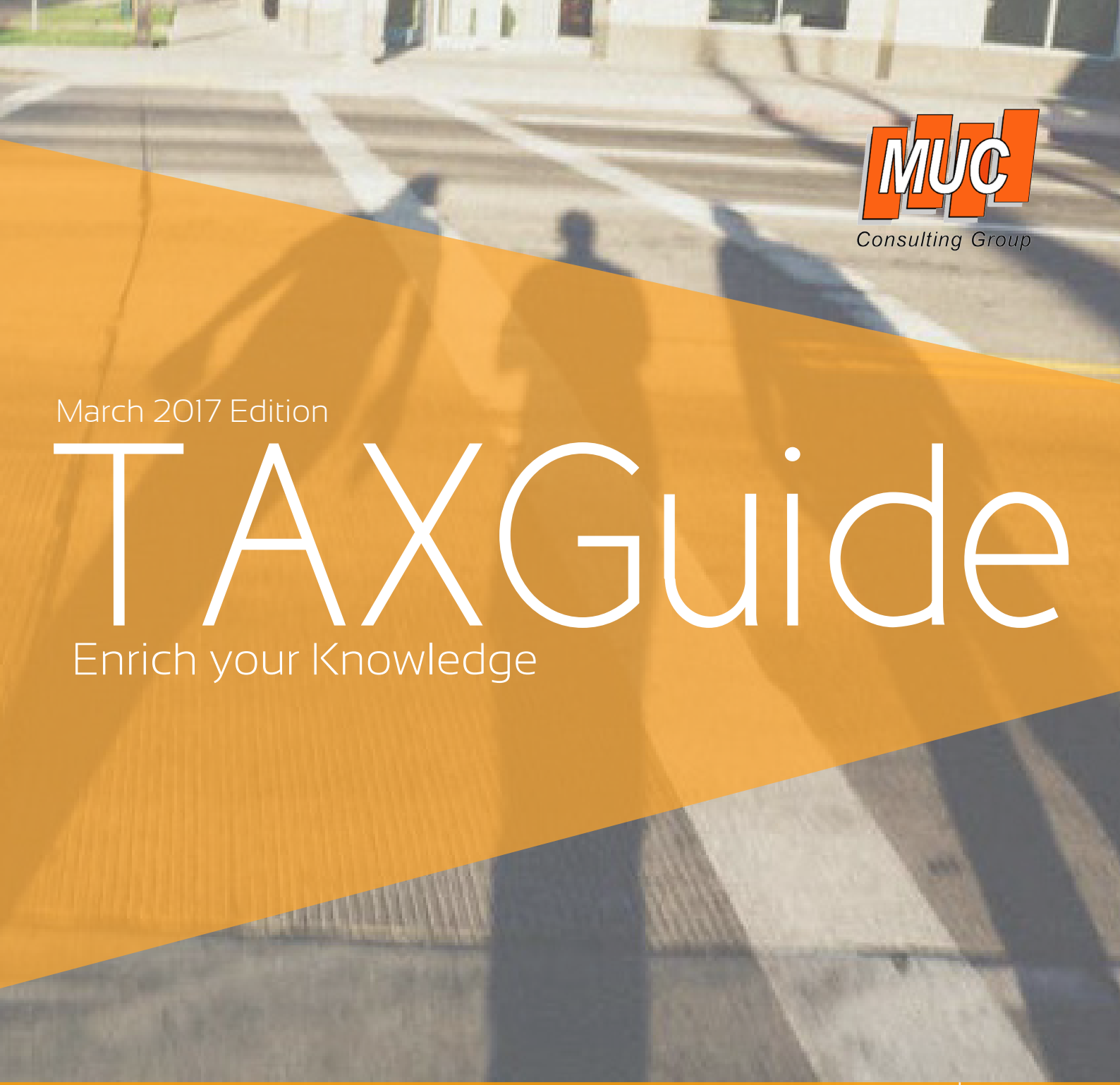

MUC Consulting Group

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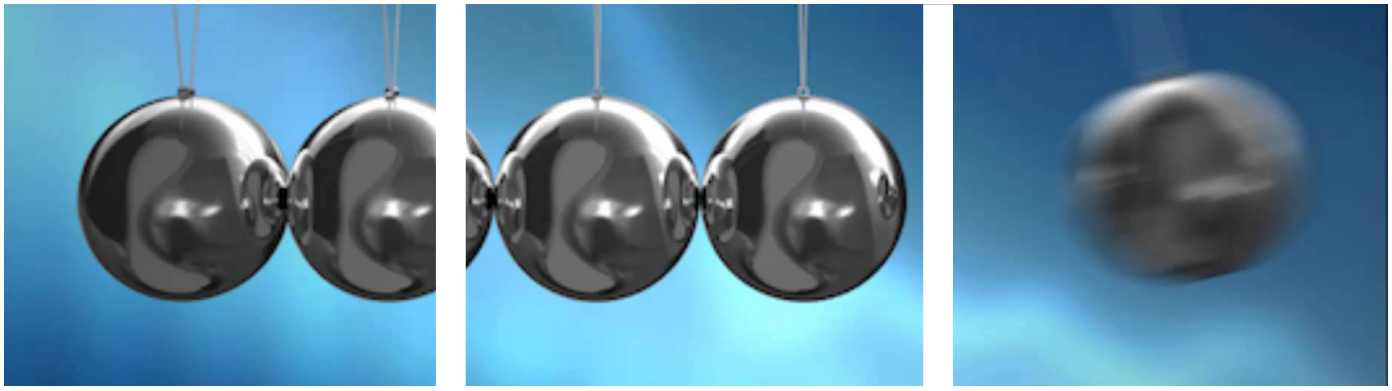
TAXGuide

Enrich your Knowledge

AEOI, A MOMENTUM FOR TAX REFORM

Article



Almost a year ago, the world was shocked by the leakage of 11.5 millions of confidential investment documents with total capacity of 2.6 terabytes owned by a Panama firm, Mossack Fonseca. These millions of documents so-called "Panama Papers" revealed a presumption of the biggest tax evasion and money laundering network through more than 214,000 shell companies in 21 tax haven countries.

The investigation result of 100 media groups as the members of International Consortium of Investigative Journalists (ICIJ) mentioned the world's famous personalities as the money owners, starting from business people and corporations, politicians, celebrities, athletes to state officials and former state officials. Some of them are Indonesia citizens.

Even though no evidence had shown any law violation, the reports from ICIJ revealed modus used by the super rich to hide their assets through offshore companies in tax haven countries.

Based on a research in 2015 by a non profit organization, Global Financial Integrity (GFI), every year developing countries lose around USD1 trillion due to corruption, tax evasion, and money laundering. GFI predicts that the tax potential evaporating from Indonesia due to illegal money shifting reaches IDR 200 trillion every year.

This research result is supported by the review of Publish What You Pay Indonesia Coalition, stating that Indonesia ranks as the 7th of countries with the highest amount of illegal money flow. Within the years of 2003 to 2012, Indonesia was recorded to release fund in total of IDR1,699 trillion or IDR 167 trillion in yearly average.

Nevertheless, the overall data are only estimation, and until now there are no fixed figures of the asset value hidden in the tax haven countries and thus no tax loss can be calculated due to such aggressive financial planning scheme.

The leakage of "Panama Papers" documents seems to be a slap on the face for governments of the entire globe, including Indonesia, which at the same time are struggling to anticipate any tax avoidance and money laundering. This condition urges the global commitment to accelerate the implementation of Automatic Exchange of Information (AEoI) to track down assets hidden by taxpayers in tax havens.

Pioneer of AEoI

The massive acts of tax avoidance by trusting assets in offshore banks and financial institutions are closely related to differences in tax rates applied in every country. Combination between very low tax rates and guarantees of bank secrecy has been making some countries or jurisdictions popular as tax havens.

The existence of bilateral tax treaty to prevent double taxation on taxpayers does not guarantee that the practice can be eliminated. Tax treaty ideally still requires taxpayers to pay tax difference due to lower tax rate imposed abroad to the tax authority lower to their countries of origin. In reality, many taxpayers do not report their assets and income from abroad or even pay the tax differences, which therefore their countries are losing their potential tax revenue.

This phenomenon has become a critical issue by tax authorities across the world. The idea of the significance of financial information disclosures for tax purposes further emerged during the G20 leader member meeting in London, England in April 2009 following the uncovered scandal of tax avoidance involving the Union Bank of Switzerland (UBS).

The scandal made the United States (US) government react in speed by filing an indictment against UBS to hand over identities and account information of its 250 citizens. Upon the case, UBS lost and paid total penalty of USD870 millions.

A year later, the US government released a policy of Foreign Account Tax Compliance Act (FATCA). To overcome tax evasion and avoidance by its citizens, all financial institutions in the world are requested to give reports to the Internal Revenue Services (IRS) on information related to financial accounts owned by the US citizens

or other entities significantly owned by the US residents (substantial ownership interest). For financial institutions which are not cooperative will be charged with 30% withholding tax on fund transferred from the US. Types of payments as tax withholding objects at 30% rate among others are payments of dividend, interest and asset sales.

The global commitment of tax information exchange application bilaterally and multilaterally became stronger pursuant to the increasing numbers of tax fraud cases uncovered. G20 with the initiative from Organization for Economic Co-operation and Development (OECD) further endorsed financial information exchange under the framework of tax treaty; Tax Information Exchange Agreement (TIEA); and Convention on Mutual Administrative Assistance in Tax Matters (MAC).

Indonesia, so far, has been engaged in tax treaties with 65 countries. For TIEA, Indonesia has been in cooperation with 6 (six) countries, whereas for MAC, 94 countries have been in commitment with Indonesia.

Nevertheless, all the ongoing information exchange agreements were considered insufficient since they were still made on requests. Thus, the idea to adopt automatic information exchange such as FATCA came into surface. G20 and OECD then agreed to apply AEoI starting from year 2017 or 2018.

Indonesia, in July 2015, signed Multilateral Competent Authority Agreement (MCAA) stating commitment to commence AEoI in September 2018. Accordingly, starting from that point of time, taxpayers' accounts in other countries can be directly accessed by the tax authority. The commitment is made to maintain Indonesia's creditability in the international world and is to take part of the global financial information exchange network.

Homework

The Directorate General of Taxes (DGT) of the Ministry of Finance in many occasions has justified the significance of AEoI for Indonesia. The big dream is that AEoI is able to prevent and detect criminal acts of money laundering, tax avoidance and terrorism funding, as well as to encourage repatriation of overseas fund owned by taxpayers. DGT also hopes that AEoI will generate more accurate financial information of taxpayers in overseas.

However, it is not easy for Indonesia—which applies banking data secrecy system—to implement AEoI. The General Tax Provisions and Procedure (KUP Law) has actually regulated banking data disclosure, but it is limited to tax audit purposes. Precisely in Article 35 of the KUP Law, it is affirmed that secrecy of data or evidence from banks, public accountants, notaries, tax consultants, administration offices, and/or other third parties is discarded for three purposes, namely tax audit, tax collection or tax crime investigation. Particularly for banking data, it can only be given under a written inquiry from the Minister of Finance.

To be able to implement AEoI, the Banking Law and the KUP Law need to be revised. Both are the main gates to the preparation of common reporting standard (CRS), as the standard reporting of data exchanged between countries through each authority. This can be a very difficult homework for the Government considering that the process is not easy and consumes quite a long time in the Parliament.

A government regulation in lieu laws (Perppu) is the most realistic options of legal reinforcement to be issued by the Government in a short run. The Government has given a green light that such Perppu will soon be released after tax amnesty program.

The content of the Perppu more or less will adopt the basic scheme of AEoI recommended by OECD. What to exchange will be financial information of both individual and corporate taxpayers, covering identity, saving balance, interest, dividend and other income. Those obliged to report them will be banking and non-banking financial institutions, including depository institutions, custodian institutions, investment entities and certain insurance companies.

Reciprocal principle is applied in AEoI that makes two dimensions attached to DGT, as data provider and recipient at the same time. As a data provider, DGT should give data and information of Income Tax withholding on Non Resident Tax Subject acquiring income from Indonesia.

DGT can also give financial information and data of banking or financial institution customers to a relevant tax authority of a partner country. However, the data and information should firstly gain approvals from the customers, to be submitted by the bank to the Financial Service Authority (OJK), and to be further handed over to DGT.

The second dimension is the other side of a coin. Tax authorities from the other countries should do the same thing and are mandatory to provide financial data and information of Indonesian citizens in their respective countries to DGT.

Total Reform

Various public reactions are common to every new policy issued, no exception with AEoI implementation plan. Fears of loosing privacy and risks of capital shifting to overseas have become issues arising by parties less agreeing with this policy. By contrast, transparency and taxpayer compliance are the spirits echoed by the Government and parties supporting the AEoI plan.

With or without AEoI, being complied with laws basically is a must for taxpayers. The current regulation package has actually been making a clear separation between which is "legal" and "illegal" in tax area. However, it is sadly to admit that it has not been perfectly executed due to many factors, such as taxpayers' incompliance, resource constraint, and lack of database owned by the tax authority.

AEoI is expected to tackle problems related to database and taxpayers' incompliance. Nevertheless, it does not really answer the problem of resource constraint of the tax authority to process data and administer taxpayers' compliance to be able to generate a clear output, which is state revenue growth.

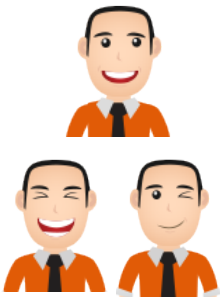
Thus, AEoI should be part of a total and comprehensive reform in the Country's taxation sector. Efforts for strengthening database and taxpayers' compliance should be accompanied with capacity increase, professionalism, and competence of the tax authority. All of which should be accommodated during the political budgeting process between the Government and the Parliament in the 2017 National Legislation Program (Prolegnas).

When the tax reform is comprehensively carried out, there will be no loopholes for taxpayers to be delinquent. The same thing will apply for the tax authority. There will be no more reasons to blame on taxpayers when the tax revenue target cannot be reached. So, welcome to the tax information disclosure era.

Type of Clients' Information Exchanged in AEOI

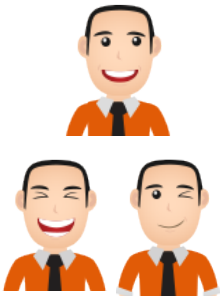
Individual Taxpayer

- Name
- Address
- Country/Jurisdiction of Domicile
- Tax ID No.
- Place and Date of Birth



Corporate Taxpayer

- Name
- Address
- Country/ Jurisdiction of Domicile
- Tax ID No.



Corporate Taxpayer with more than 2 controllers

- Name
- Address
- Country/Jurisdiction of Domicile
- Tax ID No. of Corporation and Controllers

Other Taxpayer Information:

- Account Number
- Name & ID No. of LJK (if any)
- Account Balance or Value

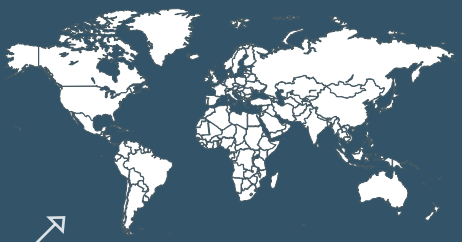
Account Balance or Value:

- In the custodian account: gross amount of interest, dividend, or other income
- In the depository account: gross amount of interest
- In the accounts other than custodian and depository accounts (other accounts): gross amount paid or credited

Inter-Country AEoI Data Exchange Flow

Tax data exchange between countries under Automatic Exchange of Information (AEoI) is executed between tax authorities of every country/jurisdiction.

Tax authority in other country/ jurisdiction



Agreements & information exchange system

System/procedure for acquiring, processing, using & protecting information

Harmonization of domestic legal provisions

Financial Institution :
- Banks
- Insurance
- Investment Companies

Financial Institutions in other countries/ jurisdictions

Client is a resident of Indonesia

Client is a resident of other country

INDONESIA IN WELCOMING THE ERA OF OPEN INFORMATION ON TAXATION

EXCLUSIVE INTERVIEW

The year 2018 is predicted to be the new era of open information on taxation globally. Automatic Exchange of Information (AEoI) has become the commitment of the world's leaders to stop the acts of tax avoidance and track the actors' financial transactions.

The practice seems challenging. Yet, ready or not, Indonesia shall participate in AEoI if not wanting to be isolated from global community. To dig further into AEoI conduct as well as the government readiness for AEoI in June 2018, Tax Guide has the opportunity to discuss the issue with the **Deputy of International Taxation of the Directorate General of Taxes (DGT), Prof. Poltak Maruli John Liberty Hutagaol**. The following is the excerpt of conversation:

What is the background of AEoI establishment and how is Indonesia's participation in AEoI?

We realize that the change of variables in international environment, where Indonesia gets involved in, is very dynamic. For example, the development of information technology, or financial and banking products that are very sophisticated. We also know some countries whom we give label to as the financial centers. They are not only providing the sophisticated financial facility, but also offering the confidentiality of information as well as low tax rate. In addition to that, the tax structure and rate in every country varies that they become loopholes. Furthermore, global investment is very limited, each country or jurisdiction races to use tax instruments as a magnet of investment. And, the condition will become a race to the bottom, which is very dangerous.

From that condition, we have seen the risks that are potential to occur. First is transfer pricing, then thin capitalization, harmful tax, competition, and lots of issues in the field of taxation, including profit shifting. All of those will undermine the taxation base in each country. According to the calculation of International Monetary Fund (IMF), there is potential tax income of USD200 billion that is lost every year in developing countries due to profit shifting. Surely the potential lost tax from Indonesia is also high. Realizing all of those risks, in G-20 leader summit in London in 2009, the world's leaders declared that the bank secrecy has come to an end.

What do you mean that it has come to an end? Is the warranty of customer's secrecy are no longer needed?

What I meant to say is, bank secrecy is still important, (and) shall be maintained. Yet, for the taxation purpose, there is exception. This is due to the fact that to all countries, including Indonesia and even the United States, the moneymaker of the State Budget and Expenditure (Anggaran Pendapatan dan Belanja Negara/ APBN) is the taxation. This is why those countries exclude the secrecy for tax purpose, while still maintaining it in other purposes. Imagine if it is open for all sectors, the banking industry will surely be collapsed because of the loss of trust (from the customers). These matters encourage Indonesia and many countries to join the information exchange. Indonesia and 100 countries or other jurisdictions have been committed to conducting this information exchange.

What is the main purpose of this taxation information exchange?

To stimulate the global financial information exchange for taxation purpose, (so that) it is faster. The advantages are: Firstly, the Taxpayer in Indonesia will be more obedient voluntarily since all

(information) has been opened. Secondly, this will make higher tax base. We can see the declaration of assets in overseas. The amount stated in the tax amnesty program is only IDR1,000 trillion. Meanwhile the potential amount is bigger, reaching up to IDR3,600 trillion.

What if there are countries not willing to be committed to AEoI?

Surely for those not willing to commit themselves, there will be moral sanction. Those countries will be isolated from international community. In addition, the international community will not trust them. It will hinder them from obtaining foreign loans from international organizations. Moreover, they will face the world's problems alone. If participating (in AEoI), we can face those problems together (with the other countries).

What kind of data and information to be exchanged in AEoI?

The customers' data in banking, capital market, insurance, and other financial institutions. The data may be in the form of the taxpayer's identity such as name, address, account number, balance and income gained and reported in the account. For corporates, the shareholders or the controllers shall also be opened. The data and information will be obtained from the Financial Service Authority (Otoritas Jasa Keuangan/ OJK) and exchanged by the Tax Office to other parties.

What are the requirements for Indonesia to conduct AEoI in 2018?

To be able to conduct AEoI, every committed country shall have the same level of 'playing field'. If one of the countries or the jurisdiction does not fulfil the requirements, the country will not be included in this program.

Firstly, the country shall be committed to international community by signing all international agreements required, among others are Tax Treaty or Tax Information Exchange Agreement, Mutual Administrative Assistance in Tax Matters (MAC), and Mutual Competent Authority Agreement (MCAA). Secondly, the country has to sign Bilateral Competent Authority Agreement. Until now, Indonesia has signed only MAC and has entered into agreement in the form of Tax Treaty, while MCAA has not been executed.

Other requirements are all domestic requirements, starting from laws to its technical regulations shall meet the requirements in order to conduct global information exchange. In other words, the information may not be constrained by the existing regulations. Every tax authority in every country shall have the power to access the exchange of information. Any information shall be automatically accessible without any condition for tax purpose. Particularly for this case, those are financial information, either from bank or other financial institutions and capital market.

Does it mean that some laws shall be revised?

Yes, ideally the General Tax Provisions and Procedure, the Banking Laws, the Sharia Banking Laws, and the Income Tax Laws shall be amended.

What about the president's plan to issue the government regulation in lieu of legislation?

The Government Regulation in lieu of Legislation (Peraturan Pemerintah Pengganti Undang-Undang/Perppu) may be a solution, but ideally, it is the amendment of the existing laws. However, the time is very limited, because on 30 July 2017 we should have the primary legislation, regulations that are equal with laws and that may accommodate the information exchange. The Perppu is still being discussed. And, it is designed so that Indonesia can conduct the information exchange. This Perppu will make us stronger in legislation.

Is the Perppu only designed to open the foreign customers' data or all customers in Indonesia?

Indeed, it is only foreign customers' data to be included in AEoI, because the data will be exchanged to fulfil the needs of other countries' tax authority in need to inquire the financial information of their citizens in Indonesia. Similarly, Indonesia will request for financial data of Indonesian citizens staying overseas. Meanwhile, the opening of customers' accounts data of the entire citizen is a different thing, not (related to) AEoI.

In Banking Laws, the mechanism has actually been regulated, but it is voluntary. Bank shall not wait for the customers' willingness since commonly, the bank officer has informed the candidate of (foreign) customer at the time of the form filling—that to start an account, the customer shall make a statement letter that they shall be ready to open their account data.

How does the government guarantee the customers' data confidentiality and ensure that the taxpayer's financial data is not leaked to unauthorized parties?

From all of the data and information, the system of transmission shall be regulated, (and) shall be qualified. We have heard that OJK has prepared the information system to control the information flow from financial institutions to OJK and DGT. The system designed by OJK is called Sistem Penyampaian Informasi Nasabah Asing (System for Foreign Customer Information Delivery/SIPINA). Meanwhile, the system designed between DGT and tax authority in other countries is called Common Transmission System (CTS). Every country has been committed to maintaining the information confidentiality. The society shall not be panic since this is an international commitment. Thus, there is no excuse of capital flight because both Singapore and Hong Kong shall also apply the same policy.

Who will be leading the AEoI conduct? Is it DGT or OJK?

OJK is the partner whom we seek support from together with the other financial institutions and industries. Meanwhile, who conducts the exchange shall be the competent authority. It is DGT, the Ministry of Finance.

For what purposes the data and information obtained will be processed? Is there any limitation of allotment?

Of course, the data is for the exchange purpose. In addition, the data will strengthen the taxation database. The data will be used for taxation according to the regulations, not only for the tax audit. Imagine that in 2019 and the following years, the Tax Office will receive data and information about the Indonesian people who place their assets overseas, not to mention the corporates. How it will be hard for DGT to face a flood of data of the Indonesian people's assets overseas.

"There is potential tax income of USD200 billion that is lost every year in developing countries due to profit shifting..."

What is the sanction for the Taxpayer with suspicious asset data and an indication for tax avoidance?

There will be an audit to check whether the assets are stated in the Tax Return or not. If not, the audit will be conducted. For Individual Taxpayers, the assets not stated will be subject to 30% (fine). There will be sanctions: criminal or administrative sanction. If it is intentionally, the criminal sanction is in the form of 400% or 200% (fine). Meanwhile, the administrative sanction is 2% per month.

Other than AEoI, what are other policies that will be applied by the government to prevent the tax avoidance?

To overcome the tax avoidance, either in domestic or offshore, we combine all international standards. First is AEoI. For domestic, we strengthen Base Erosion Profit Shifting (BEPS) Action 13 by issuing Minister of Finance Number 213 Year 2016. We will introduce three-tier-approach for transfer pricing documentation, by requiring Corporate Taxpayers conducting affiliated transaction to make master file, local file, and CBC (Country by Country) Report in order to confirm the actuality of transaction, whether or not they are arm's length.

After that, we will issue the regulations on CFC (Controlled Foreign Company) since there are many trust practices overseas, for example a company conducting profit shifting to its subsidiaries overseas. Or, for example by manipulating various financial transactions, such as conducting export, then (the income) is pooled overseas, but the subsidiary does not pay the dividend to Indonesia. It can be shifted (as if shifted to Indonesia).

ARTICLE

OBSERVING THE PLAN OF PROGRESSIVE TAX RATE FOR IDLE LAND

In business world, there is a term of 'high risk high return', which means the higher the investment risk is, the higher the potential profit will be. However, it seems like the principle does not apply for land investment. For this investment, the principle becomes 'low risk high return', which means the high profit with a low risk. This condition applies because even without additional capital and further development, the price of land will always increase. Especially if the land function is improved into office space or residential lots.

Land is an investment instrument that cannot be produced or generated so that the availability is limited. Meanwhile, the human needs upon residential lots or office space always increase day to day. The imbalance between supply and demand makes the price of land is rocketing, especially when the location is strategic or near a business centre.

Let's take Jakarta, Bogor, Depok, Tangerang, and Bekasi (Jabodetabek) as an example. Based on a research conducted by a global property company, Cushman & Wakefield, the price of land in Jabodetabek area, especially in industry area, has significantly increased every year. The trigger is the speculation on the government's plan to build strategic public infrastructure projects, such as toll road and railway transportation network projects (train, Light Rail Transit, Mass Rapid Transit and monorail).

This condition stimulates the investment, as well as the speculation. The purpose of those land investments are to receive multiple profits in the middle of the increasing trend of land price. The difference is that the land purchase for investment purpose has prepared a clear business plan and has considered various measurable risks. Meanwhile, the land acquisition in terms of speculation is only based on profit hunting without clear business motive.

The act of profit hunter in this business has been bothering the government since it has resulted in many idle lands without positive contribution to the economy. On the other hand, there are many people and entrepreneurs are having trouble to acquire land under reasonable price for residential lots or office space.

Under that rationale, the government has given a hint for the issuance of progressive tax regulation for idle lands. This policy is a part of President Joko Widodo's big program on the policy of equitable economy, in this case, in the sector of land.

In the study entitled Progressive Taxation of Vacant (2015), World Bank considered that the progressive tax policy is an appropriate step to press the speculation of land price. In addition, this policy is also effective to push the development of idle land controlled by private parties. Yet, the multilateral institution advises countries not to use this policy only to boost the state income.

Furthermore, referring to the same study, World Bank set forth some challenges to face by developing countries to be able to apply the progressive rate on idle land. Firstly, the limited number of appraiser and the high cost of land appraisal. Secondly, there is no clear definition and criteria to determine idle land.

Based on the case sample of idle land tax application in some countries, every authority has differences in determining, identifying and deciding the idle land priority. For example, starting from setting the cost of idle land, selecting the procedure and the mechanism, as well as determining the party receiving the benefits from the cost.

One of the research sample of the World Bank is the capital city of Pennysylvania, Harrisburg, United States. This city has experienced economic depression in several decades. Then, the city government applied tax on idle land as an effort to press the building tax and promote the land tax. The policy was expected to stimulate the society to build new building and maintain the existing building. As a result, this policy has recovered the economic condition and encouraged the city revitalization. In practice, the government of Harrisburg has made the policy of two rates or split-rate property tax, in which the land tax is made higher than the building tax.

Another case also occurred in the capital city of Korea, Seoul. In 1978, the land price in the city had increased until 136% because of the speculation. The demand increased, while the land availability was decreasing. This condition forced the local government to apply tax on idle land to diminish the speculation and advance the development. In practice, idle land abandoned for up to two years will be subject to 5% or higher from the normal rate of 2%. The tax rate will become even higher if the land is left idle longer, which is 7% for three years of idleness and 8% for five years of idleness. Moreover, the government will foreclose the land if the tax remains unpaid.

Other cities' government applying the progressive tax rate on idle land are Bogota in Columbia and Marikina City in the Phillipines.

Policy Option

In fact, there are three tax instruments imposed on land and building and prevailing in Indonesia, which are Land and Building Tax (Pajak Bumi dan Bangunan/PBB), Duty on Acquisition of Rights on Land and Building (*Bea Perolehan Hak atas Tanah dan Bangunan*/BPHTB), and Final Income Tax on land and building transfer.

For PBB, the central and local government have shared the management authority since 2014 in accordance with Law on Local Tax and Local Levy (*Pajak Daerah dan Retribusi Daerah*/PDRD). The local government has obtained the authority to manage PBB in the sector of Rural and Urban Areas (Pedesaan dan Perkotaan/P2), while the central government is still trusted to manage PBB in the sector of plantation, forestry, and mining (*Perkebunan, Perhutanan, dan Pertambangan/*P3).

Specifically for BPHTB, the local government is fully authorized on the management. Meanwhile, the Final Income Tax on land and building transfer is the domain of the central government.

However, the three of those instruments are considered insufficient to control the ownership and the price of land. As a result, the application of progressive tax rate on idle land is still taken into consideration even though it is still a plan and has not been formulated further. In spite of it, in several occasions, the government has mentioned several policy options that are similar to the idle land tax in several countries.

First option is tax on investment profit or Capital Gain Tax. In this context, the basis is sales-purchase transaction of land, thus, the tax is collected upon the discrepancy between purchase and sales value or subject to added value of land.

Such scheme is actually stated in the Income Tax Law, in which every added economic capacity received or obtained by the Taxpayer is determined as tax object. One of the examples is the profit of sales or asset transfer, but for the profit on land and/or building transfer is now subject to Final Income Tax of 2.5%.

Another alternative is higher tax rate on non-productive land or unutilized land. This option will target companies or individuals owning large area of land, without clear planning. The longer the land is abandoned, the higher the tax rate will be. This scheme is expected to draw the landowners to utilize the lands, thus it will give positive impact to the economy.

Legal Basis

Even though some schemes have been developed, the government has not determined a clear definition and parameter from the idle land. This condition also applies to other tax types to be collected, whether it will be in the form of Income Tax, PBB, or BPHTB.

In addition, the government shall set up the targets of tax progressive rate on idle land. Whether it is the seller or the buyer, or both of them? The target setting is also related to the type of taxes applied. This affirmation is also related to the speculative indicator as well as definition of speculator that are often stated as the main target by the government. There should be defining line between speculator and individual or corporate landowner that has not been financially capable to fund the land development or management.

At the end, all those affirmations will determine the party reserving the right to be the executor as well as the person in charge of the progressive tax rate on idle land, whether it will be the authority of central government, provincial government, or regional government.

Regardless of the scheme opted eventually, the government shall have strong legal basis on the application of tax on idle land. Therefore, the regulations that are potentially overlapping shall be synchronized soon, especially the set of Tax Laws and Land or Agrarian Law. The process will require a long time since it shall be discussed and granted by the People's Representative Council (*Dewan Perwakilan Rakyat*/DPR). Thus, the plan of progressive tax rate shall become a part of tax reform that is being prepared by the government through the amendments of several Tax Laws.

Moreover, the basic problem of tax income optimization is the limited database and the asymmetry of information. It is related with the sales-purchase transaction because usually the land acquisition price and the land ownership data are only known by the seller and the buyer. Therefore, the synergy of data and function between institutions shall be designed earlier. Especially for the related institutions such as the Directorate General of Taxes (DGT), the National Land Agency (*Badan Pertanahan Nasional*/BPN), and related authorities in regional level. This is also important to ensure that the policy implementation runs harmoniously and does not trespass the authority of each institution.

Above all, this attempt to halt the speculation through the progressive tax rate on idle land should not cut down the investment.

Note : A shorter version of the article has been published in CNNIndonesia.com

Type of Taxes and Collections on Land

Type of Taxes	Collections	Rate	Bearer
Land and Building Tax (PBB)	During the land ownership period	Average of 0,5% from taxable sales value (Nilai Jual Kena Pajak/NJKP)	Landowner
Duty on Acquisition of Rights upon Land and Building (BPHTB)	At the time of purchase/acquisition	5% from land purchase value after deduction from Non-Taxable Tax Object Acquisition Value (Nilai Perolehan Objek Pajak Tidak Kena Pajak/ NPOPTKP)	Buyer
Income Tax (PPh	At the time of transfer/sales	2.5% from gross amount of land rights transfer value	Seller

Source: Various sources, processed

Table: The Taxation on Vacant Land in Some Countries

	Government's definition of land subject to fees	Tariff Structure
Harrisburg, Pennsylvania, United States	A tax on land applied to all properties	• Foreclosure on land = 3% of assessed land value • Improvements = 0.5% of assessed value of improvements
Seoul, Korea, Rep.	Land left vacant (idle) for a minimum of two years	• 5% instead of 2% on improved lots • 7% if left vacant for more than 3 years • 8% if left vacant for more than 5 years • 9% if left vacant for more than 7 years • 10% if left vacant for more than 10 years
Marikina City, Philippines	• Land area greater than 1,000 square meters, one-half of which remains unimproved • Residential lots, regardless of land area, one-half of which remains unutilized or unimproved	Additional levy at the rate of 2.5% per year on the assessed value of the property
Bogotá, Colombia	Land that is subject to urbanization but has not yet been developed, and land that has already been urbanized but has had no construction yet	In 2004: • Vacant properties = 1.2–3.3 percent of the assessed value • For improved properties in urban areas, rates from 0.4% (residential use) to 1.5% (financial institutions) Today: vacant urban land rate has increased to 30%

Source: World Bank 2015.

ARTICLE

Divestment and State's Control over Foreign Capital

Stock divestment is recently becoming a hot issue following repeated conflict between the Indonesian government and foreign mining companies. Sovereignty, nationalism, and the country's control over strategic natural resources are the three elements that make up the spirit of the Indonesian divestment policy, and it is not only happening in mining sector.

This writing will not go further on cultivating the stock divestment conflict, but to position the divestment as a consequence arising from business activities and regulation (government's policy).

In the viewpoint of economy and business, divestment is an antithesis of investment. An investment is defined as capital participation and divestment is the opposite, which is a capital withdrawal. In asset ownership context, investment is conducted to add new asset. In contrast, divestment decreases the amount of asset owned. There are several divestment options commonly exercised in business world, i.e. direct sale of asset (direct sale), separation of unit or stock (spin off), or stock release (equity carve-out).

Divestment sometimes becomes an inevitable option for business player. It can be triggered by a number of factors, i.e. financial, social, and political factors. Many companies exercise this option as an efficiency strategy or restructuration to focus more on the main business. Moreover, some other companies conduct divestment to quit from particular industrial area or sector due to social or political pressure. However, there are also cases when a company needs to reduce its domination on asset ownership due to strict regulations.

National Interest

When a regulation forces a company to conduct divestment, in this case the government acts representing the people asking for their rights of participation in a company's operation. This issue has been the main dispute, particularly when it is connected to foreign investor involvement. The pro side will commonly base their argument on economic nationalism concept, while the contra side supports the free market and globalization concepts. Thus, its implementation tends to be complicated and prolonged. Even it may cause a long drawn-out conflict that it may require an arbitration due to the conflict of interest.

From the government's perspective, divestment is a form of foreign corporation nationalization so that the Indonesian people can take part in the corporation ownership. Business process that utilizes natural and human resources, as well as that is conducted in Indonesia's territory will be an issue if its profit is transferred to overseas. It is regulated under Article 33 paragraph (3) of Indonesian Law, stating "Earth, water, and natural resources contained therein is under the state's control and to be used maximally for the Indonesian people's welfare."

However, from the foreign investor's perspective, divestment is a form of ownership allotment reduction on national company ownership. It indicates that in business, investors needs to allow its potential profit to be acquired by local owner either individual, company, or government.

Nationalization in the form of divestment has long been implemented in Indonesia. For instance, after the Indonesian independence, the government nationalized companies previously owned by the Netherlands. The famous one is the nationalization of Netherlands' tobacco company, Verenigde Deli Maatschapijen, by Indonesian government in 1958. The company refused the nationalization and requested for help from the Netherlands' government to bring the case to International Court of Justice. Generally, Indonesia won the case, but Indonesia shall pay compensation under the 'prompt', 'effective', and 'adequate' principles.

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The practice nowadays is more host-state friendly as Article 7 of Law Number 25 Year 2007 on Capital Investment affirms that the government will not conduct nationalization or acquisition on the Capital Investment ownership right. However, it is not 100% applied as there is an exception where the government could conduct nationalization or acquisition of Capital Investment right under the Law, supported by compensation in accordance with market price. If there is no agreement between the government and the foreign investor, the case shall be solved through an arbitration.

Further implementation of the divestment policy is regulated by the government by making a Negative Investment List (Daftar Negatif Investasi/DNI), comprising proportion of stock ownership both for the restricted and 100% open stock for foreign investors. The regulations stipulating DNI have been amended several times and the last amendment is on the attachment of Presidential Regulation Number 44 Year 2016 on List of Open and Restricted Business Sectors along with the Requirements of Capital Investment Sector. The obligations as stipulated on the above regulation are only imposed to companies owning foreign stock facility up to 100% since its establishment. Therefore, the phrase '...controlled by the state fully for the Indonesian people's prosperity' shall be limited to particular sectors, i.e. mining, oil and gas, water, soil, and other strategic sectors. Other than those sectors, the stock can be 100% owned by foreign and its divestment obligation is solely bound to Article 16 of the Head of BKPM Regulation Number 14 Year 2015.

The divestment regulation on that Article only covers Foreign Capital Investment (*Penanaman Modal Asing*/PMA) Company whose Principal License states the divestment deadline although its foreign share proportion remains the same or bigger than DNI. Paragraph 2 on the same Article regulates that the minimum nominal amount of the divestment obligation conducted by PMA Company is IDR10 million derived from the stock amount stated on the company's Articles of Association.

Since the issuance of the Head of BKPM Regulation Number 14 Year 2015, the prior regulation, which restricted PMA Company conducting divestment to buy back the stock sold to local investor, was revoked. Article 16 paragraph (6) of Head of BKPM Regulation Number 14 Year 2015 affirms that foreign investor may buy back the divested stocks upon a prior approval from the Minister of Justice and Human Rights although the duration before the buyback process can be conducted is not regulated further.

Particularly for mining sector, divestment provisions are regulated in Article 112 of Law Number 4 Year 2009 on Mineral and Coal Mining. The Article stipulates that foreign companies which are the holder of Mining Business License *(Izin Usaha Pertambangan/*IUP) and Special Mining Business License (*IUP Khusus*/IUPK) and having run its production for five years are obliged to divest its stocks to the government, local government, state-owned enterprises, local government-owned enterprises, or other national private business institution.

Recently, Minister of Energy and Mineral Resources (*Menteri Energi dan Sumber Daya Mineral*/ESDM) regulates further about the stock divestment procedure and divestment stock pricing mechanism in mineral and coal mining companies. Under Minister of ESDM Regulation Number 9 Year 2017, the mining companies which are the holder of IUP and IUPK are obliged to offer stock divestment based on fair market price to Indonesian participants gradually within 90 (ninety) calendar days since the end of their five-year production. The first offer shall be made for the government through the minister, then proceeded to local government, and the last one is state-owned enterprises/ local government-owned enterprises or national private business institution. If no Indonesian citizen takes its rights, stock divestment can be conducted by offering the stock to public via Indonesian Stock Exchange.

Simply stated, the mining company divestment is more flexible than the previous years. Similar to other business sectors, foreign mining company stock can be released to the Indonesian people, individual or private companies, through capital market under a circumstance that the government or state-owned enterprise/local government-owned enterprise does not intend to buy it.

Therefore, capital market becomes an alternative to conduct divestment both by using 'secondary public offering' and 'strategic partner.' If the stock divestment is conducted by listing in capital market, public can buy the stock. It creates an opportunity for the previous owner to buy back the stock. However, it is anticipated by making a regulation stating that the previous owner cannot buy back the divested stock or by making allotment mechanism by underwriter to close the opportunity of buyback by previous owner.

All of regulations on divestment are parts of Indonesian government's attempt to stimulate cooperation between foreign investor and local partner. Even though this divestment procedure will affect the PMA Company license, there are quite many strategic business sectors widely opened for foreign investors. Moreover, the protection guarantee from the government for both local and foreign investors will surely create a conducive investment atmosphere.

Compared to the previous government regime, the divestment provisions applied by Joko Widodo's government has been supporting the investment. It is reflected in the open opportunity of stock buyback and the possibility for business players in mining sector to release its stock to public through capital market. Thus, use this time wisely to take benefits from this friendly divestment opportunity to improve business portfolio.

Learning from the previous experiences, policy in investment fields are subject to change in line with the change of government regime. Hence, there must be assurance from the current or future government that they will retain the harmony of the policy that is supportive to the investment, including provisions on divestment. The last but not least, divestment shall give more benefits for public and all of the benefits derived from the investment shall be savored by the Indonesian people, economically and socially (income, job, and environment).

Details of Annual Income Tax Return

Annual Income Tax Return is a document obliged to be prepared and reported by a Taxpayer. Its reporting is a proof of self-assessment implementation in taxation, as well as the indicator to measure the level of Taxpayer's compliance.

Type of Annual Income Tax Returns and Taxpayers	Individual Tax Return	Corporate Tax Return
Reporting Period	**3 (three) months** at the latest after the end of fiscal year	**4 (four) months** at the latest after the end of fiscal year
Extension Period	2 (two) months	2 (two) months
Form	• Entrepreneur/freelancer: **Form 1770** • Employee with income > IDR60 million: **Form 1770 S** • Employees with income ≤ IDR60 million: **Form 1770 SS**	**Form 1771**
Sanction of Late Payment	Fine of IDR100,000	Fine of IDR1,000,000
Criminal Sanction	Absence: • Jailed for 3 (three) months - 1 (one) year • Fine of 1 (one) - 2 (two) times multiplied from tax payable	Intentional/Manipulation: • Jailed for 6 (six) months - 2 (two) years • Fine of 2 (two) - 4 (four) times multiplied from tax payable
Submission Method	• e-Filling (Online) • Post office service • Expedition service • Direct submission	• e-Filling (Online) • Post office service • Expedition service • Direct submission

Tax Return Reporting via e-Filing Scheme

Application of e-Fin to the nearest Tax

Resident Taxpayer: National ID Card & Tax ID Card
Non-resident Taxpayer: Passport & Tax ID Card

e-Fin Number

Tax ID Number :
e-Fin Number :
Email Address :
Phone Number :

Register to DGT Online Account on https://djponline.pajak.go.id

Password Number to Log in

Tax ID Number
Password Number

LOG IN to: https://djponline.pajak.go.id

Report Tax Return via e-Filing

MUC Event

MUC Consulting Group Goes to Campus FIA UI

MUC Consulting Group, in cooperation with Tax Administration Department, Faculty of Administration University of Indonesia (FIA UI), conducted workshop and open recruitment at FIA UI on 9-10 March 2017. This activity was a part of GREAT Program (Generating Real Excellence in the Area of Taxation), which is one of MUC's CSR activities.

The first day event was initiated by sharing session with Sigit Wibowo, S.E., Senior Tax Manager of MUC who is also the lecturer of Tax Administration of Vocational Program UI. The next session was public lecture on future leader with the speaker Erry Tri Merryta, S.H., CEC, HRD Manager of MUC.

On the second day, MUC Consulting Group held tax workshop related to transfer pricing by inviting tax consultants from MUC Transfer Pricing & International Taxation Division. The tax workshop did not only interactively facilitate discussion between tax consultants and students but also gave a chance to the participants to learn to work in team to solve tax case samples related to transfer pricing.

On the same day, MUC also conducted recruitment. From 130 (one hundred and thirty) participants involved in the two-day event, approximately 90 (ninety) participants applied for the position in MUC and some of them passed the test and HRD interview.

MUC Conducted Customs Seminar

MUC Consulting Group, once again, conducted customs seminar with title "Procedure of Import, Customs Tariff and Value along with the Problems" on 22 February 2017 at Hotel Bidakara, Jakarta.

The main speaker of the seminar was Bambang Sabur, Custom Manager of MUC. Several topics were discussed in the seminar, such as new provision of customs registration and the risks to be prevented; bookkeeping system in customs and excise; facility of pre-entry classification; facility of Voluntary Declaration; and case samples in process of audit, objection and/or appeal.

The next customs seminar will be held on 12 April 2017 with title "Talking about Free Trade Area (FTA) and the Problems".

To get more information about seminar schedule held by MUC, please contact us by email with subject "subscribe" to *training@mucglobal.com* or access the schedule in MUC website: *http://mucglobal.com/training#February*

MUC & INKONSINA Conducted National Tax Amnesty and Sharia Banking Laws Workshop

MUC Consulting Group entered into a Memorandum of Understanding (MoU) on training issue with Induk Koperasi Syariah Indonesia (INKONSINA) on 9 February 2017 in MUC Building, Jakarta. The execution of the MoU was conducted during national workshop with topic of tax amnesty and PSAK for Sharia entity.

The speaker was MUC's Manager of Tax Advisory Yasmine Tiara and Partner of Razikun-Tarkosunaryo Public Accountant Office (KAP RTS) as well as the Head of Indonesian Institute of Certified Public Accountant (Institut Akuntan Publik Indonesia/IAPI) Tarkosunaryo. The participants of national workshop were INKONSINA's members across Indonesia.