

Adjustment Of Income Tax Regulations

Government Regulation number 55 of 2022 is a regulation to implement the provisions of Article 4 paragraph (2) letter e, Article 4 paragraph (3) letter a number 1, Article 17 paragraph (2e), and Article 32C of Law Number 7 of 2021 concerning Tax Regulations Harmonization Law.

Government Regulation number 55 of 2022 revokes and replaces several Government Regulations including: Support or Donation (Government Regulation Number 18 of 2009), Calculation of Taxable Income and Settlement of Income Tax in the Current Year (Government Regulation Number 94 of 2010 as last amended by Government Regulation Number 9 of 2021), Income Tax Received or Obtained by Taxpayers with Certain Gross Turnover (Government Regulation Number 23 of 2018), Income Tax Facilities in the context of Handling the Corona Virus Disease 2019 (the provisions of Article 10 of Government Regulation Number 29 of 2020), and Reduction of Income

Tax Rates for Domestic Corporate Taxpayers in the form of Public Companies (Government Regulation Number 30 of 2020), whose regulations are no longer under the Tax Regulations Harmonization Law and the needs of Income Tax administration.

The contents of Government Regulation number 55 of 2022 are divided into several sections. Below are the summaries of the new regulations in the Government Regulation number 55 of 2022.

INCOME TAX OBJECTS

- **Criteria for Specific Skills and Income Taxation for Foreigner**

The imposition of income tax only applies to income received or obtained from Indonesia for foreigners who have become Domestic Tax Subjects (DTS).

- Foreigners who have become domestic tax subjects are subject to income tax only on income received or obtained from Indonesia, provided that:
 - Have specific skills under the provisions of the regulations, and
 - Applies for a period of 4 (four) tax years calculated from the date they become domestic tax subjects.
 - Income received or obtained from Indonesia by Foreigners in connection with works, services, or activities in Indonesia, regardless of the name or form which has been paid outside Indonesia, is included in the definition of income received or obtained from Indonesia.
 - The above provision does not apply to foreigners who utilize the Tax Treaty between Indonesia and the partner country where they earn income from.
 - The 4 (four) year tax period is calculated from the date the foreigners first become a domestic tax subject of Indonesia.
- **Criteria for Specific Skills:**
 - Foreigners with specific skills include foreign workers holding specific positions and foreign researchers who must meet requirements regarding:

- The utilization of foreign workers determined by the Minister of Manpower; or
- Foreign researchers determined by the Head of National Research and Innovation Agency.
- The criteria for specific skills include:
 - Having expertise in the field of science, technology, and/or mathematics, proven by:
 - Certificates of expertise issued by institutions appointed by the Indonesian government or the foreign government of the foreign worker;
 - Educational certificates; and/or
 - At least 5 (five) years of work experience in the relevant field of expertise or work; and
 - Obligation to transfer knowledge.

ADJUSTMENT OF REGULATIONS REGARDING EXEMPTIONS OF INCOME TAX OBJECTS AFFECTED BY THE TAX REGULATIONS HARMONIZATION LAW

- Provisions for Income Tax Exemption on Dividends and Other Income from Abroad
 - Dividends from Domestic Sources are exempted from income tax objects and no tax deduction is made, provided that:
 - Dividend distribution is conducted through a General Meeting of Shareholders, except for interim dividends.
 - If received by a corporate taxpayer, there are no additional requirements.
 - If received by an individual taxpayer, there is a requirement to invest the dividend for a period of 3 (three) years.
 - Dividends from abroad are exempted from income tax object to the following conditions:
 - Dividends from subsidiary companies not listed on the stock exchange are exempted from income tax objects if distributed

and invested in Indonesia for at least 30% of the net income after tax.

- Dividends from subsidiary companies listed on foreign stock exchanges are exempted from income tax objects up to the amount invested in Indonesia.
- Income from abroad passing through a Permanent Establishment (PE) is exempted from income tax objects if invested in Indonesia for at least 30% of the net income after tax.
- Income from active business abroad that does not pass through a Permanent Establishment is exempted from income tax objects with the condition that it is invested in Indonesia.

Income from active business abroad refers to services performed abroad by a Domestic Taxpayer, such as management, engineering, construction, and other services that do not result in a Permanent Establishment overseas.

- Criteria, Procedure, and Specific Timeframe for Investment in Dividends or Other Income Exempted from Income Tax Objects
 - Investment Forms
 - State Securities of the Republic of Indonesia and Sharia State Securities of the Republic of Indonesia;
 - Bonds or sukuk of State-Owned Enterprises that are monitored by the Financial Services Authority;
 - Bonds or sukuk of financing institutions owned by the government and monitored by Financial Services Authority;
 - Financial investment in perception banks, including Islamic/Sharia banks;
 - Bonds or sukuk of private companies monitored by Financial Services Authority;
 - Infrastructure investment through government partnership with business entities;

- Real sector investment based on priorities set by the government;
 - Equity participation in newly established companies domiciled in Indonesia as shareholders;
 - Equity participation in existing companies domiciled in Indonesia as shareholders;
 - Collaboration with the Investment Management Institutions;
 - Usage of funds to support other business activities in the form of loans for micro and small businesses within the country of Indonesia; and/or
 - Other valid forms of investment under prevailing laws and regulations.
- Investment Time Limit
 - End of the third month after the tax year in which the dividend or other income is received/obtained, for individual taxpayers; or
 - End of the fourth month after the tax year in which the dividend or other income is received/obtained, for corporate taxpayers.
 - Investment Holding Period
 - At least 3 (three) tax years, calculated from the tax year in which the dividend or other income is received/obtained.
 - Investment cannot be transferred except to other eligible investment forms.

ADJUSTMENT OF REGULATIONS REGARDING EXPENSES THAT CAN BE DEDUCTED FROM GROSS INCOME AFFECTED BY TAX REGULATIONS HARMONIZATION LAW

- Promotion and Sales Costs

Promotion and sales costs that can be deducted from gross income are those used to obtain, collect, and maintain income, and must take into account the following matters:

- Used to maintain and/or increase sales;

- Incurred reasonably; and
- According to the customs and practices of good traders.

DEPRECIATION OF TANGIBLE ASSETS AND AMORTIZATION OF INTANGIBLE ASSETS

Depreciation	Amortization
<p>New Content in Government Regulation number 55 of 2022:</p> <ol style="list-style-type: none"> 1. Notification of useful life > 20 years (for assets owned prior to the 2022 tax year) 2. Delegation of regulation to the Minister of Finance Regulation: <ol style="list-style-type: none"> a. Depreciation calculation b. Repair costs c. Specific business sectors (forestry, agriculture, livestock) d. Deferment of insurance losses e. Procedures for notifying useful life > 20 years 	<p>New Content in Government Regulation number 55 of 2022:</p> <ol style="list-style-type: none"> 1. Notification of useful life > 20 years (for assets owned prior to the 2022 tax year) 2. Delegation of regulation to the Minister of Finance Regulation: <ol style="list-style-type: none"> a. Amortization calculation b. Starting point of amortization for specific business sectors (forestry, agriculture, livestock) c. Procedures for notifying useful life > 20 years

TAX TREATMENT ON BENEFITS IN-KIND

- Taxation Treatment of Compensation or Remuneration in the Form of Benefits in Kind.

Taxable	Nontaxable	Deductible
<p><u>In-Kind Compensation</u> Compensation in the</p>	<p>1. Food/beverage/food ingredients/beverage ingredients for all employees</p>	<p>The cost of providing benefits in kind is deductible from</p>

<p>form of goods, Example: <i>Provision of ex-official car</i></p> <p><u>Benefits Compensation</u></p> <p>In the form of facilities/services, example: <i>Provision of official car</i></p> <p>Benefits are given in relation to employment or services</p>	<ol style="list-style-type: none"> 2. Benefits In Kind Compensation in certain regions 3. Benefits In Kind Compensation for work requirements 4. Benefits In Kind Compensation from the state budget (APBN)/ Regional Budget (APBD)/Village budget (APBDes) 5. Benefits In Kind Compensation with specific types and/or limitations. 	<p>gross income, as long as it is a cost incurred to obtain, collect, and maintain income.</p>
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- **Benefits in Kind Exempted from Income Tax Objects**

- Food/beverage/food ingredients/beverage ingredients for all employees
 - Food and/or beverages provided by employers in the workplace;
 - Meal vouchers for employees on official business trips, including those in marketing, transportation, and other official business trips; and/or
 - Food and/or beverages for all employees up to a certain value limit.
- Benefits in kind in certain regions
 - Facilities at the workplace for employees and their families, including housings, healthcare services, educations, religious facilities, transportations, and sports facilities (excluding golf, motorboat racing, horse racing, paragliding, and automotive sports).

- Transportation facilities for employees and their families during work assignments.
- The Director General of Taxes will determine the designation of specific areas (the procedures for the determination will be regulated by Minister of Finance Regulation).
- Benefits in kind required for work purposes
 - Benefits in kind related to employee security, health, and safety that are required by the relevant laws and regulations.
 - Including: uniform clothing, safety equipment, employee transportation services, accommodation for ship crew and similar services, and/or benefits in kind received in the context of dealing with endemics, pandemics, or national disasters.
- Benefits in kind sourced or funded by the state, regional, or village budgets.
- Benefits in kind with specific types and/or limitations
 - Benefits in kind that are detailed and based on specific considerations,
 - including the type and/or value of the Benefits in kind, and/or
 - Criteria for recipients of the Benefits in kind
 - The details of these benefits in kind will be regulated by the Minister of Finance.

- Assessment Standards for Benefits in Kind

Description	Basis of assessment
Goods	Market value
Facilities	Actual cost incurred by the provider in providing the benefit

- **Tax Deduction Regulations for Benefits in Kind**
 - Compensation & Remuneration in the form of Benefits in Kind are subject to deduction according to the applicable deduction provisions.
 - The deduction is carried out simultaneously and as a single entity with the deduction of cash compensation.
 - The obligation to deduct starts on January 1st, 2023.
- **Transitional Provision**
 - The income tax provisions for benefits in kind apply from 1 January 2022 and follow the fiscal year of the provider of benefits in kind.
 - For benefits in kind that are not subject to income tax deduction, the recipient is obliged to calculate and pay their income tax liability and report it on their income tax return.
- **Regulations in Minister of Finance Regulation**
 - Procedures for determining specific regions
 - Types and/or limitations of benefits in kind, as well as limitations on the value of food and/or beverages for all employees
 - Procedures for assessing and calculating benefits in kind.

TAX AVOIDANCE PREVENTION INSTRUMENTS

- **The tax avoidance prevention instrument using specific prevention (Article 32)**
 - Controlled Foreign Company regulation
 - Prevention and handling of transfer pricing disputes
 - Handling of Special Purpose Company schemes
 - Limitation of loan cost
 - Handling of hybrid mismatch arrangements

The Director General of Taxes may apply the substance over form principle if the specific prevention instrument cannot be applied.

- **Special Relationships (Article 33)**
Refers to the condition of dependence or attachment of one party to another caused by:

- Ownership or equity participation;
- Controlled; or
- Blood or marriage relationships,

which result in one party being able to control the other or not being independent in conducting business or activities.

- **Controlled Foreign Company Regulation (Article 34)**
 - Determination of the dividend acquisition time and its calculation basis;
 - Determination of the dividend acquisition time for foreign companies that are obliged to submit an Annual Tax Return and foreign companies that are not obliged to submit an Annual Tax Return.
- **Taxpayers who Conduct Transactions with Parties Affected by Special Relationships must Apply the Principle of Reasonableness and Arm's Length (PRAL) (Article 35)** Special relationship-affected transactions include:
 - Affiliate transactions; and/or
 - Transactions conducted between parties that do not have a special relationship but an affiliate of one or both parties determining the counterparty and transaction price.
- **Transfer Pricing (Article 36)**
 - • The Directorate General of Taxes (DGT) has the authority to re-determine the amount of income and/or deduction to calculate the amount of taxable income if the Taxpayer:
 - Does not apply the Principle of Reasonableness and Arm's Length (PRAL);
 - Applies the Principle of Reasonableness and Arm's Length but does not comply with the applicable provisions; and/or
 - Determines Transfer Pricing that does not meet the Principle of Reasonableness and Arm's Length.
 - The re-determination of the amount of income and/or deduction is carried out by determining Transfer Pricing in accordance with the Principle of Reasonableness and Arm's Length to calculate the amount of taxable income.

- Determination of Transfer Pricing in accordance with the Principle of Reasonableness and Arm's Length is carried out by using a comparison method of prices between independent parties, resale price method, cost-plus method, or other methods.
- Other methods such as profit split method, transactional net margin method, independent transaction comparison method, methods in the valuation of tangible and/or intangible assets, or methods in business valuation.
- The use of the method is chosen based on the accuracy and reliability of each method for transactions affected by special relationships.
- The difference between the value of transactions affected by special relationships that do not comply with the Principle of Reasonableness and Arm's Length with the value that complies with the Principle of Reasonableness and Arm's Length is considered as an indirect profit sharing with affiliate entities and thus being treated as dividends.

- **Special Purpose Company (Article 38)**

Regulation regarding the determination of parties who purchase shares or company's assets through other parties or entities established for this purpose as long as there is an unreasonable pricing activity. Other things regulated are:

- Shares or assets:
 - shares or assets previously owned and/or mortgaged by Domestic Taxpayers designated as the actual purchaser, regarding loan agreements; or
 - assets that are credit assets (receivables) to Domestic Taxpayers designated as the actual purchaser, regarding loan agreements.
 - The definition of parties or entities established to purchase shares or company's assets.
- **Special Purpose Company (Article 39)**

Identification of parties involved in the sale or transfer of shares between companies established or domiciled in tax haven countries that have special

relationships with companies established or domiciled in Indonesia or a permanent establishment in Indonesia.

The sale or transfer of shares between companies as referred to above may be identified as a sale or transfer of shares of a company established or domiciled in Indonesia or a permanent establishment in Indonesia.

- **Redetermination of Income Amount (Article 40)**

The redetermination of the amount of income earned by a domestic individual taxpayer in relation to employment, activities, or services from an employer with a special relationship with a foreign company shall take into account the reasonable income level that should be earned by the relevant individual taxpayer.

The determination of such income shall take into account the transfer of all or part of the income of a domestic individual taxpayer into the form of expenses or other expenditures paid to a company that is not established or domiciled in Indonesia.

- **Recalculation of Net Income (Article 41)**

- Recalculation of tax payable based on a comparison of financial performance with other taxpayers engaged in similar businesses is conducted on taxpayers who have made commercial sales for 5 years and reported fiscal losses for 3 consecutive years.
- Further provisions regarding the comparison of financial performance with other taxpayers engaged in similar businesses for the purpose of calculating tax payable are regulated in the Ministry Regulation.

- **Limitation of Loan Cost (Article 42)**

Limitation on the amount of loan cost that can be charged for tax purposes is carried out by the Minister using:

- A method to determine a specific ratio between debt and equity;

- A method to determine a certain percentage of loan cost compared to earnings before interest, income tax, depreciation, and amortization; or
- Other methods.

Provisions regarding the determination and implementation procedures of the methods used to limit the amount of loan cost are regulated in the Ministry Regulation.

EBITDA (Earnings Stripping)

- A method to determine a certain percentage of loan cost compared to earnings before interest, income tax, depreciation, and amortization (EBITDA) has not yet been regulated in the Ministry Regulation and is currently being drafted.
- Limitations on loan cost are expected to be applied based on EBITDA (based on company profitability).

- **Hybrid Mismatch Arrangement (Article 43)**

The recalculation of the tax payable without charging the payment made by a Domestic Taxpayer to a Foreign Taxpayer as a cost that reduces income resulting from the utilization of different tax treatment of an instrument or entity that can have more than one characteristic in the country or jurisdiction where the Taxpayer is domiciled.

Regulations on payments that cannot be charged as costs may be implemented, in the event that a Foreign Taxpayer:

- Not counting the payment as taxable income (deduction-non-inclusion); or
- Charges the payment as a deduction in the country or jurisdiction where the Foreign Taxpayer is domiciled (double deduction).

- **Advance Pricing Agreement (APA) (Article 45)**

- Domestic Taxpayers may submit an Advance Pricing Agreement application to the Director General of Taxes on their initiative or through

a Foreign Taxpayer that submits it to the tax authority of the partner country.

- Advance Pricing Agreement can be established between:
 - Directorate General of Taxes & Taxpayers (Unilateral)
 - Directorate General of Taxes & the tax authority of the partner country (Bilateral)
 - Directorate General of Taxes & more than one tax authority of the partner country (Multilateral)
 - Advance Pricing Agreement can cover all or part of affiliate transactions during the Advance Pricing Agreement period / rollback period.
 - Transactions covered may include affiliate transactions between Taxpayers with Domestic Taxpayers and/or with Foreign Taxpayers.
 - The Advance Pricing Agreement includes criteria for determining the Transfer Pricing and determining the Advance Pricing during the Advance Pricing Agreement period / rollback period.
- **Advance Pricing Agreement (APA) (Article 46)**
 - The Directorate General of Taxes is authorized to make agreements with Taxpayers or tax authorities of the partner country to determine the Transfer Pricing.
 - The Directorate General of Taxes follows up on the agreement by issuing a decision letter on the implementation of the Advance Pricing Agreement.
 - The Directorate General of Taxes is authorized to monitor the implementation of the Advance Pricing Agreement.

THE IMPLEMENTATION OF INTERNATIONAL TAX AGREEMENTS

The government has the authority to establish and/or implement tax agreements or treaties bilaterally or multilaterally in order to:

- Avoid double taxation and prevent tax evasion;
- Prevent tax base erosion and profit shifting;

- Exchange tax information;
- Provide tax collection assistance; and
- Engage in other forms of tax cooperation. (Article 48)

THE INCOME TAX ON CERTAIN GROSS TURNOVER OF TAXPAYERS

Applies to businesses whose gross turnover does not exceed IDR 4.8 billion per year. The provisions set out in Government Regulation No. 23 of 2018 which have been incorporated into Government Regulation Number 55 of 2022.

Several new or additional provisions have been added into Government Regulation number 55 of 2022, including the regulation of taxpayers in the form of Village-Owned Enterprises (BUMDes) and Joint BUMDes, as well as non-taxable income up to IDR 500 million.

Taxpayers subject to the regulation include:

- Individuals: for a period of 7 years
- Business entities, in the form of:
 1. limited liability companies: for a period of 3 years
 2. limited partnerships, Firms, Cooperative, BUMDes, joint BUMDes, and Individual-Owned Corporation: for a period of 4 years

The period of time is calculated from:

- The date the taxpayer is registered, counted from the tax year of registration
- For BUMDes, joint BUMDes and Individual-Owned Corporation which registered before the Government Regulation number 55 of 2022 took effect, counted from tax year 2022.

REDUCTION OF INCOME TAX RATES FOR DOMESTIC CORPORATE TAXPAYERS IN THE FORM OF PUBLIC COMPANY

- [Income Tax Rates](#)

Domestic Corporate Taxpayers and Permanent Establishments:

- 22% for Tax Year 2020 and Tax Year 2021
- 22% starting from Tax Year 2022 under the Tax Regulations Harmonization Law

● Income Tax Subjects

Domestic Corporate Taxpayers:

- In the form of Public Company
- At least 40% of the total paid-up shares must be traded on the Indonesia Stock Exchange (ISE)
- Meet certain requirements

● Income Tax Facility

A reduced income tax rate of 3% from the normal corporate tax rate (previously 22% to 19% starting from Tax Year 2020)

● Specific Requirements

- At least 300 parties must hold shares;
- Each party can only hold less than 5% of the total shares issued and fully paid-up;
- The above conditions must be met for at least 183 days in one tax year;
- Compliance of the requirements completed by reporting to the Directorate General of Taxes (DGT).

If the requirements are not met, the normal income tax rate applies.

● Reporting Procedures

- The Financial Services Authority (FSA) reports a list of taxpayers who meet the requirements;

The reporting procedures for taxpayers and the list of Public Companies by the Financial Services Authority are regulated in the Minister of Finance Regulation.

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