The 2016 Indonesian Tax Amnesty

Overview

After a long and difficult gestation period, the Indonesian government has passed and enacted a new Tax Amnesty Bill (RUU tentang Pengampunan Pajak) (“Tax Law 11/2016”) on 1 July 2016, with one of its objectives being to increase Indonesia’s tax revenue, both in the short and long term.

The tax amnesty contemplated under Tax Law 11/2016 (the “Amnesty”) is being implemented on the back of automatic exchange of information between Indonesia and major financial jurisdictions under the Organization for Economic Cooperation and Development’s (“OECD”) Common Reporting Standards which commences in 2018.

It should be noted from the outset that no implementing regulations have been issued by the Indonesian Ministry of Finance as at the date of this update, to set out the procedures for the implementation of Tax Law 11/2016. The actual effect and impact of Tax Law 11/2016 would therefore have to be revisited once the implementing regulations have been issued.

Eligibility

The Amnesty covers income tax obligations as well as value added tax and luxury goods sales tax obligations and is applicable to all taxpayers with an Indonesian Tax ID Number, except taxpayers who are currently subject to criminal prosecution proceedings for tax crimes.

Implementation

The scope of the Amnesty covers tax obligations which have not been paid or fully settled by taxpayers up to the latest fiscal year (ending 31 Dec 2015). Under the Amnesty, participating taxpayers would have their tax liabilities (including administrative and criminal sanctions) waived upon payment of a defined amount referred to as a “Redemption Charge” or Uang Tebusan which is calculated by multiplying an applicable redemption rate by the quantum of declared nett assets which have not been previously declared.

The applicable redemption rates will vary depending on the timeframe within which the declaration is made by the taxpayer, whether the declared assets are onshore or offshore and whether offshore assets are repatriated to Indonesia, as set out in the following table:

<table>
<thead>
<tr>
<th>Assets</th>
<th>Declaration Period</th>
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<tbody>
<tr>
<td></td>
<td>Jul-Sep 2016</td>
</tr>
<tr>
<td>Declaration of Offshore Assets without Repatriation</td>
<td>4%</td>
</tr>
<tr>
<td>Declaration and Repatriation of Offshore Assets (which must then be retained/invested in Indonesia for a minimum of 3 years)</td>
<td>2%</td>
</tr>
<tr>
<td>Declaration of Onshore Assets (which must then be retained in Indonesia for a minimum of 3 years)</td>
<td>2%</td>
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</tbody>
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Timeframe and Form of Repatriation

If the taxpayer opts to repatriate offshore assets, the repatriation must be completed by 31 December 2016 for the 2% or 3% rates to apply, or by 31 March 2017 for the 5% rate to apply. The repatriated assets should then be retained for a minimum of 3 years after the repatriation date and may take the form of investments in:

(a) Government bonds;
(b) Bonds issued by Indonesian state-owned enterprises;
(c) Bonds issued by Indonesian state-owned financial institutions;
(d) Financial instruments issued by the Indonesian state payment banks;
(e) Bonds issued by private corporations that are subject to supervision by the Indonesian Financial Services Authority or Otoritas Jasa Keuangan;
(f) Investments in infrastructure involving a collaborative scheme between a business entity and the Indonesian government;
(g) Investments in the real estate sector in line with areas prioritized by the Indonesian government; and / or
(h) Other forms of investment based on the prevailing regulations.

Benefit of Participation

In addition to the waiver of tax liabilities for taxpayers who avail themselves to the Amnesty, Tax Law 11/2016 also provides that such taxpayers will benefit from a waiver of tax sanctions and criminal sanctions on tax obligations in or prior to the latest fiscal year (ending 31 December 2015) and exemption from or discontinuation of tax audits (including preliminary tax audits) and tax investigations up to and including the latest fiscal year.

Tax Law 11/2016 also provides that any information gathered may not be used as the basis for the launching of any tax investigation (preliminary or otherwise) and / or other types of criminal prosecution against the taxpayer concerned. Further, any government official involved in the implementation of the Amnesty is prohibited from divulging, distributing and / or sharing information on a participating taxpayer with any third party, with the breach of such confidentiality obligation rendering the guilty party liable to a prison term of up to 5 years.

Complete Disclosure

It should be noted, however, that the Amnesty requires full disclosure of assets by the taxpayer. In the event of under declaration or non-declaration, the taxpayer will be subject not only to income tax in accordance with the prevailing Indonesian tax regulation, but also to a surcharge of 200% on the tax payable.

Caveats

There are various provisions in Tax Law 11/2016 which lack clarity and could potentially pose issues on how the Amnesty is to be implemented and therefore how effective the Amnesty will be in fulfilling its objectives. For example, there is no express guidance in Tax Law 11/2016 as to the fair value used to disclose assets, thereby potentially leading to disputes on whether a taxpayer has under declared the value of his assets (if asset values have moved) for purposes of the Amnesty.

However, this may be understandable given that the implementing regulations governing the procedures for the implementation of Tax Law 11/2016 have not yet been issued. It is hoped that any implementing regulations will not only be consistent with Tax Law 11/2016 but will also clarify any ambiguities within.

In the light of the Amnesty offered by the Indonesian Government, taxpayers are advised to take this opportunity to review their portfolio to determine if they are completely tax compliant and if there is non-compliance, whether they may wish to participate in the Amnesty.
ASEAN Economic Community Portal

With the launch of the ASEAN Economic Community ("AEC") in December 2015, businesses looking to tap the opportunities presented by the integrated markets of the AEC can now get help a click away. Rajah & Tann Asia, United Overseas Bank and RSM Chio Lim Stone Forest, have teamed up to launch “Business in ASEAN”, a portal that provides companies with a single platform that helps businesses navigate the complexities of setting up operations in ASEAN.

By tapping into the professional knowledge and resources of the three organisations through this portal, small- and medium-sized enterprises across the 10-member economic grouping can equip themselves with the tools and know-how to navigate ASEAN’s business landscape. Of particular interest to businesses is the "Ask a Question" feature of the portal which enables companies to pose questions to the three organisations which have an extensive network in the region. The portal can be accessed at http://www.businessinasean.com/.

Please feel free to also contact Knowledge and Risk Management at eOASIS@rajahtann.com
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