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## Taxation in the Digital Realm

### Introduction

While the COVID-19 pandemic has caused a great deal of unprecedented disruption, it has also been a fertile ground for the growth and proliferation of digital companies due to the increasing use of online platforms for basic necessities ranging from social interaction, entertainment, business and commerce. In response to this new usage, the Indonesian government has issued regulations that will allow it to tax digital companies, even though these companies may not have a physical presence in Indonesia. The new regulations attempt to close the legal loophole that existed under the former regulations under which tax obligations were only imposed on companies domiciled in Indonesia or those considered to be permanent establishments.

### Tax measures

As an initial step, the Indonesian government issued Government Regulation in lieu of Law No.1 of 2020 (**Perppu 1/2020**) that was approved by the House of Representatives and came into force on 31 March 2020. Perppu 1/2020 introduces several tax measures including: (i) the imposition of value added tax (**VAT**) on the usage of intangible taxable goods and/or services through electronic system trade activities; and (ii) income tax or electronic transaction tax for foreign e-commerce players with a “significant economic presence” (which we discuss under point 2 below). Unfortunately, the implementing regulations issued so far only provide further guidance on the imposition of VAT.

#### 1. VAT

Article 6 of Perppu 1/2020 imposes VAT on the usage of intangible taxable goods and/or services from outside Indonesia that are used inside Indonesia through electronic system trade activities, in accordance with VAT Law (Law No. 8 of 1983 as amended).

To supplement and regulate Perppu 1/2020, the Ministry of Finance (**MoF**) issued Regulation No.48/PMK.03/2020 of 2020 on the “Procedure to Appoint Collectors, Collection, Payment and Reporting of VAT on the Utilisation of Intangible Taxable Goods and/or Services from Outside a Customs Area through Electronic System Trading within a Customs Area” (**MoF Reg 48/2020**). MoF Reg 48/2020 will become effective as of 1 July 2020.

MoF Reg 48/2020 contemplates that VAT will be collected, deposited and reported by foreign traders, foreign service providers, foreign electronic trading system providers and/or domestic electronic trading system providers (together, **Relevant Businesses**) that will be appointed by MoF (**VAT Collectors**). MoF will determine whether any particular foreign Relevant Business is subject to this VAT requirement (and appoint a relevant VAT Collector), by considering the following criteria:

- (a) the transaction values with purchasers or service recipients in Indonesia exceed a certain threshold within twelve months; and/or
- (b) the traffic volume or user numbers exceed a certain threshold within twelve months.

Further details on the above thresholds will be determined by the Directorate General of Taxation (**DGT**). At this stage, it is still unclear whether the relevant thresholds will be applied on a discretionary basis or in the form of a further regulation. If the latter, it is anticipated that the regulation would be issued before 1 July 2020, the effective date of MoF Reg 48/2020.

The imposed VAT rate is 10%, which must be paid for each tax period by no later than one month after the end of the tax period. The payment must be made electronically to the State Treasury using either Rupiah, US Dollars or any other foreign currency specified by the DGT. To fulfil their tax obligations, VAT Collectors will be entitled to appoint a representative in Indonesia.

## **2. Income tax or electronic transaction tax**

With the issuance of Perppu 1/2020, any Relevant Businesses with a “significant economic presence” in Indonesia would be deemed to have a permanent establishment in Indonesia and, therefore subject to income tax. A significant economic presence will be determined based on the following criteria:

- (a) the consolidated gross turnover of a business group reaches a certain threshold;
- (b) revenue from the Indonesian market reaches a certain threshold; or
- (c) the number of active users reaches a certain threshold.

If the application of a tax treaty prevents the presence of a permanent establishment, an electronic transaction tax will apply instead. The electronic transaction tax will be levied on any transaction that is carried out directly between a buyer/user and a foreign seller/service provider or via a foreign e-commerce marketplace.

Further details on the relevant thresholds, tariffs, payments and reporting mechanisms will be governed by a further MoF Regulation. Unlike the VAT matters referred to above, the MoF has yet to issue any implementing regulations on these matters.

### **Penalties**

Failure to comply with the above requirements may result in the imposition of administrative penalties based on the existing General Tax Provisions. Further action may also be taken by the Ministry of Communications and Informatics, upon the MoF’s request, to block or disconnect the Relevant Business’s electronic access, if they do not remedy any non-compliant activities during a grace period provided in any warning letter.

### **Conclusion**

Despite the Indonesian government’s efforts to boost tax revenue from digital companies, the current tax measures are still not complete. Details of the relevant thresholds are yet to be regulated. It is also not clear if the new regulations will have a retroactive effect. Until further relevant regulations are passed, significant gaps remain in the implementation and enforcement of the new tax regime for Relevant Businesses.

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We will continue to monitor any new regulations that could further regulate the tax obligations of Relevant Businesses in the future. We are expecting such new regulations as early as next month and will give you a rundown on their impact at such time.

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*If you would like to discuss any aspect of this update, please feel free to contact us.*



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