TAXAND

TAXAND ASIA UPDATES

THURSDAY 25 MARCH 2021

Your global tax partner

CHINA

KEVIN WANG
PARTNER

HENDERSEN TAXAND

CHINA

- Personal Tax – Expat allowance on meal/housing and child education will no longer be available after 2021/12/31
- Personal Tax – New LLP set up cannot enjoy reduced deemed profit rate wef 2021/1/1
- Corporate tax – most of concession during the COVID 19 will be cancelled, except a few.
- Civil Code – wef 2021/1/1

HONG KONG

CHEE WENG LEE
GLOBAL HEAD OF TAX

TRICOR HONG KONG

HONG KONG

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1. 2021/22 Hong Kong Budget
2. New tax legislation enacted in the past 12 months
3. COVID-19 updates

HONG KONG

1. 2021/22 Hong Kong Budget

- Announced on 24 February 2021
- Focus:
  “stabilizing the economy and relieving people’s burden”
- Aim:
  alleviate the hardship and pressure caused
  by the economic downturn and the pandemic

HONG KONG

1. 2021/22 Hong Kong Budget - Highlights

a) Insurance Business

- Provide half-rate profits tax concessions to eligible insurance businesses

b) Foreign Investment Funds

- Allow foreign investment funds to re-domicile to Hong Kong for registration as Open-ended Fund Company ("OFC") or Limited Partnership Fund
- Provide subsidies to cover 70% of the expenses paid to local professional service providers, subject to a cap of HK$1 million per OFC

c) Real Estate Investment Trusts ("REIT")

- Provide subsidies for qualifying REITs authorized by the SFC and listed in Hong Kong to cover 70% of the expenses paid to local professional service providers, subject to a cap of HK$8 million per REIT

d) Stamp Duty

- Raise from current 0.1% to 0.13% on stock transfers

HONG KONG

2. New tax legislation enacted in the past 12 months

a) Reinsurance business

- Offers a concessionary tax rate (at 8.25%) for:-
  - all general reinsurance business of direct insurers;
  - selected general insurance business of direct insurers;
  - selected insurance brokerage business

b) Foreign Investment Funds

- Enable funds to be registered in the form of limited partnerships in Hong Kong

- Propose eligible carried interest to be charged at profits tax rate of 0% and exclude 100% of eligible carried interest from employment income for the calculation of salaries tax, subject to meeting specified conditions

c) Ship Leasing

- Offers a concessionary tax rate for:-
  - qualifying ship lessors at 0%;
  - qualifying ship leasing managers at
    i. 0% for activities carried out for an associated corporation; and
    ii. 8.25% for activities carried out for a non-associated corporation

d) Stamp Duty

- Abolish the Doubled Ad Valorem Stamp Duty on transfer of non-residential property in Hong Kong

- Waive stamp duty on stock transfers paid by the exchange traded fund ("ETF") market makers in the course of allotting and redeeming ETF units listed in Hong Kong

HONG KONG

3. COVID-19 updates

a) Tax Measures

- The Exemption from Salaries Tax and Profits Tax (Anti-epidemic Fund) Order was enacted on 29 May 2020.
- The Exemption Order exempts, subject to certain conditions, individuals and businesses from the payment of salaries tax and profits tax in respect of financial assistance or relief provided under the Anti-epidemic Fund.
- The tax exemption applies for the year of assessment commencing on 1 April 2019 and for all subsequent years of assessment.

b) Permanent Establishment ("PE") issues

- **<u>Companies' concern</u>**

  Whether a temporary change of work location of employees due to the COVID-19 pandemic would result in creation of PE or change in the tax residence status of the company or the employees

- <u>Hong Kong tax authority's response</u>
  - they did not issue any particular guideline to address the above concern
  - **likely follows the OECD**'s views and commentaries unless they are contrary to the provisions in the Inland Revenue Ordinance

INDONESIA

ELVIANA RIYANTO
PARTNER

PB TAXAND

UPDATES ON TAX INCENTIVES RELATED TO COVID-19

COVID 19 TAX INCENTIVE EXTENSION

Indonesian Government extended the period of tax incentives in dealing with the COVID-19 pandemic, by revoking the previously issued MOF Regulation No. 86/PMK.03/2020 as last amended by MOF Regulation No. 110/PMK.03/2020 with the issuance of MOF Regulation No. 9/PMK.03/2021 (MOF 9). The COVID 19 related incentives below will be extended until June 2021

1) **Employee Withholding tax (Article 21 Income Tax) will be borne by the Government for eligible employees with annual fixed and regular gross income not exceeding IDR 200 million.**

2) **The Final Income Tax of 0.5% for Micro, Small & Medium Enterprises ("UMKM") will be borne by the Government**

3) **Exemption of Article 22 Income Tax on Imports**

4) **Final Income Tax on construction service income under an Acceleration Program to Improve the Utilisation of Irrigation Water (Program Percepatan Peningkatan Tata Guna Air Irigasi/P3-TGAI) will be borne by the Government.**

5) **50% Reduction of Article 25 monthly Income Tax installments of eligible taxpayers**

6) **Preliminary Refund on VAT Overpayment for Low-Risk Taxable Entrepreneurs with a maximum of IDR5 billion per month.**

COVID 19 TAX INCENTIVES ON MOTOR VEHICLE AND REAL ESTATE

Another action by Government to boost Indonesian economic is by supporting certain industries which are real estate and automotive industry. The Government provides incentives on Sales Tax on Luxury-Goods (STLG/PPnBM) for purchases of cars and Value Added Tax (VAT) for certain purchases residential property.

Tax Incentives on Certain Car Purchases

The Minister of Finance (MoF) has issued Regulation No. 20/PMK.010/2021 (MOF 20) regarding the Sales Tax on Luxury-goods (STLG) on certain motor vehicle purchases. Under MOF 20, the STLG will be borne by the Government for eligible purchases during fiscal year 2021.

The Sales Tax on Luxury Goods (STLG) incentives are for the following motor vehicles:

a. Motor vehicle in the category of sedan or station wagon (diesel or semidiesel) with a cylinder capacity of up to 1,500 CC;

b. Motor vehicles for the transportation of less than 10 people other than sedan or station wagon (diesel or semi-diesel) with a cylinder capacity of up to 1,500 CC.

To be eligible, the motor vehicles mentioned above must also meet 70% local purchase requirements.

COVID 19 TAX INCENTIVES ON MOTOR VEHICLE AND REAL ESTATE

Tax Incentives on Certain Car Purchases – continued

The STLG (PPnBM) borne by the Government will be at the rates of:

- **100% for the purchases of motor vehicles in March to May 2021;**
- **50% for the purchases of motor vehicles in June to August 2021; and**
- **25% for the purchases of motor vehicles in September to December 2021.**

VAT incentives on Real Estate purchases

The MoF also issued Regulation No. 21 year 2021 (MOF 21) regarding VAT borne by the Government on the transfer of landed houses and condominium /flat residential units (unit hunian rumah susun).

To be eligible, Landed houses and condominium /flat residential units must meet the following requirements:

a. **The maximum selling price is IDR5 billion; and**

b. **Should be New landed houses and New Condominium/flat residential units in a ready-to-use condition. These units should be firsthand handover by developers and have never been handed over previously.**

COVID 19 TAX INCENTIVES ON MOTOR VEHICLE AND REAL ESTATE

VAT incentives on Real Estate purchases - continued

This VAT facility may only be utilized by any individual for one eligible property

VAT on the eligible property will be borne by the Government for handover/transfer conducted between March 2021 to August 2021 tax period, in the amount of:

a. 100% of the VAT payable for property with a selling price of IDR2 billion or less; and
b. 50% of the VAT payable for property with a selling price of more than IDR2 billion to IDR5 billion.

The facility is applicable upon the transfer that occurs at the time of:

a. the signing of the sale and purchase deed; or
b. the issuance of full payment receipt by the seller,

where there is an actual transfer of rights to use or control the eligible property (which could be proven by minutes of handover).

IMPLEMENTING REGULATION ON OMNIBUS LAW - TAXATION

IMPLEMENTING REGULATION OF OMNIBUS LAW (TAXATION)

As one of the implementing regulations of the Omnibus Law related to taxation cluster, Government Regulation (GR) No.9 Year 2021 (“GR 9”) was issued and effective on 2 February 2021

Following the issuance of GR 9, the Ministry of Finance (MOF) issued MOF Regulation No. 18 Year 2021 (“MOF 18”) to provide implementing rules on the Omnibus Law on Income Tax, Value Added Tax (VAT) and General Tax Provisions and Procedures (Ketentuan Umum Perpajakan/KUP) on 17 February 2021.

INCOME TAX

REDUCED WITHHOLDING RATE ON BOND INTERESTS

According to the Omnibus Law, the government may reduce the withholding tax rate for interest paid to non-residents to be further regulated under a government regulation.

As a follow up to this article in Omnibus Law, GR-9 determines a reduced withholding rate of 10% (or the applicable tax treaty rate) for interest paid on bonds. This reduced rate applies to all types of income treated as bond interest, including capital gain (i.e. premium and discount) earned upon sale of bonds, and will be effective after six months of the effective date of this GR (The reduced rate will be in effect on 2 August 2021).

INCOME TAX

Individuals (Indonesian Citizen and Foreigners) as Domestic Tax Subjects (Subjek Pajak Dalam Negeri/ SPDN)

Clarification on criteria for Domestic Tax Subjects

Individuals domicile in Indonesia, present in Indonesia for more than 183 days within a 12-month period, or have an intention to stay in Indonesia. MOF 18 elaborates the definition of “domicile in Indonesia” and provide examples of supporting documents needed to substantiate ”an intention to stay in Indonesia”

Territorial Taxation of foreigners as Domestic Tax Subject

Foreigners with special expertise, who are considered as Domestic Tax Subjects, only have to pay Income Tax on Income received in Indonesia for the first 4 Fiscal Years. The expertise requirements are the positions as listed in Attachment II of MOF 18.

The expertise must be supported by:

- A certificate issued by a Government-authorised institution, diploma, or have relevant working experience for a minimum of five years in a field of science, technology or maths; and
- An obligation for transfer of knowledge.

INCOME TAX

Indonesian citizens (WNI) as Foreign Tax Subjects (Subjek Pajak Luar Negeri/ SPLN)

To determine the criteria of Foreign Tax Subject (SPLN), an individual is subject to a tie-breaker rule which are based on:
a) the place of permanent home outside Indonesia, b) centre of vital interests outside Indonesia, and c) habitual abode outside Indonesia, which should be analysed on a tiered basis.

Other than the criteria above, the individual must also fulfill the following requirements:

- Registered as a tax resident in that foreign jurisdiction (proven by a Certificate of Domicile);
- Have fulfilled their tax obligations for all income sourced from Indonesia during the time the WNI was Domestic Tax Subjects (SPDN); and
- Have obtained a Certificate of WNI that states fulfilled the criteria as an SPLN issued by the Director General of Taxes (DGT) ("SPLN Certificate").

The Individual will then be treated as a WNI who has left Indonesia for "good" and has become an SPLN from the time they leave Indonesia. Prior to leaving Indonesia, the individual may apply for Non- Effective Taxpayer (NE) status.

INCOME TAX

Tax on Dividend

Onshore Dividend

Onshore Dividend will be exempted from withholding income tax if the dividend **is received by**:

a. A corporate Indonesian Taxpayer
b. An Individual Indonesian Taxpayer, **as long as it is invested in Indonesia for a certain period**

Offshore Dividend

Offshore Dividend will be exempted from withholding income tax, if it is **invested in Indonesia for a certain period** and derived from:

a. An offshore ***Go Public*** company
b. An offshore **Private** company

IF the **amount of dividend invested** is equal to a minimum 30% of the profit after tax

INCOME TAX

Offshore Dividends

Reinvestment Requirements

The qualifying medium of reinvestments are as follows:

1. Investments in financial money market instruments such as:
   - Government bonds(including bonds under sharia principles);
   - Bonds/sukuk issued by State-Owned Enterprises (SOEs), State-Owned financing companies, or private companies who trades under supervision od Financial Services Authority's (Otoritas Jasa Keuangan);
   - Financial investments in a"perception bank" including a sharia bank;
   - Other legal forms of investment.

2. Investments placed in financial instruments outside the money market such as:
   - Investment in infrastructure under a Public Private Partnership scheme;
   - Investment in real sector(sector riil) subject to a Government priority;
   - Indonesia shareholding in a newly established or existing company;
   - Cooperation arrangements with the Indonesian Sovereign Wealth Fund (Lembaga Pengelolaan Investasi);
   - Lending business to small and micro businesses in Indonesia.

INCOME TAX

Offshore Dividends

To be eligible for exemption:

- The dividend must be distributed based on a General Shareholders' Meeting (or similar meeting) or via an interim dividend in accordance with the prevailing law.
- The taxpayer must invest the dividends or offshore income in the qualifying investments by the end of the 3rd or 4th month after the end of the fiscal year for individuals and corporate taxpayers, respectively.
- The investment must be held for a minimum of three years from the fiscal year when the dividend or offshore income is received or earned.
- The investment can not be transferred except to some other type of qualifying investment.

This regulation adds several new provisions as follows:

- The exemption for offshore dividends from a non-listed company is only applicable to Profit After Tax from fiscal year 2020 onwards which is received or earned from 2 November 2020.
- The 30% threshold for offshore dividends from a non-listed company can be changed by MoF regulation.

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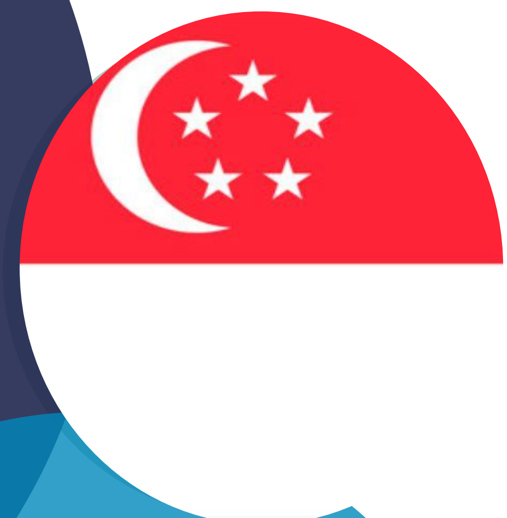
SINGAPORE



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LEGAL ASSOCIATE

WITHERS KHATTARWONG

SINGAPORE

1. COVID-19 Update

- Rate of community transmission is low
- Vaccination programme is on-going
- Re-opening of borders in a controlled and safe manner

SINGAPORE

2. Key Budget 2020

- Extension of M&A scheme by 5 years
- Refinement and extension of safe harbour rule
- Refinement and extension of the Finance and Treasury Centre scheme
- Refinement and extension of the Global Trader Programme
- Refinement and extension of the tax incentives for venture capital funds and venture capital fund management companies

SINGAPORE

3. Non-budget amendments to tax legislation

- Amendments to GAAR
- Introduction of a surcharge for tax avoidance arrangements

SINGAPORE

4. Key Budget 2021 updates

- Increase in the carry back of qualifying deductions
- Accelerated Capital Allowance claims
- Accelerated renovation and refurbishment deductions
- Revision of petrol duty rates
- GST to be extended to all cross-border goods
- GST on import of non-digital services
- Change in basis of zero-rating media sales

VIETNAM

LIM CHOR GHEE
GENERAL DIRECTOR

TRICOR VIETNAM

VIETNAM

Theme: "Vietnam's Breakout Moment – A once-in-a-generation opportunity for the country that got it right" (*Nikkei Asia, 20 Jan 2021)*

..And what Vietnamese government is doing (it right):

- Revamping investment-related legislations (easier to do business)
- Investment incentives for the High Technology sector (on top of existing sector / location-specific investment incentives)
- Higher clarify in taxation and customs treatment for manufacturing, global trade / supply chain and e-commerce
- Clearer tax administration procedures with tighter compliance requirements, plus increasingly sophisticated Transfer Pricing compliance

WHAT WE WILL DISCUSS TODAY

1. Investment Incentives in the High-Tech Sector

2. Tax / Customs Updates pertaining to Manufacturing and Global Supply Chain

3. Transfer Pricing Updates

INVESTMENT INCENTIVES IN THE HIGH-TECH SECTOR

DECISION 38/2020/QD-TTg

- Effective from 15 February 2021

- Decision 38 replaces / consolidates all the previous regulations on investment incentives relating to High Tech sector, clearly outlines:
  - List of High technologies prioritized for development and investment; and
  - List of High Tech products encouraged for development.

- Focused on 4 High Tech developmental areas:
  1. Information technology
  2. Bio-technology
  3. New Material technology
  4. Automation

HIGH TECH INVESTMENT INCENTIVES

- Land lease exemption for up to 15 years
- 4 years CIT exemption followed by 9 years of 50% CIT reduction; this comes together with preferential tax rate of 10% within 15 years (preferential rate can be extended)
- Import duty exemption for goods imported forming fixed assets of the investment project
- Import duty exemption for imported raw materials, supplies and components that could not be produced domestically within 5-year period

Qualifying criteria:

- Includes Product / technology criteria, revenue criteria, ratio of R&D expenses, ratio of R&D employees.

TAX / CUSTOMS UPDATES - MANUFACTURING AND GLOBAL SUPPLY CHAIN

DECREE NO. 18/2021/ND-CP

- Decree no. 18/2021/ND-CP amended and supplemented a number of articles guiding the implementation of the Law on Import & Export taxes
- Effective 25 April 2021
- A much welcomed and long-awaited regulation, which resolves / clarifies many aspects of taxation and custom treatment for manufacturing / global supply chain (especially outsourcing for contract manufacturing), which were earlier subject to varying interpretations and disputes

DECREE NO. 18/2021/ND-CP

- Supplement regulation for import duty exemption in relation to imported materials / supplies to serve export-manufacturing business, but part of such manufacturing process was outsourced to third party local vendors for processing using duty-free imported materials / supplies

- Provide guidance on the basis of import duty exemption in the case of indirect export/import under export-manufacturing model

- Provide detailed guidance on the import/export duty rate applying to indirect import/export transactions (i.e. on-spot import/export)

- Supplement guidance on customs checking, customs supervision and customs tax treatment to Export Processing Enterprises (EPE), including specific guidance on non-tariff treatment for the period before granting of EPE status

- Supplement guidance on import duty exemption for imported goods forming fixed assets of incentivized investment projects

IMPORT DUTY EXEMPTION – CONTRACT MANUFACTURING

- Materials imported under contract manufacturing models and sent to local vendors for processing are eligible for import duty exemption

- Conditions:
  a) Production of the exported goods is partially outsourced; or a portion of the imported materials are sent to local vendors for processing
  b) The importers fulfill relevant customs procedures.

- Note: VAT exemption also applies for the same category of imported materials

TRANSFER PRICING UPDATES

DECREE 132/2020/ND-CP

- Takes effect from 20 December 2020 and is applicable to Corporate Income Tax (CIT) from year 2020 onwards, replacing Decree 20 and Decree 68
- Arm's length principles and principle of substance (as per the Law of Tax Administration) also embedded in Decree 132
- Narrowing the arm's-length range (35^{th} to 75^{th} percentiles)
- Broadening the definition of related parties (contributed capital / loan)
- A new exemption from TP documentation requirements (domestic related party transactions, related parties have same tax rates, none enjoying tax incentives).

DECREE NO. 132/2020/ND-CP

- Raises loan interest limitation cap to 30% of EBITDA (from 20%), with retrospective application for CIT periods 2017 and 2018

- Interest expense subject to such cap is calculated on a net basis (offsetting interest expense with interest incomes in the same tax year)

- From CIT period 2019, non-deductible net loan interest expense exceeding 30% EBITDA may be carried forward consecutively to the subsequent five tax years (provided the respective net interest expenses in those tax years are still below the stipulated 30% EBITDA cap)

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ABOUT TAXAND

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