lex specialis* tax rules have historically been favoured by investors, particularly for high-capital, long-life mining projects, as they provide stability for various aspects of the mining operations, including tax.

The mining tax regime that is included in a contract is relatively straightforward. In some cases, however, the language of the contract may be open to a range of interpretations, which can result in disputes between the mining company and the DGT.

The transitional provisions of the Mining Law (Article 169) provide that existing contracts will remain effective until their expiration dates. However, confusingly the contracts are still required to be adjusted within one year in order to conform to the Mining Law, except for the provisions regarding state revenue (except, again, if efforts are made to increase the state revenue). Accordingly, the Government has approached all the CoW and CCoW holders to amend the terms of their contracts, a process that has now largely been completed (see Section 4.5 of this Guide, "CoW and CCoW Renegotiations", for further details).

Appendix E of this Guide summarises the typical tax treatments for particular generations of contracts. Not all generations of contracts have specific tax rules and, as such, their tax treatments may simply follow the prevailing ITL. In assessing the applicable tax regime, a detailed review of the contract is necessary. In addition, the tax treatments described in this guide are generic, and variations may exist between the various generations of contracts.

CoWs and CCoWs with *lex specialis* tax provisions are to be honoured until the end of the contract period, and thus are not directly impacted by GR 37/2018 or GR15/2022 (although most of these CoWs and CCoWs are in any case being phased out).

CIT

Similarly to an IUP/IUPK company, a contract company is subject to income tax on its net taxable profits. In the contract, the expenditure described below is normally allowed to be deducted from the gross income.

Mineral CoWs typically have *lex specialis* CIT rules. With regard to a CCA/CCoW, first-generation and most third-generation contracts include lex specialis CIT provisions. Where *lex specialis* tax rules do not apply, the company must follow the prevailing income tax rules for the CIT calculation.

Bookkeeping in USD

For tax purposes, a contract company may opt to apply bookkeeping in USD and in the English language. The company needs to notify the DGT of its bookkeeping in USD no later than a month before the start of the accounting year in USD.

Irrespective of the currency and language used, the company may settle its CIT liabilities in either IDR or USD, and must file its tax returns in the Indonesian language.

With respect to CIT, the relevant tax returns should be presented in USD alongside the equivalent figures in IDR in the annual CIT return.

Exploration and Development Expenses

On-site exploration expenses are generally deductible in the year in which the expenses are incurred, provided such expenses relate to the contract area. Mine development expenses should generally be capitalised and amortised in accordance with the amortisation rules in the contract.

Tax Registration

A company holding a contract is required to register for tax and to obtain an NPWP. The contract company should register for tax at the local tax office where the mine operates. This includes meeting its VAT obligations (if applicable and not centralised at the head office) and WHT.

Reclamation Reserve

Per the prevailing tax rules, some generations of contracts may require reference to the previous ITL and/or a deposit with a state-owned bank in order for the reclamation provision to be deductible.

Operating Expenses

Operating expenses are generally treated as per the prevailing law.

Selling and General and Administrative Expenses

These are generally treated as per the prevailing law.

Pre-Incorporation Expenses

The shareholder(s) of a contract company may incur expenditure before the contract company is incorporated and the respective mining contract is signed.

Contracts normally allow these pre-incorporation expenses to be transferred from the shareholder(s) to the contract company. These pre-incorporation expenses are recognised as deferred pre-operating costs, and may be claimed as deductions, by way of amortisation, starting from the beginning of production operations.

Most contracts require these pre-incorporation expenses to be audited by a public accountant and approved by the DGT. However, the implementation of this rule is not entirely clear.

There are a number of transactional tax issues that need to be addressed relating to the transfer of pre-incorporation expenses from the shareholder(s) to the company, including the VAT and WHT obligations (although VAT may be exempt under the contract).

Depreciation of Fixed Assets

Fixed assets are generally deductible through depreciation. Different generations of contracts include different depreciation rules, but most offer an accelerated rate.

Mining infrastructure, such as buildings, roads, bridges, and ports, is generally depreciable. Public infrastructure, such as roads, schools, and hospitals, is usually deductible through depreciation under a contract's rules.

Fixed assets should be classified in categories based on their useful lives. Accelerated depreciation rates may be available for fixed assets that are located in the contract area. Earlier generations of CCoWs/CCAs usually provide an investment allowance (i.e. a hypothetical depreciation) and have a fixed depreciation rate that is based on the straight-line method, irrespective of the types of assets.

For certain contracts, if the mine's life is shorter than the asset's fiscal useful life, then the remaining book value may be fully depreciated at the end of the mine's life.

Asset Revaluation

Generally treated as per the prevailing law.

Employee Benefits/ Facilities

Contracts normally provide for concessionary tax treatments of benefits provided to employees who reside in the contract area. Under the HPP Law, the costs of most of these benefits are deductible, but such benefits are not taxed in the hands of the employees. Please refer to Section 5.2 above for further explanation.

Interest Expenses

Most CoWs and CCoWs provide specific rules regarding DER. If such rules are not available in the contract, the company should follow the DER as stipulated in PMK-169 and PER 25.

Imports of Capital Equipment

Most contracts provide an exemption from Import Duty, VAT, and income tax on imports of capital equipment for up to the tenth year after the commencement of commercial production.

If no import facility is available under a contract, then relief or exemptions may be available under the prevailing laws.

On 13 August 2019, the MoF issued MoF regulation No. 116/ PMK.04/2019 ("PMK 116") revoking MoF regulation No. 259/PMK.04/2016. Effective from 11 October 2019, PMK 116 sets out the requirements for the transfer, re-exporting, or destruction of goods that have been imported by CoW and CCoW companies, and that have obtained exemptions from Import Duty and VAT upon import. In general, any transfer/re-exporting/destruction of goods that have been imported under exemptions within five years requires a recommendation from the BKPM and approval from the Customs Office. Failure to meet these requirements may lead to Import Duty and VAT being payable, plus associated penalties.

PBB

PBBs for CoW and CCoW companies are usually specifically governed in the contracts.

Sales Tax

Before the enactment of the VAT Law in 1984, Indonesia imposed a sales tax. Under the *lex specialis* rules, sales tax is still applicable to first-generation CCA companies at a maximum of 5% for certain services that are provided to CCA companies, payable on a self-remittance basis (similarly to WHT).

From 1 January 2013, MoF regulation No. 194/ PMK.03/2012 has also provided that first-generation CCA companies should not collect VAT on such services.

Amortisation of Intangible Assets

Intangible assets may include pre-operating costs, patents, rights, licences, etc.

Expenses that are incurred prior to production (with a useful life longer than one year, although some contracts do not require this) may be capitalised and amortised once production commences. These may also include expenses incurred by the contract company's shareholder(s) prior to the formation of the company (i.e. pre-incorporation expenses).

Tax Losses Carried Forward

Tax losses can be carried forward for the period stipulated in the contract. This is generally longer than the five-year carry-forward allowed under the prevailing ITL. Tax losses cannot be carried back.

VAT

With the exception of first-generation CCA companies that are subject to sales tax (see below), CoW/CCoW companies are subject to VAT on the utilisation of services and goods.

During pre-production, the company will not have any output VAT, as there will not yet have been any deliveries of mining products. Therefore, a VAT overpayment position is likely, as the company must pay input VAT to vendors on its purchases of taxable goods or services.

All VAT payments are denominated in Rupiah. If the company keeps its books in USD, then any outstanding VAT receivables could give rise to foreign- exchange issues, particularly if the receivables are long outstanding.

WHT

CoW and CCoW companies are obliged to withhold tax from payments of dividends, interest, royalties, and most types of services. The WHT rate will depend on the tax rules stipulated in the contract, the type of payment, and whether the recipient is a resident or a non-resident.

However, pursuant to MoF regulation No. 39/PMK. 011/2013, the MoF requires CoW and CCoW companies to apply the prevailing WHT rates to income payable to other parties (although this is often disputed by CoW and CCoW companies based on the *lex specialis* principles).

Latest Developments

At the time of writing, it has been reported that most CoW and CCoW holders have completed renegotiations resulting in amended CoWs/ CCoWs. As a follow up to the explanation in Section 4.5, the tax provisions in the amended CoWs and CCoWs generally maintain the higher CIT rate and adjust the other tax rules to follow the prevailing tax laws and regulations. Nevertheless, the fiscal regime for each contract should be reviewed on a case-by-case basis. The new tax provisions will take effect on the signing date of the amended CoWs and CCoWs.


Photo source: PT Bukit Asam Tbk

5.4 Other Taxation Considerations

Carbon Tax

As part of the Indonesian Carbon Pricing commercialisation mechanism, a Carbon Tax was introduced with the promulgation of HPP Law. The Carbon Tax framework complements the Indonesian mandatory carbon market, which is a sector-based regulated market and mechanism.

A large number of areas of clarification remain outstanding as regards the proposed Carbon Tax. However, the HPP Law indicates that the key framework will be as follows:

a) Tax objects: being those carbon emissions that have a "negative environmental" impact. This criterion will be progressively refined according to Indonesia's Carbon Tax "roadmap", which will ultimately cover:
   i) Carbon emissions reduction strategies;
   ii) Priority sector targets;
   iii) Alignment with new and renewable energy development; and
   iv) Alignment between various other policies;

b) Tax subjects: being individuals or corporations who:
   i) Buy goods containing carbon; or
   ii) Carry out activities that generate carbon emissions within a specified period. The elucidation to the HPP Law states that priority for the Carbon Tax will be given to corporate taxpayers and, at least initially, it will apply only to coal-fired power producers (as was the case during the voluntary trial period).

c) Initial milestones: the Carbon Tax programme is to be gradually implemented as follows:
   i) For 2021: development of a carbon trading mechanism;
   ii) For 2022 – 2024: introduction of a tax mechanism based on emissions limits (i.e. following a "cap and tax" formula) to be applied to coal-fired power plants from 1 April 2022 at IDR 30/kg CO_2e (circa USD 2.10/tonne CO_2 p.a.);
   iii) From 2025 onwards: full implementation of:
      a) A carbon trading mechanism; and
      b) The expansion of carbon taxation according to the readiness of the relevant sectors by considering economic conditions, the readiness of market players, etc.;

d) Tax rate: being the higher of:
   i) The price set by the domestic carbon market (on a kg CO_2e basis); or
   ii) IDR 30/kg CO_2e;

e) Facility: taxpayers who participate in carbon trading and the offsetting of emissions (as well as other mechanisms) may be granted:
   i) A Carbon Tax reduction; and/or
   ii) Other incentives for the fulfilment of Carbon Tax obligations;

f) Implementing rules: these will be in accordance with the roadmap and the allocation of Carbon Tax revenue to projects to increase control over climate change. Further implementing regulations will stipulate key features including the tax rate, tax base, administrative mechanism, and procedures aimed at reducing the Carbon Tax or other fulfilments of Carbon Tax obligations.

On 12 December 2022, the Government issued Government Regulation No 50 Year 2022 (GR-50) which stipulates the following administrative mechanisms:

- A "Carbon Taxpayer" is defined as an individual or company purchasing goods containing carbon or carrying-out activities which result in a certain level of carbon emissions within a certain time period.
- Carbon Tax is paid through self-payment or collection by a Carbon Tax Collector. A Carbon Taxpayer must submit an Annual Income Tax Return to report their calculation and payment of Carbon Tax at the latest 4 months after the end of the calendar year. While a Carbon Tax Collector must submit a monthly tax return at the latest on the 20th of the following month, late submission will be subject to the same penalty as other types of tax reporting. Certain taxpayers may be exempt from Carbon Tax reporting.
- Carbon Taxpayers and Collectors must record those activities which emit carbon, or the sale of goods containing carbon, so that the Carbon Tax due can be properly calculated. The recording of documents and information should be conducted in accordance with the general bookkeeping requirements and failure to do so will be subject to the same penalty as failure to maintain bookkeeping.

Non-Tax State Revenue

Royalties

Royalties are payable to the Government on a quarterly basis, based on the actual volume of production or sales. For CoW/CCoW companies, this is based on the terms of the contract. However, based on the prevailing regulations and current practice, the royalties should be paid prior to shipment.

The prevailing royalty rates applicable to IUP/ IUPK/IUPK-OP holders are set out in Chapter 3.

Dead Rent

Throughout the lives of all its mining interests, the company is required to pay annual dead rent, with the amount normally based on the number of hectares in the mining area and the stage the mining operations (e.g. there are different rates for the general survey, exploration, and exploitation stages).

Regional Tax

Mining companies shall be subject to the prevailing regional taxes. On 5 January 2022, Law No. 1 Year 2022 concerning the Financial Relationship between the Central Government and the Regional Government (the “HKPD Law”) was passed, amending Law No. 28 Year 2009 concerning Regional Tax and Retribution (the “PDRD Law”). A mining company may be liable for a number of regional taxes and retributions (except for first-generation CCoWs) at rates ranging from 1.5% to 25%. However, starting on 5 January 2025 this range will become 1.2% to 25% on a wide number of reference values that will be determined by the relevant Regional Government.

Contracts may limit the additional types and rates of regional tax introduced after the signing date of the contract. A summary of the different types of regional taxes is included in Appendix B.

Photo source: PT Aneka Tambang Tbk

Government Profit Share Under an IUPK-OP

Minerals – under an IUPK-OP

Specifically for holders of an IUPK-OP (a mining business licence that represents a conversion from an active CoW), in addition to the royalties, dead rent, land and buildings tax, and environmental and forestry regulations, the Government via GR 37/2018 also requires the IUPK-OP holder to make the following "profit share" payments:

- A Central Government profit share due at 4% of net profit – per the Mining Law and regulations; and
- A Regional Government profit share that is due at 6% of the net profit – per the Mining Law and regulations.

The above obligations are applicable from the calendar year following the issuance of the IUPK-OP. The net profit is determined after deducting CIT, based on the audited financial statements. The nature and tax deductibility of the "profit share" should be carefully considered.

Importantly, the Central Government and the Regional Government payment calculations appear to follow the accounting profit rather than the taxable income. In addition, it is not likely that the payments will constitute "taxes" for foreign tax credit or for other fiscal purposes, so any home country tax implications should be considered carefully. Finally, there will doubtless be scope for different calculation interpretations between the various Government bodies.

Coal – under an IUPK as a continuation of CCoW Operations

Similar to the above government share for IUPK-OP for minerals.

Purchase and Sale of Mining Interests

The direct transfer of a contract is subject to a number of requirements, making such transfers uncommon. The transfer of ownership (in whole or in part) is therefore generally achieved through the disposal of an interest in the company holding the contract.

The prevailing ITL stipulates that gains from the sale or transfer (in part or as a whole) of mining rights, participation in financing, or in the capital of a mining company constitutes a tax object (and is therefore taxable). Although this provision has been in effect from 1 January 2009, the operation of this provision is not entirely clear.

Purchases and Sales of Shares in an IUP/IUPK or Contract Company

This approach is common for acquisitions of mining properties in Indonesia. For a domestic seller, income tax is imposed on the profits that are earned on the sale. For a non-tax-resident seller, 5% income tax is due on the gross proceeds, unless relief is available under a tax treaty or the company being sold is a listed company in Indonesia (in this case, final tax of 0.1% is due on the sales proceeds, subject to certain requirements).

The prevailing ITL includes a long-arm capital gains tax provision. The DGT can treat the sale of a conduit or special purpose company established in a tax haven country, and that has an Indonesian subsidiary, as the sale of an interest in an Indonesian company. In this case, the DGT can impose 5% final income tax on the gross proceeds of such a sale.

To date, there has been no definition of a tax haven, or what the implications would be if the indirect ultimate shareholder of the tax haven company were resident in a jurisdiction with which Indonesia has a tax treaty.

Some Key Tax Considerations for Investments

A tax-efficient investment structure can create significant tax savings over the life of a mine. A favourable structure may also be effective for project financing purposes. Some relevant contract and IUP/IUPK issues to be aware of include the following:

- Apart from state-owned enterprises and/or non-minerals and rock commodity IUP holders which may hold more than one IUP and/or IUPK under the prevailing Mining Law, an individual legal entity can generally only hold one contract, IUP, or IUPK. This ring-fencing rule, together with the fact that there is no group relief for income tax purposes, means that careful planning is required, particularly in relation to the use of service companies within the same group, as well as inter-company charges, inter-company borrowing, etc.
- A tax-efficient shareholding structure can enhance a project's feasibility (note that under some tax treaties, and subject to the fulfilment of Certificate of Domicile and no treaty abuse rule requirements, WHT on dividends may be reduced from 20% to 15%, 10%, or even 5%).
- Sales of shares in a contract or in IUP/IUPK companies that are not listed on the IDX by foreign investors are taxed at 5% on the gross proceeds, unless protected by a tax treaty.
- Some contracts offer a reduced WHT rate for dividend payments to foreign founder shareholder(s).
- Project financing strategies or intra-group financing should consider the latest developments in relation to the thin capitalisation rules, and note that debt forgiveness is subject to tax in Indonesia (this is a common issue for unsuccessful exploration projects).
- The overall investment structure should consider both mineral processing and any refinery or downstream businesses.

Core Tax Administration System

On 18 October 2024, Minister of Finance Regulation No. 81 Year 2024 ("PMK 81") was issued to streamline several regulations in relation to the implementation of the Core Tax Administration System, to be implemented from 1 January 2025.

In brief, PMK 81 adopts most of the existing rules under the 42 MoF regulations revoked by PMK 81 and makes some alignments in terms of payment and reporting deadlines for monthly tax obligations, synchronises the use of several terminologies, and emphasises the imposition of sanctions upon failure to fulfil the stipulated tax obligations.

In addition, PMK 81 also changes some of the provisions affecting the imposition of tax and introduces new avenues available in the Core Tax System such as Taxpayer's Deposit and electronic communication channels available under the new system which in turn will change the administrative mechanism for various procedures. The procedures covered under PMK 81 are applicable for all types of taxes, namely Income Tax, VAT, LST, Stamp Duty, Sales Tax, PBB, and Carbon Tax.

Photo source: PT Freeport Indonesia

6 Accounting considerations

This accounting considerations section discusses certain accounting issues that are commonly faced by mining companies operating in Indonesia. However, it should be noted that the discussion in this guide does not attempt to cover all of the accounting requirements applicable to mining companies operating in Indonesia. Please contact one of our advisers (listed in Appendix F) to discuss these further.

6.1 Exploration and Evaluation (E&E)

Exploration costs are incurred to discover mineral resources. Evaluation costs are incurred to assess the technical feasibility and commercial viability of the resources found. Exploration starts when the legal rights to explore have been obtained. Expenditure incurred before obtaining the legal right to explore is generally expensed, but an exception to this would be separately acquired intangible assets, such as a payment for an option to obtain legal rights.

The accounting treatment of E&E expenditure (capitalising or expensing) can have a significant impact on the financial statements and reported financial results, particularly for entities at the exploration stage with no production activities.

Statement of Financial Accounting Standard (SFAS) No. 106 "Exploration for and Evaluation of Mineral Resources" sets out the accounting treatment for E&E expenditures. Under SFAS No. 106, an entity shall determine an accounting policy specifying which expenditure items may be recognised as E&E assets, and apply the policy consistently. In making this determination, an entity considers the degree to which the expenditure can be linked to the discovery of specific mineral resources. An entity may change its accounting policies for E&E expenditure, if the change makes the financial statements more relevant to the economic decision-making needs of users and no less reliable, or more reliable and no less relevant to those needs. An entity shall judge relevance and reliability using the criteria in SFAS No. 208, "Accounting Policies, Changes in Accounting Estimates and Errors".

Photo source: PT Vale Indonesia Tbk

Expenditure incurred for exploration activities should be expensed unless it meets the definition of an asset. An entity recognises an asset when it is probable that economic benefits will flow to the entity as a result of the expenditure. These economic benefits might be available through the commercial exploitation of mineral reserves, the sale of exploration findings, or further development rights. It is often difficult for an entity to demonstrate that the recovery of exploration expenditure is probable.

Evaluation activities occur at a more advanced stage than exploration activities, and hence they are more likely to meet the criteria for recognition as an asset. However, each project needs to be considered on its merits. The amount of evaluation work required to conclude that a viable mine exists will vary for each area of interest.

Management needs to develop a consistent and transparent accounting policy that is applied throughout the various phases of E&E activity, highlighting the cut-off point before the capitalisation of costs commences. The costs incurred after a probability of economic feasibility is established are capitalised only if the costs are necessary to bring the resources to commercial production. Subsequent expenditure should not be capitalised after commercial production commences, unless they meet the asset recognition criteria.

E&E assets can be measured using either the cost model or the revaluation model. In practice, most companies use the cost model. The depreciation and amortisation of E&E assets do not usually commence until the assets are placed in service. The E&E assets recognised should be classified as either tangible or intangible according to their nature.

E&E assets are reclassified from the E&E account when evaluation procedures have been completed. E&E assets for which commercially viable reserves have been identified are reclassified as development assets. E&E assets are tested for impairment immediately prior to their reclassification from E&E, and as well as when impairment indicators are identified, which could include but are not limited to cases when:

- Rights to explore in an area have expired or will expire in the near future, without the possibility of renewal;
- No further exploration or evaluation has been planned or budgeted for;
- A decision has been made to discontinue E&E in an area because of the absence of commercial reserves; and
- Sufficient data exists to indicate that the book value will not be fully recovered from future development and production.

6.2 Development

Development expenditure represents costs that have been incurred to obtain access to proven and probable reserves, and to provide facilities for extracting, treating, gathering, transporting, and storing the minerals.

Development expenditure is capitalised to the extent that it is necessary to bring the property to commercial production. Such expenditure should be directly attributable to an area of interest, or be capable of being reasonably allocated to an area of interest. Costs that could meet these criteria include:

- The purchase prices for development assets, including any duties and any non-refundable taxes;
- Costs directly related to bringing the asset to the location and condition for its intended use, such as drilling costs or costs for the removal of overburden to establish access to the ore reserve; and
- The present value of the initial estimate of the future costs of dismantling and removing the item and restoring the site on which it is located, where such obligations arise when the asset is acquired or constructed.

The allocation of expenditure includes direct and indirect costs. Indirect costs are included only if they can be directly attributed to the area of interest. These may include items such as road construction costs and costs to ensure conformity with environmental regulations. The costs associated with re-working engineering design errors or those attributed to inefficiencies in development should not be capitalised.

General or administrative overheads relating to the whole entity, rather than to specific phases of operations, are expensed as they are incurred. Charges for the time of head office staff may be capitalised where there is a clear and direct allocation of their time to specific development activities.

Entities should also consider the extent to which “abnormal costs” have been incurred to develop the asset. SFAS 216 requires that the cost of abnormal amounts of labour or other resources involved in constructing an asset should not be included in the cost of that asset. Entities will sometimes encounter difficulties with their mining plans and make adjustments to them, entailing associated costs, and entities should develop a policy on how such costs will be assessed as being normal or abnormal.

Expenditure incurred after the point at which commercial production has commenced should only be capitalised if the expenditure meets the asset recognition criteria.

Pre-Production Sales

There may be a long commissioning period for a mine, sometimes longer than twelve months, during which production gradually increases towards its design capacity. An entity may receive revenue from the saleable material produced during this phase. Where test production is considered necessary for the completion of the asset, the proceeds from the sale and the cost to produce the material should be recognised in the profit or loss.

6.3 Production

Revenue Recognition

Mining companies in Indonesia apply SFAS 115, "Revenue from Contracts with Customers" to determine the timing and amount of revenue that can be recognised for the sale of goods and services. SFAS 115 is adapted from IFRS 15, "Revenue from Contracts with Customers". The revenue recognition model under SFAS 115 emphasises the satisfaction of the performance obligations identified in a contract with customers for a seller to recognise revenue. Entities apply a five-step approach to determine when and how much revenue can be recognised:

STEPS

1. Identify the contract with the customer;
2. Identify the separate performance obligations in the contract;
3. Determine the transaction price;
4. Allocate the transaction price to the separate performance obligations; and
5. Recognise revenue when (or as) the performance obligation is satisfied.

Entities need to exercise judgment when considering the terms of contracts and all of the facts and circumstances, including any implied contract terms. Revenue recognition can present challenges for mining entities, so they need to analyse the facts and circumstances in order to determine when and how much revenue to recognise. Extracted mineral ores may need to be moved long distances, and may need to be of a specific type in order to meet the smelter or refinery requirements. Entities may exchange products in order to meet logistical, scheduling, or other requirements.

Some common challenges relating to revenue recognition in the mining industry are as follow:

a. Agency Relationships: Principal versus agent considerations

Mining entities will often engage in other activities in addition to selling extracted ore, such as the transportation of products. It is important to identify whether a mining entity is acting as a principal or an agent in transactions as it is only when the entity is acting as a principal that it will be able to recognise revenue based on the gross amount received, or a receivable in respect of its performance under a sales contract. Entities acting as agents do not recognise revenue for any amounts received from a customer to be paid to the principal. Revenue is recognised for any commission or fee earned for facilitating the transfer of goods and services. Whether the entity is acting as an agent or principal depends on the facts of the relationship, which can require the use of significant judgment.

An entity is the principal in an arrangement if it obtains control of the goods or services of another party before then transferring control of those goods or services to the customer. Obtaining title momentarily before transferring a good or service to a customer does not necessarily constitute control.

An entity is an agent if its performance obligation is solely to arrange for another party to provide the goods or services. Indicators that the entity is an agent include the following:

- The other party is primarily responsible for the fulfilment of the contract;
- The entity does not have inventory risk;
- The entity does not have latitude to set prices;
- The entity does not bear customer credit risk; and
- The entity's consideration is in the form of a commission.

An agent recognises revenue arising from the commission or fees earned for facilitating the transfer of goods or services. Its consideration is the "net" amount retained after paying the principal for the goods or services provided to the customer.

b. Delivery – Cost, Insurance and Freight (CIF) versus FoB

An entity will recognise revenue when (or as) a good or service is transferred to the customer, and the customer obtains control of that good or service. Control of an asset refers to an entity's ability to direct the use of and obtain substantially all of the remaining benefits (that is, the potential cash inflows or savings in outflows) from the asset.

Resources are often extracted from remote locations, and require transportation over significant distances. Transportation by truck instead of by rail can be a significant cost. There are two main types of contracts for future shipping costs – CIF and FOB.

CIF contracts mean that the selling entity will have responsibility for paying costs, insurance and freight until the goods reach a final destination, such as a refinery or an end user. FOB contracts, on the other hand, mean that the selling entity is deemed to have delivered the goods when the goods are delivered to an independent carrier. The buyer has to bear all of the costs and risks of loss pertaining to the goods from that point.

Under both approaches, the contractual terms mean that risk and title (and therefore control) of the commodity normally pass at the ship's rail, although the timing of revenue recognition could change under the new standard, depending on the terms of trade. The difference between the shipping terms affect which party is responsible for freight costs.

Sales of goods

An entity recognises revenue when it satisfies a performance obligation by transferring a promised good or service to a customer. Revenue is recognised at the point when control is transferred to the customer. Under CIF and FOB terms, this will generally follow the terms of the contract, usually when goods pass the rail on a vessel that has been selected by the buyer, at which point the buyer will control the goods.

Transportation

SFAS 115 requires an entity to account for each distinct good or service as a separate performance obligation. Freight or transportation services may meet the definition of a distinct service. A performance obligation for transportation generally meets the criteria for a performance obligation that is settled over a period of time, and the revenue will be recognised over the period of the transfer to the customer. If a performance obligation does not meet the criteria, it will be settled at a future point in time, and revenue will likely be recognised when the customer receives the goods.

Factors that might indicate the existence of a separate performance obligation for transportation include the following:

- The specialism of any of the vehicles or technology involved with providing transportation;
- The cost, distance or time associated with providing the transportation; and
- Whether the terms of the contract allow the customer to opt out of the transportation services and collect the commodity themselves.

c. Provisional Pricing Arrangements

Sales contracts for commodities often incorporate provisional pricing, which might arise for a number of reasons:

- The time taken to transport the product might mean that the customer wishes to pay the market price at the date of eventual delivery to the final destination – in such situations, a provisional price is charged on the date at which control of the product is initially transferred. The final price is generally an average market price for a particular future period, or a final assayed amount.
- The product is being transported in concentrated form, and the final quality and volume of component commodities will not be known until further processing at its final destination.

Revenue will be recognised when the performance obligation is satisfied, which is when the customer obtains control of the product. The entity will also need to determine the transaction price, which is the amount of consideration to which it expects to be entitled for the transaction. Management should first consider whether provisionally priced contracts include embedded derivatives that are within the scope of the guidance on financial instruments. A mining entity will apply the separation and/or measurement guidance in other standards first, and then apply the guidance in the revenue standard to the remaining portion of the contract.

The transaction price might be variable or contingent on the outcome of future events, which would include provisional pricing arrangements. Variable consideration is subject to a constraint. The objective of the constraint is that an entity should recognise revenue through the performance obligations being satisfied, to the extent that a significant revenue reversal is not “highly probable”, in future periods. Such a reversal would occur if there were a significant downward adjustment to the cumulative amount of revenue recognised for that performance obligation. Judgment will be required to determine whether the amount to be recognised is subject to a significant reversal. SFAS 115 has a list of factors that could increase the likelihood or magnitude of a revenue reversal. Management’s estimate of the transaction price will be reassessed at the end of each reporting period.

d. Take-or-pay and similar long-term supply agreements

Long-term sales contracts are common in the mining industry. Producers and buyers may enter into sales contracts that are often a year or longer in duration, to secure supply and reasonable pricing arrangements. Contracts will typically stipulate the sale of a set volume of product over the period, at an agreed price. There are often clauses within the contract relating to price adjustments, or to escalation over the course of the contract to protect the producer and/or the seller from significant changes to the underlying assumptions at the time when the contract was signed. Long-term commodity contracts frequently offer the counterparty flexibility and options in relation to the quantity of the commodity to be delivered under the contract.

Mining entities should continue to first assess whether these arrangements represent financial instruments, or contain embedded derivatives that should be accounted for under the standards on financial instruments (e.g., they should assess whether a contract with volume flexibility contains a written option that can be settled net, either in cash or using another financial instrument). In addition, mining entities should continue to evaluate whether such arrangements convey the right to use a specific asset, and therefore constitute a lease under the leasing standards.

In relation to take-or-pay contracts, only the minimum amount specified would generally be considered a contract, as this is the only enforceable part of the agreement. Options in the contract to acquire additional volumes will likely be considered as separate contracts at the time when the customer exercises the option, unless such options provide the customer with a material right (e.g. an incremental discount). Where there is a material right, the option should be accounted for as a separate performance obligation in the original contract. This will require the total transaction price to be allocated to the individual performance obligations, using standalone selling prices.

Customers may not exercise all of their contractual rights to receive a good or a service in the future. Unexercised rights are often referred to as breakage. An entity should recognise estimated breakage as revenue in proportion to the historical pattern of exercised rights. Management might not be able to determine whether there will be any breakage, or the extent of such breakage. In this case, they should consider the constraints on variable consideration, including the need to record any minimum amount of breakage. Breakage that is not expected to occur should be recognised as revenue when the likelihood of the customer exercising its remaining rights becomes remote. The assessment should be updated at the end of each reporting period.

For take-or-pay arrangements, this may mean that an entity may be able to recognise revenue in relation to breakage amounts in a period earlier than when such breakage occurs, provided it can demonstrate that the customer is not expected to exercise these rights. Given the nature of these arrangements and the inherent uncertainty in predicting a customer's behaviour, it may be difficult to satisfy this requirement.

Stripping Costs During the Production Phase

An entity usually obtains two kinds of benefits from its stripping activity. These are the extraction of ore in the current period in the form of inventory and improved access to the ore body for future periods. As a result, two different kinds of assets are created. If stripping activity in the current period does not provide an identifiable benefit, the associated costs are expensed in the current period.

To the extent that the benefits of stripping activity are realised in the form of inventory produced, the associated costs are recorded in accordance with the principles of SFAS 202: "Inventory".

To the extent that the benefits are realised in the form of improved access to the ore body in the future, the associated costs are recognised as a “stripping activity asset” if all of the following conditions are met:

a. It is probable that the future economic benefit associated with the stripping activity will flow to the entity;
b. The entity can identify the component of the ore body to which access has been improved; and
c. The costs relating to the stripping activity associated with that component can be measured reliably.

Identifying components of the ore body is a complex process which requires the use of management’s judgment. It might be difficult separately to identify the costs of producing inventory and the costs of improving access to the ore body. In such cases, costs are allocated between the inventory produced and the stripping activity asset using a relevant production measure. The allocation of costs cannot be based on a sales measure.

Stripping assets are initially measured at cost, and then subsequently measured at cost less depreciation, amortisation and impairment losses. While rare in practice, stripping activity assets may also be carried at revalued amounts if the existing asset of which it is a part is carried at its revalued amount. A stripping activity asset is typically depreciated based on the Units of Production (UoP) method, unless another method is more appropriate.


Photo source: PT Bukit Asam Tbk

Leases

Mining companies in Indonesia apply SFAS 116, "Leases" which is adapted from IFRS 16, "Leases". The SFAS 116 model requires lessees to capitalise nearly all of the leases on the balance sheet to reflect the right to use an asset for a period of time, as well as the associated liability for payments to use the asset, except for certain short-term leases for a period of less than twelve months and leases of low-value assets.

Mining companies will need to carefully consider all of the major arrangements they have entered into that may increase both the assets and liabilities on the balance sheet under the lease standard such as mining equipment, vehicles, land and buildings. Similarly, mining contractor companies will need to consider all of the major arrangements they have entered into, such as leases of construction equipment and vehicles, as well as land and buildings, that may give rise to balance sheet lease accounting under the current leases standard.

Determining whether a contract contains a lease

SFAS 116 prescribes that a contract contains a lease when:

a. There is an identified asset; and
b. The contract conveys the right to control the use of the identified asset for a period of time in exchange for consideration.

An asset can be identified implicitly or explicitly in the contract. A contract may explicitly define a particular asset, or it may do so implicitly when the supplier can fulfil the contract only through the use of a particular asset. The right to substitute an asset if it is not operating properly, or if a technical update is required, does not prevent the contract from being dependent on an identified asset.

The definition of a lease is now driven to a greater degree by the question of which party to the contract controls the use of the underlying asset for the period of its use. A customer needs to have the right to obtain substantially all of the benefits from the use of the asset (the "benefits" element), while also having the ability to direct the use of the asset (the "power" element).

The right to control the use of an identified asset is the key distinguishing factor, because under a lease the customer has control over the right to use the identified asset, whereas under a simple supply contract, the supplier retains control over the use of the particular asset. The key question is thus which party (customer or supplier) has the right to direct how and for what purpose the identified asset is used throughout the contract period. SFAS 116 gives several examples of relevant decision-making rights:

a. The right to change what type of output is produced;
b. The right to change when the output is produced;
c. The right to change where the output is produced; and
d. The right to change how much of the output is produced.

This list is not exhaustive and none of the above criteria are mutually exclusive, meaning that there is no threshold to determine whether any of the criteria are more important than the others. The relevance of each of the decision-making rights depends on the underlying asset being considered.

The flowchart below summarises the analysis that needs to be performed to determine whether a contract contains a lease:

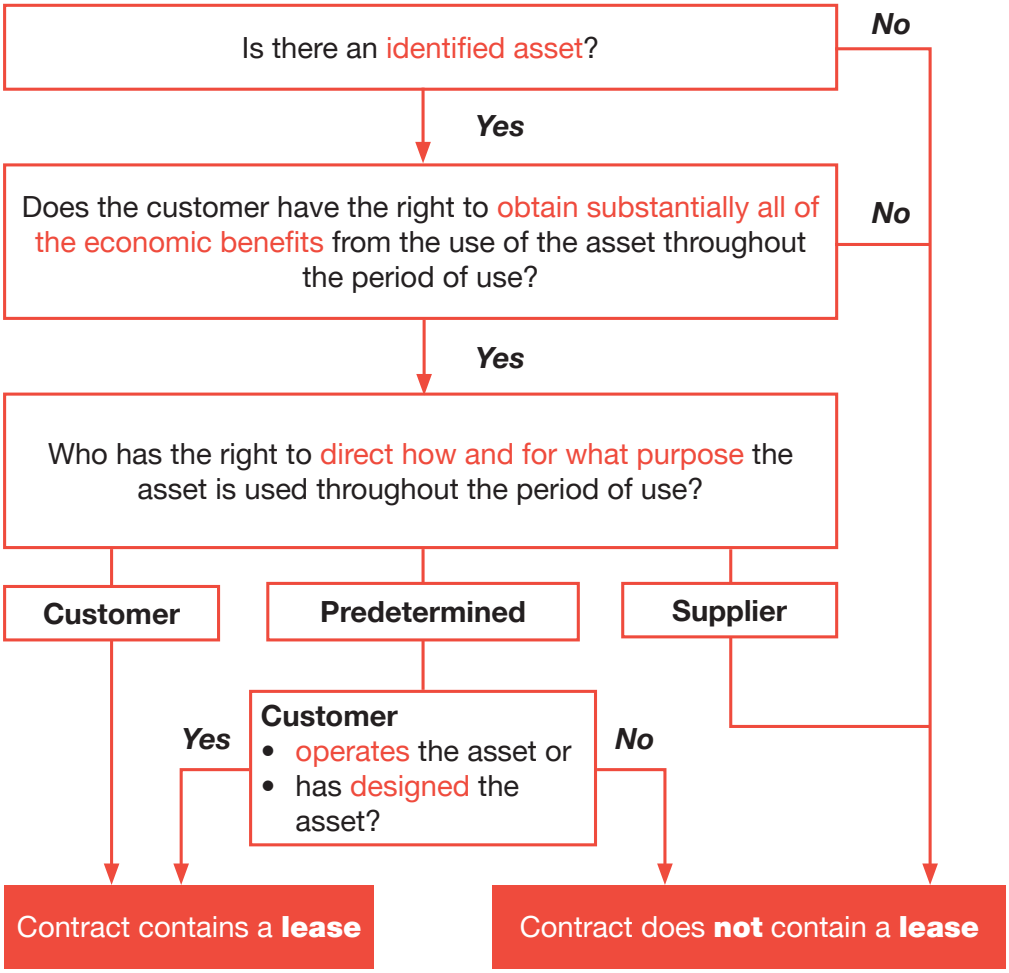


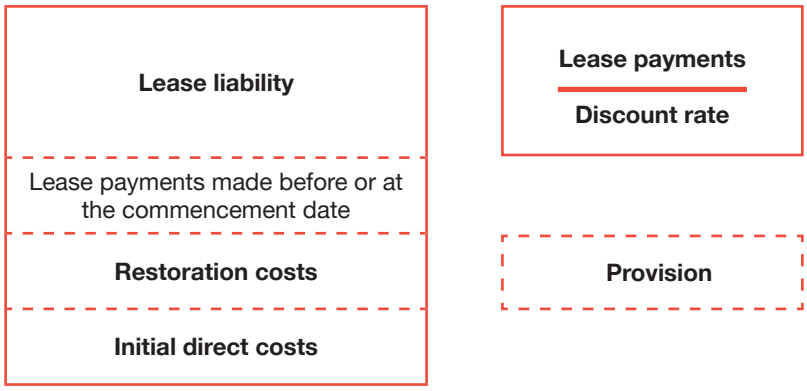
Photo source: PT Bukit Asam Tbk

Lease Accounting for a Lessee

Initial recognition

The lease liability is initially capitalised on the commencement date of the lease, and measured at an amount equal to the present value of the lease payments during the lease term that have not yet been paid. The value of the right-of-use of the asset is equal to the lease liability at the commencement of the lease, plus any direct costs incurred to obtain the contract and any contractually obligated restoration costs.

The lessee uses as its discount rate the interest rate implicit in the lease. If this rate cannot be readily determined, the lessee should instead use its incremental borrowing rate.

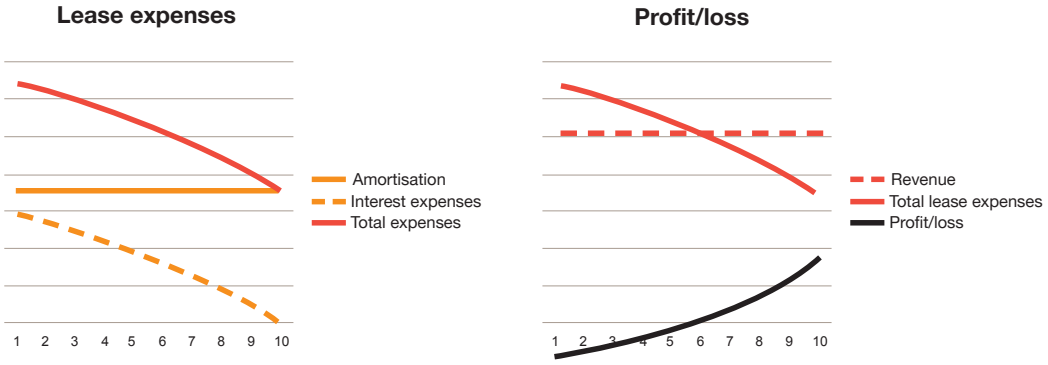


Subsequent measurement

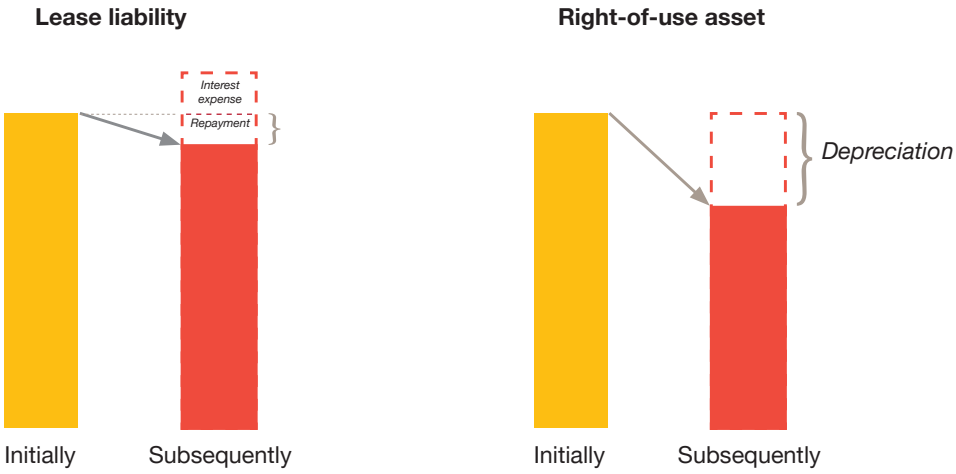
The lease liability is measured in subsequent periods using the effective interest rate method.

The right-of-use asset is depreciated in accordance with the requirements set out in SFAS 216, "Property, Plant and Equipment", meaning depreciation on a straight-line basis or using another systematic basis that is more representative of the pattern by which the entity expects to consume the right-of-use asset.

The combination of straight-line depreciation of the right-of-use asset and the effective interest rate method applied to the lease liability results in a decreasing total lease expense across the lease term. This effect is sometimes referred to as *frontloading*.



The carrying amount of the right-of-use asset and the lease liability will no longer be equal in subsequent periods. Due to the frontloading effect described above, the carrying amount of the right-of-use asset will, in general, be below the carrying amount of the lease liability.



Any subsequent change in the measurement of the provision for the restoration costs, due to a revised estimation of expected costs, typically results in an adjustment to the 'right of use' asset.

Lease Accounting for a Lessor

The accounting for leases by a lessor is practically the same under SFAS 116 as it was previously under SFAS 30. The lessor still has to classify leases as either finance or operating, depending on whether substantially all of the risks and rewards incidental to the ownership of the underlying asset have been transferred. For a finance lease, the lessor recognises a receivable at an amount equal to the net investment in the lease, which is the present value of the aggregate of the lease payments receivable by the lessor and any residual value not covered by guarantees. If the contract is classified as an operating lease, the lessor continues to present the underlying assets.


Photo source: PT Bukit Asam Tbk

6.4 Closure and Rehabilitation

The mining industry can have a significant impact on the environment. Closure or environmental rehabilitation work at the end of the useful life of a mine or installation may be required by law, the terms of operating licences or an entity's stated policy and/or past practice.

An entity that promises to remedy damage or that has done so in the past, even when there is/was no legal requirement to do so, may have created a constructive obligation and thus a liability under SFAS. There may also be environmental clean-up obligations related to the contamination of land arising during the operating life of the mine or installation. The associated costs of remediation/restoration may be significant. The accounting treatment of closure and rehabilitation costs is therefore critical.

A provision is recognised when an obligation to perform the rehabilitation exists. Local legal regulations should be taken into account when determining the existence and extent of the obligation. An obligation might arise if an entity has a policy and a past practice of performing rehabilitation activity. A provision is recorded if others have a reasonable expectation that the entity will undertake the restoration. Obligations to decommission or remove an asset are created at the time when the asset is put in place. Mining infrastructure, for example, must be removed at the end of its useful life, typically upon the closure of the mine.

Closure provisions are updated at each balance-sheet date to reflect changes in the estimates of the amount or timing of future cash flow and changes in the discount rate. Changes to provisions related to the removal of an asset are added to or deducted from the carrying amount of the related asset in the current period. However, adjustments to the asset are restricted. The asset cannot decrease below zero, and cannot increase above its recoverable amount:

- If the decrease in the provision exceeds the carrying amount of the asset, the excess is recognised immediately in the profit or loss; and
- Adjustments that result in an addition to the cost of the asset are assessed to determine whether or not the new carrying amount is fully recoverable or not. Impairment testing is required if there is an indication that the asset may not be fully recoverable.

The accretion of discounts on a closure liability is recognised as part of finance expenses in profit or loss.

7 Additional regulatory considerations for mining investments

Investment Law

Law No. 25/2007, as amended by the Job Creation Law (the "Investment Law") is the prevailing law that generally regulates investments in Indonesia, and serves as the legal basis for the provision of an integrated one-stop service to simplify business licensing. The Government also recently introduced the OSS system to enable investors to expedite the process of obtaining business licences.

Upon the issuance of the Job Creation Law, the Government set out a new investment principle under which all business sectors are basically open to foreign investment, except for those: (i) who are explicitly stipulated to be fully restricted for foreign investment; and (ii) for which investment may only be carried out by the Central Government. Under Presidential Regulation No. 10 of 2021 on Investment Business Fields, (as most recently amended by Presidential Regulation No. 49/2021) ("Perpres No. 10/2021"), several mining commodities have been prioritised to obtain fiscal and non-fiscal incentives so long as they meet certain requirements. It should also be noted that, pursuant to Perpres No.10/2021 and Regulation of BKPM No. 4 of 2021 on the Guidelines and Procedures for Risk-Based Business Licensing Services and Investment Facilities ("BKPM Regulation No. 4/2021"), foreign investors can only conduct businesses in the large-scale business category if they fulfil the minimum IDR 10 billion investment value (excluding land and buildings) per business sector per project location[24].

Photo source: PT Vale Indonesia Tbk

The obligations for Limited Liability companies set out in the Investment Law include:

- Prioritising the use of Indonesian manpower;
- Creating a safe and healthy working environment;
- Implementing good corporate governance principles;
- Providing regular investment reports and submitting such reports to the BKPM;
- Creating a healthy business competition environment, anticipating any monopolistic practices, or other aspects that may be harmful to the state;
- Complying with all of the prevailing laws and regulations;
- Implementing CSR; and
- Environmental conservation.

Specifically, the Investment Law provides that investors exploiting non-renewable natural resources must also allocate funds in stages for site restoration, in line with the applicable environmental standards. Sanctions for non-compliance with certain aspects of the Investment Law (including those regarding CSR) include the restriction, suspension, or revocation of business activities and licences.

The Central Government provides protection against nationalisation, unless such nationalisation is required by law, in which case the Central Government will provide compensation based on the market value. In addition, investors are given the right freely to transfer and repatriate foreign currency, in forms including capital, profits, bank interest, royalties, dividends, loan repayments, sales proceeds, the liquidation of investment proceeds, compensation for losses, compensation for acquisitions, management fees and technical service fees.

Forestry Law

Indonesia has resource-rich soil, which hosts extensive forest resources. The use of these forest resources is strictly controlled by the Central Government, especially protected forests. It is common for mining concession areas to overlap with forestry areas (either protected or productive forests), meaning that mining activities can be impacted by the rules applicable to such forests.

Law No. 41 of 1999 on Forestry, as amended by Law No. 19/2004, and the Job Creation Law and as partially revoked by Law No. 18 of 2013 on the Prevention and Eradication of Forest Destruction (the "Forestry Law"), allows for 13 open-pit mines in protected forests, provided that the respective mining companies had signed their contracts prior to the introduction of the Forestry Law (as governed by and listed under Presidential Decree No. 41 of 2004 on Licensing or Agreement within the Mining Sector Located in Forest Areas, as most recently amended by Presidential Decree No. 3/2023).

Under Government Regulation No. 23 of 2021 on the Organization of Forestry ("GR No. 23/2021"), the utilisation of Forest Areas for

non-forestry activities (including mining) is permitted in both production forest areas and protected forest areas, subject to obtaining a Forest Area Utilisation Approval from the Ministry of Environment and Forestry. “Protected forest” areas are open for mining activities, provided that mining is conducted in the form of underground mining (and not through an open pit), subject to a number of conditions.

For areas that are designated as production forest areas, both underground and open pit mining are permitted. Mining is prohibited in areas designated as conservation forest areas.

GR No. 23/2021 requires holders of Forest Area Utilisation Approval to implement the demarcation of the forest area use within 1 (one) year, failure to complete which shall render the Forest Area Utilisation Approval null and void and declared invalid. On top of that, holders of Forest Area Utilisation Approval shall pay a certain amount of: (i) PNBP for Forest Area Use, if located in a province where the adequacy of its forest areas has been exceeded, or (ii) PNBP as Forest Area Use and PNBP for compensation if located in a province with inadequate forest areas. Forest Area Utilisation Approval holders must also carry out reclamation and/or reforestation in forest areas that are no longer used.

Energy Law

Given the importance of energy resources, it is necessary for the Central Government to create an energy management plan to ensure that the national energy needs can be met in the long term. Law No. 30/2007 (the “Energy Law”) established the National Energy Council as the government body responsible for designing and formulating national energy policy, setting the national energy general plan, determining the steps to be taken in an energy crisis and in emergency conditions, and monitoring the implementation of government policy in energy fields which are cross-sectoral in nature.

The Government of the Republic of Indonesia recently issued Government Regulation No. 33 of 2023 on Energy Conservation (“GR No. 33/2023”) in order to preserve domestic energy resources and increase the efficiency of their utilisation. Central Government believes that it is necessary to make efforts to implement energy conservation by expanding the scope of energy users and energy sources, lowering the threshold of energy consumption, and developing energy conservation service businesses. The conservation of energy resources shall be setting out:

a. Prioritising the energy resources to be exploited and/or provided;
b. The amount of energy resources that can be produced; and
c. Limitations on energy resources which cannot be exploited within a certain time limit.

Photo source: PT Agincourt Resources

In light of the above, the MoEMR has identified certain critical mineral commodities, which include, among others, nickel, tin, copper, iron, and another 43 (forty-three) type of mineral commodities based on MoEMR Decree No. 296.K/MB.01/MEM.B/2023 on The Determination of the Types of Commodities Included in the Critical Mineral Classification. The determination of these critical mineral commodities may be used by ministries/ agencies and provincial governments to:

a. Make governance arrangements for the mineral mining industry and associated minerals businesses, including residual processing and/or refining products;
b. Issue regulations on the trading system for the mineral mining industry and its associated minerals businesses, including residual processing and/or refining products;
c. Be a consideration when setting fiscal policy in the mineral and coal mining sector;
d. Be a consideration when setting the reference mineral price formula;
e. Be a consideration in the policy of prioritising minerals for domestic needs;
f. Be a consideration in issuing business permits in the mineral and coal mining sector;
g. Be taken into consideration when seeking to stimulate investigation and research; and/ or
h. Be a consideration when increasing the obligation of business permit holders in the minerals and coal mining sector to carry out further exploration.

The determination of critical mineral commodities is valid for 3 (three) years and can be reviewed annually or at any time if necessary.

Environmental Laws and Regulations

There is a difficult balance to strike between protecting the environment and preserving natural resources, on the one hand, and maintaining a viable mining industry, on the other. Environmental protection in Indonesia is governed by various laws, regulations, and decrees, with non-compliance leading to fines, penalties and, in extreme cases, the revocation of licences and/or permits and imprisonment.

Law No. 32 of 2009 on the Protection and Management of the Environment as amended by the Job Creation Law (the "Environmental Law") requires the Central Government and regional governments to prepare a strategic environmental analysis, and to ensure that the principles of sustainable development have been integrated into the development of each particular region.

Both the Mining Law and the Environmental Law require mining companies that are exploiting natural resources and that have an environmental or social impact to create and maintain an environmental impact assessment (*Analisis Mengenai Dampak Lingkungan* or "AMDAL"), which should consist of an environmental impact assessment, an environmental management plan, and an environmental monitoring plan. Environmental management effort documents, Environmental Management Efforts (*Upaya Pengelolaan Lingkungan* or "UKL") and Environment Monitoring Efforts (*Upaya Pemantauan Lingkungan* or "UPL") generally need to be prepared in situations where an AMDAL document is not required. Furthermore, pursuant to the Environmental Law, mining companies must obtain an Environmental Approval. The Environment Feasibility Decree (*Keputusan Kelayakan Lingkungan Hidup*) which approves the AMDAL document, shall serve as an Environmental Approval. The Environmental Law stipulates that the Environment Feasibility Decree is a requirement for obtaining a business licence.

Photo source: PT Bukit Asam Tbk

The sanctions applied for breaches of the Environmental Law range from three to fifteen years of imprisonment and/or a fine of between IDR 100 million and IDR 750 million (potentially up to IDR 9 billion in certain cases). The Environmental Law also stipulates the minimum penalties applicable, depending on the nature of the breach.

The environmental quality requirements regarding emissions and wastewater temperature levels have been the subject of industry concern, due to the time lag necessary to implement new processes and technologies, and the increased production costs.

Central Bank of Indonesia Regulation on the Reporting of Foreign Exchange Trading

BI Regulation No. 16/22/PBI/2014 regarding the Reporting of Foreign Exchange Trading and the Reporting of the Application of Prudential Principles to Foreign Loan Administration for Non-Bank Corporations (as partially revoked by BI Regulation No. 21/2/PBI/2019) (the "BI Regulation No. 16/22/PBI/2014"), includes a requirement for companies to report their foreign currency loans to BI on a quarterly basis. Furthermore, the fourth quarterly report each year needs to be verified by an independent public accountant. Failure to comply with this reporting obligation will result in an administrative sanction of IDR 10 million.

In January 2019, BI Regulation No. 21/2/PBI/2019 regarding the Reporting of Foreign Exchange Trading was issued to revoke certain provisions of BI Regulation No. 16/22/ PBI/2014 (the "BI Regulation No. 21/2/PBI/2019"). The final provision of BI Regulation No. 21/2/PBI/2019 stipulated that, from the effective date of BI Regulation No. 21/2/PBI/2019 (i.e. 1 March 2019), the provisions in BI Regulation No. 16/22/PBI/2014 that regulated the reporting of foreign exchange trading would be revoked. All laws and regulations that constitute implementing regulations of BI Regulation No. 16/22/PBI/2014 shall remain effective insofar as they do not conflict with BI Regulation No. 21/2/PBI/2019.

The prudential principles under BI Regulation No. 16/21/PBI/2014 (as amended by BI Regulation No. 18/4/PBI/2016) and BI Circular Letter No. 16/24/ DKEM of 2014 (as amended by BI Circular Letter No. 17/18/ DKEM of 2015 and BI Circular Letter No. 18/6/ DKEM of 2016) are as follow:

a. A minimum hedging ratio of 25% of the negative difference between foreign exchange assets and foreign exchange liabilities that will be due within three months, and that will be due between three and six months from the end of the reporting quarter. Only companies that have a "negative difference" of more than USD 100,000 are required to fulfil the minimum hedging ratio;
b. A minimum liquidity ratio of 70%, calculated by comparing the company's foreign exchange assets and foreign exchange liabilities that will be due within three months of the end of the reporting quarter; and
c. A minimum credit rating of "BB-" or equivalent from the credit ratings agencies recognised by Central Bank of Indonesia.

Listing Rules for Mining Companies

Pursuant to the issue of IDX Decision No. KEP-00100/BEI/10-2014, the listing rules for mining (minerals and coal) companies have been simplified. The rules cover mining companies (and prospective mining companies) that have a mining business licence, or holding companies that (or that will) consolidate 50% of a mining subsidiary's income, where the mine:

- Has commenced sales; or
- Is already in the production phase but has not commenced sales; or
- Is not yet in the production phase.

To qualify for listing, prospective issuers must fulfil the following conditions (among others):

- Net tangible assets and deferred exploration costs must be at least IDR 100 billion for listing on the Main Board, or IDR 5 billion for listing on the Development Board;
- One or more of the company's directors must have technical expertise and at least five years' work experience in the mining sector within the past seven years;
- The issuer must maintain proven and probable reserves that have been certified by a competent authority (in some other jurisdictions, this is referred to as either a "Competent Person's report" or a "Qualified Person's report");
- The issuer must have a clean and clear certificate; and
- The issuer must have undertaken a feasibility study within three years of the date when the listing request is submitted. Other requirements are detailed in the IDX Regulations. Mineral and coal companies with shares listed on the IDX before the issuance of this decision should have fulfilled the requirements regarding the directors' qualifications by 1 July 2015.

In respect of the requirement to have a clean and clear certificate, please note that this clean and clear certificate is no longer required, as regulated under PerMen 7/2020. However, at the time of writing, IDX Decision No. KEP-00100/BEI/10-2014 had not yet been amended to comply with PerMen 7/2020.

Central Bank of Indonesia Regulation on the Obligation to Use the Rupiah Currency

BI Regulation No. 17/3/PBI/2015 on the Obligation to Use the Rupiah Currency for Transactions in Indonesia has been effective since 1 July 2015 ("BI Regulation 17/2015"), with the stated aim of stabilising the Rupiah exchange rate.

BI Regulation 17/2015 stipulates that all parties shall be obligated to use the Rupiah in transactions within the territory of Indonesia. Such transactions include any transaction having the purpose of a payment, the settlement of obligations using money, and/or other financial transactions.

Pursuant to BI Regulation 17/2015, the mandatory use of the IDR shall not apply to the following transactions:

a. Certain transactions within the framework of implementing state revenue and expenditure;
b. Acceptance or disbursement of grants from or to overseas;
c. International trade transactions, covering:
    - Exports and/or imports of goods to or from outside the customs territory of the Republic of Indonesia; and/or
    - Services trading activities that cross the state's territorial borders, conducted by way of:
        i. Cross border supply; and
        ii. Consumption abroad;
d. Savings at banks in the form of foreign exchange;
e. International financing transactions; or
f. Transactions in a foreign currency conducted pursuant to the provisions of the Law.

Photo source: PT Bukit Asam Tbk

The press release for BI Regulation 17/2015 states that the MoEMR and BI will form a task force to facilitate the implementation of the regulation to ensure that it does not affect ongoing business activities. In addition, the MoEMR and BI will issue guidelines for the implementation of BI Regulation 17/2015 for the energy sector. At the time of writing, however, no guidelines had been issued by either the MoEMR or BI to regulate the procedures for the implementation of the BI Regulation in the minerals and coal mining sectors. In general, BI has issued BI Circular Letter Number 17/11/ DKSP 2015 concerning the Obligation to Use the Rupiah in the Territory of the Unitary State of the Republic of Indonesia. Nevertheless, other than the types of transactions exempted from the obligation to use the IDR, BI Regulation 17/2015 mentions that strategic infrastructure projects may also be exempt from using the Rupiah, with prior BI approval. To apply for BI approval, the requesting party must first obtain a confirmation or support letter from the relevant ministry or government body.

Based on Circular Letter of the Ministry of Energy and Mineral Resources No: 04.E/30/ DJB/2017 concerning the Exceptions to and Postponement of the Enforcement of BI Regulation 17/2015, in order effectively to use the Rupiah so as not to hinder transactions in the mineral and coal mining sector, BI has granted the following approvals:

a. Exceptions to the implementation of the mandatory use of the IDR for three types of transactions representing the implementation of the State Budget, namely payments of fixed fees, payments of Royalty or Coal Production Results, and payments of an annual lump sum or PBB and Regional Taxes;
b. Exceptions to the implementation of the mandatory use of the IDR for two types of transactions which shall refer to the prevailing laws and regulations, namely payments of reclamation guarantees and payments of post-mining guarantees;
c. Postponement of the implementation of the mandatory use of IDR in the form of the use of foreign currency quotes and payments in Rupiah for ten types of transactions related to mineral and coal mining business activities;
d. Postponement of the implementation of the mandatory use of the IDR in the form of the use of foreign currency quotes and payments in foreign currency or IDR for one type of transaction, namely domestic sales of minerals and coal from the concession holder to the holder of a Production Operation Mining Business Licence specifically for transportation and sales, or to the holder of a Production Operation Mining Business Licence specifically for processing and refining intended for export. Specifically for such transaction, business actors are required to submit a written application to BI accompanied by supporting documents evidencing their export sales activities, namely the Customs Identification Number (*Nomor Identitas Kepabeanan* or "NIK") and the latest PEB.

The stated period of postponement of the implementation of the mandatory use of IDR is given until 23 February 2026, and during that period, BI will monitor the readiness of minerals and coal industry players to implement the mandatory use of IDR.

The holders of CoWs, CCoWs and business licences in the fields of mineral and coal mining are directed to use the Jakarta Interbank Spot Dollar Rate (JISDOR) exchange rate as a reference when calculating the Rupiah prices of goods and/or services originally offered in foreign currencies.

Other Regulations Related to Mining Operations

Other regulations applicable to Indonesian mining operations include regulations regarding land acquisition, the use of groundwater, the technical guidelines for controlling air pollution from fixed sources, water quality and pollution, waste management and storage, electricity for private use, use of heavy equipment, regulations on used oil, and the storage of production chemicals. Non-compliance may lead to fines, penalties, and, in extreme cases, the revocation of licences or permits.

CSR

Contractors are required to comply with the relevant laws and regulations on CSR and Community Development.

Under Article 74 of Law No. 40 of 2007 on Limited Liability Companies (as amended by the Job Creation Law) (the "Company Law"), companies carrying out natural resources business must implement CSR, which must be budgeted for in the companies' expenditure plans. Failure to comply with the CSR obligation may be subject to sanctions. The Company Law provides that CSR means a commitment by companies to participate in sustainable economic development to increase the quality of lives and environment in the interests of the company, local communities, and the general public.

Government Regulation No. 47 of 2012 on the Social and Environmental Responsibilities of Limited Liability Companies ("GR 47/2012") provides further provisions on CSR. Pursuant to GR 47/2012:

i. CSR shall be implemented by the Board of Directors of the company based on the company's annual work plan, which includes the plan and budget for the implementation of CSR, after obtaining the approval of the Board of Commissioners or General Meetings of Shareholders in accordance with the company's articles of association.
ii. The implementation of CSR shall be set out in the company's annual report and delivered to the General Meeting of Shareholders.

Appendices

Photo source: PwC

Minimum in-country processing and refining requirements for metal minerals prior to export[1]

No	Commodity		Minimum Limit			
	Ore	Mineral	Processing		Refining	
			Products	Quality	Products	Quality
1.	Copper (fusion process)	Chalcopyrite Digenite Bornite Cuprite Covelitte	Copper Concentrates	≥15% Cu	Copper Cathode	Copper Metal ≥ 99.9% Cu
					Copper Telluride	a. Copper Metal, Cu ≥ 99.9%; b. Tellurium Metal, Te ≥ 99%; c. Tellurium Dioxide, TeO_2 ≥ 98%; d. Tellurium Hydroxide, $Te(OH)_4$ ≥ 98%; and/or e. Copper telluride alloy Te ≥ 20%.
	Copper (leaching process)	Chalcopyrite Digenite Bornite Cuprite Covelitte	-	-	Metal	a. Copper Metal, Cu ≥ 99.9%; b. Gold Metal, Aul ≥ 99%; c. Silver Metal, Ag ≥ 99%; d. Palladium Metal, Pd ≥ 99%; e. Platinum Metal, Pt ≥ 99%; f. Selenium Metal, Se ≥ 99%; g. Tellurium Metal, Te ≥ 99%; h. Tellurium Dioxide, TeO_2 ≥ 98%; i. Tellurium Hydroxide, $Te(OH)_4$ ≥ 98%; and/or j. Rare metals and rare earth elements (refer to the requirement for rare-earth metal terms for tin).
2.	Nickel and/or cobalt (fusion process) a. Saprolite b. Limonite	Pentlandite Garnierite Serpentinite Carolite	-	-	Nickel Matte, Metal Alloys, Nickel Metal, and Metal Oxide	a. Ni Mate, Ni ≥ 70%; b. FeNi Metal, Ni ≥ 8%; c. Nickel Pig Iron (NPI) 2% < Ni < 4%, and Fe > 75%; d. Nickel Pig Iron (NPI), Ni ≥ 4%; e. Nickel Metal, Ni ≥ 93%; and/or f. Nickel Oxide (NiO), Ni ≥ 65%.

[1] Pursuant to the Regulation of the Minister of Energy and Mineral Resources of the Republic of Indonesia Number 25 of 2018 on Mineral and Coal Mining Businesses as amended by Regulation of the Minister of Energy and Mineral Resources Number 17 of 2020.

No	Commodity		Minimum Limit			
	Ore	Mineral	Processing		Refining	
			Products	Quality	Products	Quality
	Nickel and/or cobalt (leaching process) Limonite	Pentlandite Garnierite Serpentinite Carolite	-	-	Metal, Metal Oxide, Metal Sulphide, mix hydroxide/ sulphide precipitate, and hydroxide nickel carbonate	a. Nickel Metal, Ni ≥ 93%; b. Mix Hydroxide Precipitate (MHP), Ni ≥ 25%; c. Mix Sulfide Precipitate (MSP), Ni ≥ 45%; d. Hydroxide Nickel Carbonate (HNC), Ni ≥ 40%; e. Nickel Sulfate and Nickel Sulfate Hydrate ($NiSO_4$ and $NiSO_4.xH_2O$), Ni ≥ 20%; f. Cobalt Sulfate and Cobalt Sulfate Hydrate ($CoSO_4$ and $CoSO_4.xH_2O$) Co ≥ 19%; g. Nickel Chloride and Nickel Chloride Hydrate ($NiCl_2$ and $NiCl_2.xH_2O$), Ni ≥ 20%; h. Cobalt Chloride and Cobalt Chloride Hydrate ($CoCl_2$ and $CoCl_2.xH_2O$), Co ≥ 19%; i. Nickel Carbonate ($NiCO_3$), Ni ≥ 40%; j. Cobalt Carbonate ($CoCO_3$), Co ≥ 40%; k. Nickel Oxide (NiO), Ni ≥ 65%; l. Cobalt Oxide (CoO), Co ≥ 65%; m. Nickel Hydroxide ($Ni(OH)_2$), Ni ≥ 50%; n. Cobalt Hydroxide ($Co(OH)_2$), Co ≥ 50%; o. Nickel Sulphide (NiS), Ni ≥ 40%; p. Cobalt Metal, Co ≥ 93% q. Cobalt Sulphide (CoS), Co ≥ 40%; and/or r. Chromium Metal, Cr ≥ 99%.

No	Commodity		Minimum Limit			
	Ore	Mineral	Processing		Refining	
			Products	Quality	Products	Quality
	Nickel and/or cobalt (fusion process) a. Saprolite b. Limonite		-	-	Metal Alloys	a. Sponge FeNi, 2% ≤ Ni < 4%, and Fe ≥ 75%; b. Sponge FeNi, Ni ≥ 4%; c. Luppen FeNi, 2% ≤ Ni < 4%, and Fe ≥ 75%; d. Luppen FeNi, Ni ≥ 4%; e. Nugget FeNi, 2% ≤ Ni < 4%, and Fe ≥ 75%; and/or f. Nugget FeNi, Ni ≥ 4%.
3.	Bauxite	Gibbsite Diaspora Boehmite	-	-	Metal Oxide/ Hydroxide and Metal	a. Smelter Grade Alumina, Al_2O_3 ≥ 98%; b. Chemical Grade Aumina, Al_2O_3 ≥ 90%; c. Alumina Hydroxide, $Al(OH)_3$ ≥ 90%; d. Proppants: 1) Al_2O_3 ≥ 72% (Granulated); 2) Able to rupture at a pressure of 7.500psi, the size of the fraction: -20+40 mesh ≤ 5.2%; -30+50 mesh ≤ 2.5%; or -40+70 mesh ≤ 2.0%. 3) Apparent Specific Gravity (ASG) 3.27. and/or e. Aluminum Metal, Al ≥ 99%.
4.	Iron	Hematite Magnetite	Iron concentrates *)	Fe ≥ 62% and TiO_2 ≤ 1%	Sponge, Metal, and Metal alloys	a. Sponge iron, Fe ≥ 72%; b. Sponge ferro alloy, Fe ≥ 72%; c. Pig iron, Fe ≥ 75%; and/or d. Ferro alloy, Fe ≥ 75%.
		Goethite Hematite Magnetite (Laterite iron)	Laterite iron concentrates **)	Fe > 50% and (Al_2O_3 + SiO_2) > 10%		
		Lamela magnetite-ilmenite (iron sand)	Iron sand concentrates ***)	Fe ≥ 56% and 1% < TiO_2 ≤ 25%	Metal	a. Sponge iron, Fe ≥ 72%; and/or b. Pig iron, Fe ≥ 75%.
			Pellet iron sand concentrates ****)	Fe ≥ 54% and 1% < TiO_2 ≤ 25%		
			Ilmenite concentrates *****)	≥ 45% TiO_2	Metal oxide, Metal chloride, and Metal alloys	a. Titanium Dioxide Synthetic, TiO_2 ≥ 85%; b. Titanium Tetrachloride, $TiCl_4$ ≥ 87%; and/or c. Titanium metal alloy, Ti ≥ 65%.

No	Commodity		Minimum Limit			
	Ore	Mineral	Processing		Refining	
			Products	Quality	Products	Quality
5.	Tin	Cassiterite	-	-	Metal	Tin Metal, Sn ≥ 99.90%
			Zircon concentrates	Refer to the requirements for zirconium and zircon.	Refer to the requirements for zirconium and zircon.	Refer to the requirements for zirconium and zircon.
			Ilmenite Concentrate	TiO_2 ≥ 45%	Metal oxide, Metal chloride, and Metal alloys	a. Refined Titanium Dioxide, TiO_2 ≥ 85%; b. Titanium Tetrachloride, $TiCl_4$ ≥ 87%; and/or c. Titanium metal alloy, Ti ≥ 65%.
			Rutile concentrates	TiO_2 ≥ 90%	Metal chloride and Metal alloys	a. $TiCl_4$ ≥ 98%; and/or b. Titanium alloy ≥ 65% Ti.
			Monazite and xenotime concentrates	-	Metal Oxide, Metal hydroxide, and Rare Earth Metal	a. Rare earth metal oxide (REO) ≥ 99%; b. Rare earth metal hydroxide (REOH) ≥ 99%; and/or c. Rare earth metal ≥ 99%.
6.	Manganese	Pyrolusite Psilomelane Braunite Manganite	Manganese concentrates	Mn ≥ 49%	Metal, Metal alloys and Manganese Chemical	a. Ferro Manganese (FeMn), Mn ≥ 60% b. Silica Manganese (SiMn), Mn ≥ 60% c. Manganese Monoxide (MnO), Mn ≥ 42% MnO_2 ≤ 4%; d. Manganese Sulfate ($MnSO_4$) ≥ 90%; e. Manganese Chloride ($MnCl_2$) ≥ 90% f. Refined Manganese Carbonate ($MnCO_3$) ≥ 90%; g. Potassium Permanganate ($KMnO_4$) ≥ 90%; h. Manganese Oxide (Mn_3O_4) ≥ 90%; i. Refined Manganese Dioxide (MnO_2) ≥ 98%; j. Manganese Sponge (Direct Reduced Manganese) Mn ≥ 49%, MnO_2 ≤ 4%; and/or k. Electrolytic Manganese Dioxide MnO_2 ≥ 90% and K < 250 ppm.

No	Commodity		Minimum Limit			
	Ore	Mineral	Processing		Refining	
			Products	Quality	Products	Quality
7.	Lead and Zinc	Galena Sphalerite Smithsonite Hemimorphite (chalamid)	Zinc concentrates	Zn ≥ 51%	Metal and Metal oxide/hydroxide	a. Bullion Zinc, Zn ≥ 90%; b. Zinc Oxide, ZnO ≥ 98%; c. Zinc Peroxide, ZnO_2 ≥ 98%; and/or d. Zinc Hydroxide, $Zn(OH)_2$ ≥ 98%.
					Gold Metal and/or silver	a. Gold Metal, Au ≥ 99%; and/or b. Silver Metal, Ag ≥ 99%.
			Lead concentrates	Pb ≥ 56%	Metal and Metal oxide/hydroxide	a. Bullion Lead, Pb > 90%; b. Lead Oxide, PbO ≥ 98%; c. Lead Hydroxide, $Pb(OH)_2$ ≥ 98%; and/or d. Lead Dioxide, PbO_2 ≥ 98%;
					Gold Metal and/or silver	a. Au Metal ≥ 99%; and/or b. Au Metal ≥ 99%.
8.	Gold	a. Native b. Associated minerals	-	-	Gold Metal	Gold Metal, Au ≥ 99%
9.	Silver	a. Native b. Associated minerals	-	-	Silver Metal	Silver Metal, Ag ≥ 99%
10.	Chromium	Chromite	Chromite concentrates	Cr_2O_3 ≥ 40% and Fe ≥ 13%	Metal, Metal Alloys, and Chromium Chemical	a. Chromium Carbonate ($Cr_2(CO_3)_3$), Cr ≥ 16%; b. Chromium Sulfate ($Cr_2(SO_4)_3$), Cr ≥ 14%; c. Chromium Sulfite ($Cr_2(SO_3)_3$), Cr ≥ 28%; d. Chromium Phosphate ($CrPO_4$), Cr ≥ 20%; e. Chromium Nitrate and Chromium Nitrate Hydrate ($Cr(NO_3)_3$ and $Cr(NO_3)_3.xH_2O$), Cr ≥ 12%; f. Chromium Nitrite ($Cr(NO_2)_3$, Cr ≥ 25%; g. Chromium Hydroxide ($Cr(OH)_3$), Cr ≥ 47%; h. Chromium Chlorate ($Cr(ClO_3)_2$), Cr ≥ 16%; i. Chromium Permanganate ($Cr(MnO_4)$), Cr ≥ 12%; j. Chromium Metal, Cr ≥ 99%; and/or k. Chromium metal alloys, Cr ≥ 60%.

No	Commodity		Minimum Limit			
	Ore	Mineral	Processing		Refining	
			Products	Quality	Products	Quality
11.	Zirconium		-	-	Zircon chemical, zircon sponge, zirconia, zircon Metal, and hafnium	a. Zirconium Oxychloride (ZOC), $ZrOCl_2 \cdot_8 H_2O \geq 90\%$; b. Zirconium Sulfate (ZOS), $Zr(SO_4)_2 \cdot_4 H_2O \geq 90\%$; c. Zirconium Basic Sulfate (ZBS), $Zr_5O_8(SO_4)_2.xH_2O \geq 90\%$; d. Zirconium Basic Carbonate (ZBC) $ZrOCO_3.xH_2O \geq 90\%$; e. Ammonium Zirconium Carbonate (AZC), $(NH_4)_3ZrOH(CO_3)_3 \cdot {}_2H_2O \geq 90\%$; f. Zirconium Acetate (ZAC), $H_2ZrO_2(C2H_3O_2)_2 \geq 90\%$; g. Kalium Hexafluoro Zirconate (KFZ), $K_2ZrF_6 \geq 90\%$; h. Zirconium Sponge, Zr ≥ 85%; i. Zirconia (ZrO_2+HfO_2) ≥ 99%; j. Zirconium Metal, Zr ≥ 95%; and/or k. Hafnium Metal, Hf ≥ 95%.
			Ilmenite	$TiO_2 \geq 45\%$	Metal oxide, Metal chloride and Metal alloy	a. Titanium Dioxide Synthetic, $TiO_2 \geq 85\%$; b. Titanium Tetrachloride, $TiCl_4 \geq 87\%$; and/or c. Titanium metals alloy, Ti ≥ 65%.
			Rutile	$TiO_2 \geq 90\%$	Metal chloride and Metal alloy	a. Titanium Tetrachloride, $TiCl_4 \geq 98\%$; and or b. Titanium metals alloy, Ti ≥ 65%.
12	Antimony	Stibnite	-	-	Antimony Metal	a. Antimony Metal, Sb ≥ 99%; and/or b. Diantimony Pentaoxide, $Sb_2O_5 \geq 95\%$.

Remarks:

*) This represents iron concentrates that contain hematite/magnetite minerals with an iron component of Fe ≥ 62% and Titanium oxide compound concentration of $TiO_2 \leq 1\%$.

**) This represents laterite iron concentrates that contain goethite/hematite/magnetite minerals with an iron component of Fe ≥ 50% and alumina (Al_2O_3) and silica (SiO_2) components of ≥ 10%.

***) This represents iron concentrates that contain lamella magnetite-ilmenite minerals with an iron component of Fe ≥ 56% and compound concentration Titanium oxide of $1\% < TiO_2 \leq 25\%$.

****) This represents pellets iron sand concentrates that contain lamella magnetite-ilmenite minerals with an iron component of Fe ≥ 54% and compound concentration Titanium oxide of $1\% < TiO_2 \leq 25\%$.

*****) This represents ilmenite concentrates that contain lamella magnetite-ilmenite minerals with compound concentration Titanium oxide of $TiO_2 \geq 45\%$.

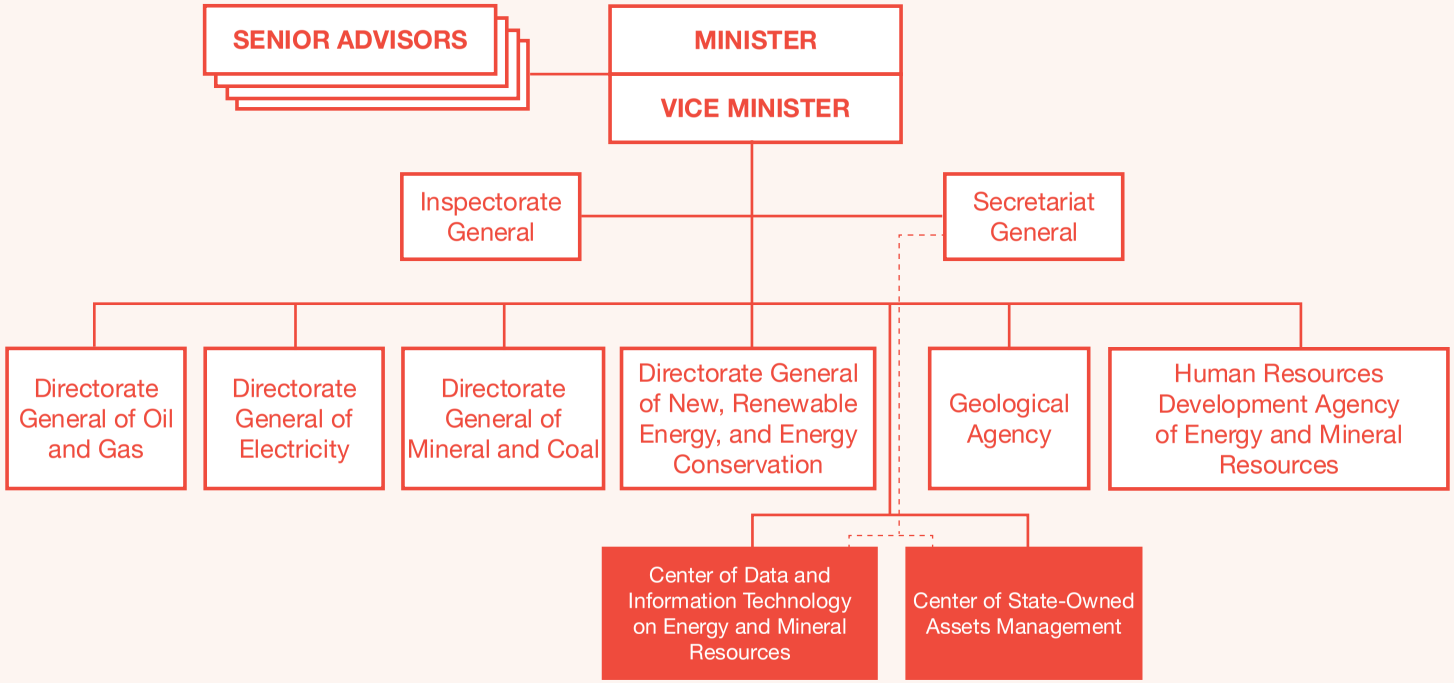
Regional Taxes

This table represents a selection of the various regional taxes that are relevant to the mining industry.

Type of Regional Tax		Maximum Tariff	Current Tariff	Imposition Base
A. Provincial Taxes				
1	Taxes on motor vehicle	10%	Non-public vehicles	
			1%-2% for the first vehicle owned. Starting 5 January 2025 will become maximum 1.2%.	Calculated by multiplication of two factors: a. Motor vehicle sales value; and b. Motor vehicle weight (which contributes to level of road deformation and/or environmental damage caused due to motor vehicle utilisation.
			2% - 10% for the second vehicle owned and above. Starting 5 January 2025 will become maximum 6%.	
			0.5% - 1% for public Vehicles. Starting 5 January 2025 will become maximum 0.5%.	
			Starting 5 January 2025 there will be additional 66% of taxes on motor vehicle (Opsen).	
2	Title transfer fees on motor vehicle, and water surface vessels	20%	Motor vehicles	
			20% on the first title Transfer. Starting 5 January 2025 will become maximum 12%.	-
			1% on the second title transfer and above. Starting 5 January 2025 will become maximum 12%.	-
			Starting 5 January 2025 there will be additional 66% of title transfer fees on motor vehicle, and above - water vessels (Opsen).	-
3	Tax on heavy equipment	0.2%	Set by region	Calculated by reference to the sales value and a weight factor (size, fuel, type, etc.). A Government table will be published on an annual basis to enable this calculation.

Type of Regional Tax		Maximum Tariff	Current Tariff	Imposition Base
4	Tax on motor vehicle fuel	10%	For public vehicles: at least 50% lower than the tax on non-public vehicle fuel (depending on each region)	Sales price of fuel (gasoline, diesel fuel, and gas fuel)
5	Tax on the collection and utilisation of surface water	10%	Set by region	Purchase value of water (determined by applying a number of factors).
B. Regency and Municipal Taxes				
6	Catering	10%	10%	Purchase value
7	Tax on electric power	10%	3% for utilisation by industry	Sales on electricity
			1.5% for personal use	-
8	Tax on non-metal minerals and rocks (formerly the C-Category mined substance collection)	25%	Set by region	-
			Starting 5 January 2025 there will be additional 25% of tax on non-metal minerals and rock (opsen).	-
9	Tax on groundwater	20%	Set by region	Purchase value
10	Land and Building Tax	0.5%	Set by region	Land and buildings sale value
11	Duty on the acquisition of land and buildings rights	5%	Set by region	Land and buildings sale value

Ministry of Energy and Mineral Resources Organisational Structure



Note:
1. Senior Advisor to the Minister for Strategic Planning
2. Senior Advisor to the Minister for Institutional Relationship
3. Senior Advisor to the Minister for Natural Resources Economics
4. Senior Advisor to the Minister for Environment and Spatial Planning

IMA (the Indonesian Mining Association)

The IMA was founded on 29 May 1975, as a non-governmental, non-political, and non-profit organisation established in accordance with the laws of the Republic of Indonesia. The headquarters and registered office of the association is located in Jakarta.

The association serves as a link between the Government and the mining industry, organising lectures, seminars, and training activities for members, as well as periodic conferences on mining in Indonesia, publishing proceedings and mining information, and representing the Indonesian mining industry at national and international meetings. The IMA is a founding member of the ASEAN Federation of Mining Associations, and currently operates the secretariat for the Federation.

Purpose

The aims and objectives of the association are to support the government and its policies in order to encourage the development of the mining industry and to utilise non-confidential and non-proprietary information to promote the exploration, mining, mineral beneficiation and metallurgical aspects in Indonesia through:

1. Studying problems relating to the above aspects of the mining industry at the national level and finding possible solutions to these problems.
2. Studying modern methods in the mining industry, which have been adopted in other countries, for potential application in Indonesia.
3. Fostering mutual respect between the members of the association, both private and governmental (it being understood that no decision or action of the association shall affect any contracts to which any of the members are a party).
4. Advancing new ideas relating to the above aspects of the mining industry.
5. Fostering a spirit of scientific research among the members of the association.
6. Establishing contact and cooperating with similar professional organisations outside of Indonesia.
7. Disseminating objective information and analysis concerning the above aspects of the mining industry.
8. Maintaining a high standard of professional conduct on the part of the Association's members.
9. Promoting the development of the necessary infrastructure to support the mining industry in Indonesia.
10. Familiarising the general public and educational institutions with current developments and problems in the mining industry.
11. Giving assistance to and encouraging potential university graduates to prepare for a career in the mining industry.

APBI-ICMA (the Indonesian Coal Mining Association)

ASOSIASI PERTAMBANGAN
BATUBARA INDONESIA
INDONESIAN **COAL**
MINING ASSOCIATION

APBI-ICMA was founded on 20 September 1989 as a response to the challenges of the coal mining industry in Indonesia.

The APBI-ICMA is a non-government, non-profit and non-political organisation that embraces both upstream (exploration and exploitation) and downstream (marketing and distribution, utilisation, and mining services) aspects of the coal industry in Indonesia.

The association aims to create an environment that allows its members to discuss common concerns and exchange ideas, and it works towards a common goal for the coal mining industry.

The APBI-ICMA also acts as a partner to relevant government Institutions and provides them with the industry's views on how to encourage a favourable environment for investment and competition.

The APBI-ICMA works collaboratively with all stakeholders to enhance investment in and strengthen the economic health of the coal mining industry in order to deliver greater benefits to government, investors, communities, employees, customers, and the environment.

APNI (Asosiasi Penambang Nikel Indonesia)

APNI
ASOSIASI PENAMBANG NIKEL INDONESIA

APNI was formed by the Mineral and Coal Directorate of the Ministry of Energy and Mineral Resources on 6 January 2017 and was appointed to the FORMATUR management by the Director of Mineral Development, Mr. Bambang Susigit, on 6 March 2017.

APNI's vision is to become the best association organisation that creates superior values and work programs that are able to synergize all Indonesian nickel mining actors and become a source of pride for all nickel mining stakeholders in Indonesia, the government and Indonesian society in general.

APNI's mission is committed to creatively transforming nickel mineral natural resources for people's welfare and sustainable development with an environmental perspective through the best mining management practices "best mining practise" by prioritising the welfare and peace of members and the community in general, human resource development, social responsibility and environment, occupational safety and health and job creation.

Summary of CCoW generations

No	Item	First Generation	Second Generation	Third Generation	Remarks
1	**Dead rent – in USD per hectare per annum unless stated otherwise**				
	a. General Survey	0.01 – 0.03	0.05 – 0.10	0.025 – 0.05	Second Generation's dead rent follows the prevailing dead rent tariff
	b. Exploration	0.08 – 0.20	0.20 – 0.70	0.10 – 0.35	
	c. Feasibility	0.20	1.00	0.50	
	d. Construction	0.20	1.00	0.50	
	e. Operation	1.00	2.00 - 4.00	1.50 – 3.00	
2	**Production royalty rate (%)**	13.5%	13.5%	13.5%	Based on the coal sales price minus certain marketing/ selling expenses
3	**CIT**				
	a. Tax Rates	35% for the first ten years of the Operating Period; 45% thereafter	25%*)	Incremental CIT rate to 30% (or a lower rate that is subject to a GR)	
	b. Depreciation rates				
	Non-building assets:				
	i. Straight line	12.5%	5% - 25%*)	10% - 50% (for tangible assets that are located in the Contract Area); otherwise 5% - 25%	
	ii. Declining balance	Not Applicable	10% - 50%*)	20% - 100% (for tangible assets that are located in the Contract Area); otherwise 10% - 50%	
	Building assets:				
	i. Straight line	12.5%	5% - 10%*)	10% - 20% (for tangible assets that are located in the Contract Area); otherwise 5% - 10%	
	ii. Declining balance	Not Applicable	Not Applicable*)	Not Applicable	

No	Item	First Generation	Second Generation	Third Generation	Remarks
	c. Amortisation rates (%)				
	a. Straight line	12.5%	10% - 25%*)	10% - 50%	Under most CCoWs, the costs incurred prior to commercial operation may be deferred and amortised
	b. Declining balance	Not applicable	10% - 50%*)	20% - 100%	
	d. Accelerated Depreciation				
	Non-building assets:	25%	Not Applicable*)	Not Applicable	Accelerated depreciation can be claimed only within the first four years of the life of the assets
	Building assets:	10%	Not Applicable*)	Not Applicable	
	e. Investment allowance	20% of total investment	Not Applicable*)	Not Applicable	At the rate of 5% a year
	f. Deductible expenses:				
	Operating Expenses:				
	i. Cost of materials, supplies, equipment, and utilities	✓	✓	✓	
	ii. Expenses for contracted services	✓	✓	✓	
	iii. Premiums for insurance	✓	✓	✓	
	iv. Damages/ losses that are not compensated for under insurance	✓	✓	✓	
	v. Payments of royalties or other payments in respect of patents, designs, technical information, and services	✓	✓	✓	
	vi. Losses from obsolescence or destruction of inventory	✓	✓	✓	Provision is not deductible
	vii. Rentals	✓	✓	✓	

No	Item		First Generation	Second Generation	Third Generation	Remarks
	viii.	Dead rent, surface rent, production royalties, stamp duty, and other levies	✓	✓	✓	
	ix.	Sales tax	✓	Silent	Silent	
	x.	Uncredited VAT	Silent	✓	✓	
	xi.	Expenses for treatments, washing, processing, repairs and maintenance, handling, storage, loading, transportation, and shipping	✓	✓	✓	
	xii.	Expenses for commission and discounts	✓	✓	✓	
	xiii.	Expenses for environment/ reclamation	Silent	✓	✓	
	xiv.	Expenses incurred prior to the establishment of the company by a shareholder	Silent	x	✓	For the Third Generation, these are deductible, provided that the expenditures have been audited by an independent auditor and approval from the DGT has been obtained
	Sales, General & Administation					
	i.	Salaries and wages	✓	✓	✓	
	ii.	Costs of specified BIKs in the Contract Area	✓	x	✓	For Second Generation, these are not deductible unless the holder obtains remote area approval from the DGT
	iii.	Research expenses	✓	✓	✓	For the Second Generation, this should be performed in Indonesia
	iv.	Travel expenses	✓	✓	✓	Only for business purposes
	v.	Technical fees	✓	✓	✓	

No	Item		First Generation	Second Generation	Third Generation	Remarks
	vi.	Management fees and other fees for services performed abroad	✓	✓	✓	
	vii.	Communication and office expenses	✓	✓	✓	
	viii.	Dues and subscriptions	✓	✓	✓	
	ix.	Advertising and other selling expenses, public relations, and marketing	✓	✓	✓	
	x.	Legal and auditing expenses	✓	✓	✓	
	xi.	General overhead expenses	✓	✓	✓	
	xii.	Exploration expenses	✓	✓	✓	
	xiii.	Other relevant expenses	✓	✓	✓	
	xiv.	Reserve for reclamation	Silent	✓	✓	For the Third Generation, this is subject to a deposit being placed in a State-Owned bank, audited by a public accountant, and approved by the DGT
	g. Interest deductibility					
		Maximum DER	1.5 to 1	4 to 1[7] refer to PMK-169	Not Applicable	
		Maximum DER for Investments <=USD 200m	Not Applicable	Not Applicable	5 to 1	
		Maximum DER for Investments >USD 200m	Not Applicable	Not Applicable	8 to 1	

No	Item			First Generation	Second Generation	Third Generation	Remarks
	h. Tax loss carried forward			Four years (losses before the fifth anniversary of the Operating Period can be utilised in any year)	Five years	Eight years	
4	**WHT rates**						
		i.	Dividends, interest and royalties	10%	15% for domestic taxpayers, 20% for foreign taxpayers	15% for domestic taxpayer, 20% for foreign taxpayer	For the Second and Third Generation, the reduced tax rate is available under a tax treaty; However, please note that the WHT rates under CCoWs may be irrelevant, based on PMK-39
		ii.	Dividends (founder shareholders)	10%	Silent	7.5%	
		iii.	Rental, technical fees, management fees and other service fees (domestic/ foreign)	10%	2% to 20%	15%/20% of deemed net income	
		iv.	EIT	Applicable*)	Applicable*)	Applicable*)	
5	**VAT rates**						
		i.	VAT on coal sales	Not Applicable*	Exempted*)	10% on domestic sales; 0% on export sales	Third Generation CCoW VAT obligations are grandfathered to the 1994 VAT Law. Any VAT that is paid should be creditable/ refundable
		ii.	VAT on domestic purchases	Not Applicable*	10% paid to vendor*)	10% collected by the mining company	Input VAT cannot be credited/refunded by Second Generation CCoW holders, but this is deductible for CIT purposes
		iii.	VAT on import	Not Applicable*	10% paid to Custom Office*)	Could be exempted in accordance with the prevailing regulations	
		iv.	VAT on offshore services	Not Applicable	10% on a self-assessment basis*)	10% on self assessment basis	

No	Item	First Generation	Second Generation	Third Generation	Remarks
6	**Sales Tax rates**	2 - 2.5% on domestic services that are provided to contractors; and 0 - 5% on goods (for one Contractor only)	Not Applicable	Not Applicable	The Sales Tax was repealed in 1984, when VAT was introduced; A list of services (and goods) is provided in PMK-194t
7	**Import of capital goods:** **a. Import duty** **b. Article 22 Income Tax**	Exempted	a. Exempted/ reduced rates up to the 10th anniversary of the Operating Period, in accordance with the prevailing regulations; b. Could be exempted in accordance with the prevailing regulations	a.Exempted/ reduced rates up to the 10th anniversary of the Operating Period, in accordance with the prevailing regulations; b. Could be exempted in accordance with the prevailing regulations	Exemption from import duty is subject to either CCoW or BKPM Master List approval
8	**Other taxes and levies**				
	a. Regional taxes (e.g. motor vehicles and street lighting levies)	Regional Development Tax (IPEDA): maximum of USD 100,000 a year	Applicable*	Follows the prevailing Regional Tax Law at a rate not exceeding the prevailing rate at the signing date	
	b. Land and building tax	Silent	0.5% x 40% of the sale value of PBB objects*) (refer to PER-47)	Pre-production period: equal to deadrent; Operating production period: deadrent plus 0.5% x 30% of gross revenue from the mining operations	
9	**Stamp duty**	1/1000 of the total loan amount	IDR 3,000/ IDR 6,000*)	Silent	

Note:
*) follows the prevailing tax laws and regulations

Summary of Mineral CoW Generations

No	Item	Third Generation	Fourth Generation	Fifth Generation	Sixth Generation	Seventh Generation	Remarks
1	**Dead rent – in US$ per hectare per annum, unless stated otherwise:**						
	a. General Survey	0.01 - 0.03	0.025 - 0.05	0.025 - 0.05	0.025 - 0.05	0.025 - 0.05	-
	b. Exploration	0.08 - 0.2	0.1 - 0.35	0.1 - 0.35	0.1 - 0.35	0.1 - 0.35	
	c. Feasibility	0.2	0.5	0.5	0.5	0.5	
	d. Construction	0.2	0.5	0.5	0.5	0.5	
	e. Operation	1.00 - 2.00	1.50 - 3.00	1.50 - 3.00	1.50 - 3.00	1.50 - 3.00	
2	**Production royalty rate (%)**	Annex E	Annex F	Annex F	Annex F	Annex F	Annex F of the CoW usually provides details of the royalty rates.
3	**CIT:**						
	a. Tax Rates	Follows the prevailing laws, but not higher than: - 35% for the first five years of the Operating Period; - 40% for the second five years of the Operating Period; - 45% thereafter.	Maximum of 35%	Maximum of 35%	Incremental CIT rate up to 30% (or lower rate, subject to a GR)	Incremental CIT rate up to 30% (or lower rate, subject to a GR)	-
	b. Depreciation rates						
	Non-building assets:						
	i. Straight line	12.5%	Not Applicable	Groups 1 and 2 follow ITL 1984 Group 3: 12.5%	10% -50% (for tangible assets located in the Contract Area); otherwise 5%-25%	10% -50% (for tangible assets located in the Contract Area); otherwise 5%-25%	For the fifth generation, the tax depreciation rates only apply to tangible assets that are located in the Contract Area. Otherwise, the provisions under the 1984 Income Tax Law should prevail
	ii. Declining balance	Not Applicable	25%	Groups 1 and 2 follow ITL 1984	20% - 100% (for tangible assets located in the Contract Area); otherwise 10%-50%	20% - 100% (for tangible assets located in the Contract Area); otherwise 10%-50%	-
	Building assets:						
	i. Straight line	12.50%	25%	12.50%	10%-20% (for tangible assets that are located in the Contract Area); otherwise 5%-10%	10%-20% (for tangible assets that are located in the Contract Area); otherwise 5%-10%	-
	ii. Declining balance	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	-
	c. Amortisation rates						
	a. Straight line	12.5%	Not Applicable	25.0%	10% -50%	10% -50%	Under most CoWs, the costs incurred prior to commercial operation may be deferred and amortised
	b. Declining balance	Not Applicable	25%	Not Applicable	20% - 100%	20% - 100%	-
	d. Accelerated Depreciation						
	Non-building assets:	25%	Not Applicable	Not Applicable	Not Applicable	Not Applicable	For the third generation, accelerated depreciation can only be claimed within any one of the first four years of the life of the assets
	Building assets:	10%	Not Applicable	Not Applicable	Not Applicable	Not Applicable	

No	Item		Third Generation	Fourth Generation	Fifth Generation	Sixth Generation	Seventh Generation	Remarks
	e. Investment allowance		20% of total investment	Not Applicable	Not Applicable	Not Applicable	Not Applicable	At the rate of 5% a year
	f. Deductible expenses:							
	Operating Expenses:							
	i.	Cost of materials, supplies, equipment and utilities	✓	✓	✓	✓	✓	-
	ii.	Expenses for contracted services	✓	✓	✓	✓	✓	-
	iii.	Premiums for insurance	✓	✓	✓	✓	✓	-
	iv.	Damage/losses not compensated for by insurance	✓	✓	✓	✓	✓	-
	v.	Payments of royalties or other payments in respect of patents, designs, technical information, and services	✓	✓	✓	✓	✓	Third Generation - payment to affiliates is subject to approval from the DGT
	vi.	Losses from obsolescence or destruction of inventory	✓	✓	✓	✓	✓	-
	vii.	Rentals	✓	✓	✓	✓	✓	-
	viii.	Deadrent, surface rent, production royalties, stamp duty, and other levies	✓	✓	✓	✓	✓	-
	ix.	Sales Tax	✓	Silent	Silent	Silent	Silent	-
	x.	Uncredited VAT	Silent	✓	✓	✓	✓	-
	xi.	Expenses for treating, processing, repairs and maintenance, handling, storage, transportation and shipping	✓	✓	✓	✓	✓	-
	xii.	Expenses for commissions and discounts	✓	✓	✓	✓	✓	-
	xiii.	Environmental expenses	Silent	Silent	Silent	✓	✓	-
	xiv.	Expenses incurred prior to the establishment of the company and expended by a shareholder	✓	✓	✓	✓	✓	It is deductible, provided that the expenditures have been audited by an independent auditor and approval from the DGT has been obtained

No	Item		Third Generation	Fourth Generation	Fifth Generation	Sixth Generation	Seventh Generation	Remarks
	Sales and General & Administration:							
	i.	Salaries and wages	✓	✓	✓	✓	✓	-
	ii.	Costs of specified BIKs in the contract area	✓	✓	✓	✓	✓	-
	iii.	Research expenses	✓	✓	✓	✓	✓	-
	iv.	Travel expenses	✓	✓	✓	✓	✓	Only for business purposes
	v.	Technical fees	✓	✓	✓	✓	✓	-
	vi.	Management fees and other fees for services performed abroad	✓	✓	✓	✓	✓	-
	vii.	Communication and office expenses	✓	✓	✓	✓	✓	-
	viii.	Dues and subscriptions	✓	✓	✓	✓	✓	-
	ix.	Advertising and other selling expenses, public relations, and marketing expenses	✓	✓	✓	✓	✓	-
	x.	Legal and auditing expenses	✓	✓	✓	✓	✓	-
	xi.	General overhead expenses	✓	✓	✓	✓		-
	xii.	Exploration costs	✓	✓	✓	✓	✓	-
	xiii.	Other relevant expenses	✓	✓	✓	✓	✓	-
	xiv.	Reserve for reclamation	Silent	Silent	Silent	✓	✓	Subject to a deposit being placed in a State-Owned bank, audited by a public accountant, and approved by the DGT
	g. Interest deductibility:							
		Maximum debt to equity ratio	1.5 to 1	3 to 1	Not Applicable	Not Applicable	Not Applicable	-
		Maximum debt to equity ratio for Investment <=US$200m	Not Applicable	Not Applicable	5 to 1	5 to 1	5 to 1	-
		Maximum debt to equity ratio for Investment >US$200m	Not Applicable	Not Applicable	8 to 1	8 to 1	8 to 1	-
	h. Tax losses carried forward		Four years (a loss before the fifth anniversary of the Operating Period can be utilised in any year)	Eight years	Five to eight years	Eight years	Eight years	-
4	**WHT rates:**							
	i.	Dividends, interest and royalties	10%	15% for domestic taxpayers; 20% for foreign taxpayers	15% for domestic taxpayers; 20% for foreign taxpayers	15% for domestic taxpayers; 20% for foreign taxpayers	15% for domestic taxpayers; 20% for foreign taxpayers	Please note that the WHT rates under CoWs may be irrelevant based on PMK-39
	ii.	Dividends (founder shareholder)	See above	See above	See above	7.5%	7.5%	-
	iii.	Technical, management fees and others	Prevailing law	2% to 20%	9% for domestic taxpayers; 20% for foreign taxpayers	15% of deemed net income/20%	15% of deemed net income/20%	-
	iv.	Rentals	Prevailing law	15% for domestic taxpayers; 20% for foreign taxpayers	15% for domestic taxpayers; 20% for foreign taxpayers	15% of deemed net income/20%	15% of deemed net income/20%	-
	v.	EIT	Applicable	Applicable	Applicable	Applicable	Applicable	Follows the prevailing tax laws and regulations

No	Item	Third Generation	Fourth Generation	Fifth Generation	Sixth Generation	Seventh Generation	Remarks
5	**VAT rates:**						
	i. VAT on sales	Silent	10% on domestic sales; 0% on export sales	10% on domestic sales; 0% on export sales	10% on domestic sales; 0% on export sales	10% on domestic sales; 0% on export sales	The fifth generation VAT obligations are grandfathered to the 1984 VAT Law
	ii. VAT on domestic purchases	Silent	10% paid to vendor	10% collected by the mining company	10% collected by the mining company	10% collected by the mining company	The sixth and seventh generations VAT obligations are grandfathered to the 1994 VAT Law
	iii. VAT on imports	Silent	Deferred up to the 10th anniversary of the Operating Period	Deferred up to the 10th anniversary of the Operating Period[7]	Could be exempted, in accordance with the prevailing regulations	Could be exempted, in accordance with the prevailing regulations	-
	iv. VAT on offshore services	Silent	10% on a self assessment basis	10% on a self assessment basis	10% on a self assessment basis	10% on a self assessment basis	-
6	**Sales Tax rates**	Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	The Sales Tax was repealed in 1984, when VAT was introduced
7	**Import of capital goods**: a. Import Duty b. Article 22 Income Tax	a. Exempted up to the 10th anniversary of commercial production; b. Silent	a. Exempted/reduced rates up to the 10th anniversary of the Operating Period, in accordance with the prevailing regulations; b. Silent	a. Exempted/reduced rates up to the 10th anniversary of the Operating Period[7], in accordance with the prevailing regulations; b. Silent	a. Exempted/reduced rates up to the 10th anniversary of the Operating Period, in accordance with the prevailing regulations; b. Could be exempted in accordance with the prevailing regulations	a. Exempted/reduced rates up to the 10th anniversary of the Operating Period, in accordance with the prevailing regulations; b. Could be exempted in accordance with the prevailing regulations	Exemption of import duty is subject to either CoW or BKPM Master List approval
8	**Other taxes and levies:**						
	a. Regional taxes (e.g. motor vehicles and street lighting levies)	- Regional charges - Regional Development Tax ("IPEDA"): amount equal to deadrent and an amount based on the non-public area	Applicable	Applicable	Applicable	Applicable	Generally capped at the rate not exceeding the rate prevailing at the CoW signing date
	b. Land and building tax	Silent	Applicable	Applicable	Applicable	Applicable	-
	c. Stamp duty	1/1000 of the total loan	Applicable	Applicable	Applicable	Applicable	-

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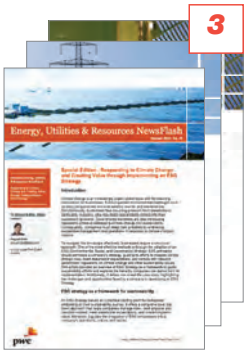

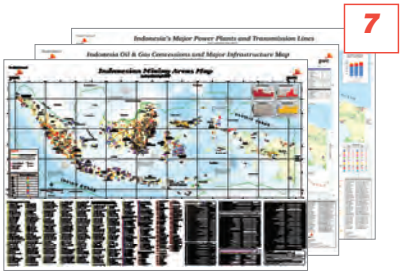

Endnotes

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