



**Deloitte.**

Investment Gateway  
into Indonesia

Emerald of the Equator



# Foreword

The current Indonesian government recognizes the fact that it is very important to generate new investments to sustain the growth of the Indonesian economy. As a founding member of the Association of South-East Asian Nations (ASEAN), Indonesia is committed to ASEAN's aim of liberalizing trade and investment. Several measures, including instituting a one-stop service for permitting to facilitate greater investment, have been taken to make sure investment continues to come. Plans, programs, and legislation to encourage partnerships with local and international investors have also been planned and prepared.

In support of the government's efforts, and to have quick and clear answers for everyone contemplating investing in Indonesia, I am very proud of the collaborative work of Deloitte Indonesia's dedicated team of experts in putting together this publication, "Investment Gateway into Indonesia – Emerald of the Equator".

This publication was written based on our personal experiences when meeting prospective investors and in listening to and answering their usual questions, which do not relate only to "how" but also to "why".

I trust that this publication will also give a broader insight to every prospective investor, and that it will be a prime tool for them to explore the numerous opportunities that await them the moment they start doing business in Indonesia.



**Danilo Alcantara**  
Country Leader  
Deloitte Indonesia

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## A. Introduction to Indonesia

# A. Introduction to Indonesia

**Republic of Indonesia** (constitutional democracy with an executive presidency)

Nationality: Indonesian (40% Javanese, 16% Sundanese and 44% other ethnic groups)

Language: Bahasa Indonesia, English (business, professional)



Total Area: 1,904,569 sq km (15<sup>th</sup> largest)  
Land: 1,811,569 sq km  
Water: 93,000 sq km  
Population: 252,164,800 est. 2014 (4<sup>th</sup> largest)

**Major Islands:** Sumatera, Java, Kalimantan (Borneo), Sulawesi (Celebes), and Papua  
**Minor Islands:** Maluku, Lesser Sunda Island (Nusa Tenggara)

## 1. Macro Outlook

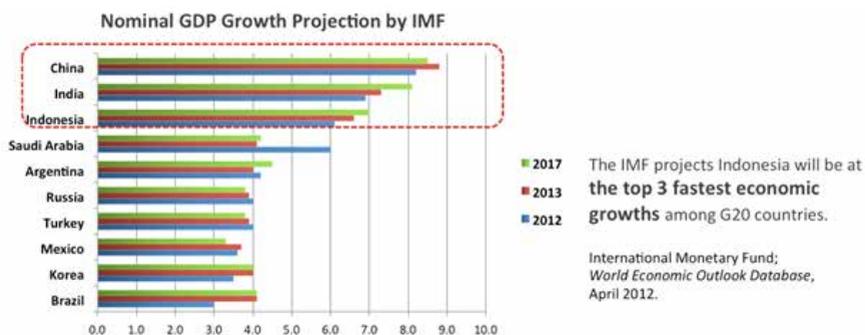
Real GDP growth in the first three quarters of 2014 was just 5.1%, the slowest performance for five years. The trigger for the slowdown was not lower private consumption but a fall in net exports. Fixed investment growth also slowed in the third quarter; however, the government's target is to achieve 5.7% growth in 2015 and reach 7% by 2019. Indonesia inflation reached 8.36% in 2014 and is expected to be maintained below 5% for the following year.

| Indicator                   | 2014   | 2015   | 2016      | 2017      | 2018      | 2019      |
|-----------------------------|--------|--------|-----------|-----------|-----------|-----------|
| Growth (% , y-o-y)          | 5.1    | 5.7    | 6.3 – 6.9 | 6.8 – 7.4 | 7.2 – 7.8 | 6.7 – 8.3 |
| Inflation (% , y-o-y)       | 7.6    | 4.4    | 3.0 – 5.0 | 3.0 – 5.0 | 2.5 – 4.5 | 2.5 – 4.5 |
| Interest rate (% , average) | 5.8    | 6.0    | 5.0 – 7.0 | 5.0 – 7.0 | 4.5 – 6.5 | 4.5 – 6.5 |
| USD exchange rate           | 11,900 | 11,900 | 12,125    | 11,900    | 11,850    | 11,800    |

*Table: Government Macroeconomic Assumptions*



Indonesia's GDP in 2014 is estimated to have reached USD 856 billion and GDP per capita is estimated at around USD 3,509. Based on the long-term national development plan (RPJPN), Indonesia plans to achieve per capita income equivalent to a middle income country by 2025. The highest contributor to GDP is the manufacturing industries sector, followed by the agriculture, livestock, forestry & fisheries sector and the trade, hotel and restaurant sector. Private consumption remains the main economic driver.



## 2. Demography

Indonesia consists of 17,508 islands, with more than 251 million people, making Indonesia the fourth largest country in the world in terms of population. The demographic advantages of the 251 million people are:

- Over 60% of the population is between 20 and 65, with a low dependency ratio and a dynamic workforce with high literacy
- Around 52% of the population lives in urban areas
- Indonesia's population comprises more than 39% of the total population of 10 Southeast Asian countries



The working population is projected to grow at 0.7%, compared to 0.5% CAGR for the total population, from 2012 to 2017. Indonesia also has a large consumer base with fast-growing spending power. The middle class is rising in Indonesia. Around 7 million people are expected to join the middle class per year. Consumer expenditure has grown at a 13.8% CAGR from 2000 – 2012 and is expected to continue at an 11.5% rate in 2012 – 2017.

### 3. Investment Climate

A large part of Indonesia’s economic success is a result of the growing middle class and stable economic growth. Indonesia is one of the MINT economies (Mexico, Indonesia, Nigeria and Turkey), namely those that are the most attractive to long-term investors due to their favourable demographic profiles.

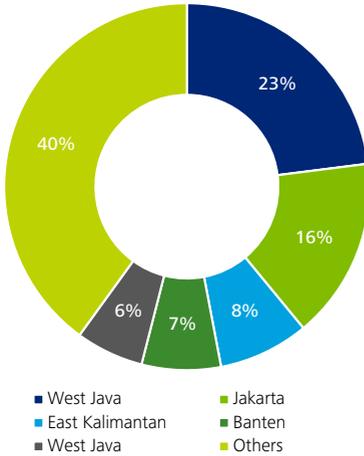
Indonesia’s debt to GDP ratio has steadily declined from 83% in 2001 to be less than 26% by the end of 2013 – the lowest among ASEAN countries, aside from Singapore, which has no government debt.

As a result, the country continues to receive good reviews. The ratings reflect Indonesia’s resilience to the global financial crisis, improving government and external credit-metrics, and an ability to manage domestic political challenges to the reform agenda.

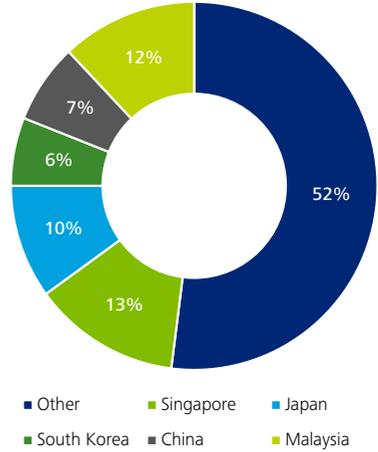
| Rating Agency       | Rate        | Outlook       |
|---------------------|-------------|---------------|
| Fitch Rating        | <b>BBB-</b> | <b>Stable</b> |
| Mood’s              | <b>Baa3</b> | <b>Stable</b> |
| Standard and Poor’s | <b>BB+</b>  | <b>Stable</b> |

Source: Investment Coordinating Board (BKPM), 2015

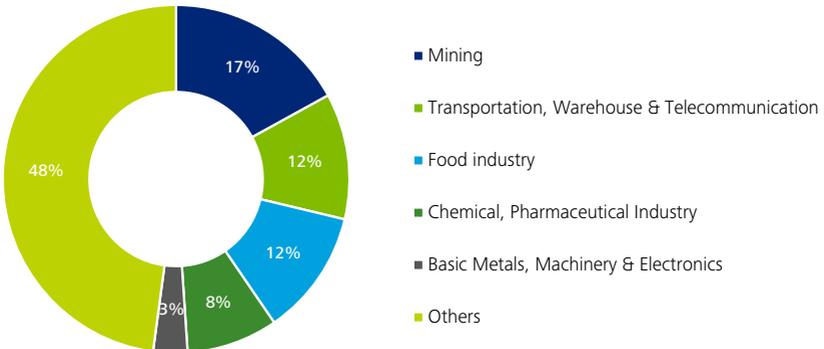
**FDI Realization 2014:  
Based on Location**



**FDI Realization Quarter IV –  
2014: Based on Country of  
Origin**



**FDI Realization 2014: Based on Sector**



#### 4. Industry Overview

Indonesia has a well-balanced economy, in which all major sectors play an important role. Agriculture historically has been the dominant sector in terms of both employment and output. The country has a vast range of mineral resources, which have been exploited over the past four decades, enabling the mining sector to make an important contribution to Indonesia's balance of payments.

Indonesia has a well-diversified trading economy. Oil and gas is the country's largest export category, followed by coal (and other mining products), palm oil, agricultural products, electrical machinery and equipment, mineral fuels, and fish. Indonesia's government plans to increase production of core commodities as seen below.

| Commodity | 2014 (million ton) | 2019 (million ton) |
|-----------|--------------------|--------------------|
| Rice      | 69.9               | 82.0               |
| Corn      | 18.6               | 23.4               |
| Soybean   | 0.89               | 1.02               |
| Sugar     | 2.8                | 3.4                |
| Beef      | 395.1              | 459.9              |
| Fish      | 24.9               | 40 – 50            |

*Table: Government Medium-Term Commodity Agenda*

The newly elected government plans to improve connectivity in Indonesia through better infrastructure facilities. The government has introduced a “sea toll road” concept to connect Indonesia’s archipelago through seaports in the main corridor between western and eastern islands to reduce high logistics costs. In addition, the government plans to build more roads, toll roads, airports, and railways, not only focusing on Java but also in Sumatra, Kalimantan, Sulawesi, and Papua. Furthermore, the government has introduced a 35,000-MW power generation project to achieve a 96.61% electrification ratio by 2019 and to support economic growth. This program aims to complement the 10,000-MW Fast Track program (Phase I& II).

| Infrastructure | 2014     | 2019     |
|----------------|----------|----------|
| New Road       | 1,028 km | 2,650 km |
| Toll Road      | 260 km   | 1,000 km |
| Railway        | 5,434 km | 8,692 km |
| Seaport        | 278      | 450      |
| Airport        | 237      | 252      |

*Table: Government Medium-Term Infrastructure Agenda*







## B. Establishment of Company

# B. Establishment of Company

## 1. General Investment Policy

### Business environment

As a founding member of the Association of South-East Asian Nations (ASEAN), Indonesia is committed to ASEAN's aim of liberalizing trade and investment. Together with two other founding members, Malaysia and Singapore, Indonesia called for ASEAN to create a single market earlier than the 2020 target. Indonesia joined the ASEAN-China free trade agreement (ACFTA) in 2003 and the ASEAN-South Korea Free Trade Agreement in 2005. Indonesia and Japan signed the Indonesia and Japan Economic Partnership in 2007.

### Price controls

A few commodities and services remain classified as "administered prices." These include petroleum, electricity, liquefied petroleum gas, rice, cigarettes, cement, hospital services, generic medicine, potable/piped water, city transport, air transport, telephone charges, trains, salt, toll road tariffs, and postage.

### Intellectual property

Indonesia's intellectual property laws recognize patents, trademarks, copyrights and industrial designs. Both the licensor and licensee may sue for infringement. The laws assign civil cases to the commercial court and establish a mechanism for alternative settlement by arbitration, as well as allowing for court-ordered injunctions against infringement.

Under the Trademark Law, registration of a license with the directorate-general is mandatory. Trademark protection is valid for 10 years and can be extended for an additional 10-year period. A standard patent is valid for 20 years, while a simple patent is valid for 10 years.

The Copyright Law extends protection to creations in science, art and literature.

## Currency

The currency in Indonesia is the rupiah (IDR).

## Banking and financing

The Banking Law of 1992, as amended in 1998, permits two categories of traditional banks: general commercial banks and rural banks (BPRs). The only functional distinction that remains is between banks that offer current accounts and those that do not (primarily the BPRs). BPRs, which undertake simple kinds of banking activities, operate on a small scale and target their services to lower-income individuals. Commercial banks are free to offer various banking services, although foreign exchange transactions require special qualifications and a permit. Both general commercial banks and rural banks can carry out either conventional or sharia banking business.

Bank Indonesia is the central bank.

Indonesia's main financial centres are Jakarta, Semarang, Bandung and Surabaya (on the main island of Java), Medan and Palembang (on the island of Sumatra), Denpasar (in Bali) and Makassar (in Sulawesi). Singapore functions as Indonesia's offshore banking centre.

## Foreign investment

The Investment Coordinating Board (BKPM) is responsible for promoting foreign and domestic investment and approving most project proposals in Indonesia. Other government agencies or ministries handle investments in the oil and gas, banking and insurance industries. The BKPM or the corresponding provincial board approves foreign and domestic investment in all other sectors.

Foreign investors that wish to carry out operations in Indonesia normally must form a limited liability company (based on Company Law No.40 of 2007) and obtain a business license from the BKPM (based on Investment Law No.25 of 2007)

Many business sectors are open to a Foreign Investment Company (PMA), with certain exceptions as stipulated under Presidential Regulation No. 39 of year 2014 regarding the list of business fields that are closed to investment and business fields that are conditionally open for investment (“Negative List for Investment”). Every sector has certain restrictions on foreign capital ownership.

The Foreign Investment Law includes a guarantee that that foreign investors will be treated equally to domestic investors and that the Indonesian government will not nationalize a foreign investment or revoke the investor’s rights to control a foreign investment, unless it is in the national interest to do so and compensation is paid.

### Exchange controls

The rupiah, the local currency, is freely convertible, although approval of Bank Indonesia must be obtained before more than IDR 100 million is taken out of the country. Authorization of Bank Indonesia may be provided only for the purpose of testing of cash machines, overseas exhibitions and other purposes that, according to the bank, serve the public interest.

A person carrying IDR 100 million or more into Indonesia must verify the authenticity of the funds with Indonesian customs upon arrival. A request for a wire transfer of IDR 100 million or less from a bank in Indonesia must be accompanied by a formal declaration signed by the customer. A wire transfer with a value of USD 100,000 or more to a non-resident must be supported by a statement and supporting documentation obtained from the customer for the underlying transaction.

Indonesia does not restrict the transfer of foreign currency funds to or from foreign countries, but inbound investment capital requires approval. Offshore loans must be registered with Bank Indonesia, with subsequent movement reported monthly, to enable the bank to monitor the country’s foreign exchange exposure.

Domestic commercial banks must submit monthly reports to Bank Indonesia on their foreign exchange transactions. Late submissions of the monthly foreign

exchange transaction report will be subject to an IDR 5 million per day fine; failure to report the foreign exchange transaction will be subject to an IDR 100 million fine. A bank's license will be cancelled if the bank does not submit the report for six consecutive months. Financial institutions are also required to submit monthly reports on their foreign currency transactions; the penalty for late submission is IDR 1 million per day and IDR 20 million for failure to report.

Non-financial institutions must report the movement of financial assets (such as equity in overseas companies and savings at overseas banks) and liabilities (such as overseas loans and trade payables) between residents and non-residents, including overseas transactions by residents. The requirement, applicable to companies with total assets of at least IDR 100 billion or annual sales of at least IDR 100 billion, is for transactions that are not conducted through a domestic bank or financial service company.

Investment Law No. 25 of 2007 guarantees foreign investors the right to transfer (in the currency of the original investment) all after-tax profits, certain costs and (in the event of nationalization) compensation. In certain circumstances, convertibility is guaranteed for capital repatriation.

IDR must be used in all transactions that have a purpose of payment settlement of obligations that must be satisfied with a cash payment and other financial transactions conducted in Indonesia. Exemptions are provided for certain transactions related to the implementation of the state budget; the receipt or grant of offshore grants; international commercial transactions; bank deposits in foreign currency; and offshore loan transactions.

### **Principal forms of business entity**

Company Law No. 40 of 2007 regulates limited liability (Perseroan Terbatas, or PT) companies. The PT is the most common form of business organization and the one to which foreign investors are restricted under the Investment Law. Branches of foreign corporations normally are not permitted outside of the banking and oil and gas sectors.

It should be noted that there are restrictions on foreign ownership in certain business sectors. Investment in infrastructure requires a joint venture company, with the Indonesian partner holding at least 67% equity.

### Formalities for setting up a company

To set up a company with foreign equity (a PMA company), a Principle License approval must be obtained from the BKPM. A deed of establishment and articles of association also are necessary. It is standard practice to employ the services of a notary public to draft the articles of association (“AOA”), who will then undertake the steps to obtain the necessary legal documents.

The draft AOA must set out the firm’s purpose, location, capital and management rules in accordance with the provisions of the Investment Law or relevant regulation and the final terms of the individual foreign investment agreement. It must include details of the proposed company’s founders, first directors and commissioners, and shareholders.

The Principle License is valid for one to three years, depending on the line of business of the PT PMA (i.e. for services company usually will be granted 1 -2 year, while manufacturing company is valid for 3 years) to complete the preparation of the establishment. In order to do so, the PMA must be formed and approval must be obtained from the Ministry of Law and Human Rights (“MOLHR”). Once approved, the PMA company is considered to be established. Issuance of a Certificate of Company Registration by the Ministry of Trade takes an additional week. Although an Indonesian corporation’s capital must be denominated in rupiah and so stated in the articles of association, the foreign currency equivalent (e.g. in US dollars) may be stated in brackets for purposes of future capital repatriation. Equity capital owned by foreign shareholders, which may be up to 100%, must equal the value in rupiah of the government-approved foreign investment, calculated at the foreign exchange rate prevailing on the date the investment permit was issued.

Company books are ordinarily kept in rupiah, in the Indonesian language. Subject to the approval of the Directorate-General of Taxation (DGT), however, books may be kept in US dollars, using English. The DGT also sets the exchange rate used for

accounting and tax payments on a weekly basis. Books, records, annual balance sheets and copies of correspondence must be retained in Indonesia for 10 years. A portion of profits must be retained each year until a minimum reserve of 20% of issued capital has been attained.

## Forms of entity

### Requirements for a limited liability company

**Capital:** Based on BKPM regulation No. 5 of 2013, the minimum total investment is IDR 10 billion (about USD 1.2 million) including working capital for one year, machinery and others, not including land and buildings; at least USD 300,000 or 25% must be issued and paid-up capital. A debt-to-equity ratio in the range of 3:1 is normally permitted. Higher minimums for authorized capital apply in certain sectors (e.g. USD 2 million for a freight forwarding company). All issued capital must be paid up and evidence of payment must be submitted to the Ministry of Justice and Human Rights to obtain approval for the deed of establishment containing the articles of association. All shares issued subsequently must be fully paid up upon issue.

For foreign investment companies, the rupiah value of capital is assigned at the foreign exchange rate prevailing at the time the investment license was granted. However, the rupiah value of payments of capital in foreign currency is calculated at the exchange rate prevailing at the time of payment. This calculation applies to payments in kind, which must be valued by an independent appraiser.

A company may repurchase its shares if (1) payment is made out of net profits and does not cause the company's net assets to fall below the total of subscribed capital plus the required reserve; and (2) the aggregate nominal total shares owned by—or pledged in favour of—the company or its subsidiary does not exceed 10% of the total subscribed capital.

Increases and decreases of capital must be approved at a general meeting of shareholders; a reduction of capital also requires that there be no objection from a creditor.

**Founders, shareholders:** Based on the Company Law, at least two shareholders are required at all times, which may be two individuals, two companies or a combination thereof in certain sectors. Shareholder liability is limited to the amount they contribute.

The minimum share for the minority shareholder is 1% (for foreign shareholder) and 5% (for local shareholder) or USD 1,000.

**Board of directors/management:** A company must have at least one director and one commissioner. Certain companies, notably public companies, must have at least two directors and two commissioners, while a bank must have at least three directors and two commissioners. When there is more than one director, each is entitled to represent the company (subject to exceptions stated in the articles of association). In foreign/domestic joint ventures, the composition of the board of directors generally reflects the ratio of foreign to local shareholdings.

Directors must carry out their duties in good faith, and a disposal or encumbrance of substantial company assets must be approved at a general meeting of shareholders. At least 75% of issued shares must be represented at the general meeting at which such approval is sought. One or more shareholders representing, collectively, at least one-tenth of a company's total issued shares may, in the name of the company, file a civil complaint against a director or commissioner on the grounds that the company was harmed as a result of mismanagement or negligence.

General shareholder meetings must be held at least once a year to approve the annual report and determine whether profits will be retained or distributed as dividends. The meeting must be held within six months of the closing of the company's financial year. Decisions are taken by majority vote or as provided for in the articles of association. Functions of the general meeting of shareholders that cannot be delegated to the directors or commissioners include amendments to the articles of association, appointment and dismissal of members of the board of directors and commissioners, and mergers, consolidations and dissolutions.

**Taxes and fees:** Notary fees amount to 0.1%-1% of a company's authorized capital, but are negotiable. A nominal stamp duty is charged on the deed of establishment.



**Types of shares:** The company's capital may be issued in several classifications of equity shares, at least one of which must have the characteristics of ordinary shares. Shares may be registered or bearer, but bearer shares may not be issued until the full value has been paid up. In practice, all shares held by foreign investors must be in registered form. Both common and preferred shares are permitted, but subsequent issues of preferred shares may be sold only to those already holding preferred shares. Each share normally has one vote, unless otherwise provided in the articles of association.

### **Branch of a foreign corporation**

The Investment Law requires that a foreign-owned enterprise operate wholly or mostly in Indonesia as a separate business unit to be organized under Indonesian law and resident in Indonesia. Branches are, therefore, normally not permitted, except for foreign banks and oil and gas companies. Other businesses, such as trading, construction or foreign news agencies, may be established as representative offices.

### **Representative office**

A foreign company can set up a trading representative office, but it must obtain approval from the BKPM. A trading representative office can engage only in business promotion or market research activities. A regional representative office, other than an office in the financial sector, must also obtain approval from the BKPM to set up. Its activities are limited to supervision and coordination; it may not own or maintain production facilities or operational activities and, therefore, it cannot accept orders, participate in tenders, sign contracts, or engage in the importation of goods. A foreign construction service representative office may conduct a construction project through a joint operation by obtaining approval from the Ministry of Public Works.

### **Regulation of business**

#### **Mergers and acquisitions**

The Company Law regulates mergers, consolidations, acquisitions and splits of companies. Mergers generally are permitted with the consent of 75% of the shareholders. Some protection for minority shareholders is provided, particularly

with respect to the share sale price, which must be “fair.” Unless the surviving company retains its name and management, a merged entity must adopt a new name and management.

Mergers of limited liability companies are possible where one or more companies are merged into a single surviving company (with the simultaneous dissolution of the other company or companies). In a consolidation, two or more companies merge into a new entity and each of the original companies is dissolved; in an acquisition, an individual or legal entity takes over all or most of the shares of a company, resulting in a transfer of control.

### Monopolies and restraint of trade

The Anti-Monopoly and Unfair Competition Law prohibits a company from holding more than a 50% share of the domestic market, or two or three companies from holding 75% of the market between them. Market share is determined by sales value rather than volume. The law prohibits vertical restrictions on competition and any deals or contracts allowing for monopolies, oligopolies, price fixing, cartels, trusts and geographical designations of markets between suppliers. Small enterprises and cooperatives are exempt, as are the production and marketing of goods and services deemed “vital” to public welfare and state companies. Companies violating the law are subject to maximum fines of IDR 100 billion and six-month prison terms for their executives.

### Requirements

For tax purposes, foreign investment (PMA) companies, permanent establishments, certain entities with foreign affiliations and companies that prepare their financial statements using US dollars as the functional currency in accordance with PSAK 10 may maintain English language and US dollar bookkeeping, provided approval from the Minister of Finance is obtained (contractors of oil and gas PSCs and companies operating under Mining Contracts of Work need only to provide notification). A change in the method of bookkeeping is possible, subject to approval from the DGT.

## 2. Bonded Storage

Bonded Storage is defined as a building, a site or a zone that meets certain requirements which is used for storage of goods for certain purposes and obtains customs facilities. Bonded Storage takes several forms, among others, as described below.

### Bonded Warehouse

A Bonded Warehouse is defined as a place of bonded storage to store imported goods, which may be accompanied with one or more activities such as packaging/ re-packaging, sorting, kitting, packing, adjustment, or cutting of certain goods within a certain period for later removal.

The imported goods or materials that are introduced into a bonded warehouse by an Entrepreneur in Bonded Warehouse may be granted facilities in the form of postponement of import duty, exemption from excise, and/or non-collection of import taxes (VAT, LGST, and Art.22). These facilities shall be provided to goods or materials introduced solely with the purpose of supporting industry (manufacturing) at other Indonesian customs territory or bonded zone, or for re-export.

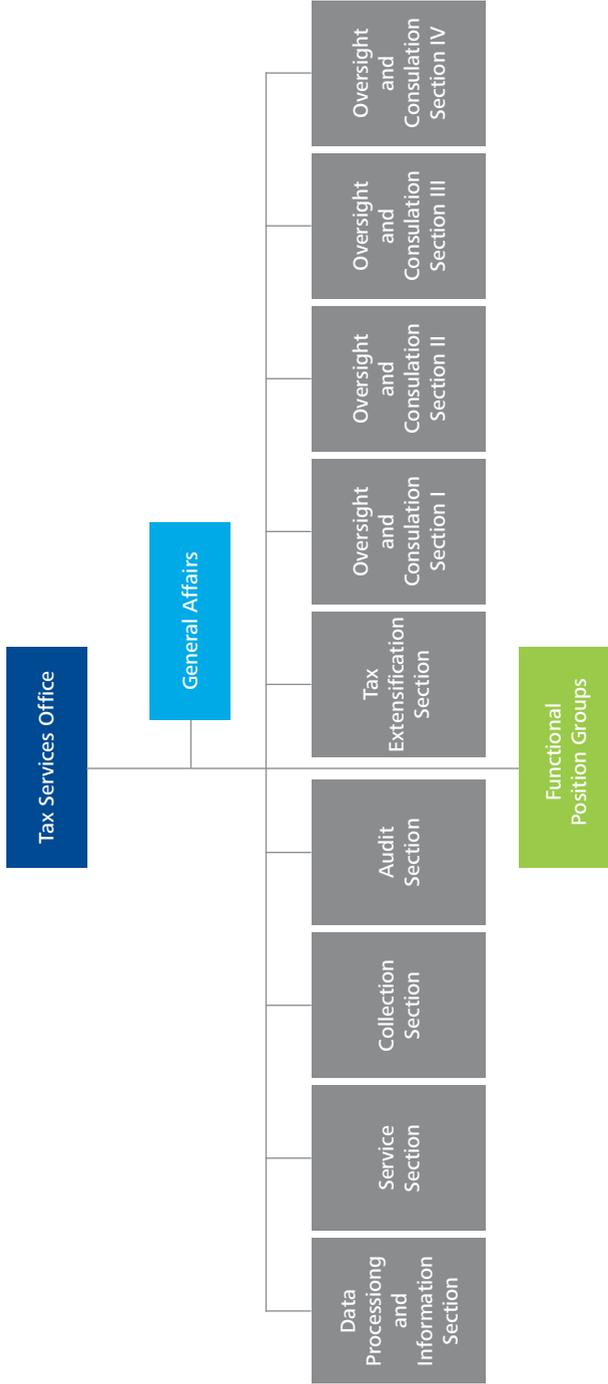
### Bonded Zone

Bonded Zone is defined as a place of bonded storage to store imported goods and/or local supplies for production purposes with its output primarily for export purposes. Import of goods, entry of taxable goods, delivery of products, release of goods, re-delivery of taxable goods, lending of machinery, and entry of excisable goods to and/or from the bonded zone shall be granted facilities in the form of postponement of import duty, exemption from excise, and/or non-collection of import taxes (VAT, LGST, and Art.22). These facilities shall be provided to goods/materials entered into a bonded zone to be processed or combined with the products produced in a bonded zone, or capital goods, including office equipment, to be used by an Entrepreneur in Bonded Zone (PDKB). Consumables are not facilitated in a bonded zone.

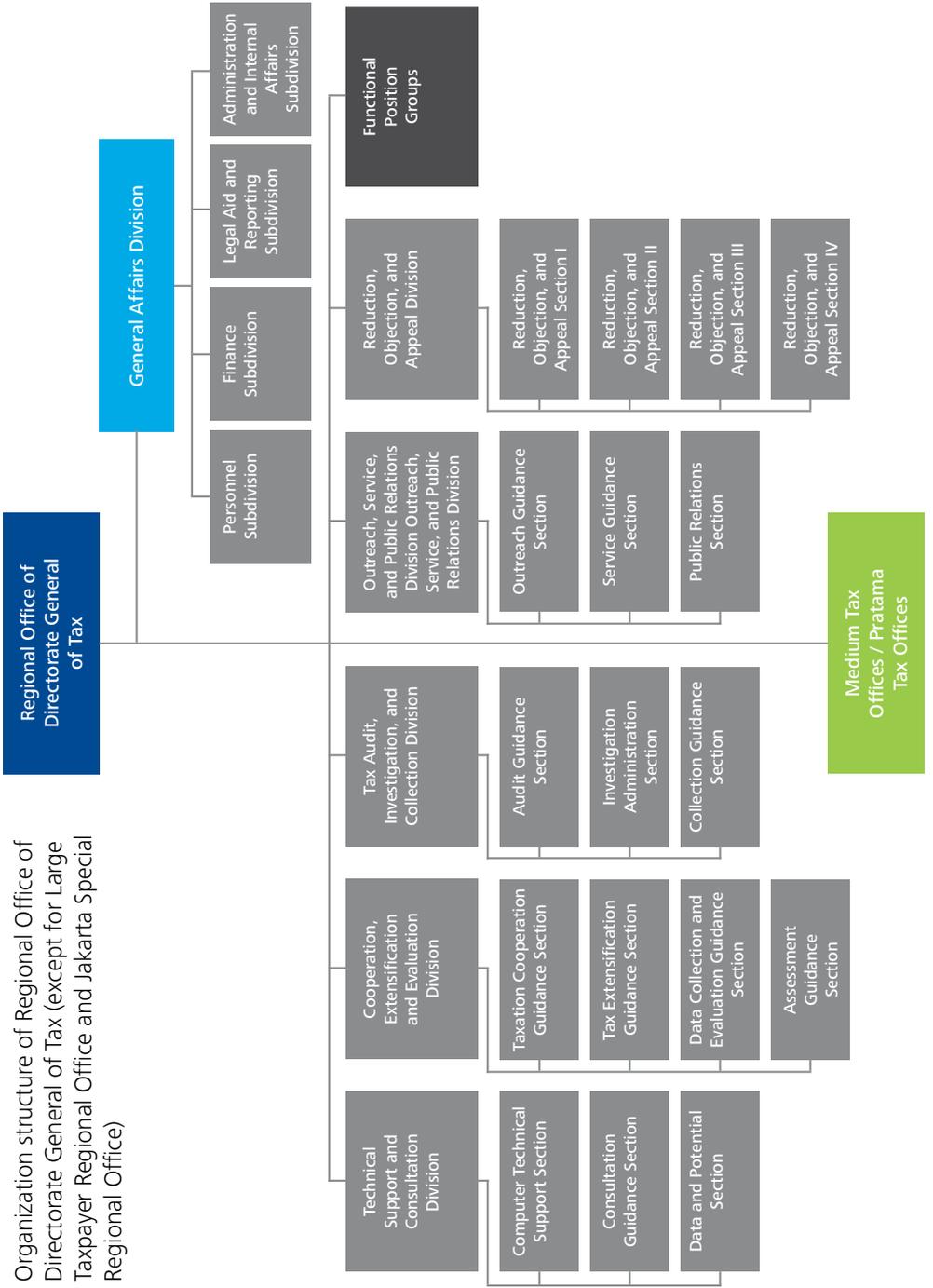
Application is required to obtain each license and there are requirements that must be fulfilled in obtaining the license.

### 3. Government Agencies

#### Organization Structure of Pratama Tax Office



Organization structure of Regional Office of Directorate General of Tax (except for Large Taxpayer Regional Office and Jakarta Special Regional Office)



## C. Taxation in Indonesia

# C. Taxation in Indonesia

## 1. Tax Incentives

### Income Tax Facility

A corporate taxpayer (limited liability company) investing in certain industries (high priority economic sectors on the national scale as stipulated by government regulation) and/or areas (with high economic potential to be developed) may be entitled to income tax benefits in the form of the following:

- An additional reduction of taxable income, up to 30% of the amount invested;
- Accelerated depreciation or amortization;
- Extension of tax loss carry forward for up to 10 years; and
- A reduced (10%) withholding tax on dividends paid to non-residents, or less if so provided under a tax treaty.

A request for this facility must be submitted by the taxpayer to the Minister of Finance, who will issue a decision on whether to approve the request upon considering the advice of the Head of the Investment Coordinating Board (BKPM).

### Income Tax Holiday

Indonesia has a tax holiday regime for new domestic or foreign investment in specified business sectors (pioneer industries). The regime grants beneficial tax treatment to manufacturing projects in high priority sectors (i.e. base metals, oil refining/petrochemicals, machinery, renewable energy and telecommunication equipment) and in remote areas. The tax incentives are as follows:

- An exemption from corporate income tax for five to 10 years from the date commercial production commences;
  - A two-year, 50% reduction in corporate income tax liability after the end of the tax holiday period; and
  - An extension of the exemption or reduction in corporate income tax, depending on the competitiveness and strategic value of the industry.
- To qualify, the company must meet the following requirements:
- It must invest at least IDR 1 trillion in a qualified pioneer industry;
  - It must deposit at least 10% of the total investment in an Indonesian bank, which cannot be withdrawn before the company undertakes its investment plan; and

- It must be a new taxpayer with Indonesian legal entity status; however, existing investors that have operated for less than 12 months before the effective date of the tax holiday regulation (i.e. 15 August 2011) also may qualify for the tax holiday.

An application should first be submitted to either the Minister of Industry or the Head of the Investment Coordinating Board. Upon review, these authorities shall submit a proposal to the Minister of Finance at the latest by 15 August 2015.

## 2. Business taxation

### Overview

The principal taxes applicable to companies doing business in Indonesia are corporate income tax, branch profits tax, withholding tax, value added tax (VAT), and various other indirect levies, such as tax on land and stamp duty. There is no excess profits tax or alternative minimum tax.

The main tax laws are the Income Tax Law, VAT Law, Land and Building Tax Law, and the Law on General Tax Provisions and Procedures. Taxes are administered by the Directorate General of Taxes (DGT).

| Indonesia Quick Tax Facts for Companies |   |
|---|---|
| Corporate income tax rate               | 25%   |
| Branch profit tax rate                  | 20%   |
| Capital gains tax rate                  | 5% / 25%  |
| Basis                                   | Worldwide   |
| Participation exemption                 | Yes   |
| Loss relief                             |   |
| - Carryforward                          | 5 years   |
| - Carryback                             | No  |
| Double taxation relief                  | Yes   |
| Tax consolidation                       | No  |
| Transfer pricing rules                  | Yes   |
| Thin capitalization rules               | No  |
| Controlled foreign company rules        | Yes   |
| Tax year                                | Calendar year or accounting/financial year  |
| Advance payment of tax                  | Yes   |
| Return due date                         | 4 months after end of calendar year/tax year  |
| Withholding tax                         |   |
| Payable to non – tax resident:          |   |
| - Dividends                             | 20%   |
| - Interest                              | 20%   |
| - Royalties                             | 20%   |
| - Branch profit tax                     | 20%   |
| Payable to tax resident                 | 2% (services and equipment rental) / 10% (land and/or building rental) / 15% (dividends, interest, royalties) |

|  |  |
|--|--|
| Capital tax                                      | No   |
| Social security contributions                    | 7.24%-11.74%   |
| Land and building tax                            | 0.3%   |
| Land and building acquisition duty               | 5%   |
| Transfer tax                                     | 0.1% (transfer of shares listed on Indonesian stock exchange); 5% (transfer of non-listed resident company's shares by a non-resident); 5% of gross proceeds (sale of land and/or buildings) |
| Tax on founder shares at initial public offering | 0.5%   |
| Stamp duty                                       | Varies   |
| VAT  | 10%  |

## Residence

A company is considered resident for tax purposes if it is established or domiciled in Indonesia or if its place of effective management is in Indonesia.

## Capital gains taxation

Capital gains are taxable as ordinary income, and capital losses are deductible. However, the sale of shares listed on the Indonesian stock exchange is subject to a tax of 0.1% of the transaction value. Founder shares also are subject to an additional final tax of 0.5% on the share value at the time of an initial public offering, regardless of whether the shares are held or sold following the offering. The sale or transfer of land and/or buildings is subject to a 5% final income tax on the sales proceeds.

Income derived from the sale of non-listed Indonesian shares held by foreigners is taxable at a rate of 5% of the gross proceeds, unless the rate is reduced under a tax treaty.

## Double taxation relief

### Unilateral relief

Resident companies deriving income from foreign sources are entitled to a unilateral tax credit for foreign tax paid on the income. The credit is limited to the amount of Indonesian tax otherwise payable on the relevant foreign income. A country-by-country limitation applies, i.e. the credit for foreign tax paid on income from one country is limited to the amount of Indonesian tax otherwise payable on the income from the same country. Indonesia does not grant credit for underlying tax.

### Tax treaties

Indonesia has a reasonably broad tax treaty network, with the treaties generally following the OECD model treaty and containing OECD-compliant exchange of information provisions. Treaties generally provide for relief from double taxation on all types of income, limit the taxation by one country of companies resident in the other, and protect companies resident in one country from discriminatory taxation in the other.

To claim relief under a tax treaty, the foreign taxpayer must complete and submit to the DGT a specific document issued by the Indonesian Tax Office in lieu of a Certificate of Domicile, and Form DGT-1 or Form DGT-2. Form DGT-2 is specifically for a company that is a banking institution or earns income from bonds or stocks listed on the Indonesian stock exchange. The Certificate of Domicile must be endorsed by the tax authorities of the treaty partner country. If the foreign taxpayer is unable to obtain the endorsement, the foreign taxpayer can use any form of Certificate of Domicile commonly verified or issued by the tax treaty partner's tax authorities, provided certain requirements are met. This form must be attached to a completed Form DGT-1 or Form DGT-2. Treaty relief will be denied if the foreign taxpayer fails to fulfil this requirement.

## Indonesia Tax Treaty Network

|                |              |              |                      |
|----------------|--------------|--------------|----------------------|
| Algeria        | Hong Kong    | New Zealand  | Surinam              |
| Australia      | Hungary      | Norway       | Sweden               |
| Austria        | India        | Pakistan     | Switzerland          |
| Bangladesh     | Iran         | Philippines  | Syria                |
| Belgium        | Italy        | Poland       | Taiwan               |
| Brunei         | Japan        | Portugal     | Thailand             |
| Bulgaria       | Jordan       | Qatar        | Tunisia              |
| Canada         | Korea (DPRK) | Romania      | Turkey               |
| China          | Korea (ROK)  | Russia       | Ukraine              |
| Croatia        | Kuwait       | Seychelles   | United Arab Emirates |
| Czech Republic | Luxembourg   | Singapore    | United Kingdom       |
| Denmark        | Malaysia     | Slovakia     | United States        |
| Egypt          | Mexico       | South Africa | Uzbekistan           |
| Finland        | Mongolia     | Spain        | Venezuela            |
| France         | Morocco      | Sri Lanka    | Vietnam              |
| Germany        | Netherlands  | Sudan        |                      |

## Anti-avoidance rules

### Thin capitalization

Indonesia does not have specific thin capitalization rules, although the income tax law authorizes the Ministry of Finance to determine the debt-to-equity ratio of companies for tax calculation purposes.

### Controlled foreign companies

The taxation of a foreign subsidiary of an Indonesian entity is governed under Indonesian tax law Article 18(2) and the regulations thereunder, i.e. Minister of Finance regulation 256/PMK.03/2008 and the Director of General Taxation regulation PER-59/PJ/2010, collectively known as “Indonesian Controlled Foreign Corporation (“CFC”) rules”.

The tax law states that the Minister of Finance is authorized to determine the time when dividend is obtained by a resident taxpayer from capital participation in an offshore company other than business entities that sell their shares on a stock exchange, with provisions as follows:

- a. Has a minimum capital participation of 50% of the number of paid-up shares of a business entity in a foreign country; or
- b. Jointly with other resident taxpayer(s) has a minimum capital participation of 50% of the number of paid-up shares in a business entity in a foreign country.

The tax regulations indicate that the time when dividends are deemed to be received by the resident taxpayer is:

- a. The fourth month following the end of the deadline to submit an annual income tax return of the business entity in the foreign country for the fiscal year concerned; or
- b. The seventh month following the end of fiscal year if the business entity in foreign country has no obligation to submit an annual income tax return or there is no provisions on deadline for submission of an annual income tax return.

As such, even when the dividends were retained by the foreign subsidiary, the Indonesian parent entity would be deemed to have received such dividends and therefore should be taxable at the hands of the Indonesian parent entity. Further, the tax regulation states that the dividend to be calculated by a resident taxpayer shall be equal to the amount of dividend becoming his or her right to profits after tax in proportion with his or her investment in a business entity in a foreign country.

### General anti-avoidance rule

While Indonesia does not have a general anti-avoidance rule, in 2009 the DGT issued a regulation to prevent the misuse of agreement on double taxation avoidance, known as PER-62. Basically, in order for recipients of Indonesian-source income to be eligible for treaty benefits, they have to fulfil both the **stringent** administrative procedure and beneficial ownership requirements.

PER-62 requires that the Indonesian source income recipient has to fulfil the following conditions, informally known in the tax community as “the six conditions”:

1. That the creation of the Indonesian source income recipient is not motivated by reasons to take advantage of benefit of the tax treaty; and
2. That the Indonesian source income recipient has its own management to conduct the business and such management has an independent discretion; and
3. That the Indonesian source income recipient employs sufficient qualified personnel; and
4. That the Indonesian source income recipient engages in active conduct of a trade or business; and
5. That the Indonesian source income is subject to tax in the country of incorporation of the Indonesian source income recipient; and
6. That no more than 50% of the Indonesian source income recipient’s income is used to satisfy claims by other persons.

Failure to satisfy even one of the conditions may jeopardize the eligibility to enjoy treaty benefits.

### **Exchange of Information Regulation (Minister of Finance Regulation No 60/PMK.03/2014)**

Exchange of Information (EOI) between countries can be carried out to assist each country in identifying any tax avoidance or tax evasion scheme, and to expedite cross-border tax dispute resolution.

EOI should be carried out based on provisions stipulated in:

1. DTA/Tax Treaty
2. Tax Information Exchange Agreement (TIEA)
3. Multilateral Agreement

The Minister of Finance regulation allows, inter alia, any unit of the DGT that requires information (e.g. when a taxpayer is suspected of tax avoidance or tax evasion) to send a proposal to the Director of Tax Regulation II to request information from the competent authority of the treaty partner.

### **Indonesia's Participation in OECD's Base Erosion and Profit Shifting (BEPS) Projects**

Although Indonesia is not a member of the OECD (Organization for Economic Co-operation and Development) countries, Indonesia is a member of the G-20 countries and therefore Indonesia has fully participated in BEPS projects both as an observer and as a contributor. However, Indonesia will issue its own version of the BEPS provisions and as of the date of this guide, no formal regulation has been issued by the Minister of Finance.

## Administration

### Tax year

The tax year for a company is the accounting/financial year.

### Bookkeeping

For tax purposes, foreign investment (PMA) companies, permanent establishments, certain entities with foreign affiliations and companies that prepare their financial statements using the US dollar as the functional currency in accordance with Indonesia's generally accepted financial accounting standards (PSAK Number 10) may maintain English language and US dollar bookkeeping, provided approval from the Minister of Finance is obtained (contractors of oil and gas PSCs and companies operating under Mining Contracts of Work need only to provide notification). A change in the method of bookkeeping is possible, subject to approval from the DGT.

### Filing and payment

All taxpayers carrying out a business or an independent profession must maintain regular and proper accounting records, on which periodic tax payments are based. A foreign company carrying out business activities through a PE in Indonesia generally has the same compliance obligations as a resident taxpayer. A foreign company that does not have a PE settles its Indonesian tax obligations on Indonesian-source income when an Indonesian payer withholds income tax.

Tax collection operates under a self-assessment system. Corporate tax is payable in monthly instalments, with tax due on the 15th day of the calendar month following the tax assessment month. Tax returns (as opposed to actual tax payment) must be filed by the 20th of the following month. The annual corporate tax return must be filed within four months of the end of the book year. There are also schedules for the payment of other taxes. Overpayments of tax may be recovered, but only after a tax audit has been carried out.

The collection of tax on dividends, interest, royalties, rentals, professional service fees, technical and management service fees, construction service fees, etc. is via withholding at source. If the recipient is an Indonesian resident, the tax withheld is considered a payment on account of the company's final tax liability, but if the recipient is non-resident, the tax withheld represents a final tax. Tax withheld from dividend, interest, royalty and other payments must be paid on the 10th day of the calendar month following the tax assessment month.

Payment of income tax that has been deducted from employees' wages must be paid by the 10th day of the following calendar month.

### **Consolidated returns**

There is no provision for the filing of consolidated returns or for group relief.

### **Statute of limitations**

The statute of limitations with respect to the assessment and collection of tax is five years each.

### **Tax authorities**

Income tax and VAT are administered centrally by the DGT, while regional taxes are administered and collected by regional governments, such as provinces and districts.

The DGT is a department under the Ministry of Finance that formulates technical guidelines and procedures for fiscal policy. The DGT has various units that administer taxpayer obligations (e.g. monitoring tax compliance, collecting tax, counselling, conducting tax audits); these offices are classified as small, medium and large tax offices. An account representative from the tax office is assigned to serve each taxpayer.

## Rulings

A taxpayer may request a confirmation from the DGT if the application of the tax law and procedure is unclear. There is no timeframe for the DGT to respond to such a request. A tax ruling applies only to the taxpayer that filed the request and generally can be used only to support that taxpayer's position in the event of a tax audit or tax objection. Such a ruling may not be used by other taxpayers.

## Other taxes on business

### Corporate tax for sharia business

Very broadly speaking, the fundamental characteristic in which Islamic finance differs from traditional finance is that the charging or paying of "interest" is prohibited. Although sharia law prohibits the charging or paying of interest, it does not preclude other forms of return on an investment, such as rent or profits that the parties agree on at the time they enter into the contract. In relation to sharia-compliant products, most discussion of Islamic finance concerns about the various investments arising from the prohibition on interest.

The treatment on income and expenses as specified in the Income Tax Law also applies to sharia-based business activities in the same manner as for conventional banking/financial services (*mutatis mutandis*). The income tax treatment of sharia banking and sharia financial service can be summarized as follows:

### Sharia Banking

| Income recipient            | Type of income   | Tax treatment  |
|-----------------------------|--|--|
| Bank                        | Bonus, profit sharing and margins from transactions of facilitated customers<br><br>Other income   | Interest<br><br>Treated in accordance with the normal income tax regulation for the relevant transaction |
| Investor/depositor customer | Bonus, profit sharing and any other income from funds entrusted and placed offshore through an Indonesian sharia bank or an Indonesian branch of an offshore sharia bank<br><br>Other income | Interest<br><br>Treated in accordance with the normal income tax regulation for the relevant transaction |

## Sharia financial services

| Type of transaction   | Tax treatment   |
|---|---|
| Leasing (Ijarah)  | Normal operating lease and the leased asset is non-depreciable                                  |
| Financial lease (Ijarah Muntahiyah Bittamlik/IMB)                                   | Similar to a financial lease with an option and the leased asset is non-depreciable             |
| Factoring (Wakalah bil Ujrah)   | Gain or profit is treated as interest   |
| Consumer financing (Murabahah, Salam, Istishna)                                     | Gain or profit margin is treated as interest  |
| Credit card   | Fees or other income treated in accordance with the normal income tax rules for the transaction |
| Other sharia financing  | Fees or other income treated in accordance with the normal income tax rules for the transaction |
| Corporate financing from investor (Mudharabah, Mudharabah Musytarakah, Musytarakah) | Gain or profit sharing treated as interest  |
| Delivery of assets (considered to be directly delivered from supplier to end user)  | Treated in accordance with the normal income tax regulation for the relevant transaction        |

### Tax on oil and gas contracts in the upstream business

Oil and gas activities are controlled by the state and conducted by the government as the holder of the mining authority. The most common form of cooperation contract is a production sharing contract (PSC). An entity can only enter into one PSC or have a participating interest in one PSC, and that entity must obtain a tax registration number (“ring fence principle”). Under the ring fence principle, exploration costs or losses incurred by an entity that enters into a PSC cannot be transferred, used or carried over by another entity under another PSC.

A cooperation contract generally will override the general principles of Indonesian income tax law, because these contracts have the status of *lex specialis*. Reference to the general tax laws will be made only on matters not specifically covered in the contract.

Investment and expenditure incurred under a PSC must be approved by the government. The contractor recovers the costs it incurred to carry out the exploration and exploitation activities in line with the work plan and budget and the authorization of financial expenditure approved by the government (“cost recovery” mechanism).

The PSC contractors generally will recover operating costs out of production. If in any calendar year the operating costs exceed the value of crude oil or gas produced, the unrecovered excess may be carried forward and recovered in subsequent years until the end of the contract. The remaining crude oil and natural gas will then be shared between the government and the PSC contractors according to the production sharing splits agreed in the contract.

The “uniformity principle” is adopted by the upstream operation. This principle provides that the treatment of deductible costs for tax purposes is identical to the costs recovered by the PSC contractors from the government within the framework of the PSC, and vice versa.



The upstream contractors are subject to corporate tax and final tax on after-tax profits (i.e. branch profit tax). The corporate tax and branch profit tax rates of PSCs concluded before Government Regulation (GR) No. 79/2010 was issued refer to the Income Tax Law prevailing on the date the PSCs were signed and remain valid throughout the life of the PSCs. For contracts signed after GR-79/2010, the PSC contractor can opt to either apply the income tax rates that prevailed at the time the contract was signed or follow the changes in tax rates as they occur over time.

### Tax on general mining

Prior to 2009, foreign investors established local subsidiaries to enter into contracts of work with the Indonesian government for the exploration and exploitation of coal and mineral resources. Similar to the cooperation contract in the upstream oil and gas industry, a contract of work generally will override the general principles of Indonesian tax law; reference to the general tax laws will be made only on matters not specifically mentioned in the contract.

Depending on the generation of the contract, the taxation provisions of the contract of work usually stipulate the corporate tax calculation on profits (such as corporate tax rates, deductible expenses, etc.) and other tax obligations that will remain valid throughout the life of the contract. Other contracts may be subject to the general principles of the tax law. A detailed analysis of each contract is necessary to determine the applicable tax treatment of a specific mining contract.

Contract-based mining concessions are no longer available following the introduction of Law on Mineral and Coal Mining No. 4/2009. A foreign investor can operate a mining concession through a Mining Business License (Izin Usaha Pertambangan or "IUP"). IUP holders are taxed under the general tax regime.

### Offshore drilling companies

Foreign oil and gas drilling service companies are taxed at a deemed 15% profit level of gross revenue (which results in a 3.75% effective income tax rate, taking into account the deemed profit level). Domestic oil and gas drilling service companies are taxed under the general tax regime.

### Vendors and service providers

Certain providers to PSC and mining contractors, such as construction, shipping, etc. typically are taxed on a certain percentage of gross revenue. Other midstream and downstream providers are generally taxed based on profits.

### Local content

PSC contractors have to fulfil local (domestic) content requirements. In general, this means that the PSC Contractors cannot import goods, equipment or services unless these are not available in Indonesia. Consequently, often a foreign provider cannot enter into a contract directly with a PSC Contractor so, in a number of cases, the foreign service provider is subcontractor of or collaborates with a domestic service provider to enter into a contract with the PSC Contractor.

### 3. Taxes on individuals

| Indonesia Quick Tax Facts for Individuals                  |  |
|--|--|
| Income tax rates   | 5%-30%   |
| Capital gains tax rates                                    | Same as income tax rates   |
| Basis  | Worldwide income   |
| Double taxation relief                                     | Yes  |
| Tax year   | Calendar year  |
| Return due date  | 31 March   |
| Withholding tax (applicable for Indonesian sourced income) |  |
| - Dividends  | 10% (for resident); 20% (for non-resident)   |
| - Interest   | 15%/20% (for resident); 20% (for non-resident)   |
| - Royalties  | 15%  |
| Net wealth tax   | No   |
| Social security (employee contribution):                   | 2%   |
| - (BPJS Manpower)  | 0.5% (1 January 2014 – 30 June 2015)   |
| - (BPJS Healthcare)  | 1% (As of 1 July 2015)   |
| Inheritance tax  | No   |
| Land and building tax                                      | 0.3%   |
| Land and building acquisition duty                         | 5%   |
| Transfer tax   | 0.1% (transfer of shares listed on Indonesian stock exchange); 5% (transfer of non-listed resident company's shares by a non-resident); 5% of gross proceeds or taxable sale value whichever is higher (sale of land and/or buildings) |
| Tax on founder shares at initial public offering           | 0.5%   |
| VAT  | 10%  |

## Residence

Residents are defined as individuals who are present in Indonesia for 183 days or more in any continuous 12-month period, or who reside in Indonesia during the fiscal year and intend to remain there. Non-resident taxpayers are individuals present in Indonesia for fewer than 183 days with no intention to reside in Indonesia. Non-residents need not register for tax purposes.

## Taxable income and rates

Resident individual taxpayers are taxed on their worldwide gross income, less allowable deductions and non-taxable income. Non-resident individuals are taxed only on Indonesian-source income.

## Taxable income

Personal income taxes in Indonesia are levied only at the national level. Taxable income includes employment income, income from the exercise of a business or profession and other income, such as passive income (dividends, interest, and royalties), capital gains, etc. Benefits-in-kind received by employees are not, in most cases, taxable to the employee (or deductible for the employer). The benefits-in-kind could be subject to tax if they are provided by certain categories of employer.

Tax relief is available for contractors and suppliers under grant-funded government projects, although taxes apply on their personnel, subcontractors, sub consultants and sub suppliers.

### Deductions and reliefs

Deductions are generally available for expenses incurred in generating income.

| Basis of deduction  | Deductible amount (per year)   |
|---|--|
| Taxpayer  | IDR 24,300,000   |
| Spouse  | IDR 2,025,000 (additional IDR 24,300,000 for a wife whose income is combined with the husband's) |
| Dependents  | IDR 2,025,000 each (up to a maximum of three individuals related by blood or marriage)           |
| Occupational support                                      | 5% of gross income, up to a maximum of IDR 6 million   |
| Pension cost (available to pensioners)                    | 5% of gross income, up to a maximum of IDR 2,400,000   |
| Contribution to approved pension fund, e.g. BPJS Manpower | Amount of self-contribution  |

The Minister of Finance is authorized to re-determine the amounts of the personal deductions.

## Rates

| Taxable Income  | Rate                           |
|---|--------------------------------|
| Up to IDR 50,000,000  | 5%                             |
| Over IDR 50,000,000 but not exceeding IDR 250,000,000   | 15%                            |
| Over IDR 250,000,000 but not exceeding IDR 500,000,000  | 25%                            |
| Over IDR 500,000,000  | 30%                            |
| Type of Income  | Effective Withholding Tax Rate |
| Dividends received from Indonesia companies   | 10%                            |
| Payments to non-resident individuals:<br>- Salary, dividends, interest, royalties, rent for property, prizes or award<br>- Payment for technical, management, and other services wherever performed | 20% <sup>(1)</sup>             |
| Gains on listed share on Indonesia Stock Exchange   | 0.1%                           |
| Additional tax on sale of 'Founders shares' at IPO price  | 0.5%                           |
| Gains on the disposal of land and/or building   | 5% <sup>(2)</sup>              |
| The transfer of a non-listed resident company's shares by a non-resident  | 5% <sup>(3)</sup>              |
| Rental of land and/or building by an individual   | 10%                            |
| Interest paid on savings and fixed deposit account  | 20%                            |
| Small-scale entrepreneur/company  | 1% <sup>(4)</sup>              |

### Notes:

1. Subject to any reduced rates under a tax treaty.
2. Based on transaction value or taxable sales value, whichever is higher.
3. Based on transfer value, unless an exemption applies under a tax treaty.
4. Subject to certain conditions, based on gross revenue and considered a final tax.

### **Inheritance and gift tax**

Indonesia does not levy inheritance or gift tax.

### **Net wealth tax**

Indonesia does not levy a net wealth tax.

### **Real property tax**

Land and building tax is payable annually on land, buildings and permanent structures. The rate is typically not more than 0.3% of the value of the property, although higher rates apply to certain high-value housing and large estates. A certain non-taxable amount of the sales value is excluded from this tax.

The sale of land and/or buildings by an individual (other than the sale of a simple house and basic apartment by taxpayers whose main business is the transfer of land or buildings) is subject to a tax of 5% of the gross proceeds or taxable sales value whichever is higher. Exemptions are granted for the transfer of land and/or buildings as part of a grant or inheritance and the sale of land valued at less than IDR 60 million by an individual taxpayer whose annual income does not exceed the non-taxable income threshold.

A land and building acquisition duty of 5% is payable when a person obtains rights to land or a building with a value greater than the non-taxable threshold, which maximum is up to IDR 60 million. A taxpayer who receives such rights by way of inheritance is entitled to a non-taxable threshold of a minimum of IDR 300 million.

### **Compliance**

The tax year is the calendar year.

Indonesia has a self-assessment system, under which individuals are required to compute their tax liability and file a return. However, an individual taxpayer whose income is under the non-taxable income threshold is not required to file an annual return. If a return is due, it must be submitted by 31 March following the end of the tax year, and any annual tax due should be paid before the submission.

Individual taxpayers in certain conditions may need to make monthly advance tax payments based on the previous year's tax liability. Each payment is due on the 15th day of the month following the income month.

#### 4. Indirect taxes

##### Value added tax

VAT is levied at each stage of the production and distribution chain and is levied on the supply of goods and the provision of services at a standard rate of 10%. VAT on exports of taxable goods and certain taxable services is zero rated. Zero-rated export services are limited to: toll manufacturing services; repair and maintenance services attached to or for movable goods utilized outside the Indonesian customs area; and construction services attached to or for immovable goods located outside the Indonesian customs territory.

VAT applies to intangible goods (including royalties) and to virtually all services provided outside Indonesia to Indonesian businesses (i.e. imported services). VAT applies equally to all manufactured goods, whether produced locally or imported. Manufacturing is defined as any activity that changes the original form or nature of a good, creates a new good, or increases its productivity. This includes fabricating, cooking, assembling, packing and bottling.

The VAT on inputs is creditable against the VAT on outputs.

Indonesia does not have a VAT grouping concept. If a company has one or more branches situated in different tax office jurisdictions, the company can file a request for centralization of VAT payment and filing of the VAT returns. The centralization usually is made by the main/head office, but it can also be centralized at the level of an active branch, provided certain criteria are met.

### Capital tax

There is no capital tax.

### Real estate tax

Land and building tax is payable annually on land, buildings and permanent structures. The rate is typically not more than 0.3% of the value of the property, although higher rates apply to certain high-value housing and large estates.

A land and building acquisition duty of 5% is payable when a person obtains rights to land or a building with a value greater than IDR 60 million. Various exemptions apply, including on transfers in connection with a merger and transfers to relatives.

Land and Building Tax for certain businesses (i.e. oil and gas, geothermal, mining, plantation, forestry) are regulated under a specific land and building tax regime.

### Transfer tax

The sale of shares listed on the Indonesian stock exchange is subject to a tax of 0.1% of the transaction value. Founder shares also are subject to a final tax of 0.5% on the share value at the time of an initial public offering, regardless of whether they are held or sold following the offering.

The transfer of a resident company's shares by a non-resident is subject to a withholding tax equal to 5% of the transfer value, unless otherwise provided under a tax treaty.

### Stamp duty

Stamp duty applies to financial transactions, deeds and receipts, at rates ranging from IDR 3,000 to IDR 6,000, depending on the amount of the transaction and type of document.





## Transfer pricing

The DGT requires that related-party transactions or dealings with affiliated companies (including profit sharing by multinational companies) be carried out in a “commercially justifiable way” and on an arm’s length basis. The most appropriate transfer pricing method must be used.

Domestic related-party transactions are outside the scope of the transfer pricing rules, except when taxpayers are subject to different tax rates such as:

- a. Taxpayers subject to different tax systems (for instance, final or non-final income tax in certain business sectors);
- b. Transactions subject to the imposition of luxury goods sales tax (LGST); or
- c. Transactions with contractors in the oil and gas industry.

Documentation must be prepared for domestic and cross-border transactions with a total value with each related party higher than IDR 10 billion within one fiscal year. The documentation should contain, among others, information on the following:

- Detailed description of the company, such as the structure of the group’s business, ownership structure, organizational structure, operational aspects of business activities, list of competitors, and descriptions of business environment, its policies on setting of prices and/or cost allocation;
- The nature and value of related-party transactions;
- The transfer pricing methods used, as well as the rationale for selecting a particular method; and
- The results of the comparability analysis, selected comparable companies, and notes on the application of the selected transfer pricing method.

A taxpayer can submit a request to the tax authority for a Mutual Agreement Procedure (MAP). The DGT provides technical guidelines on the application of MAP, including:

- a. Circumstances that may give rise to MAP application;
- b. Application procedure, timeline, and required information and documentation;
- c. Circumstances that may give rise to the Tax Authority's rejection of the MAP application; and
- d. In relation to Transfer Pricing correction – Formation of a special team to prepare the Directorate General's position paper.

Effective 1 January 2012, with the issuance of Government Regulation No. 74/2011 in December 2011, a taxpayer eligible for MAP can have it processed simultaneously with its application for objection, appeal or reduction or cancellation of an incorrect Tax Assessment Letter. In the event that the MAP results in a mutual agreement, the DGT will amend the tax assessment decision in accordance with the MAP results. However, if the decision on the taxpayer's appeal is released by the tax court prior to conclusion of a MAP, the DGT will terminate the MAP.

A recent regulation issued by the Ministry of Finance dated 22 December 2014 pertains to new updates to the existing regulation in relation to the implementation of the Mutual Agreement Procedure. The new regulation is effective from 22 December 2014. The new regulation is also applicable to any on-going request of MAP which was submitted prior to the issuance of this regulation but not yet concluded.

An advance pricing agreement (APA) may be entered into with the tax authorities for a maximum of three years, starting from the tax year in which the APA is agreed. In cases where an APA is processed through MAP provision, the APA applies for four years from the year the APA is concluded.

## Customs and excise duties

Any goods coming from overseas into the Indonesian customs territory are treated as “imports” and generally are subject to import duty and import taxes. The importer must register with the Minister of Trade to obtain an Importer Identification Number, known as an API, and must register with the Directorate General of Customs and Excise to obtain a Customs Identification Number (NIK).

Certain exemptions apply (e.g. goods in a bonded zone or warehouse and goods in an import facility for export purposes).

Preferential tariff rates are extended to countries that have signed Free Trade Agreements (FTA) and Economic Partnership Agreements (EPA). This means that customs duties for selected imported goods that originate from the FTA/ EPA partner countries are lower or totally eliminated. Currently, Indonesia has preferential tariffs in the following schemes:

- ASEAN Trade in Goods Agreement (ATIGA): This is a preferential tariff based on an agreement between Indonesia and ASEAN countries. This tariff is applicable for the import of goods from ASEAN countries into Indonesia.
- ASEAN-China FTA (ACFTA): This is an agreement between the ASEAN countries to build a free trade area with China. China refers to the Mainland and excludes the Special Administrative Regions (Hong Kong and Macau) and Taiwan.
- ASEAN-Korea FTA (AKFTA): This is an agreement between the ASEAN countries and Korea to build the economic partnership between the countries.
- Indonesia-Japan Economic Partnership Agreement (IJEPA): This is an agreement between the governments of Indonesia and Japan to build the economic partnership between the two countries, and increase trade and investment in both countries.
- ASEAN-Australia-New Zealand FTA (AANZFTA): This is an agreement between ASEAN countries to build a free trade area with Australia and New Zealand.

- ASEAN-India FTA (AIFTA): This is an agreement between ASEAN countries to build a free trade area with India.
- Indonesia-Government of Islamic Republic of Pakistan, stipulation of import duty tariff: This stipulation is made within the framework of the Preferential Trade Agreement between Indonesia and the Government of the Islamic Republic of Pakistan.

Excise duties are also imposed on certain goods as part of the government's effort to curb the distribution of such goods in Indonesia. A number of excise duties are levied, primarily on alcohol and tobacco products.

Customs duty and import taxes payables should be settled before goods are released from the customs area (port). If the goods are excisable, duty payable should also be settled before the excisable goods are released from the port. Failure to comply can give rise to an administrative penalty depending on the amount of underpayment; the maximum penalty is 1000% of the underpayment.

### Environmental taxes

The central government does not have any specific environmental taxes. However, in certain regions, a permit to dump liquid waste into certain water resources is subject to a user fee collected by the regional government.

## 5. Withholding taxes

### Dividends

Dividends received by a resident company from a shareholding in another Indonesian company are exempt from tax, provided the dividends come from retained earnings and the recipient company holds at least 25% of the capital of the payer company. If the recipient company holds less than 25%, the dividends are subject to a 15% withholding tax, which represents an advance payment of the company's tax liability.

Dividends paid to a non-resident are subject to a 20% withholding tax, unless the rate is reduced under a tax treaty. The tax is considered a final tax.

### **Interest**

Interest paid to a resident bank or financial institution is exempt from tax.

Interest on a savings and deposit account paid to a non-resident is subject to a 20% withholding tax, unless the rate is reduced by a tax treaty. Interest from Indonesian banks and Indonesian branches of foreign banks is subject to a final 20% tax for both companies and individuals.

### **Royalties**

Royalties paid to a resident are subject to a 15% withholding tax; the rate is 20% on remittances abroad, unless the rate is reduced under a tax treaty. For tax purposes, royalties include any charge for the use of property or know-how in Indonesia and the transfer of a right to use property or know-how in Indonesia.

### **Branch Profit Tax**

A branch of a foreign company in Indonesia is taxed at the standard corporate income tax rate, and a 20% branch profit tax is levied on net profits after income tax. An exemption from the branch profit tax is available if so provided under a tax treaty. An exemption from branch profit tax also applies if all the net profits of a PE are reinvested in Indonesia in the form of:

- A capital contribution in a newly established company domiciled in Indonesia as a founder or a member of the founders;
- A capital contribution in an existing company established and domiciled in Indonesia;
- Fixed assets to be used by the PE to do business or conduct activities of the PE in Indonesia; or
- Investment in intangible goods to be used by the PE to do business or conduct activities of the PE in Indonesia.

### **Wage tax/social security contributions**

The employer is responsible for calculating, deducting and remitting tax due on employees' salaries and other remuneration. The employer must file an employment withholding tax return on a monthly basis.

The employer is required to contribute to the general social security scheme, as follows: 3% to 6% of wages for the health scheme; 3.7% of wages to the retirement scheme, 0.24% to 1.74% to the accident compensation fund; and 0.3% to the death compensation fund. The employee also makes a contribution.

### **Other**

A 2% withholding tax applies on domestic payments made for technical, management and consulting services and rentals, except for land and building rentals, which are subject to a 10% final withholding tax.





## D. Audit & Compliance

An entity that conducts business in Indonesia is required to maintain accounting records and to prepare annual financial statements in accordance with the Statements of Financial Accounting Standards (“PSAK”) published by the Financial Accounting Standards Board of the Indonesian Institute of Accountants (“DSAK-IAI”).

The entity must maintain a register of shareholders, as well as a special register for members of the board of directors and commissioners and their family members, detailing share ownership within Indonesia. Changes of share ownership must be recorded in the register of shareholders and the special register. The board of directors must submit an annual report to a general meeting of shareholders within six months of the closing of the company’s books. The report must contain at least the following: (1) a consolidated balance sheet and profit and loss statement for the preceding financial year and comparative figures from the previous year, audited by a registered public accountant in certain instances; and (2) a report on the condition and performance of the company.

### 1. Accounting period

The accounting period for an entity is normally 12 months and it generally uses the 1 January to 31 December calendar year as the accounting year. However, an entity is allowed to choose an accounting year that does not start with 1 January. For tax purposes, the fiscal year in most cases is also the calendar year. Similar to the accounting year, an entity is also allowed to choose a fiscal year, which does not start with 1 January.

### 2. Currency

An entity prepares its accounting records and financial statements by using its functional currency. However, an entity may present its financial statements using a currency other than its functional currency (presentation currency). The functional currency is the currency of the primary economic environment in which the entity operates. This is often the currency in which sales prices for its goods and services are denominated and settled.

The functional currency for most business entities in Indonesia is generally Indonesian Rupiah (IDR); however there are also a number of companies in Indonesia whose functional currency is a currency other than IDR.

### 3. Language, Accounting Basis and Standards

An entity is required to maintain accounting records and to prepare financial statements using the Indonesian language. In cases where financial statements are also prepared in languages other than Indonesian, the entity shall obtain permission from the Ministry of Finance.

An entity shall prepare its financial statements, except for cash flow information, using the accrual basis of accounting. Under the accrual basis of accounting, the effects of transactions are recognized when they occur. In addition, an entity recognizes items as assets, liabilities, equity, income, and expenses when their definitions and recognition criteria are satisfied.

An entity's accounting records and annual financial statements shall comply with SAK issued by DSAK-IAI. Entities that have no public accountability are allowed to adopt the SAK for Entities that Have No Public Accountability (SAK ETAP), which is simpler than the full SAK.

### 4. Audit Requirements

The following types of entities are required to submit annual financial statements that are audited by a qualified auditor:

- Publicly-listed companies.
- Banks, insurance, and other companies involved in accumulating funds from the public.
- Companies issuing debt instruments.
- Companies with assets of 25 billion Rupiah or more
- Bank debtors whose financial statements are required by the bank to be audited.
- Certain types of foreign entities engaged in business in Indonesia that are authorized to enter into agreements.
- Certain types of state-owned enterprises.

Audits are conducted in accordance with the Indonesian Auditing Standards

promulgated by the Indonesian Institute of Certified Public Accountants (IICPA).

Public companies are required to submit their audited financial statements within three months after the end of the annual financial statements period to the capital market regulator - Otoritas Jasa Keuangan / Financial Services Authority (OJK).

For interim financial statements, submission to OJK should be conducted within one month after the date of interim financial statements if not audited; within two months if statements are reviewed; otherwise, within three months if the statements are audited.

## 5. Independence

The Indonesian Auditing Standards require auditors to maintain their independence, to comply with the auditor's code of ethics, and to avoid potential conflict of interests when conducting audit. Moreover, auditors should also observe and comply with the relevant independence rules issued by the regulator (i.e. Ministry of Finance) including independence rules issued by OJK for auditors of publicly-listed clients.

The Ministry of Finance also requires rotation of audit firms which have provided audit services for six consecutive years if there are no significant changes in the composition of partners in the audit firm.

## E. Labour Environment

# E. Labour Environment

## 1. Employee rights and remuneration

Manpower Law No. 13 of 2003 governs the bargaining power of workers, specifies minimum standards for working conditions, and sets rules for severance and compensation payments. Although the law recognizes workers' right to strike, it also restricts strike action, including a requirement that strikes be legal, orderly and peaceful.

Indonesia has ratified the main conventions of the International Labour Organization (ILO), including conventions on the rights of assembly and collective negotiation; on equal wages for men and women for the same work; and on forced labour, freedom of association and protection of the rights of association. ILO Convention 138 on the minimum age for employment is incorporated in Indonesian law, and ILO Convention 182 on the elimination of the worst forms of child labour was ratified and incorporated into law in 2000.

The government has issued several regulations that expand or modify labour laws, including decrees on the employment of foreigners, occupational health and safety, work competency standards, and overtime standards and pay.





## 2. Wages and benefits

Provincial wage councils set minimum wage levels for each province and for each of the districts within the province. These councils comprise representatives from the Ministry of Manpower and Transmigration, the All-Indonesia Workers' Union, employers' associations and academia. Wage levels have been increasing over the past few years in line with inflation. District-level minimum wages can be substantially higher than provincial wages.

Wages include a minimum wage, overtime pay, sick pay and holiday pay. Cash wages must constitute 75% of the minimum wage, with the remainder typically allotted for food and transport. Foreign firms typically start employees at salaries that are double the minimum wage. Most local firms pay rates slightly above the minimum wage.

Fringe benefits include annual holidays (typically 12 days a year) and paid leave for national holidays, religious obligations, family obligations (including marriage), paid maternity leave, and sick leave. Severance compensation is required upon termination or retirement. Employees receive a one month's bonus as a Religious Festival Allowance (THR). The extra month salary is to be paid before Lebaran (end of Ramadhan) for Muslims, before Christmas for Christians, before Nyepi Day for Hindus, and before Buddha's Enlightenment Day for Buddhists.

### Pensions and social insurance

There are currently two types of social security (BPJS) program: BPJS Manpower and BPJS Healthcare. Premium for both programs is paid by both the employer and employee.

The new BPJS Manpower scheme came into effect on 1 January 2014 but in general it continues the previous social security or Jamsostek and the premium will remain the same as Jamsostek premium, i.e. 0.24% to 1.74% (by employer) for workers accident Insurance, 0.30% (by employer) for life insurance, and 3.70% (by employer) and 2.00% (by employee) for retirement plan.

The healthcare scheme replaces the old healthcare scheme and will be fully mandatory by 1 January 2019. Small, medium, and large enterprises will need to register themselves and their employees to the Healthcare Scheme by 1 January 2015. The premium is 4.5% of the employee monthly salary (4.0% is paid by the employer and 0.5% is paid by the employee for the period of 1 January 2015 until 30 June 2015). As of 1 July 2015, the premium will be 5% of the employee's monthly salary (4.0% is paid by the employer and 1.0% is paid by the employee). The cap for the employee's monthly salary used to determine the premium amount is two times the Indonesian tax exemption amount (married with one child), or currently IDR 4,725,000/month. The mandatory premium will cover husband, wife, and two children. Additional family members can be covered with additional premium.

Under the current regulation, participants also include foreign workers (expatriates) who work for at least six months in Indonesia (must hold valid work/stay permit).

### **Other benefits**

Individual negotiations or collective bargaining determine other fringe benefits. These usually include family and cost-of-living allowances, free medical care (including dental care) for the employee and his/her family, housing, transport, and work clothes. Many firms offer pension schemes. Senior executives often receive additional benefits such as a company car and annual home leave.

### **3. Termination of employment**

There are legal restraints on the dismissal of a worker who has been employed continuously for at least three months. Even if a production cutback is needed or the worker is deemed unfit, the employer may not discharge the worker without a severance-pay settlement agreed between the employee and employer. If an agreement cannot be reached, the employer must obtain the approval of the Ministry of Manpower and Transmigration.

Severance payments consist of one to nine times the employee's last monthly salary (depending on the length of service), and (after at least three years of service) a gratuity payment at double the employee's last monthly salary. Other entitlements upon termination of employment include cash payments for accrued annual leave, and housing and medical benefits equal to 15% of the severance and gratuity payments.

#### **4. Labour-management relations**

Labour contracts are common, and typically cover employees who enter a firm within a certain time period. Contracts can be renewed for one to three years. Collective bargaining is typically conducted at the company level if a union represents or gains the approval of at least 51% of the workforce. Labour disputes are addressed by a special provincial-level commercial court.

#### **5. Employment of foreigners**

Employment of foreigners is allowed only in positions that Indonesians cannot fill and only if regular and systematic training is provided so that Indonesians can eventually replace the expatriates. There are normally no difficulties in obtaining permission to employ foreign managers and technicians if the government believes no Indonesians are available to fill the positions. However, foreigners are not eligible to fill certain positions (e.g. personnel managers).

Foreigners fall into four classes: professionals, managers, supervisors and technicians/operators. Work permits are required for all four classes. Foreigners must have minimum university degree to work in Indonesia and must have an Indonesian counterpart (except for director or commissioner positions). The ratio is 1:3 for a Representative Office (one expatriate: three Indonesian Counterparts). Every RO which employs one expatriate (with University degree) must employ three Indonesian citizens. For a Foreign Investment Company in the form of a Limited Liability Company (PT PMA) the ratio is 1:1 (Copy of Indonesia ID card + employment contract needs to be attached).

Firms must submit a mandatory report, staff welfare report and expatriate utilization plan (RPTKA) manpower report to the Ministry of Manpower and Transmigration before inviting the expatriates. The report should state all positions to be filled by expatriates during a one-year period, the qualifications for each position, and plans for training Indonesian staff. The ministry grants individual work permits based on approved manpower plans. Approval for work-permit applications can take up to three months.

Non-directorship positions and others not included in the BKPM plans need approval from the Ministry of Manpower and Transmigration's Office for Placement of Foreign Workers.





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Osman Bing Satrio & Eny’s practice is registered with the Ministry of Finance, Ministry of Trade & Industry, and the Indonesian Institute of Accountants (IAI). The Audit Partners are registered with both the Capital Market Coordinating Board and Bank Indonesia (the Central Bank). Many of Deloitte Indonesia’s professionals have earned Certified Public Accountant (CPA) and other similar certifications, both locally and internationally. Many have also gained certifications such as Certified Information Systems Auditor (CISA), Certified Internal Auditor (CIA), and Certified Information Systems Security Professional (CISSP).

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