

# Tax News Flash

July 2016



## Tax Amnesty Indonesia 2016

On June 28, 2016 the Indonesian parliament approved, after a lengthy period of discussions, the long-awaited and controversial Tax Amnesty Law ("the Law") and our President, Joko Widodo, signed it to become effective as of 1 July 2016 under Law No. 11/2016. The Law aims to increase tax revenues, make fairer tax reforms possible due to an expanded tax base and accelerate economic growth.

Bank Indonesia estimates that the amnesty may bring funds of around IDR 560 trillion (USD 42 billion) back to Indonesia and the expected "Clearance Levy" (in Bahasa it is called 'uang tebusan') to be IDR 165 trillion. However, some analysts are less positive on the amount of returning funds.

### Highlights of the Law

Benefits of participation	Consequences for non-participation or for submitting "incomplete" information
<ul style="list-style-type: none"> <li>Waiver of any:               <ul style="list-style-type: none"> <li>(i) taxes due,</li> <li>(ii) administrative sanctions and</li> <li>(iii) tax criminal sanctions</li> </ul>               regarding assets reported in the Declaration Letter for any open tax obligations up to the last tax year.             </li> </ul>	<ul style="list-style-type: none"> <li>If the ITO has information on any unreported assets from 1 January 1985 to 31 December 2015, they would be deemed as "additional assets" subject to normal treatment under the tax laws.</li> </ul>
<ul style="list-style-type: none"> <li>The Clearance Levy rates are significantly lower than the normal tax rates (25% for corporate and 30% for the individual taxpayers). Refer to "Clearance Levy – Rates" below for details.</li> </ul>	<ul style="list-style-type: none"> <li>The tax payable as a result of the above would be subject to:               <ul style="list-style-type: none"> <li>- For non-participation: corporate income tax and tax penalties in accordance with the current tax laws for the whole amount;</li> <li>- For submitting "incomplete" information: the difference would be subject to corporate income tax at the normal rate, plus an administration sanction of 200%.</li> </ul> </li> </ul>
<ul style="list-style-type: none"> <li>Tax audits, preliminary evidence investigations and/or tax investigations would not be conducted up to the last tax year.</li> </ul>	
<ul style="list-style-type: none"> <li>Coverage of the Law is Income Tax, Value Added Tax and Sales Tax on Luxury Goods.</li> </ul>	
<ul style="list-style-type: none"> <li>Applicable to all taxpayers, including taxpayers that have not registered, except for taxpayers currently being investigated by the Prosecutor, under a judicial process in Court and/or already sentenced for criminal charges in taxation.</li> </ul>	
<ul style="list-style-type: none"> <li>Outstanding tax audits, preliminary evidence investigations and tax investigations would be stopped.</li> </ul>	
<ul style="list-style-type: none"> <li>Any related tax liabilities on transferring the title of tangible properties, i.e. land and buildings and shares, would be waived provided it is done not later than 31 December 2017.</li> </ul>	
<ul style="list-style-type: none"> <li>A Declaration Letter can be submitted more than once, up to a maximum of three times until March 2017.</li> </ul>	

## Consequences for participation

Besides the above benefits, there are also some consequences to participation in the Tax Amnesty:

- The repatriated offshore assets must be invested in Indonesia for at least a three-year period from when they are transferred,
- On-shore assets cannot be transferred out of Indonesia within a three-year period after the date of the Confirmation Letter (an approval letter issued by the Ministry of Finance/ Indonesian Tax Office in relation to the Declaration Letter),
- For taxpayers required to maintain bookkeeping (mostly corporate taxpayers), the incremental value of the additional assets, between the total amount reported in the Declaration Letter and the latest income tax return, must be recorded as additional retained earnings,
- All the additional assets, either tangible and/ or intangible, cannot be depreciated/amortized for (mostly corporate) income tax payable computation purposes,
- The taxpayer cannot carry forward any available accumulated tax losses,
- The taxpayer cannot carry forward any tax (Income Tax and VAT) overpayments to the following months,
- The taxpayer cannot request a refund for a tax overpayment balance,
- All outstanding tax liabilities must be settled, and
- The taxpayer cannot amend any tax returns for periods up to its last tax returns.



## Clearance Levy – Rates

As mentioned above, on non-declared assets prior to the issuance of the Law, a Clearance Levy must be paid. The Clearance Levy rates are based on various variables (e.g., whether offshore or Indonesia based funds, period of declaration, etc.). The rates vary from 2% to 10% based on the submission of the Declaration Letter:

Clearance Levy rates	July – September 2016	October – December 2016	January – March 2017
Offshore assets declaration – no repatriation	4%	6%	10%
Offshore assets declaration – repatriation and invested in Indonesia for at least three years	2%	3%	5%
Onshore assets – kept in Indonesia for a least three years	2%	3%	5%

In addition to the above, the Law provides special Clearance Levy rates for taxpayers with turnover of less than IDR 4.8 billion:

- 0.5% for non-declared assets with a value up to IDR 10 billion; and
- 2% if exceeding IDR 10 billion.

## Clearance Levy – How to calculate

The “taxable” base of the Clearance Levy is the Net Asset Value (“NAV”) of the non-declared assets, minus any outstanding liabilities or loans directly related to the assets that are declared. This is pretty simple but there are several points that participants need to be aware of when calculating the NAV:

- The calculation must be made in Indonesian Rupiah (“IDR”),
- Cash must use the nominal value and non-cash assets must use their fair value,
- There is a limitation on the liabilities that can be used in the calculation:
  - 75% of the non-declared assets’ value for corporate taxpayers, and
  - 50% of the non-declared assets’ value for individual taxpayers.
- Any assets and liabilities in other currencies must be converted into IDR by using the exchange rate issued by the Minister of Finance (tax rate) based on the financial year end in accordance with the latest submitted tax returns.

## Requirements for participants

In order for a taxpayer to qualify for participation in the Tax Amnesty, the following requirements must be fulfilled:

- Availability of a tax ID number (NPWP) - it is still possible to register now before participating;
- Payment of the Clearance Levy;
- Settlement of all outstanding tax liabilities;
- Submission of its latest income tax return in accordance with the financial year and tax regulations;
- Revocation of all outstanding on-going legal (tax) procedures, e.g. refunds for tax overpayments, reduction or cancellation of administrative sanctions in tax assessment letters, tax collection letters, tax objections, tax appeals, tax lawsuits, judicial reviews, etc.

## Information to be included in the Declaration Letter and required attachments

The Declaration Letter must contain the following information with the related supporting documents attached:

- Taxpayers' ID number,
- A detailed list of the assets and their supporting documents, such as location, year of acquisition, etc.,
- A detailed list of any related liabilities and supporting documents, e.g. loan agreements,
- Net Asset Value calculations,
- Clearance Levy calculations,
- The payment slip for the Clearance Levy,
- Copy of the latest annual tax returns,
- Evidence of settlement of all outstanding tax liabilities,
- A statement that all letters related to tax disputes and tax refunds will be withdrawn,
- For repatriation: a statement that all offshore-assets would be invested in Indonesia for a minimum period of three years once they are transferred, and
- For on-shore assets: a statement confirming not to transfer these assets outside Indonesia within three years from the issuance of the tax amnesty approval.

The Declaration Letter must be signed by the taxpayer, i.e., the individual or, for a company, the highest ranking management member based on its Articles of Association, which is normally the President/Director (a proxy is allowed).

## Formal procedure

The signed Declaration Letter and its attachments must be filed with the Ministry of Finance, through the local tax office where the taxpayer is registered (or any other place to be determined by the Ministry of Finance). The taxpayer should obtain a receipt.

During the time between the submission of the Declaration Letter and the formal Tax Amnesty Approval, the taxpayer will not be subject to tax audits, preliminary evidence audits and/or tax crime investigations for tax periods up to and including its latest tax year. In addition, any running tax audits, preliminary evidence audits and/or tax crime investigations will be suspended. They would be discontinued if and when the Ministry of Finance issues a Tax Amnesty Approval/Confirmation Letter.

If a subsequent declaration or a revision results in an overpayment of the Clearance Levy, the overpayment must be refunded and/or taken into account with regard to other tax liabilities within three months after the Tax Amnesty Approval or the submission of subsequent Declaration Letters.

## Confidentiality of the disclosed information

The information disclosed in a Declaration Letter cannot be used as a basis for investigations, prosecutions and/or other criminal charges against the taxpayer. Any breach of this confidential information would be subject to a criminal sanction of up to 5 years in prison.

### KPMG Comments:

Despite the controversy of the Law, there are several benefits that all taxpayers should consider, because, by participating in this tax amnesty, all previous outstanding tax obligations would be deemed final and would continue with certainty in the following years.

There are still some important unclear matters in the Law that need to be addressed in the implementing regulations, such as how to justify the fair value of the assets, what kind of acceptable evidence is needed to support the existence of the assets, use of on-shore funds for personal purposes, etc.

Because of the complexities and implications of the Tax Amnesty Law, we recommend that you consult with your external legal and tax advisors before proceeding with the submission of a Declaration Letter.



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