

Rödl & Partner

CLIENT ALERT INDONESIA

TAPPING PERSPECTIVES

Issue:
November
2020

Latest News on Investment, Tax and Business in
Indonesia:

THE INDONESIAN OMNIBUS LAW

www.roedl.de/indonesien | www.roedl.com/indonesia



Read in this Issue:

→ The Indonesian Omnibus Law

- Investment Licensing
 - Amendment of investment regulations
 - Risk-based business assessment
 - Simplified licensing requirements
 - Conclusions
 - Tax aspects
 - The CIT rate changes
-

→ Law No. 11 of 2020 on Job Creation Section IV on Manpower

- Unemployment Security Program

→ The Indonesian Omnibus Law

Investment Licensing

On 5 October 2020, the Indonesian House of Representatives approved the job creation law, which is commonly known as "Omnibus Law". The Omnibus Law has been promulgated after having been signed by President Joko Widodo on 2 November. On the same date, it has also been signed by the Minister of Law and Human Rights, and is now effective as Law No. 11 of 2020, issued in the State Gazette of the Republic of Indonesia No. 245 of 2020. This legal instrument aims at attracting investment, and stimulating the economy by i.a. simplifying the licensing process and harmonizing various business related laws and regulations that are deemed to be obstructive towards foreign investments. The Omnibus Law supersedes earlier provisions on the same regulated subject matter. It governs a wide range of topics, e.g. employment or environmental issues, but in this article we will focus on the investment licensing mechanisms which appear of certain interest from a foreign investment perspective.

The Investment Law of 2007 and guiding legislation remain the main reference for capital investment activities in Indonesia, but the Omnibus Law opens a broader range of sectors to foreign direct investment, which were previously at least partially closed. So far, Article 12(1) of the Investment Law stated that "all business fields are open to direct investment, except for those that are declared as closed to investment or open subject to conditions."

Amendment of investment regulations

This provision has been amended under the Omnibus Law to read as follows: "All business fields are open to direct investment, except for those that are declared as closed to investment or which constitute activities that are reserved to the central government." Hence, the removal of the wording "open subject to conditions" can be interpreted to mean that all business activities will become either fully open or closed for capital investment, or may only be conducted by the central government. This can also be seen from the deletion of paras 4 and 5 in Art 12 of the Investment Law; esp. para 4 made reference to criteria and requirements for business fields that are closed or open with requirements, which so far was

particularly defined in the Negative List, that governs investment conditions and restrictions under a presidential decree. It is not yet clear whether and to what extent the amendments will lead to a removal or substantial revision of the current Negative List. The omnibus law states that further provisions regarding investment requirements shall be governed by a Presidential Regulation, which so far has not been issued.

The government currently aims at accelerating the drafting of 44 implementing regulations for the Omnibus Law which consists of 40 Draft Government Regulations and 4 Draft Presidential Regulations, with a target of completion in late November or early December 2020. Until now, 30 implementing regulations have been drafted already. With regard to this implementing legislation it remains to be seen (i) what the future criteria of the different sectors will be (possibly large-size investment, investment in labor intensive business sectors, as well as high-tech and digital-based business sectors will remain relevant), (ii) what investment requirements will be imposed by the central government for the different sectors and (iii) how foreign ownership restrictions, which are currently imposed on many sectors, e.g. distribution or transportation, will be regulated.

Risk-based business assessment

The Omnibus Law revises the business licensing mechanism by introducing a new concept of risk-based business assessment. Accordingly, business activities are divided into low, medium and high risk categories. Business licensing will be processed through an electronic system. The granting of the relevant license or permission will be determined by the risk level and the business scale rating. The respective assessment shall take into account aspects such as the (i) type of business activities, (ii) business location, (iv) scarcity of resources or (iv) volatility risks. The risk level and business scale rating are divided into different categories.

- **LOW RISK BUSINESS** requires a Business Identification Number (NIB), which is the legal requirement for the implementation of business activities. The NIB is the proof of registration of business actors to carry out business activities,

and as an identity for business actors in carrying out their business activities.

- **MEDIUM RISK ACTIVITIES** are further subdivided. A **MEDIUM-LOW RISK BUSINESS ACTIVITY** requires an **NIB** and a **STANDARD CERTIFICATION** in form of a statement by business actors to fulfill business standards for their activities. Further, **MEDIUM-HIGH RISK BUSINESS ACTIVITIES** require an **NIB** and a **STANDARD CERTIFICATION** in form of a certificate issued by the **CENTRAL OR REGIONAL GOVERNMENT** based on the results of a compliance verification with applicable business standards. Beyond these requirements, in case medium risk activities require compliance with certain product standards, the Central Government issues a standard product certificate based on the results of the compliance standard verification that business actors must meet before carrying out the product commercialization.
- **HIGH RISK BUSINESS** requires the **NIB** and a **LICENSE** in form of the **CENTRAL OR REGIONAL GOVERNMENT'S APPROVAL** for the implementation of the envisaged business activities that must be obtained before commencement of operations. If high-risk business activities further require compliance with certain business, industrial or product standards, the aforementioned certificate issuance in line with the compliance standard verification is required as well.

It remains, however, still unclear how this assessment and risk level determination will be conducted by the Government. The implementation and enforcement of this process will be incorporated in the implementing Government Regulations to be issued within three months after the entry-into-force of the Omnibus Law. We will thus have to wait until early February for the implementing legislation, to see how the respective administrative practice will develop.

Simplified licensing requirements

The Omnibus Law provides several rules to simplify the basic requirements for Business Licensing. One is the "suitability of space utilization", which means the suitability of a location for the intended

business activity as determined in a detailed spatial plan issued by the Government. The Local Government is obliged to prepare and provide this spatial plan in digital form, which should be easily accessible by the public. The Central Government is moreover obliged to integrate the plan in digital form into the electronic business licensing system. If business actors have obtained the location permit for their activity - which must be in line with the spatial plan -, then the business actor has to submit an application concerning the suitability to use the space for the envisaged business activities through the electronic business licensing system. After obtaining the confirmation of the suitability of the activity for the respective space utilization, business actors may proceed the business licensing. We understand that the Central Government shall be authorized to cancel all approvals issued by Local Governments which do not comply with the spatial plan. So there seems to remain a certain procedural risk here from our initial impression.

The Central Government is obliged to supervise and provide guidance as to the practical implementation of a business license. If there is a violation of the provisions in a business license, it will be subject to administrative sanctions for the owner of the Business License in the form of warnings, temporary suspension of business activities, imposition of administrative fines, in some cases even imposition of police force, and in extreme cases the revocation of license, certification or approvals.

Conclusions

According to the transition provisions of the Omnibus Law, with the entry into force of the law business licenses or sector permits that have been issued before the entry into force, remain valid until their expiry date. Business Licensing which is currently in the application process needs to be adjusted to the provisions of this law. This might lead to some delays with regard to the lacking implementing legislation, and there is no practice yet as to how authorities will deal with this for the moment.

We will further monitor this legislative development and provide further updates, particularly with regard to the implementing guidelines.

→ Law No. 11 of 2020 on Job Creation Section IV on Manpower Unemployment Security Program

In addition to the amendment of essential provisions of Law No. 13 of 2020 on Manpower (“Manpower Law”), Section IV of the Omnibus Law No. 11 of 2020 on Job Creation (“Job Creation Law” or the “Law”) also provides a new social security program under the joint management of the Social Security Program Agency or *Badan Penyelenggara Jaminan Sosial* (“BPJS”), and the central government, namely the **UNEMPLOYMENT SECURITY PROGRAM**.

Workers having their employment terminated shall now be entitled to the unemployment security program, with the contributions being borne by the central government. The benefits to be provided are as follows:

- Cash payment;
- Access to information related to the job market; and
- Job training.

The above benefits shall be provided with 6 (six) months of salary at the maximum, after the worker has passed a certain period of membership with the program.

This unemployment security program is an addition to the already existing five programs under BPJS, which are the (i) **HEALTH SECURITY**, (ii) **WORK ACCIDENT SECURITY**, (iii) **OLD-AGE SECURITY**, (iv) **PENSION SECURITY**, and (v) **DEATH SECURITY**.

The addition of this new program therefore led to the amendment of some provisions in Law No. 40 of 2004 on the National Social Security System and Law No. 24 of 2011 on BPJS.

Similar to numerous provisions in the Job Creation Law, further details regarding the benefits, requirements, and implementation of this unemployment security program shall be regulated in an upcoming Government Regulation, planned to be issued within a few months subsequent to the enactment of the Law on 2nd November 2020.

Contact for more information



Markus Schlueter
T +49 221 9499 093 42
markus.schlueter@roedl.com

→ The Indonesian Omnibus Law

Tax aspects

The omnibus law, explained in the above article, also covers tax aspects which are relevant for foreign investors. We see several notable amendments affecting the prevailing Tax Laws, in this article mainly looking from a foreign investor's perspective.

Changes include modifications of the (i) Income Tax Law, (ii) VAT Law, (iii) Law of General Tax Procedures and (iv) Regional Tax Law.

An initial overview on important changes may be seen below:

TAX LAWS IMPACTED	THE PREVIOUS LAW	CHANGES CAPTURED IN THE OMNIBUS LAW
INCOME TAX LAW	<p>Dividend income received from an Indonesia domestic company by:</p> <ul style="list-style-type: none"> - Corporate recipient holding more than 25 percent shareholding, dividend income is tax exempt - Corporate recipient holding less than 25 percent shareholding, dividend income is subject to income tax - Individual recipient receiving dividend income shall be taxed 10 percent Final income tax <p>Dividend income received from Foreign domicile companies by Indonesian corporate and individual taxpayer is subject to income tax at the prevailing income tax rate.</p> <p>Interest income paid to non-resident is subject to 20 percent withholding tax according to Article 26 of the Income Tax Law</p> <p>DOMESTIC TAX RESIDENTS ARE:</p> <ul style="list-style-type: none"> - Individual domiciled in Indonesia or residing in Indonesia for more than 183 days or has intention to reside in Indonesia - Corporation which is established or domiciled in Indonesia 	<p>Domestic companies receiving dividend income from an Indonesia domestic company are exempt from income tax regardless the percentage of shareholding.</p> <p>Individual recipient receiving dividend income shall be exempt from income tax, provided that such dividend income is invested within Indonesia.</p> <p>Dividend income received from Foreign domicile companies by Indonesian corporate and individual taxpayer is exempt from income tax provided that the dividend constitutes more than 30 percent of the after tax income of the investee and such dividend income is invested in Indonesia. Further implementing regulation shall be issued following the Omnibus Law.</p> <p>Withholding tax rate of 20 percent which is imposed on interest payment to non-resident can be lowered subject to the implementing Government Regulation.</p> <p>DOMESTIC TAX RESIDENTS ARE:</p> <ul style="list-style-type: none"> - Individuals which can be Indonesia national or foreign national domiciled in Indonesia ; or residing in Indonesia for more than 183 days or has intention to reside in Indonesia - Corporation which is established or domiciled in Indonesia

TAX LAWS IMPACTED	THE PREVIOUS LAW	CHANGES CAPTURED IN THE OMNIBUS LAW
INCOME TAX LAW	<p>All Indonesia residents are subject to income tax for his worldwide income</p> <p>FOREIGN TAX RESIDENTS ARE:</p> <ul style="list-style-type: none"> - Individuals not residing in Indonesia, or individuals residing in Indonesia less than 183 days, or foreign corporation which conducts business activity through a Permanent Establishment - Individuals not residing in Indonesia, or individuals residing in Indonesia less than 183 days, or foreign corporation which does not conduct business activity through a Permanent Establishment but earn Indonesia source of income 	<p>Foreign-national Indonesia tax resident is subject to Indonesia source of income in accordance with the following conditions:</p> <ul style="list-style-type: none"> - Has specific expertise; and - valid for four years since the effective date of becoming Indonesia tax resident. <p>Subject to Minister of Finance Implementing Regulation</p> <p>FOREIGN TAX RESIDENTS ARE:</p> <ul style="list-style-type: none"> - Individuals not domiciled in Indonesia - Foreign national residing in Indonesia less than 183 days - Indonesia nationals residing outside Indonesia for more than 183 days and fulfilling the following criteria of: foreign domicile; economic activity; habitual abode; foreign tax resident etc.
VAT LAW		<ul style="list-style-type: none"> - Relaxation of certain aspect in input-VAT credits - Coal is determined as VAT-able goods
LAW OF GENERAL TAX PROCEDURES		<ul style="list-style-type: none"> - Imposing re-arrangement of administration sanctions

We also saw some Corporate Income Tax (CIT) rate changes this year, which however were not directly part of the Omnibus Law, though standing in context with it. Reductions have already been introduced in an earlier Law, i.e. Law Number 2/2020 of 16 May 2020. The Law was passed in anticipation of the economic slow-down because of the progressing pandemic situation.

The CIT rate changes

The CIT rate changes, as outlined in Law Number 2/2020, are as follows:

1. For the Financial Year 2020 and 2021, the CIT rate will be 22 percent. Qualifying listed companies (which means a minimum of 40 percent of its shares are traded in the Indonesia stock exchange) are entitled to a 3 percent extra reduction, resulting in a 19 percent rate.
2. For Financial years 2022 and onwards, the CIT rate will be 20 percent. Qualifying listed companies are again entitled to a 3 per cent lower rate, i.e. 17 percent.

Contact for more information



Wahyu Indradi
T +62 21 5056 0405
wahyu.indradi@roedl.com

Imprint

Client Alert Indonesia | November 2020

Publisher:

Rödl & Partner
Green Office Park 9
Wing A, 3rd Floor, Zone 6&7
Jl. Grand Boulevard BSD City
Tangerang 15345, Indonesia
T +62 21 2056 0405
www.roedl.de | www.roedl.com

Responsible for the content:

Rödl & Partner (Indonesia)
Green Office Park 9
Wing A, 3rd Floor, Zone 6&7
Jl. Grand Boulevard BSD City
Tangerang 15345, Indonesia

Layout/Type:

Rödl & Partner (Indonesia)
jakarta@roedl.com

This Newsletter offers non-binding information and is intended for general information purposes only. It is not intended as legal, tax or business administration advice and cannot be relied upon as individual advice. When compiling this Newsletter and the information included herein, Rödl & Partner used every endeavor to observe due diligence as best as possible, nevertheless Rödl & Partner cannot be held liable for the correctness, up-to-date content or completeness of the presented information. The information included herein does not relate to any specific case of an individual or a legal entity, therefore, it is advised that professional advice on individual cases is always sought. Rödl & Partner assumes no responsibility for decisions made by the reader based on this Newsletter. Should you have further questions please contact Rödl & Partner contact persons.

The entire content of this Newsletter and the information available in the internet is intellectual property of Rödl & Partner and is protected by copyright. Users may only download, print or copy the content of this Newsletter for their own purposes. Each change, reproduction, distribution or public communication of its content or parts of the content, whether online or offline, require the prior written consent of Rödl & Partner.