

Tax News Flash

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Key highlights on the new Income Tax Law Implementing Regulation

The Indonesian government recently issued a new Income Tax Law Implementing Regulation, Government Regulation No. 55 Year 2022 (“GR-55”), which provides guidance on how to carry out certain provisions of the Income Tax Law after the implementation of the Harmonization of Tax Regulations Laws (“HPP Law”).

With GR-55 now in place, the related implementing regulations issued prior to GR-55 are still relevant unless they contradict the provisions of GR-55. Specifically, GR-55 cancels the regulation that outlined the tax rules for charities and donations¹. It also revokes the method used to calculate current corporate income tax payable², the tax system for small businesses³, the income tax facility that was created in response to the COVID-19 pandemic⁴, and the reduction of corporate income tax returns for listed company taxpayers⁵.

GR-55 contains a (re)-confirmation and clarification of the guidance that has prevailed since the implementation of the HPP Law. Some of the updates are new, but the rest is basically a compilation of the existing guidance. In this publication, we shall only discuss three notable topics: the new tax depreciation/amortization rule, new anti-tax avoidance measures, and a new form of international tax agreements.

Tax depreciation/amortization

Since the HPP Law was passed, taxpayers are now allowed to depreciate/amortize the acquisition costs related to acquiring permanent buildings and

intangible assets with a useful life of more than 20 years (referring to the actual useful life, in line with the accounting bookkeeping). Before, the maximum depreciation/amortization period was 20 years. The acceptable method to use in this regard is the straight-line method which must be applied consistently.

For the permanent building and intangible assets which were acquired and have been depreciated/amortized before fiscal year 2022, taxpayers can choose to follow the new rule as long as they notify the Directorate General of Tax (“DGT”). The said notification must be done before the end of fiscal year 2022. The procedures on how to notify the DGT will be regulated in a separate Ministry of Finance (“MoF”) regulation.

Costs related to repairing tangible assets must be depreciated separately from the associated tangible assets. The mechanism, etc. shall be regulated in a future MoF regulation.

Adoption of transfer pricing reasonableness as an anti-tax avoidance measure

GR-55 introduces new anti-tax avoidance measures in addition to what has been regulated in Article 18 of the Income Tax Law. They are:

- Extend the definition of control to include dependency: the power to control and/or dictate the other party’s business and/or pricing regardless of whether the parties involved have a management control relationship.

¹ Provisioned in the Government Regulation No. 18 Year 2009.

² Provisioned in Article 2 of Government Regulation No. 94 Year 2010 and its amendments.

³ Provisioned in the Government Regulation No. 23 Year 2018.

⁴ Provisioned in Article 10 of Government Regulation No. 29 Year 2020.

⁵ Provisioned in the Government Regulation No. 30 Year 2020.

In this regard, if the transaction price is deemed not reasonable, the DGT has the authority to determine that the buyer or acquirer of the shares/assets is a special purpose company (not the actual party to the transaction). Further guidance on this matter shall be regulated in a separate MoF regulation.

- Extend the definition of a fair and reasonable transfer price to refer to the financial performance of similar comparable companies.

For business taxpayers that report profits that are “too low” compared to the financial performance of taxpayers in a similar business or that report “unreasonable” losses when taxpayers have been in business for more than five years (where any consecutive three years out of the five years are in loss), the DGT has the authority to recalculate the taxable profit by referencing the financial performance of similar comparable companies. GR-55, in this regard, acknowledges the comparison of the transfer price between independent parties as one of the acceptable transfer pricing methods. Further guidance on this matter shall be issued in a separate MoF regulation.

- Redefine the coverage of tax evasion to include the hybrid cross-border entity/transaction structure involving countries/jurisdictions with more favorable tax treatments (compared to Indonesia).

Because of this, regardless of whether the transactions are between related parties or not, the DGT has the authority to deny the deductibility of expenses of any hybrid cross-border entity or transaction structure.

A convertible bond is the example given by GR-55. In Indonesia, a convertible bond is seen as a liability and therefore interest related payments constitute a deductible expense for the purposes of corporate income tax (“CIT”). In other countries/jurisdictions, however, it may be characterized as equity and therefore the income arising from that is regarded as a dividend. If dividend income is not taxable in the respective country/jurisdiction of the convertible bond holder (dividend recipient), the party or parties involved in the said transaction are deemed to have committed an act of tax avoidance. Hence for Indonesian tax purposes, the DGT has the authority to deny the deductibility of any respective interest expense claimed in Indonesia. Further guidance on this matter shall be regulated in a separate MoF regulation.

GR-55 emphasizes that if the abovementioned anti-tax avoidance measure cannot be applied, the DGT has the authority to determine the deductibility

of expenses and/or the taxability of income that should be reported in Indonesia. The mechanism, procedures, and limitations of authority shall be regulated in a separate MoF regulation.

With respect to advance pricing agreements, GR-55 has now introduced a multilateral arrangement in addition to the unilateral and bilateral agreements which have been regulated in the prevailing regulations and guidance. Further guidance is expected to be issued in a separate MoF regulation.

A new form of international tax agreement

GR-55 introduces another form of international agreement which is meant to specifically address the challenges arising from the digitalization of the economy and/or other Base Erosion and Profit Shifting (“BEPS”) actions. This is done to help implement the Two-Pillar solution to address challenges in the digital economy. Indonesia and other members of the OECD/G20 BEPS Inclusive Framework on BEPS signed this agreement in December 2022. In Indonesia, the implementation of the Two-Pillar solution shall be regulated in a separate MoF regulation, following the international concessions that were accepted and agreed upon by the members of the OECD/G20 BEPS Inclusive Framework on BEPS.

Others

Apart from the above, the taxation of benefits-in-kind (“BIKs”), i.e., the non-cash compensation provided to employees has also been a hot topic that has caught the public’s attention. We discussed our views and key takeaways on this matter in our [Global Mobility Services \(“GMS”\) bulletin February 2023 edition “New tax treatment on benefits-in-kind”](#).

KPMG notes:

This publication covers several topics that we view as notable and important for business taxpayers. Please connect with your KPMG contacts for further guidance on these regulations.

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