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AN INTRODUCTION TO

Doing Business in Indonesia 2023

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This edition of Doing Business in Indonesia was produced by a team of professionals at Dezan Shira & Associates, with Ayman Falak as Editor.
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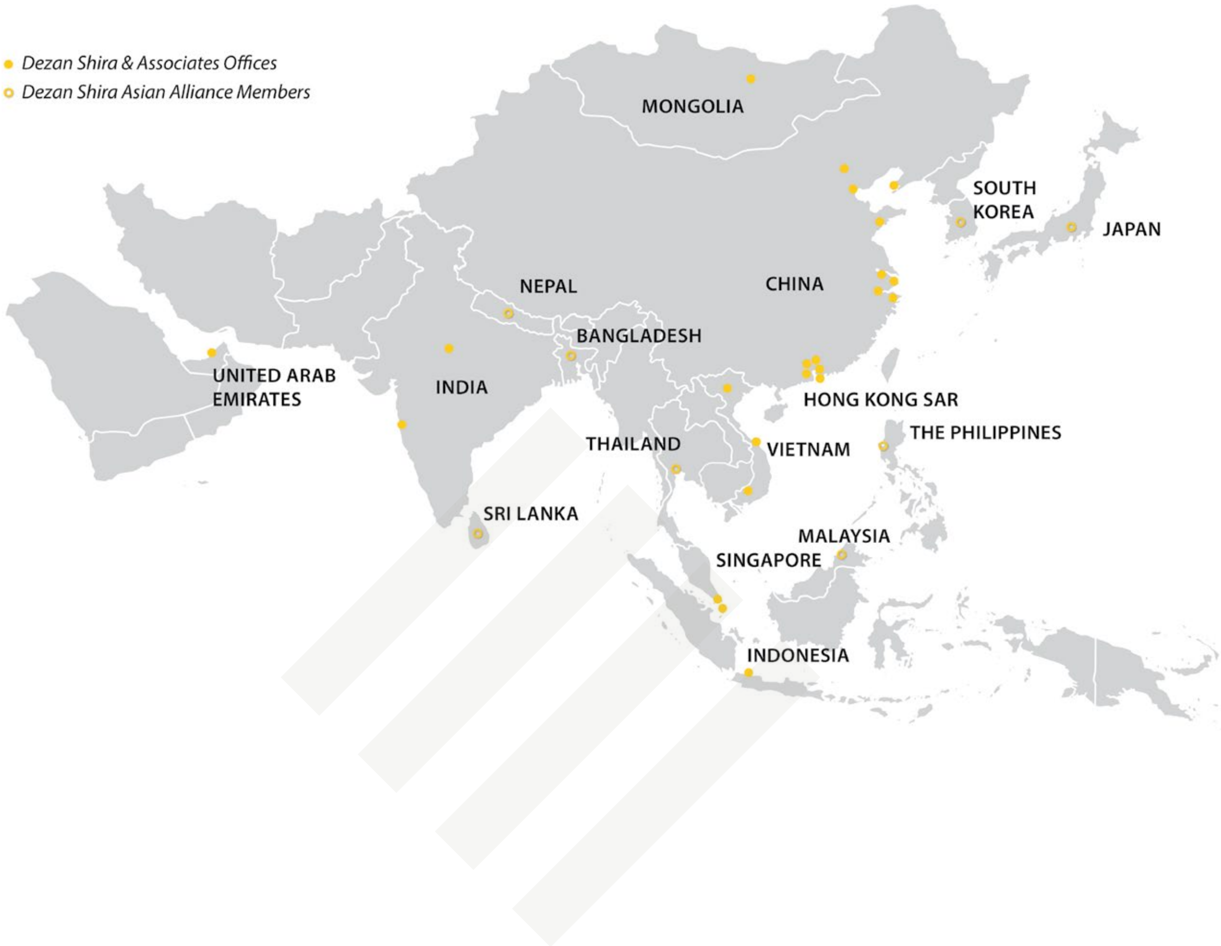

About Dezan Shira & Associates

At Dezan Shira & Associates, our mission is to guide foreign companies through Asia's complex regulatory environment and assist them with all aspects of establishing, maintaining and growing their business operations in the region. Since its establishment in 1992, Dezan Shira & Associates has grown into one of Asia's most versatile full-service consultancies with operational offices across China, Hong Kong, India, Singapore and Vietnam, as well as liaison offices in Italy, Germany and the United States, and partner firms across the ASEAN region. With over 30 years of on-the-ground experience and a large team of professional advisers, we are your reliable partner in Asia.

Preface

ALBERTO VETTORETTI
Managing Partner
Dezan Shira & Associates

After gaining independence in 1945, Indonesia experienced rapid industrialization during the 1970s on the back of strong oil exports before labor-intensive industries became the new engine of growth in the late 1980s. The country is now the largest economy in Southeast Asia with a US$1.38 trillion economy by nominal GDP, and a member of the G20.

Indonesia's most important export commodities are oil and gas, palm oil, minerals, such as tin, gold, nickel, copper, bauxite, as well as coal. However, the country is moving away from exporting raw minerals to developing its own downstream industries which is key to the government's economic growth strategy. For 2023, Indonesia is expected to see between 4.5-5.3 percent growth supported by growth in commodities, infrastructure, tourism, and manufacturing of high-value products like electric vehicle batteries.

The government of Joko Widodo remains prudent about its macroeconomic policies and structural reforms to attract foreign investment. Infrastructure is still the cornerstone of the government's policies, with Indonesia needing over US$400 billion of infrastructure financing until 2024.

Other important considerations for foreign investors are Indonesia's ongoing amendments to various laws to remove bureaucratic inefficiencies, simplify business licensing requirements, and liberalize more industries. An example is Government Regulation in Lieu of Law No. 2 Year 2022.

Consequently, for investors and firms seeking to do business in Indonesia, it is important to have a long-term outlook. After all, with a population of close to 300 million, a competitive labor market, a rapidly expanding digital economy, and rising incomes, it is not a market to be taken lightly.

This publication, designed to introduce the fundamentals of investing in Indonesia, was compiled by Dezan Shira & Associates, a specialist foreign direct investment practice providing corporate establishment, audit, business advisory, tax advisory and compliance, accounting, payroll, due diligence, and financial review services to multinationals and small- and medium- sized enterprises investing in emerging Asia.

An Introduction to Doing Business in Indonesia 2023 covers the following:

- Indonesia's Positive Investment List
- Corporate establishment;
- Taxation;
- Human resources and payroll; and
- Audit and compliance.

CONTACT

Dezan Shira & Associates
indonesia@dezshira.com
www.dezshira.com

Highlights from the guide

Government Regulation in Lieu of Law No. 2 of 2022 is Indonesia's biggest attempt at bureaucratic reforms since independence.

The Law amends more than 75 current laws that aims to simplify the process to obtain business licenses and starting a business, formalizing special economic zones, and amending the country's strict labor laws. Further, Indonesia has liberalized emerging sectors of interest for foreign investors, such as construction, healthcare, and telecommunications, among others.

In this guide, we review the important changes that will impact foreign businesses looking to invest in Indonesia.

Below are some of the key changes foreign businesses need to aware of.

Business licensing regime

Indonesia has now introduced a new business licensing regime whereby business licenses are issued based on the assessment of 'business risk level', determined by the scale of hazards a business can potentially create.

The business activities undertaken by the applicant company will be classified into one of the following risk-level types:

- Low-risk businesses;
- Medium-low risk businesses;
- Medium-high risk businesses; and
- High-risk businesses.

Positive investment list

Under the Law, Indonesia has liberalized over 245 business lines, including important sectors, such as transportation, energy, and telecommunications. The general principle under the positive investment list is that a business sector is open to 100 percent foreign investment unless it is subjected to a specific type of limitation.

As such, the government has classified business fields into four categories.

1. Priority sectors;
2. Business fields that stipulate specific requirements or limitations;
3. Businesses fields open to large enterprises, including foreign investors, but are subject to a compulsory partnership with cooperatives and micro, small, and medium-sized enterprises (MSMEs); and
4. Business fields that are fully open to foreign investment.

Labor laws

The Law has amended Indonesia's labor laws. Changes include a formula for calculating the minimum wage, eliminating sectoral minimum wages, introducing provisions for hourly wages (for the first time), and income support for workers made redundant. Further, a new procedure for the disbursal of severance payments has been established.

Tax overhaul

The government has overhauled the existing tax structure to optimize tax revenue collection.

The overhaul includes changes in the topline personal income tax rate. Individuals earning more than 5 billion rupiah (US$351, 000) per year in net income will now be subject to a 35 percent income tax, and individuals with an annual net income of up to 60 million rupiah per year (US$4,220) will be subject to a five percent tax rate, up from the previous threshold of 50 million rupiah (US$3,517).

Sectors to Watch for in Indonesia in 2023

Indonesia's central bank, Bank Indonesia, predicts that the country's economy is expected to grow at between 4.5-5.3 percent in 2023 – one of the highest among G20 members – and will be supported by several important sectors, including commodities, infrastructure development, tourism, and manufacturing of high-value products, such as electric vehicle batteries.

GDP had accelerated to 5.31 percent in 2022, bringing Southeast Asia's largest economy back to pre-pandemic growth. The pace of growth in 2022 was largely supported by Indonesia's large domestic consumption and further bolstered by the export of commodities as global prices of key shipments, such as coal, palm oil, and iron, rallied upwards.

The highest priority for the Indonesian government for 2023 will be to hold inflation at three percent. Further, weakening global economic activity and a slowdown in commodity prices could impact GDP this year. However, external demand for commodities and pent-up domestic consumption will continue to be the backbone of growth in 2023.

Downstream mining

As Southeast Asia's largest economy, Indonesia has enjoyed an exports boom on the back of rising commodity prices caused by the Russian-Ukraine conflict. As such, Indonesia's commodity exports will continue to be a backbone to the economy in 2023.

In 2014, the Indonesia government began banning the export of raw mineral ores to encourage foreign investments in the downstream mining sector and development of local smelters besides boosting exports of higher-value processed commodities as well as increasing government revenue. For 2023, the country is set to expand the raw mineral export ban to include bauxite.

Indonesia has a large and unprospected variety of mineral deposits and is the world's biggest exporter of tin, palm oil, and thermal coal, as well as a major exporter of nickel, copper, bauxite, rubber, manganese, zinc, and lead, among other resources. Mining roughly accounts for over one-tenth of Indonesia's GDP and has been integral to its economic growth.

The country is also home to the Grasberg mine – one of the biggest gold mines, and third-largest copper mine in the world – which is estimated to have 275 billion ounces of copper and 14.2 million troy ounces of gold reserves.

Nickel

Indonesia announced a ban on the export of nickel ores in 2019 and introduced a requirement for nickel miners to process or purify raw nickel in Indonesia before export. The country is home to the world's largest nickel reserves and its ban caused major shifts in the supply chains of electric vehicle makers and stainless-steel producers. Nickel is a major component of EV batteries and of stainless-steel.

Indonesia's exports of processed nickel have soared from US$1 billion in 2015 to US$30 billion in 2022 with the country expected to account for half the global production increase in nickel up to 2025.

The ban on nickel ores prompted the European Union to launch a complaint to the World Trade Organization (WTO) in 2019 who argued that Indonesia's ban was unfairly harming the EU's stainless-steel industry. In November 2022, the WTO ruled in favor of the EU, citing that Jakarta's ban was not in line with global trade rules. Indonesia has appealed the ruling.

The WTO ruling poses a direct challenge to Indonesia's desire to ensure its mineral raw materials are processed domestically. The government has not announced its next strategy if it loses the appeal, but has not ruled out implementing a heavy tax on nickel raw exports as one initiative.

Electric vehicle batteries supply chain

Indonesia's nickel reserves are making the country indispensable to the global EV industry with the country aiming to be a global EV hub. Global EV makers, which include US's Tesla and China's BYD, are said to be finalizing deals to invest in Indonesia, according to the country's Coordinating Minister for Maritime Affairs and Investment, Luhut Binsar Pandjaitan. Indonesia aims to be one of the top three producers of EV batteries in the world by 2027.

Moreover, to complement its nickel-based battery industry, the country is also developing lithium refineries and anode material productions facilities.

With its 278 million population, Indonesia also presents opportunities for the sale of EV vehicles ranging from motorbikes to cars. Formidable challenges and opportunities for investors include consumer affordability and the lack of publica charging infrastructure. The government has an ambitious target of having 2.5 million EV users by 2025.

Coal

Indonesia is the world's third-largest exporter of coal after China and India and the world's biggest thermal coal exporter. Indonesia produced 687 million tons of coal in 2022 of which 494 million tons was exported and the remainder for domestic use. Coal exports earn the country roughly US$3 billion per month with China, India, South Korea, and Japan accounting for 70 percent of exports. Vietnam and the Philippines are growing export markets for Indonesian coal.

The government left the thermal coal market in a volatile state in January 2022 when it issued an export ban to meet domestic demand. The ban displaced an estimated four percent of the global seaborne supply or 36 million tons of coal.

For 2023, the country is targeting a record 518 million tons of exports and production at 695 million tons.

As with other commodities, the government is eager to develop Indonesia's downstream coal industry, specifically surrounding the below seven subsectors:

1. Coal liquefaction;
2. Coal quality enhancement;
3. Coal gasification;
4. Coke manufacturing;
5. Underground coal gasification;
6. Briquette manufacturing;
7. Coal-water mixture production.

This strategy will need immense foreign investment, particularly in infrastructure and technology.

Infrastructure

Infrastructure development has been the cornerstone of President Joko Widodo's government for most of the past decade. During eight years of his tenure, his government has built 1,700km of highway, over 4,000km of non-highway roads, 30 reservoirs, 18 ports, and 21 airports, with most developed outside the island of Java. To take this into perspective, Indonesia had only 780km of highway for the past 40 years.

Between 2022 and 2024, Indonesia requires over US$400 billion for infrastructure investments. Specifically for 2023, the government has set aside US$25 billion in the national budget for infrastructure.

As such, Indonesia is pushing for private involvement in its infrastructure development through private-public partnership (PPP) initiatives. There are also opportunities for small and large-scale energy and infrastructure projects in Indonesia's eastern regions, which is lacking the most in connectivity and is seeing increased focused from the government (Java currently constitutes 60 percent of total GDP and 60 percent of the population).

Healthcare and pharmaceuticals

Given its large market size, Indonesia's healthcare sector presents a lucrative opportunity for foreign investors.

The government's annual spending on healthcare has skyrocketed since the implementation of the universal healthcare program (BPJS) in 2014, which has now grown to be the world's largest, covering some 240 million people. Every citizen and expatriate are mandated to join, and companies must register their employees to the program, paying a percentage of the premiums.

Increasing spending on healthcare will impact important sub-sectors, such as the medical devices industry, which was valued at US$4.5 billion in 2019. The majority of this, US$2.8 billion, was from imports. Indonesia mainly imports sophisticated medical instruments, such as PET-CT scanners and ICU equipment, and exports low-tech equipment, such as gloves and syringes.

The pharmaceutical industry is dominated by generic drugs (70 percent) with the remainder from over the counter (OTC) drugs. The BPJS program has boosted sales of generic drugs in the country, valued at more than US$700 million.

Tourism

Indonesia has set an ambitious target of up to 7.4 million tourists for 2023, generating some US$5 billion for the country. This is still not at the pre-pandemic levels of 16 million foreign visitors.

However, the sector will have its challenges in 2023.

Despite all countries lifting their COVID-19 travel policies, the threat of a global recession, high air fares, and inflation are impacting consumer spending behavior.

The country's tourism ministry has opened the sector to foreign investment for developing sustainable-based tourism projects, five priority tourist destinations, and eight special economic zones catered to tourism. The ministry also highlighted that these opportunities were valued at US$1.5 billion in total and would create 1.5 million new jobs.

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The Positive Investment List and the Liberalization of Business Sectors

The Positive Investment List and the Liberalization of Business Sectors

Presidential Regulation 10 of 2021 as amended to President Regulation No. 49 of 2021 (PR 49/2021) liberalizes many business sectors for foreign investment. Dubbed the positive investment list, PR 49/2021 liberalizes over 200 business lines, including transportation, energy, and telecommunication.

The general principle under the positive investment list is that a business sector is open to 100 percent foreign investment unless it is subjected to a specific type of limitation. The regulation presents one of the greatest liberalizations in foreign ownership limitations in Indonesia since the negative investment list was first introduced in the 1980s.

MARCO FÖRSTER
Manager
ASEAN Advisory Unit
Dezan Shira & Associates
Ho Chi Minh City Office

"Foreign investors, entering Indonesia and taking advantage of what the country has to offer requires having a long-term outlook."

The design of the positive investment list

The government has classified business fields into four categories.

1. Priority sectors;
2. Business fields that stipulate specific requirements or limitations;
3. Businesses fields open to large enterprises, including foreign investors, but are subject to a compulsory partnership with cooperatives and micro, small, and medium-sized enterprises (MSMEs); and
4. Business fields that are fully open to foreign investment.

Priority sectors

To classify as a priority sector, business enterprises must meet the following criteria:

- Must be labor intensive;
- Must be capital intensive;
- Must be part of a national project/program;
- Must be export-oriented;
- Must involve a pioneer industry (renewables, oil refining, metals, etc.);
- Must utilize advanced technologies; and
- Must implement research and development activities.

There are 246 business fields under this category of the positive investment list. Moreover, businesses in priority sectors are eligible for a range of fiscal and non-fiscal incentives.

Fiscal incentives include a 50 percent corporate income tax reduction for investments between 100 billion rupiah (US$6.9 million) and 500 billion rupiah (US$34.9 million) for a period of five years and 100 CIT reduction for investments over 500 billion rupiah (US$34.9 million) for a period between five and 20 years. In addition, there are tax allowances available in the form of a reduction in the taxable income of 30 percent of the total investment for six years, a special withholding tax rate on dividends of 10 percent, and tax losses carried forward for up to 10 years.

Examples of non-fiscal incentives are the provision of supporting infrastructure, simplified business licensing procedures, and the guaranteed energy supply and raw materials. We explore a few examples of the prioritized business lines and their incentives below.

Examples of Priority Business Sectors and Their Incentives	
Business line	**Incentive type**
Textile and garment industry	Tax allowance and investment allowance
Pharmaceutical industry	Tax allowance
Digital economy (hosting, data processing etc.)	Tax holiday
Geothermal (exploring and drilling)	Tax allowance
Cooking palm oil industry	Tax allowance
Iron and steel industry	Tax allowance
Automotive industry	Tax allowance
Oil and gas refinery	Tax holiday
Cosmetics industry	Tax allowance
Coal gasification	Tax allowance

Business fields that stipulate specific requirements or limitations

Under this category, business fields are open to foreign investments but are subject to the following types of restrictions:

- Lines of business reserved for domestic investors;
- Lines of business subject to foreign ownership limitations;
- Lines of business that require special licenses; and
- Other investment requirements, namely business lines that are restricted and strictly supervised as well as regulated in separate laws and regulations in the field of alcoholic beverage control and supervision.
  - The business lines include:
    - Wholesale trade of alcoholic beverages (importers, distributors, and sub-distributors);
    - Retail trade of alcoholic beverages; and
    - The street retail of alcoholic Beverages.

Business Fields with Specific Requirements	
Business fields	**Requirements**
Publishing of newspapers, magazines (press)	100 percent domestic capital required for establishment, and up to 49 percent foreign capital ownership for business development and expansion
Private broadcasting agency	100 percent domestic capital required for establishment, and up to 20 percent foreign capital ownership for business development and expansion
Subscription-based broadcasting agency	100 percent domestic capital required for establishment, and up to 20 percent foreign capital ownership for business development and expansion
Postal services	Maximum foreign capital ownership of 49 percent
Domestic scheduled air transportation	Foreign capital ownership of 49 percent. However, domestic capital ownership needs to be the single majority
Domestic non-scheduled air transportation	Foreign capital ownership of 49 percent. However, domestic capital ownership needs to be the single majority
Air transport activities	Foreign capital ownership of 49 percent. However, domestic capital ownership needs to be the single majority
Domestic passenger liner and tramp activities	Maximum foreign capital ownership of 49 percent
Domestic sea transport for tourism	Maximum foreign capital ownership of 49 percent
Domestic liner and tramp sea freight for goods	Maximum foreign capital ownership of 49 percent
Domestic sea transportation for special goods	Maximum foreign capital ownership of 49 percent
Pioneer domestic sea transportation of goods	Maximum foreign capital ownership of 49 percent
Domestic sea transportation using public shipping	Maximum foreign capital ownership of 49 percent
Overseas liner and tramp sea freight for goods	Maximum foreign capital ownership of 49 percent
Overseas sea transportation for special goods	Maximum foreign capital ownership of 49 percent
Interprovincial sea public transport	Maximum foreign capital ownership of 49 percent
Interprovincial sea public transport (pioneering)	Maximum foreign capital ownership of 49 percent
Interprovincial city/ regency public transport	Maximum foreign capital ownership of 49 percent
Interprovincial city/regency public transport (pioneering)	Maximum foreign capital ownership of 49 percent
Inter-city and regency public transport	Maximum foreign capital ownership of 49 percent
River and lake transportation with non-fixed and irregular routes	Maximum foreign capital ownership of 49 percent

Business Fields with Specific Requirements	
Business fields	**Requirements**
River and lake transportation with non-fixed and irregular routes for tourism	Maximum foreign capital ownership of 49 percent
River and lake transportation for general goods and/or animals	Maximum foreign capital ownership of 49 percent
River and lake transportation for special goods	Maximum foreign capital ownership of 49 percent
River and lake transportation for dangerous goods	Maximum foreign capital ownership of 49 percent
Weapons equipment industry	Capital ownership based on approval from Ministry of Defense
Horticulture	Maximum foreign capital ownership of 30 percent
Traditional medical products (for humans)	100 percent domestic capital
Fish processing industry	100 percent domestic capital
Wood-based building products	100 percent domestic capital
Coffee processing industry that already acquire geographical indications	100 percent domestic capital
Ship industry • Outriggers; and • Traditional vessels	100 percent domestic capital
Traditional handicrafts	100 percent domestic capital
Traditional cosmetics	100 percent domestic capital
Raw materials for traditional medicine (for humans)	100 percent domestic capital
Batik industry	100 percent domestic capital
Crackers and chips industry	100 percent domestic capital
Hajj and Umrah activities	100 percent domestic capital and must be Muslim

The foreign ownership limitations (bullet point 2) do not apply in the following circumstances:

- The investments are conducted in special economic zones;
- Investments are in the form of non-direct investments taken through the Indonesian stock exchange;
- Investments subject to more favorable treatment under a treaty between Indonesia and the investor's country of origin; or
- Any investments approved prior to the issuance of the positive investment list. The positive investment list provides for this through a 'grandfathering policy'.

Business fields open to foreign investors but are subject to a compulsory partnership with MSMEs

Business fields under this category are open to foreign investors or large-scale enterprises through a compulsory partnership agreement with an MSME. There are 106 business lines for this category, being:

- Business lines that do not use advanced technology;
- Are labor-intensive businesses, characterized by a special cultural heritage; or
- The capital for the business' activities does not exceed 10 billion rupiah (US$701,000).

Further, they cover businesses that are commonly carried out by MSMEs and/or sectors that have the potential to enter the larger supply chain. The partnership arrangement can be in the form of operational cooperation, profit sharing, subcontracting, outsourcing, or distribution.

Businesses open to 100 percent foreign investment

The following business fields are open to 100 percent foreign investment:

- Oil and gas construction;
- Onshore upstream oil installation;
- Onshore and offshore distribution pipelines;
- Onshore and offshore oil and gas drilling service;
- Oil and gas well maintenance service;
- Electricity generation;
- Construction of electricity installation;
- Geothermal electricity generation;
- Supermarkets (with areas less than 1,200 sqm);
- Department store (with areas between 400 – 2,000 sqm);
- Ports;
- Airport and airport supporting services;
- Maritime cargo handling;

- Telecommunication;
- E-commerce;
- Pharmaceutical industry; and
- Hospitals.

What business activities are closed for investments?

There are six business sectors closed for investments for both domestic and foreign companies. These are:

- Class-I narcotics and cultivation;
- All forms of gambling and/or Casino activities;
- Fishing of endangered species;
- Utilization of corals found in nature for the production of jewelry, souvenirs, building materials, etc.;
- Chemical weapons production;
- Alcoholic beverage manufacturing;
- Manufacturing of beverages containing alcohol-wine;
- Manufacturing of beverages containing alcohol-malt; and
- Industrial ozone-depleting substances industries and industrial chemicals.

Corporate Establishment

Corporate Establishment

Indonesia's government has sought to simplify the corporate establishment process through the Omnibus Law. As such, Government Regulation in Lieu of Law No. 2 of 2022 has amended several aspects of the corporate establishment process and norms of doing business in Indonesia.

Based on the Investment Coordinating Board of the Republic Indonesia Regulation No. 4 of 2021 (BKPM Reg 4/2021), the minimum capital requirement for a foreign investment company or PT PMA shall be a total investment of at least10 billion rupiah (US$696,000). Previously, the minimum capital requirement for a PT PMA was 2.5 billion rupiah (US$167,065).

Further, the government has also implemented a risk-based approach to the issuance of business licenses. Business activities will be assessed on the scale of the hazards they can potentially create (low risk, medium-low risk, medium-high risk, and high risk).

Previously, foreign businesses had to endure multi-layered bureaucratic structures that involved multiple local and federal authorities, making it difficult for investors to determine which business licenses to obtain.

Another important amendment is the introduction of individually owned companies for Indonesian citizens. It is a type of company category that can be incorporated by a single individual.

What are my options for investment?

Investors should assess their specific needs carefully before deciding which corporate structure to operate from. Using a reliable local advisor is recommended for first-time investors in the country, as they find it easier to remain compliant with applicable regulations.

There are two legal options for foreign investors looking to set up in the country: a PT PMA or representative office (RO).

Foreign investment company

Establishing a foreign investment company or PT PMA, is the preferred structure for companies looking to have a legal presence in the country. Foreign investors will need to have a minimum paid-up capital equivalent of 10 billion rupiah (US$696,000), an increase from the previous 2.5 billion rupiah (US$174,135), as the government aims to attract more high-value investments into the country.

RELATED READING

Opportunities in Indonesia's Special Economic Zones
ASEAN Briefing Magazine
July, 2022

In this issue of the ASEAN Briefing magazine, we provide an overview of Indonesia's special economic zones and explore the tax incentives available. Finally, we discuss choosing the ideal location in Indonesia's SEZs by highlighting select zones.

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Set up requirements for a foreign investment company

According to BKPM Reg 4/2021, investors looking to incorporate a PT PMA need to adhere to the following requirements:

- A minimum paid up capital of 10 billion rupiah (US$696,000) to cover operational activity;
- Appointment of two shareholders (these can be foreign individuals or corporations - the percentage of local involvement will depend on the foreign ownership limitation based on the Positive Investment List);
- The appointment of at least one commissioner and a director (these can be held by foreign individuals), although it is advisable to have one local director for the ease of administration; and
- The director will be responsible for running the day-to-day activities of the company.

Set up process for a PT PMA

1. Reserve a company name with the Ministry of Law and Human Rights (which should not be similar to the name of other companies or contain vulgar language), Further the company name shall consist of three words and can be in English.
2. Determine the industrial business classification code (KBLI) based on the intended business activities.
3. Establish a legal entity with the company's activities stated in the Deed of Establishment (this must be done with a local notary and the Deed of Establishment will have to be ratified by the Ministry of Law and Human Rights).
4. Obtain a taxpayer identification number from the local tax office and domicile letter from the district government (businesses establishing in Jakarta do not require a domicile letter).
5. Obtain a tax registration certificate through the tax office where the business is domiciled.
6. Obtain a Business Identification Number (NIB) by applying through the Online Single Submission (OSS) system. The NIB functions as the company's import identification number, customs ID, and registration certificate. Further, the NIB will also automatically register your company under the government's health and social security scheme.
7. Some companies may need to apply for additional business licenses (such as for mining and fintech). Business licenses will now be issued based on the assessment of 'business risk level' determined by the scale of hazards a business can potentially create.

Risk-based business licensing for a PT PMA

Government Regulation 5 of 2021 (GR 5/2021) — an implementing regulation of the Omnibus Law — introduces criteria on how business licenses are issued in the country.

Business licenses will now be issued based on the assessment of 'business risk level', determined by the scale of hazards a business can potentially create.

To determine the risk level, the government will conduct a risk analysis of each application before deciding on issuing a business license. This will comprise of:

1. dentifying the relevant business activity;
2. Assessing the hazard level;
3. Assessing the potential occurrence of hazards;
4. Determining the risk level and business scale rating; and
5. Determining the type of business license.

Based on the aforementioned risk analysis, the businesses activities undertaken by the applicant company will be classified into one of the following types:

- Low-risk businesses;
- Medium-low risk businesses;
- Medium-high risk businesses; and
- High-risk businesses.

Based on this risk-based approach, the lower the business risk, the simpler the business licensing requirements will be.

What sectors will be impacted?

The government will undertake the risk-analysis for business activities in the following sectors:

1. Maritime affairs and fisheries;
2. Agriculture;
3. The environment and forestry;
4. Energy and mineral resources;
5. Nuclear energy;
6. Industry;
7. Trading;
8. Public works and housing;
9. Transport;
10. Health, medicine, and food;
11. Education and culture;
12. Tourism;
13. Religious affairs;
14. Post, telecommunications, broadcasting, and electronic system, and transactions;
15. Defense; and
16. Employment.

What are the requirements to obtain a business license?

The requirements vary depending on the risk level of the business with those in the high-risk categories requiring more permits and licenses.

The first stage of the process is obtaining an NIB through the OSS system. To register for an NIB, businesses will need to provide the following information:

- Taxpayer number (*Nomor Pokok Wajib Pajak* – NPWP);
- Business activity code according to the KBLI;
- Business profile;
- The capital structure of the business; and
- The proposed location of the business.

Furthermore, the OSS system will be linked to all relevant ministries, such as the Ministry of Finance, the Ministry of Home Affairs, and the Ministry of Law and Human Rights.

Low-risk business activities

Low-risk business activities are only required to obtain an NIB to commence their operations. In addition to serving as the formal identity of the business, the NIB also serves as a company's import identification number, as well as the number for registering with the national social insurance program.

Medium-low risk business activities

Business activities in this category must obtain a NIB and Certificate of Standards before beginning operations. A Certificate of Standards is a statement of the fulfillment of certain business or product standards, which must be filled in through the OSS system.

The NIB allows the business to conduct activities from 'preparation to the 'commercial stage'.

The preparation stage includes:

- The procurement of tools or facilities;
- Land acquisition;
- Recruitment of manpower;
- Feasibility studies;
- Financing operations for the construction phase.

The commercial-stage includes:

- The production of goods/services;
- Distribution of goods/services;
- Marketing of goods/services; and
- Other commercial activities.

Medium-high risk business activities

For medium-high risk business activities, companies will need to obtain a NIB and Certificate of Standards. However, the certificate will need to be verified by the central or regional government.

A company with a NIB and an 'unverified' Certificate of Standards are only permitted to conduct activities deemed in the preparation stage of operations.

Once the central or regional government is satisfied the business has fulfilled the specific business standards, they will issue the 'verified' certificate and the company can begin the commercial stage of operations.

High-risk business activities

High-risk business activities will require an NIB and a license to operate. The license will be issued once the business has fulfilled certain conditions and verifications set out by the central or regional government, which may include an environmental impact analysis.

The NIB, however, allows the business to conduct activities in the preparation stage of operations. Depending on the products or services being provided, businesses may have to obtain other supporting licenses to conduct commercial activities regardless of what risk level their activities are classified as.

An illustration of the licensing requirements can be seen below.

Business line	Business scale	Risk level	License	Issuing Authority
Wholesale distribution	Micro, small, medium, and large	Low	NIB	Governor, or Regent or Mayor
E-commerce operator	Large and medium	High	NIB and license	Ministry of Trade
Freight forwarding	All sizes	Medium-high	NIB and Certificate of Standards	Governor

Individually incorporated companies

Government Regulation 8 of 2021 (GR 8/2021), an implementing regulation of the Omnibus Law, which makes amendments to the Company Law of 2007 by introducing the concept of "individually owned companies" as well as leaving the required minimum paid-up capital to the discretion of the founder(s) of the company.

Individually owned companies are a new type of company category in Indonesia that can be incorporated by a single individual, who is at least 17 years of age.

Investors should note that GR 8/2021 only impacts Indonesian nationals.

GR 8/2021 sets out the criteria for businesses to get classified as micro or small enterprises, which was not previously regulated. Through this reform, the government hopes to increase the number of officially registered micro and small enterprises who will thus pay tax as well as contribute to the national social security programs. Currently, the majority of Indonesia's 64 million or so micro, small, and medium enterprises (MSMEs) are in the informal sector and employ more than 70 million informal workers.

Importantly, an individually owned company is only applicable to businesses categorized as micro or small enterprises. GR 8/2021 states that businesses categorized as micro or small enterprises must fulfill the following capital or annual sales criteria.

Enterprise scale	Capital	Annual sales
Micro	Up to 1 billion rupiah (US$69,000), excluding land and buildings	Up to 2 billion rupiah (US$138,000)
Small	More than 1 billion rupiah (US$69,000) and up to 5 billion rupiah (US$345,000), excluding land and buildings	More than 2 billion rupiah (US$138,000) and up to 15 billion rupiah (US$1 million)

Further, the incorporation of an individually owned company does not require a deed of establishment, rather the individual only needs to fill out an establishment statement through the Ministry of Law and Human Rights (MOLHR) website to obtain a registration certificate. The statement must include the following information:

- Name and domicile of the company;
- Purpose and business activities of the company;
- The amount of authorized, issued, and paid-up capital of the company;
- Number of shares of the company;
- Details of the founder of the company; and
- Tax number of the founder of the company.

The individually owned company must change its legal status to a limited liability company if the number of shareholders is more than one person, or the business no longer meets the criteria of a micro or small business.

Another important aspect with regards to an individually owned company is that their liability is limited to the company's capital.

Minimum authorized capital required

GR 8/2021 stipulates that the amount of paid-up capital is to be agreed upon by the founder(s) of the company.

Under the 2007 Company Law, companies need to have paid-up capital of at least 50 million rupiah (US$3,450). Once the founder(s) of the company are agreed on the amount of authorized capital, they must pay at least 25 percent of the total paid-up capital, and the proof of payment must be electronically submitted to the MOLHR within 60 days from the date of establishment.

Obligation to file financial statements

Financial statements of individually owned companies must be submitted within six months of the end of their accounting period. Failure to submit financial statements will result in administrative sanctions ranging from a written warning to the suspension of business activities.

Improving the ease of doing business for MSMEs

MSMEs are the backbone of Indonesia's economy (contributing to 60 percent of GDP) as well as its largest source of employment.

However, a major impediment to these businesses is that they are handicapped in accessing bank loans and other types of financing because they and their workers are unregistered. This makes it difficult for the government to support MSMEs expand and grow, or since the onset of the pandemic, survive. As a result, an estimated 43 percent of Indonesian MSMEs were forced to shut down, and more are expected to close as the government has extended partial lockdown measures in the country.

GR 8/2021 could give individuals the protection and benefits of a limited liability company without needing to fulfill all the administrative requirements. Moreover, these entities can access sources of financing, such as through non-banking institutions. These organizations (such as fintech firms) can provide microloans and are already gaining popularity among the country's large unbanked and underbanked population.

The microloans are popular because of their convenience as it normally takes just 24 hours for the funds to be disbursed, and the terms and maturity are small and short – with borrowers typically receiving not more than US$100.

Representative offices

Opening an RO is the fastest and simplest way of establishing a legal entity in the country. This set up is a temporary arrangement – ROs are not allowed to engage in any commercial activities, issue invoices, sign contracts, or earn any revenue. Foreign investors, however, can own 100 percent of this business entity and don't have to contribute the same paid-up capital required by PT PMAs.

The business activities of ROs are limited to market research activities, obtaining information on potential clients, developing trade contacts, and gathering information on regulations and laws. There are four types of ROs, which we explore below.

General representative office (KPPA)

A KPPA is a general RO structure, ideal for investors who are still exploring opportunities in Indonesia. The KPPA has two main responsibilities:

- Represent, supervise, and manage its parent company in Indonesia; and
- Prepare for the establishment of a limited liability company for the parent company.

The KPPA must be incorporated in the capital of any Indonesian province and must be located in an office building. The KPPA permit is valid for an initial three years and can be extended twice for one year each time.

Representative office for a foreign trading company (KP3A)

A KP3A is similar to a KPPA but is more ideally suited for manufacturers or product owners looking to establish a network of distributors in the country. The KP3A is divided into the following categories:

- Act as a buying/or selling agent for the parent company, performing liaising or promotional activities; or
- Act as a manufacturing agent with its activities also limited to market research and liaising.

Unlike a KPPA, the KP3A does not have to be established in the capital city of a province; they can set up in any district or regency in the country.

Foreign investors will also need to obtain a Foreign Company Trade Representative license (SIUP3A), which can be done through the OSS system of the BKPM. The KP3A permit is limited to two months (temporary license) to a maximum of one year (permanent license).

Representative office for a foreign construction company (BUJKA)

A BUJKA is an RO for foreign construction companies, and unlike the KPPA and KP3A entities, a BUJKA can undertake projects in Indonesia through a joint venture with a local construction company. The BUJKA license is valid for three years and the local partner must be a limited liability company.

Applicants must prove to the National Construction Services Development Board (LPJK) that they are classified as a 'large' construction company, and they must have a service business license issued by the Department of Public Works.

Representative office for a foreign oil and gas company (KPPA MIGAS)

Foreign oil companies can set up a representative office through a KPPA MIGAS permit. The license is valid for three years and applicants will need to seek prior approval from the BKPM.

Representative Office for a foreign electricity supporting services (JPTLA)

A JPTLA is a representative office for businesses in the field of electricity supporting services. The JPTLA must obtain a NIB and a business entity certificate.

The JPTLA business licensing is granted to the following activities:

- Construction of electricity installation;
- Consultation for electricity installation; and
- Maintenance of electricity installation.

The JPTLA can undertake high-cost electricity supporting services with the following threshold:

- Projects for the construction and installation of electricity infrastructure worth at least 100 billion rupiah (US$6.9 million); or
- Projects for consultation in the field of electrical maintenance and installation worth at least 10 billion rupiah (US$696,000).

Further, the JPTLA representative office must appoint an Indonesian citizen in charge of the office and conduct technology and knowledge transfers to Indonesian workers. The JPTLA must prioritize the utilization of domestic products as well as use high-tech and environmentally friendly technology.

General set up requirements for ROs

Foreign investors looking to open an RO will need to fulfil the following requirements:

- Register through the OSS online portal;
- The parent company's Articles of Association legalized by a notary and the Indonesian Embassy of the parent company's country of origin;
- Letter of Appointment by the Indonesian Embassy located in the parent company's country of origin;
- Latest financial statements of the parent company;
- Letter of intent legalized by a notary and the Indonesian Embassy located in the parent company's country of origin;
- Certificates demonstrating competency in the relevant industry or sub-sector;
- Recommendation letter from the Ministry of Energy and Mineral Resources (for KPPA MIGAS applicants;
- Lease agreements;
- Must be located in the capital of a province (unless it is a KP3A applicant); and
- A letter that states the RO will not engage in any commercial activities in Indonesia.

Protection and empowerment measures for small businesses

Indonesia's Government Regulation 7 of 2021 (GR 7/2021) looks to provide greater protection and empowerment to Indonesia's cooperatives, micro, small, and medium-sized enterprises (MSMEs).

GR 7/2021 provides several facilities to encourage the growth of local MSMEs, such as mandating regional governments to provide at least 30 percent of the total land area for commercial areas for the promotion and development of MSMEs. In addition, the regulation has made it easier for MSMEs to obtain a business license, tax reductions, and reliefs, and are exempt from paying the provincial or the regency/city minimum wage.

MSME criteria

GR 7/2021 expands the criteria for an MSME. Previously, there were only two criteria: assets and revenue, and each had its own threshold for a company to be recognized as an MSME. Under GR 7/ 2021, MSMEs are categorized by their business capital or annual sales. The criteria exclude land and buildings.

Micro enterprises

Micro enterprises are businesses that have capital of no more than 1 billion rupiah (US$69,900) and annual sales of no more than 2 billion rupiah (US$139,800).

Small enterprises

Small enterprises are businesses that have capital of more than 1 billion rupiah (US$69,900) and annual sales of more than 2 billion rupiah (US$139,000) but less than 5 billion rupiah (US$349,551).

Medium enterprises

For medium enterprises, they are businesses with a capital of more than 5 billion rupiah (US$349,551) and annual sales of more than 15 billion rupiah (US$1.04 million) but less than 50 billion rupiah (US$3.5 million).

Ease of obtaining a business license

The Omnibus Law has implemented a centralized business licensing system. An MSME only needs to submit their national ID and a reference letter from their neighborhood association online to receive their business number.

The government will provide technical guidance, consultation, and training for all MSMEs in this process, hoping it will also increase their knowledge of national standards, such as for Halal certification, as well as other regulatory certificates.

Ease of obtaining financing and incentives

MSMEs can use their business activity as a form of credit guarantee to obtain financing. Additionally, their tax administration process has been simplified.

Micro and small enterprises are eligible for incentives in the form of:

- Regional tax reduction or relief;
- Regional fee reduction or relief;
- Subsidized loans;
- Capital for MSMEs with innovative products that have market potential or are technology-based;
- Financing of intellectual property rights;
- Vocational training; and
- Support for research and development.

The government can act as a guarantor for up to 80 percent of loans or financing provided by banks and other non-bank financial institutions to MSMEs.

Micro and small businesses must first fulfill the following criteria:

- Must have just started business operations or are already operating;
- Have a gross income of no more than 7.5 billion rupiah (US$524,381) per year;
- The business activities are in:
  - » Agriculture;
  - » Plantations;
  - » Livestock;
  - » Guesthouses/hostels;
  - » Boarding houses;
  - » Campgrounds;
  - » Industry;
  - » Transportation;
  - » Restaurants; and
  - » Stalls; and/or
- Procure government goods or services electronically.

Medium-sized enterprises and large businesses can also receive the above-mentioned incentives if they develop export-oriented products, hire a local workforce, utilize micro or small enterprises to expand the business, and train and provide upskilling programs for micro or small businesses.

MSMEs are also exempt from paying the regional/city minimum wage rates.

Priority location and development

GR 7/2021 mandates ministries, state-owned enterprises, and regional-owned and private businesses to allocate 30 percent of their commercial areas, shopping centers, and public infrastructure for the promotion and development of MSMEs. Public infrastructure includes airports, toll road rest and service areas, railway stations, and terminals.

The rental fee for the area used for the promotion of the MSME should not exceed 30 percent of the commercial rental fee.

Government and state-owned entities to help facilitate demand

The central and regional government(s) are obligated to allocate 40 percent of their goods and services procurement budget for MSMEs.

Cooperatives

There are also provisions to assist Indonesian cooperatives. GR 7/2021 reduces the requirement of primary cooperatives from 20 members to nine, and cooperatives can now be either single-purpose or multi-purpose cooperatives, aimed at attracting more members through this enterprise.

Shariah-based cooperatives

GR 7/2021 allows for the establishment of shariah-based cooperatives, but the entity must contain the word ‘shariah’ in the official name, and the shariah principles must be stated in the cooperatives’ articles of association.

Taxation

Taxation

The Harmonized Tax Law (HTL) or Law No. 7/2021 overhauls Indonesia's existing tax structure. Changes include an increase in the value-added tax (VAT) rate, a new carbon tax, scrapped plans to reduce the corporate income tax (CIT), and changes to the topline personal income tax (PIT) rate.

The law aims to optimize tax revenue collection and compliance amid state revenues already battered to cover the costs caused by the pandemic. Some business groups have questioned the timing of the tax hikes, considering that economic recovery is still fragile.

Corporate taxation

Corporate income tax is set at a basic rate of 22 percent for the 2023 fiscal year. There are several facilities given to businesses regarding the CIT if they fulfil the following conditions:

- Companies that are listed on the stock exchange that offer the minimum requirement of 40 percent of total share capital are subjected to a three percent tax cut from the standard rate;
- Companies that have an annual turnover of 50 billion rupiah (US$3.5 million) are eligible for a 50 percent tax cut from the standard rate, which is imposed proportionally on the part of the gross turnover of up to 4.8 billion rupiah (US$336,000); and
- Companies with gross turnover of no more than 4.8 billion rupiah (US$336,000) are subject to a 0.5 percent tax of total turnover.

Value-added tax

Value-added tax in Indonesia is imposed on the provision of services or the transfer of taxable goods. VAT rates are set out below:

- 11 percent imposed on most manufacturers, retailers, wholesalers, and importers from April 2022 and 12 percent by 2025;
- Export of tangible and intangible goods are subject to zero percent VAT; and
- Export of services is subject to zero percent VAT.

The government's negative list sets out all the goods and services that are non-taxable. These include, among others – mining or drilling products, basic food commodities, food and drink served in hotels, restaurants, restaurants, stalls, and money, gold bullion and securities. insurance services, religious services, arts and entertainment services, non-advertising broadcasting services, medical health services, financial services, and educational services.

Personal income tax

Expatriate workers need to know that personal income tax (PIT) in Indonesia is determined through a self-assessment scheme.

The country has adopted a worldwide income taxation system, meaning that individuals considered as Indonesia tax residents pay tax to the government on the income they earned in Indonesia, and also on income they earned from abroad, unless there is an applicable double tax agreement.

Non-resident taxpayers will only be liable to pay PIT for income they earn in Indonesia, unless the country in which they are a tax resident has an applicable tax treaty with Indonesia. In these cases, the taxpayer might not pay any tax in Indonesia or pay a reduced amount.

Given these tax treatments, it is important for expatriate workers to understand their tax liabilities in Indonesia. It is advisable to use the services of registered local tax advisors to help determine which tax law regime will be applicable along with any exemptions that may bring.

Eligibility to pay income tax

Under Indonesia's previous income tax law, an individual is considered a domestic tax subject if they were present in the country for more than 183 days during a 12-month period, or they have an intention to stay in Indonesia.

Through PMK 18/2021, the government has provided further clarification on the definition of 'residing in Indonesia' and the 'intention to stay in Indonesia'.

'Residing in Indonesia' is defined as an individual who:

- Lives at a place of residence in Indonesia that is at their disposal and can be accessed at all times, which they own, rent, and is not a place of transit;
- Have their vital interests in Indonesia; and
- Have their habitual abode in Indonesia.

An 'intention to stay in Indonesia' needs to be substantiated with the following documents:

- A permanent stay permit;
- A limited stay visa;
- A limited stay permit; or
- Other documents that support their stay of more than 183 days in Indonesia.

Territorial taxation for foreigners

Foreigners who have become domestic tax subjects will only be taxed on Indonesian-sourced income. This is only applicable if they meet the expertise requirements from Appendix II of PMK-18.

Their expertise, however, must be supported by:

- A certificate issued by a government-authorized institution, or have a minimum of five years' work experience in the field of science, technology, and math; and
- An obligation for knowledge transfer to an Indonesian citizen.

The territorial tax treatment is available for four years of residency. If the foreign individual leaves Indonesia and re-enters Indonesia within the four-year period, the territorial taxation will begin from the time they first became a domestic tax subject.

Foreigners looking to apply for the territorial tax treatment must do so through the Directorate General of Taxes (DGS). Those who were already a domestic tax subject prior to the issuance of PMK-18/2021 can also apply to the DGS for this tax treatment. Certain foreign expatriates, because of their special legal status, are not considered as Indonesian tax residents and are exempted from paying PIT, even if they stay for more than 183 days per year or reside and intend to stay in Indonesia.

These exemptions apply for:

- Foreign diplomatic and consular personnel;
- Military personnel and civilian employees of foreign armed services; and
- Representatives of international organizations specified by the Minister of Finance.

When it comes to tax rates, residents and non-residents are taxed differently:

- Residents are subject to a withholding progressive tax (their net taxable income is set at graduated rates, with current rates ranging from five percent up to a maximum of 30 percent, depending on an individual's income); and
- Non-residents are subject to a final withholding flat tax of 20 percent on gross income.

Personal Income Tax Rates in Indonesia	
Annual income	**Rate (%)**
Up to 60 million rupiah (US$4,220)	5
Above 60 million rupiah (US$4,220) to 250 million rupiah (US$17,500)	15
Above 250 million (US$17,500) to 500 million rupiah (US$35,170)	25
Above 500 million rupiah (US$35,170) to 5 billion rupiah (US$351, 000)	30
Above 5 billion rupiah (US$351, 000)	35

Deductions and relief

There are several elements that can be deduced from the gross income when determining the annual taxable income of an individual.

It is worth noting that a family is regarded as a single tax reporting unit with a single tax identity number (NPWP) in the name of the head of the family. The head of the family needs to report the income of their dependent spouse and children on their tax return.

The following personal deductions are available for resident taxpayers.

Income Tax Deductions in Indonesia	
Basic of deduction	**Deductible amount per year**
Individual taxpayer	54 million rupiah (US$3,739)
Spouse	Additional 4.5 million rupiah (US$311)
Each dependent (max. 3)	Additional 4.5 million rupiah (US$311)

Employer compliance obligations

Income tax in Indonesia is mostly paid by withholding by the employer. The tax withheld by employers must be remitted to the government body on a monthly basis.

Employee compliance obligations

Expatriate employees are required to complete an annual tax return and compute their tax liability by March 31 of the following tax year.

The majority of PIT is paid through statutory employer withholdings on earned income. However, for any other income that a taxpayer in Indonesia earns on a regular basis, they must make monthly provisional tax payments to the tax department based on the income earned in the previous year.

Filing a tax return

To file a tax return, an individual must register as a taxpayer in order to obtain a tax identification number (NPWP). Expatriates must obtain a NPWP if they are a tax resident.

While employers are responsible for deducting tax from their employees' salaries, it is the individual employee's responsibility to register as a taxpayer and file their tax returns.

Tax deregistration when leaving Indonesia

It is highly recommended that expatriates leaving Indonesia permanently cancel their tax registration to avoid any misunderstandings, and thus avoid being continuously considered a tax resident of Indonesia.

To do so, expatriates should submit an application to the local tax office, which will then perform a tax audit on the taxpayer's returns and supporting documents prior to granting approval to deregister.

The individual should ensure that all tax related documents are readily available in anticipation of a tax audit (including bank statements, salary slips, foreign tax documentation if applicable, work contracts, etc.).

Dividends and offshore income exempted from income tax

To increase investments in Indonesia's financial markets and the real sector, the government has provided income tax exemptions for foreign dividends received by domestic taxpayers. The reinvestment requirements are not required for domestic dividends received by domestic corporate taxpayers.

Such concessions will require reinvestment for a certain period from when the dividend is received. PMK-18/2021 provides details on these reinvestment requirements:

Qualifying reinvestments are shown below.

- Investment in financial market instruments, such as:
  - Government bonds, including shariah instruments;
  - Bonds or sukuk issued by a state-owned enterprise, private companies;
  - Financial investments in perception banks including shariah banks; or
  - Other legal forms of investments.

- Investments in financial instruments outside the money market, which include:
  - Investment in real sector;
  - Investment in infrastructure through a private-public partnership;
  - Equity cooperation in an already existing company domiciled in Indonesia;
  - Cooperation with the Indonesian Sovereign Wealth Fund; or
  - Lending to small and medium-sized businesses in Indonesia.

The investment must be held for a minimum of three years from when the dividend or offshore income is received. The taxpayer must also invest the dividend or offshore income recorded as part of the qualifying investment by the end of the third or fourth month after the end of the fiscal year. Finally, the investment cannot be transferred except to another qualifying investment.

Type of income	Reinvestment required	Threshold (%)
Domestic dividends received by corporate taxpayers	No	N/A
Domestic dividends received by domestic individual taxpayers	Yes	No
Offshore dividends received by domestic taxpayers – from a listed company	Yes	No
Offshore dividends received by domestic taxpayers – from a listed company	Yes	30
Offshore income received from a permanent establishment (PE)	Yes	30
Offshore income received from an active business (not from a PE or subsidiary)	Yes	No

Note: 30 percent from profit after tax
Source: PwC - Taxflash

If the reinvestment requirement provides a 30 percent threshold, the taxpayer can enjoy the full exemption if this threshold is fulfilled. However, if the reinvestment is less than the 30 percent threshold, the taxpayer must pay income tax on the spread between the investment amount and the 30 percent threshold to enjoy the exemption.

Investors should note that the exemption does not apply to foreign citizens who utilize the double tax avoidance agreement (DTA) between Indonesia and the partner country/jurisdiction of the DTA.

Digital tax

As of April 2022, under PMK 60/2022, non-resident suppliers of digital services within Indonesia can now be appointed as VAT collectors and as such, are now required to collect 11 percent VAT and pay to the Indonesian government.

The following utilization of intangible goods will now be subject to VAT:

a. The use of or right to exercise the copyright in the field of literature, art or scientific work, patent, design or model, plan, secret formula or process, trademark, or other forms of intellectual property right, industrial property right, or other similar rights;
b. The utilization or right to use industrial, commercial, or scientific tools/equipment;
c. Utilization of knowledge or information obtained from the scientific, technical, industrial, or commercial sectors;
d. The use of additional or complementary assistance in the utilization or right to exercise the right as referred to in point (a), the utilization or right to use the tools/equipment as referred to in point (b), or provision of knowledge or information as referred to in point (c);
e. The use of or the right to use motion picture films, films or video tapes for television broadcasting, or sound tapes for radio broadcasts; and
f. The acquisition of all or part of the rights relating to the use or granting of intellectual property rights, industrial property rights, or other rights as referred to in points (a) to (e).

The utilization of intangible taxable goods also includes the utilization of digital goods.

The government recognizes the following e-commerce entities based on their activities:

- Merchants (sellers): Businesses or individuals that conduct electronic offerings through electronic systems either managed or owned by themselves or through an e-commerce organizer.
- E-commerce organizers (PPMSE): Businesses or individuals that provide electronic systems to facilitate e-commerce transactions. These include business models, such as online streaming platforms, online marketplaces, online classified advertisements, and price comparison platforms, among others.
- Intermediary Service Organizers (PSP): These are businesses or individuals that provide search system facilities (for example, Google, Bing) or those that provide information storage services (hosting and caching).

The aforementioned entities can be either domestic or foreign businesses and the legal requirements for each type will also differ.

Domestic merchants

Domestic merchants must obtain a business license from the government's Online Single Submission (OSS) Agency. Under the country's Standard Classification of Business Fields, businesses carrying out trading via the internet need to comply with KBLI classification 4791.

Domestic e-commerce organizers

Businesses who operate their own e-commerce facilities are classified as PPMSEs and must obtain a special license named *Surat Izin Usaha Perdagangan melalui Sistem Elektronik* (business license for trading through an electronic system (SIUPMSE).

The SIUPMSE can be applied through the OSS system and businesses will need to adhere to certain criteria to be eligible. These are:

- Obtaining an Electronic System Provider certificate within 14 days after the SIUPMSE is issued;
- Must provide a website and/or application name to the government;
- Must establish a consumer complaints section on their website/application, which includes e-mail address and contact number in addition to the details of the Directorate-General of Consumer Protection and Trade Compliance;
- The PPMSE must provide facilities that inform or link customers to the OSS Agency's website; and
- The business must submit its transaction data (subscribers, payments, complaints, contracts, shipments etc.) to Statistics Indonesia (BPS), the government agency responsible for conducting statistical surveys.

Foreign merchants

Foreign merchants must provide a valid business license issued in the country where they are established to the domestic PPSME company which provides their electronic communication facilities. The domestic PPSME will then need to report all the transactional activities (subscribers, payments, complaints, contracts, shipments, etc.) of the foreign merchant to the BPS.

Foreign e-commerce organizers

Foreign PPSMEs that have been appointed as a 'VAT collector' by the Ministry of Finance are obligated to charge the 11 percent VAT rate on the sales of digital products to Indonesian consumers.

They must first have local transaction values of the following:

- The PPSME has completed transactions with Indonesian consumers that exceeds 600 million rupiah in a year or 50 million rupiah (US$3,500) per month; or
- Traffic or visitors to the e-commerce site exceeds 12,000 users per year or 1,000 users per month.

Withholding tax

Withholding tax applies to both residents and non-resident companies in Indonesia. The tax rate on dividends is 15 percent for residents and 20 percent for non-residents (unless they have an applicable tax treaty). The withholding tax rate on interest and royalties are also set at 15 percent for residents and 20 percent for non-residents.

Withholding Tax Rates for Resident and Non-Resident Companies in Indonesia		
Nature of income	Tax rate (%)	
	Residents	Non-residents
Dividends	15	20
Interest	15	20
Royalties	15	20

Luxury-goods sales tax

The import of certain manufactured taxable goods may be liable to luxury-goods sales tax (LST). LST must be accounted every month together with VAT.

A summary of the LST rates is set out below.

Luxury-Goods Sales Tax in Indonesia

Group	LST rates (%)							
	10	20	30	40	50	60	75	125
Luxury residences such as luxury homes, town houses, condominiums, apartments.		●						
Dirigibles, balloons, and other non-powered aircraft				●				
Firearms and other arms, except for state purposes				●	●			
Aircraft other than those for the state or commercial air-transport purposes					●			
Luxury cruisers, except for the need of the state and public transport as well as yacht for tourism							●	
Motor vehicles	●	●	●	●	●	●		●

Stamp duty

Individuals, companies, and other organizations in Indonesia must pay stamp duties on certain legal documents. As of January 2021, the standard stamp duty tax rate is 10,000 rupiah (US$0.70).

Indonesia requires stamp duties on two main types of documents: documents created to explain events of a civil nature and documents to be used as evidence in a court of law.

Documents of a civil nature include the following:

- Agreements, certificates, statement letters, and similar documents and their copies;
- Notarial deeds and executorial deeds (grosse) and their copies;
- Deeds made before a land deed officer (also known as a land conveyance officer) and their copies;
- Securities in any form and name; and
- Documents stating a sum of money above 5,000,000 rupiah (US$350), which describe the receipt of money or contain an acknowledgment of debt payment or settlement, either entirely or partially.

In addition to these documents, the Law also applies to the following civil documents:

- Securities transaction documents, including futures contract transactions in any name or form;
- Auction documents in the form of excerpts, minutes, copies, and minutes of auction executorial deeds (grosse); and
- Other documents stipulated by Government Regulation.

The Law exempts the following documents from stamp duty:

- Land transfer and building rights documents used for handling and restoring social conditions following natural disasters;
- Land transfer and building rights documents used solely for religious or non-commercial activities;
- Documents relating to the implementation of government programs and monetary or financial policies; and
- Documents relating to the implementation of international agreements under binding international treaties or reciprocal laws.

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Electronic stamp duty

Electronic stamps, which carry a unique code and description, will apply to electronic transaction documents with a value above 5,000,000 rupiah (US$350).

The Indonesian government, however, is still building the infrastructure to manage electronic stamp duties.

Indonesia's DTA network

Indonesia has signed over 60 double tax avoidance (DTA) agreements with various countries, which eliminate instances of double taxation from cross-border activities. The withholding tax rate on dividends are set between seven to 15 percent whereas interest rates are set between five to 15 percent unless an applicable tax treaty is in place wherein there will be no tax.

The tax rate for royalties is between 10 to 15 percent.

Countries with Signed DTAs with Indonesia

A-B	C-J	K-O	P-S	T-Z
Algeria	Cambodia	Korea (North)	Pakistan	Taiwan
Armenia	Canada	Korea (South)	Papua New Guinea	Tajikistan
Australia	China	Kuwait	Philippines	Thailand
Austria	Croatia	Laos	Poland	Tunisia
Bangladesh	Czech Republic	Luxembourg	Portugal	Turkey
Belarus	Denmark	Malaysia	Qatar	Ukraine
Belgium	Egypt	Mexico	Romania	United Arab Emirates
Brunei	Finland	Mongolia	Russia	United Kingdom
Bulgaria	France	Morocco	Serbia	United States of America
	Germany	Netherlands	Seychelles	Uzbekistan
	Hong Kong	New Zealand	Singapore	Venezuela
	Hungary	Norway	Slovakia	Vietnam
	India		South Africa	Zimbabwe
	Iran		Spain	
	Italy		Sri Lanka	
	Japan		Sudan	
	Jordan		Suriname	
			Sweden	
			Switzerland	
			Syria	

4

Human Resources and Payroll

Human Resources and Payroll

Labor law

The main sources of employment and labor laws in Indonesia are:

- Labor Law of 2003 on Manpower as amended by Law No. 11 of 2020 on Job Creation and recently revoked by Government Regulation in Lieu of Law No. 2 of 2022 on Job Creation;
- Law No. 21 of 2000 on Labor Union; and
- Law No. 2 of 2004 on Industrial Relations Dispute Settlement.

Fixed-term contracts

Under implementing regulation 35 of 2021 (GR35/2021), the government recognizes three types of fixed-term contracts (FTC):

- FTC based on the completion of work;
- FTC based on the period of time; and
- FTC related to non-permanent work.

GR 35/2021 states that all FTC types are for work that is temporary and can be completed within a set time period, therefore any contract extensions cannot be for prolonged periods (5 years maximum in total). Failing to adhere to these rules will result in the employee deemed to be on a permanent employment contract.

Indonesia's New Fixed-Term Contract System

	FTC based on completion of work	FTC base on period	FTC related to non-permanent work
Type of work	• Temporary work; or • One-time work	• Work that can be completed in short time; • Seasonal work; or • Work related to new products that are in in trial or experimentation.	• Work that is based on attendance; or • Work that changes based on volume or time.
Contract period	There is no specific maximum period, however, the employment agreement must include provisions on the expected period for work completion.	Maximum five years (including extension).	Maximum 20 days per month. If the employee works for 21 days per month or more for three consecutive months, then they will be considered permanent workers.

Compensation for FTC workers

Prior to the Omnibus Law, any party terminating the FTC was required to pay the other party compensation equivalent to the employee's salary for the remaining time of the FTC. If an FTC expired naturally, then neither party would have to pay compensation.

This has changed with GR 35/2021, which now obligates the employer to pay compensation to the employee, even if the employee terminates the FTC prematurely.

The employers must pay compensation upon:

- The expiry of an FTC;
- Each extension of the FTC; and
- Early termination of the contract, irrespective of who terminates the contract.

How is it calculated?

Compensation is calculated using the following formula:

Contract period	Compensation amount
More than one month but less than 12 months	(work period in months/12) x one month's salary
More than 12 months	
12 consecutive months	One month's salary

When an FTC expires and is then extended, the compensation for the initial contract must be paid when the FTC expires.

For any ongoing FTCs, the compensation payment will be calculated from November 2, 2020, the date from which the Omnibus Law came into effect. Further, foreign workers are not entitled to the aforementioned compensation.

Working hours

Normal working hours in Indonesia is 40 hours per week, which can be divided into eight hours per day for five working days or seven hours per day for six working days.

GR 35/2021 recognizes working hours of less than 40 hours per week if the company has the following characteristics:

- Undertake work that can be completed in less than 35 hours per week;
- Can implement flexible working hours; and
- Undertake work that can be completed outside a particular location.

Overtime

The regulation extends the overtime working hours to four hours per day and 18 hours per week, which does not apply to public holidays. GR 35/2021 requires that collective labor agreements, company regulations, or employment agreements specifically state which roles are entitled to overtime pay. If this is not expressed, then the employee will automatically be entitled to receive this payment.

The overtime payment is based on the employee's monthly wage. Every hour, the calculation is applied, which is 1/173 times the monthly wage. The calculation of the overtime payment is also categorized by the day of the overtime: working days, weekends, or public holidays.

The regulation does include provisions on employees that are exempt from overtime pay eligibility. These are:

- Employees that hold certain positions with responsibilities as thinkers, controllers, planners, executors, etc.;
- Workers whose working hours cannot be capped, such as those in managerial roles; and
- Workers that are paid high salaries.

Outsourcing

The regulation makes it clear for employers to include the provisions of transfer of rights protection in the contract in the event of a change in an outsourcing company. The outsourcing company must be a legal entity and comply with the business license they were issued from the central government.

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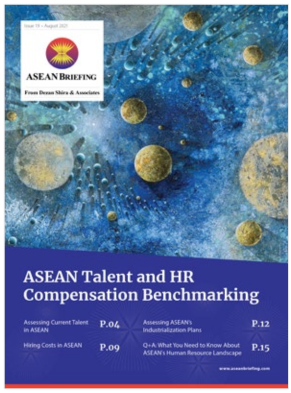

ASEAN Talent and HR Compensation Benchmarking
ASEAN Briefing Magazine
August, 2021

In this issue of the ASEAN Briefing magazine, we provide an overview of current talent availability in ASEAN, and future factors that will impact human resource development in the region. We then explore hiring costs in the bloc before finally focusing on the industrialization plans of select ASEAN members.

AVAILABLE HERE

Termination of employment

GR35/2021 sets the procedures to unilaterally terminate employment. The employer must first notify the employee in writing, setting out the reasons for termination, and the termination payments and entitlements at least 14 business days before the date of termination.

If the employee has no objection to the termination, then the employer can notify the Ministry of Manpower of this notice. If, however, the employee objects to the termination, they must provide, in writing, the reasons for this within seven business days from receiving the termination notice.

Any disagreements related to termination should be discussed between the relevant parties to agree to mutual separation. If this fails, then the matter can be brought to the local employment office for mediation, and if this fails, to the Industrial Relations Court.

Prior to the changes in the Omnibus Law, employers had no right to unilaterally terminate employment in any circumstance, unless the termination was agreed upon by both parties through negotiations. The employer would then be able to obtain an approval for the termination from the labor courts and the employee was entitled to up to six months' salary.

If the employee has no objection to the termination, then the employer can notify the Ministry of Manpower of this notice. If, however, the employee objects to the termination, they must provide, in writing, the reasons for this within seven business days from receiving the termination notice.

Termination payments

Terminated employees are entitled to termination payments and the amount varies depending on the length of employment of the employee.

Termination payments are comprised of severance payments, long service pay, and compensation of rights. There is another component called separation pay, but this must be stipulated in the employment agreement.

Compensation pay refers to compensation for any untaken annual leaves and other costs incurred such as for relocation.

Long service pay refers to a type of compensation given to employees based on the number of years they have worked at the company. An employee who has had their contract terminated may be eligible for the long service pay in addition to their severance pay.

Severance Payment in Indonesia	
Completed years of service	**Severance payment**
Less than 1 year	1 month wage
More than 1 year but less than 2	2 months wage
More than 2 years but less than 3	3 months wage
More than 3 years but less than 4	4 months wage
More than 4 years but less than 5	5 months wage
More than 5 years but less than 6	6 months wage
More than 6 years but less than 7	7 months wage
More than 7 years but less than 8	8 months wage
More than 8 years	9 months

Service Payment in Indonesia	
Completed years of service	**Service payment**
More than 3 years but less than 6	2 months wage
More than 6 years but less than 9	3 months wage
More than 9 years but less than 12	4 months wage
More than 12 years but less than 15	5 months wage
More than 15 years but less than 18	6 months wage
More than 18 years but less than 21	7 months wage
More than 21 years but less than 24	8 months wage
More than 24 years	10 months wage

Reg 35/2021 does provide changes to calculating termination pay for certain cases, such as merger or consolidation of the company resulting in the termination of the employee, or closure of the company due to mounting losses, among others. In such cases, the severance pay is not as high as mentioned in the previous tables.

Termination Payment Formula

Reason for termination	Severance payment (as accordance to the previous tables)	Long service payment (as accordance to the previous tables)	Compensation of rights (as accordance to the previous tables)	Separation pay
Long-term illness or disability resulting in the worker unable to work for 12 moths	2x	1x	1x	No
Employee death				
Retirement	1.75x	1x	1x	No
• Merger, consolidation, separation of company and which the employee is not willing to continue with their employment or the employer will no longer accept the employee; • Employer carries out efficiency to prevent losses; • Acquisitions; • Employee's self-termination due to violations committed by the employer; and • Employer is involved in debt payment proceedings without suffering losses	1x	1x	1x	No
Force majeure but does not result in the company closing down	0.75x	1x	1x	No

Termination Payment Formula				
Reason for termination	**Severance payment** (as accordance to the previous tables)	**Long service payment** (as accordance to the previous tables)	**Compensation of rights** (as accordance to the previous tables)	**Separation pay**
• Acquisition resulting in changes of employment for the employee; • Efficiency due to employer's losses; • Closure of the company due to force majeure; • Company bankruptcy; • Employee's violation of the employment agreement (after being served warning letters); and • Employer is involved in debt payment proceedings as a result of its losses	0.5x	1x	1x	No
• Court decision finds the employee's allegations against the employer not proven; • Employee's voluntary termination; • Employee's absence without permission for five continuous working days; and • Employee being found guilty of a violation that creates losses for the company			Yes	Yes
Employee unable to work for six months due to detention by the authorities, and creates losses for the company			Yes	No
Employee unable to work for six months due to detention by the authorities, but does not create losses for the company		1x	Yes	No

Relevant visa categories for foreign workers

There are a variety of visas foreign visitors can apply for depending on their purpose of visit.

Business visas

This is a single-entry visa valid for 60 days upon arrival and can be extended up to four times. This type of visa is intended for businesspeople who are engaging in meetings in the country, attending conferences, or undertaking market research.

This visa must be sponsored by a legal entity in Indonesia and the holders are not allowed to gain employment while in the country.

Multiple entry business visas

Multiple entry business visas allow foreign visitors to make repeated trips into Indonesia for one year. The visa, however, has a 60-day limit upon arrival, meaning that visitors will have to leave the country before it expires before entering Indonesia again.

The requirements for obtaining this visa type are the same as that of the business visa. The fee is US$100.

Application requirements

The application requirements for the business visa is as follows:

- A passport valid for at least six months;
- A letter of invitation from the Indonesian-based sponsor mentioning the purpose of the applicant's visit, and length of stay. The Indonesian sponsor will also need to do an online application to the immigration office in Jakarta on behalf of the applicant;
- The process usually takes five working days by which the immigration office will issue a visa approval letter. This will then be sent to the applicant's nearest Indonesian Embassy, who will issue the visa.
- A business cover letter from the applicant's own company;
- One passport-sized photograph (white background);
- A copy of the applicant's round trip, electronic airline ticket;
- Pay the US$50 fee; and
- A bank statement proving the applicant has at least US$1,500.

Working visas

A work visa (IMTA) can only be applied by the Indonesian company that will hire the foreign worker. The company must prove to the Ministry of Manpower (MOM) that the foreign applicant is required to fulfil certain positions.

Foreign employees in Indonesia are not allowed to obtain work in the following sectors:

- Human resource management;
- Legal;
- Health and safety;
- Quality control; and
- Supply chain management.

Foreign worker utilization plan

On March 31, 2021, Indonesia's Ministry of Manpower issued Regulation No. 8 of 2021 (MOM Reg 8/2021) on the Employment of Foreign Workers. MOM Reg 8/2021 is an implementing regulation to GR 34/2021 and provides in detail the requirements for businesses to fulfill in order to hire foreign workers.

For a local company to employ a foreign worker, they must prepare a Foreign Worker Utilization Plan (*Rencana Penggunaan Tenaga Kerja Asing* (RPTKA)) — a document that details the specific work, position, and length of employment the foreign employee will undertake in Indonesia. The RPTKA now also serves as the basis for the MOM to grant visas and stay permits.

Types of RPTKA

There are four types of RPTKA categorized under MOM 8/2021.

RPTKA Categories	
RPTKA type	**Validity**
Temporary work (production quality control, filming work, installation of machines etc)	Valid for up to six months and cannot be extended
Employment for more than six months	Valid for up to two years with possibility for extension
Employment that does not require payment to the Foreign Worker Utilization Compensation Fund	Valid for up to two years with possibility for extension
Employment in special economic zones (SEZ)	Valid for five years with possibility for extension; or The SEZ RPTKA for directors or commissioners can be granted for a period as needed by the employer

What is the process of hiring foreign workers in Indonesia?

It is the responsibility of the local company to apply for the RPTKA, which can be done through the online portal, under the Ministry of Manpower. The application is addressed to the Director of Foreign Manpower Utilization Management (*Direktur Pengendalian Penggunaan Tenaga Kerja Asing*). However, if the application is for less than 50 foreign workers – then the application is addressed to the Director-General of Manpower Placement Guidance and Expansion of Work Opportunity (*Direktur Jenderal Pembinaan Penempatan Tenaga Kerja dan Perluasan Kesempatan Kerja*).

Who can apply?

According to MOM 8/2021, employers that can employ foreign workers include:

- Government institutions, international bodies, and foreign state representatives;
- Foreign trade representatives, foreign news agencies conducting activities in Indonesia, and foreign representative offices;
- Foreign private companies conducting business in Indonesia;
- Legal entities such as private limited companies established in Indonesia;
- Social, religious, or cultural institutions;
- Entertainment management entities; and
- Other business entities are allowed to employ foreign workers.

RPTKA assessment

Once submitted, the MOM will conduct a feasibility study to see if the employer and prospective employee meet all the requirements. Employers are required to submit the following information:

- Identity of the employer;
- Reasons for utilizing a foreign worker;
- The position of the foreign worker within the company's organization structure;
- Number of foreign workers being employed;
- Contract length of the foreign employee;
- Working location of the foreign employee;
- Proof of mandatory employment reporting by the employer; and
- Statement letter affirming the following:
  - The designation of the Indonesian employee(s) assigned as a co-worker to the foreign employee;
  - The Indonesian employee(s) will receive training or education from the foreign employee in accordance with the position and qualifications of the foreign employee; and
  - Ensure the foreign worker returns to their home country once their work contract expires.
- Future plans to absorb Indonesian workers.

The results of this assessment will be issued in no more than two working days.

Personal information submission

The employer can submit the personal information and documents of the foreign worker after the RPTKA assessment or during the submission of the RPTKA documents. The personal information will be verified by the MOM within two working days.

RPTKA approval and payment

If the documents and information declared to the MOM are correct and complete, the MOM will issue a payment notification letter for the amount of US$100 to the Foreign Workers Compensation Fund (*Dana Kompensasi Penggunaan Tenaga Kerja Asing* or DKP-TKA). This amount is to be paid to the MOM every month.

Once the employer has made the payment, the MOM will issue the RPTKA approval, and the data will be sent to the Ministry of Law and Human Rights, who will process the visa and stay permits. Payment of the DKP-TKA is waived for foreign state representatives, international bodies, religious institutions, social institutions, and certain positions in the education sector.

Annual reporting obligations

Employers must submit an annual report to the MOM that covers the scope of the foreign worker's employment, the education or training facilitated to Indonesian co-workers, and the types of technology transfer implemented.

RPTKA exemptions

There are RPTKA exemptions for foreign workers that are the members of the board of directors, members of the board of commissioners, diplomatic or consular staff, or are hired by the local employer in connection to emergency activities, vocational activities, or in connection to production activities of an Indonesian-based tech startup.

Specifically, for tech-based startups and vocational training activities, the RPTKA exemption lasts for no more than three months, after which the company must apply for RPTKA approval. This application must be submitted at least two weeks before the expiration of the period of employment of the foreign worker, as stated in the foreign worker employment statement letter, which is issued in place of an RPTKA approval.

The MOM will issue the IMTA, and the immigration office will issue a limited stay visa (VITAS). Upon arriving in Indonesia, the applicant must convert their VITAS into a limited stay permit Kartu Izin Tinggal Terbatas (KITAS).

Additional requirements to obtain a VITAS

Once a foreigner has received sponsorship to work in Indonesia, they can apply for a limited stay visa (*Visa Tinggal Terbatas* or 'VITAS'). After the VITAS is secured, their immigration status changes to a limited stay permit (ITAS), which requires an official stamp from an immigration office.

After the VITAS is secured, their immigration status changes to an ITAS, which requires an official stamp from an immigration office.

Once the ITAS is secured, the foreign worker can receive a KITAS, which will permit them to work in Indonesia for up to 12 months. This can then be extended when the expiry date approaches.

The additional requirements to obtain a VITAS are:

- A letter detailing the applicant is of good standing from the embassy or consulate of the foreigner's country of origin; and
- A health letter stating that the applicant is free from any contagious diseases.

Changes in the length of limited stay permits

Before the changes were implemented in regulation GR 48/2021 (issued in March 2021), the limited stay permit (ITAS) was valid for a maximum of two years with the possibility to extend twice for two years each time. After six years, the foreigner must apply for a new ITAS.

Under GR 48/2021, the ITAS is now valid for five years and can be extended once for another five-year period, meaning the foreigner can stay in the country in total for 10 years. Any ITAS for work purposes that is valid for no more than 90 days can be extended up to a maximum of 180 days.

Further, expatriates who have obtained their ITAS at a designated port of entry, such as airports and ports, will not be required to apply for the ITAS at their local immigration office in Indonesia, as was previously stipulated. This should ease the burden on expatriates and provide added certainty.

Permanent stay visas

The permanent stay visa *Kartu Izin Tinggal Tetap* (KITAP) allows expatriates to permanently stay in Indonesia. To qualify for this visa, expatriate workers would need to have held a KITAS for four consecutive years, work in the same company, and having the same position. As with other visas, applicants will need a local sponsor. In addition to their employer, this could also be their spouse (who must be Indonesian).

Conversion of stay permits

Foreigners can now convert their visit stay permit to an ITAS, or an ITAS to a permanent stay permit (KITAP), or permanent stay visa/permanent residence. The KITAP is valid for five years and is extended automatically if the status of the expat does not change.

Obtaining a KITAP means the foreigner is no longer required to make the annual trip to the immigration office, as in the case of KITAS/ITAS holders, and no more costly visa extensions.

Introduction of the second home category

The government has now allowed foreigners who treat Indonesia as a 'second home category' to be eligible to receive a VITAS. The applicant must show evidence that they have settled in Indonesia. Further requirements will be issued in upcoming government regulations.

Visa on arrival, social visit visas, and multiple-entry visas

Visa on arrivals is still valid for 30 days but can no longer be extended. Previously, this visa type could be extended for a further 30 days once it expired.

The single-entry visa, or the social visit visa, is issued to foreigner travelers entering Indonesia for short internship programs, volunteer programs, meeting family, sports activities, and social activities, among others. The length of this stay is for 180 days and with no extension possible. This visa type was previously valid for 60 days and could be extended four times with a maximum stay of six months.

Finally, foreigners applying for the multiple entry visa can be granted 180 days stay in Indonesia, which can be extended for a total stay of no more than one year.

Social visit visas

Under GR 48/2021, the government has added 'pre-investment' activities as one of the activities foreigners can undertake in Indonesia under a visit visa. This refers to foreigners looking to start a business in Indonesia, and undertaking feasibility studies, among others.

Previously, a letter from a guarantor in Indonesia was required as part of the application process. Under the latest changes, if the foreigner does not have a guarantor, then the guarantee letter can be replaced with proof of payment of an 'immigration guarantee' to the Directorate General of Immigration.

Guarantors of expatriates

GR 48/2021 has provided an exemption for the requirement of a foreign worker in Indonesia to have a guarantor. Depending on their visa, foreigners needed a guarantor who was responsible for their activities in the country and report any change to their civil or immigration status to the authorities. This requirement was not required for foreigners legally married to Indonesians, foreign investors, or citizens of countries that also waived the guarantee requirements for Indonesians.

Foreign investors, foreigners who make Indonesia a second home, and foreigners engaged in pre-investment activities can now make an official payment to the Directorate General of Immigration, which will act as their immigration guarantee.

The payment will cover the cost of repatriation, deportation, or other immigration costs. If the immigration guarantee is not used during the foreigner's stay in Indonesia, the full amount will be paid back.

Second home visa

Indonesia has announced plans to issue second home visas, the first of its kind for the country, which will allow foreigners to stay for up to 10 years. Applicants must have a minimum of 2 billion rupiah (US$133,000) as proof of funds, a passport that is valid for a minimum of 36 months, and a curriculum vitae.

Positions open for employment for expatriate workers

On August 27, 2019, Indonesia's Ministry of Labor issued Regulation No. 228 of 2019 ("Regulation 228, 2019") to define the types of job positions foreign employees can hold in the country. The regulation widens the number of positions open to expatriate workers, consolidates the list of positions into one, and simplifies the approval process for foreigners and their employers.

Regulation 228 lists more than 2,000 job titles across 18 sectors that can now be filled by expatriates. The job titles are taken directly from the International Standard Classification of Occupations (ISCO), issued by the International Labor Organization (ILO). The job positions and the requirements in Regulation 228, 2019 will be re-evaluated by the government in two years.

This regulation was issued as an implementing regulation for Ministry of Labor Regulation No. 10 of 2018 (Regulation 10, 2018), intended to attract highly skilled foreign employees into Indonesia. Regulation 10 was also designed to provide greater convenience for local employers – previous regulations regarding foreign workers were scattered across individual sectors.

Sectors and Positions Open to Foreign Employees	
Sector	Number of positions available
Construction	181
Real estate	6
Education	780
Manufacturing/processing industry	70
Water and waste management, recycling, remediation	19
Art and entertainment	57
Transportation and warehousing	51
Hospitality and F&B	12
Agriculture, forestry and fisheries	10
Leasing, manpower, travel agencies, and other support services	3
Financial services and insurance	32
Health and social activities	4
Information and telecommunications	244
Mining and Excavation	592
Wholesale and retail trade, repair and maintenance of cars and motorcycles	46
Procurement of electricity, gas, geothermal, and cool air	40
Miscellaneous services	8
Professional, scientific, and technical activities	20

Minimum wage

Minimum wage is implemented through Government Regulation No. 36 of 2021 (GR 36/2021) that states that calculations for the monthly minimum wage are carried out by the provincial or district wage council.

The local government will determine the minimum wage based on economic and employment conditions. These comprise of the following variables:

- Purchasing power parity;
- Manpower absorption levels; and
- Median wage variables (the margin between the 50 percent of the highest wages and 50 percent from the lowest 50 percent of the lowest wages from employees in the same position).

These variables are assessed based on existing data from the last three years. In addition, the wage council will also take into account economic growth or provision rate inflation, as well as the per capita consumption of working household members.

If the provincial, regional, or city minimum wage is currently higher than the sectoral minimum wage, then businesses will have to apply the provincial, regional, or city minimum wage.

Who does the minimum wage apply to?

The minimum wage applies to all workers with less than one year of working in the company. After one year, the employee is eligible to be paid in accordance with the scale of wages in the particular company, if they wish to do so.

Moreover, businesses are no longer permitted to postpone the payment of the minimum wage for their employees like before, unless they are classified as micro or small businesses.

Hourly wages for part-time workers

GR 36/2021 stipulates that part-time workers are now eligible for hourly wages — a first for Indonesia. Hourly wages are reserved for part-time workers only.

The formula for determining the hourly wage is as follows:

Hourly wage = Monthly wage/126

To calculate the daily wage:

Six working days/week

Daily wage = Monthly wage/25

Five working days/week

Daily wage = Monthly wage/21

The employer and employee are allowed to set their agreement, but the final salary should not be lower than the calculation using the aforementioned formulas. The agreed-upon wage structure must also be reported to the Ministry of Manpower.

The wage must be paid in Rupiah or the Rupiah equivalent of a foreign currency. Any non-cash portion in payment may not exceed 25 percent of total wages.

Minimum wages for micro and small businesses

Micro and small enterprises are exempted from paying the provincial, regional, or city-level minimum wage. However, their workers should be paid at least 50 percent of the average public consumption or 25 percent above the poverty line at the provincial level.

Deductions

Any deductions made from an employee's salary must only be for one of the following:

- The payment of fines;
- Payment of damages caused by the employee (must not exceed 50 percent of the employee's monthly salary);
- Salaries paid upfront;
- Rent for property rented by the employer for the employee;
- Employee debts or installments to the employer; or
- Salary overpayments.

Sanctions

Employers who fail to pay their employees within the specified deadline can face a fine of five percent of the employees' wage, every day, starting from the fourth day after the deadline. If the wage is unpaid after the eighth day, the employer will be imposed an additional one percent of the employees' wage, per day.

Further, if an employer does not prepare a wage structure and wage scale for the employee, they can face the following sanctions:

- Written warning letters;
- Restriction on business activities;
- Temporary suspension of business; and/or
- Revocation of business license.

What are the new rates for 2022?

The following rates represent the minimum wage of each province in Indonesia. The rates in cities or districts are normally higher than the provincial minimum wage.

Indonesia Minimum Wage 2022			
Province	**Monthly minimum wage rate (rupiah)**	**Province**	**Monthly minimum wage rate (rupiah)**
Aceh	3,413,666 (US$220)	West Nusa Tenggara	2,371,407 (US$153)
North Sumatra	2,710,493 (US$175)	East Nusa Tenggara	2,123,994 (US$137)
West Sumatra	2,742,476 (US$177)	West Kalimantan	2,608,601 (US$168)
Riau	3,191,662 (US$206)	South Kalimantan	3,149,977 (US$203)
Riau Islands	3,279,194 (US$211)	Central Kalimantan	2,599,456 (US$167)
Jambi	2,943,033 (US$190)	East Kalimantan	3,201,396 (US$206)
South Sumatra	3,404,177 (US$220)	North Kalimantan	3,251,702 (US$210)
Bangka Belitung	3,498,479 (US$226)	Maluku	2,812,827 (US$181)
Bengkulu	2,418,280 (US$156)	North Maluku	2,976,720 (US$192)
Lampung	2,633,284 (US$170)	Gorontalo	2,989,350 (US$193)
Banten	2,661,280 (US$171)	North Sulawesi	3,485,000 (US$225)
DKI Jakarta	4,901,798 (US$316)	Southeast Sulawesi	2,758,595 (US$178)
West Java	1,986,670 (US$128)	Central Sulawesi	2,599,456 (US$168)
Central Java	1,958,169 (US$126)	South Sulawesi	3,385,145 (US$218)
Special Region of Yogyakarta	1,981,782 (US$128)	West Sulawesi	2,608,601 (US$168)
East Java	2,040,244 (US$131)	Papua	3,864,696 (US$249)
Bali	2,713,672 (US$175)	West Papua	3,282,000 (US$212)

Social insurance

Indonesia's social security programs are run by two organizations – the Social Security Administrator for Health (BPJS Kesehatan) and the Workers Social Security (BPJS Ketenagakerjaan) for pensions. The country launched its universal healthcare and pension programs in 2014, mandating every citizen and expatriate to join.

The government launched its ambitious universal healthcare and pension programs in 2014. Since its inception, the healthcare program has become the biggest in the world with more than 246 million participants. Registered Indonesians and expatriates are eligible for free health services ranging from dental care to medicines to physiotherapy. Further, patients are also eligible for free emergency and chronic care, in addition to organ transplants.

Who is eligible?

The government has made it mandatory for all Indonesian citizens and expatriates to participate in the social security programs. Expat employees must also enroll their families in the programs.

Classification of healthcare class facilities

The BPJS healthcare system is divided into three classes. This does not determine the level of treatment a patient receives, but it does determine the type of hospital room they will be given. Hospital rooms in Indonesia come with varying levels of comfort and size.

Class I patients are provided rooms with two to four other patients while class II patients have to share with three to five others. Class III patients will have to share with five to six patients.

How to calculate the healthcare premiums for employees?

The premium for employees is calculated as five percent of the monthly salary, with a salary cap of 12 million rupiah (US$839).

In the private sector, the employer must pay four percent and the employee the remaining one percent. For civil servants, the government contributes to three percent while the employee contributes two percent. In addition to the employee, the premium also covers their spouse and up to three dependent children up to the age of 21.

Employees earning less than 4 million rupiah (US$279) per month are eligible to receive Class I room facilities at the hospitals. Employees earning lower than this can receive Class II and III room facilities.

How to calculate the healthcare premiums for non-employees?

The premiums for individuals that are classified as non-employees/self-employed /non-formal workers is as follows:

- Class I – 150,000 rupiah (US$10.21) per person, per month;
- Class II – 100,000 rupiah (US$6.80) per person, per month; and
- Class III – 42,000 rupiah (US$2.85) per person, per month (for this specific class, the government will pay 16,600 rupiah (US$1.12) of the total amount, per person, per month)

How do you calculate pension premiums for employees?

The pension program covers the following:

- Accident compensation – provides protection for accidents occurring during or as a result of work;
- Old age benefits – provides protection for participants that are in retirement, laid off;
- Pension benefits – provides guaranteed income in retirement; and
- Life insurance – upon the death of the participant, their heirs can claim the benefits.

Under regulation 37/2021, which was issued in March 2021, the government unveiled a new unemployment benefit program, the Job Loss Security program (JLS), the first of its kind in the country.

The JLS scheme does not, however, provide universal coverage as only employees who are already registered with the Workers Social Security program will be eligible. It is the task of employers to enroll any new employees into the program. Employees who have been made redundant and are eligible for unemployment benefits will receive cash stipends for up to six months, further skills training, and career guidance information.

Employers will contribute 0.46 percent of their monthly wages to the JLS program, in which 0.22 percent is contributed by the government and the remaining 0.24 percent from the employer. Importantly, the employer's contribution is taken from the re-composition of the life insurance and work compensation components of the pension program.

Under GR 37/2021 the employer's contribution to the life insurance component has been reduced by 0.1 percent from 0.3 percent of the employee's monthly wage to become 0.2 percent. Further, the work compensation contribution has also been reduced by 0.14 percent from 0.24 – 1.74 percent to produce the new range 0.10 – 1.60 percent.

Workers Social Security Scheme			
Areas Covered	**% of monthly wages**		
	Employer contributions	Employer contributions after GR 37/2021	Employee contributions
Life insurance	0.3%	0.2%	-
Accident insurance	0.24-1.74%	0.10 – 1.60%	-
Old age benefits	3.7%	-	2%
Pension plan	2%	-	1%

The maximum salary used as the basis for the calculation is capped at six months' salary of 5 million rupiah (US$352).

What are the benefits of the program?

The program offers participants the following benefits:

Cash stipend — the participant can receive 45 percent of the monthly wage (capped at 5 million rupiah (US$352)) for the first three months, and then 25 percent the following three months.

The program will also provide career counselling as well as online and offline training.

Sanctions for employers

Employers who fail to register their employees to the program must pay cash compensation to the employee as a lump sum in addition to providing job training.

Religious holiday allowances

The payment of the religious holiday allowance (Tunjangan Hari Raya – THR) by employers to their employees is mandatory in Indonesia. This is in accordance with the Ministry of Manpower's Regulation No. 6 of 2016 (Reg 6).

What is THR?

The THR is a yearly bonus given to employees at least one week before the start of the religious holiday observed by the employee (based on the employee's religion), equivalent to one month's salary (based on the period of employment). The recognized religious holidays for THR payment are:

- Eid-il-Fitri for Muslims;
- Christmas for Catholics and Protestants (considered as two different religions in Indonesia);
- Nyepi for Hindus;
- Vesak for Buddhists; and
- Chinese New Year for Confucianism.

The practice of many businesses in the country has been to pay the THR of non-Muslim employees prior to the Christmas holidays, and those of Muslim employees before the Eid-il-Fitri break.

Who is eligible to receive THR and how is it calculated?

All employees, whether permanent or contract-based are eligible for THR and it must be paid using Indonesian rupiah.

The amount paid is based on the employees' service period. For employees working for more than 12 continuous months, they are entitled to THR equivalent to one month's salary.

For employees who have served one month or more but less than 12 months, the THR is calculated on a pro-rata basis using the following formula:

(Service period/12) x 1 month's salary

Freelance workers are also entitled to THR. Those working for more than 12 continuous months must receive the equivalent of one month's salary, which is calculated on the average salary they received throughout this period.

For those working more than one month and less than 12 months, the THR is calculated based on the average monthly salary throughout the employment period.

Fines for non-compliance

The regulation reiterates that businesses who fail to pay the THR will be fined five percent of the THR amount, which will be used for the employees' welfare. Further, this sanction does not waiver the employer's obligation to pay the THR.

In addition to financial sanctions, employers will be subject to administrative sanctions for failure to pay the THR. These are:

- Restriction of business activities;
- Permanent or temporary suspension of production facilities; or
- Suspension of business activities.

5

Audit and Compliance

Audit and Compliance

There is currently no single unifying regulation on auditing and compliance in Indonesia. Foreign investors will need to be aware that regulations regarding auditing, accounting, and financial reporting are stipulated over several laws and bylaws, and that a good understanding of these can ensure their business stays compliant.

Foreign investors should, however, focus on the *Company Law*, which dictates the terms for when audits become obligatory in addition to the accounting standards companies should adhere to when preparing financial statements.

Auditing and compliance requirements

The *Investment Law* lays out the basic requirements on how to operate in Indonesia. These are part of key compliance norms:

- Implementing good corporate governance;
- Undertake corporate social responsibility activities;
- Comply with the labor law;
- Submit quarterly investment activities to the Investment Coordinating Board (BKPM); and
- Honor the cultural traditions of communities.

The *Company Law* mandates that financial statements of a limited liability company must be audited by a public accountant registered in Indonesia if they meet at least one of the following criteria:

- Companies with assets exceeding 50 billion rupiah (US$3.5 million);
- Public companies;
- Companies that issue debt instruments;
- Certain types of state-owned enterprises; or
- The company collects or manages public funds (such as banks and insurance companies).

By law, a company must keep its accounting records and books for at least 10 years from the end of its reporting period.

Public companies

Under the *Capital Markets Law*, foreign companies are allowed to be listed in the country's bourse.

Their prospectus, however, must first be audited by an auditing firm that is recognized by the country's Financial Services Authority (OJK), the main regulator of Indonesia's financial services sector.

RELATED READING

Audit and Compliance in ASEAN: Prepare for 2022
ASEAN Briefing Magazine
December, 2021

In this issue of ASEAN Briefing magazine, we provide an overview of the audit and compliance requirements in ASEAN's six largest economies. We then explore the length of IFRS adoption in ASEAN and provide answers to often asked questions about ASEAN's auditing landscape.

AVAILABLE HERE

The annual financial statement must be submitted to the OJK and announced to the public by no later than the end of the third month from the date of the annual financial statement.

The submission of periodic financial statements must be conducted through the electronic reporting system of the OJK.

Public companies must also establish internal audit committees, an internal audit unit, and a company secretary. The audit committee supports the board of commissioners to ensure the effectiveness and integrity of a company's financial statements and internal controls.

Auditor independence

Indonesian Auditing Standards require that the auditor must be a registered and independent public accountant as stipulated by the Ministry of Finance (MOF). They must avoid all potential conflicts of interests and adhere to MOF regulations.

The Indonesia Financial Services Authority stipulates the mandatory rotation of the public accountant every three years with a two-year cooling period. This only applies to the public accountant and not the public accountant firm.

Fiscal year

The annual deadline for reporting and paying corporate income tax is April 3. If a company's fiscal year begins from January 1, then the deadline is December 30. If a company's fiscal year differs from the calendar year, then their deadline is four months after the end of their fiscal year.

Accounting standards

Audits are to be conducted based on the Indonesian Financial Accounting Standards (SAK), which are set by the Financial Accounting Standards Board (DSAK IAI) and the Indonesian Sharia Accounting Standards Board (DSAS IAI), for sharia-based companies.

Since 2015, the DSAK IAI has converged its accounting standards with that of the International Financial Reporting Standards (IFRS), issued by the IFRS Foundation and the International Accounting Standards Board (IASB). Current harmonization revolves around the chronological adoption of past IFRS with emphasis on closing the gap between Indonesia's adoption status and the most up to date international standards.

Currently SAK is broken down into two tiers:

- Tier 1 –SAK: applies to listed companies and other entities with significant public accountability; and

- Tier 2 – SAK ETAP: applies to entities with low public accountability. Tier 2 SAK ETAP was developed with IFRS for SE (small entities) as its point of reference.

This is part of Indonesia's efforts to make local financial statements more comparable and understandable across international boundaries as the country aims to attract greater foreign investment and play a more prominent role within the G20.

Annual reports

All registered company's annual financial statements are to be submitted to a regional tax office once a year. Financial statements consist of the following:

- Balance sheet;
- Cash flows;
- Profit and loss statement; and
- Statement of changes in equity.

Financial statements are required to provide both the current and previous year's figures and need to be presented on a comparative basis.

Periodic financial statements must be presented in the Indonesian language and a foreign language. The obligation to use foreign languages does not apply to small- and medium-sized enterprises. Periodic financial statements that utilize foreign languages must contain the same information as the periodic financial statements that use the Indonesian language.

If there is a difference in the interpretation of information presented in foreign languages with those presented in the Indonesian language, the information in the Indonesian language shall be used as a reference.

The accounting books must also use the rupiah as its currency. Companies will need to seek permission from the tax authorities for the use of the US dollar, the only other eligible functional currency. This must be done no later than three months before the start of the accounting year.

Penalties for non-compliance

Companies that fail to comply with Indonesia's audit and tax requirements can expect to receive monthly interest penalties starting from two percent and up to 48 percent. Furthermore, issuing false tax and accounting documents can also result in imprisonment.

Transfer pricing

Transfer pricing in Indonesia applies to companies that transact between companies from the same group, such as a subsidiary, or other 'related' parties. The persons or entities are related if:

- One party has direct or indirect control of the other (e.g., head offices or branch offices); or
- Both parties are under the control of the same persons or entity (e.g., several subsidiaries being owned by the same parent company).

Such conditions can give rise to preferential pricing between the parties, which could lead to the hiding of profits and underpaying taxes.

Under the Income Tax Law, a special relationship is deemed to exist if:

- The taxpayer owns capital participation either directly or indirectly of at least 25 percent of another taxpayer;
- The relationship between taxpayers through ownership of at least 25 percent of two or more taxpayers;
- A family relationship through marriage or blood; or
- The participation in management or technology even if there is no ownership.

The arm's length principle

Indonesia endorses the arm's length principle as the standard guide to transfer pricing. Under this principle, profits are taxed on where the profits are generated and where the real economic activities have occurred.

What are the required documents?

Indonesia issued Regulation No.213/PMK.03/2016 (PMK 213) in 2016 introduced a three-tiered system to transfer pricing documentation.

The three-tiered system consists of the following documents:

- A master file, that consists of the standardized information related to the business group;
  - Structure and ownership of each member of the group;
  - Any intangible assets owned by the group;
  - The business activities of the group; and
  - Consolidated financial statements;
- A local file, that consists of information specifically related to the transactions of the local taxpayer;
  - Business identity and activities of the taxpayer;
  - The related party transaction information;

   - Determination of the arm's length principle; and
   - The taxpayers' financial information; and
- A country-by-country report (CbC), which relates to the global allocation of the group's income and taxes.

Master and local file documentation obligations are imposed on taxpayers who, apart from having related-party transactions, must meet the following criteria:

- Have gross revenue of more than 50 billion rupiah (US$3.4 million) for the previous fiscal year;
- Taxpayers that conduct related-party transactions exceeding 20 billion rupiah (US$1.37 million) in the previous fiscal year;
- Taxpayers that conduct related-party transactions exceeding five billion rupiah (US$344,000) pertaining to services, interest payments, or intangible goods; or
- Taxpayers that conduct transactions with related parties located in a jurisdiction with a lower income tax rate than Indonesia.

The CbC reporting obligations are imposed on taxpayers that fulfill the following criteria:

- Taxpayers that are considered the parent entity of a group with consolidated gross revenue of 11 trillion rupiah (US$757 million); or
- Taxpayers that are not parent entities but are members of entities of a group with an ultimate parent entity that is a tax resident in a country that;
   - Does not have an exchange of information agreement with Indonesia;
   - Does not make CbC reports available to the Indonesian tax authorities; or
   - Do not impose obligations to file CbC reports.

Selection of transfer pricing methods

There are five transfer pricing methods for tangible or intangible transactions in Indonesia. These are:

- The comparable uncontrolled price (CUP) method;
- The cost-plus method;
- The resale price method;
- The profit split method; and
- The transactional net margin method (TNMM).

The CUP method is the most favored method used by Indonesia's Directorate General of Taxes (DGT), such as for royalty and interest payments. If the CUP method is not applicable, then the Indonesian tax authorities will apply the TNMM method.

Advance pricing agreement

The Directorate General of Taxes issued Regulation No.22/PMK.03/2020 (PMK-22) in 2020 regarding the procedure for implementing advanced pricing agreements (APA).

An APA is an agreement between one or more taxpayers and one or more tax authorities to determine in advance a set of criteria, and within a specific period, for specific cross-border transactions. This is to ensure such transactions comply with the arm's length principle as well as assist in avoiding transfer pricing disputes.

Under the latest regulation, an Indonesian taxpayer can submit an APA through a tax office where the taxpayer is registered based on:

- The initiative from the taxpayer through a unilateral or bilateral APA; or
- A written application submitted to the DGA for a bilateral APA from an overseas taxpayer.

APA application withdrawal and renewal

Taxpayers can withdraw from an APA application before the APA negotiation has been completed. A taxpayer, however, can submit an APA renewal application to the DGT within 12 months and up to six months before the last fiscal year.