THE INWARD INVESTMENT AND INTERNATIONAL TAXATION REVIEW

THIRTEENTH EDITION

Editor
Charles C Hwang

THE LAWREVIEWS

THE INWARD INVESTMENT AND INTERNATIONAL TAXATION REVIEW

THIRTEENTH EDITION

Reproduced with permission from Law Business Research Ltd
This article was first published in April 2023
For further information please contact Nick.Barette@thelawreviews.co.uk

Editor
Charles C Hwang

THE LAWREVIEWS

Published in the United Kingdom
by Law Business Research Ltd
Holborn Gate, 330 High Holborn, London, WC1V 7QT, UK

www.thelawreviews.co.uk

The information provided in this publication is general and may not apply in a specific situation, nor does it necessarily represent the views of authors' firms or their clients. Legal advice should always be sought before taking any legal action based on the information provided. The publishers accept no responsibility for any acts or omissions contained herein. Although the information provided was accurate as at April 2023, be advised that this is a developing area.

Enquiries concerning reproduction should be sent to info@thelawreviews.co.uk.
Enquiries concerning editorial content should be directed to the Content Director,
Clare Bolton – clare.bolton@lbresearch.com.

ISBN 978-1-80449-161-4

ACKNOWLEDGEMENTS

The publisher acknowledges and thanks the following for their assistance throughout the preparation of this book:

ABOU JAOUDE & ASSOCIATES LAW FIRM

ADVOKATFIRMAET GRETTE AS

ÆLEX

ALLENDE BASCUÑÁN & CÍA

ANDERSON MŌRI & TOMOTSUNE

BAKER MCKENZIE

BIRD & BIRD ADVOKAT KB

CROWELL & MORING LLP

CUVAL ABOGADOS

DAVIES WARD PHILLIPS & VINEBERG LLP

DELOITTE IMPUESTOS Y SERVICIOS LEGALES, SC (DELOITTE MEXICO)

DLA PIPER NEDERLAND NV

FOGLIA & PARTNERS

GORRISSEN FEDERSPIEL

LOYENS & LOEFF

MOCHTAR KARUWIN KOMAR

PHH RECHTSANWÄLT:INNEN

PHH TAX

SACHA CALMON – MISABEL DERZI, CONSULTORES E ADVOGADOS

VILLARAZA AND ANGANGCO

WOLF THEISS

CONTENTS

PREFACE

I am pleased to bring to you the 13th edition of *The Inward Investment and International Tax Review*. This annual publication provides tax summaries for investment into 23 countries around the globe. While intended to provide readers with accurate and up-to-date analysis on the main tax considerations of investing in each of the jurisdictions covered, this publication is not a substitute for tax advice tailored to your unique circumstances.

From the onset of the covid-19 pandemic, governments around the world used their respective tax laws to help support their economies and raise the funds needed to provide this support. These support initiatives have ranged from robust government-backed loan programmes and individual stimulus payments to postponed tax deadlines and deferred tax payments. Some governments have largely ended these initiatives and now look to replenish their coffers or avoid further deficits, whether by increasing tax rates, increasing enforcement activities, or enacting altogether new taxes. Other governments continue to implement tax reduction policies to mitigate the negative impacts of the pandemic. For example, the Chinese government implemented a VAT credit refund, which will lead to an estimated 1.5 trillion yuan in total tax refunds, to improve businesses' cash flows. The Chinese government also implemented a 100 per cent super deduction for corporate basic research investments to promote corporate R&D. (By contrast, because of legislative inaction, the parallel US deduction for research expired and was replaced by a five-year amortisation rule (15 years for certain foreign research) effective for tax years beginning after 31 December 2021.)

Other themes were present before but have been brought to the forefront by the pandemic – namely remote work and global tax reform. Advances in technology continue to enable workers to perform their duties from anywhere in the world. Many of these workers do not realise the tax ramifications of remote work for themselves and their employers, and governments are stepping up their enforcement efforts. As for tax reform, the OECD continued making progress on its Two-Pillar Solution during 2022, but significant work still remains. The digitisation of the global economy continues, and until a global consensus is achieved on the OECD's Pillar 1, countries continue to pursue digital services taxes as a unilateral measure to protect their respective tax bases.

In 2022, the OECD made significant progress with its Pillar 2 15 per cent minimum tax project. In early 2022, the OECD released the commentary for the model rules for the 15 per cent tax. In February 2023, the OECD released administrative guidance related to the model rules. The effective tax rate in each jurisdiction in which a multinational group operates would be compared to the 15 per cent standard. To the extent that the 15 per cent minimum tax is not paid, a top-up tax equal to the shortfall would be paid to the jurisdiction of the ultimate parent of a multinational group that is within the scope of these rules. Each

jurisdiction could choose to enact its own top-up tax. If such top-up tax conforms to the model rules, that tax would be creditable against the 15 per cent minimum tax assessed against the parent.

The United States has taken, to date at least, a different path from the OECD framework. The Inflation Reduction Act of 2022 was signed into law by the President on 16 August 2022. This Act provides for a number of tax credits and other policies aimed at bolstering energy and environmental policies as well as fostering investment in the United States. Prior to the Inflation Reduction Act of 2022, the United States had a minimum tax regime in the form of the base erosion and anti-abuse tax (BEAT). The Inflation Reduction Act introduced a second corporate minimum tax for large, publicly traded taxpayers. This new minimum tax is based on book income and is calculated as 15 per cent of adjusted financial statement income. Unfortunately, neither BEAT nor the new minimum tax on book income conforms to the OECD framework. Some of the United States' trading partners have also portrayed the tax credits enacted by this US legislation as being protectionist in effect.

The EU has enacted a new regime that extends the rules governing aid from EU governments (known as state aid) to non-EU governments as well. In June 2022, the European Parliament approved the Foreign Subsidy Regulation, which would require multinationals making an acquisition or forming a joint venture in the EU, or bidding on a government contract from a member of the EU, to disclose financial contributions from non-EU governments in certain circumstances. Tax benefits are included in the definition of financial contributions, though the mechanics of identifying and computing tax benefits are as yet unclear.

Governments also continue to enhance transparency in the beneficial ownership of private business entities and crack down on illicit finance. For example, beginning on 1 January 2024, new entities formed under US law, as well as foreign legal entities that register to do business with a state government or Native American tribe, will be required to register with the Financial Crimes Enforcement Network (FinCEN) (a bureau of the US Treasury Department with responsibility for enforcing US laws on money laundering, terrorist financing and other financial crimes). This registration will disclose all beneficial owners who directly or indirectly own or control 25 per cent or more of the equity of the entity or have substantial control over the entity. While there are a number of exemptions, such as for public companies and large operating entities, many expect the new beneficial ownership reporting rules to have a substantial effect on investment into the United States. Entities formed before 1 January 2024 will have until 1 January 2025 to also register. The database containing the information collected by FinCEN under these regulations is intended to be used only by law enforcement.

These are just a sample of the many developments that are discussed in the summaries that follow. I hope you find this updated guide helpful in following the current trends in taxation and the inward investment environment.

The views expressed in this book are those of the authors and not of their firms, the editor or the publishers. Every effort has been made to ensure that the contents of this edition were current as of the date of publication.

Charles C Hwang
Washington, DC
February 2023

Chapter 9

INDONESIA

Mulyana, Sumanti Disca Ferli, Ratna Mariana and Astrid Emmeline Kohar[1]

I INTRODUCTION

Indonesia is a unitary state consisting of 38 provinces, and 514 regencies and municipalities. In addition to national taxes such as income tax[2] and value added tax (VAT),[3] others are taxes imposed by the regional governments, such as taxes on land and buildings (except for areas used for plantation, forestry and mining, which are still maintained as national taxes), motor vehicles, advertising and consumption-based tax objects, which encompass restaurants and catering services, electricity consumption by end-users, hotels, parking services, and arts and entertainment.[4]

Under Article 23A of the Indonesian Constitution, every tax and other impositions that are compelling in nature for the needs of the state must be regulated by law. In many cases, the tax laws delegate to lower regulations, such as government regulations or even ministerial regulations, as implementing regulations to further regulate the subject matter. The Director General of Tax also issues many circular letters on certain subjects to subordinates as internal direction or guidelines. While these circular letters are not regulations and are technically non-binding on taxpayers, the tax offices very often follow these. However, problems arise when the provisions in lower regulations or these circular letters of the tax authority conflict with those provided in the tax laws. As a general principle of Indonesian law, a regulation higher in hierarchy will take precedence over a regulation lower in hierarchy (*lex superior derogat legi inferiori*). It has been more than three decades since Indonesia adopted a self-assessment system to replace the official assessment system in its tax legal system (except for tax on land and buildings, which still uses the official assessment system). Under the self-assessment system, taxpayers must themselves calculate, pay and report their own tax obligations in accordance with the prevailing laws and regulations.

In 2002, Indonesia enacted Law No. 14 of 2002 on the Tax Court (the Tax Court Law), and also established a Tax Court (replacing the Board of Tax Dispute Settlement) to

1 Mulyana is a partner, and Sumanti Disca Ferli, Ratna Mariana and Astrid Emmeline Kohar are associates at Mochtar Karuwin Komar.

2 Set out in Law No. 7 of 1983 on Income Tax as amended by Law No. 7 of 1991, Law No. 10 of 1994, Law No. 17 of 2000, Law No. 36 of 2008, Law No. 11 of 2020, Law No. 7 of 2021 on Harmonised Tax Rules (Law 7/2021) and Government Regulation in Lieu of Law No. 2 of 2022 on Job Creation (the GR in Lieu of Law 2/2022).

3 Set out in Law No. 8 of 1983 on Value Added Tax on Goods and Services and Luxury-goods Sales Tax as amended by Law No. 11 of 1994, Law No. 18 of 2000, Law No. 42 of 2009, Law 7/2021 and the GR in Lieu of Law 2/2022.

4 Set out in Law No. 1 of 2022 on Financial Relationship between the Central Government and Regional Governments, which revokes and replaces Law No. 28 of 2009 on Regional Taxes.

examine and decide tax disputes between taxpayers and the tax authorities. Under the Tax Court Law, based on limited grounds, taxpayers and the tax authorities, if not satisfied with a Tax Court decision, also have the right to request a civil review application to the Supreme Court against that Tax Court decision. Many tax disputes have been brought by taxpayers before the Tax Court regarding transfer pricing issues as a result of the price adjustment of or non-recognition by the tax authorities of the expenses in transactions between taxpayers and their foreign shareholders or affiliated companies. Tax disputes can also arise owing to different interpretations of laws and regulations between taxpayers and the tax authorities, or a conflict between laws and regulations affecting the rights and obligations of taxpayers.

To increase business activities in Indonesia, the government has also maintained certain tax incentives and facilities for companies doing business in Indonesia in specific business sectors and regions. There is also a tax incentive for publicly listed companies that meet certain requirements as regards the rate of income tax. Since 2020, the government has sought to mitigate the impact of the covid-19 pandemic on the Indonesian economy by introducing sweeping reforms on fiscal policy through the enactments of:

a Law No. 2 of 2020 on the Stipulation of Government Regulation in Lieu of Law No. 1 of 2020 on State Financial and Financial System Stability Policies for the Mitigation of Corona Virus Disease 2019 (Covid-19) Pandemic or the Handling of Threats that are Potentially Harmful to National Economy and/or Financial System Stability to Become a Law (Law 2/2020), which took effect on 18 May 2020; and

b Law No. 11 of 2020 on Job Creation (the Job Creation Law),[5] which took effect on 2 November 2020.

The Job Creation Law has since been revoked by Government Regulation in Lieu of Law No. 2 of 2022 on Job Creation (the GR in Lieu of Law 2/2022). The GR in Lieu of Law 2/2022 was enacted on 30 December 2022 as an emergency regulation to replace the Job Creation Law, which had been declared 'conditionally unconstitutional' on procedural grounds by the Constitutional Court by virtue of Decision No. 91/PUU-XVIII/2020 dated 25 November 2021. From the outlook, the general thrust of the GR in Lieu of Law 2/2022 is largely similar to its predecessor, all with the aim to boost investments and create jobs by streamlining regulations and simplifying licensing processes across various sectors. Tax rules under the GR in Lieu of Law 2/2022 are also largely similar to the Job Creation Law. The GR in Lieu of Law 2/2022 – although becoming effective immediately on its enactment – remains subject to the parliament's approval. Normally the parliament gives approval on the GR in Lieu of Law submitted by the president. However, in the event of a rejection by the parliament, the GR in Lieu of Law 2/2022 will be declared void. It remains to be seen whether the GR in Lieu of Law 2/2022 will obtain the parliament's approval to be ratified as a proper law. As recently reported, the GR in Lieu of Law 2/2022, on 15 February 2023, obtained a majority vote of approval from the legislative body of the parliament to be brought to the second level of discussion (plenary meeting) for the parliament's final approval. Based on the foregoing, the discussions on the Job Creation Law and its replacement, the GR in Lieu of Law 2/2022, in this chapter should be seen in this light.

5 The Job Creation Law is also called the Omnibus Law because it contains various laws and has amended more than 70 laws.

The foregoing fiscal packages also provide for amendments on certain provisions of the General Provisions and Procedures of Taxation Law, the Income Tax Law and the VAT Law, in the framework of tax reform. Some of the amendments include reducing corporate income tax rate, expanding VAT credit applicability and reducing sanctions for tax non-compliance.

The government again introduced another set of fiscal packages in 2021 through the enactment of Law No. 7 of 2021 on Harmonised Tax Rules (Law 7/2021), promulgated on 29 October 2021 in a bid to boost the country's revenue collection amid the covid-19 pandemic. Law 7/2021 brings in a number of major tax overhauls, such as introducing a higher income tax on the wealthy, raising VAT and making several previously exempted activities subject to VAT, taxing carbon-intensive activities, and overturning the corporate tax cut that was introduced by Law 2/2020. Continuing the tax reforms, on 5 January 2022, the government enacted Law No. 1 of 2022 on Financial Relationship between the Central Government and Regional Governments (Law 1/2022), which revoked Law No. 28 of 2009 on Regional Taxes. Law 1/2022 seeks to strengthen fiscal decentralisation through, among other things, enhancing local taxing powers by regional governments. Under Law 1/2022, administration and compliance costs for local taxation are reduced by reclassifying and integrating consumption-based regional taxes to provide ease of payment and reporting by taxpayers and improve efficiency in tax monitoring by local governments. Law 1/2022 also introduces additional objects for regional taxation, including taxes on valet parking and the renting of sports facilities.

Early this year, a positive institutional reform was also made in the tax sector, namely through the issuance of Minister of Finance Regulation No. 2/PMK/09/2023 on Tax Supervisory Committee (MOF Regulation 2/2023). Effective on 17 January 2023, MOF Regulation 2/2023 revokes and replaces Minister of Finance Regulation No. 54/PMK.09/2008 regarding the same matter (as amended several times, lastly by Minister of Finance Regulation No. 18/PMK.01/2020). The new MOF Regulation 2/2023 aims to enhance the effectiveness and efficiency of tax monitoring by strengthening the role of the Tax Supervisory Committee in protecting the rights of taxpayers. Pursuant to MOF Regulation 2/2023, the Tax Supervisory Committee is an independent agency directly responsible to the Minister of Finance, and it is tasked with reviewing and monitoring policies and administration on tax, customs and excise by the Fiscal Policy Agency, the Directorate General of Tax and the Directorate General of Customs and Excise, respectively. The Tax Supervisory Committee also accepts tax, customs and excise-related complaints and is authorised to monitor the handling of these complaints by the relevant tax authorities.

II COMMON FORMS OF BUSINESS ORGANISATION AND THEIR TAX TREATMENT

The types of business entity commonly used in Indonesia take the form of sole proprietorship, general partnership, firm partnership, limited partnership (CV), limited liability company (PT) or cooperative.

A sole proprietorship is carried out by a natural person in his or her personal capacity. This form is typical for small to medium-sized businesses such as stores, restaurants and small repair shops.

A general partnership is the most basic form of partnership under Indonesian law. The general partnership is an association of persons for the carrying out of a joint enterprise. The members of the general partnership are not personally liable for the liabilities of the general

partnership, and each member cannot bind the other member unless specifically authorised by the other member or unless the transaction is of benefit to the general partnership. A general partnership is the form of organisation that is typically used by professional experts, such as law firms or accounting firms.

A firm partnership is the form used by commercial partnerships, such as trading or commercial services firms. Each partner in the firm partnership has the right to act in the name of the partnership within the scope of its business. Liability of the partners in the firm partnership with third parties is on a joint and several basis.

A CV differs from a firm partnership; while all partners are active partners in a firm partnership, in a CV there is also a non-active or 'sleeping' partner (limited partner). The liability of the limited partner is only to the extent of the sum he or she has pledged to contribute to the CV.

Major companies in Indonesia mostly take the form of a PT. The main characteristics of a PT are that it owns its assets and holds liabilities separately from its shareholders. Generally speaking, the shareholders of a PT have no liability for acts carried out for and on behalf of the PT. Their liability is limited to the shares they have subscribed. However, under certain circumstances, the court may pierce the veil or disregard the corporate entity, and hold that the shareholders are personally liable for acts carried out in the name of the PT. Those circumstances are:

a where the requirements for the PT to be established as a legal entity have not been made or are not met (e.g., approval of the Minister of Law and Human Rights has not been obtained);

b the shareholders in question, directly or indirectly, in bad faith exploit the PT for their personal interest;

c the shareholders in question are involved in an unlawful act committed by the PT; or

d the shareholders in question, directly or indirectly, in an unlawful act make use of the assets of the PT in such a way that the PT assets become insufficient to settle the PT's debts.

The Indonesian Company Law (Law No. 40 of 2007) also provides that if there is only one shareholder in the PT for a period of not more than six months, the shareholder must transfer a part of its shares to another party. Otherwise, the sole shareholder becomes personally liable for all of the obligations and losses suffered by the PT. Note however, that the Job Creation Law (and its replacement, the GR in Lieu of Law 2/2022) have introduced the concept of an individual-founded legal entity under the micro and small enterprise framework. In this regard, the Job Creation Law (and its replacement, the GR in Lieu of Law 2/2022) have also expanded the definition of PT to comprise both the conventional PT founded by at least two shareholders and the individual-founded legal entity that meets the micro and small enterprise criteria.

A cooperative is an association of persons, and its objective is the enhancement of the welfare of its members through engagement in a specific business as authorised in its charter. A cooperative has the status of legal entity after it is legalised by the relevant minister.

Previously, the basic tax treatment for all forms of businesses, except for the sole proprietorship, was a flat tax rate of 25 per cent of the net income. However, by virtue of Law 2/2020, the corporate income tax rate of domestic corporate taxpayers and permanent establishments has been reduced to 22 per cent for the 2020 tax year and the 2021 tax year, and 20 per cent beginning from the 2022 tax year (with an additional 3 per cent reduction

for go-public companies subject to certain requirements). In a controversial move, Law 7/2021 overturns the planned corporate tax rate of 20 per cent for the 2022 tax year, where it remains at the rate of 22 per cent. In the sole proprietorship, the person's tax rates are calculated on a progressive basis ranging from 5 per cent up to 35 per cent. To calculate the tax obligation, in addition to the permissible deductible expenses, the natural person must also deduct a non-taxable income threshold for himself or herself, his or her spouse and up to three dependants.

i Corporate

Most large companies adopt a corporate form. Like its predecessor, the 1967 Foreign Investment Law, the Indonesian Investment Law of 2007 requires business entities engaged in almost all business sectors (including manufacturing and trading of goods and services) to take the form of a PT if there is a foreign ownership participation in that entity in the framework of foreign direct investment (a PMA company). The same requirement also applies to the financial sector (except for banking). For the oil and gas sector, a foreign corporation can be used. Banking business can take the form of a branch office of the foreign bank, but the banking authority no longer issues new business licences to a branch office of a foreign bank. Based on the foregoing, the discussion below focuses on the PT corporate form.

ii Non-corporate

Non-corporate entities such as a general partnership, firm partnership and limited partnership are not permissible for foreign-owned equity. Generally, the Indonesian Income Tax Law treats all entities, regardless of whether they are incorporated, in the same manner.

III DIRECT TAXATION OF BUSINESSES

Since the 2020 tax year, the flat tax rate of 22 per cent of net income applied for all businesses that take the form of an entity (regardless of whether they are incorporated), subject to some exceptions, including:

a a public company that satisfies a minimum listing requirement of 40 per cent and other requirements can obtain a 3 per cent reduction from the standard rate;

b corporate taxpayers with gross revenue up to 50 billion rupiahs are entitled to a 50 per cent reduction of the standard tax rate imposed on the taxable income for gross revenue up to 4.8 billion rupiahs;

c companies engaged in upstream oil and gas and geothermal industries must calculate their corporate income tax pursuant to the terms of their production-sharing contracts; and

d companies engaged in mining activities that are parties to the contract of work with the government must calculate their corporate income tax pursuant to the terms of the contract of work.

There are also businesses that have deemed profit margins for tax purposes. For such businesses, their respective deemed profit on gross revenue and effective income tax rate are, inter alia, domestic shipping operations (4 per cent; 1.2 per cent) and foreign shipping and airline operations (acting through a permanent establishment (PE) in Indonesia) (6 per cent; 2.64 per cent).

i Tax on profits

Determination of taxable profit

Indonesian tax residents are taxed on their worldwide income,[6] and foreign tax credits are available for the foreign income of tax residents subject to certain criteria. The taxable profit is calculated based on the gross income deducted with allowed expenses. Pursuant to the Income Tax Law, deductible expenses are expenses for the purposes of earning, collecting or maintaining income, including:

a expenses that are directly or indirectly related to the business activities, such as material expenses, salaries, wages, allowances, interest, royalties, travelling expenses, waste management expenses, insurance premiums, promotion and selling expenses, administration expenses, and taxes (except income tax);
b depreciation and amortisation expenses;
c contributions to the pension fund;
d losses;
e expenses for R&D conducted in Indonesia; and
f replacement costs or rewards given in kind or for enjoyment.

Non-deductible expenses include:

a distributions of profit in any form, such as dividends;
b expenses for personal interests of shareholders, partners or members;
c establishment of reserves or provisions, with some exceptions, such as provisions for doubtful accounts for banking and financing companies, reclamation provisions for mining companies, forestation provisions for forestry companies, and provisions for closure and maintenance for industrial waste processing businesses;
d income tax payments; and
e tax penalties.

Pursuant to Article 11 of the Income Tax Law, expenditure incurred in relation to tangible assets with a useful life of more than one year (except for land titles) can be depreciated. Depreciation is commenced from the month of the acquisition of the assets by using the straight-line method or the declining method consistently. Buildings can be depreciated by using the straight-line method only.

Pursuant to Article 11A of the Income Tax Law, amortisation for expenditure to acquire intangible assets, including expenses for extension of land titles and goodwill that has a useful life of more than one year, can be carried out by the straight-line method or declining method during the useful life by way of applying an amortisation tariff for such expenditure or on the remainder of the book value; provided that this is done consistently, it is all amortised at the same time at the end of the useful life. The amortisation is commenced in the month in which the expenditure is incurred, except for in certain business sectors.

Basically, taxable profits are based on accounting profits. However, for the calculation of the tax obligation, some adjustments may be required, as certain expenses are not tax deductible. Profits are taxed on an accruals or receipts basis, depending upon which book

6 There have been reports that, in an effort to further encourage the movement of capital into Indonesia, the government is planning to change the taxation regime for individual (non-corporate) taxpayers from the (currently) worldwide system to the territorial basis. When applied, this proposed change would result in the taxation of income deriving only from Indonesia.

method the taxpayer has adopted. The book method must be conducted consistently by the taxpayer. A change of the book method must obtain the approval of the Director General of Tax.

Capital and income

In practice, there is still a distinction between the taxation of income and capital gain (profit). Currently, the income tax on income arises from the sale of shares in the stock exchange and is a final tax of 0.1 per cent of the gross amount of the sale of shares. In the case of the sale of shares by founding shareholders in publicly listed companies, there is an additional tax of 0.5 per cent of the sale transaction value.

Tax on capital gains from the sale of shares in closely held companies by a foreign shareholder is 5 per cent of the value of the sale transaction, unless provided otherwise by a relevant tax treaty if the taxing authority is not Indonesia.

Losses

Pursuant to Article 6(2) of the Income Tax Law, losses may be carried forward for a maximum of five years. For a limited category of businesses in certain regions, or businesses subject to certain concessions, however, the period can extend up to 10 years. The carry-back of losses is not allowed. Losses can survive a change in shareholders of the PT.

Rates

Previously, pursuant to Article 17 of the Income Tax Law, the flat tax rate for tax-resident entities (whether corporate or non-corporate) was generally 25 per cent. However, as discussed above, Law 2/2020 and Law 7/2021 have reduced the income tax rate of domestic corporate taxpayers and permanent establishments to become 22 per cent for the 2020 tax year onwards. Certain corporate taxpayers can also obtain an additional 3 per cent reduction, subject to the following requirements:

a it is in the limited liability company form;
b it has at least 40 per cent of its paid-up capital traded in Indonesia stock exchange; and
c it meets certain requirements, namely:
d its shares are owned by at least 300 parties;
e each shareholder has less than 5 per cent shares of the company;
f the requirements (a) and (b) above have been fulfilled for at least 183 days within one tax year; and
g the company is to report the fulfilment of the above criteria to the Directorate General of Tax.

The reduction of the corporate income tax rate to 22 per cent in Law 7/2021 is reiterated in its implementing regulation, Government Regulation No. 55 of 2022 on Adjustment of Rules in the Income Tax Sector (GR 55/2022).

For individual tax residents, the Income Tax Law, as amended by Law 7/2021, has introduced a tax cut for the country's population (i.e., raising the threshold for annual taxable income subject to 5 per cent rate from the previous threshold of 50 million rupiahs to 60 million rupiahs). However, it adds a 35 per cent tax rate for individuals earning more than 5 billion rupiahs per year. The current tax rates for individual tax residents are as follows.

Taxable income	Rate (%)
Up to 60 million rupiahs	5
Over 60 million rupiahs but not exceeding 250 million rupiahs	15
Over 250 million rupiahs but not exceeding 500 million rupiahs	25
Over 500 million rupiahs but not exceeding 5 billion rupiahs	30
Over 5 billion rupiahs	35

Administration

Businesses must pay tax and file tax returns for particular taxes either monthly or annually, depending on the tax obligation in question. For example, for many withholding taxes, the tax payment deadline is the 10th day of the following month, and the tax return filing deadline is the 20th day of the following month. For corporate income tax, the tax payment deadline is at the end of the fourth month after the book year end before filing the tax return, and the deadline for filing the tax return is the fourth month after the book year end.

There are two kinds of tax authorities: at the national level (i.e., the Directorate General of Tax and the Directorate General of Customs and Excise, both under the Ministry of Finance: this chapter focuses on the authority of the Directorate General of Tax only) and at the local (regional) level.

The tax authorities may audit businesses from time to time at random to check the compliance of taxpayers. If a business requests a tax refund, this will always trigger a tax audit.

In practice, it is possible to obtain guidance or clearance from the tax authorities where there is uncertainty as to the correct tax treatment or if the tax treatment could apply in a way that would not seem to be intended. Normally, the tax authorities follow the written guidance or clearance that they have issued to the taxpayer in treating such taxpayer. Since some of this written guidance and clearance has been made publicly available, taxpayers who believe that such guidance or clearance may also be beneficial to them usually attempt to rely on such documents in convincing the tax authorities that they are eligible for the same tax treatment. Complaints relating to tax-related policies and administration may also be submitted to the Tax Supervisory Committee, where the Committee will, inter alia, forward these complaints to the relevant tax authorities for further handling. Pursuant to newly issued MOF Regulation 2/2023, tax authorities are responsible for providing reports on the handling of these complaints to the Tax Supervisory Committee.

In cases where a taxpayer does not agree with a tax position taken by the tax office as stipulated in the tax assessment letter, the taxpayer has the right to submit an objection application to the Director General of Tax to annul the tax assessment letter within three months of the sending date of the tax assessment letter. If the taxpayer is not satisfied with the objection decree of the Director General of Tax, the taxpayer can ask for an appeal against such an objection decree to the Tax Court within three months of the receipt of the objection decree.

Under the Tax Court Law of 2002, Tax Court decisions are final and binding, but are still subject to an extraordinary legal remedy for civil review to the Supreme Court based on limited grounds as provided for in the Tax Court Law.[7] Under Article 91 of the Tax Court Law, those grounds are:

7 This extraordinary legal remedy is available for both taxpayers and the tax authorities, such as the Director General of Tax and the Director General of Customs and Excise.

a if the Tax Court decision is based on a lie or fraud by the counterparty that is known after the rendering of the decision, or based on evidence that later is declared forged by the criminal judge;

b if there is new written evidence that is important and decisive that, if it is known in the proceedings at the Tax Court, will result in a different decision;

c if something is granted that was not claimed, or that is more than what was claimed by a party;

d where it concerns a part of the claim that has not been decided without considering the causes; or

e if there is a decision that is clearly not in accordance with the provision of the prevailing laws and regulations.

Looking at the Supreme Court level, and from decisions of the Supreme Court on tax disputes on the Supreme Court website,[8] the ground in (e) above is always used in civil review applications. Other grounds are very rarely used and, if they are, they are used only as an additional ground.

Pursuant to Article 93 of the Tax Court Law, the Supreme Court examines and renders a decision within six months from the date the dossier is received by the Supreme Court in the event that the Tax Court has rendered its decision through an ordinary procedure examination or within one month if the Tax Court has rendered its decision through an expediting procedure examination.

In recent practice, often the Supreme Court renders its decisions within those timelines. However, there are still delays that are caused particularly by the administrative processing and sending of case dossiers by the Tax Court to the Supreme Court.

Tax grouping

There are no group tax relief provisions available in Indonesia. As a result, members of a group of companies are taxed individually.

ii Other relevant taxes

Other taxes relevant for businesses are, inter alia, VAT and luxury goods sales tax, land and building tax, income tax on land and building transfers, duty on the acquisition of land and building rights,[9] and stamp duty. Carbon tax was also introduced by Law 7/2021.

VAT is imposed on the transfer of taxable goods or the provision of taxable services in the Indonesian customs area. The current VAT rate is 11 per cent and will be increased to 12 per cent at the latest by 2025 by virtue of Law 7/2021. Pursuant to the VAT Law (as amended by Law 7/2021), a government regulation can provide for a VAT rate ranging from 5 to 15 per cent, provided that the said government regulation has been submitted to and agreed by the parliament during the state budgeting process. Law 7/2021 also removes the VAT exemptions previously applied to basic goods and services, such as staple food, health and education services. The VAT Law has also been amended by the Job Creation Law (and its replacement, the GR in Lieu of Law 2/2022). The Job Creation Law (and its replacement,

8 www.mahkamahagung.go.id.

9 By Law No. 1 of 2022, the duty on the acquisition of land and building rights became a local (regional) tax levied by regency and municipal governments.

the GR in Lieu of Law 2/2022) allows for the crediting (subject to certain conditions) of input VAT that previously could not be credited under the VAT Law. VAT is also now levied on digital economy (i.e., on the use of taxable intangible goods or services derived from outside of customs areas through e-commerce).

In addition to VAT, certain goods regarded as luxury goods are subject to an additional luxury goods sales tax ranging from 10 to 75 per cent. Pursuant to the VAT Law, the rate of the luxury goods sales tax may be increased by the government up to 200 per cent.

Land and building tax (PBB) is divided into two categories,[10] as follows.

a PBB on general area: this PBB is imposed annually on property in the form of land or a building based on an official assessment issued by the head of the region. The rate of this PBB is to be determined by the regional regulation, but it should not be more than 0.5 per cent. The tax due is calculated by applying the tax rate on the tax object sale value (NJOP) deducted with non-taxable NJOP, which is set at a minimum of 10 million rupiahs. Any change to the non-taxable NJOP must be stipulated in a regional regulation.

b PBB on plantation, forestry and mining areas: this PBB is imposed annually on property in the form of land or a building based on an official assessment issued by the Director General of Tax. The rate of this tax is 0.5 per cent, and the tax due is calculated by applying the tax rate on the taxable sale value (NJKP). The NJKP is a predetermined portion of the NJOP. Currently, the NJKP is 40 per cent of the NJOP. The government can increase the NJKP rate by up to 100 per cent of the NJOP. The NJOP rates are determined by the Director General of Tax on behalf of the Minister of Finance. They may be adjusted every year or every three years, depending on the economic development of the region.

Income tax on land and building transfers is imposed on the seller for the transfer of land and buildings. The rate of this tax is 2.5 per cent of the gross transfer value unless such value is lower than the NJOP of the object. In the latter case, the tax base is the NJOP. The tax paid is a final tax.

Duty on the acquisition of land and buildings is imposed on the buyer to acquire land and buildings. The rate of this duty is 5 per cent of the acquisition value of the object, unless such value is lower than the NJOP of the object. In the latter case, the tax base is the NJOP.

As provided in Law No. 10 of 2020 on Stamp Duty, stamp duty of 10,000 rupiahs is imposed for each of the documents prepared with the purposes of being used as an evidence instrument concerning an act, fact or situation that is civil in nature, such as agreements, notarial deeds and their copies, and every document to be presented as evidence before the courts.

Law 7/2021 has introduced a tax aimed at reducing carbon emissions, which inflict adverse impacts on the environment. The carbon tax will be imposed on individuals and companies buying goods containing carbon or conducting activities that emit carbon. The

10 PBB was historically governed by Law No. 12 of 1985 on Tax on Land and Buildings, as amended by Law No. 12 of 1994 (the PBB Law) and was part of the national taxes. Starting from 1 January 2010, by virtue of Law No. 28 of 2009 on Regional Taxes and Dues (the Regional Tax Law), PBB became part of the local taxes governed thereunder with the exception of areas used for plantation, forestry and mining, where PBB remains part of the national taxes. Law 1/2022 (which revokes and replaces the Regional Tax Law) reiterates the authority of regional governments over PBB.

carbon tax will be determined by carbon market price, with a minimum rate of 30 rupiahs per kilogram of CO_2 equivalent. Coal power plants will be the first to be subjected to carbon tax, beginning April 2022. Details on the rights and obligations relating to carbon tax are set out in Government Regulation No. 50 of 2022 on the Procedures for the Implementation of Tax Rights and Obligations (GR 50/2022).

IV TAX RESIDENCE AND FISCAL DOMICILE

i Corporate residence

A company is treated as an Indonesian tax resident if it is established or has its place of management in Indonesia. A foreign corporation can become a tax resident of Indonesia if it has a presence in Indonesia through a PE. Generally, a PE assumes the same tax obligations as a resident taxpayer.

ii Branch or permanent establishment

A foreign company can have a fiscal presence in Indonesia in the form of PE if it has or performs any of the following in Indonesia:

a a place of management;
b a branch office;
c a representative office;
d an office building;
e a factory, workshop or warehouse;
f a site for promotion and sales;
g a mining site;
h a working area of oil and gas;
i fishery, husbandry, agriculture, plantation or forestry activities;
j construction, installation or assembly projects;
k provides services through employees or others for more than 60 days in any 12-month period;
l a dependent agent;
m an insurance company agent or employee receiving premiums or taking risks in Indonesia; or
n computer, electronic or internet devices used in Indonesia for internet (e-commerce) transactions.

The above, however, are subject to the provisions of a relevant tax treaty.

By virtue of Law 2/2020, significant economic presence can also constitute a PE and therefore subject to Indonesia's income tax regime. Pursuant to Law 2/2020, e-commerce activities of foreign parties that have a significant economic presence are subject to income tax or electronic transaction tax. The 'significant economic presence' is determined based on the business group consolidated gross circulation, sales and active users in Indonesia.

In addition to the standard corporate income tax, a PE is also subject to 20 per cent branch profit tax, which is applied to the net profit after tax of the PE unless the profit is reinvested in Indonesia.

V TAX INCENTIVES, SPECIAL REGIMES AND RELIEF THAT MAY ENCOURAGE INWARD INVESTMENT

i Holding company regimes

The Income Tax Law previously applied dividend tax exemption only in the event that dividend was received by a corporate tax resident, provided that the dividend derived from the retained earnings and the corporate tax resident had at least 25 per cent of the paid-up capital in that company. The Job Creation Law (and its replacement, the GR in Lieu of Law 2/2022) have expanded the dividend tax exemption under the Income Tax Law to also include, among others: (1) dividend paid by a domestic company and received by a corporate tax resident (without any prerequisite); (2) dividend paid by a domestic company and received by a domestic individual taxpayer insofar as the dividend is invested in Indonesia for a certain period of time; and (3) foreign dividend received by domestic corporate or individual tax resident insofar as the dividend is invested in Indonesia for a certain time period and subject to certain requirements.

ii IP regimes

Currently, there are no IP regimes that are subject to special tax treatment in Indonesia.

iii State aid

There may be special tax treatment for the income tax of government projects funded by foreign loans or grants. For such projects, the income tax liability of the main contractors, consultants and suppliers may be borne by the government.

iv General

The fiscal incentives of import duty, or import-related tax relief or exemption, are generally applicable to foreign direct investment in manufacturing or processing for imports of capital equipment, spare parts and basic materials during the initial start-up period. The government has also provided income tax incentives and tax holidays. The government in 2022 also brought in another round of tax amnesty (by virtue of Law 7/2021) that will allow taxpayers to pay off their tax obligations without incurring penalties.

Income tax incentives

In 2019, the government issued Government Regulation No. 45 of 2019 on Amendment to Government Regulation No. 94 of 2010 on the Calculation of Taxable Income and Settlement of Income Tax in the Current Year (taking effect on 26 June 2019), which provides the following tax incentives:

a allowing corporate taxpayers who open a new business or expand their existing businesses in labour-intensive sectors to offset 60 per cent of their investment against their taxable net income;

b allowing corporate taxpayers that conduct work practices, internships or training for human resources development purposes to offset up to 200 per cent of the cost of their activities against their taxable gross income; and

c allowing corporate taxpayers that conduct R&D activities in Indonesia to offset up to 300 per cent of the cost of their activities against their taxable gross income.

To implement the tax incentives introduced by Government Regulation No. 45 of 2019, the Minister of Finance has issued:

a Regulation No. 16/PMK.010/2020 of 2020 (taking effect on 9 March 2020), which sets out further rules and procedures for net income reduction for labour-intensive businesses; and

b Regulation No. 153/PMK.010/2020 of 2020 (taking effect on 9 October 2020), which sets out further rules and procedures for domestic corporate taxpayers that carry out their R&D activities in Indonesia to secure up to 300 per cent gross income deduction of their total R&D cost incurred.

The government also issued Government Regulation No. 78 of 2019 on Income Tax Facilities for Investments in Particular Business Sectors or Particular Regions (taking effect on 13 December 2019), which replaced Government Regulation No. 18 of 2015 as amended by Government Regulation No. 9 of 2016 on the same matter. Under this Regulation, 183 business sectors are eligible for income tax facilities, which comprise 166 particular business sectors and 17 business sectors located in particular regions. These include certain businesses in a number of industries (e.g., agriculture and forestry industries, the chemical industry, the mining industry and the electronics industry). As a general rule, the income tax facilities available under Government Regulation No. 78 of 2019 are: (1) net income deductions; (2) accelerated depreciation of fixed tangible assets and accelerated amortisation of intangible assets; (3) 10 per cent income tax (or lower) on dividends paid to foreign taxpayers not operating as permanent establishments within Indonesia; and (4) compensations for losses. The implementing rules of Government Regulation No. 78 of 2019 are set out in Minister of Finance Regulation No. 11/PMK.010/2020 on the Implementing Regulation of Government Regulation No. 78 of 2019 on Income Tax Facility for Investments in Certain Sectors or Regions (as amended by Minister of Finance Regulation No. 96/PMK.010/2020).

Tax holiday

The Minister of Finance issued Regulation No. 130/PMK.010/2020 on Facility on Corporate Income Tax Reduction, taking effect on 9 October 2020. This Regulation replaced the previous Minister of Finance Regulation No. 150/PMK/010/2018 on the same. Under this Regulation, income tax reductions can be granted to business entities for a maximum of 20 fiscal years or a minimum of five fiscal years.

The criteria established for business entities that qualify for income tax reductions are as follows:

a the business is categorised as a pioneering industry, such as:
- integrated upstream basic metal industry;
- integrated petroleum refinery industry;
- integrated basic petrochemical industry;
- integrated pharmaceutical raw material industry;
- machinery industry;
- robotic component industry that supports the production of manufacture machines;
- automotive manufacturing industry;
- ship parts manufacturing industry;
- train parts manufacturing industry;
- agriculture, farming or forestry-based processing industries;

- economic infrastructure; or
- digital economy;

b the business is an Indonesian legal entity;

c the business is a new investment that has not yet been issued a decree on the giving or notice of rejection to corporate income tax reduction;

d the business has a new investment plan with a minimum value of 100 billion rupiahs;

e the business meets the debt-to-equity ratio requirement as referred to in a Minister of Finance regulation; and

f the business is committed to realise its investment within one year of the issuance of the income tax reduction decree.

Detailed rules on the procedures for the granting of the tax reduction are set out in Indonesian Investment Coordinating Board-issued Regulation No. 7 of 2020 on Details of the Pioneering Industry Business Sectors and Production Types and Procedures for the Granting of Corporate Income Tax Reduction Facilities (taking effect on 4 December 2020).

Tax amnesty

Pursuant to Law 7/2021, as an extension of the tax amnesty carried out in 2016 and 2017, a second chapter of tax amnesty was conducted from 1 January 2022 to 30 June 2022, which allowed taxpayers' disclosure of unreported assets prior to 2016, and between 2016 and 2020. Assets obtained from 1985 to 2015 were charged with an income tax rate of 6 per cent to 11 per cent of the asset value, while those obtained from 2016 to 2020 were subject to 12 per cent to 18 per cent tax. Currently, the government reportedly has no plans to continue the tax amnesty beyond its second round, which concluded in 2022.

VI WITHHOLDING AND TAXATION OF NON-LOCAL SOURCE INCOME STREAMS

i Withholding on outward-bound payments (domestic law)

Withholding tax at a rate of 15 per cent of the gross amount applies to dividends, interest and royalties paid by a company in Indonesia to Indonesian taxpayers or PEs. As discussed above, the Job Creation Law (and its replacement, the GR in Lieu of Law 2/2022) have expanded the dividend tax exemption under the Income Tax Law to also include, among others: (1) dividend paid by a domestic company and received by a corporate tax resident (without any prerequisite); (2) dividend paid by a domestic company and received by a domestic individual taxpayer insofar as the dividend is invested in Indonesia for a certain period of time; and (3) foreign dividend received by domestic corporate or individual tax resident insofar as the dividend is invested in Indonesia for a certain time period and subject to certain requirements. Detailed requirements on dividend tax exemption are set out in Government Regulation No. 55 of 2022 regarding Adjustment of Rules in the Income Tax Sector.

ii Domestic law exclusions or exemptions from withholding on outward-bound payments

As discussed in Section V.iv, for investments in certain industries and certain regions there are income tax incentives that also cover a reduction in the withholding tax tariff on dividends payable to foreign investors to 10 per cent (subject to a lower rate under a relevant tax treaty). Contracts of work entered into by mining companies and the government prior to the 2009 Mining Law may provide such exclusions or exemptions from withholding.

iii Double tax treaties

Pursuant to Article 26 of the Income Tax Law, withholding tax at a rate of 20 per cent of the gross amount applies to distributions such as dividends, interest and royalties paid by resident taxpayers to non-residents, unless a relevant tax treaty provides otherwise. As a note, the Job Creation Law and its implementing regulation, GR 9/2021, provide for a reduction of Article 26 withholding tax on interests including premiums, discounts and returns in connection with debt repayment guarantees to a 10 per cent rate or as determined by a tax treaty. Currently, Indonesia has entered into tax treaties with more than 60 countries.

The tax treaties provide withholding tax exemptions for service fees, and reduced withholding tax rates on dividends, interest, royalties and branch profits received by residents of countries with which Indonesia is a party to such tax treaties. To claim the tax treaty benefits, the foreign taxpayer must present a certificate of domicile to the tax authority.

iv Taxation on receipt

Indonesian tax residents are taxed on their worldwide income. Pursuant to Article 24 of the Income Tax Law, the tax paid for income from foreign sources can be credited to the tax owed under the Income Tax Law in the same tax year. The amount of the tax credit is the amount of the foreign income tax paid abroad but must not exceed the tax owed under the Indonesian Income Tax Law.

VII TAXATION OF FUNDING STRUCTURES

Indonesian PTs are usually funded by capital pay-ins and loans. The Job Creation Law (and its replacement, the GR in Lieu of Law 2/2022) has amended the rule on minimum authorised capital of PTs under the Indonesian Company Law of 2007. Accordingly, the minimum authorised capital of PTs is subject to the resolution of the PT founders. Further rules on authorised capital are regulated in Government Regulation No. 8 of 2021 on Authorized Capital and Registration of the Establishment, Amendment and Dissolution of Small and Micro Enterprises. Previously, the minimum authorised capital of PTs under the 2007 Company Law was 50 million rupiahs. However, laws and regulations governing certain types of businesses may determine a minimum capital higher than this figure.

i Thin capitalisation

For foreign direct investment companies, there are requirements as to the debt-to-equity ratios depending on the type of the business in which they will be engaged. Pursuant to Minister of Finance Regulation No. 169/PMK.010/2015 on Determination of the Amount of Debt-to-Equity Ratio of Companies for the Purpose of the Calculation of the Income Tax (taking effect from tax year 2016), the maximum debt-to-equity ratio for companies is 4:1,

except for certain taxpayers such as banking, finance and insurance companies, and taxpayers engaging in the business of oil and gas, mining and infrastructure. In cases where the debt-to-equity ratio of the taxpayers exceeds the maximum figure, the expense to service the loan that is tax deductible is only up to the expense to service the loan up to the maximum debt-to-equity ratio.

ii Deduction of finance costs

Finance costs, such as interest and bank arrangement fees, can be deducted if these are expenses for the purposes of earnings, or collecting or maintaining income.

iii Restrictions on payments

There are some rules on payments of dividends to shareholders of a PT under Indonesian company law. Pursuant to the Indonesian Company Law of 2007, a PT can only declare and distribute dividends out of its net profits to its shareholders provided that the requirement for setting aside sums to the reserve fund has been satisfied. The Company Law does not provide what particular percentage of the PT's net profits in any one financial year must be set aside for the reserve fund. The setting aside of net profits for the reserve fund shall be carried out until the reserve fund reaches at least 20 per cent of the issued and paid-up capital of the PT. This does not mean that in one financial year a PT must set aside its net profits for the reserve funds to reach 20 per cent of its issued and paid-up capital. However, reserve funds that have not reached 20 per cent of the issued and paid-up capital can only be used by the PT to cover losses that cannot be covered by other reserves. The use of net profits, including determination of the amount for the reserve fund, must be decided by a general shareholders' meeting.

iv Return of capital

Return of capital can be achieved by a company purchasing its own shares from shareholders. Pursuant to Article 37(1) of the Company Law, a PT can purchase its own shares based on a resolution of the general shareholders' meeting provided that:

a the repurchase of the shares does not cause the net assets of the PT to become smaller than the issued capital plus the mandatory reserve fund that has been set aside; and

b the total amount of all shares repurchased by the PT, and the pledge of shares or the fiduciary encumbrance over the shares held by the PT or other companies, or both, whose shares, directly or indirectly owned by the PT, do not exceed 10 per cent of the issued capital of the PT, unless provided otherwise in capital market laws and regulations.

For tax purposes, the payment by a PT to a shareholder for purchasing the shares owned by such a shareholder in the PT will be treated in the same manner as a distribution of dividends to a shareholder.

VIII ACQUISITION STRUCTURES, RESTRUCTURING AND EXIT CHARGES

i Acquisition

Foreign companies acquiring local businesses generally structure transactions by acquiring shares in the Indonesian target company (share deals) or by purchasing assets of the target company (asset deals).

Share deals

A foreign entity may acquire shares in an Indonesian target company directly or indirectly through another foreign entity provided that the business sector of the target company is open for foreign investment. For the transfer of shares in a closely held company, if the seller is another foreign entity, such a seller will have a final income tax of 5 per cent of the share price (withholding tax of 20 per cent and net deemed profit of 25 per cent of the share price) imposed on it, unless, pursuant to the relevant tax treaty, the taxing authority is not Indonesia.

The PT should only record the transfer of the shares in the shareholders' register if evidence is presented to it that the income tax has been completely settled. In cases where the purchaser of the shares is a foreign entity, the PT is deemed as the party who has the obligation to collect the income tax.

Pursuant to Article 18(3c) of the Income Tax Law, the sale of shares in an Indonesian (target) company by a conduit company, or special purpose company established or domiciled in a tax-haven country that has a special relationship with an entity established or domiciled in Indonesia or a PE in Indonesia can be deemed as the sale or transfer of shares by the Indonesian entity or PE in Indonesia.

Asset deals

A foreign entity is not allowed to acquire assets of an Indonesian entity directly to operate a business in Indonesia. As discussed above, except for certain limited business sectors, foreign entities are not eligible to obtain business licences in Indonesia. To acquire assets of the Indonesian (target) company and operate a business in Indonesia, a foreign entity must use its Indonesian company, or must first establish a PMA company, to acquire such assets. If the acquired assets are land and buildings, the purchaser of the assets will have duty imposed on the acquisition of land and buildings at a rate of 5 per cent of the price of the assets imposed on it.

Pursuant to Article 18(3b) of the Income Tax Law, the indirect purchase of shares or assets of an Indonesian (target) company by an Indonesian entity through a special purpose company can be deemed as the purchase of shares or assets by the Indonesian entity if the special purpose company has a special relationship with the Indonesian entity or if there is unreasonable pricing.

ii Reorganisation

As a general rule, the transfer of assets in business mergers, consolidations or spin-offs is conducted at market value. This results in taxable gain or loss. This loss is basically tax deductible. Upon approval of the Director General of Tax, the assets can be transferred at book value for a tax-neutral merger or consolidation provided that the business purpose tests are satisfied.

In Indonesia, there is no provision that can allow a merger of a local entity with a foreign entity.

iii Exit

If a business decides to relocate to another country, the Indonesian entity must be dissolved and must further be liquidated. As one of the exercises in the liquidation process, that entity must also resolve its tax liability, and for these purposes there will be a tax audit. Upon the

settlement of the tax obligation, the tax authority will issue a tax clearance. Once the tax clearance has been obtained, the Indonesian entity can completely dissolve and cease to exist as a legal entity.

There is no tax penalty merely for relocation of a business to another country.

IX ANTI-AVOIDANCE AND OTHER RELEVANT LEGISLATION

i General anti-avoidance

As discussed in Section VIII.i, the Indonesian Income Tax Law provides avoidance rules for the sale of shares or assets meeting certain requirements.

Pursuant to Article 18(3b) of the Income Tax Law, the indirect purchase of shares or assets of an Indonesian (target) company by an Indonesian entity through a special purpose company can be deemed as the purchase of shares or assets by the Indonesian entity if the special purpose company has a special relationship with the Indonesian entity or if there is unreasonable pricing.

Pursuant to Article 18(3c) of the Income Tax Law, the sale of shares in an Indonesian (target) company by a conduit company or special purpose company established or domiciled in a tax-haven country that has a special relationship with an entity established or domiciled in Indonesia, or a PE in Indonesia, can be deemed as the sale or transfer of shares by the Indonesian entity or PE in Indonesia.

Indonesia no longer has a tax treaty with Mauritius, a low-tax jurisdiction.

ii Controlled foreign corporations

As discussed above, in most business sectors, controlled foreign corporations must take the form of a PT. As such, the rules for the distribution of dividends to a shareholder that is a foreign entity are basically the same as those that apply to shareholders of a closely held PT.

iii Transfer pricing

Pursuant to Article 18(3) of the Income Tax Law, the Director General of Tax has the authority to adjust taxpayers' income or costs in transactions with related parties not carried out under the arm's-length principle by using the comparable uncontrolled price method, resale price method, cost plus method, transactional net margin method and other methods. Currently, the transfer pricing documentation must also be attached to the corporate income tax return for any transaction with a related party that: (1) exceeds 20 billion rupiahs for tangible goods transactions; or (2) exceeds 5 billion rupiahs for service provision, interest payment, intangible goods utilisation or other affiliated transactions per entity per year. For such a purpose, the taxpayer must conduct a comparable analysis or determine comparable data to show that the transaction with the related party conforms to the arm's-length principle.

Pursuant to Article 18(3a) of the Income Tax Law, the Director General of Tax also has the authority to enter into advance pricing agreements with taxpayers or the tax authority of another country on the application of the arm's-length principle to transactions between related parties.

iv Tax clearances and rulings

It is possible to obtain advance tax rulings from the tax authority to secure certainty. Tax rulings may also be required to acquire a local business.

To issue a tax clearance, the tax authority will need to conduct a tax audit. In the acquisition of a local business, the seller of the local business is usually reluctant if the tax clearance is required as a condition precedent for the conclusion of the transaction.

v Mutual agreement procedures

In an effort to more effectively prevent and settle international taxation disputes, the Minister of Finance has also issued Regulation No. 49/PMK.03/2019 on Procedures for the Implementation of Mutual Agreement Procedure (taking effect on 26 April 2019). The mutual agreement procedure (MAP) refers to an administrative procedure provided for under a tax treaty for the settlement of disputes that arise during the implementation of a tax treaty. As a general rule, Minister of Finance Regulation No. 49/PMK.03/2019 provides opportunities for Indonesian domestic taxpayers to submit requests to the Director General of Tax for the implementation of a MAP, in the event that a tax treatment by a tax treaty partner state is in contradiction to the relevant tax treaty. In addition to Indonesian domestic taxpayers, the request for the implementation of a MAP can also be filed by: (1) Indonesian citizens who have become domestic taxpayers in a tax treaty partner state (request to be filed via the Director General of Tax); (2) the Director General of Tax; or (3) the tax authority of the tax treaty partner state (which request is to be filed via the authorised official in the tax treaty partner state in accordance with the tax treaty).

Pursuant to Minister of Finance Regulation No. 49/PMK.03/2019, following the application for a MAP, the requests will be reviewed by the Director General of Tax. Subsequently, there will be a follow-up (e.g., notification to the authorised official in the tax treaty partner state) and a negotiation conducted between the Director General of Tax and the tax treaty partner authority. The outcome of the negotiation will be set out in a mutual agreement that sets out the agreement or disagreement on the points requested for a MAP. If an agreement is reached between the parties, a decree confirming the implementation of the mutual agreement is then delivered to the requesting parties.

X YEAR IN REVIEW

Indonesia, in spite of its populous market and rich natural resources, has long been a complex market for investments. It has been struggling with an over-regulation problem that led to many missed investment opportunities in the country. Overlapping (often, conflicting) and taxing regulations as well as a lack of coordination between government authorities were some of the classic problems that undermined the attractiveness of Indonesia's market. The covid-19 outbreak has made investing in Indonesia even more challenging as the pandemic has disrupted much of the country's normal business activities, resulting in a contraction of Indonesia's national economic growth. In response to these pressing problems, since 2020 the government has introduced wide-ranging reform packages that include sweeping reforms of the country's tax policies. Law 2/2020 (as amended by Law 7/2021) grants corporate income tax cuts from the previous 25 per cent rate to 22 per cent. In addition, Law 7/2021 also, among other things, adds a higher tax rate bracket for the country's top individual earners, raises VAT, waives VAT exemptions previously given to basic goods and services, and imposes a levy on carbon-intensive activities. Wide-ranging reform packages under the Job Creation Law were also introduced in late 2020, which seek to streamline the licensing process and revoke rules that had been hampering investment. With the Job Creation Law being declared 'conditionally unconstitutional' by the Constitutional Court, the government

decided to enact an emergency regulation (i.e., the GR in Lieu of Law 2/2022) as the Job Creation Law's replacement on 30 December 2022 – an unprecedented move given that the Constitutional Court had previously set a deadline to replace the contentious Job Creation Law by 25 November 2023 at the latest. Nevertheless, the general thrust of the GR in Lieu of Law 2/2022 is largely similar to its predecessor, and reforms on the current tax law regime under the GR in Lieu of Law 2/2022 are also largely similar to the Job Creation Law.

Tax reforms also continued during 2022, which include the enactment of Law 1/2022, which seeks to, among other things, boost local taxation by reducing administration and compliance costs. Consumption-based regional taxes are reclassified and the scope of regional tax objects is expanded. Implementing regulations of the previously enacted fiscal reform package were also issued (such as, GR 50/2022 and GR 55/2022), with the aim of providing more clarity and details on the implementation.

On another note, transfer pricing issues involved in transactions between related parties have been the dominant tax disputes for many years. Many taxpayers have challenged the adjustments made by the tax authority to the Tax Court for nullification.

There is only one Tax Court in Indonesia, which is situated in Jakarta. However, the Tax Court has also held sessions in Yogyakarta and Surabaya since 7 June 2012 and 14 March 2013, respectively.

XI OUTLOOK AND CONCLUSIONS

The tax reform, which began in 2020, brought forth sweeping changes on Indonesia's tax regime (i.e., the General Provisions and Procedures of Taxation Law, the Income Tax Law and the VAT Law) – all with the ultimate goal of making it easier for taxpayers to fulfil their obligations while at the same time increasing state revenues from the tax sector as the country transitions to a new normal following the subsiding of the covid-19 pandemic. Corporate income tax was reduced and conditions for tax exemption were expanded. The VAT Law has also been amended to allow the crediting of certain VAT that previously could not be credited. On the other hand, to boost state revenue, a new income tax bracket for the rich was introduced. Further, the government has also initiated taxation on carbon-intensive activities and the digital economy. The VAT rate was also raised for 2022 onwards and will be subject to a further increase by 2025 at the latest. The year 2022 also saw the Indonesian government's efforts in improving local taxation powers by making regional taxation easier and expanding objects for levies by local governments. Continuation of fiscal reform will be very much needed in 2023, especially as Indonesia is seeking to rebuild its national economy following the pandemic and also given current global uncertainties, ranging from the potential global economic slowdown and food and energy crises to the Russia–Ukraine geopolitical conflict.[11] The country is also set to assume the ASEAN presidency this year following the successful conclusion of its G20 presidency in 2022. Opting for 'ASEAN Matters: Epicentrum of Growth' as its main theme, post-pandemic economic rebuilding will be one of Indonesia's key target areas during its ASEAN presidency. Early this year, we have also seen a positive institutional development in the tax sector through the issuance of MOF Regulation 2/2023, which strengthens the role of the Tax Supervisory Committee in monitoring tax-related policies and administration. While these suggest that promising developments in the tax

11 Interestingly, these were also highlighted by the government as the reasons for its enactment of GR in Lieu of Law 2/2022 as an emergency regulation to replace the Job Creation Law.

sector might continue in 2023, presidential and legislative elections are also due to be held early in 2024, which will pave the way for a new figure to lead the world's third largest democracy following a decade of President Joko Widodo's leadership. Thus, it remains to be seen how the country's political dynamic will affect the government's focus on continuing its economic reform agendas.

Appendix 1

ABOUT THE AUTHORS

JMULYANA

Mochtar Karuwin Komar

Mulyana is a partner at Mochtar Karuwin Komar, Jakarta, Indonesia, and joined the firm in 1995. He advises on various legal issues, including tax disputes, corporate matters, anti-corruption, administrative and constitutional law issues, air law, international law, arbitration and dispute resolution. In cooperation with tax advisers from tax consulting firms, he has handled and represented companies in tax disputes at the Supreme Court in various cases since 2002. He has also advised clients on tax disputes at the levels of the Director General of Tax, the Director General of Customs and Excise, and the Tax Court. He obtained his law degree at the faculty of law, Parahyangan Catholic University, in Bandung, Indonesia (1987), and an LLM at Columbia Law School in New York City (1994). He has also taught courses on international business transactions, air law and international law at the faculty of law, Tarumanagara University, Jakarta, for several years.

SUMANTI DISCA FERLI

Mochtar Karuwin Komar

Sumanti Disca Ferli is an associate at Mochtar Karuwin Komar, Jakarta, Indonesia, and joined the firm in 2011. She specialises in tax litigation and other dispute resolution matters, and advises on various legal issues, including corporate matters, financing and international trade. In cooperation with tax advisers from tax consulting firms, she has handled and represented companies in tax disputes at the Supreme Court in various cases. She obtained her bachelor's degree in law (*cum laude*) from the faculty of law of the University of Indonesia, Depok, majoring in litigation, in 2008, and her master's degree (*cum laude*) from the same university, majoring in business law, in 2010. She also obtained an LLM from University College London, majoring in international commercial law, in 2016.

RATNA MARIANA

Mochtar Karuwin Komar

Ratna Mariana is an associate at Mochtar Karuwin Komar, Jakarta, Indonesia, and joined the firm in 2016. She specialises in tax litigation and other dispute resolution matters, and advises on various legal issues, including corporate matters and telecommunication law. In cooperation with tax advisers from tax consulting firms, she has handled and represented companies in tax disputes at the Supreme Court in various cases. She obtained her bachelor's

degree in law (*cum laude*) from the faculty of law of Tarumanagara University, Jakarta, in 2011. She also obtained an LLM from the Erasmus University in Rotterdam, the Netherlands, majoring in commercial and company law, in 2016.

ASTRID EMMELINE KOHAR

Mochtar Karuwin Komar

Astrid Emmeline Kohar is an associate at Mochtar Karuwin Komar, Jakarta, Indonesia, and joined the firm in 2016. She specialises in tax litigation, mining and corporate matters, and advises on various legal issues, including foreign investments, commercial litigation, antitrust and regulatory matters. She obtained her bachelor's degree in law (*cum laude*) from the faculty of law of Gadjah Mada University, Yogyakarta, in 2014. She also obtained an LLM with honours from the University of Cambridge, United Kingdom, majoring in international commercial law, in 2015.

MOCHTAR KARUWIN KOMAR

World Trade Centre 1, 11th Floor
Jl Jend Sudirman Kav 29–31
Jakarta 12820
Indonesia
Tel: +62 21 571 1130
Fax: +62 21 571 1162
mulyana@mkklaw.net
disca.ferli@mkklaw.net
ratna.mariana@mkklaw.net
astrid.kohar@mkklaw.net
www.mkklaw.net

ISBN 978-1-80449-161-4