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### ■ Corporate tax

The main changes include tax rate reduction, tax exemption for intercompany dividends, a possible restriction of promotional expenses, the official adoption of generally accepted transfer pricing methods, and the inclusion of anti-avoidance provisions in the law.

### ■ Individual tax

The top rate is reduced from 35% to 30%. Failure to have a tax ID number (NPWP) will cost a surcharge of 20% on top of the normal payroll tax (Article 21 income tax)

### ■ Withholding tax

The rate structure for Article 23 income tax is simplified amounting to only two tax rates: 15% and 2%, both to be based on the gross income amount. Income from exchange-traded derivatives may be subject to final income tax.

## Income tax bill is passed into law

The parliament finally passed the proposed income tax bill into law in the plenary session of 2 September. Hence, starting on 1 Jan 2009 a new set of income tax laws will be effective. What follows is a summary of the main changes covered in the new law.

### Corporate tax

- **Tax rate reduction.** A flat rate of 28% will apply starting in 2009 and will be further reduced to 25% in 2010. Public companies, subject to a minimum listing of 40% and other conditions, will have a tax cut of 5% from the standard rate, giving them an effective tax rate of 23% in 2009 and 20% in 2010. Small enterprises, i.e. corporate taxpayers with annual turnover up to Rp50 billion, will have a tax discount at 50% of the normal rate in respect of their taxable income up to Rp4.8 billion.

- **Inter-company dividends.** Dividends received by a PT company from another PT company will be exempt from income tax, subject to a

minimum share ownership of the dividend recipient in the company paying the dividends of 25%. Hence, the *active business* requirement is abolished.

- **Tax objects.** The law confirms that a few additional items constitute tax objects: gains from transfer of assets in any form of reorganization, gains from sales or transfers of mining interests in the financing or capital of mining companies, and income from *syariah*-based activities.
- **Deductible expenses.** Contributions for *national disasters*, social infrastructure, R&D, and education facilities are claimable as deductible expenses. A special regulation will be issued by the Minister of Finance (MoF) to deal with the deductible portion of promotional expenses. The procedure for claiming a deduction from uncollectible accounts will be easier.

- **Permanent establishment (PE) definition.** The PE definition is expanded to include a warehouse, computers, electronic agents, and automatic equipment located in Indonesia used to carry out business activities in Indonesia by a foreign enterprise.
- **Transfer pricing.** For determining the arm's length character of transfer prices, the Director General of Tax (DGT) may use any of these methods: comparable uncontrolled price (CUP), resale price, cost plus, profit split, or transactional net margin method (TNNM).
- **Anti-avoidance provisions.** The use of conduit companies to purchase assets (Indonesian company shares) may be scrutinized by the DGT. In particular, the DGT may determine the actual buyer in such transactions. The sale of shares in an interposed conduit company may be deemed as a sale of shares in an Indonesian company belonging to the conduit company.
- **Beneficial owner.** The concept of beneficial owner is introduced by alluding to the state of residence (SoR) of the benefit recipient in respect of the income derived from Indonesia. If the recipient is an individual, the SoR is the country where he/she resides. If it is a corporate taxpayer, the SoR is the country where the company's owner (holders of more than 50% of the company shares) reside or the country where the place of effective management is located.

## Individual tax

- **Tax rate reduction.** The top rate will be reduced from 35% to 30% starting in 2009 and will be applicable for taxable income above Rp500 million. The non-taxable threshold will be increased from Rp13.2 million to Rp15.84 million.
- **Dividend income.** Dividend income received by resident individual taxpayers will be subject to final income tax at a maximum rate of 10%.
- **Exit tax.** A tax exemption will apply to individuals (including their family members but excluding children over 21 years old) who have an NPWP starting in 2009 and continuing through 2010. Those who do not have an NPWP will continue to pay exit tax during 2009-2010. A complete elimination will apply starting in 2011.
- **Payroll tax.** Individual taxpayers who do not have a tax ID number (NPWP) will be subject to a 20% surcharge on top of the payroll tax (Article 21 income tax) withheld from their salaries. Employers are required to withhold this tax along with the surcharge.

## Tax withholding and collection

- **Tax rate simplification.** The tax rate structure for domestic withholding tax (Article 23 income tax) will be simplified. There will be only two withholding tax rates, 15% and 2%, both to be based on the gross amount of the income concerned. This removes the need to determine the estimated net income (ENI) for particular types of services. Dividends, interest, royalties and prizes will be subject to 15% withholding tax. The 2% tax rate will apply across the board to rentals of assets excluded from the final income tax regime and fees for certain services.
- **Exchange-traded derivatives.** Exchange-traded derivatives by virtue of Article 4(2) income tax law may be subject to final income tax.
- **Non-residents.** The scope of tax withholding for non-residents (Article 26 income tax) will be expanded to include swap and other hedging transaction premiums, gains from loan forgiveness, and gains from the sale of shares in an interposed conduit company owning shares in an Indonesian company.

- **NPWP ownership.** Taxpayers who do not have an NPWP will be subject to a surcharge on top of the normal withholding tax rates. i.e. 20% higher for Article 21 income tax and 100% higher for Articles 22 and 23 income tax. The party paying the income will be held responsible for withholding the surcharge along with the normal withholding tax.
- **Article 22 income tax on high luxury goods.** Purchases of high luxury goods will be subject to Art. 22 income tax. These may include luxury condominiums, apartments, and private airplanes.

Implementing regulations may be issued soon after the President signs the new law.

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