Mining in Indonesia

Investment and Taxation Guide

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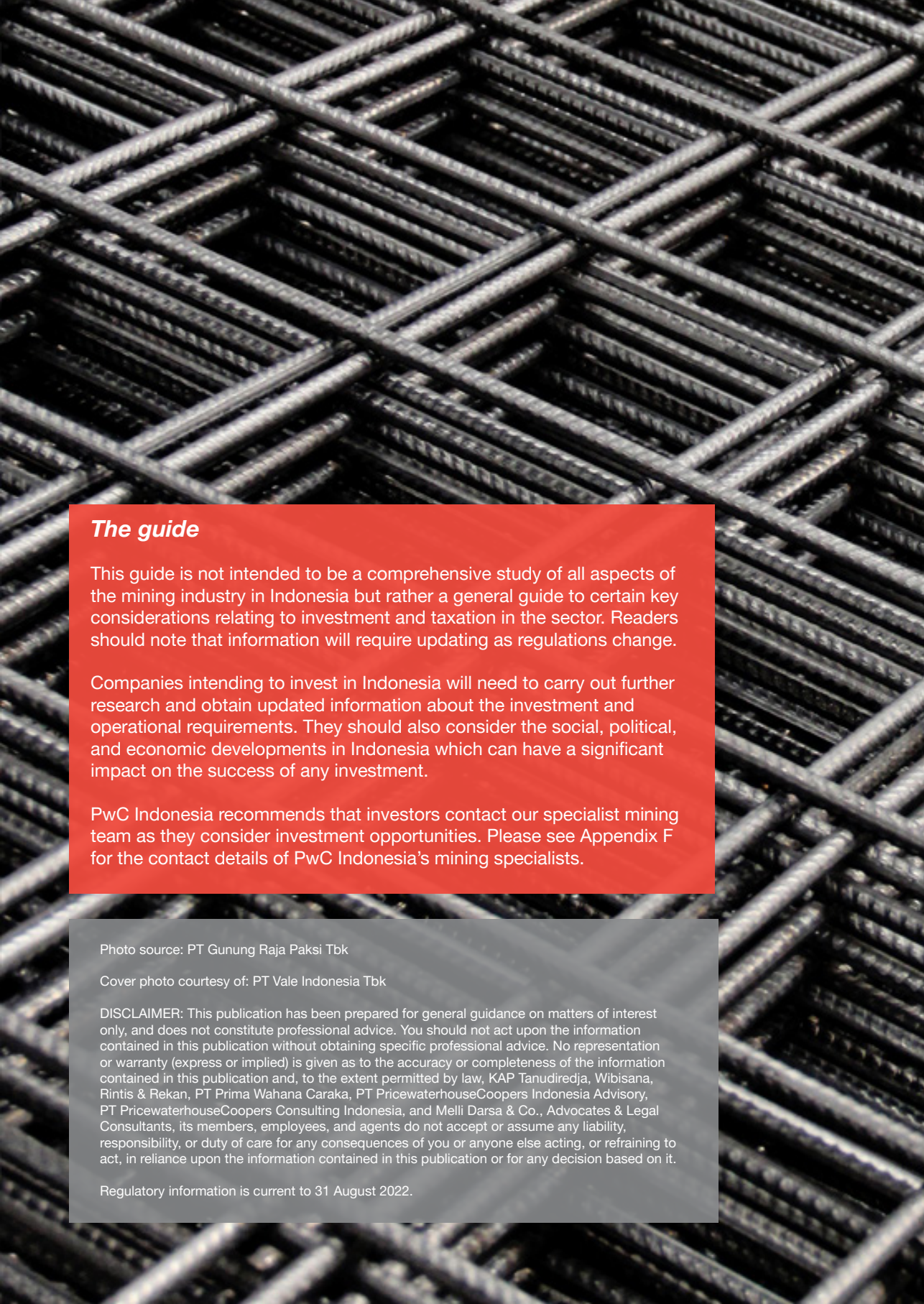


The guide

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 information 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 investment and operational requirements. They should also consider the social, political, and economic developments in Indonesia which can 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 Gunung Raja Paksi Tbk

Cover photo courtesy of: PT Vale Indonesia Tbk

Regulatory information is current to 31 August 2022.

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
Corporation Law	Law No. 40/2007
CoW	Contract of Work
Contracts	CoW/CCoW/CCA
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
DMO	Domestic Market Obligation
EIT	Employee Income Tax
Energy Law	Law No. 30/2007
Environmental Law	Law No. 32/2009

Term	Definition
EBITDA	Earnings Before Interest, Tax, Depreciation, and Amortisation
E&E	Exploration and Evaluation
ET	*Eksportir Terdaftar* (Registered Exporter)
EV	Electric Vehicle
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
HBA	*Harga Batubara Acuan* (Coal Reference Price)
HMA	*Harga Mineral Acuan* (Mineral Reference Price)
IDX	Indonesia Stock Exchange
IFAS	Indonesian Financial Accounting Standards
IFRS	International Financial Reporting Standards
Investment Law	Law No. 25/2007
IP	*Izin Penugasan* (Assignment Licence)
IPO	Initial Public Offering
IPR	*Izin Pertambangan Rakyat* (Peoples' Mining Licence)
ITL	Law No. 36/2008 (the prevailing Income Tax Law)
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)

Term	Definition
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)
KP	*Kuasa Pertambangan* (Mining Rights)
L/C	Letter of Credit
LST	Luxury Sales Tax
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
mt	Metric Tonne
MW	Megawatt
NPWP	*Nomor Pokok Wajib Pajak* (Tax Payer Identification Number)
OSS	Online Single Submission
PBB	*Pajak Bumi dan Bangunan* (Land and Building Tax)
PER 47/2015	*Peraturan Direktur Jendral Pajak* (DGT Regulation) [Reference Number]/[Issuance Year]
PerMen 28/2009	MoEMR Regulation [Reference Number]/[Issuance Year]
PerMenDag 4/2015	*Peraturan Menteri Perdagangan* (MoT Regulation) [Reference Number]/[Issuance Year]
PLN	*Perusahaan Listrik Negara* (State-owned Electricity Company)
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)
PSAK	*Pernyataan Standar Akuntansi Keuangan* (Statement of Financial Accounting Standards/SFAS)

Term	Definition
PTBA	PT Bukit Asam Tbk, state-owned coal mining company
PwC	PwC refers to the network of member firms of PricewaterhouseCoopers International Limited, each of which is a separate and independent legal entity
RKAB	*Rencana Kerja dan Anggaran Biaya* (Work Plan and Budget)
SE 44/2014	*Surat Edaran Direktur Jendral Pajak* (DGT Circular Letter) [Reference Number]/[Issuance Year]
SFAS	Statement of Financial Accounting Standards
SIPB	*Surat Izin Penambangan Batuan* (Rock Mining Business Licence)
SOE	State-Owned Enterprise
UKL	*Upaya Pengelolaan Lingkungan* (Environmental Management Effort)
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)
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 twelfth edition of PwC Indonesia's ***Mining in Indonesia: Investment and Taxation Guide***.

Since the last edition of this publication, there have been many developments affecting Indonesia's mining industry, particularly on the new laws and regulations issued by the Government. The industry is also being impacted by the global energy transition which affects not only fossil fuels such as coal, but also the increased demand for critical minerals essential to the energy transition.

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:

- 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 then followed by issuance of Government Regulation No. 96 of 2021 ("GR 96/2021") on "Implementation of Mining Business Activities", which generally has also been well received by investors since it addresses some concerns on the divestment requirements. GR 96/2021 provides foreign investors with a longer period to satisfy share divestment obligations. For instance, in 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 must divest their interest in stages, commencing from the fifth year of production, so that the shareholding is a maximum of 49% by the tenth year of production. For further discussion regarding the divestment requirements under GR 96/2021, please refer to Section 2.6 of this Guide, "Divestment of Foreign Shareholdings".

While there has been some progress in addressing long-outstanding industry issues, there remains regulatory uncertainty that has raised investor concerns.

Photo source: PT Agincourt Resource

In April 2022, the Government issued GR No. 15/2022 concerning the Treatment of Taxation and/or Non-Tax State Revenue in Coal Mining Businesses, which introduces a new higher royalty on coal sales made by IUPK holders as continuation of a CCoW, where the royalty is calculated based on a certain formula with progressive rates according to the fluctuation of the coal benchmark price. This was then followed by the issuance of GR No. 26/2022 which introduces a similar higher royalty rate for coal sales made by IUP/IUPK holders effective from 14 September 2022. For further discussion regarding these new coal royalty rates, please refer to Section 2.5 of this Guide, “Royalties and the Fiscal Regime”.

Regulatory uncertainty means that the investment environment for the Indonesian mining industry will continue to be challenging. However, as investors view Indonesia as still having significant geological potential, in terms of both coal and mineral resources, there is a real opportunity to attract more investment to drive an increase in this sector’s contribution to the economy. This is what all stakeholders should be focused on.

1 The Industry in Perspective

A critical transition for miners

The race to net zero is changing what it means to be a miner. Demand for critical minerals is surging and operating environments are getting more challenging.

The market for mining materials is reconfiguring in fundamental ways. The energy transition and the race to reach net-zero emissions are creating a surge in demand for 'critical minerals'. These are the commodities needed to generate low-emission energy — elements such as lithium, nickel, cobalt and graphite for energy storage; copper and aluminium for energy transmission; and silicon, uranium and rare earth elements for solar, wind and nuclear energy generation.

Demand for critical minerals is expected to grow significantly over the next three decades. The International Energy Agency estimates that the annual demand for critical minerals from clean energy technologies will surpass US$400bn by 2050, which is equivalent to the annual revenues of the current coal market. This might seem like a long way off, but miners are already struggling to keep up with the demand for critical minerals.

For example, copper, lithium and cobalt are already experiencing supply constraints, and supply imbalances are likely in the near term. In addition, there's significant under investment in these critical minerals, which will exacerbate the supply-demand situation over the near to medium term.

The industry's inability to meet demand could have major implications for the cost — and ultimately the pace — of the global uptake and installation of energy transition technologies. Raw materials are the largest cost component of an EV battery. The supply and price of the input battery metals will have the greatest impact on whether EVs will reach cost parity with, and replace, traditional internal-combustion vehicles.

The mining industry, therefore, plays a fundamental role in the global transition to clean energy. The shift to net zero will require more mining, not less. The rapid scaling of the low-emission energy systems of the future — solar and wind power, electric vehicles (EVs) and grid-scale batteries — will be highly material-intensive. The production of a solar farm requires three times more mineral resources than a similar-

Photo source: PT Timah Tbk

sized coal plant, and constructing a wind farm needs 13 times as much as a comparable gas-fired plant.

But providing resources for the energy transition is not simply a matter of mining more of the same materials in the same way. Instead, the world will need more critical minerals and raw materials to power the global economy of the future, and these resources will need to be mined sustainably.

The combined impact of the energy transition, geopolitics and stakeholder expectations is changing what it means to be a miner. It's no longer simply about extraction. Mining companies need to position themselves strategically, and with urgency, to benefit from the changing market dynamics and the growth in demand for critical minerals and materials necessary for the energy transition.

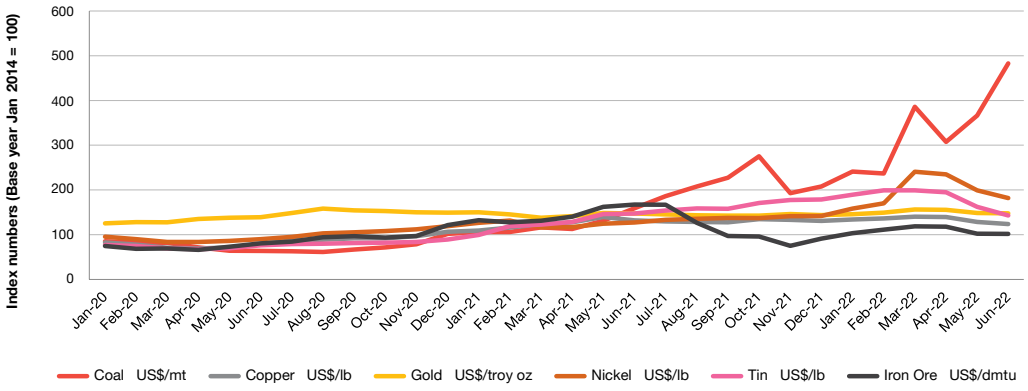
Volatility in mineral and coal prices continues in 2022

Since mid-2020, there has been a broad-based rise in mineral and coal prices driven by a strong demand recovery from the COVID-19 pandemic and restoring business activities, as well as numerous pandemic-related supply constraints. The upward trend in mineral and coal prices continued during the first quarter of 2022, with coal and mineral prices surging, reaching record highs in March 2022.

One of the main reasons for the price surge is the Russian invasion of Ukraine, which has caused major disruptions to the supply of commodities. Russia is the world's largest exporter of natural gas and nickel and it also accounts for a significant share of coal, crude oil and refined aluminium exports. The disruptions have exacerbated existing stresses in commodity markets following the recovery from the COVID-19 pandemic, which saw rebounding global demand and constrained supplies.

Mineral and coal prices have been extremely volatile, with volatility is expected to continue throughout 2022. Mineral and coal prices are expected to be significantly higher in 2022 than in 2021 and to remain high at least over the short term. The duration of the Russia-Ukraine conflict and the disruptions it has caused to the supply of commodities are amongst the key factors which will affect mineral and coal price volatility in the near future.

Mineral and Coal Prices



Source: World Bank, Bloomberg, PwC Analysis

Coal: the average price of coal rose year-on-year by 127% in 2021. The rise in coal price continued in 2022 with the average price during the first half of 2022 increasing by another 99%. The sudden price growth, contrary to many market watchers' expectations, reflects the uncertainty and volatility of the times. As geopolitical and demand pressures continue, more volatility in coal price is expected over the short term. Increased demand for thermal coal in Asia, tight supplies of natural gas, and sanctions on Russian coal exports are continuing to increase thermal coal prices in 2022. In the medium term, new thermal-coal power plants in Asia will need to secure supply through long-term contracts to meet rising energy demand, in contrast to the trend in other regions of the rapid dismantling of coal-fired power plants. We expect volatility to increase as supply–demand imbalances affect prices. Higher-grade, lower-emission thermal coal will increasingly be preferred. In the long term, however, demand pressures are expected to ease. Currently, consensus forecasts indicate that prices for thermal coal will decrease significantly over the next decade. With renewable energy becoming increasingly cost-competitive and with net-zero targets set by many countries at the 2021 United Nations Climate Change Conference (COP 26), more thermal-coal power plants are set to be shut down over the next decade.

Nickel: the average price of nickel saw an increase of 34% in 2021, increasing by another 45% in the first quarter of 2022. Subsequent months however have seen a softening in nickel prices. The nickel market has been affected by production and export disruptions following sanctions imposed on Russia, the world's largest exporter of nickel. On the demand side, production of stainless steel in China is slowing, although, demand for nickel-contained batteries continues to grow and is now the second-largest use of nickel. The sales of EVs in 2021 doubled compared with 2020 and continued rising strongly in 2022. The dynamics in the automotive sector around growing demand for electric vehicles will continue to support the demand for nickel as a major component to battery production.

Copper: the average price of copper rose year-on-year by 51% in 2021. The price of copper is expected to rise modestly over the next 12 months due to the ongoing drive towards clean energy transformation.

Tin: the average price of tin rose year-on-year by 89% in 2021. The rise in tin price continued in 2022 with the average price during the first quarter of 2022 increasing by another 34%. The recent rise in tin price has been supported by strong demand from the electronics sector and supply disruptions in key tin-producing countries. However, subsequent months have seen softening in tin prices where the average price during the second quarter of 2022 dropped by 15%, compared to the first quarter average price. In the longer term, however, tin demand prospects remain positive and stand to benefit from the clean energy transition and green technologies.

Iron ore: the average price of iron ore rose year-on-year by 48% in 2021. The iron ore price grew strongly in the first half of 2021 as miners struggled to keep pace with rising demand. The price fell in the last quarter as demand, particularly from Chinese steel mills, eased. These price fluctuations highlight the volatility risks associated with geographically concentrated customers.

Gold: the performance of gold remained essentially unchanged from 2020, with prices relatively consistent year on year.

Indonesian Production of Coal and Minerals

Despite the decline in coal price during 2012 and 2013, Indonesia recorded increases in coal production during those years. Demand was strong from coal-fired power plants around the world, especially from plants in China and India. In addition, a number of new power plants have come on-line since mid-2008, both in Indonesia and abroad. In 2014, thermal coal production decreased only slightly, to 458 million tonnes, despite some attempts by the Government to limit production increases. In 2015, Indonesia saw a significant reduction in its thermal coal production for the first time in many years, with the Government's official figures showing a decrease of 14% to 392 million tonnes.

However, this position was reversed over the period 2016-2019, with Indonesia recording coal production increases for four consecutive years reaching 617 million tonnes in 2019. In 2020, coal production decreased by 9% to 561 million tonnes mainly due to the decline of global and domestic demand during the onset of the COVID-19 pandemic. The pandemic also initially resulted in lower prices in the first half of 2020, which drove the decision of coal producers to cut production and reduce investment. Despite the declining production, the 2020 coal production was still above the target of 550 million tonnes. In 2021, coal production reached 614 million tonnes or 98% of the 2021 target of 625 million tonnes, on the back of a significant increase in demand and prices.

In 2022, the coal production target has been set at 663 million tonnes. Initially, Indonesian miners were expected to struggle to meet this target due to coal export restrictions imposed by the Indonesian Government in January 2022 to tackle the issue of lack of domestic coal supply for power stations. However, the coal production during January-August 2022 has reportedly reached 430 million tonnes (or 65% of the target), which indicates the actual coal production in 2022 may well meet the target.

Tin production in Indonesia has significantly decreased since 2013 as a result of the Indonesian Government's efforts to limit export quotas in order to deal with illegal mining and reserve depletion, and also due to the suspension of operations in several tin mines due to environment-related issues. During the 2016-2018 period, the production level of tin was steady, but represented less than half of tin production in 2013. Tin production showed signs of improvement with the production level in 2019 increased by 50% from the 2018 production level. However, the production of tin has since declined significantly with 2021 production representing only half of the 2019 tin production. The decline was caused by several factors, among others, the restrictions imposed during the pandemic situation, the illegal mining issue and also declining grade of tin produced in the last few years.

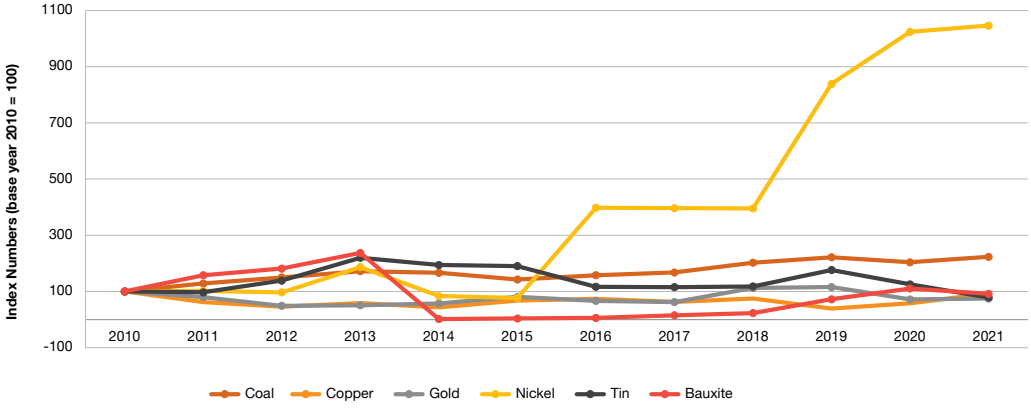
Meanwhile, Indonesia's copper production has been significantly affected by production at the Grasberg mine. In 2018, copper production increased mainly due to the improved production of the Grasberg mine after resolution of the protracted negotiations between Freeport-McMoran and the Government of Indonesia around the divestment of shares and the conversion of the permit from a CoW to an IUPK-OP. In 2019, the Grasberg mine transitioned from open-pit to underground mining which resulted in a decrease in copper production in 2019. The Grasberg underground mine commenced extraction of ore in 2020 and achieved the optimal production level in mid-2020, and has since been the major contributor to the increase in copper production in 2020 and 2021.

Photo source: PT Vale Indonesia Tbk

The production of nickel and bauxite has also continued to increase after the relaxation of the ban on exports of nickel ore and washed bauxite by the Indonesian Government at the beginning of 2017. Another factor contributing to the increase is the production from the new nickel smelters that have been coming on-line since 2017 together with higher global nickel prices driven by increased demand for the electric vehicle 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 export of low-grade nickel ore two years ahead of the initial schedule, which was announced in August 2019 and effective January 2020. A similar trend of nickel production increase was also seen in 2013 when the full ban on export of nickel ore was initially applied at the beginning of 2014.

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

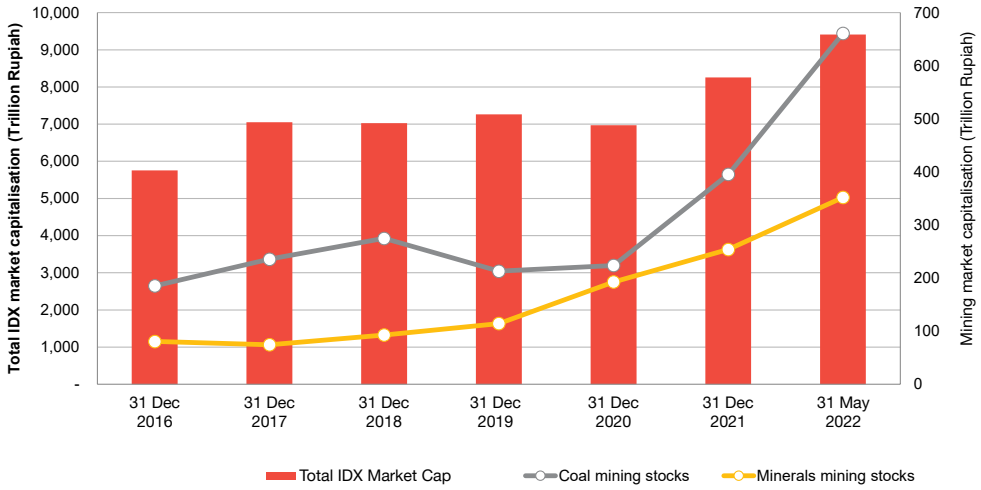
Indonesian Coal and Mineral Production Trends



Source: Indonesian Coal Mining Association, U.S. Geological Survey, Ministry of Energy & Mineral Resources Performance Report for 2019, 2020, and 2021 (Laporan Kinerja Kementerian ESDM for 2019, 2020 & 2021), PwC Analysis.

Increases in Mineral and Coal Prices Drove Market Capitalisation of Indonesian Mining Stocks in 2021 and 2022

Market Capitalisation of Mining Companies in Indonesia



Source: IDX

The movements in the market capitalisation of listed coal and mineral mining companies on the IDX generally follow the fluctuations in mineral and coal prices.

During the period from December 2016 to May 2022, the market capitalisation of listed coal and mineral mining companies on the IDX has shown steady growth which corresponds to the upward trend in mineral and coal prices over the period. The exception was 2019, where the market 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 during the time when many businesses were heavily affected by the impact of 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 2016 to May 2022, the market capitalisation of listed coal mining companies on the IDX has increased by 357% from IDR 185 trillion at 31 December 2016 to IDR 661 trillion at 31 May 2022. This is despite the pressures on coal from the global transition to clean energy and the rising Environmental, Social and Governance ("ESG") expectations from governments and other stakeholders such as employees, local communities and customers. The geopolitical issues experienced in 2022 have confirmed the continuing role that coal plays in maintaining energy security in many parts of the world, which has contributed to the increased demand for coal and value of coal mining companies.

Meanwhile, the market capitalisation of listed mineral mining companies on the IDX has also increased by 436% during the same period, from IDR 81 trillion at 31 December 2016 to IDR 352 trillion at 31 May 2022. Strong performance of nickel, copper and gold prices in the last few years and the important roles that nickel and copper play in the global transition to clean energy, have been the major factors supporting investors' confidence.

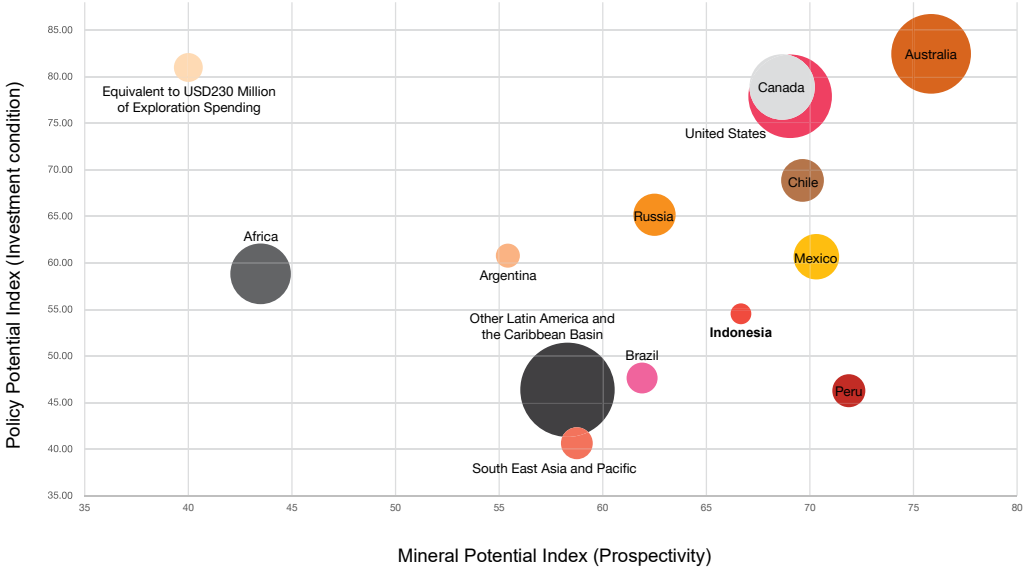
Indonesian Mining Exploration – In Need of a Boost

Exploration is the lifeblood of the mining industry. Unfortunately, exploration spending, particularly in greenfield areas, has been virtually stagnant in Indonesia for a number of years. When commodity prices fell in 2012, Indonesian mining companies shifted their attention from increasing production and development to cutting operational expenditure and focusing on easier-to-mine mineral deposits, while curtailing capital expenditure. All of these factors have led to low level exploration, despite the increase in commodity prices and profitability in recent years.

Global mining companies rank Indonesia highly in terms of its mineral prospectivity, but poorly in terms of its mineral policies and investment climate. Based on the 2021 Annual Mining Survey issued by the Fraser Institute, there is no significant change in the global perception of the Indonesian mining sector with Indonesia still ranked among the worst globally. In terms of the policy perception index, which gauges how friendly government policy is to the mining sector, Indonesia is ranked 72nd out of the 84 regions that were surveyed, which is broadly similar to the previous year's survey results where Indonesia was ranked 69th out of the 77 regions surveyed.

However, in terms of the mineral potential index, representing perceived geologic attractiveness, Indonesia's ranking has improved considerably from the unusually low ranking of 69th out of the 77 countries surveyed in 2020 to 33rd out of 84 countries surveyed in 2021. While improving, the mineral potential index of Indonesia in 2021 is still far behind the ranking based on the surveys conducted in 2019 when Indonesia was ranked the third out of 76 countries surveyed, or in 2017 when Indonesia was ranked number one out of the 91 countries surveyed.

Mineral Potential Index vs Policy Perception Index



Source: World Bank, Bloomberg, Fitch, PwC Analysis

Based on data from the MoEMR, Indonesia's coal, nickel, bauxite and tin reserves in 2020 amounted to 38.8 billion tonnes, 4.5 billion tonnes, 1.2 billion tonnes, and 2.2 billion tonnes, respectively. Despite its geological potential, Indonesia has yet to capture a fair proportion of the global exploration spend. Indeed, Indonesia has consistently received less than 2.5% of the global exploration budget during the period from 2006 to 2014, and less than 2.0% during the period from 2015 to 2021, which is extraordinarily low when compared to its mineral potential.

Continuing uncertainty regarding the regulatory environment for mining in Indonesia has dampened the appetite for investment. Many major international mining companies have left Indonesia, while continuing to invest elsewhere, sometimes even in countries which have far less geological potential.

The mining industry is a high-cost, capital-intensive industry. Without certainty regarding the laws and regulations that affect mining business in Indonesia, there is unlikely to be significant new investment, even with an improvement in commodity prices. This is particularly the case in the minerals sector, given the comparatively higher investment costs relative to coal mining, and despite the many under-explored areas of the country. This situation will continue to be a drag on the industry's growth in Indonesia in 2022 and beyond, and it should be an area of focus for the Government, particularly given the export revenues, jobs and other economic benefits that can be generated by a strong mining industry.

The continued lack of exploration spending in Indonesia over the last decade is clearly a worrying sign. The low level of greenfield exploration activity is a significant threat to the long-term success of the industry and it may adversely affect the future growth of the Indonesian economy. An increase in exploration, discovery, and the development of new deposits is essential for sustaining the industry over the longer term. Without substantial greenfield exploration in the coming years, we are unlikely to see significant new mine developments in Indonesia, other than for existing known deposits.

Exploration is the lifeblood of the mining industry. Reserve replacements are urgently needed if Indonesia is to remain a major mining country. With the issuance of Mining Law No. 3 of 2020 (the amendment to the 2009 mining law), the Government has partly addressed this issue. The amendment to the mining law now requires IUP/IUPK holders to continue performing exploration activities, including through the setting aside of an exploration budget. Holders of IUP-OPs/IUPK-OPs are also required to set aside a "mineral and coal reserve security fund" (*Dana Ketahanan Cadangan Mineral dan Batubara*) for new reserve discovery activities.

The amendment to the mining law also introduces longer mining business licence periods for mineral IUPs/IUPKs with integrated processing and/or refining facilities and coal IUPs/IUPKs with integrated coal development and/or utilisation facilities. These IUP and IUPK holders are granted a 30-year business licence and may be eligible for extensions of 10 years upon each expiration (after fulfilling the requirements of prevailing laws and regulations). This incentive appears targeted at improving the economics of smelters that obviously can require sizable up-front investment, which hopefully will increase investment in the Indonesian mining sector.

Photo source: PT Agincourt Resources

Despite the positive changes introduced by the amendment to the mining law, consideration of further stimulus measures may be of benefit, such as removing the hurdles to investment in exploration, including uneconomic foreign divestment rules, and providing incentives at the exploration stage, when risk capital is required from investors (e.g. waive the Value Added Tax ("VAT") during the exploration stage, provide tax credits when the production commences, as well as assistance with land acquisition or compensation, etc.).

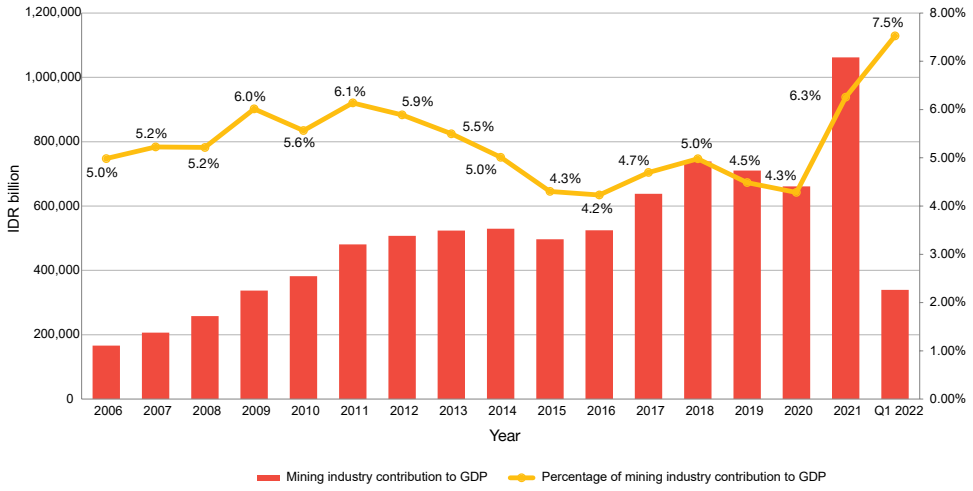
The Government needs to find a balance between securing state revenue, on the one hand, and attracting investment (and particularly greenfield exploration investment) and developing a sustainable mining industry, on the other. An investor-friendly regulatory regime is needed to ensure a strong mining sector, which will be even more important to Indonesia given the increased need for critical minerals to support the energy transition, and the country's ambition to be a hub for EV production.

Mining is a cyclical business. Global mining companies will again come hunting for projects in high potential geographies – the question is whether Indonesia can establish an attractive and competitive mining investment framework before the next round of investments. Now is the time to change the paradigm and give mining exploration a boost.

The Mining Industry's Contribution to the Indonesian Economy Significantly Improved in 2021 and 2022

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

Contribution of Mining Industry to Indonesian GDP

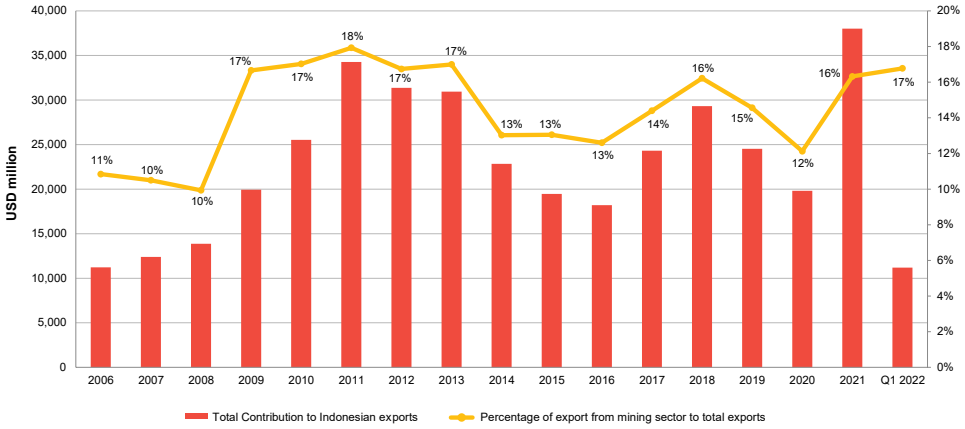


Source: Bank Indonesia

The mining sector's contribution to Indonesian GDP declined 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 global demand weakening during the COVID-19 pandemic situation, the mining contribution to GDP also decreased. However, mineral and coal prices have strengthen significantly in 2021 and 2022 following a strong demand recovery after the COVID-19 pandemic, with commodity prices further strengthened by recent geopolitical tensions. As a result, the mining sector's contribution to Indonesian GDP has much improved to 6.3% in 2021 and 7.5% in the first quarter of 2022.

The mining sector represents a high proportion of Indonesian exports, particularly as mining products are generally priced in US dollars. The mining sector's contribution to Indonesian exports had fallen off for a few years, following the implementation of the ban on exports of unprocessed (or not-sufficiently 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.

Mining Products as a Percentage of Total Indonesian Exports



Source: Bank Indonesia

However, the mining industry's contribution to total exports increased to 14% and 16% in 2017 and 2018, respectively, primarily from increased coal export revenues, increasing from US$ 14.6 billion in 2016 to US$ 20.5 billion in 2017 and to US$ 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 the improvement of the mining industry's contribution to total exports, with nickel exports providing an additional US$ 155 million and US$ 628 million in 2017 and 2018, respectively, while bauxite exports posted a remarkable increase of US$ 66 million and US$ 265 million in 2017 and 2018, respectively, from only US$ 430,000 in 2016. Based on the export data from Bank Indonesia, the export realisation of both nickel and bauxite ores in 2018 were 19.8 million tonnes and 8.7 million tonnes, respectively, which are less than half of the quota capacity given by the MoEMR, indicating the potential revenue increase from export of both commodities in the future.

In 2019, nickel and bauxite exports further increased to US$ 1.1 billion and US$ 467.6 million, respectively. For nickel, the significant increase in export was also affected by the Government's decision to accelerate the full ban on export 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 US$ 24 billion in 2018 to US$ 21.6 billion in 2019 due to the weakening of global coal prices.

Since January 2020, the government has officially banned the export of nickel ore. This policy was issued to boost the development of smelter construction and also for the country's mineral reserves preservation, especially for nickel. Also, coal export value and quantity decreased 24% and 11.3%, respectively, in 2020 due to the global and domestic demand weakening in light of the COVID-19 pandemic situation. As a result of these, the mining industry's contribution to total exports further decreased to 12% in 2020, despite bauxite exports increasing to US$ 555 million.

However as explained above, mineral and coal prices have strengthened significantly in 2021 and 2022 following a strong demand recovery after the COVID-19 pandemic. Similar to the mining sector's contribution to GDP, its contribution to total exports has also significantly improved to 16% in 2021 and to 17% during the first quarter of 2022.

2 Regulatory Framework

2.1 Introduction

Mineral 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 comply 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 (*Dewan Perwakilan Rakyat* or "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 of Law No. 4 of 2009 on Minerals and Coal Mining (the "Amendment to the Mining Law") was formally enacted.

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

In 2020, other than the issuance of the Amendment to the Mining Law, another significant regulatory change in mining business has also been made through Law No. 11 of 2020 on Job Creation as partially revised by Law No. 1 of 2022 ("Job Creation Law") which amends several laws including the Mining Law. To the Mining Law, the Job Creation Law adds one new article regarding royalty imposition for coal and revises one article regarding sanctions for causing nuisance to mining business activities. Following the issuance of the Job Creation Law, royalty imposition for coal is further regulated under the Government Regulation No. 25 of 2021 on the Implementation of Energy and Mineral Resources Business ("GR 25/2021").

Photo source: PT Timah Tbk

Details regarding the key changes provided under the Job Creation Law and its implementing regulations that impact the mining business are elaborated further in this chapter.

The key objective of the Mining Law is to support sustainable national development, for which purpose it imposes on investors the following requirements regarding 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.

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

- Mining Areas (GR 22/2010);
- Mining Business Activities (GR 96/2021);
- 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 PNBP in Minerals Mining Businesses (GR 37/2018); and
- Treatment of Taxation and/or PNBP in Coal Mining Businesses (GR 15/2022).

Please note that GR 25/2021, GR 26/2022 and GR 37/2018 were not issued specifically as implementing regulations of the Mining Law, but are regulations that remain relevant to mining companies operating in Indonesia. GR 26/2022 provides guidance on the rates of production royalties that the holder of an IUPK should pay - please refer to the discussion regarding this GR in Section 2.5 of this Guide, “Royalties and the Fiscal Regime”. GR 37/2018 provides guidance on the treatment of taxation and/or PNBP that Indonesian mineral mining companies should be aware of. Please refer to the discussion regarding this GR in Section 4.2 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 PerMen have also been issued by the MoEMR. Some of the key regulations relate to:

a. The Procedures for the Granting of Areas, Licences, and Reporting in the Business Activity of Mineral and Coal Mining (PerMen 7/2020 as amended by PerMen 16/2021);
b. The Mineral and Coal Mining Business (PerMen 25/2018 as lastly amended by PerMen 17/2020);
c. The Determination of Mining Areas (PerMen 37/2013);
d. The 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 48/2017 as partly revoked by PerMen 41/2018 and PerMen 7/2020 as amended by PerMen 16/2021);
f. The Procedures for Setting the Benchmark Prices of Metal Minerals and Coal (PerMen 7/2017 as amended by PerMen 44/2017, PerMen 19/2018, and PerMen 11/2020);

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); and
i. The Implementation of Good Mining Practice and the Supervision of Minerals and Coal Mining (PerMen 26/2018).

As mentioned above, in 2019 and early 2020, significant regulatory changes were made in the mining sector relating to, among others, licensing, royalty rates and divestment procedures. As part of efforts to simplify the regulations and in order to attract more investment to the mining sector, the following regulations were issued by the MoEMR:

1. PerMen 8/2018, concerning "The Revocation of the Decision of the MoEMR and the Decision of the Minister of Mining and Energy related to Mineral and Coal Business Activities" revokes the following regulations:
   - Decree of the Minister of Mining and Energy No. 2555.K/201/M.PE/1993, concerning "The Mining Inspection Officer in the General Mining Sector";
   - Decree of the Minister of Mining and Energy No. 103.K/008/M.PE/1994, concerning "Supervision of the Implementation of the Environmental Management Plan and the Environmental Monitoring Plan in the Field of Mining and Energy";
   - Decree of the Minister of Mining and Energy No. 620.K/008/M.PE/1994, concerning "The Central Environmental Impact Analysis Commission of the Department of Mining and Energy";
   - Decree of the Minister of Mining and Energy No. 2202.K/201/M.PE/1994, concerning "Granting of a Preliminary Investigation Permit in the Frameworks of Foreign Investment (*Penanaman Modal Asing* or "PMA") or Domestic Investment (*Penanaman Modal Dalam Negeri* or "PMDN") in the General Mining Sector";
   - Decree of the Minister of Mining and Energy No. 134.K/201/M.PE/1996, concerning "Use of Maps, Clarifications of Boundaries and Widths of Mining Concession Areas, CoW, and CCoW in the General Mining Sector";
   - Decree of the Minister of Mining and Energy No. 135.K/201/M.PE/1996, concerning "Verification of the Capability and Capacity of Applicants for Mining Concessions, CoW, and CCoW"; and
   - Decree of the MoEMR No. 1614/2004, concerning "Guidelines for Processing the Applications for CoW and Coal Mining Undertaking Work Agreements in the Foreign Investment Framework".

2. PerMen 7/2020 revokes the following regulations:
   - PerMen 11/2018 (as lastly amended by PerMen 51/2018).
   - Several provisions with respect to changes to the board of directors and board of commissioners as set out under PerMen 48/2017.

3. PerMen 25/2018 revokes the following regulations:
   - PerMen 25/2008, concerning "Procedures for the Determination of the Policy on Limiting National Mineral Mining Production";
   - PerMen 34/2009, concerning "Priority of Supply for Mineral and Coal Needs for Domestic Interests";
   - PerMen 17/2010, concerning "Determination of Benchmark Pricing for Mineral and Coal Sales";
   - PerMen 33/2015, concerning "Procedures for the Installation of Boundary Marks in Minerals and Coal Special Mining Business Licence Area (*Wilayah Izin Usaha Pertambangan Khusus* or "WIUPKs");

- PerMen 41/2016, concerning “Development and Empowerment of the Community in Minerals and Coal Mining Business Activities”;
- PerMen 5/2017, as amended by PerMen 28/2017, concerning “Increasing the Added Value of Minerals through Domestic Minerals Processing and Refining Activities”; and
- PerMen 6/2017, as amended by PerMen 35/2017, concerning “Procedures and Requirements for Obtaining Recommendations for Exports of Processed and Refined Minerals”.

4. PerMen 26/2018 revokes the following regulations:
   - PerMen 2/2013, concerning “Supervision of the Implementation of Mining Business Management as Implemented by the Provincial Government and Regency/City Government”;
   - PerMen 7/2014, concerning “Reclamation and Post-Mining in Mineral and Coal Mining Business Activities”;
   - PerMen 38/2014, concerning “Applications for Safety Management Systems for the Minerals and Coal Mining Sector”;
   - Decree of the Minister of Mining and Energy No. 555.K/26/M.PE/1995, concerning “Occupational Health and Safety for General Mining”;
   - Decree of the Minister of Mining and Energy No. 1211.K/008/M.PE/1995, concerning the “Prevention and Handling of Environmental Pollution and Damage in General Public Mining Activities”; and
   - Decree of the MoEMR No. 1457 K/28/MEM/2000, concerning “Technical Guidance for Environmental Management in the Mining and Energy Sectors”.

The DGoMC has also issued a number of regulations/circular letters, with some of the key ones being as follow:

- Royalty Calculations;
- Benchmark Prices (including Adjustment Costs and Benchmark Prices for certain types and uses);
- DMO Credits;
- Use of Affiliates for Mining Services; and
- Production Costs for Determining the Coal Price for Mine Mouth Power Plants.

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

- GR 1/2019, concerning “Export Proceeds from the Exploitation, Management, and/or Processing Activities of Natural Resources”. Please refer to Section 6 of this Guide, “Additional Regulatory Considerations for Mining Investment”, and the sub-section “Requirement to Deposit DHE with an Indonesian FX Bank”, for further discussion of GR 1/2019.
- Ministry of Finance (“MoF”) Regulation (*Peraturan Menteri Keuangan* or “PMK”) No. 39/PMK.010/2022 as lastly amended by PMK No.123/PMK.010/2022 concerning Determination of Export Goods that are Subject to Export Duty and Export Duty Tariffs (“PMK 39/2022”). Please refer to Section 2.4 of this Guide, “Mandatory In-Country Processing and Export Restrictions”, for further discussion of PMK No. 39/PMK.010/2022 as lastly amended by PMK No. 123/PMK.010/2022.

Photo source: PT Bukit Asam Tbk

- 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 2.4 of this Guide, "Mandatory In-Country Processing and Export Restrictions", and the sub-section on "Use of National Sea Transportation and Insurance for Coal Exports", for further discussion of PerMenDag 40/2020, as amended by PerMenDag 65/2020.
- PerMenDag 94/2018, as amended by PerMenDag 102/2018, concerning the "Provisions for the Use of Letters of Credit for the Export of Certain Goods". Please refer to Section 2.4 of this Guide, "Mandatory In-Country Processing and Export Restrictions", and the sub-section on the "Letter of Credit ("L/C") Requirements for Exports of Minerals Resources", for further discussion of PerMenDag 94/2018 as amended by PerMenDag 102/2018.
- Presidential Regulation (*Peraturan Presiden* or "Perpres") No. 55/2022, concerning "Delegation of Granting Business Permits in the Mineral and Coal Mining Sector".

Hierarchy of the current regulatory framework is shown in the diagram below:

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

GRs

- **Mining Areas** GR 22/2010
- **Mining Business Activities** GR 96/2021
- **Reclamation and Mine Closure** GR 78/2010
- **Mineral and Coal Mining Direction and Supervision** GR 55/2010
- **Type and Tariff of Non-Tax State Revenue Applicable to Minister of Energy and Mineral Resources** GR 26/2022
- **Tax and Non-Tax State Revenue Treatment in the Mineral Mining Sector** GR 37/2018
- **Tax and Non-Tax State Revenue Treatment in the Coal Mining Sector** GR 15/2022
- **Implementation of Energy and Mineral Resources Sector** GR No. 25/2021

MoEMRs

- **Mining Areas, Licensing and Reporting in Mineral and Coal Mining** PerMen 7/2020 as amended by PerMen 16/2021
- **Determining 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 partly 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 PerMen17/2020
- **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 of Price Determination** PerMen 9/2017 as amended by PerMen 43/2018
- **Mine Reclamation and Closure** PerMen 26/2018

DGoMC Circulars, Regulations, and Decree

- **Royalty Calculations** No. 32.E/35/DJB/2009
- **Adjustment Costs for Coal Benchmark Prices** No. 515.K/32/DJB/2011 No. 999.K/30/DJB/2011 No. 644.K/30/DJB/2013
- **Coal Benchmark Price for Certain Types and Uses** No. 480.K/30/DJB/2014
- **DMO Credits** No. 5055/30/DJB/2010 No. 300.K/30/DJB/2018
- **Use of Affiliates for Mining Services** No. 376.K/30/DJB/2010
- **Coal Benchmark Price for Mine-Mouth Power Plants** No. 953.K/32/DJB/2015

Photo source: PT Bukit Asam Tbk

2.2 Mining Areas, Mining Licences, and Reporting in the Minerals and Coal Business Activities

A. Mining Areas

Based on the Mining Law, there are several terms used to describe mining areas, 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, geology potential, and/or information about geology has already been obtained;
- WIUP means an area for which authorisation has been granted to an IUP 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 the national strategic interest;
- A Special Mining Business Area (*Wilayah Usaha Pertambangan Khusus* or "WUPK") means a part of a mining area which data, geology potential, and/or information about geology that may be commercialised has already been obtained; and
- A 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 22/2010, GR 96/2021, PerMen 37/2013, and as amended by PerMen 16/2021.

Based on the Amendment to the Mining Law:

- WPs as part of the 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 with the DPR of the Republic of Indonesia.
- Determination of WPs include the determination of WUPs, WPRs, WPNs, and WUPKs.

WUPs include:

- Radioactive WUPs;
- Metal mineral WUPs;
- Coal WUPs;
- Non-metal mineral WUPs; and/or
- Rock WUPs.

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

Based on PerMen 7/2020, the MoEMR or Governor determines the non-metal mineral or rock WIUPs, based on the applications that are submitted by business entities, cooperatives, or individuals. 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 DGoMC, on behalf of the MoEMR or the Governor, shall perform administrative and technical evaluations on the requests that are submitted by business entities, cooperatives, 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 the WIUP determination, no later than ten business days after the date when the request was received.

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

The implementing guidelines for the determination of non-metal mineral and/or rock WIUPs are stipulated in MoEMR Decree No. 1798 K/30/MEM/2018 as amended by MoEMR Decree No. 24 K/30/MEM/2019 and partially revoked by MoEMR Decree No. 110.K/HK.02/MEM.B/2021 of 2021 ("KepMen 1798/2018"). Although KepMen 1798/2018 is the implementing regulation of PerMen 11/2018 (which has been revoked by PerMen 7/2020), PerMen 7/2020 stipulates that any Ministerial decrees issued as implementing regulations of PerMen 11/2018 shall remain valid as long as they do not contradict PerMen 7/2020. In this case, KepMen 1798/2018 remains relevant, as the reference for the determination of non-metal minerals and/or rock WIUPs.

In relation to the WIUP and the WIUPK, the Government has also issued MoEMR Decree No. 1801 K/30/MEM/2018 of 2018, on the calculation formulas for information data compensation for the WIUP and the WIUPK. However, the Government believes that such compensation has not been optimal for attracting investments to the mining business. Therefore, the MoEMR issued MoEMR Decree No. 80 K/32/MEM/2020 of 2020, which revokes MoEMR Decree No. 1801. 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 Presidential Regulation (*Peraturan Presiden* or "Perpres") No. 5/2022 concerning the Delegation of Granting Business Permits in the Mineral and Coal Mining Sector. This Perpres 55/2022, regulates the delegation of authority from Central Government to Regional Government, among others:

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

The Determination and Granting of Metal, Minerals and Coal WIUPs

Pursuant to Article 17 of the Amendment to the Mining Law, metal, mineral and coal WIUPs are stipulated and granted by the MoEMR to a business entity, a cooperative, or an individual through an auction, after the WIUPs have been determined by the Governor.

Further procedures on the implementation of WIUPs determination may be regulated under the implementing regulations. 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 at the office of the Ministry of Mineral and Coal, or through their official website; and/or
- It shall be announced at the office of the Provincial Government that manages minerals and coal, or through their official website.

The auction shall be performed by:

- The MoEMR, if the metal mineral and coal WIUP 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 is 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, the parties that are allowed to participate in a metal, minerals or coal WIUP auction are determined by the size of the WIUP acreage, as follows:

≤ 500 ha	> 500 ha
• Regionally-Owned Enterprises (*Badan Usaha Milik Daerah* or "BUMD"); • (Local) National enterprises*; • Cooperatives; and/or • Individuals (including firms and partnerships)	• National State-Owned Companies (*Badan Usaha Milik Negara* or "BUMN"); • BUMDs • National enterprises*; • Foreign held entities PMA; and/or • Cooperatives

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

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

i. **Pre-qualification**
   During the pre-qualification stage, the evaluation of the auction participants is based on the administrative, technical, and financial requirements. The auction participants are required to meet certain administrative, technical, and financial requirements. The 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, the prospective winner of the auction is to be determined by the Auction Committee, based on the weighted average results of the evaluation that was performed at the pre-qualification and qualification stages, with the pre-qualification result carrying 40% and the offering price carrying 60%.

Previously, PerMen 11/2018 placed a greater importance on the pre-qualification aspects where the weighting for the pre-qualification result was set at 70%, and the weighting for the offering price was set at 30%. However, PerMen 11/2018 was amended by PerMen 7/2020, which basically applies the same calculation criteria but places a greater focus on the offering 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 mineral or coal WIUP auction, and the implementation of the metal mineral and coal WIUP auctions are stipulated in KepMen 1798/2018.

The Determination and Granting of Metal, Minerals and Coal WIUPKs

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

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 only available to BUMNs and BUMDs. Priority for the granting of the WIUPK shall be given to the BUMD 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 amended partially by PerMen 16/2021), BUMNs and BUMDs may engage private business entities whose capital is wholly sourced from domestic investment as partners in the bidding 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 the 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 administrative, technical, and financial requirements.

If there is only one BUMN that is interested and eligible, the WIUPK shall be directly granted to such 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 from the appointment date.

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

The share participation by 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 partially 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 such a 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 after the date of the direct appointment letter.

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 investment by a private business entity is capped at a share ownership of 49%.

b. The Determination of Metal Mineral and Coal WIUPKs by Auction

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

The process of auctioning the WIUPKs to private business entities that are engaged in the minerals 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 partially by PerMen 16/2021), the auction procedures, evaluation of pre-qualification phase documents, evaluation of bid prices, weighting values of the results of the evaluation of the pre-qualification documents and the bid prices, as well as the ranking determination of the prospective auction winner of the metal, minerals and coal WIUPK are similar to those for metal, minerals and coal WIUP auctions.

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

When the WIUPK auction is won by a BUMN	When the WIUPK auction is won by a BUMD	When the 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 its affiliate within 60 calendar days after the determination of the auction winner. • In providing the share participation, the BUMN shall coordinate with the Provincial and Regional/ City Governments 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 into: - 40% of the total percentage of share investment for a BUMD established by the Provincial Government; and - 60% of the total percentage of share investment for 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: i. directly operate the mining activities within the WIUPK; or ii. form a joint venture entity no more than 90 calendars 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 referred to above, with a maximum share ownership of 49%.	• The MoEMR shall announce the private business entity as the auction winner and instruct the entity to provide the BUMD with share participation of 10%, provided that the private business entity can: 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 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 into: - 40% of the total percentage of share investment for a BUMD established by the Provincial Government; and - 60% of the total percentage of share investment for a BUMD established by the Regional/City Government.

The implementing guidelines for the determination of metal, minerals and coal WIUPKs by priority and the procedures for metal, minerals and coal WIUPK auctions are stipulated in KepMen 1798/2018. Although those guidelines are set out under KepMen 1798/2018, being the implementing regulation of PerMen 11/2018 that has been revoked by PerMen 7/2020, PerMen 7/2020 stipulates that any Minister's decrees issued as implementing regulations of PerMen 11/2018 shall remain valid as long as they do not contradict PerMen 7/2020.

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 for conducting mining activities in a specific WPN area in which mining business activities can be carried out;
- 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 licences are GR 96/2021, PerMen 25/2015, and PerMen 7/2020.

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

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

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

d. IUPK-OP

An IUPK-OP is a mining business licence that is 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 that is granted specifically for purchasing, transporting, processing, and refining, as well as 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, the 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 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 it shall be adjusted into an industrial business licence that is issued based on the laws and regulations in the industrial sector within one year at the latest since this Law entered into force (i.e. 10 June 2020).

Before the enactment of the Amendment to the Mining Law, a company, a cooperative, or an 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, the dualism licensing issue which caused confusion and is presumed to be a factor slowing down the development of 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 the one-year period. During the one-year period which shall end on 10 June 2021, the MoEMR shall still be the authorised institution in monitoring the 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 that is granted for performing core mining service business activities in relation to certain phases/parts of the mining business activities.

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 the alluvial mineral sediment excavation 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, which is 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, complying 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 minerals or coal excavated (as a by-product of their mining activities), are still required to obtain an IUP-OP for Sales.

Business entities that utilise the excavated minerals or coal for their own use and for non-commercial purposes are not required to have an IUP-OP for Sales.

Based on the Transitional Provisions of PerMen 7/2020:

- The 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, and/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
   SIPB is a mining business licence granted to engage 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, 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 can only be engaged in the mining services business in consultation and/or planning activities.*

In the above table, the 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, private business entities include PMDNs 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 only be issued 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 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 2.6 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 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 the Regional Government at the provincial level. Article 169c of the Amendment to the Mining Law further stipulates that the authority of the Regional Government granted under the Mining Law and other laws regulating the authority of the Regional 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 Regional Government.

The Amendment to the Mining Law, however, does not mention the validity of the implementing regulations of the Mining Law, including among others PerMen 7/2020, which includes provisions regarding the issuance of mining business licences.

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

Exploration IUP	
Grantor	**Condition**
MoEMR	If the WIUP is located: • across more than one province; • in sea territory that is more than 12 miles from the shoreline towards the open sea and/or towards archipelagic waters; or • directly adjacent to another country. The Exploration IUP is also granted by the MoEMR if: • the application of the Exploration IUP is made by a listed/public company; and • the application of the licence is made for more than one metal mineral 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.

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 of the IUP-OP is made by a listed/public company; and • the application of 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	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 other provinces outside 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 the transportation and sales are carried out between provinces and/or nations.
Governor	If the transportation and sales take place in one province.

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

**According to Article 169C point 3 of the Amendment to the Mining Law, the existing IUP-OP Specifically for Processing and/or Refining licences issued before the enactment of the Amendment to the Mining Law shall be adjusted into an industrial business licence that is issued based on the laws and regulations in the industrial sector within one year at the latest since the Amendment to the Mining Law came into force.*

The authority of the Governor to issue each of the above-mentioned mining business licences must be interpreted in a way that the Central Government has delegated its authority to do so. As discussed above, this is because the authority of mining business licence issuance 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 at the latest from when this Law comes into force. 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 in the Mining Law granting authority to Mayors/Regents to issue mining business licences based on the location of the mining area 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. The 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 its amendments, 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 licences.

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

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 to PMA companies:

- Exploration IUPs;
- IUP-OPs including extensions;
- Cancellation of IUPs relinquished to the Government;
- IUP-OPs Specifically for Transportation and Sales including extensions;
- IUP-OPs Specifically for Processing and/or Refining including extensions (should have been adjusted to become industrial business licence following the issuance of the Amendment to Mining Law and GR 96/2021);
- Temporary Licences for Transport and Sales;
- IUP-OPs for Sales;

- In-Principle Licences for Processing and/or Refining; and
- IUJPs, including extensions.

It should be noted that the In-Principle Licence for Processing and/or Refining is no longer applicable, following the issuance of PerMen 11/2018 (as amended by PerMen 22/2018 and PerMen 51/2018) which has been revoked by PerMen 7/2020.

The authority of BKPM as outlined in PerMen 25/2015 also includes approval of changes in status from a PMDN company to a PMA company, and vice versa.

Furthermore, it should be noted that following the issuance of GR No. 5 of 2021 on the Organisation of Risk-Based Business Licensing ("GR 5/2021") and to ensure legal certainty during the implementation of risk-based business licensing, BKPM has issued Regulation of BKPM No. 4 of 2021 on Guidelines and Procedures for Risk-Based Business Licensing Services and Investment Facilities ("BKPM Regulation 4/2021") that stipulates a change in the status from a PMDN company to a PMA company or vice versa shall be updated through the OSS system.

As discussed before, the Amendment to the Mining Law has introduced some new licences. The Government may amend PerMen 25/2015 should the MoEMR also delegate authority to issue those new licences to BKPM.

Licence Terms and Extensions

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

<table>
<tr><th>Types of Licences</th><th colspan="2">Licence Terms</th><th>Extensions</th><th>Notes</th></tr>
<tr><td rowspan="4">Exploration IUPs</td><td>Coal</td><td>7 years</td><td>1 year (please see notes)</td><td rowspan="4">• 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 requirements are met.
• Applications to change an Exploration IUP to an IUP-OP should be submitted no later than:
i. Six months before the expiration of the Exploration IUP (for metal minerals, certain types of non-metal minerals, or coal);
ii. Three months before the expiration of the Exploration IUP (for non-metal minerals or rocks).</td></tr>
<tr><td>Metal Minerals</td><td>8 years</td><td>1 year (please see notes)</td></tr>
<tr><td>Non-Metal Minerals</td><td>3 years *)</td><td>N/A</td></tr>
<tr><td>Rocks</td><td>3 years</td><td>N/A</td></tr>
<tr><td rowspan="2">Exploration IUPKs</td><td>Coal</td><td>7 years</td><td>1 year (please see notes)</td><td rowspan="2">• Pursuant to Article 83a of Amendment to Mining Law, the exploration period may be extended for one year for each extension, provided that all of the requirements are met.
• Applications to change an Exploration IUPK to an IUPK-OP should be submitted no later than six months before the expiration of the Exploration IUPK.</td></tr>
<tr><td>Metal Minerals</td><td>8 years</td><td>1 year (please see notes)</td></tr>
</table>

Types of Licences	Licence Terms		Extensions	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); • 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	
IUP-OP Specifically for Processing and/or Refining		30 years	20 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 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 laws and regulations in the industrial sector within one year at the latest since this Law came into force.
IUP-OP Specifically for Transportation and Sales		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 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 for each 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 for each extension.*
*****) Pursuant to the Amendment to Mining Law, metal mineral production activities that are integrated with the processing and/or refining facility may be granted for a maximum of 30 years, which is extendable for ten years for each 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 determined either a WPN or WIUP/WIUPK. The WIUP would be offered via tender, while the offering of a WIUPK would be via priority or tender (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 were previously stipulated in PerMen 11/2018. However, PerMen 11/2018 was revoked by PerMen 7/2020, which was issued in March 2020.

There are no substantial differences between PerMen 11/2018 and PerMen 7/2020 in relation to the procedures for the issuance of an IUPK-OP as a continuation of a CoW/ CCoW operation, except that PerMen 7/2020 does not regulate regarding the validity of metal minerals CoWs following the conversion of the CoW into the IUPK-OP.

Based on PerMen 7/2020, a holder of a metal 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, by attaching the following documents:

- Area maps and coordinate borders, according to the provisions of the applicable rules and regulations;
- Proof of the complete payment of any fixed fees and production fees; and
- A Work Plan and Budget (*Rencana Kerja dan Anggaran Biaya* or "RKAB").

The DGoMC, on behalf of the MoEMR, shall evaluate 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 mineral 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 which were issued by the Central Government and the Regional Government shall remain valid so long that 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 mineral CoWs are stipulated in MoEMR Decree No. 1796 K/30/MEM/2018 ("KepMen 1796/2018").

The DGoMC, on behalf of the MoEMR, shall evaluate the application that is submitted by the holder of a metal mineral CoW. Based on the DGoMC's evaluation, the MoEMR may approve or reject the application for the 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 IUPK-OP as a continuation of the operation of a CoW/CCoW is considered as:

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


Photo source: PT Vale Indonesia Tbk

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

The implementing guidelines for the application, evaluation, and approval of the IUPK-OP as a continuation of the operation of a CoW/CCoW are stipulated in KepMen 1796/2018.

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.

With regard to the IUPK as 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 as 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 of all contract areas approved by the MoEMR. The extension period given to a CoW or CCoW under the Amendment to the Mining Law is ten years however, for a CoW/CCoW which has not previously been extended, up to two extensions may be granted, each for a maximum of ten years.

Application for the IUPK as a Continuation of the Operation 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 the CoW or CCoW holders to have their extension applications processed by the MoEMR. The application will be evaluated by considering the continuation of its 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 result does not indicate good mining exploitation performance.

Rights, Obligations and Prohibitions of Holders of Mining Business Licences

The rights, obligations, and prohibitions of each type of IUP holder are stipulated in PerMen 7/2020, as follows:

Holders of	Rights	Obligations	Prohibitions
IUPs and IUPKs	There is an exhaustive list in PerMen 7/2020. Some examples are as follow: • To conduct mining business activities at a WIUP or a WIUPK in accordance with the provisions of the laws and regulations; • To have 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 legislation; and • 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 annual RKAB;	There is an extensive list in PerMen 7/2020. Some examples are as follow: • To conduct all the mining business activities in accordance with the provisions of the legislation; • To prepare and submit an annual RKAB to the MoEMR or the Governor; • To prioritise the fulfilment of coal and mineral needs in the country, and to adhere to the 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 manpower, goods, and services in the country, 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; and • To pay financial obligations, in accordance with the laws and regulations;	• To sell the mining products abroad, before processing and/ or refining the products domestically in accordance with the provisions of the laws and regulations; • To sell mining products that have not been produced by its own mining concessions; • To perform blending activities for coal originating from the holders of an IUP- OP, IUPK-OP or an IPR, without receiving approval from the DGoMC or governors in accordance with their level of authority; • To perform the processing and/or refining of the mining products, without having the IUP, IPR, or IUPK; • To engage subsidiaries and/or affiliates as mining service providers, without receiving approval from the DGoMC on behalf of the MoEMR; • To have an IPR, an IUP-OP Specifically for Processing and/ or Refining*), an IUP-OP Specifically for Transportation and Sales, and an IUJP; • To pledge the IUP/ IUPK and/or mining commodities for other parties; and • To perform a general inspection and exploration, and to conduct a feasibility study, before the annual RKAB for the Exploration IUP is approved.

Holders of	Rights	Obligations	Prohibitions
IUPs and IUPKs (Continued)	• To apply to the Minister or Governor, in accordance with the correct authority, for an IUP or IUPK in order to search for other mining commodities in the WIUP or WIUPK, by forming a new Business Entity in accordance with the legislation; • To build transport facilities, storage/ stockpiling facilities, and to purchase and use explosives in accordance with the approval of the annual RKAB; and • To propose a request to use the area outside the WIUP or WIUPK to the MoEMR or Governor to support mining activities.	• To obtain approval from the MoEMR or the Governor for any changes to shareholders and the Boards of Directors/ Commissioners; • To pay adequate compensation to the relevant communities, in the event of any errors in the conduct of the mining business activities that have a direct negative impact on those communities; • (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; • (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.	• To perform any construction, mining, processing and/or refining activities, as well as any transportation and sales activities, including advanced exploration, before the annual RKAB for the IUP-OP is approved; • To perform mining business activities in areas that are prohibited by the legislation; • To transfer the IUP/ IUPK to another party, without the prior consent of the MoEMR or the Governor; • To conduct a transfer of shares, such that the BUMN and BUMD ownership share in a business entity which holds an IUPK becomes less than 51% for IUPKs obtained through the granting of WIUPK with priority given to BUMN; • To conduct a transfer of shares, such that the BUMD ownership share in a business entity which holds an IUPK becomes less than 51% for IUPKs obtained through the granting of WIUPK with priority given to BUMN; • (Pursuant to the Mining Law) to encumber the IUP/IUPK, including its commodities, to another party.

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 business activities, in accordance with the provisions of the legislation.	There is an expansive list in PerMen 7/2020. Some examples are as follows: • To prepare and submit the annual 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 the affairs in the field of manpower; • To obtain approval for any changes in investment and financing sources, including changes in paid-up capital and issued capital in accordance with annual RKAB approval; • To comply with restrictions on processing and/or refining, in order to conduct overseas sales in accordance with the provisions of the legislation; • To comply with the benchmark prices for mineral or coal sales, in accordance with the provisions of the legislation; • To prioritise the fulfilment of domestic mineral and coal needs; and • 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; • To obtain approval from the MoEMR or the Governor for any changes to shareholders.	• To undertake 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 7. CCoWs • To have the IUP, IPR, IUPK, and IUJP; and • To transfer the IUP-OP specifically for Processing and/or Refining to another party. • To transfer 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 the transportation and sales facilities and infrastructure, including stockpiles, ports, or special ports, in accordance with the provisions of the legislation.	• To send a copy of the agreements/contracts with IUP holders to MEMR; • To comply with the legislation in the field of traffic and road traffic, if the holder uses public road facilities, which includes complying with the load capacity level requirement that is adjusted with the class of the road, the traffic of the road, and the traffic accident risks; • To file a periodic report of its business operations to the MoEMR or the Governor every three months, or whenever it is needed; and • To file a report on the Verification Results that are 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.	• To perform any transportation or sales activities relating to any mineral or coal commodities that have not originated from the areas of IUP holders (i.e. holders of an IUP-OP, IUPK-OP, IUP-OP Specifically for Processing and/ or Refining, IPR, CoW, CCoW, and any other holders of the IUP-OP Specifically for Transportation and Sales); • To perform 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; • To purchase mineral or coal commodities in the mine mouth; • To transfer the IUP to another party; and • To have 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 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 its competency; • 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 service and business activities; • To perform the mining safety requirements in accordance with the provisions of the laws and regulations; • To prepare and submit a report of the activities to MoEMR or the Governor according to its authorities and through a holder of the IUP/ IUPK, in accordance with the provisions of the 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 laws and regulations.	• To hold an IUP, IPR, IUPK, IUP- OP Specifically for Processing and/ or Refining, and an IUP- OP Specifically for Transportation and Sales; and • To perform activities that are not in accordance with the IUJP.

**) However, it should be noted that existing IUP-OP Specifically for Processing and/or Refining licences issued before the enactment of the Amendment to the Mining Law shall be adjusted into industrial business licences issued based on the laws and regulations in the industrial sector within one year of this Law coming into force.*

Photo source: PT Timah Tbk

Prohibition Against Receiving Fees from a Mining Services Company

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

Adjustment of Licence Areas

One of the key aspects of GR 96/2021 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 the evaluation of the MoEMR. Previously, under GR 23/2010, the size of an Exploration IUP for coal and metal minerals must be reduced as set out below:

Exploration IUP		Downsizing after 3 years of exploration (under GR 23)	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 to 5,000 ha	2,500 ha (applies after 1 year)	Max 1,000 ha

Exploration IUPK		Downsizing after 3 years of exploration (under GR 23)	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 holders. The Amendment to the Mining Law also stipulates that the size of one WIUPK for the Operation Production of metal minerals or coal shall be granted based on the MoEMR's evaluation of the development plan of all areas proposed by the IUPK holders.

An IUP or IUPK is issued for a particular type of mineral or coal. If other minerals are discovered in the licence area, then the relevant government authority will issue further IUPs or IUPKs for those different minerals. The holder of the 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 paragraph (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. Transfer of Licence

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, such MoEMR approval will be granted if the following requirements are satisfied:

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

Under GR 96/2021, parts of WIUP/WIUPK of a BUMN at the stage of operation production can be transferred to another entity which is at least 51% owned by a BUMN holder of IUP/IUPK subject to approval from MoEMR. To note that the ownership of such BUMN in the transferee entity can not be diluted to become lower than 51%.

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

(i) the transfer is intended to support the implementation of national strategic program, national priority program or coal and mineral added value project which requires capital investment of at least IDR1,000,000,000,000 (one trillion Indonesia Rupiah);
(ii) the transferred WIUP/WIUPK is having a resource and reserve data;
(iii) the development plan on top of transferred WIUP/WIUPK has been approved; and
(iv) the ownership of a BUMN in the transferee must be at least 51%.

The MoEMR may impose certain additional requirements which 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, such MoEMR approval will be granted if at least the following requirements are satisfied:

(i) The holders of the licence have 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 type of IUPs and IUPKs that allow the holder to transfer their shares. The Amendment to the Mining Law further clarifies that shares shall mean shares that are not listed in the IDX. This implies that the transfer of shares listed on the IDX do not require approval from the MoEMR. The holder of IUP/IUPK must report to MoEMR if they conduct the transfer of shares by way of initial public offering in the IDX.

The requirements regarding the transfer of 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 only limited to holders of the above types of licences. No explanation has been provided in PerMen 48/2017 to explain this narrow scope.

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, by completing certain administrative and financial requirements. 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.

Photo source: PT Freeport Indonesia

C. Reporting of Mineral and Coal Business Activities

Based on PerMen 7/2020, IUP holders are required to prepare and submit an annual RKAB and periodic written reports on the annual RKAB, as well as on the performance of the business activities. These two documents need to be submitted regularly to the MoEMR (through the DGoMC) or the Governor.

The key provisions regarding these reporting requirements can be summarised as follows:

Aspects	Key Provisions
The types of IUPs that are subject to the Reporting Requirements	• Exploration IUPs and IUPKs; • IUP-OPs and IUPK-OPs; • IUP-OPs Specifically for Transportation and Sales; and • IUJPs.
The timeframe for the submission of the Annual RKAB	• Initial reporting: no later than 30 calendar days after the issuance of the IUP; • Subsequent reporting: at least 90 calendar days after and no later than 45 calendar days before the end of the fiscal year, which also includes the obtaining of the consent for the annual RKAB; and • In event of an IUP being issued within 45 calendar days of the end of the fiscal year, the IUP holder shall submit the annual RKAB to obtain consent either: (i) before the performance of the annual RKAB in the current year; or (ii) no later than the end of the fiscal year for next year's annual RKAB.
The Evaluation and Approval Process for the Annual RKAB	• On behalf of the MoEMR or the Governor, the DGoMC shall perform an evaluation of the annual RKAB and provide approval for, or a response on the annual RKAB no more than 14 business days after the date when the annual RKAB was completely and properly received; • IUP holders are required to deliver the revised version of the annual RKAB, which must accommodate the response from the DGoMC, no more than five days after the date on which the response from the DGoMC was received; and • The DGoMC shall grant approval for the revised version of the annual RKAB within no more than 14 business days after the date when the revised annual RKAB was fully and properly received.
Amendments to the Annual RKAB and Reports (Subsequent to Obtaining Approval from the MoEMR or the Governor)	• Holders of Exploration IUP and IUPK, IUP-OP, or IUPK-OP, may apply for one amendment to the annual RKAB in the current year. The application for an amendment to the annual RKAB must be submitted after the IUP holder has submitted its Q1 Quarterly Report, and it has to be submitted, at the latest, by 31 July of the current year; • In the event that any *force majeure*, environmental capacity condition, or other difficulty occurs, an amendment to the Annual RKAB may be applied by the holders of IUP-OP, or IUPK-OP, more than once. • The evaluation and approval process for an amendment to the annual RKAB follows the provisions explained in the previous point; • Holders of IUP-OPs and IUPK-OPs must submit amendments to their Reports on the Feasibility Study, should there be any changes to technical, economic, or environmental variables, according to the provisions of the applicable rules and regulations; and • Holders of Exploration IUPs and IUPKs, IUP-OPs, or IUPK-OP must report any amendments to the utilisation of their mining services in the current year.

At the time of writing, the Government is in the process of simplifying the regulations and/or licences in the coal and minerals sectors. Going forward, the MoEMR will optimise the use of the annual 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 previously required to be obtained individually, but which have now been revoked by the Government and replaced with approvals granted in conjunction with the annual RKAB 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 MoT.
- Instead, IUP holders can use the annual RKAB to apply directly to the DGoMC for such licences.

In addition to the annual RKAB submission requirement, PerMen 7/2020 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 requirement, depending on the type of IUP holder, as summarised below:

Mining Licence	Periodic Reports	Final Reports	Special Reports
Exploration IUPs and IUPKs	• Report for the Annual 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 Closing 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.	• Early Notice of Accidents; • Early Notice of Dangerous Events; • Early Notice of Events Caused by Diseases Infecting Workers; • Report on Illnesses Caused by Work; • Report on Environmental Incidents; • Report on the Mining Technical Study; and/or • The External Audit Report on the Safety Management System for Minerals and Coal Mining.

Mining Licence	Periodic Reports	Final Reports	Special Reports
IUP-OPs and IUPK-OPs	• Report for annual RKAB; • Report on the Mining Water Waste Quality; • Statistical Report on Mining Injuries and Dangerous Events; • Statistical Report on Workers' diseases; • Report on Reclamation to Release or Close 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.	• Early Notice of Accidents; • Early Notice of Dangerous Events; • Early Notice of Events Caused by Diseases Infecting Workers; • Report on Illnesses Caused by Work; • Report on Environmental Incidents; • Report on the Mining Technical Study; and/or • The External Audit Report on the Safety Management System for Mineral and Coal Mining.
IUP-OP Specifically for Processing and/or Refining*	• Report for the Annual RKAB; • Report on Mining Water Waste Quality; • Statistical Report on any Mining Accidents and Dangerous Events; • Statistical Report on Workers' Diseases; and • Internal Audit Report on the Implementation of the Safety Management System for Mineral and Coal Mining.	Not applicable.	• Early Notice of Accidents; • Early Notice of Dangerous Events; • Early Notice of Events Caused by Diseases Infecting Workers; • Report on Illnesses Caused by Work; • Report on Environmental Incidents; • Report on the Mining Technical Study; and/or • The External Audit Report on the Safety Management System for Minerals and Coal Mining.
IUP-OP Specifically 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 of Mining Services Business Activities; and • Internal Audit Report on the Implementation of Safety Management System of Mineral and Coal Mining.	Not applicable.	Not applicable.

**) As stated previously, according to Article 169C point 3 of the Amendment to the Mining Law, existing IUP-OP Specifically for Processing and/or Refining licences issued before the enactment of this Law shall be converted into industrial business licences issued based on the laws and regulations in the industrial sector within one year of the Law coming into force.*

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

Type of Reports	Reports 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 the 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 7/2020 has yet to set out a specific timeframe for the submission of this type of report • A MoEMR Decree will be issued to set 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 Notice of Accidents and the Early Notice of Dangerous Events reports need to be submitted immediately after the occurrence of the accident or the incident; • The Report on Illnesses Caused by Work needs to be submitted immediately after the diagnosis and inspection results are have been issued; and • The Report on Environmental Incidents needs to be submitted within 1 x 24 hours after an environmental incident occurs.

The DGoMC (on behalf of the MoEMR) or the Governor evaluates and may provide a response to the submitted periodical reports. PerMen 7/2020 does not stipulate a specific deadline for the government to provide its response, but it does stipulate a maximum timeframe 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 7/2020:

- An Annual RKAB which has been submitted to and/or approved by the MoEMR (through the DGoMC) or the Governor before the enactment of PerMen 7/2020 shall remain valid as the basis for the implementation of mining activities, and must be adjusted in accordance with the provisions set out in PerMen 7/2020, especially those related to the type of permit for which approval has been issued in the Annual RKAB; and
- The provisions in PerMen 7/2020, concerning the approval of the annual RKAB, as well as any changes to shareholders and the Boards of Directors and/or Commissioners, shall be applied to CoWs and CCoWs.

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. 1806 K/30/MEM/2018.

2.3 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 national needs, the Central Government considers it important to limit national coal and mineral production.

The MoEMR, in coordination with the relevant Government Agency and/or Provincial Government, may determine the national production volume of minerals and coal in the national interest. The MoEMR may also determine the volume and types of minerals and coal required for the DMO, and the volume and types of minerals and coal that can be exported.

DMO

This policy is intended to guarantee the supply that is necessary to meet increasing domestic demand, especially for coal. The Central Government has authority to control the production and the exporting of each mining product. The Regional Government is obliged to comply with the production and export controls imposed by the Central Government.

Details of the DMO procedures were previously stipulated in PerMen 34/2009. However, PerMen 34/2009 has since been revoked by PerMen 25/2018.

The DMO applies to all types of coal and minerals. Broadly, mining companies must comply with the DMO requirements by selling a portion of the minerals/coal that they produce to domestic consumers.

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, the DMO has only been applied to coal.

MoEMR Decree No. 139.K/HK.02. MEM.B/2021 concerning the "Coal Domestic Market Obligation in 2021" ("Kepmen 139/2021"), stipulates that the holders of Operation Production stage CCoW, coal IUP-OP and coal IUPK-OP, and IUPK-OP as a continuation of the operations of a CoW/CCoW licence are required to meet the minimum coal DMO of 25% of their 2021 production plan, as approved by the by the government for the fulfilment of coal for electricity for public and private interest and materials/fuels for industry. If the minimum percentage cannot be fulfilled, there will be sanctions in the form of prohibition to export coal and imposition of fines. Prohibition to export coal also applies to the holders of Coal Transport and Sales Licences who do not meet the coal DMO in accordance with the sales contract.

Based on KepMen 139/2021, those licence holders who do not meet the DMO requirement, are subject to the following provisions:

- Prohibition of selling coal abroad until it meets the DMO requirements according to the percentage of sales or in accordance with the sales contract, except for those who do not have sales contracts with domestic coal users.
- Payment obligations with the following conditions:
  a. Fines amounting to the difference in the selling price abroad minus the Coal Benchmark Price for the provision of electricity for the public interest (DMO) multiplied by the volume of sales abroad in the amount of the obligation to fulfil domestic coal needs that are not fulfilled.

b. Fines amounting to the difference in the selling price abroad minus the Coal Benchmark Price multiplied by the volume of sales abroad in the amount of the obligation to fulfil domestic coal needs that are not fulfilled.
c. Compensation fund for sales shortfalls in accordance with the percentage of sales that do not have a sales contract with domestic coal users or whose coal specifications do not have a domestic market.

KepMen 139/2021 also established a coal sales price for coal supply of electricity for public use at a maximum of US$70/MT with certain coal specifications.

On 19 January 2022, MoEMR issued Ministerial Decree No. 13.K/HK.021/MEM.B/2022 ("KepMen 13/2022") regarding Guidelines for the Imposition of Administrative Sanctions, Prohibition of Selling Coal Abroad and the Imposition of Fines and Compensation Fund for Fulfilment of Domestic Coal Needs as stipulated in KepMen 139/2021 regarding Fulfilment of Domestic Coal Needs in 2021.

The KepMen 13/2022 outlines a DMO fulfilment scheme, which is carried out through:

- Direct Realisation of DMO, carried out by coal mining companies to their domestic end users; and/or
- Indirect Realisation of DMO, carried out by coal mining companies through the holder of a Coal Transportation and Sales Permit ("IPP").

Coal Mining Companies that do not fulfil their DMO obligations, especially the obligation to pay fines and/or compensation funds are subject to administrative sanctions in the form of:

- Temporary suspension of all production operations, or a statement of negligence within a maximum period of 60 (sixty) calendar days if they do not pay the fine or compensation within 30 (thirty) days from the imposition of the fine or compensation as stated in the statement of fine or compensation payable submitted by the management agency; and
- Revocation of the IUP, IUPK, IUPK as a Continuation of the Operation of a CCoW, or termination of CCoW if coal producers do not carry out the obligation to pay fines or compensation until the end of the temporary suspension period.

Determination 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 10 (ten) calendar days after the end of each month.

As the Government continues to prioritise security of supply, it can be expected that the DMO for coal set by the Government will continue to increase in the coming years.

Coal and Minerals Price Benchmarking

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

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

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" were 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 include transhipment and barging costs. Therefore, there are inconsistencies 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. Other certain 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 mineral; constant; HMA; corrective factors; treatment costs and refining charges; and/or mineral payable. Metal HPM also applies to holders of metal minerals IUP-OP who sell its nickel ores to its affiliates.

Where coal is sold on a term basis, the HBA used as the reference to determine the price of coal in the sales contract is based on the formula of 50% of the HBA in the month of signing of the contract, plus 30% of the HBA in the month prior to the signing of the contract, plus 20% of the HBA two months prior to the signing of the contract.

The benchmark price will be updated on a monthly basis, and it will be determined in accordance with market prices (comprising a basket of recognised global and Indonesian coal indices, in the case of coal). Under PerMen 7/2017 (as lastly 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 in accordance with generally applicable international market price;
b. the increment of in-country added value of mineral or coal; and/or
c. the implementation of good mining principles.

Pursuant to PerMen 11/2020, the requirements relating to the quantity and quality verifications for minerals and coal must be implemented prior to the selling 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 in selling metal-mineral or coal commodities will be subject to the following administrative sanctions:

a. written warning;
b. temporary suspension of, partially or wholly, the mining activities; and/or
c. 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 the Electricity Supply for the Public Interest", was issued as an implementing regulation of PerMen 19/2018; however, on 26 December 2019, KepMen 1395/2018 was then revoked by Kepmen 261/2019.

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

1. The selling price of coal for electricity supplied in the public interest is set at US$ 70/mt, FOB Vessel, for coal that meets the following specifications: calorific value of 6,322 kcal/kg 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 US$ 70/mt, then the selling price of coal for electricity supplied in the public interest is based on the formula set out in Annex of KepMen 261/2019. The royalty to be paid to the Government from 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 given above, and the HBA is lower than US$ 70/mt, then the selling price of the coal is 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 for electricity supplied 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 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 starting from 1 January 2020.

Coal Price for Fulfilment on Domestic Industrial Raw Material/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 Material/Industrial Fuel and revoked Ministerial Decree No. 206.K/HK.02/MEM.B/2021 which established coal sales price for domestic raw materials or fuel supply of all domestic industries (except the metal mineral processing and/or refining industry (smelters)) of US$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 US$90/MT was only applied to the cement and fertiliser industries. KepMen 58/2022 became effective starting from 1 April 2022.

Coal Price Determination for Mine Mouth Power Plants

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

Under PerMen 24/2016, 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 it is calculated based on the production cost formula plus a margin (from 15% to 25%), and considering an escalation factor. The escalation factor is adjusted on an annual basis, based on the changes in the US Dollar/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 the PerMen. 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 in the Clean and Clear list, and they must have a reserve allocation and coal quality required by the power plant. PerMen 9/2016, as amended by PerMen 24/2016, 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. Note, however, that based on PerMen 7/2020, a Clean and Clear certificate is no longer required.

2.4 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, and 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, and 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 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 activities that improve the quality of metal minerals, through an extraction process and 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.

The increase 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 a Processing and Refining IUP are required to meet the minimum in-country processing and refining requirements for various types of metal minerals, non-metal minerals, certain rocks, as well as the byproducts, and residues from the refining of metal mineral mining commodities (in the form of copper, tin, lead, and zinc), and 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 obligation to meet the minimum in-country processing and refining requirements, as set out in PerMen 25/2018, is not applicable if the products are directly used in the domestic interest, and the minerals are exported for research and development purposes, subject to a recommendation from the DGoMC, on behalf of the MoEMR and Export 39 approval from the Directorate General of Foreign Trade ("DGoFT").

Pursuant to MoEMR Decree No. 154 K/30/MEM/2019, of 2019, regarding the Guidance on the Imposition of Administrative Penalties for Delays in the Construction of Smelter Facilities, as amended by MoEMR Decree No. 210 K/30/MEM/2019, of 2019, regarding the Amendment to MoEMR Decree No. 154 K/30/MEM/2019, of 2019, holders of IUP-OPs or IUPK-OPs that conduct the exportation of certain types of metal minerals must (i) construct smelter facilities, and (ii) achieve construction progress amounting to at least 90% of the smelter progress plan every six months, based on the verified results of the smelter progress report. In the event that the 90% requirement is not fulfilled, such IUP-OK or IUPK-OP holders must provide a security deposit as assurance, and this is to be placed in a joint escrow account that is to be opened at one of the Government Banks under the name of the DGoMC, as the valid representative ("QQ") of the IUP-OK or IUPK OP holder. The security deposit can then be withdrawn if the holder achieves construction progress amounting to at least 75% of the smelter progress plan. On the other hand, if the holder fails to achieve construction progress amounting to at least 75% of the smelter progress plan, the security deposit can be cashed out by the DGoMC.

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 be in 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 Governor), for approval. A holder of an IUP-OP or IUPK-OP that supplies ores, concentrates, or mineral intermediate products to other processing and/or refining parties must submit its sales plans to the MoEMR, for the attention of the DGoMC (or 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 for processing and refining activities may be conducted by the 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 IUP or IUPK in the stage of Production Operation activities who own processing and/or refining facilities in an integrated manner; or
b. Other parties who conduct processing and/or refining business activities that are not integrated with mining activities whose licensing is issued based on the provisions of 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 IUP and IUPK 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 and 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 favourable to include 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 an income tax holiday 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 a Ban on Exports of Unprocessed Minerals

In an attempt to alleviate the impact on miners and the country's export revenues from the ban on the exports of unprocessed or insufficiently processed minerals, the Government issued PerMen 25/2018, allowing mining companies to continue exporting semi-processed products and certain types of ores up until 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 export approval from the DGoFT and Export Recommendation from the MoEMR, the holders of metal mineral IUP-OPs, metal mineral IUPK-OPs, and processing and/or refining licence for anode mud may export certain approved quantities of their semi-processed products up 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-OP, IUPK-OP, or IUP-OP Specifically for Processing and/or Refining licences, and 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 the domestic utilisation, through:

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

The holders of IUP-OP, IUPK-OP, or IUP-OP Specifically for Processing and/or Refining licences may export certain approved quantities of product which do 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 have constructed or are in the process of constructing a refining/smelting facility, either individually or jointly with other parties, and they pay export duties under the relevant laws and regulations.

However, due to concern around depletion of the country's nickel reserves, in August 2019, the Government of Indonesia announced its decision to accelerate the full ban on export of low-grade nickel ore two years ahead of the initial schedule. This was then followed with the issuance of PerMen 11/2019, the second amendment of 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 further relaxation through issuance of PerMen 17/2020, the third amendment of PerMen 25/2018. Based on PerMen 17/2020, the holder of an IUP-OP/IUPK-OP for metal minerals is allowed to continue exporting semi-processed products and certain types of ores (excluding nickel ore) up until 10 June 2023, subject to the conditions set out in the implementing regulations. Holders of existing processing and/or refining licences are allowed to export products in a certain amount up until the expiry date of its export licence (which pursuant to GR 96/2021 shall be 10 June 2023 at the latest).

The export relaxation under PerMen 17/2020 above was stipulated following the issuance of the Amendment to the Mining Law in 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 in cooperation for the processing and refining activities).

Export approval from the DGoFT is granted following a recommendation from the MoEMR. As set out in PerMen 25/2018, in order to obtain a recommendation, mining companies must apply for a recommendation to the MoEMR, 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 grants of recommendation for export are stipulated under MoEMR Decree No. 1826 K/30/MEM/2018.


Photo source: PwC

The DGoMC, on behalf of the MoEMR, shall supervise the implementation of mineral export sales and the monitoring of the progress 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 export approval previously granted.

Other than the revocation of the recommendation for export approval, the holders of metal mineral 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 the mineral export sales.

If the administrative fine is not paid within one month of imposition, the holders of metal mineral 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 temporary suspensions of some or all business activities, for at most 60 days, by the MoEMR or the Governor, as applicable.

PMK No. 39/PMK.010/2022 (as lastly amended by PMK No. 98/PMK.010/2022) sets out the rates of export duty for the various forms of processed metal minerals. Under PMK No. 39/PMK.010/2022 (as lastly amended by PMK No. 98/PMK.010/2022), the export duty rates are linked to the physical progress of the refining facility development, as set out in the export recommendation issued by the MoEMR, according to the following three stages:

- Stage I – the level of the physical progress of the development is not more than 30% of the total development;
- Stage II – the level of the physical progress of the development is more than 30% but not more than 50% of the total development; and
- Stage III – the level of the physical progress of the development is more than 50% of the total development.

PMK No. 39/PMK.010/2022 (as lastly amended by PMK No. 98/PMK.010/2022) sets out the export duty rates, as follows:

No	Types of Mineral	Export Duty Rate			
		The stage of the physical progress of the refining facility's development			Minerals with certain criteria
		Stage I	Stage II	Stage III	
1	Copper concentrate with concentration > 15% Cu	5%	2.5%	0%	N/A
2	Iron concentrate (hematite, magnetite) with concentration > 62% Fe and < 1% TiO_2	5%	2.5%	0%	N/A
	Laterite iron concentrate (goethite/laterite) with concentration > 50% Fe and concentration of (Al_2O_3+SiO_2) > 10%	5%	2.5%	0%	N/A
	Iron sand concentrate (magnetite-ilmenite lamellae) with concentration > 56% Fe and 1% < TiO_2 < 25%	5%	2.5%	0%	N/A
	Iron sand concentrate pellet (magnetite-ilmenite lamellae) with concentration > 54% Fe and 1% < TiO_2 < 25%	5%	2.5%	0%	N/A
3	Manganese concentrate with concentration > 49% Mn	5%	2.5%	0%	N/A
4	Lead concentrate with concentration > 56% Pb	5%	2.5%	0%	N/A
5	Zinc concentrate with concentration > 51% Zn	5%	2.5%	0%	N/A
6	Ilmenite concentrate with concentration > 45% TiO_2	5%	2.5%	0%	N/A
	Other titanium concentrates with concentration > 90% TiO_2	5%	2.5%	0%	N/A

However in 2021, in light of the COVID-19 pandemic, the MoEMR issued Decree No.46.K/MB.04/MEM.B/ 2021 concerning the "Recommendations on Export Sales for Metal Minerals during the COVID-19 Pandemic". Based on this MoEMR Decree, the holder of an IUP-OP or IUPK-OP for Minerals that didn't meet the percentage of physical progress construction of Smelter Facility at the minimum of 90% on evaluation periods, since Presidential Decree No.12/2020 became effective, are eligible for the recommendation for mineral export sales. However, the holders of IUP-OP and IUPK-OP are still subject to an administrative penalty, which is calculated from the cumulative export sales in the evaluation period.

Subsequently, the MoEMR issued Decree No.104.K/HK.02/MEM.B/2021 concerning the "Guidance on Administrative Penalty for the Delay in Construction of Smelter Facilities during the COVID-19 Pandemic". Based on this MoEMR Decree, the administrative penalty is not applied to certain types of development activities of refining facilities, which affected by the COVID-19 Pandemic as stated below:

Procurement	Construction	Commissioning
• Fabrication • Delivery	• Mobilisation of Material, Equipment, Tools, and/or Manpower • Temporary Facility for Construction • Preparation of Work • Work Execution • Completion of Work and/or Mechanical Completion	• Mobilisation of Equipment, Tool,and/or Manpower • Mobilisation of Commissioning Material

Use of National Sea Transportation and Insurance for Coal Export

The requirement for the use of national 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 the Export and Import of Certain Goods" and DGoFT Regulation No. 2/DAGLU/PER/1/2019 concerning "Technical Guidance for Implementing the Requirement for the Use of National Insurance for the Export and Import of Certain Goods" ("DGoFT Reg. 02/2019").

Based on PerMenDag 40/2020 (as amended by PerMenDag 65/2020), coal exporters are principally required to use domestic sea transportation companies, and also to obtain insurance from domestic insurance companies or a consortium of domestic insurance companies. The obligation to utilise domestic sea transportation companies and domestic insurance, shall apply to coal exporters which transport coal with capacity 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 carrying 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, which serve 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 based on the death of the insured party or payment based on the life of the insured party with a benefit in 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 Financial Services Authority. The type of insurance must be marine cargo insurance, and the insurance company or the consortium of the insurance companies issuing such insurance must be registered in the 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 which is an integrated online platform at the Ministry of Trade (http://inatrade.kemendag.go.id). The report must include the scanned copy of Exporter/Importer's tax invoice and at least the following:

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

Exporters or importers who fail to comply with the mandatory use of domestic sea transportation companies and domestic insurance companies and the reporting obligation will be subject to administrative sanction in the form of suspension recommendation of Business Identification Number (*Nomor Induk Berusaha*).

Letter of Credit Requirements for Exports of Mineral Resources

The requirement for the use of an L/C for exports of coal and minerals is set out in PerMenDag 94/2018 (as amended by PerMenDag 102/2018). This requirement is also regulated under DGoMC Decree No. 1952 K/84/ MEM/2018 of 2018 concerning the "Use of Domestic Banks or Overseas Branches of Indonesia's Banks for Exports of Mineral and Coal" ("DGoMC 1952/2018"). These regulations are intended to result in more accurate information being obtained about foreign exchange revenue from exports.

Pursuant to PerMenDag 94/2018 (as amended by PerMenDag 102/2018) and DGoMC 1952/2018:

a. The use of an L/C is mandatory for exports of mineral products including fully returning the proceeds generated from the sale of minerals and coal overseas through a domestic bank account or an overseas branch of a domestic bank;
b. Violation of the obligation stated in point a above is subject to sanctions in the form of a revocation of mineral export approval or a coal registered exporter, written warnings and the temporary suspension of activities;
c. The price stated in the L/C should not be lower than the global market price. In the event that global market prices are not available, the prices determined by the government or the prices in the country of destination shall be used as the export prices;
d. The payment should be made to a domestic foreign exchange bank (*bank devisa*) or the export financing institution (*lembaga pembiayaan ekspor*) established by the Government. In receiving a payment made by the L/C, the export financing institution shall refer to the provisions of the BI Regulation regarding Foreign Exchange Resulting from Exports;
e. The L/C mechanism should be declared in the export declaration (*Pemberitahuan Ekspor Barang* or "PEB");
f. The L/C documentation is subject to audit by a surveyor appointed by the MoT;
g. Exporters must submit a report to the DGoFT on the realisation of the exports completed, with the final price of the L/C, on a monthly basis, no later than the 15th day of the subsequent month;
h. In the event that an exporter is unable to implement the L/C terms, it should apply to The MoT for a deferral. The approval from the MoT will consider the following:
    - The terms adopted in sales contracts for exports of coal and/or minerals between exporters and overseas customers which were drawn up before PerMenDag 94/2018 became effective;
    - The ability of the exporter to adjust the means of settlement using an L/C within a certain period of time; and
    - Written confirmation of the stamp duty on both points above.
i. No exports will be allowed if they fail to satisfy the L/C requirements.

Exporters of mineral products should closely examine the procedures and requirements to avoid unnecessary sanctions, including the suspension of export/import activities. However, it remains unclear how the rules can be effectively applied for inter-company sales, non-sales exports, exports through pipelines, and exports under trustee arrangements, among others.

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 comes into effect starting from 15 September 2022. Currently, under GR 26/2022, a range of percentages on the sales proceeds apply to different types of coal and minerals (please refer to below table of GR 26/2022 for the detailed royalty rate 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 a 0% royalty rate imposition. GR 25/2021 has been issued as an implementing regulation of the Job Creation Law which stipulates further on the 0% royalty rate for coal. The incentive is granted by taking into account the energy independence and fulfilment of industrial materials demand. The amount, requirements, and procedure for the 0% royalty must obtain a prior approval from the MoF.

Holders of an IUPK will be required to pay an additional royalty of 10% of the net profit. Based on GR 15/2022, the Central Government is entitled to receive 40% of this additional royalty, while the balance is to be shared between the relevant province and regencies. Since this additional royalty is determined based on the net profit, it is expected that the Government will take a greater role 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).

IUP Royalty Rates	
Commodity	**Production Royalty Rate**
Coal a) Open pit coal • HBA < USD70 • USD70 < HBA < USD90 • HBA >= USD90 b) Open pit coal • HBA < USD70 • USD70 < HBA < USD90 • HBA >= USD90	 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 <= USD1,300/ounces • USD1,300/ounces < Price <= USD1,400/ounces • USD1,400/ounces < Price <= USD1,500/ounces • USD1,500/ounces < Price <= USD1,600/ounces • USD1,600/ounces < Price <= USD1,700/ounces • USD1,700/ounces < Price <= USD1,800/ounces • USD1,800/ounces < Price <= USD1,900/ounces • USD1,900/ounces < Price <= USD2,000/ounces • Price > USD2,000/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 "Guidelines on the Imposition, Collection, and Payment of Mineral and Coal Non-Tax State Revenue".

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

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

Coal benchmark price	Royalty Rates	
	IUPK Continuation with *lex-specialis* provisions[1]	IUPK Continuation without *lex-specialis* provisions[2]
<USD70	14%	20%
USD70 up to < USD80	17%	21%
USD80 up to < USD90	23%	22%
USD90 up to < USD100	25%	24%
> USD100	28%	27%

1) IUPK Continuation with lex-specialis provisions is IUPK Continuation of CCoW where the tax provisions are nailed down.
2) IUPK Continuation without lex-specialis provisions is IUPK Continuation of CCoW where the tax provisions are following 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 the 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, to provide special rules on both the tax and PNBP arrangements for the mineral mining sector. In April 2022, the Government issued GR 15/2022 to provide special rules on both the tax and PNBP arrangements for the coal mining sector.

Please refer to Chapter 4 for further details regarding GR 37/2018 and GR 15/2022 and mining-specific taxation matters.

2.6 Divestment 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:

Operation Production IUP and IUPK	Integrated Processing and/or Refining Facilities	Divestment Share Obligation (applicable since 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, 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 should first be offered to a BUMN.

In addition to the restrictions above, PerMen 9/2017 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 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 which are obliged to be divested.
- 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 is not interested in exercising its 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, of 2020, which stipulates the detailed requirements for the implementation of 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 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 Government is not interested or does not provide a written response to the divestment offering within the required timeline, the 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 (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, of 2020, stipulates the details regarding the supporting documents that are to be provided in 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 it does not provide a written reply within the required timeline, PerMen 9/2017 stipulated 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, the divestment offer to BUMNs and BUMNs is no longer conducted by way of a tender. In the event that more than one BUMN or BUMD has expressed 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 confirming that it is not interested or 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, via a tender, no more than seven calendar days following the BUMN and BUMD confirming that they are not interested or not providing a written reply to the divestment offering within the required timeline. 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 to 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 through the offering of 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 lower than the fair market value, which is generally understood to include the net present value of the cash flows generated from the exploitation of the reserves over the remaining life of the mine.

However, the above provision 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 which may be mined within the period of the IUP-OP or IUPK-OP. Furthermore, the calculation of the fair market value shall be conducted based on the discounted cash flow method, using 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 become:

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 stipulated that the regulated divestment share price would become:

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 in order to determine the fair market value, the calculation is to use two methods, the discounted cash flow method and/or the market data benchmarking method. MoEMR Decree No. 84 K/32/MEM/2020, of 2020, further explains the use of the discounted cash flow method in greater detail, including the financial assumptions that are to be considered.

The Government (via the MoEMR) may engage an independent valuer in order 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 on the basis of the divestment share price that is calculated in reference to the evaluation that has been performed by the Government. This provision has now been removed in PerMen 43/2018. However, based on MoEMR Decree No. 84 K/32/MEM/2020, of 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, for it to be revised in accordance with the predetermined method.

Divestment via IPO

PerMen 27/2013 stated that divestment via the Indonesian capital market will not be treated as satisfying the divestment requirements. Pursuant to the revocation of PerMen 27/2013 by PerMen 9/2017 (as amended by PerMen 43/2018), this provision has been removed. 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 taking divested shares. Such provision has also been included in GR 96/2021. This implies that divestment via the Indonesian capital markets can be treated as satisfying the divestment requirements.

2.7 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 have now been provided by PerMen 26/2018.

An Exploration IUP/IUPK holder must include a reclamation plan in its exploration RKAB, among other requirements, and 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 submitting an application for an IUP-OP, the reclamation plan for the production phase and the post-mining plan are also to be prepared by the IUP/IUPK holder, and this plan should cover a five-year period (or the remainder of the mine life, if shorter).

On 7 May 2018, Decree of MoEMR No. 1827 K/30/MEM/2018 concerning Guidelines for the Implementation of Good Mining Techniques ("KepMen 1827/2018") was issued as the implementing guidelines for the provisions under PerMen 26/2018. 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 currency for reclamation guarantee at exploration stage; and (ii) a time deposit placed at a state-owned bank in IDR or USD currency as 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 currency; and
- 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. The reclamation and post-mining activities will be evaluated for the release of the reclamation guarantee and post-mining guarantee. In the event that the reclamation and post-mining criteria are not met, the MoEMR or the governor shall appoint a third party to carry out the reclamation or post-mining activities.

Please refer to Annex of KepMen 1827/2018 for the detailed requirements and procedures of the reclamation plan, post-mining plan, placement and release of guarantee, and 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 reducing or returning the WIUP or WIUPK, reclamation and mine closure activities must be implemented and must reach 100% completion. Ex holders of IUP or IUPK licences which have expired must reach 100% completion for reclamation and mine closure activities.

2.8 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 miner.

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 provides a minor provision that is to include anyone who hinders or interferes with mining business activities from IUP, IUPK, IPR or SIPB holders SIPB holders as a subject of the sanctions for causing 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.

2.9 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 tender (where further extensions are still available under the contracts).

However, the 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 opened for tender.

Detailed guidance on applications for extensions of IUPK-OPs is outlined in GR 96/2021 and PerMen 7/2020.

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 size allowed 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 with 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). It is not stated in the Mining Law which provisions the existing contracts must conform, but this could include alignment with the Mining Law's provisions on divestment obligations, the resizing of the 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 contract holders. At the time of writing, all CCoW holders and substantially all CoW holders have completed the negotiation process and signed contract amendments with the Government. Please refer to the discussion in Section 3.5 of this Guide, "CoW and CCoW Renegotiation", for the latest status of the negotiations between the Government and the contract holders.

3 Contracts of Work

3.1 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 the changing conditions 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 with the new mining law, several articles were amended, with one of the most interesting amendments being 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 continuance of CoW/CCoW operations". This permit will allows holders of a CoW/CCoW to extend their mining business for up to 20 years (given in two ten-year extensions) or will provide a ten-year licence if the CoW or CCoW has previously been extended prior to the regulation being released.

CoWs were 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. The company could be 100% foreign-owned. However, if the company was 100% foreign owned, it may have been subject to divestment requirements at a later date. As a practical matter, most CoWs have some level of Indonesian ownership.

The CoW sets out the company's rights and obligations with respect to all phases of a mining operation, 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 Antam Tbk

The CoW outlines a series of stages with defined terms:

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) Depending on the CoW generation. For the details, refer to Appendix E.
2) For the first generation, the maximum period from the general survey until the feasibility study was 18 months, which can be extended for a maximum of 6 months.

Some of the important considerations that are 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; preferences given to Indonesian suppliers; environmental management and protection issues; regional cooperations in relation to infrastructure; provision for 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 can be appropriately addressed in a concise legal contract.

The CoW covers all of the tax, royalty, and other fiscal charges, including: dead rent in the contract area; production royalties; income tax that is 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").

CCA and CCoW

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 and second-generation contracts) and one generation of CCoW, which is typically referred to as the 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 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 was issued pursuant to Presidential Decree No. 75/1996, dated 25 September 1996.

CCA

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

Under the CCA, the coal contractor is entitled to an 86.5% share of the coal that is produced by the 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.

For the first generation of CCA, equipment purchased by the coal contractor became the property of the Indonesian Government (previously PTBA), although the contractor has exclusive rights to use the assets and is 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%.

CCoW

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

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

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, as deferred pre-operating costs, and it will be amortised starting from the period in which the 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

The stages coincide with the decision points for the relinquishment of part of 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 US Dollars, in the state-owned bank account. The security deposit is released upon the completion of the following:

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

For the seventh generation of CoWs, or the third generation of CCoWs, the security deposit is released upon the completion of the following:

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

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, the companies have responsibility for all of the financing requirements of the project and details are to be reported to the MoEMR.

For a company holding a contract, 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, and the provision of infrastructure for the use of the local community. The company also has the following obligations under the contract:

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 items and the amount of expenditure, and it 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 items and the amount of expenditure, and it is required to relinquish at least 25% of the original contract area for the second and third generations, and 40% for the first generation.

CoW	CCA/CCoW
• Exploration Stage In 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 of the data that have been 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 In 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, the third-generation company is required to have reduced the contract area to not more than 25% of the size of the original contract area. First and second generation contractors are required to have reduced 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, 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 have reduced 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 the mining.

Production

During the production phase, the company is required to provide 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 it is encouraged to meet domestic demand first. Sales to associates are required to be at arm's length prices. Sales contracts exceeding three years are subject to Government approval.

The contract also requires contractors to provide 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 it may sub-contract the operations of the mine, but outsourcing mining operations should now be considered in light of the rules that are contained 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 have more than one company in Indonesia. Group overheads can be borne by yet another company that has been formed to service the group contract companies. This can provide 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 the production or sales according to the provisions that are set out in the contract. However, in practice, the royalty is currently to be paid to the Government prior to shipment, as required by MoEMR Decree No. 1823 K/30/MEM/2018 concerning "Guidelines on the Implementation of the Imposition, Collection, and Payment of Mineral and Coal Non-Tax State Revenues".

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 that is based on the number of hectares in the Mining Area. During the pre-production stage, 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 which are closed to the public will follow the calculation method outlined in the relevant contract.

3.2 The Fiscal Regime Under CoWs, CCoWs, and CCAs

All generations of contracts, except for the second generation CCAs, are based on the taxation and other laws and regulations that were in place at the time when the agreements were 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 in interpreting the agreements as well as in doing business with other companies. Potential investors in mining properties that are covered by earlier generation contracts should seek professional assistance in order to examine such issues.

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

Please note that the contract renegotiations (see Section 3.5 of this Guide, "CoW and CCoW renegotiation", and Section 4.3 of this Guide, "Tax Regime for a CoW/CCoW/CCA company", below) generally incorporate the adoption of the prevailing fiscal rules effective from 1 January 2019. Nevertheless, the fiscal regime of each contract should be reviewed on a case-by-case basis.

3.3 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 the contract may 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 and the fulfilment of the company's 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 the 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 that are set out in the contract:

a. General Survey and Exploration Period

- The company has a period of 6 months to sell or remove its property, otherwise the property becomes the property of the Government; and
- The company is required to provide any information that has been gained from 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 that is located in the contract area to the Government at 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 6 months to sell or remove its property, otherwise the property reverts to the Government without any compensation 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 the property that is located in the contract area to the Government at 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, then the company then has 12 months to sell or remove its property, otherwise the property reverts to the Government without any compensation 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 to the company.

3.4 Transfer of the Contract

The Purchase and Sale of Shares in a Contract Company

Due to the difficulties that are involved in transferring a direct interest in a contract (see below) it is common for such interests to be transferred indirectly through the transfer of shares in the company holding the contract, or through transferring the shares of 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 for a transfer of 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 also very unlikely to occur). In such a 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 mineral 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.

3.5 CoW and CCoW Renegotiations

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

The renegotiation process began in 2010, with 31 CoW and 68 CCoW holders. As of the time of writing, it has been reported that all CoW and CCoW holders have agreed with all of the terms in the proposed amendments.

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

Our understanding is that most fiscal matters have been renegotiated to a "prevailing law" basis, other than the corporate income tax rate in certain cases.

4 Tax Regimes for the Indonesian Mining Sector

4.1 General Overview of the Indonesian Tax Systems

On 2 November 2020, the Government issued Law No. 11 Year 2020 concerning Job Creation ("Job Creation Law"). Some of the important changes introduced under the Job Creation Law include the exemption of dividends from tax, the inclusion of coal as a VATable product (previously exempted) and several changes in the VAT rules that offer more favourable outcomes for taxpayers.

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

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

On 29 October 2021, Law No. 7 Year 2021 concerning Harmonisation of Tax Regulations ("HPP Law") was passed, which determines, amongst other things, that the Corporate Income Tax ("CIT") rate remains at 22% starting 2022, the provision of all BIKs is to be deductible for the provider but taxable for the employee, that a useful life of a longer than 20 years will be used for permanent buildings and intangible assets, that there will be a further limitation on interest deduction, there will be an increase in VAT rate from 10% to 11% (from 1 April 2022) and 12% (from 1 January 2025), all mining products taken directly from the source become VATable, and there will be the introduction of a carbon tax. The effective date of the income tax-related provisions is 1 January 2022, whilst the VAT and carbon tax related provisions were to become effective on 1 April 2022. For further details, please refer to our December 2021 Energy, Utilities & Resources NewsFlash No. 71.

PwC Indonesia publishes the Indonesian Pocket Tax Book on an annual basis. This publication provides a general guide to the prevailing Indonesian tax laws as lastly amended by 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-2022.pdf*).

Photo source: PT Gunung Raja Paksi Tbk

4.2 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 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, which is called a *Nomor Pokok Wajib Pajak* ("NPWP"). The IUP, IUPK, IPR, and SIPB company is also required to register for tax at the local tax office in the jurisdiction in which the mine operates. This includes the company meeting VAT obligations (if applicable and not centralised in the head office) as well as WHT obligations.

CIT – General

The prevailing ITL stipulates that the Government will issue Government Regulations which covers specific tax provisions that are applicable for general mining (including coal) business activities.

Mineral

The Government issued GR No. 37 Year 2018 ("GR 37/2018") which provides specific rules covering both the tax and PNBP arrangements which are generally applicable from 2019 tax year onward 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 the construction, processing and/or refining, transportation, and sales) within a State Reserve Area. The IUPK-OPs that are 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 the CoW format); 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 provide specific rules covering both the tax and PNBP arrangements which are generally applicable from 2023 tax year onward for the following coal mining "concession" holders:

a. IUPs;
b. IUPKs;
c. IUPKs as continuation of CCoW Operations, being a mining business licence that is granted for this stage of the activities (i.e. not just the actual mining, but also the construction, processing and/or refining, transportation, and sales) within a State Reserve Area. The IUPK as continuation of CCoW Operations that are referred to in GR 15/2022 are limited to those relating to the CCoW that has expired into an IUPK as 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 last 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 minus the allowable expenditures. The CIT is imposed at a rate of 22% from net taxable profit for all mineral and coal concession holders.

Under Law No. 2 Year 2020 regarding the determination of Government Regulation in Lieu of Law No. 1 Year 2020 regarding State Financial Policy and Financial System Stability for handling the Corona Virus Disease 2019 Pandemic and/or in the Context of Facing Threats that Harm the National Economy and/or the Financial System Stability to Become Law, 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 for 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 (a) that have been paid or accrued for: (a) expenditure that is attributable to the company's operations, and (b) that have 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 the sales of mining products and any other income that has been earned by the mining company.

Mineral

Under GR 37/2018, the values of mineral mining product sales are to be based on one of the following prices, as determined 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, then the actual selling price should be used. Otherwise, taxpayers can only use the actual selling price if the discrepancy is within 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 coal benchmark price (HBA) as stipulated by the MoEMR or 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 HBA or coal price index is not available, the values are calculated by the actual selling price that is supposed to be received by the seller.

The above approach to determining 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 that 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 production.

Under the HPP Law, intangible assets having 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 the actual useful life based on the taxpayer's bookkeeping.

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Stripping/Overburden Removal Costs

Mineral

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 unit of production method over the contract period.

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

Stripping costs that are incurred during production operations, such as the cost of overburden removal, the opening of 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 operations and production operations.

Overall, the new stripping arrangements could operate such that the pre-production spending may be recoverable (in terms of tax) over a longer period. This could be problematic for projects with mine lives that are significantly shorter than the accompanying concession period. The recovery of any post-production spending is also effectively subject to the five-year tax loss carry forward limit.

Coal

Under GR 15/2022GR-15, for coal mining companies which follow the prevailing ITL (e.g. coal IUPs), pre-operating expenditures which have a 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 that production operations are approved by the MoEMR via either: proportionally over the contract period; or the unit of production method over the contract period.

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

Depreciation of Fixed Assets

Fixed assets are categorised into four categories, according to 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 straight-line approach.

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 the useful life of 20 years or the actual useful life based on the taxpayer's bookkeeping. Since the HPP Law will be effective starting from 1 January 2022 and the depreciation method should be applied consistently, it is unclear whether this new rule will be applicable to existing buildings or only for new buildings acquired from 1 January 2022 onwards.

Mineral

Specifically for holders of IUPK-OPs that have been converted from CoWs, the 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 that are 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 the fiscal years following the issuance of the IUPK-OP, with the depreciation or 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-OP;
   iii. there is an entitlement to depreciate or amortise the residual tax book value of the assets with useful lives that end in the fiscal year following the issuance of the IUPK-OP; and
   iv. the depreciation rules that are outlined in the original CoW apply to existing buildings for the life of the IUPK-OP;
b) for assets that were obtained after the issuance of the IUPK-OP, these follow the prevailing depreciation or amortisation rules; and
c) if the IUPK-OP for some reason ends prior to the date that is set out in the IUPK-OP, then 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 that were obtained prior to the issuance of the IUPK and still owned by the IUPK holders or have become the property of the State:
   i. there is an entitlement to depreciate all residual tax book value of the tangible assets in the fiscal year in which the IUPK was issued;
   ii. the amortisation rules that are 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 for the fiscal years following the issuance of the IUPK, with the 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) for assets that were obtained after the issuance of the IUPK, these 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 straight-line approach. The HPP Law stipulates that intangible assets having 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 the actual useful life based on the taxpayer's bookkeeping.

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

Reclamation Reserve

For accounting purposes, a mining company is usually required to maintain a reclamation reserve in its accounts, in order to cover the environmental management and reclamation work that is to be conducted during the mining period 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 resource sector laws/regulations. If the actual costs exceed the value of the reserve, then the balance will generally be deductible.

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 in order to ensure the utilisation of the deductions of these costs. The current regulations relating to reclamation reserves are silent on the matter of mine closure reserves, meaning that mine closure reserves are unlikely to be deductible until the costs occur or are funded.

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 transfer pricing rules are observed. Non-interest-bearing loans from shareholders are only allowed if certain requirements are met.

Thin Capitalisation Rule

Effective from 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 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 that is subject to final tax (e.g. land and/or building rentals);
- Entirely, for the non-reporting of private offshore loans (see below).

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 on interest deductions would still be possible if, for example, the loan was used to generate Indonesian bank interest income; the loan was used to finance BIKs; the interest rate was not at arm's length; or the related party loan leverage was beyond usual industry practices.

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

The HPP Law has now expanded the acceptable method to calculate deductible financing cost to other methods commonly used internationally, such as using 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 on this Thin Capitalisation Rule shall be stipulated in Government Regulation. As GR 37/2018 and GR 15/2022 stipulate that deductibility of interest expense for the "mineral" mining sector shall also follow the prevailing ITL, developments around interest deductibility in particular need to be monitored, although the move away from the current "one-size-fits-all" 4:1 ratio would generally be welcomed.

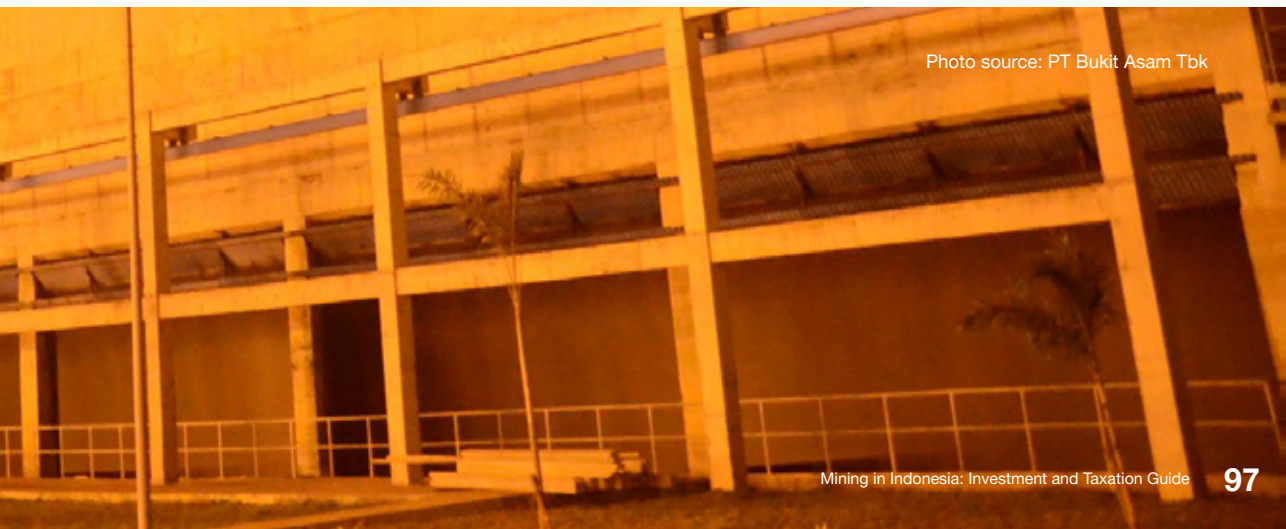


Photo source: PT Bukit Asam Tbk

BIKs

BIKs provided by the employer are typically not taxable in the hands of the employee and do not constitute deductible expenses for employers. However, BIKs which are 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 in remote areas would continue to be not taxable in the hands of the employee but could be treated as deductible expenses for employers.

Companies that are located in remote areas should submit an application to the DGT in order to obtain validation that their place of business is indeed located in a remote area.

However, under the HPP Law, the BIKs, in general, are now deductible expenses for employers and taxable in the hands of employees, except for the following BIKs which are deductible for employers but not taxable in the hands of employees:

- Food and beverages provided for all employees;
- BIKs provided in certain areas (generally remote);
- BIKs necessary to carry out work;
- BIK financed by the regional/state, revenue budget, or
- Certain other BIKs to be specified.

MoF Regulation No.167/PMK.03/2018 ("PMK 167") added specific provisions for IUPK-OP holders. This regulation was dated and effective from 19 December 2018. Remote area approval for IUPK-OP holders is granted for a period of ten years and can be extended for another ten years. This timeline is longer than the standard validity period for non-IUPK-OP holders of a maximum ten years (i.e. five years, extended by another five years).

The IUPK-OP licence holder should provide evidence showing that the licence originated from the conversion of an "active" CoW or CCoW, and that the CoW or CCoW originally included a provision regarding the deductibility of BIKs during the contract period.

Transactions with Related Parties

Payments to affiliates may be deductible if they are directly attributable to mining operations. However, the amount of 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 disclose significant detail in their CIT return regarding the number of related party transactions that exist, and they must also be able to justify the use of a particular pricing methodology. The DGT has been actively performing transfer-pricing audits. As a result, taxpayers with related-party transactions must carefully consider their transfer pricing positions. In addition, the DGT now requires the preparation of standard transfer pricing documents, i.e. a Master File, 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. The CbCR should also be filed with the Tax Office. For fiscal year 2022, the notification should be filed by 31 December 2023 at the latest.


Photo source: PT Antam Tbk

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 the 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 when they are sold to Bank of Indonesia ("BI") or when they are processed into jewellery for export, is subject to Article 22 income tax at 0.45%. This is collected by the gold producer.

Article 22 income tax constitutes a CIT prepayment, and therefore it constitutes a cash-flow concern only.

Bookkeeping in US Dollars

For tax purposes, a PMA company may request authorisation to maintain its bookkeeping in US Dollars 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 US Dollar accounting year (for an established company).

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

For tax purposes, however, the US Dollar is the only alternative to the Indonesian Rupiah.

Tax Holidays

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

PMK 130 provides a Tax Holiday facility that remain largely the same as in the previous relevant regulation, i.e. MoF Regulation No. 150/PMK.010/2018 ("PMK 150") regarding Tax Holidays. Below are the available tax facilities under PMK 130.

<table>
<tr><th rowspan="2">Provision</th><th colspan="2">Capital Investment Plan</th></tr>
<tr><th>IDR 100 billion – IDR 500 billion</th><th>≥ IDR 500 billion</th></tr>
<tr><td>CIT reduction rate</td><td>50%</td><td>100%</td></tr>
<tr><td>Concession period (from the start of commercial production)</td><td>5 years</td><td>5 – 20 years, depending on the investment value:
<table>
<tr><th>No.</th><th>Investment (in IDR)</th><th>Period (in years)</th></tr>
<tr><td>1</td><td>500 billion up to < 1 T</td><td>5</td></tr>
<tr><td>2</td><td>1 T up to < 5 T</td><td>7</td></tr>
<tr><td>3</td><td>5 T up to < 15 T</td><td>10</td></tr>
<tr><td>4</td><td>15 T up to < 30 T</td><td>15</td></tr>
<tr><td>5</td><td>≥ 30 T</td><td>20</td></tr>
</table></td></tr>
<tr><td>Transition</td><td>25% CIT reduction for the next 2 years</td><td>50% CIT reduction for the next 2 years</td></tr>
</table>

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 finally that have not received any of the following:

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

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

For the mining sector, a tax holiday is available for the integrated upstream basic metal industry (with or without its integrated derivative product processing facilities). Many smelter companies 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 to (only) apply for the tax allowance (and not for the tax holiday).

BKPM Regulation No. 7 Year 2020 ("BKPM 7") provides the Indonesian Formal Business Field Classification (*Klasifikasi Baku Lapangan Usaha Indonesia* – "KBLI") list of business fields that are eligible to access the tax holiday facility. However, companies for which the business field is outside the KBLI list within BKPM 7 can also apply for the tax holiday facility through a separate channel to the MoF, provided that they fulfil the other general eligibility requirements.

The tax holiday facility is available for recommendations that are generated by the Online Single Submission ("OSS") system, or applications that are 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.

The provision of tax holiday facility as intended in PMK 130 shall be evaluated from time to time, providing chances the tax holiday facility to be amended or revoked in the future.

Tax Allowances

The Government issued Regulation No.78 Year 2019 ("GR 78/2019"), regarding 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 facilities allowance package consists of:

- A reduction in net taxable income of up to 30% of the amount that was invested, in the form of qualifying fixed assets (including land), prorated at 5% for six years, provided that the assets that have been invested in are not being misused or transferred out within a certain period.

  The assets in question 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 provincial/regional one-stop service agency or business licence issued by the OSS agency as the 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 main business activity.
- Accelerated depreciation and amortisation for assets acquired for investment purposes;
- WHT on the dividends that are paid to non-residents at 10%; and
- An increased 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:

- 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 that are undertaken outside Java.

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

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

- those for Integrated Economic Development Zones (*Kawasan Pengembangan Ekonomi Terpadu* – "KAPET");
- those granted a tax holiday facility; and
- those granted a super deduction facility on labour-intensive industries, as provided 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. The current VAT rate is 11%.

Law No. 42 Year 2009 concerning Value Added Tax ("VAT Law") stipulates that supplies of gold bars, coal, and natural resources that have been taken directly from their source are not subject to VAT. This VAT position may change, according to the level of processing of the mining product in question. As a result, coal miners have historically not charged output VAT on their coal sales but also did not receive credits for VAT incurred on input costs. This resulted in an effective 11% increase in many costs.

VAT Rate

Under the HPP Law, the VAT rate is to be increased from previously 10% to:

a) 11% - starting from 1 April 2022.
b) 12% - by 1 January 2025.

VAT Object on Mining Products

Pursuant to the Job Creation Law, the supply of coal, even in an unprocessed state, has become a VATable supply. As a result, coal miners need to register for VAT purposes. The miner should then be entitled to an input credit for VAT incurred on relevant costs but needs to add VAT to 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, which stipulates that gold granules remain subject to VAT but not collected (previously VAT collected), with the following requirements:

a) having a diameter of 7 (seven) millimetres;
b) having refinement purity of 99.99% based on the Indonesian National Standard and/or accredited by London Bullion Market Association Goods Delivery; and
c) be production proceeds and 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, the VAT will be collected accordingly.

The HPP Law now stipulates that mining or drilling commodities that have been taken directly from their source and gold bars, other than for the Government's foreign exchange reserve, are now subject to VAT. As a result, unregistered mining companies will need to register for VAT purposes. The mining companies should then be entitled to an input credit for VAT incurred on relevant costs.

Pre-Production VAT

During the pre-production stage, under VAT Law as last amended by the HPP Law, subject to fulfilling the creditability criteria, all input VAT that has been incurred is creditable. This is different from the previous treatment in which only input VAT on purchases of capital goods is creditable. This could eliminate the tax issues regarding the eligibility to claim input VAT on land purchase/rental.

Furthermore, since the company will not have any output VAT during the pre-production period, VAT overpayment is likely.

The claim for refund of pre-production VAT overpayment should be requested at the end of the fiscal year (previously 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 (which can be five years for certain sectors, including the mining sector, that produce mining taxable goods) from the date on which the company first credit the input VAT, then the company must repay the VAT refund by the end of the month following the failure to deliver 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 holder of mineral IUPK-OPs that originated from the conversion of an "active" CoW and that were issued no later than 31 December 2019 as a VAT and Luxury Sales Tax ("LST") Collector.

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 the VAT Collector obligations are exempted, 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 the rate of 15%.

WHT of 2% is applicable to payments for most types of services that are made to Indonesia-resident entities. If the payments are made to a non-resident, then 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 proposed changes to the tax treatment of dividends:

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

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

Interest income, either in United States Dollars or in Rupiah on the DHE deposits that have been placed domestically with a bank that is incorporated or domiciled in Indonesia, or 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 table below.

Timeline	Final Income Tax Rate for DHE Deposits	
	IDR currency	US$ currency
One Month	7.5%	10%
Three Months	5%	7.5%
Six Months	0%	2.5%
More than Six Months	0%	0%


Photo source: PT Agincourt Resources

PBB

Under MoF Regulation No. 186/PMK.03/2019 concerning the classification and procedure for determining the sale 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 that are located in the mining areas, including locations 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 surface, including: (1) onshore areas (such as reserve production areas, unproductive areas, emplacement areas, security areas, etc.); (2) offshore areas;
- Earth body; 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 is stipulated as a proportion of the sale 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 economic development of the region in question.

PMK 186 stipulates the following:

- For land surface, the sale 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 body, the sale value of PBB objects will depend on net mining operating revenue from the previous year if already in the production stage. Otherwise, the sale value of PBB objects will be determined by the DGT's decision.
- For buildings, the sale value of PBB objects is based on the "New Acquisition Price". This is defined as all the costs that are incurred to acquire the PBB object at the time of its assessment, less depreciation, based on the physical condition of the PBB object.

4.3 Tax Regime for a CoW/CCoW/CCA Company

One of the key features of a contract is its *lex specialis* status, meaning that the terms in the contract override the general law. For example, when certain 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 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, where they generally follow the prevailing tax regulations).

Taxation matters that are not governed by the contract should follow the prevailing Tax Laws and regulations (as discussed above).

The advantage of having *lex specialis* tax rules in a contract includes the tax stability 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 ITL, such as a reduction in income tax rates or the introduction of tax incentives. Despite this, *lex specialis* tax rules have historically been favoured by investors, particularly for high-capital long-life mining projects. This is because 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 widely interpreted, 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 date. However, confusingly the contracts are still required to be adjusted within one year in order to conform with the Mining Law, except for the provisions regarding state revenue (except, again, if there are efforts to increase the state revenue). Accordingly, the Government has approached all of the CoW and CCoW holders in order to amend the terms of the contracts, a process that has now largely been completed (see Section 3.5 of this Guide, “CoW and CCoW Renegotiation”, for further details).

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

CoWs with *lex specialis* tax provisions are to be honoured until the end of the CoW period, so they are not directly impacted by GR 37/2018 (although most of these CoWs are being phased out, in any case).

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 the obligations for VAT (if this is applicable and has not been centralised at head office) and WHT.

Bookkeeping in US Dollars

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

Irrespective of the currency and language that are used, the company may settle its CIT liabilities in either Rupiah or US Dollars and file its tax returns in the Indonesian language.

With respect to CIT, the relevant tax returns should be presented in US Dollars alongside the equivalent figures in Rupiah in the annual CIT return.

CIT

Similar to an IUP/IUPK company, a contract company is subject to income tax on its net taxable profit. In the contract, the expenditure that is 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, the first-generation and most of the third-generation contracts include *lex specialis* CIT provisions, while the second-generation and remaining third-generation CCoWs do not. Where the *lex specialis* tax rules do not apply, the company must follow the prevailing income tax rules for the CIT calculation.

Exploration and Development Expenses

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

Reclamation Reserve

As 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

Generally, as per the prevailing law.

Selling and General & Administration Expenses

Generally, as per the prevailing law.

Asset Revaluation

Generally, as per the prevailing law.

Employee Benefits/ Facilities

Contracts normally provide for concessional tax treatments on benefits that are provided to employees who reside in the contract area. The costs of most of the benefits that are provided to employees who are located in the contract area are deductible, but such benefits are not taxed in the hands of the employees.

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.

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

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

There are also 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 into categories that are 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 type 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.

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.

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

Carried Forward Tax Losses

Tax losses can be carried forward for the period stipulated in the contract. This is generally more than the five-year carry-forward that is 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. However, some contracts may adopt a VAT regime that is different to the prevailing VAT regulations. For example, input VAT may be creditable, despite the coal or gold bars being produced (which are exempt from output VAT).

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

Until 2004, mining companies were designated as VAT Collectors, meaning that the mining companies should collect and pay the VAT that was charged by vendors (i.e. input VAT) directly to the State Treasury, rather than to the respective vendors. Some contract companies are required to continue to act as VAT Collectors under their relevant contracts.

Subject to the tax rules in the contract, the company may claim a refund on the input VAT that has been paid, but it must undergo a tax audit.

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

Sales Tax

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

PBB

PBBs for CoW and CCoW companies are usually specifically governed by the contract.

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”) to revoke MoF regulation No. 259/PMK.04/2016. Effective from 11 October 2019, PMK 116 sets out the requirements for the transfer, re-export, 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-export/destruction of goods that have been imported with 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.

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 that are 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 that is payable to other parties (although this is often disputed by CoW and CCoW companies under the *lex specialis* principles).

Latest Developments

At the time of writing, it has been reported that most CoW and CCoW holders have finished the renegotiation which resulted in amended CoWs/ CCoWs. As a follow up to the explanation in Section 3.5, the tax provisions in the amended CoWs and CCoWs generally keep the higher CIT rate and adjust the other tax rules to follow the prevailing tax laws and regulations. Nevertheless, the fiscal regime of 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.

4.4 Other Taxation Considerations

Carbon Tax

The Carbon Tax is a significant new tax which was planned to be implemented from 1 April 2022, the Carbon Tax, which follows on from a "voluntary" programme which has been in place for the last 12 months, is complemented with a Presidential Regulation also dated 29 October 2021.

However, considering the current economic recovery following the corona virus pandemic, at the date of writing, the application of the Carbon Tax (which was initially to be applied only on emissions from coal-fired power plants) has been postponed.

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

a) Tax objects: being those carbon emissions which have a "negative environmental" impact. This criterion will be progressively refined according to Indonesia's Carbon Tax "roadmap", which will ultimately cover:
   i) carbon emission 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 which generate carbon emissions within a specified period. The elucidation to the HPP Law states that the Carbon Tax will be prioritised towards corporate taxpayers and, at least initially, apply only to coal-fired power producers (as was the case during the voluntary trial period).

c) 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 emission limits (i.e. following a "cap and tax" formula) to be applied for coal-fired power plants from 1 April 2022 at IDR 30/kg CO2e (circa USD2.10/CO2 tonne p.a.);
   iii) for 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 the players, etc.;

d) Tax rate: being the higher of:
   i) the price set by the domestic carbon market (on a kg CO2e basis); or
   ii) IDR 30/kg CO2e;

e) Facility: taxpayers who participate in carbon trading and the offsetting of emissions (as well as other mechanisms) can be given:
   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 for greater climate change control. Implementing regulations will stipulate key features including the tax rate, tax base, administrative mechanism, and procedures aimed at reducing Carbon Tax or other fulfilments of Carbon Tax obligations.

Non-Tax State Revenue

Royalties

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

The prevailing royalty rates that are applicable to IUP/IUPK/IUPK-OP holders are set out in Chapter 2.

Dead Rent

Throughout the lives of all of its mining interests, the company is required to pay dead rent. This is due annually, with the amount normally being based on the number of hectares in the mining area and the stage of 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 prevailing regional taxes. On 5 January 2022, the Government passed Law No. 1 Year 2022 concerning Financial Relationship between the Central Government and the Regional Government ("HKPD Law") as the amendment of Law No. 28 Year 2009 concerning Regional Tax and Retribution ("PDRD Law"). A mining company may be liable for a number of regional taxes and retributions (except first- generation CCoWs). The rates range from 1.5% to 25%, however starting 5 January 2025 the range will become 1.2% to 25% of a wide number of reference values that are determined by the relevant Regional Government.

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

Government Share Under an IUPK-OP

Mineral – under an IUPK-OP

Specifically for an IUPK-OP (a mining business licence that is a conversion from an active CoW) holder, 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 "share" payment:

- A Central Government share that is due at 4% of net profit – as per the Mining Law and regulations; and
- A Regional Government share that is due at 6% of net profit – as 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. These obligations are regarded as profit distributions, and therefore are not deductible.

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

Coal – under an IUPK as continuation of CCoW Operations

Similar to the above government share for IUPK-OP.

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 gains from the sale or transfer (partly or wholly) of mining rights, participation in financing, or capital in 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 the acquisition of mining properties in Indonesia. For a domestic seller, income tax is imposed on the profits that are earned from the sale. For a non-tax-resident seller, 5% income tax on the gross proceeds is due, 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 sale proceeds, subject to certain requirements).

The prevailing ITL provides for a long-arm capital gains tax provision. The DGT can treat the sale of a conduit or special purpose company that has been 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 the 5% final income tax on the gross proceeds of the sale.

To date, there has been no definition of a tax haven, or what the implications will be if the indirect ultimate shareholder of the tax haven company is 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 can also be effective for project financing. Some relevant contract and IUP/IUPK issues to be aware of include the following:

- Apart from state-owned enterprises and/or non-mineral 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 or one 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 for the use of service companies within one 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, the 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 development on the thin capitalisation rules and note that debt forgiveness is subject to tax in Indonesia (this issue is common in unsuccessful exploration projects).
- The overall investment structure should consider both mineral processing and any refinery or downstream businesses.

5 Accounting Considerations

The accounting considerations section discusses certain accounting issues that are commonly faced by a mining company operating in Indonesia. The discussion in this guide does not attempt to cover all of the accounting requirements that are applicable to a mining company operating in Indonesia. Please contact one of our advisers (listed in Appendix F) to discuss these further.

5.1 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; an exception to this would be separately acquired intangible assets, such as payment for an option to obtain legal rights.

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

Statement of Financial Accounting Standard ("SFAS") No. 64 "Exploration for and evaluation of mineral resources" sets out the accounting for E&E expenditures. Under SFAS No. 64, an entity shall determine an accounting policy specifying which expenditures are 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 associated with finding specific mineral resources. An entity may change its accounting policies for E&E expenditures, 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 the relevance and reliability using the criteria in SFAS No. 25, "Accounting Policies, Changes in Accounting Estimates and Errors".

Photo source: PT Bis Industries

Expenditures incurred in exploration activities should be expensed unless they meet 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 sales 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 are further advanced than exploration activities, and hence they are more likely to meet the criteria for recognising an asset. However, each project needs to be considered on its merits. The amount of evaluation work that is 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 through the various phases of E&E activity, highlighting the cut-off point before capitalisation of costs commences. Costs incurred after probability of economic feasibility is established are capitalised only if the costs are necessary to bring the resource to commercial production. Subsequent expenditures 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. Depreciation and amortisation of E&E assets does not usually commence until the assets are placed in service. E&E assets recognised should be classified as either tangible or intangible according to their nature.

E&E 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 to development assets. E&E assets are tested for impairment immediately prior to their reclassification from E&E, and when impairment indicators are identified, which include but are not limited to when:

- Rights to explore in an area have expired or will expire in the near future, without 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.

5.2 Development

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

Development expenditures are capitalised to the extent that they are necessary to bring the property to commercial production. They should be directly attributable to an area of interest, or be capable of being reasonably allocated to an area of interest. Costs which could meet these criteria include:

- the purchase price for development assets, including any duties and any non-refundable taxes;
- costs directly related to bringing the asset to the location and condition for intended use such as drilling costs or 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.

Allocation of expenditure includes direct and indirect costs. Indirect costs are included only if they can be directly attributed with the area of interest. These may include items such as road construction costs and costs to ensure conformity with environmental regulations. 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 incurred. Time charges from 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 in developing the asset. SFAS 16 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 in their mining plans and make adjustments to these. There will be a cost associated with this, and entities should develop a policy on how such costs are assessed as being normal or abnormal.

Expenditures incurred after the point at which commercial production has commenced should only be capitalised if the expenditures meet 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 is gradually increased towards design capacity. An entity may receive revenue from the saleable material that is produced during this phase. Where test production is considered necessary for the completion of the asset, the proceeds from the sales are usually offset against the asset costs, instead of being recognised as revenue. Judgment is required to determine whether all of the revenues that have been earned during the commissioning period should be deducted from the cost of developing the mine.

5.3 Production

Revenue Recognition

Mining companies in Indonesia apply PSAK 72, "Revenue from Contracts with Customers" effective 1 January 2020, to determine the timing and amount of revenue that can be recognised for the sale of goods and services. PSAK 72 is adopted from IFRS 15, "Revenue from Contracts with Customers". PSAK 72 introduces a revenue recognition model that emphasises the satisfaction of performance obligations identified in a contract with customers for a seller to recognise revenue. Entities now apply a five-step approach to determine when and how much revenue can be recognised:

STEP

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 the contract and all of the facts and circumstances, including 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.

The following are common challenges relating to revenue recognition in the mining industry:

a. Agency Relationships: Principal versus agent considerations

Mining entities will often engage in other activities in addition to selling extracted ore, such as providing 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 they 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 the commission or fee earned for facilitating the transfer of goods and services. Whether the entity is acting as agent or principal depends on the facts of the relationship, which can require significant judgment.

An entity is the principal in an arrangement if it obtains control of the goods or services of another party in advance of 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 to arrange for another party to provide the goods or services. Indicators that the entity is an agent include:

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

An agent recognises revenue for the commission or fee 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 that were provided to the customer.

b. Delivery – Cost, Insurance and Freight ("CIF") versus Free on Board ("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 great distances. Transportation by truck instead of railway can be a significant cost. There are two main variants of contract that address the future shipping costs – CIF or FOB.

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

In both approaches, 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 affects 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 transfers to the customer. Under CIF and FOB terms, this will generally follow the terms of the contract, and is usually when the goods pass the rail on a vessel that has been selected by the buyer, at which point the buyer will control the goods.

Transportation

PSAK 72 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 transfer to the customer. If it does not meet the criteria, the performance obligation will be settled at a future point in time, and revenue will likely be recognised when the customer receives the goods.

Factors which might indicate that there is a separate performance obligation for transportation include:

- Specialism of any vehicles or technology involved with providing the transportation;
- Level of 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 element and collect the commodity themselves.

c. Provisional Pricing Arrangements

Sales contracts for commodities often incorporate provisional pricing. Provisional pricing might arise for a variety 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 at the final destination – in those situations, a provisional price is charged on the date at which control of the product initially transfers. 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, when the customer obtains control of the product. The entity will also need to determine the transaction price, which is the amount of consideration it expects to be entitled to in the transaction. Management should first consider whether provisionally priced contracts include embedded derivatives that are in the scope of financial instrument guidance. 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 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 of the cumulative amount of revenue recognised for that performance obligation. Judgment will be required to determine if the amount to be recognised is subject to a significant reversal. PSAK 72 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 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 adjustment or escalation over the course of the contract to protect the producer and/or the seller from significant changes to the underlying assumptions in place at the time 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 financial instruments standards (e.g., whether a contract with volume flexibility contains a written option that can be settled net in cash or 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 a separate contract at the time 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 separate performance obligations, using standalone selling prices.

Customers may not exercise all of their contractual rights to receive a good or service in the future. Unexercised rights are often referred to as breakage. An entity should recognise estimated breakage as revenue in proportion to the pattern of exercised rights. Management might not be able to conclude whether there will be any breakage, or the extent of such breakage. In this case, they should consider the constraint on variable consideration, including the need to record any minimum amounts 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 each reporting period.

In 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 the breakage occurs, provided that it can demonstrate it is expected that the customer will not exercise these rights. Given the nature of these arrangements and the inherent uncertainty in being able to predict 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 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 the 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 from the stripping activity are realised in the form of inventory produced, the associated costs are recorded in accordance with the principles of SFAS 14: Inventories.

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 for 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 involving management's judgment. It might be difficult to separately identify costs of producing inventory and of improving access to the ore body. In such cases, costs are allocated between the inventory produced and the stripping activity asset with reference to a relevant production measure. Allocation of costs cannot be based on a sales measure.

Stripping assets are initially measured at cost and subsequently measured at cost less depreciation, amortisation and impairment losses. While rare in practice, the 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 amounts. The stripping activity asset is typically depreciated based on the Units of Production ("UoP") method, unless another method is more appropriate.

Photo source: PT Latinusa Tbk

Leases

Mining companies in Indonesia apply PSAK 73, "Leases" effective 1 January 2020. PSAK 73 is adopted from IFRS 16, "Leases". The PSAK 73 model requires lessees to capitalise nearly all 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. PSAK 73 does not prescribe the threshold for low-value assets unlike IFRS (which determines low-value assets to be those below US$ 5,000). As such, judgment is required in determining low-value assets.

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

What is a Lease?

PSAK 73 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 implicitly when the supplier can fulfil the contract only through the use of a particular asset. A right to substitute an asset if it is not operating properly, or if there is a technical update required, does not prevent the contract from being dependent on an identified asset.

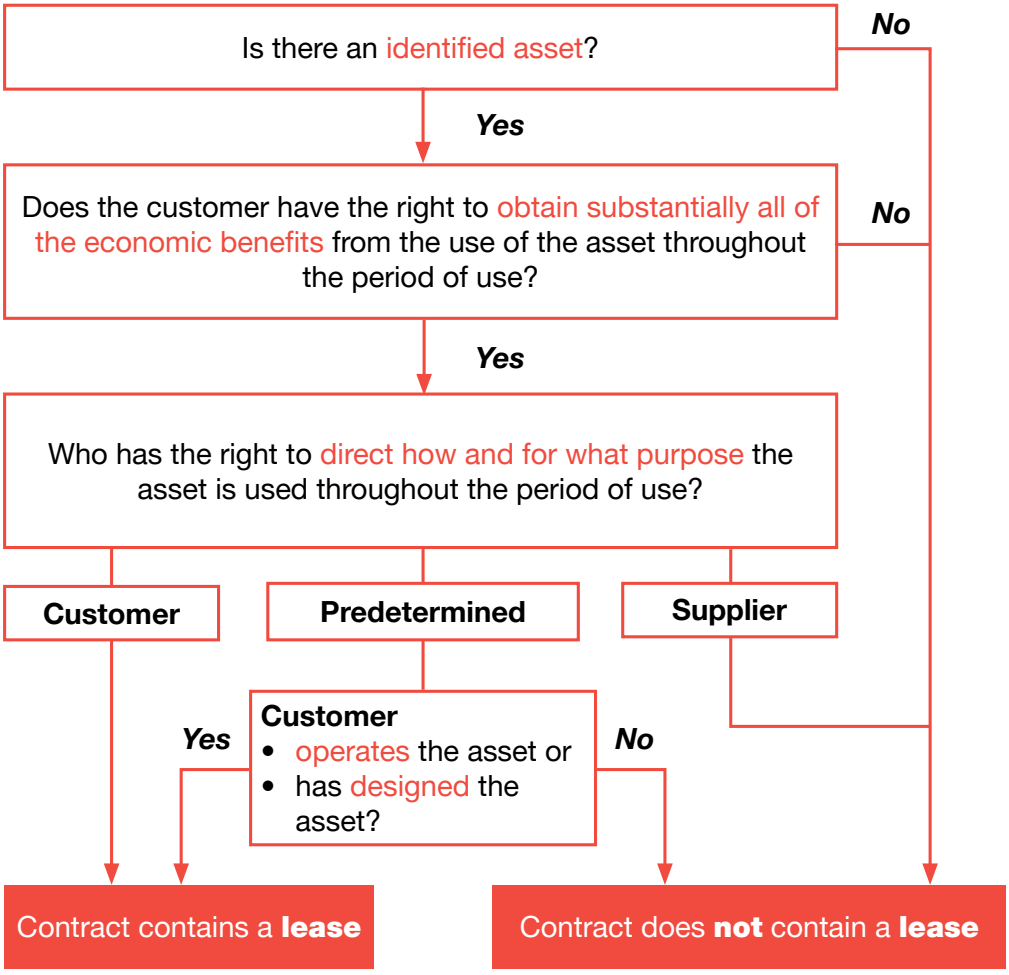
The definition of a lease is now much more driven by the question of which party to the contract controls the use of the underlying asset for the period of use. A customer no longer needs only to have the right to obtain substantially all of the benefits from the use of an asset (the "benefits" element), but must also have 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 in 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 to address, therefore, is which party (that is, the customer or the supplier) has the right to direct how and for what purpose an identified asset is used throughout the contract period. PSAK 73 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 independently exclusive, meaning 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 made to determine whether a contract contains a lease:

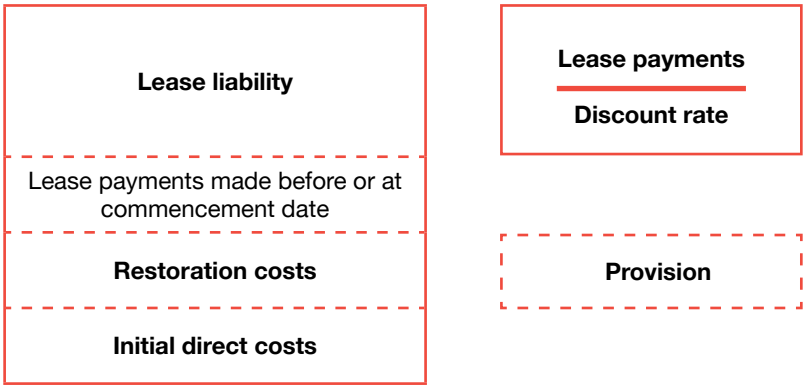


Lease Accounting for a Lessee

Initial recognition

There is no longer a distinction between a finance lease contract and an operating lease; all lessees are required to capitalise a right-of-use asset and a corresponding lease liability for almost all lease contracts. The lease liability is initially capitalised on the date of commencement and measured at an amount equal to the present value of the lease payments during the lease term that are not yet 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 contractually obligated restoration costs.

There is no change to the approach to determining the discount rate for the lease. 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.



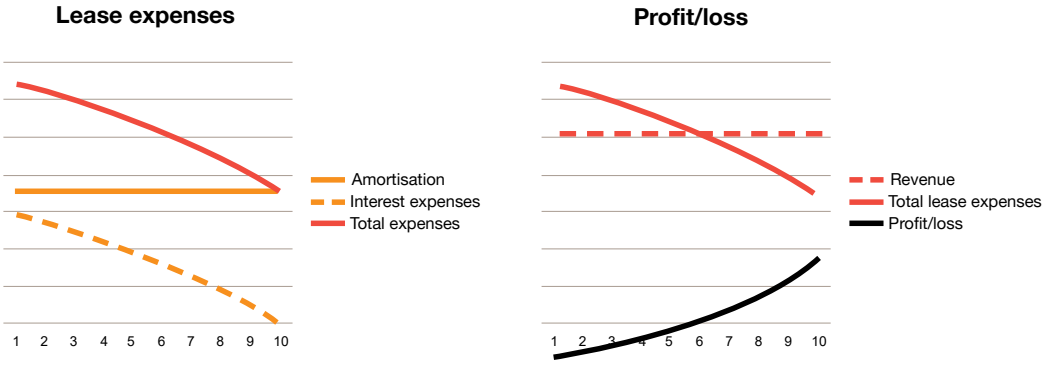
The effect of this approach is a substantial increase in the amount of capitalised financial liabilities and assets for entities that have entered into significant lease contracts that are currently classified as operating leases.

Subsequent measurement

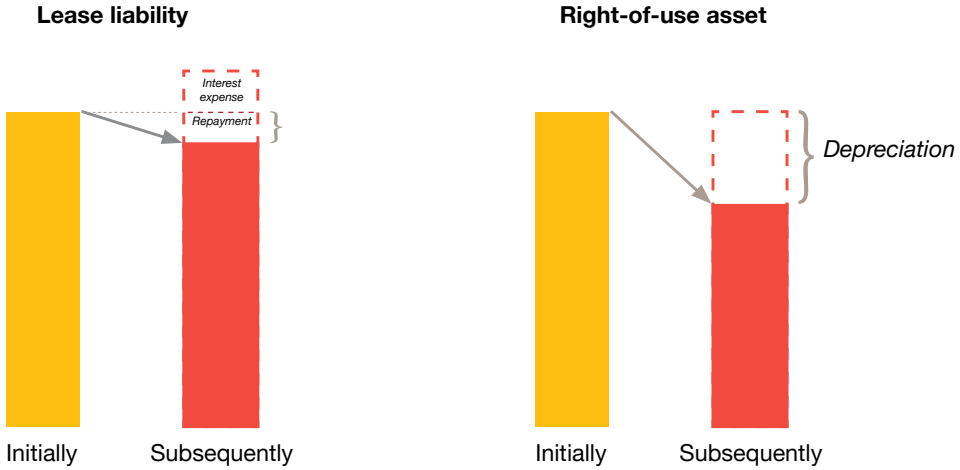
The lease liability is measured in subsequent periods using the effective interest rate method.

The right-of-use asset is depreciated in accordance with the requirements in PSAK 16, "Property, Plant and Equipment", which will result in depreciation on a straight-line basis or another systematic basis that is more representative of the pattern through which the entity expects to consume the right-of-use asset.

The combination of the 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 throughout 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.



Lease Accounting for a Lessor

The accounting for a lessor is practically the same under PSAK 73 as it was under PSAK 30. The lessor still has to classify leases as either finance or operating, depending on whether substantially all of the risk and rewards incidental to 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 lease payments receivable by the lessor and any unguaranteed residual value. If the contract is classified as an operating lease, the lessor continues to present the underlying assets.

5.4 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 past practice.

An entity that promises to remedy damage or has done so in the past, even when there is 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 for contamination of land that arises during the operating life of the mine or installation. The associated costs of remediation/restoration can be significant. The accounting treatment of closure and rehabilitation costs is therefore critical.

A provision is recognised when an obligation exists to perform the rehabilitation. The 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 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 for changes in the estimates of the amount or timing of future cash flows and changes in the discount rate. Changes to provisions that relate to the removal of an asset are added to or deducted from the carrying amount of the related asset in the current period. However, the adjustments to the asset are restricted. The asset cannot decrease below zero and cannot increase above its recoverable amount:

- if the decrease in provision exceeds the carrying amount of the asset, the excess is recognised immediately in profit or loss;
- adjustments that result in an addition to the cost of the asset are assessed to determine if the new carrying amount is fully recoverable or not. An impairment test is required if there is an indication that the asset may not be fully recoverable.

The accretion of the discount on a closure liability is recognised as part of finance expense in profit or loss.

Photo source: PT Bis Industries

6 Additional Regulatory Considerations for Mining Investment

Investment Law

Law No. 25/2007 as amended by the Job Creation Law (the "Investment Law") is the prevailing law which 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 in which all business sectors are basically open for foreign investment except for those that are (i) explicitly stipulated to be fully restricted for foreign investment, and (ii) for which investment may only be carried out by the Central Government. Under PerPres No. 10/2021, several mining commodities are prioritised to obtain fiscal and non-fiscal incentives so long as they meet certain requirements.

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 corporate social responsibility; and
- Environmental conservation.

Investors exploiting non-renewable natural resources must also allocate funds for site restoration, in line with environmental standards. Sanctions for non-compliance with certain aspects of the Investment Law (including those on corporate social responsibility) 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 royalties, dividends, loan repayments, sales of investments, and management and technical service fees.

Photo source: PT Adaro Energy Indonesia Tbk

Forestry Law

Indonesia has resource-rich soil, which includes forest resources. The use of forest resources is therefore strictly controlled by the Central Government, especially the resources of protected forests. It is common for mining concession areas to overlap with forestry areas (either protected or productive forests), meaning mining activities can be impacted by the rules applicable to such forests.

Law No. 41/1999, as amended by Law No. 19/2004 and the Job Creation Law and partially revoked by Law No. 18 of 2013 on Prevention and Eradication of Forest Destruction (the "Forestry Law"), allows 13 open-pit mines in protected forests, provided that the mining companies had signed their contracts prior to the introduction of the Forestry Law (as governed by Presidential Decree No. 41/2004).

Under Government Regulation No. 23 of 2021 on Forestry, the utilisation of Forest Areas for non-forestry activities (including mining) is permitted in both production forest areas and protected forest areas, subject to the obtaining of a Forest Area Utilisation Approval from the Ministry of Forestry. "Protected forest" areas are open for mining activities, provided that the 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 that are designated as conservation forest areas.

Holders of Forest Area Utilisation Approval are required to pay a certain amount of PNBP compensation for provinces that lack sufficient forest areas. Forest Area Utilisation Approval holders must also carry out reclamation and/or reforestation on 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 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, determining the national energy general plan, determining the steps to be taken in an energy crisis and in emergency conditions, and monitoring the implementation of policy in energy fields with cross-sectoral characteristics.


Photo source: PT Freeport Indonesia

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, and non-compliance can give rise to fines and penalties and, in extreme cases, the revocation of licences and/or permits.

Law No. 32 of 2009 on Protection and Management of Environment as amended by the Job Creation Law ("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 consists of an environmental impact assessment, an environmental management plan, and an environmental monitoring plan. Environmental management effort documents, 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 the Environmental Approval.

The sanctions that are 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 recent industry concerns, due to the time lag that is necessary for implementing the new processes and technologies, and the increased production costs.

Bank 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 in Foreign Loan Administration for Non-Bank Corporations, 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 trigger 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 Concluding Provision of BI Regulation No. 21/2/PBI/2019 stipulates 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 regulate the reporting of foreign exchange trading will 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, 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 follows:

a. The minimum hedging ratio is 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 US$ 100,000 are required to fulfil the minimum hedging ratio;
b. The minimum liquidity ratio is 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 BI.

Requirement to Deposit DHE with an Indonesian FX Bank

On 10 January 2019, the Government issued GR 1/2019 regarding “Export Proceeds from the Exploitation, Management and/or Processing Activities of Natural Resources”.

GR 1/2019 provides that:

- Foreign exchange-denominated proceeds derived from the exploitation, management and/or processing of natural resources (DHE) are to be deposited into the Indonesian financial system. DHE will cover proceeds arising from exports of mining, plantation, forestry and fishery products (although the MoF will issue further regulations on exactly which exports are subject to GR 1/2019).
- The deposits are to be made via a special account with an FX Bank, and must be deposited by the end of the third month following the recording of the relevant PEB.
- Exporters can use DHE for the payment of customs and other export-related duties, loans, imports, profit and dividend distributions and for other purposes as set out in the Indonesian Investment Law (e.g. for the transfer of capital, profits, and to pay most outgoings such as interest, purchases of materials, capital goods, investments, royalties, salaries, etc.).

- More controversially perhaps, GR 1/2019 provides that, if transactions are made through an escrow account, the exporters must also open an escrow account at an FX Bank and, where applicable, transfer the existing offshore escrow arrangements within 90 days of the issuance of GR 1/2019.

Notably, there are no exceptions specified in GR 1/2019, including any to deal with risk management issues or existing financing arrangements.

The administration of GR 1/2019 rests with:
- The MoF, which has authority to monitor exports of natural resources;
- The BI, which has the authority to monitor the depositing of the DHE into the FX Bank, as well as its utilisation pursuant to the requirements of GR 1/2019; and
- The Financial Services Authority (i.e. OJK), which has the authority to monitor the escrow accounts maintained by FX Banks.

Sanctions for non-compliance include fines, a prohibition on exporting and/or the revocation of the relevant business licence. The MoF will also issue further regulations on the imposition of sanctions.

However, the GR 1/2019 requirements are not completely new. BI Regulation No. 16/10/PBI/2014 (most recently amended by BI Regulation No. 17/23/PBI/2015 and partially revoked by BI Regulation No. 21/14/PBI/2019) on the Receipt of Foreign Exchange Export Proceeds and the Withdrawal of Foreign Exchange, and MoEMR Decree No. 1952K/84/MEM/2018 on the Use of Domestic Banks or Branches of Indonesian Banks Abroad for Sales of Minerals and Coal Abroad have for some time required that export proceeds in these areas be deposited through an Indonesian licenced foreign exchange bank. However, GR 1/2019 introduces much stricter requirements, across a broader range of exports, and with heavier sanctions for non-compliance.

New Listing Rules for Mining Companies

Pursuant to the issue of IDX Decision No. KEP00100/BEI/10-2014, the listing rules for mining (mineral and coal) companies have been simplified. The new rules cover mining companies (and prospective mining companies) that have a mining business licence, or holding companies which (or which 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, the 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 whose shares were 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. KEP00100/BEI/10-2014 has not yet been amended to conform with PerMen 7/2020.

Bank Indonesia Regulation on the Obligation to Use Rupiah

BI Regulation No. 17/3/PBI/2015 on the Obligation to Use Rupiah for Transactions in Indonesia has been effective since 1 July 2015 ("BI Reg 17/2015"), with the stated aim of stabilising the rupiah exchange rate.

BI Reg 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 payment, the settlement of obligations using money, and/or other financial transactions.

Pursuant to BI Reg 17/2015, the mandatory use of the Rupiah shall not apply for the following transactions:

a. Certain transactions within the framework of implementing state revenue and expenditures;
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.

The press release states that MoEMR and BI will form a task force to facilitate the implementation of BI Reg 17/2015 so that it does not affect ongoing business activities. In addition, the MoEMR and BI will issue a guideline for the implementation of BI Reg 17/2015 for the energy sector. At the time of writing, however, no guideline has been issued by either the MoEMR or BI regulating procedures for the implementation of the BI Regulation on the mineral and coal mining sector. In general, BI has issued BI Circular Letter Number 17/11/DKSP 2015 concerning the Obligation to Use 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 rupiah, BI Reg 17/2015 mentions that strategic infrastructure projects may also be exempted from using the rupiah, with prior BI approval. In this regard, BI issued Circular Letter No.17/11/DKSP dated 1 June 2015 ("BI Circular 17/2015") which set out the infrastructure projects that can exempted by the BI, including among others transportation, roads, irrigation, drinking water, water treatment, telecommunication and informatics, electricity, and oil and gas. 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 the Circular Letter of the Ministry of Energy and Mineral Resources No: 04.E/30/DJB/2017 concerning Exceptions and Postponement of the Enforcement of BI Reg 17/2015, in order to effectively use the rupiah so as not to hinder transactions in the mineral and coal mining sector, Bank Indonesia has granted the following approvals:

a. Exceptions to the implementation of the mandatory use of rupiah for three types of transactions constituting the implementation of the State Budget, namely payment of fixed fees, payment of Royalty or Coal Production Results (DHPB), and payment of annual lump sum or Land and Building Tax (PBB) and Regional Taxes.
b. Exceptions to the implementation of the mandatory use of rupiah for two types of transactions whose implementation refers to the prevailing laws and regulations, namely the payment of reclamation guarantees and payment of post-mining guarantees.
c. Postponement of the implementation of the mandatory use of rupiah in the form of the use of foreign currency quotes and payment of 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 rupiah in the form of the use of foreign currency quotes and payments in foreign currency or rupiah 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 holder of a Production Operation Mining Business Licence, specifically for processing and refining which has an export orientation. Specifically for this transaction, business actors are required to submit a written application to Bank Indonesia accompanied by supporting documents showing export sales activities, namely the Customs Identification Number (NIK) and the latest Export Declaration of Goods (PEB).

The period for postponing the implementation of the mandatory use of rupiah is given until 23 February 2026 and during that period, Bank Indonesia will monitor the readiness of mineral and coal industry players to implement the mandatory use of rupiah.

The holders of the Contract of Work (*Kontrak Karya* - KK), Coal Contract of Work (*Perjanjian Karya Pertambangan Batubara* - PKP2B) and business licences in the field of mineral and coal mining are directed to use the Jakarta Interbank Spot Dollar Rate (JISDOR) exchange rate as a reference in calculating the rupiah price 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, 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, used oil regulations, and the storage of production chemicals. Non-compliance may lead to fines, penalties, and, in extreme cases, the revocation of licences or permits.

Corporate Social Responsibility

Contractors are required to comply with the relevant laws and regulations on Corporate Social Responsibility ("CSR") and Community Development.

Under Article 74 of Law No. 40 of 2007 on Limited Liability Companies (as amended by the Job Creation Law), companies that are carrying out natural resources business must implement CSR, and this must be budgeted for in the companies' expenditure plans. The details of these responsibilities will be further stipulated under government regulations. At the time of writing, no government regulations have yet been issued.

Appendices

Photo source: PT Gunung Raja Paksi Tbk

Minimum in-country processing and refining requirements for metal minerals prior to export

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	Cu Metal ≥ 99% Cu
					Copper Telluride	a. Cu Metal ≥ 99%; b. Te Metal ≥ 9%; c. TeO_2 ≥ 98%; d. Te $(OH)_4$ ≥ 98%; and/or e. Copper telluride alloy > 20% Te
	Copper (leaching process)	Chalcopyrite Digenite Bornite Cuprite Covelitte	-	-	Metal	a. Cu Metal ≥ 99%; b. Au Metal ≥ 99%; c. Ag Metal ≥ 99%; d. Pd Metal ≥ 99%; e. Pt Metal ≥ 99%; f. Se Metal ≥ 99%; g. Te Metal ≥ 99%; h. TeO_2 ≥ 98%; i. $Te(OH)_4$ ≥ 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 and Nickel Metal	a. Ni Mate ≥ 70% Ni; b. FeNi ≥ 8%Ni; c. Nickel Pig Iron (NPI) 2% ≤ Ni < 4% with Fe ≥ 75%; d. Ni Metal ≥ 93%; and/or e. NiO ≥ 70% Ni.
	Nickel and/or cobalt (leaching process) Limonite		-	-	Metal, Metal Oxide, Metal Sulphide, mix hydroxide/ sulphide precipitate, and hydroxide nickel carbonate	a. Ni Metal ≥ 93%; b. Mix Hydroxide precipitate (MHP) ≥ 25% Ni c. Mix sulphide precipitate (MSP) ≥ 45% Ni; d. Hydroxide Nickel Carbonate (HNC) ≥ 40% Ni; e. NiS ≥ 40% Ni; and/or f. Co Metal ≥ 93% g. CoS ≥ 40% Co; h. Cr Metal ≥ 99%; and/or i. Cr2O3 ≥ 40%.

No	Commodity		Minimum Limit			
	Ore	Mineral	Processing		Refining	
			Products	Quality	Products	Quality
	Nickel and/or cobalt (reduction process) a. Saprolit b. Limonit		-	-	Metal Alloys	a. Sponge FeNi 2% ≤ Ni < 4% with Fe ≥ 75%; b. Sponge FeNi ≥ 4% Ni; c. Luppen FeNi 2% ≤ Ni < 4% with Fe ≥ 75%; d. Luppen FeNi ≥ 4% Ni; e. Nugget FeNi 2% ≤ Ni < 4% with Fe ≥ 75%; and/or f. Nugget FeNi ≥ 4% Ni.
3.	Bauxite	Gibbsite Diaspora Boehmite	-	-	Metal Oxide/ Hydroxide and Metal	a. Smelter grade alumina ≥ 98% Al_2O_3; b. Chemical grade alumina ≥ 90% Al_2O_3; c. Alumina Hydrate ≥ 90% $Al(OH)_3$; 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. Al Metal ≥ 99%

No	Commodity		Minimum Limit			
	Ore	Mineral	Processing		Refining	
			Products	Quality	Products	Quality
4.	Iron	Hematite Magnetite	Iron concentrates *)	≥ 62% Fe and ≤ 1% TiO_2	Sponge, Metal, and Metal alloys	a. Sponge iron ≥ 72% Fe; b. Sponge ferro alloy ≥ 72% Fe; c. Pig iron ≥ 75% Fe; and/ or d. Ferro alloy ≥ 75% Fe
		Goethite Hematite Magnetite (Laterite iron)	Laterite iron concentrates **)	> 50% Fe and (Al_2O_3 + SiO_2) > 10%		
		Lamela magnetite-ilmenite (iron sand)	Iron sand concentrates ***)	≥ 56% Fe; and 1% < TiO_2 ≤ 25%	Metal	a. Sponge iron > 72% Fe; and or b. Pig iron > 75% Fe.
			Pellet iron sand concentrates ****)	≥ 54% Fe; and 1% < TiO_2 ≤ 25%		
			Ilmenite concentrates *****)	≥ 45% TiO_2	Metal oxide, Metal chloride, and Metal alloys	a. Synthetic TiO2 ≥ 85%; b. TiCl4 ≥ 87%; and or c. Titanium alloy ≥ 65% Ti.
5.	Tin	Cassiterite	-	-	Metal	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. Synthetic TiO2 ≥ 85%; b. TiCl4 ≥ 87%; and or c. Titanium alloy ≥ 65% Ti.
			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%.

No	Commodity		Minimum Limit			
	Ore	Mineral	Processing		Refining	
			Products	Quality	Products	Quality
6.	Manganese	Pyrolusite Psilomelane Braunite Manganite	Manganese concentrates	≥ 49% Mn	Metal, Metal alloys and Manganese Chemical	a. Ferro Manganese (FeMn), Mn ≥ 60% b. Silica Manganese (SiMn), Mn ≥ 60% c. Manganese Monoxide (MnO), Mn ≥ 47.5% MnO_2 ≤ 4%; d. Manganese Sulfate ($MnSO_4$) ≥ 90%; e. Manganese Chloride ($MnCl_2$) ≥ 90% f. Manganese Carbonate Synthetic ($MnCO_3$) ≥ 90%; g. Kalium Permanganat ($KMnO_4$) ≥ 90%; h. Manganese Oxide (Mn_3O_4) ≥ 90%; i. Manganese Dioxide Synthetic (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 (calamine)	Zinc concentrates	≥ 51% Zn	Metal and Metal oxide/hydroxide	a. Bullion ≥ 90% Zn; b. ZnO ≥ 98%; c. ZnO_2 ≥ 98%; and/or d. Zn $(OH)_2$ ≥ 98%.
					Gold Metal and/or silver	a. Au Metal ≥ 99%; and/or b. Ag Metal ≥ 99%.
			Lead concentrates	≥ 56% Pb	Metal and Metal oxide/hydroxide	a. Bullion > 90% Zn; b. PbO ≥ 98%; c. $Pb(OH)_2$ ≥ 98%; and/or d. 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	-	-	Precious Metal	Au Metal ≥ 99%
9.	Silver	a. Native b. Associated minerals	-	-	Precious Metal	Ag Metal ≥ 99%
10.	Chromium	Chromite	-	-	Metal and alloys	a. Cr Metal ≥ 99%; and/or b. Chromium alloys ≥ 60% Cr

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) $ZrOCl_{2}.{}_{8}H_{2}O \geq 90\%$; b. Zirconium sulfate (ZOS) $Zr(SO_{4})_{2}.{}_{4}H_{2}O \geq 90\%$; c. Zirconium Basic Sulfate (ZBS) $Zr_{5}O_{8}(SO_{4})_{2}.xH_{2})$ ≥ 90%; d. Zirconium Basic Carbonate (ZBC) $ZrOCO_{3}.xH_{2}O) \geq 90\%$; e. Ammonium Zirconium Carbonate (AZC) $(NH_{4})_{3}ZrOH(CO_{3})_{3}.\ 2H_{2}O \geq 90\%$; f. Zirconium Acetate (ZAC) $H_{2}ZrO_{2}(C_{2}H_{3}O_{2})_{2} \geq 90\%$; g. Kalium Hexafluoro Zirconate (KFZ) $K_{2}ZrF_{6} \geq 90\%$; h. Zirconium Sponge ≥ 85%; i. Zirkonia (ZrO_{2}+HfO_{2}) ≥ 99%; j. Zirconium ≥ 95% Zr; and/or k. Hafnium ≥ 95% Hf.
			Ilmenite	$TiO_{2} \geq 45\%$	Metal oxide, Metal chloride and Metal alloy	a. TiO2 synthetic ≥ 85%; b. TiCl4 ≥ 87%; and or c. Titanium metals alloy ≥ 65%.
			Rutile	$TiO_{2} \geq 90\%$	Metal chloride and Metal alloy	a. TiCl4 ≥ 87%; and or b. Titanium metals alloy ≥ 65% Ti.
12	Antimony	Stibnite	-	-	Antimony Metal	a. SB ≥ 99%; and/or b. $Sb_{2}O_{5} \geq 95\%$.

Remarks:

*) This represents iron concentrates that contain hematite/magnetite minerals with an iron component of Fe ≥ 62%.

**) This represents iron concentrates that contain goethite/laterite minerals with an iron component of Fe ≥ 51% and alumina ($Al_{2}O_{3}$) and silica (SiO_{2}) components of ≥ 10%.

***) This represents iron concentrates that contain lamella magnetite-ilmenite minerals with an iron component of Fe ≥ 58% and compound concentration Titanium oxide of $1\% \leq TiO_{2} \leq 25\%$.

****) This represents iron concentrates in the form of pellets that contain lamella magnetite-ilmenite minerals with an iron component of Fe ≥ 56% and compound concentration Titanium oxide of $1\% \leq TiO_{2} \leq 25\%$.

*****) This represents iron concentrates that contain lamella magnetite-ilmenite minerals with compound concentration Titanium oxide of $TiO_{2} \geq 50\%$.

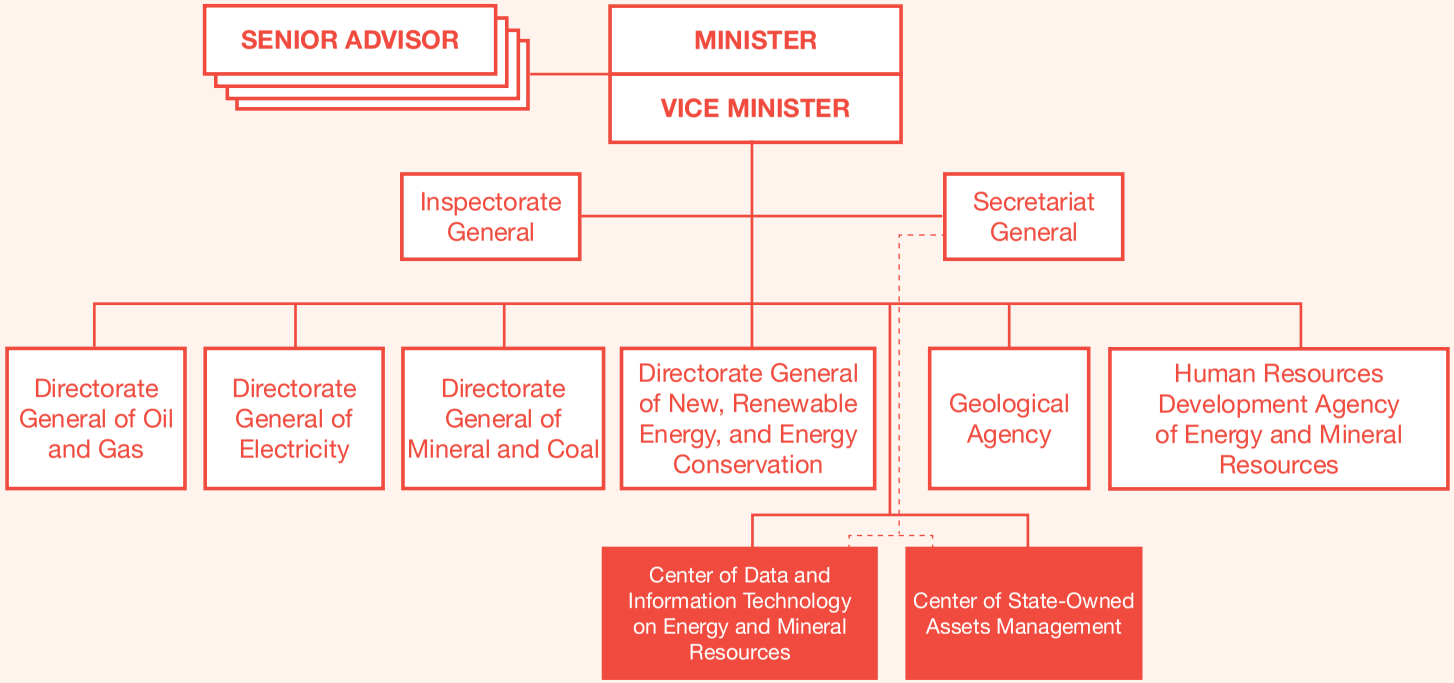
Regional Taxes

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% forutilisation 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



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)

IMA was founded on 29 May 1975, as a non-governmental, non-political, and non-profit organisation that was established in accordance with the laws of the Republic of Indonesia. The headquarters and the registered office of the association are 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 organising periodic conferences on mining in Indonesia, publishing proceedings and mining information, and representing the Indonesian mining industry at national and international meetings. IMA is a founding member of the ASEAN Federation of Mining Associations, and it currently provides the secretariat for the Federation.

IMA's 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 their potential application in Indonesia.
3. Fostering a 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 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 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 infrastructure that is necessary 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.

Summary of CCoW generations

No	Item	First Generation	Second Generation	Third Generation	Remarks
1	**Dead rent – in US$ 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 <=US$ 200m	Not Applicable	Not Applicable	5 to 1	
		Maximum DER for Investments >US$ 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 US$ 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	Rp3,000/ Rp6,000*)	Silent	

Note:
*) follows the prevailing tax laws and regulations

Photo source: PT Antam Tbk

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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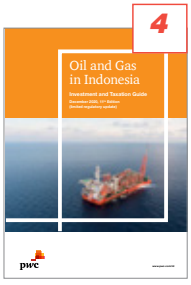

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