

Going by the book

Investors need to be aware of the implications of Indonesia's tax amnesty

By Stacy Choong and Joanna Yap

THE long-awaited Indonesia tax amnesty bill was finally passed by the parliament on June 28, 2016. The new tax amnesty scheme, which applies from July 2016 until the end of March 2017, provides a waiver of tax dues, administrative sanctions and tax crime sanctions if the taxpayer makes redemption payment as stipulated by the legislation.

Notwithstanding the diverse public opinions on the effectiveness of the new bill, the crux of the matter for Indonesian individuals and companies is that the more quickly they act, the less they pay. The law grants special tax rates ranging from 2 to 10 per cent, depending on how soon they declare previously untaxed assets and whether the funds are repatriated and kept onshore in Indonesia for three years. This compares to the normal personal income tax rates of 5 to 30 per cent, and penalties of up to 200 per cent on back taxes.

The redemption payment rates for declared assets/funds repatriated back to Indonesia are: 2 per cent for declaration done before end-September 2016; 3 per cent before end-December 2016; and 5 per cent before end-March 2017. The redemption payment rates for declared assets which continue to be maintained overseas are 4 per cent, 6 per cent and 10 per cent, for the same corresponding three-monthly period.

The announced rates of 2 to 10 per cent are higher than the proposed rates under an earlier bill where the proposed rates then were 2 to 6 per cent.

The bill passed also clarifies that the lower rates of 2 to 5 per cent are applicable not only to foreign assets remitted back to Indonesia but also assets currently within Indonesia, provided that the applicant commits to retaining such assets within Indonesia for at least the next three years.

There is also an expanded list of assets that the remitted funds must be invested in for at least three years after repatriation. Other than government securities/state-owned enterprise bonds, it also includes private company bonds, the trading of which is supervised by the Financial Services Authority; certain infrastructure investments effected through government cooperation with business entities; and certain real estate investments based on priorities set by the government.

Further announcements on the range of permitted investments are expected to be made, which impact the rate of repatriation of declared funds. Remittances have to be done by Dec 31, 2016 for taxpayers seeking the 2 and 3 per cent rates and by March 31, 2017 for the 5 per cent rate.



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At a glance

FOR INDIVIDUAL TAXPAYERS	SUBMISSION PERIOD	REDEMPTION PAYMENT RATES (%)
Repatriated assets or onshore assets (subject to the requisite 3-year investment/retention requirement)	July 2016 – September 2016	2
	October 2016 – December 2016	3
	January 2017 – March 2017	5
Foreign assets - not repatriated	July 2016 – September 2016	4
	October 2016 – December 2016	6
	January 2017 – March 2017	10

Compiled by Withers KhattarWong

Applying for tax amnesty

To apply for the tax amnesty, the applicant must submit a Declaration Letter disclosing the net value (assets minus liability) of the under-declared assets (that is, assets not declared in their last income tax return for year 2015). The applicable redemption payments are computed by multiplying the relevant rate and the net value of the additional assets declared. Each applicant is allowed to submit no more than three separate Declaration Letters up to March 31, 2017.

There is, however, a limitation on deductible debt for the purpose of determining the net value. For an entity taxpayer, the debt must be no greater than 75 per cent of the value of the additional assets, and for an individual the limit is capped at 50 per cent.

The amnesty terms also require the applicant to settle all assessed tax arrears, to withdraw requests relating to outstanding tax objections/appeals and to make full payment of the redemption payment. It also specifies that the taxpayers must submit their latest tax return and a detailed list of assets together with information on the ownership of the assets reported.

For taxpayers with foreign trusts, foundations or holding entity structures with professional nominees in place, it will be

important to have more clarity and confirmation on what constitutes sufficient information on the ownership of the assets held through such foreign structures, in order to avoid future disputes on the completeness of their submitted declarations. It is provided that the minister, or his appointed official, shall issue a Tax Amnesty Certificate within 10 working days from the date of receipt of the completed application with attachments. If the applicant does not receive such a certificate within the promised 10-day period, then the Declaration Letter itself shall be deemed to be received as a certificate. The applicant is then entitled to the indemnity against tax audits and investigations for tax offences under the terms of the amnesty. For taxpayers who have already been subject to on-going tax audits or investigations, such process must also cease upon receipt of the certificate.

However, if it should be subsequently discovered that data or information was not completely disclosed in the Declaration Letter, additional taxable income (with applicable penalty) can be deemed to have been received or earned by the taxpayer at the time of such discovery. Clarity on what constitutes complete disclosure for the amnesty application purposes is therefore important to avoid

lingering negotiations and disputes.

The amnesty also requires taxpayers to transfer title in any declared land, building and/or stocks back to the name of the taxpayers. Such title transfer shall be exempt from Indonesia income tax if the application for the transfer of rights/title is done by Dec 31, 2017, or in the case where the title cannot yet be transferred, then a notarial statement done before Dec 31, 2017 stating that the assets are truly owned by the taxpayer.

The taxpayer should therefore understand the full legal and tax implications, not only in, but also outside Indonesia in connection with the unwinding of any foreign holding (and also local nominee holding) structures.

If the assets are retained in foreign holding structures, the continuing Indonesia tax exposure on such assets may be higher than holding the assets directly through an Indonesian holding company or in individual names. The applicability of Indonesia's Controlled Foreign Corporation laws and the deemed domiciled and permanent establishment rules will depend on the ownership and management of the assets and structures. If the foreign holding structures are only unwound beyond the above specified period, then the taxpayer will have to factor in the additional Indonesia tax costs for doing so.

The tax amnesty includes only obligations of income tax, value-added tax and sales tax on luxury goods up to Dec 31, 2015. If any income or gains have been accrued this year – whether due to current year restructuring, transfers or receipts not otherwise producing tax exempt income/gains – then such income and gains would not appear to fall within the scope of the amnesty.

More than just tax

Legalities aside, the importance of this new bill goes beyond legal and tax issues. It is another signal of the new reality that investors are faced with – a rapidly changing and increasingly complex business environment that demands a high level of transparency and accountability. Global initiatives such as the OECD BEPS (base erosion profit shifting) programme and AEOI (automatic exchange of information) system, coupled with the fallout from the Panama Papers and the recent money laundering controversies in Malaysia and Singapore, are all indications of the new normal.

Taxpayers will undoubtedly need to be more aware of their home tax regimes and reporting obligations. Secrecy, on its own, is not an estate planning tool. **W**

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