DENTONS HPRP

Job Creation Act
Legal Insight

Tax Treatment of Income Tax to Support Ease of Doing Business

Law No. 11 of 2020 on Job Creation (**“Job Creation Act”**) has amended several tax laws including the Income Tax Act Law No. 7 of 1983 as amended several times, most recently by Law No. 36 of 2008 on the Fourth Amendment to the Income Tax Act Law No. 7 of 1983. The amendment provides a relaxation of income tax to support ease of doing business

The provisions on the relaxation are further elaborated in Government Regulation No. 9 of 2021 on Tax Treatment to Support Ease of Doing Business (**“GR 9/2021”**) (enacted 2 February 2021) and then followed by Minister of Finance Regulation No. 18 of 2021 on the Implementation of the Job Creation Act Within the Fields of Income Tax, Value-Added Tax and Luxury Goods Sales Tax, as Well as General Taxation Provisions and Procedures (enacted 17 February 2021) (**“MoF Reg 18/2021”**).

In this article, we will provide highlights on the relaxation on the application of income tax as provided under GR 9/2021 and MoF Reg 18/2021.

1. Income Tax for Foreign Citizens

Through the Job Creation Act, the Government of Indonesia officially imposes income tax on foreign citizens as further regulated under GR 9/2021 and MoF Reg 18/2021. This rule applies to foreigners who are also domestic tax subjects.

However, income tax only applies to foreigners who are domestic tax subjects for income received or obtained from Indonesia provided that:

a. The foreign citizen possess certain skills. This includes certain positions and foreign researchers as determined by the relevant ministries; and

b. It is valid for 4 (four) tax years calculated from the time the foreign citizen becomes domestic tax subjects.

This also includes income received or obtained from Indonesia in connection with a job, service or activity in Indonesia under any name and form that is paid outside Indonesia.

However, this does not apply to foreign citizens who utilize the Double Taxation Avoidance Agreement between the government of Indonesia and the government of the partner country or partner jurisdiction of the Double Taxation Avoidance Agreement where foreign citizens earn income from outside Indonesia.

2. Income Tax on Interest

Under GR 9/2021, a foreign taxpayer other than a permanent establishment, earning income from Indonesia in the form of Interest income including premiums, discounts, and compensation in connection with security for repayment of debts received or earned by foreign taxpayers other than permanent establishments is subject to a decrease in the withholding of income tax of 20% (twenty percent) to 10% (ten percent) or in accordance with the rate based on the double tax avoidance treaty The reduction in the rate will come into force 6 (six) months from when the GR 9/2021 comes into effect. This new provision is expected to boost investment in securities in the form of bonds or sukuk issued by the Government of Indonesia or private companies.

3. Dividends Exempted from Income Tax

In an effort to increase investment in the financial market and real sector, the Government provides income tax exemptions for domestic and foreign originating dividends received by domestic taxpayers from income tax.

The exemption of income in the form of dividends or other income (after-tax income from a permanent establishment abroad and active income from abroad which does not pass through a permanent establishment) from the object of Income Tax applies to dividends or other income tax revenue received or earned by individual taxpayers and domestic corporate taxpayers from the enactment of the Job Creation Act.

For individual taxpayers, the received domestic dividends may be exempted as long as the dividend is invested in Indonesia within a certain period of time. Meanwhile for domestic dividends received by domestic corporate taxpayer, the requirement for the dividends to be invested in Indonesia in order to be exempted from income tax does not apply. However, the distributed dividends must be ratified by a general meeting of shareholders or interim dividends in accordance with the provisions of laws and regulations for dividend received from Indonesia.

Meanwhile, dividends received from overseas are also exempted from income tax with the condition that the dividends will continue to be invested or used to support business activities in Indonesia for a certain period of time. This covers dividends originating from foreign business entities whose shares are traded on the stock exchange or whose shares are not traded on the stock exchange depending on the shares' proportion. For the shares that are not traded on a stock exchange, the dividend must be invested within a certain period and be at least 30% of the profit after tax.

4. Other Income Exempted from Income Tax

GR 9/2021 and MoF Reg 18/2021 also detail other income from abroad that is exempted from the income tax object provided that the other income must be invested or used to support other business activities in Indonesia and within a certain period. Other income referred to includes income after tax from a permanent establishment abroad and income from abroad that does not go through a permanent establishment.

a. Income from a permanent establishment abroad

   The invested income is at least 30% (thirty percent) of Profit After Tax. If less than 30% (thirty percent) of the total Profit After Tax, the income after tax from a permanent establishment abroad which is invested is exempted from the imposition of Income Tax. The difference between 30% of Profit After Tax and the income after tax from a permanent establishment abroad which is invested will be subject to Income Tax. If more than 30% (thirty percent) of the total Profit After Tax, the after-tax income from a permanent establishment abroad which is invested is exempted from the imposition of Income Tax. Remaining Profit After Tax after deduction of 30% of the total Profit After Tax will not be subject to Income Tax.

b. Income earned not from a permanent establishment abroad

   The income referred to includes:

   a. income which comes from active businesses abroad; and

   b. income other from companies that are owned overseas.

5. Form of Investment and Certain Period of Time as Condition to be Exempted from Income Tax

MoF Reg 18/2021 further stipulates investment instrument criteria as a condition for obtaining income tax exemption. The goal is to strengthen the circulation of investor funds in Indonesia and increase productivity of domestic investment products. The form of investment referred above consists of:

a. securities of the Republic of Indonesia and Sharia securities of the Republic of Indonesia;
b. bonds or sukuk issued by State-Owned Enterprises trade in which is supervised by the Financial Services Authority (**"OJK"**);
c. bonds or sukuk issued by financing institutions owned by government trade in which is supervised by the OJK;
d. financial investment in perception banks, including sharia banks;

e. bonds or sukuk issued by private companies trade in which is supervised by the OJK;
f. infrastructure investment through government cooperation with a business entity;
g. real sector investment based on priorities determined by the government;
h. equity participation in newly established companies domiciled in Indonesia as a shareholder;
i. equity participation in existing companies domiciled in Indonesia as a shareholder;
j. cooperation with investment management institutions;
k. investment used to support other business activities in the form of lending for micro and small businesses in Indonesia according to the provisions of the laws and regulations in the field of micro small and medium enterprises; and / or
l. other forms of investment that are legal in accordance with the provisions of legislation.

To obtain exemption facilities for dividends and other income from the income tax object, dividends and other income must be invested for at least 3 tax years starting from the tax year dividends or other income are earned.

Investments must be made no later than:

a. for individual taxpayers, the end of the third month; or

b. for corporate taxpayers, the end of the fourth month:

after the Fiscal Year ends, for the Tax Year in which the dividends or other income is received or received.

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