

Indonesia wealth management update

There have been a number of recent legal and regulatory changes in Indonesia that have impact from a wealth management perspective.

BY:

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Post Tax Amnesty Voluntary Declaration

Under Ministry of Finance regulation No. 165/PMK.03/2017, taxpayers have a chance to voluntarily declare previously undeclared assets, as long as the assets have not already been discovered by the Director General of Tax. Undeclared assets include:

- Undeclared assets in the Tax Amnesty declaration letter for those who have participated in the Tax Amnesty
- Unreported assets in the Annual Income Tax Return for those who did not participate in the Tax Amnesty

The Voluntary Declared Assets will be deemed as additional income subject to final tax at 25% for corporate taxpayers, 30% for individual taxpayers and 12.5% for certain other taxpayers.

Certain other taxpayers include taxpayers with gross income from business and/or free lance jobs in the fiscal year prior to Tax Amnesty of up to IDR4.8 billion, gross income from other income (i.e., other than from business and/or freelance jobs) in the fiscal year prior to Tax Amnesty of up to IDR632 million,





or gross income from business and/or freelance jobs or other income in the fiscal year prior to Tax Amnesty of up to IDR4.8 billion with the other income maximum of IDR632 million.

The tax base for the calculation of the final tax is as follows:

- Cash or cash equivalent: nominal value
- Land and/or building: sale value of tax object (Nilai Jual Objek Pajak)
- Motor vehicle: sale value of motor vehicle (Nilai Jual Kendaraan Bermotor)
- Gold or Silver: sale value as referred by PT Aneka Tambang Tbk
- Shares of listed company: share price as referred by PT Bursa Efek Indonesia
- Warrant: warrant price as referred by PT Bursa Efek Indonesia
- Government or corporate bonds: bonds price as referred by PT Penilai Harga Efek Indonesia
- If there is no reference on the assets value, taxpayers can use a value from a licensed appraiser or from the Director General of Tax

The New CFC Rules

The Indonesian controlled foreign company (“CFC”) rules were amended by the Ministry of Finance Regulation No. PMK107/PMK.03/2017, effective as of 27 July 2017.

The determination of deemed dividend will be effective for fiscal year 2017. Key changes under the new rules are as follows:

- a. The definition of CFC is still the same but the scope of CFC is expanded to include:
 - **Directly owned CFC: a foreign entity owned at least 50% by:**
 - An Indonesian taxpayer (company or individual); or
 - A group of Indonesian taxpayers (companies or individuals)
 - **Indirectly owned CFC: as a foreign entity owned at least 50% by:**
 - Another CFC
 - Various CFCs held by Indonesian taxpayers; or
 - Various CFCs held by the same or more Indonesian parent companies.
- b. **Transparent entities:** if an Indonesian taxpayer owns a CFC through e.g., a trust or similar arrangement, a “look-through” or “pass-through” approach will be applied.

- c. **Timing of deemed dividend:** the Indonesian taxpayer has to recognise a deemed dividend from a CFC by the end of the fourth month after the CFC submits its local corporate income tax return; or by the end of the seventh month after the end of the CFC's fiscal year if the CFC is not required to submit a corporate tax return.
- d. **Calculation of deemed dividend:** it will be based on the effective ownership in the CFC multiplied by the commercial profit after tax. Any actual dividend paid by the CFC can be offset against previously reported deemed dividends but only if within the past five consecutive years. If the actual dividends are higher than the deemed dividends, the difference must be reported in the Indonesian taxpayers' corporate tax return.
- e. **Foreign Tax Credit ("FTC"):** subject to certain limitations, taxes paid on the actual dividends can be credited in the Indonesian taxpayers' corporate tax return in the year the tax is paid. To claim the FTC, certain documents of the direct CFC must be provided to the Indonesian Tax Office.

Limited liability companies must now report their beneficial owners

Under President Regulation No. 13 of 2018 on the Implementation of the Principle of Knowing the Beneficial Owners of Corporations in Relation to the Prevention and Eradication of Money Laundering and Terrorism Financing Crimes ("Regulation 13"), a corporation must:

1. Determine at least one person as its beneficial owner
2. Appoint an employee to implement the principle of knowing the beneficial owners, and provide information on the corporation and its beneficial owner to authorised institutions, if requested
3. Report to the authorised institutions accurate information on the beneficial owner, and keep the information up to date

A corporation is defined broadly, but Regulation 13 lists examples, including limited liability companies. Regulation 13 does not differentiate between domestic and foreign investment companies. Given the broad definition, Regulation 13 would also apply to foreign investment companies.

How the beneficial owner reporting will be implemented in practice remains to be seen. The relevant authorised institutions may issue implementing regulations of Regulation 13 if those authorised institutions require a corporation to disclose its ultimate beneficial owner.

Criteria of beneficial owners of limited liability companies:

- The beneficial owner possesses more than 25% of the shares in the limited liability company as stated in the articles of association





- The beneficial owner possesses more than 25% of the voting rights in the limited liability company as stated in the articles of association
- The beneficial owner receives more than 25% of the profits earned annually by the limited liability company
- The beneficial owner possesses authority to appoint, replace and dismiss members of the board of directors and board of commissioners of the limited liability company
- The beneficial owner possesses authority or power to influence or control the limited liability company without the need to obtain authorisation from any party
- The beneficial owner receives benefits from the limited liability company
- The beneficial owner is the actual owner of the fund used to subscribe for the shares of the limited liability company

Reporting submission:

A limited liability company must report accurate information on its beneficial owner in any of the following circumstances:

- When it applies for establishment, registration, legalisation, approval or business license
- During its operation (for any changes/updates)

The report must be submitted by the founders/management of the limited liability company, a notary or a proxy.

Existing limited liability companies that have obtained or are still in the process of applying for registration, legalisation, approval, notification and business license have been given one year from the effective date of Regulation 13 (i.e., 5 March 2018) to implement the principle of knowing the beneficial owners.

An update on Automatic Exchange of Information

Indonesia is committed to participate in the Automatic Exchange of Information in September 2018.

On 5 April 2018, the Director General of Tax issued an announcement on a list of jurisdictions, a type of non-reporting financial institutions and exempted accounts for AEOI purposes. The list of jurisdictions consists of:

- the list of participating jurisdictions (i.e., the 79 countries including Singapore)
- the list of reportable jurisdictions (i.e., the 69 countries) ■