

Tax Allowance – an update ^{P1}

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Tax Allowance – an update

The Government issued Regulation No.78 Year 2019 (GR-78) on 12 November 2019. GR-78 represents an amendment to the regulations on the tax allowances available for companies that invest in certain business sectors and/or regions.

GR-78 will be effective from 13 December 2019 and revokes a series of previous Government Regulations (i.e. GR No.18 Year 2015 (GR-18) as amended by GR No.9 Year 2016 (GR-9)).

The highlights in GR-78 are as follows:

Business sectors and/or regions

GR-78 covers 183 eligible types of investment (based on Business Classification Field/KBLI). This includes 166 designated sectors and 17 categories of investment in designated sectors and also in designated regions. The requirement to conduct the business in a designated region is no longer applicable to some businesses. The details are available on request from your usual PwC Indonesia contact.

Tax facility package

The principal tax facilities remain the same as for GR-18 but with changes to the details of each tax facility as follows:

1. A reduction in net taxable income of up to 30% of the amount invested in the form of fixed assets (including land), prorated at 5% for 6 years of the commercial production, and provided that the assets invested is not being misused or transferred out within certain period **[unchanged]**. The fixed assets should now satisfy the following conditions under GR-78:
 - ✓ be new, unless originating from a complete relocation from another country;
 - ✓ be listed in the new business license as the basis for obtaining a tax allowance facility; and
 - ✓ be owned directly by the taxpayer (not through a lease) and utilised for the main business activity.
2. Acceleration of fiscal depreciation and amortisation deductions **[unchanged]**.

3. A reduction of the withholding tax rate on dividends paid to non-residents to 10% or the applicable reduced tax treaty rate **[unchanged]**.
4. An extension of the tax-loss carry forward period of more than 5 years but not more than 10 years. GR-78 updates the annual qualification to extend the tax-loss carry forward period as follows:

Options to extend the tax-loss carry forward	Old	New
1. Eligible investment under GR-78	Previously not available	One additional year
2. Eligible investment is carried out in Industrial Zone and/or Bonded Zone	One additional year	No change
3. Investment in new and renewable energy	Previously not available	One additional year
4. Developing economic or social infrastructure in the operational area of at least IDR 10 billion	One additional year	No change
5. Using raw materials and/or components at least 70% made in Indonesia	One additional year if using local products from the fourth year	One additional year if using the local products from the second year
6. Employing Indonesian workers	One additional year if employing 500 people for at least five consecutive years; or Two additional years if employing 1,000 people for a minimum of five consecutive years	One additional year if employing 300 people for at least 4 consecutive years; or Two additional years if employing 600 people for a minimum for four consecutive years
7. Research and development in Indonesia for product development or production efficiency of at least 5% of the investment within five years	Additional two years	No change
8. Exports make up at least 30% of the total sales for the investment conducted outside of a Bonded Zone	Additional two years	No change

Options to extend the tax-loss carry forward under points (1) and (2) will be automatically available upon the granting of a tax allowance facility. The other options to extend the tax-loss carry forward can only be utilised by the taxpayer upon obtaining approval for this.

Changes in the application process

GR-78 introduces the use of the Online Single Submission (OSS) system to process tax allowance applications (which must be made before the start of the commercial production). This is either:

1. along with the taxpayer's application for a business identification number; or
2. within one year of the new business licence being issued by the OSS system.

Details on the application process will be further regulated by the Minister of Finance.

Limitations

Taxpayers who have enjoyed a tax allowance facility under GR-78 cannot enjoy the following tax facilities:

1. The tax facility in Integrated Economic Development Zones.
2. The tax holiday as provided under GR No.94 Year 2010 as amended by GR No.45 Year 2019.
3. The super deduction facility on labour-intensive industries as provided under GR No.94 Year 2010 as amended by GR No.45 Year 2019.

Transitional provisions

GR-78 sets out the following transitional provisions to provide certainty for taxpayers at various stages of applications:

1. Taxpayers already granted tax facilities based on the old GRs can continue to use the facilities until the end of these facilities' periods.
2. Applications for a tax allowance facility based on GR-18 jo GR-9 that have been submitted to the Head of BKPM prior to the effective date of GR-78 on 13 December 2019 will be processed based on GR-18 jo GR-9.
3. Taxpayers with business licenses issued during the effective period of GR-18 jo GR-9 (i.e. 6 May 2015 until 12 December 2019) may be granted tax facilities under GR-78, provided that:
 - a. the investment approval has never been approved or rejected under GR-18 jo GR-9;
 - b. the business specification fulfils the requirements under each designated business sector and/or region stipulated in GR-78;
 - c. the company has not entered into commercial production; and
 - d. the application is submitted by 12 December 2020.

Implementing regulations based on the old GRs remain valid as long as they are not contradictory to the provisions of GR-78.

Draft Omnibus Tax Law

The government has recently announced that it will seek to introduce two "Omnibus" Laws. The first (related to tax) will seek to promote investment, voluntary tax compliance, and equality between domestic and foreign businesses. The second is targeting the ease of doing business in Indonesia and will include an updated positive investment list.

The Omnibus concept involves legislation which, as a single instrument, operates to amend a number of underlying laws. The Omnibus approach is often used to deal with specific legislative issues without the need to seek complete amendments of the relevant underlying law.

In this case the Omnibus Tax Law (entitled "Tax Provisions and Concessions for Economic Consolidation") is proposing to amend the General Tax Provisions and Procedures Law, the Income Tax Law, the Value Added Tax (VAT) Law, and the Regional Tax and Retribution Law.

This TaxFlash offers high level discussion points on the draft Omnibus Tax Law based upon a Ministry of Finance Press Release of 25 November 2019.

It is expected that more comprehensive reform of these tax laws will continue via the regular amendment process which has been in train for several years now.

According to the latest public draft the Omnibus Tax Law will seek to implement the following:

1. Reduction in Corporate Income Tax (CIT) rate

- a. the CIT rate will be gradually reduced from the current rate of 25% to 22% in 2021–2022 and to 20% starting 2023.
- b. the CIT rate for companies newly listed on the Indonesia Stock Exchange, that meet certain requirements, would be reduced by a further 3%, for the first five years of listing (i.e. the CIT rate will become 19% in 2021–2022 and 17% starting 2023).

2. Tax exemption on dividends received by domestic taxpayers

- a. Indonesian-sourced dividends received by resident taxpayers will be CIT exempt if reinvested in Indonesia for a certain period (detail still to be specified).
- b. Foreign-sourced dividends, or the after-tax profits of a Permanent Establishment, which is earned by resident taxpayers (either listed or non-listed) will also be CIT exempt if reinvested in Indonesia for a certain period (detail still to be specified).

3. Tax reduction on interest income received by foreign taxpayers

The 20% Article 26 Income Tax withholding currently applying to interest payments due to foreign taxpayers will be reduced where the interest is sourced from Indonesia. There is no guidance as yet on the reduction.

4. Territorial basis in calculating taxable income of individual taxpayers

- a. Indonesian citizens that reside abroad for more than 183 days will be treated as non-resident if they fulfil certain requirements (still to be specified). Withholding on their Indonesian-sourced income will be at the 20% Article 26 Income Tax rate. Non-Indonesian sourced income will be non-taxable while the Indonesian citizen is non-resident.
- b. Expatriates with dual tax residency and who reside in Indonesia beyond the 183 days time test will be deemed as resident. However only Indonesian-sourced income will be subject to Indonesian income tax.

5. Relaxation on creditable Input VAT for VAT-able Entrepreneurs

- a. Input VAT incurred on the utilisation of goods/services prior to the VAT-able Entrepreneur being registered will be creditable to a level of 80% of the entrepreneur's taxable delivery.
- b. Input VAT discovered during a tax audit process will be creditable.

6. New standard rate on administrative sanctions to increase voluntary compliance

- a. The tax administrative sanctions will be adjusted to follow a prevailing bank interest rate. This should result in tax administrative sanctions lower than the current 2% per month.
- b. The tax administrative sanctions due on the improper issuance of VAT invoices, or for not registering as a VAT-able Entrepreneur, will be reduced to 1% of the tax base.

7. New standard rate on interest compensation received by taxpayers

The use of the prevailing bank interest rate will also apply to interest compensation paid by the tax authority on incorrect tax assessments.

8. New approach to tax e-commerce

- a. The Omnibus Tax Law will outline a framework for foreign e-commerce or digital business platforms to collect VAT on transactions in the Indonesian market and to report this VAT to the tax authority.
- b. The government will separately expand the scope of a “permanent establishment” to include foreign digital players with a significant “economic presence” in Indonesia (i.e. even if without any physical presence). This is with a view to increasing the tax collected on the Indonesian-sourced income of e-commerce businesses (subject to any tax treaty intervention).

9. Harmonisation of regional taxes

Regional governments are already authorised to collect regional taxes where the Tax Objects and tax rate thresholds are determined by Parliament through the Regional Tax and Retribution Law. The Omnibus Law will provide authority to the central government to set the rates of these taxes through a Presidential Decree after consultation with the relevant regional governments. Greater regional harmonisation of the tax rates etc. is the apparent goal of this change which is hoped to create a better business environment, spur investment and job creation but still maintain the ability of the regional governments to collect tax revenue.

10. One-stop source of tax concessions

Indonesia has several tax concessions including:

- i) the Tax Holiday;
- ii) the Super Deduction on spending for vocational training, research and development in Indonesia, etc.;
- iii) for labour-intensive industries;
- iv) for Special Economic Zones;
- v) for government securities traded in the international market; and
- vi) for reductions or exemptions of regional taxes.

These concessions will be summarised into a specific category in the law so as to provide more consistency and a greater legal basis.

Progress

In term of progress the current draft of the Omnibus Tax Law was recently presented in a government meeting by the Ministry of Finance. This draft is an update of an earlier draft after input from other ministries and government agencies. The government is planning to submit the final draft to parliament this December.

We expect that the Omnibus amendments should generally be viewed positively by taxpayers. PwC will monitor the legislative process closely and provide more detailed comments in our series of event and publications following the discussions at parliament level.

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