

Speaker



Ali Mardi

Tax Partner

+62 812 102 3818

alimardi@deloitte.com

Experience

- Ali has over 25 years of experience in financial, accounting and tax consulting. Prior to joining Deloitte, Ali was a co-founder of a Tax and Transaction Services firm. Before that he has held various roles in Indonesia and the Netherlands including as a Group CFO of a local Oil and Gas Company and as Tax Partner in one of the Big 4 Accounting Firms.
- During his professional career in Indonesia and the Netherlands, Ali has been exposed to a wide variety of industry sectors, including coal and hard rock mining, smelter, oil and gas, petrochemicals, and independent power producers/ IPPs (coal-fired, geothermal, hydro and solar).
- Ali has been specializing in Indonesian energy and resources sectors since 1998.

Qualifications

- Master Program - Strategic Management, Prasetiya Mulya Business School
- Bachelor of Economics, Majoring in Accounting, Tarumanagara University
- Certified Indonesian Tax Consultant (Brevet C)
- A registered Indonesian Chartered Accountant (CA)
- A registered CPA Australia

Disclaimer

This presentation is the property of Deloitte Touche Solutions (DTS) and is not intended to provide a comprehensive analysis of tax and non-tax state revenue of Indonesian mining sector. Webinar participants and readers should seek independent professional tax advice before applying the information contained in this presentation. Whilst every effort has been made to ensure the accuracy of this presentation, DTS, its partners and employees are not responsible for any inaccuracies, errors or omissions in this presentation. No reliance may be placed for any purposes whatsoever on the contents of this presentation or on its completeness. No representation or warranty, express or implied, is given and no responsibility or liability is or will be accepted by or on behalf of DTS or by any of its partners, members, employees, agents or any other person as to the accuracy, completeness or correctness of the information contained in this presentation or any other oral information made available, and any such liability is expressly disclaimed.

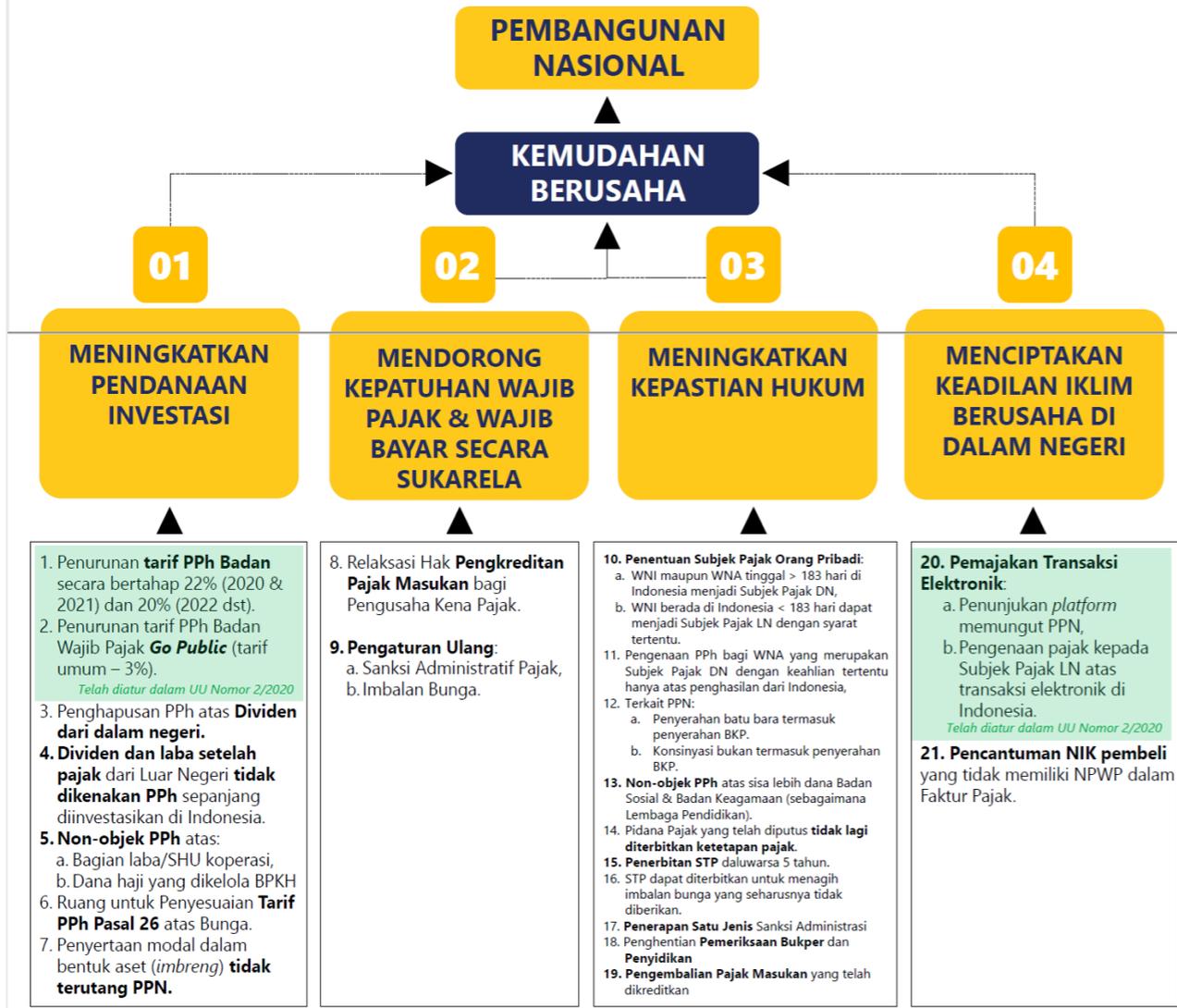
Agenda

- Tax Cluster of Law No. 11 of 2020
- Selected Income Tax Provisions
- Selected Value Added Tax (VAT) Provisions
- Appendix

Tax Cluster of Law No. 11 of 2020

Tax Cluster of Omnibus Law

SUBSTANSI KLASTER KEMUDAHAN BERUSAHA: BIDANG PERPAJAKAN

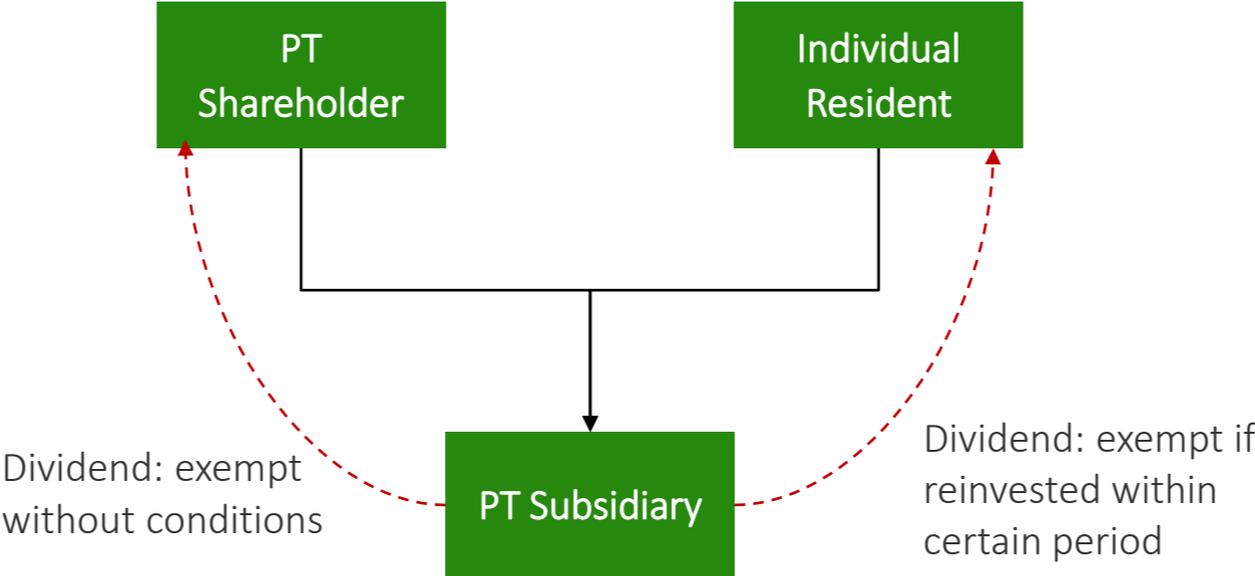


Source of Diagram: DGT's slides

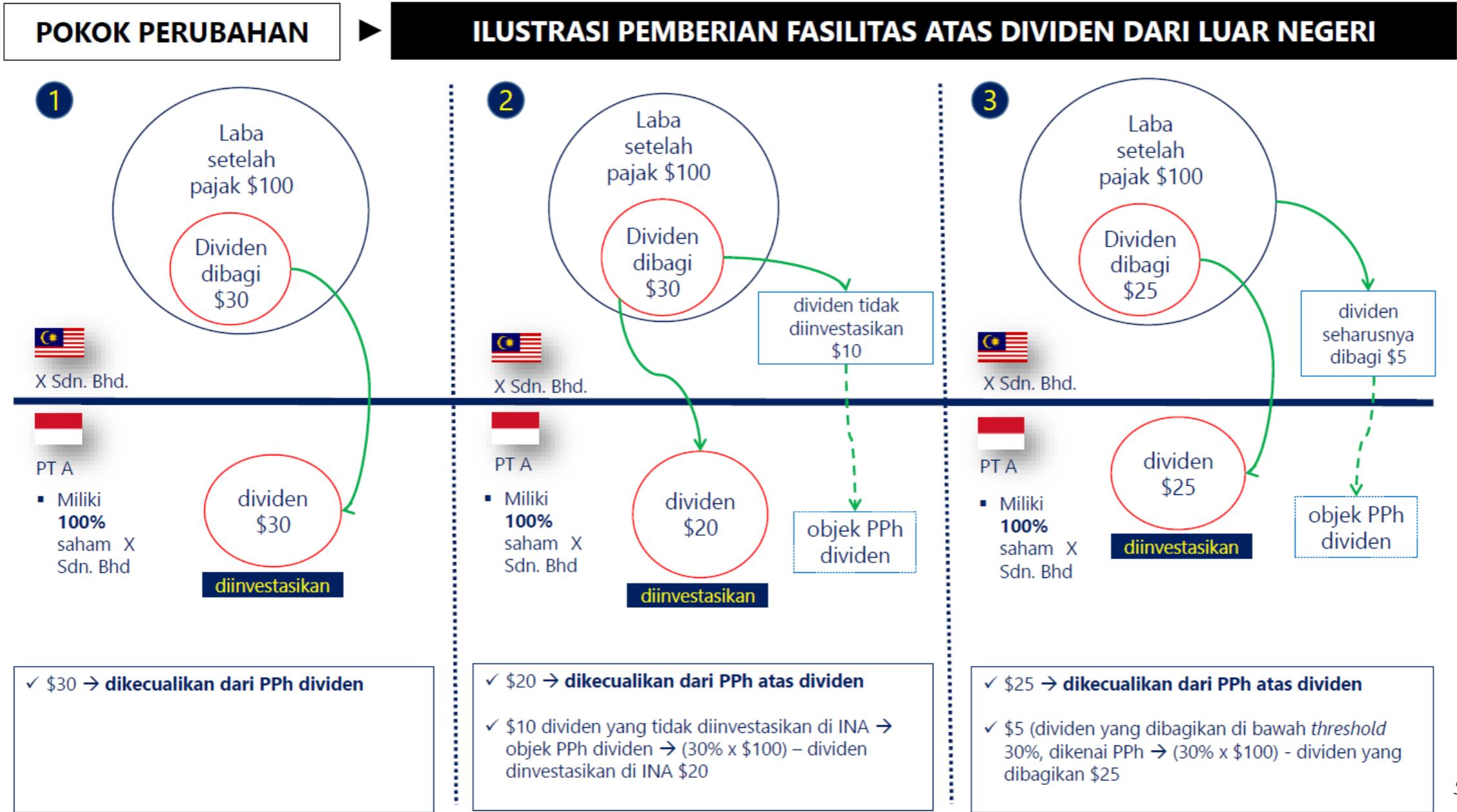
- Tax Cluster under Law No. 11 of 2020:
 - Article 111 (page 617): Income Tax Law amendment
 - Article 112 (page 633): VAT Law amendment
 - Article 113 (page 647): General Tax Provisions and Procedures Law amendment
 - Article 114 (page 668): Regional Tax and Retribution Law amendment
- Law No. 11/ 2020 is effective from 2 November 2020, with implementing regulations to be issued within three months
- This presentation does not intended to include all the changes introduced by Law No. 11 of 2020. We have selected some key changes in Income Tax Law and VAT Law that may be relevant for the energy and mining sectors.

Selected Income Tax Provisions

Dividend from Domestic



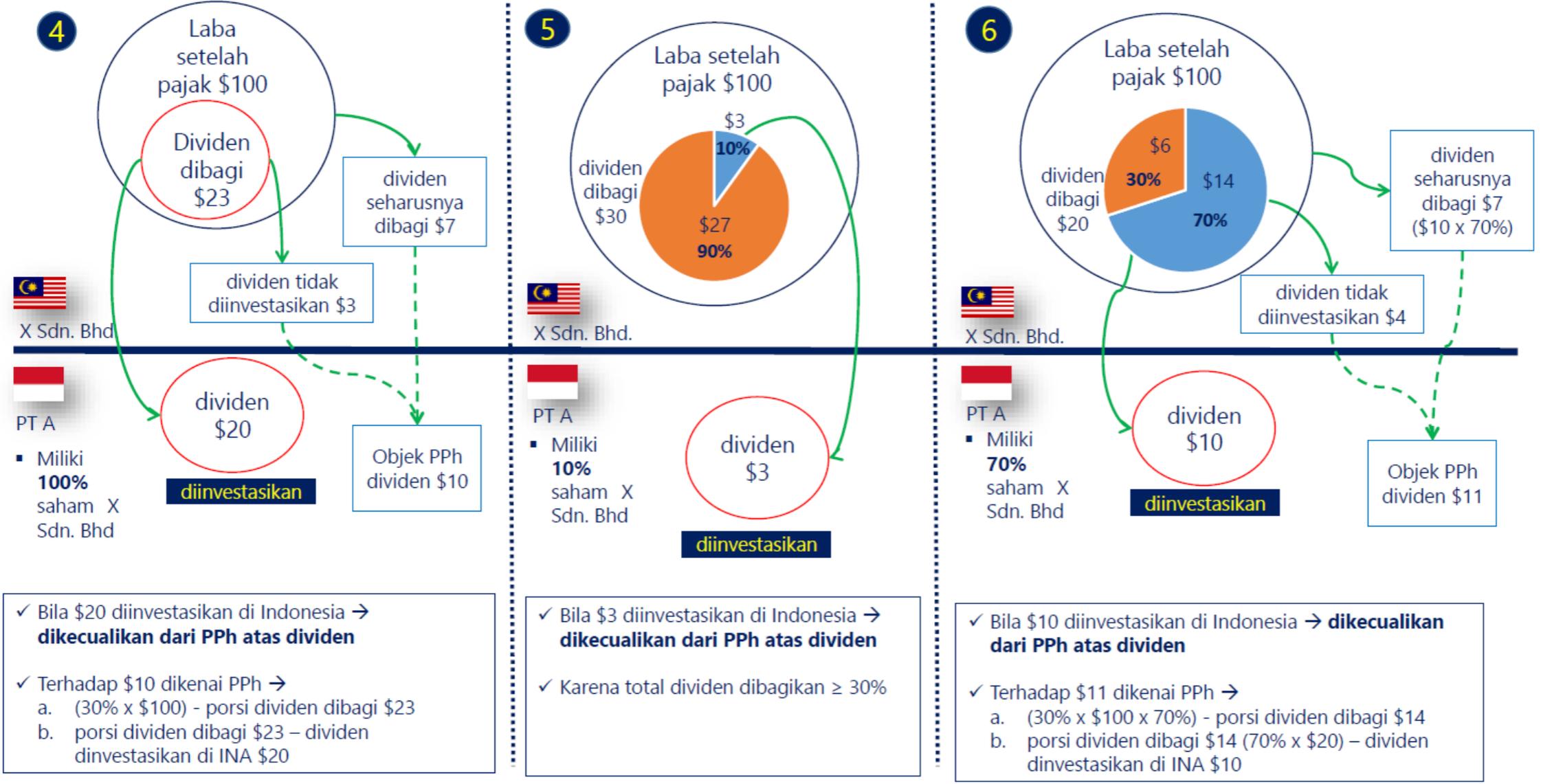
Dividend from Offshore – Example from the DGT (1 of 2)



Source: DGT's slides

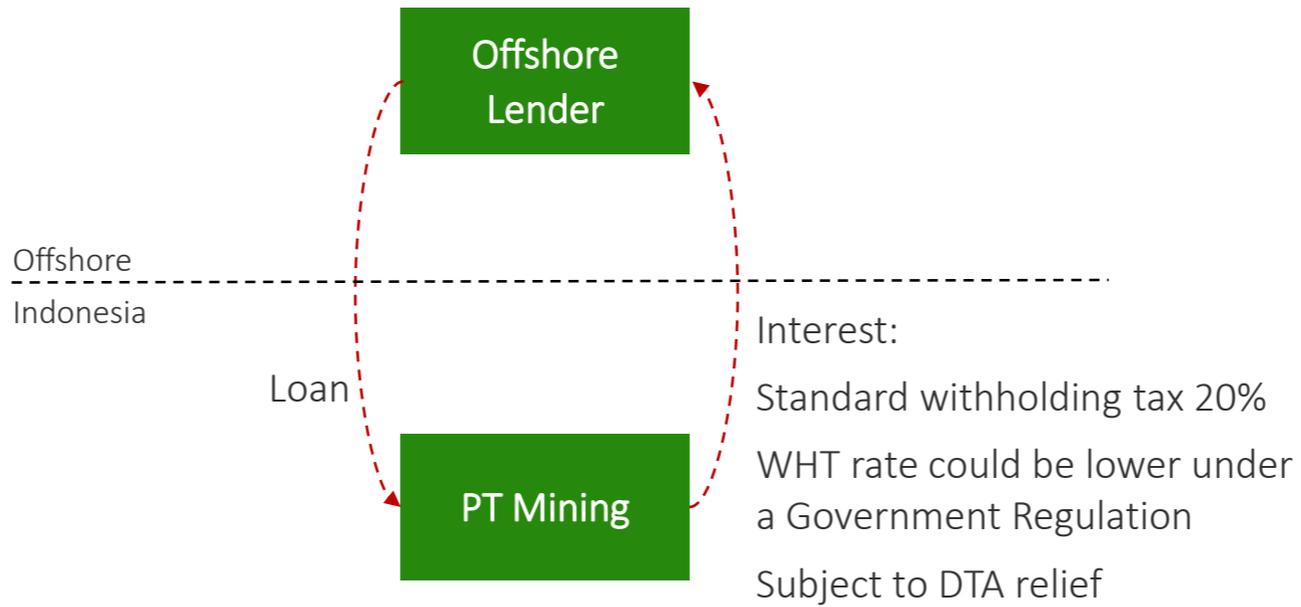
Dividend from Offshore – Example from the DGT (2 of 2)

POKOK PERUBAHAN ILUSTRASI PEMBERIAN FASILITAS ATAS DIVIDEN DARI LUAR NEGERI



Source: DGT's slides

Interest to Offshore Party

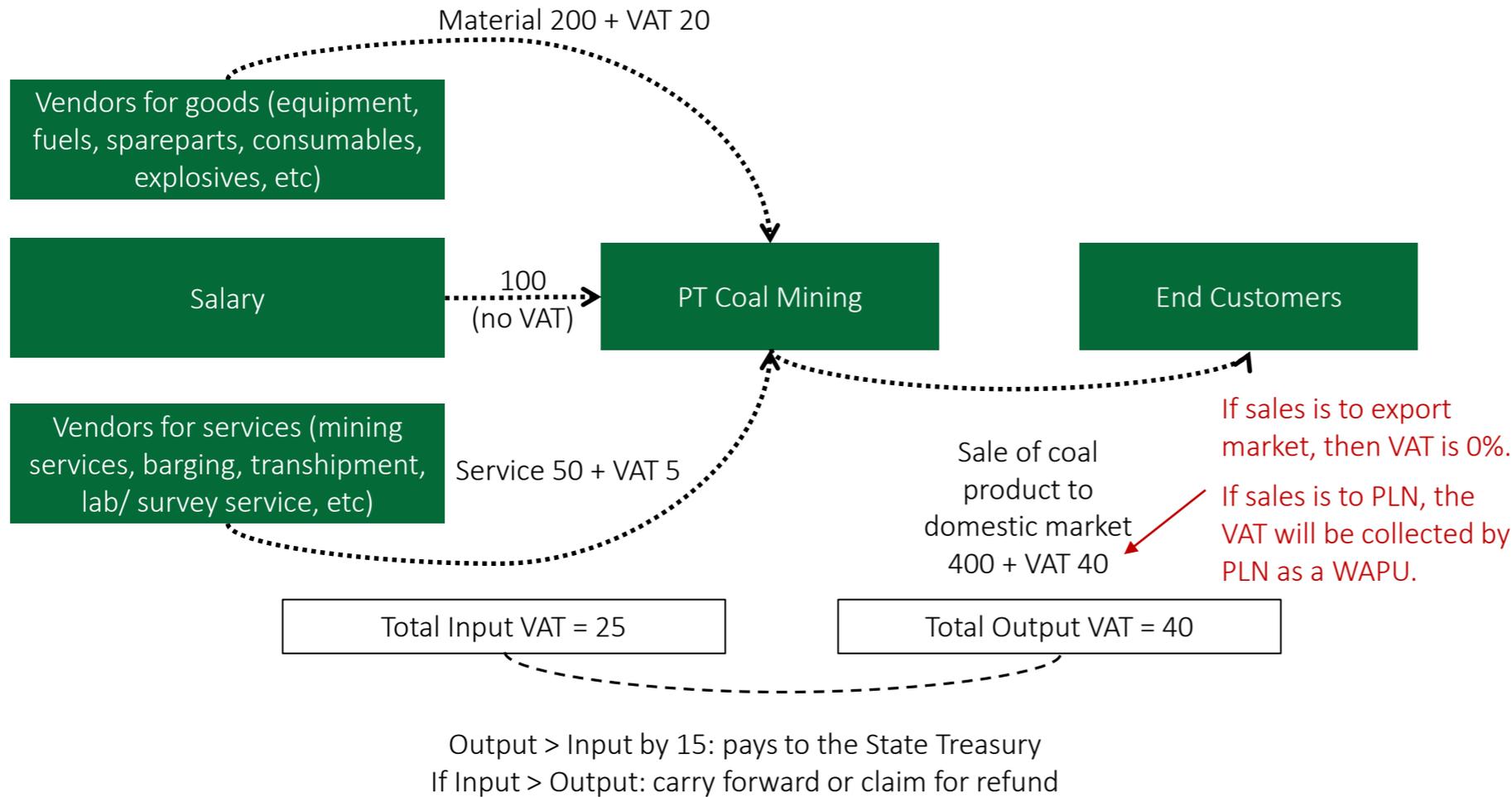


Selected VAT Provisions

VAT on Coal Delivery (1 of 2)

Regulation	Job Creation Law	Current Law	Notes	Implementing Regulation
<p>Article 4A(2)a</p> <p>VAT treatment on coal product</p>	<p>Mining products taken directly from source is not subject to VAT, except for coal</p>	<p>Coal that has not been processed to briquette is <u>not</u> subject to VAT.</p>	<p>Domestic coal delivery is subject to 10% VAT, whilst export is subject to 0% VAT. Related Input VAT should be creditable.</p>	
<ul style="list-style-type: none"> Under Law No. 11 of 2020, coal is goods subject to VAT. This treatment refers back to the position under the 1994 VAT Law (which was changed in 2000) Impacts to coal mining companies and coal users: <ul style="list-style-type: none"> Coal mining companies should assess the impact of the Omnibus Law and take necessary actions such as: <ol style="list-style-type: none"> Review the CCA/ CCoW VAT positions Discuss with coal buyers on the impact Discuss with the DGT (and other stakeholders) on the VAT position Register as VAT Entrepreneur (PKP) Issue VAT invoice, collect VAT and pay/ report to the tax office on domestic coal delivery Report coal export (0% VAT) in monthly VAT returns Implement procedures on review of Input VAT to ensure creditability Perform VAT compliance (VAT returns, etc.). In respect of the users, review the impact of this change (for some users this could mean an increase in coal procurement cost whilst for some this may be a cash flow issue “only”). 				
01 1 st Gen CCA	<ul style="list-style-type: none"> In general the CCA does not adopt VAT system (it adopts the Sales Tax system: 2.5% Sales Tax). There may be argument no VAT needs to be charged depending on the CCA? Significant impact upon conversion to IUPK 			
02 2 nd Gen CCoW	<ul style="list-style-type: none"> The CCoW in general follow the prevailing tax rules, including VAT In this case the mining company is required to charge 10% VAT on domestic sales and 0% VAT on export sales. Input VAT related to mining business should be creditable 			
03 3 rd Gen CCoW	<ul style="list-style-type: none"> After the amendment of the 3rd generation CCoWs, some contracts follow the prevailing VAT Law whilst some contracts retain the 1994 VAT Law provisions Now the position will be similar as delivery of coal is subject to VAT 			
04 IUP and IUPK Holders	<ul style="list-style-type: none"> IUP coal mining company is required to charge 10% VAT on domestic sales and 0% VAT on export sales. Input VAT related to mining business should be creditable 			
05 Coal Users	<ul style="list-style-type: none"> Domestic major coal users includes IPP, PLN, cement manufacturer, and certain industries Since coal is now subject to 10% VAT, the users will need to assess whether it can credit the input VAT from coal purchase 			

VAT on Coal Delivery (2 of 2)



Major domestic coal users are IPPs and PLN.

Delivery of electricity is subject to VAT but due to its strategic nature, the VAT is exempt (except for delivery to housing with at least 6,600 watt capacity).

Therefore, IPPs and PLN are not able to credit (majority of) input VAT incurred on purchase of goods and services, which is now including coal.

There are questions on whether IPPs can on-pass this additional VAT cost to PLN, which is depending on their PPA and whether PLN can absorb this.

Some VAT Compliance Considerations

01 VAT Invoice

- Prescribed format.
- Validity of input VAT invoice.
- Timing of Input VAT credit (deadline within three months after the month of issue).

02 Timing of Issuance

- Receipt of coal sales advance or coal delivery, whichever is earlier.
- Possible to have a *FP Gabungan* (issue at the end of month) for multiple deliveries within a month.

03 VAT Centralization

- To consider VAT centralization as coal mining companies usually have more than one place of business.

04 Coal Export

- Subject to 0% VAT (PEB as VAT Invoice equivalent).
- Report in monthly VAT return.

05 VAT Systems

- Need to be adjusted to accommodate amongst other, review of Input VAT validity, issue of Output VAT on coal sales, monthly reporting, etc.
- VAT Reconciliation.



Appendix

Dividend from Domestic

Regulation	Job Creation Law	Current Law	Notes	Implementing Regulation
<p>Article 4(3)f. points 1.a) and 10</p> <p>Individual recipient</p>	<ul style="list-style-type: none"> 10% or Tax exemption, if the dividend is re-invested in Indonesia within certain time period 	10%		Criteria, procedures & period for reinvestment and income tax exemption procedures will be regulated further by MoF Regulation
<p>Article 4(3)f. point 1.b)</p> <p>Corporate recipient</p>	Exempted	<ul style="list-style-type: none"> Current CIT rate or Not taxable, provided certain requirements are met (dividend paid from retained earning and minimum 25% shares participation in the entity paying the dividend) 	In structuring an investment by a PT Shareholder in the shares of another PT Subsidiary, the minimum 25% shareholding is not crucial for tax purpose now.	

Dividend or Income from Overseas (1/5)

Regulation	Job Creation Law	Current Law	Notes	Implementing Regulation
<p>Article 4(3)f. points 2, 3, 8 and 10</p> <p>Dividend (from offshore <u>listed and non-listed</u> company) and PE's NPAT</p>	<ul style="list-style-type: none"> • Current tax rate applies, or • Tax exemption, if the dividend / PE's NPAT is re-invested in Indonesia or used to support other business in Indonesia within certain time period <u>and</u> meet the following criteria: <ul style="list-style-type: none"> - Such dividend and NPAT re-invested is at the minimum 30% of the NPAT; OR - The dividend sourced from offshore <u>non-listed</u> company is re-invested in Indonesia before the DGT issues tax assessment letter on deemed dividend (CFC). • Tax that has been paid in the source country is <u>not</u> creditable. 	<p>Current tax rates and no exemption is available.</p> <p>CFC rules exists under Art 18(2) for offshore non-listed subsidiary.</p>	<p>Positive changes as now Indonesian oil/gas and mining companies expanding offshore will have the opportunity to have tax-exempt profit/ cash repatriation (despite 30% of the income must be repatriated and reinvested in Indonesia for certain period). This is applicable for both an offshore corporate subsidiary and/ or an offshore branch (PE) of an Indonesian company.</p> <p>Need clarity on how the current CFC rules (PMK93/ 2019) will work in conjunction with this new income tax exemption facility.</p>	<p>Criteria, procedures & period for reinvestment and income tax exemption procedures will be regulated further by MoF Regulation.</p>

Dividend or Income from Overseas (2/5)

Regulation	Job Creation Law	Current Law	Notes	Implementing Regulation
<p>Article 4(3)f. points 4 and 10</p> <p>Re-invested dividend from <u>non-listed</u> offshore company and PE's Income of < 30%</p>	<ul style="list-style-type: none"> • If reinvestment < 30% of profit after tax ("x%"): <ul style="list-style-type: none"> - the invested dividend and / or PE's income is <u>not taxable</u> - the discrepancy from 30% of the minimum re-investment (30% - x%) is <u>taxable</u> - the 70% of profit after tax is <u>not taxable</u>. • Change in the threshold of reinvested offshore dividend (from non-listed company) is governed under MoF regulation. 		<p>Dividend from offshore <u>listed</u> company is not covered.</p>	<p>MoF regulation will govern the threshold of the dividend re-investment.</p>

Dividend or Income from Overseas (3/5)

Regulation	Job Creation Law	Current Law	Notes	Implementing Regulation
<p>Article 4(3)f. points 5 and 10</p> <p>Re-invested dividend from <u>non-listed</u> offshore company and PE's Income of > 30%</p>	<ul style="list-style-type: none"> • If reinvestment > 30% of profit after tax ("x%"): <ul style="list-style-type: none"> - the invested dividend and / or PE's income is <u>not taxable</u> - the remaining amount of NPAT (100% - x%) is <u>also not taxable</u>. 			MoF regulation will govern the threshold of the dividend re-investment.
<p>Article 4(3)f. points 6</p> <p>Dividend from offshore non-listed company is re-invested in Indonesia <u>after</u> DGT issues tax assessment letter on deemed dividend</p>	<ul style="list-style-type: none"> ▪ Dividend that is reinvested in Indonesia after DGT issues tax assessment letter on the deemed dividend is not tax exempt. 	N/A		

Dividend or Income from Overseas (4/5)

Regulation	Job Creation Law	Current Law	Notes	Implementing Regulation
<p>Article 4(3)f. point 8</p> <p>Tax that has been paid in the source country</p> <p>(related to point 2 and 7 of Article 4(3)f.)</p>	<ul style="list-style-type: none"> Cannot be credited against the Indonesian corporate income tax payable, Cannot be claimed as a cost/expense, and/or Cannot be asked for a refund . 	N/A		
<p>Article 4(3)f. point 9</p> <p>Dividend or PE's NPAT which are not reinvested in certain time period</p>	<ul style="list-style-type: none"> The said dividend and PE's NPAT are <u>taxable income in the year those incomes are earned</u>, and <u>Foreign tax that has been paid on those incomes is creditable</u> under Art. 24 of ITL. 	N/A	<p>This appears to confirm that if no re-investment, then the tax exemption facility is not applicable at all – need to see the implementing MoF regulation.</p>	

Dividend or Income from Overseas (5/5)

Regulation	Job Creation Law	Current Law	Notes	Implementing Regulation
<p>Article 4(3)f. points 7 and 10</p> <p>Income from foreign active business <u>without</u> a PE</p>	<ul style="list-style-type: none"> • Current tax rate applies or • Tax exemption, if the income is re-invested in Indonesia within certain time period, with the following requirements shall be met: <ul style="list-style-type: none"> - <i>the income is earned from foreign active business, and</i> - <i>not deriving from an overseas subsidiary.</i> 	<p>No exemption is available</p>	<p>This should encourages Indonesian taxpayers to expand offshore as the Income may potentially be tax exempted in the offshore jurisdiction (via a tax treaty) and in Indonesia.</p>	<p>Criteria, procedures & period for reinvestment and income tax exemption procedures will be regulated further by MoF Regulation.</p>

Interest to Offshore Party

Regulation	Job Creation Law	Current Law	Notes	Implementing Regulation
Article 26(1b) Interest to Foreign Party <u>except to PE</u> in Indonesia	Can be reduced < 20%, subject to further Government Regulation.	20%	Offshore financing will become more attractive if the interest WHT is reduced in the future	Further provision on the reduction of WHT rate will need to be regulated by a Government Regulation

VAT on *Inbreng*/ In-kind Capital Contribution

Regulation	Job Creation Law	Current Law	Notes	Implementing Regulation
<p>Article 1A(2)d</p> <p>VAT exemption on transfer of taxable goods in the event of business combination, merger, expansion, spinoff, acquisition, <u>and transfer of taxable goods as capital injection (<i>inbreng</i>)</u></p>	<p>Transfer of taxable goods in the event of business combination, merger, expansion, spinoff, acquisition, and <i>inbreng</i>, where delivery is done by:</p> <ul style="list-style-type: none"> • VAT entrepreneur (PKP) to other PKP → not a delivery of taxable goods; • Non-PKP → VAT not collected; or • PKP to non-PKP → delivery of taxable goods → subject to VAT 	<p>Transfer of taxable goods in the event of business combination, merger, expansion, spinoff, acquisition, where delivery is done by PKP to other PKP.</p>	<ul style="list-style-type: none"> • Main change in <i>inbreng</i> • Income tax on capital gain is still an issue for <i>inbreng</i> transaction 	

Creditability of Input VAT (1 of 6)

Regulation	Job Creation Law	Current Law	Notes	Implementing Regulation
<p>Article 9(2a) and 9(13)</p> <p>Input VAT before PKP carries taxable delivery (pre-production)</p>	<ul style="list-style-type: none"> Input VAT on procurement of taxable goods and/or <u>taxable services</u>, import of taxable goods, and utilization of intangible taxable goods and/or utilization of taxable services from outside Customs Area within Customs Area are creditable. Input VAT shall be creditable insofar as meeting provisions for credit pursuant to VAT Law. 	<p>Only Input VAT on purchase and/or import of capital goods are creditable</p>	<p>Taxpayer will gain benefit for portion of input VAT that is not limited to procurement or import of capital goods.</p> <p>This is positive for mining and smelter development. However, to consider the three-year deadline to enter commercial operations.</p>	<p>Ministry Regulation will be issued to further regulate about:</p> <ul style="list-style-type: none"> Input VAT crediting procedures Criteria of not yet carrying taxable delivery

Creditability of Input VAT (2 of 6)

Regulation	Job Creation Law	Current Law	Notes	Implementing Regulation
<p data-bbox="115 379 418 459">Articles 9(6a), 9(6c), 9(6e) and 9(13)</p> <p data-bbox="115 507 460 667">Limitation of creditable input VAT during pre-production: the 3 year limit</p>	<ul data-bbox="517 379 998 1166" style="list-style-type: none"> • Input VAT becomes not creditable if the PKP has not delivered taxable goods and/or taxable services and/or export of taxable goods and/or taxable services related to such Input VAT within 3 years: <ul data-bbox="559 671 998 959" style="list-style-type: none"> - If the input VAT has been refunded/credited against output VAT → the refunded input VAT has to be repaid - If the input VAT is carried forward → the input VAT can no longer be carried forward • The period limitation may be determined as more than 3 years for certain business sectors. 	<ul data-bbox="1026 379 1600 1002" style="list-style-type: none"> • PKP that has not entered into production stage can request for VAT refund every fiscal period • In case the PKP has refunded the input VAT before entering production stage (<i>gagal produksi</i>) and 3 years have passed after the Fiscal Period when input VAT is credited for the first time, the refunded input VAT has to be repaid. • Extension of two years exist to compensate and credit the Input VAT during preproduction period. 	<p data-bbox="1614 379 2038 496">It is not clear if there will be extension of the three-year period.</p> <p data-bbox="1614 544 2067 667">Relevant to integrated mining-smelter and independent smelter developments</p>	<p data-bbox="2067 379 2426 539">Ministry Regulation will be issued to further regulate about:</p> <ul data-bbox="2067 544 2449 922" style="list-style-type: none"> • Certain business sector that can enjoy extended deadline for commercial production • Input VAT repayment in case of gagal produksi

Creditability of Input VAT (3 of 6)

Regulation	Job Creation Law	Current Law	Notes	Implementing Regulation
Article 9(6d) Dissolution/ termination of business and PKP cancellation	<ul style="list-style-type: none">The 3-year-period limitation provision shall also apply for PKP who undergoes business dissolution (termination), deregister as PKP, or the PKP status is deregistered ex officio within 3 years after the Fiscal Period when Input VAT is credited for the first time.			

Creditability of Input VAT (4 of 6)

Regulation	Job Creation Law	Current Law	Notes	Implementing Regulation
<p>Articles 9(9a) and 9(13)</p> <p>Input VAT prior to PKP registration (for entrepreneur that should have registered as PKP)</p>	<p>Input VAT on procurement of Taxable Goods and taxable services before Entrepreneur is confirmed as PKP shall be creditable.</p> <p>Creditable input VAT by PKP by using procedures for Input VAT credit with the amount of 80% of collectable Output VAT. However, such input VAT could neither be charged as costs nor capitalized in procurement price of taxable goods. As such, this would increase taxable profit in CIT for taxpayer who is not confirmed as PKP.</p>	Not creditable	<ul style="list-style-type: none"> The DGT has confirmed in the socialization on 17 Nov 2020 that the 80% credit is on a deemed basis. Hence the taxpayer will still need to pay VAT on the 20% of sales that should have been collected with VAT. 	Input VAT crediting procedures will be regulated further by MoF regulation

Creditability of Input VAT (5 of 6)

Regulation	Job Creation Law	Current Law	Notes	Implementing Regulation
<p>Articles 9(9b) and 9(13)</p> <p>Input VAT that was not reported in VAT return and notified/ becomes the finding in a tax audit.</p>	<p>Input VAT on procurement of taxable goods and/or services, import of taxable goods, and utilization of intangible taxable goods and/or utilization of taxable services from outside Customs Area within Customs Area that is not reported in Periodic VAT Return notified and/or found during tax audit process shall be creditable.</p>	<p>Not creditable</p>	<p>Taxpayer will gain benefit to credit Input VAT if they have not claim Input VAT in VAT return, which is notified and/or found during tax audit.</p>	<p>Input VAT crediting procedures will be regulated further by MoF regulation</p>

Creditability of Input VAT (6 of 6)

Regulation	Job Creation Law	Current Law	Notes	Implementing Regulation
<p>Articles 9(9c) and 9(13)</p> <p>Input VAT which is collected through tax assessment</p>	<p>Input VAT on procurement of taxable goods and/or services, import of taxable goods, and utilization of intangible taxable goods and/or utilization of taxable services from outside Customs Area within Customs Area that is collected through issuance of tax assessment letter, insofar as they meet the general input VAT crediting requirement and no dispute on the assessment.</p>	<p>Not creditable</p>	<p>Taxpayer will gain benefit for portion of Input VAT collected through tax assessment letter to be creditable (not including penalty).</p>	<p>Input VAT crediting procedures will be regulated further by MoF regulation</p>



Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited (“DTTL”), its global network of member firms, and their related entities (collectively, the “Deloitte organization”). DTTL (also referred to as “Deloitte Global”) and each of its member firms and related entities are legally separate and independent entities, which cannot obligate or bind each other in respect of third parties. DTTL and each DTTL member firm and related entity is liable only for its own acts and omissions, and not those of each other. DTTL does not provide services to clients. Please see www.deloitte.com/about to learn more.

Deloitte Asia Pacific Limited is a company limited by guarantee and a member firm of DTTL. Members of Deloitte Asia Pacific Limited and their related entities, each of which are separate and independent legal entities, provide services from more than 100 cities across the region, including Auckland, Bangkok, Beijing, Hanoi, Hong Kong, Jakarta, Kuala Lumpur, Manila, Melbourne, Osaka, Seoul, Shanghai, Singapore, Sydney, Taipei and Tokyo.

About Deloitte Indonesia

In Indonesia, services are provided by Deloitte Touche Solutions.

This communication contains general information only, and none of Deloitte Touche Tohmatsu Limited (“DTTL”), its global network of member firms or their related entities (collectively, the “Deloitte organization”) is, by means of this communication, rendering professional advice or services. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional adviser.

No representations, warranties or undertakings (express or implied) are given as to the accuracy or completeness of the information in this communication, and none of DTTL, its member firms, related entities, employees or agents shall be liable or responsible for any loss or damage whatsoever arising directly or indirectly in connection with any person relying on this communication. DTTL and each of its member firms, and their related entities, are legally separate and independent entities.