

Omnibus Law Cipta Kerja Relaksasi Ketentuan Pajak Penghasilan

Omnibus Law on Job Creation Relaxes Income Tax Provisions

JAKARTA. Undang-Undang Cipta Kerja, yang pembahasan dan pengesahannya menuai kontroversi dan ditentang publik, turut merelaksasi sejumlah klausul dalam Undang-Undang Pajak Penghasilan (PPh). Relaksasi antara lain mencakup perubahan sistem pemajakan menjadi berbasis teritorial, pengurangan objek pajak, dan penambahan kriteria dividen yang dikecualikan dari pengenaan pajak.

Territorial System

Dengan terbitnya UU Cipta Kerja, sistem perpajakan Indonesia berubah dari yang sebelumnya menyasar semua penghasilan wajib pajak tanpa memperhatikan sumbernya—dari dalam maupun luar negeri (worldwide income)—menjadi hanya memajaki penghasilan yang diperoleh di Indonesia (territorial income). Hal ini terkait dengan perubahan Pasal 2 ayat (3) dan (4) UU PPh yang menjadi dasar penentuan subyek pajak orang pribadi.

Intinya, Warga Negara Indonesia (WNI) yang tinggal di luar negeri lebih dari 183 hari dalam 12 bulan, dapat menjadi subyek pajak luar negeri (SPLN). Dengan demikian, penghasilan yang diperolehnya dapat dipajaki oleh otoritas terkait di Negara tempatnya tinggal.

Sebaliknya, Warga Negara Asing (WNA) yang bekerja di Indonesia lebih dari 183 hari dalam 12 bulan akan tercatat sebagai subyek pajak dalam negeri (SPDN). Artinya, WNA tersebut wajib membayar pajak atas penghasilan yang diterimanya selama di Indonesia sesuai dengan ketentuan yang berlaku.

JAKARTA. The Job Creation Law (UU Cipta Kerja), whose discussion and ratification sparked controversy and are publicly opposed, also relaxed several clauses in the Income Tax Law (UU PPh). The relaxation includes changing the taxation system to be territorial-based, reducing tax objects, and adding the dividend criteria exempted from tax imposition.

Territorial System

With the issuance of the Job Creation Law, the Indonesian tax system changed from the one that was previously targeting all taxpayers' income regardless of its source - domestic and foreign (worldwide income) - to only taxing income earned in Indonesia (territorial income).

It is related to the amendment to Article 2 paragraphs (3) and (4) of the Income Tax Law, which is the basis for determining individual tax subjects.

The point is Indonesian citizens (WNI) who stay abroad for more than 183 days in 12 months may be Non-Resident Tax Subjects (SPLN). Thus, their incomes may be taxed by the relevant authorities in the country where they stay.

On the contrary, expatriates (WNA) who work in Indonesia for more than 183 days in 12 months will be registered as Resident Tax Subjects (SPDN). In other words, the foreigners are obliged to pay taxes on incomes received while residing in Indonesia according to the applicable regulations.

Ketentuan ini kemudian dipertegas di Pasal 4 UU PPh ayat tambahan (1a-1c), yang menegaskan bahwa WNA yang memiliki keahlian tertentu dan telah menjadi SPDN dikenai pajak hanya atas penghasilan yang diterima atau diperoleh dari Indonesia. Namun, ketentuan ini hanya diperuntukan bagi WNA yang memiliki keahlian tertentu dan berlaku selama 4 (empat) tahun sejak ditetapkan sebagai subjek pajak dalam negeri.

Adapun penghasilan WNA yang menjadi objek PPh adalah yang diterima atau diperoleh sehubungan dengan pekerjaan, jasa, atau kegiatan di Indonesia dengan nama dan dalam bentuk apapun yang dibayarkan di luar Indonesia. Namun, ketentuan ini tidak berlaku bagi WNA yang memanfaatkan Persetujuan Penghindaran Pajak Berganda.

Bukan Objek PPh

Berkaitan dengan objek pajak penghasilan, Melalui UU Cipta Kerja pemerintah menghapus dan menambah jenis penghasilan yang dikecualikan dari pengenaan PPh, yakni dengan mengubah dan menambahkan sejumlah klausul di Pasal 4 UU PPh. Kriteria penghasilan yang dikecualikan dari pengenaan PPh bertambah menjadi 17 item dari sebelumnya 13 item. Berikut adalah tambahan daftar penghasilan yang bukan objek PPh:

1. Bagian laba atau sisa hasil usaha (SHU) koperasi;
2. Dana setoran biaya penyelenggaraan ibadah haji dan pengembangan keuangan haji di instrumen keuangan tertentu;
3. Sisa lebih yang diterima lembaga sosial dan keagamaan yang digunakan untuk pengadaan sarana dan prasarana sosial dan keagamaan maksimal empat tahun sejak diterima.
4. Keuntungan atas pengalihan harta orang pribadi, anggota firma, perseroan komanditer atau kongsi kepada Perseroan Terbatas (PT) di dalam negeri sebagai pengganti saham. Syaratnya: pengalihan dilakukan oleh pemilik 90% saham dari jumlah modal disetor, diberitahukan kepada DJP, pengenaan pajak di kemudian hari atas keuntungan tersebut dijamin;

Keempat jenis penghasilan di atas menggenapi daftar penghasilan yang dikecualikan dari PPh sebelumnya:

1. Bantuan atau sumbangan, termasuk zakat;
2. Hibah;

This provision is further affirmed in Article 4 additional paragraph (1a-1c) of the Income Tax Law, which confirms that the foreign nationals who have certain expertise and have become SPDN are taxed only on incomes received or earned from Indonesia. However, this provision is only targeting foreigners who have certain expertise and valid for four years after confirmed as Resident Tax Subjects.

The income of foreign citizens that becomes the object of income tax is the one that is received or earned in connection with work, services, or activities in Indonesia under the name and any form paid outside Indonesia. However, this provision does not apply to foreign citizens who utilize a Double Taxation Avoidance Agreement.

Non-Object of Income Tax

Related to income tax objects, through the Job Creation Law the government removes and adds the types of incomes that are exempted from the imposition of income tax, i.e., by amending and adding several clauses in Article 4 of the Income Tax Law. The income criteria excluded from the imposition of income tax increased to 17 items from previously only 13 items. The following is the list of additional earnings that are not income tax objects:

1. *Share of profit or net income (SHU) of a cooperative;*
2. *Funds for the cost of organizing the pilgrimage (BPIH) and developing hajj finance in certain financial instruments.*
3. *Budget surplus received by social and religious institutions used for the procurement of social and religious facilities and infrastructure for a maximum of four years since it was received.*
4. *Profits from the transfer of property of an individual, a firm member, limited partnership, or joint venture to a domestic Limited Liability Company (PT) as a substitute for shares. The terms are: the transfer is carried out by the owner of 90% of the shares of the total paid-up capital and notified to Directorate General of Taxes (DGT); as well as the future tax imposition on the profit is guaranteed.*

The four types of incomes complete the list of incomes exempted from the Income Tax Law:

1. *Aid or donation, including zakat;*
2. *Grant;*
3. *Inheritance;*

3. Warisan;
4. Harta termasuk setoran tunai pengganti saham atau penyertaan modal yang diterima badan;
5. Imbalan berkenaan dengan pekerjaan atau jasa, yang dinikmati dalam bentuk natura dan kenikmatan;
6. Klaim asuransi kesehatan, asuransi jiwa, dan asuransi beasiswa;
7. Dividen atau penghasilan lain yang ditetapkan;
8. Iuran dana pensiun;
9. Penghasilan dari modal yang ditanamkan oleh dana pensiun;
10. Penghasilan yang diterima atau diperoleh perusahaan modal ventura;
11. Beasiswa;
12. Sisa lebih yang diterima badan atau lembaga nirlaba pendidikan, penelitian dan pengembangan; dan
13. Bantuan atau santunan yang dibayarkan oleh BPJS.

4. *Assets including cash deposits to replace shares or equity capital received by the entity;*
5. *Remuneration in respect of work or services enjoyed in the form of benefits in kind;*
6. *Claims of health insurance, life insurance, and scholarship insurance;*
7. *Dividend or other incomes determined;*
8. *Pension fund contributions;*
9. *Income from capital invested by pension funds;*
10. *Income received or earned by venture capital companies;*
11. *Scholarship;*
12. *Budget surplus received by educational non-profit, research and development agencies or institutions; and*
13. *Aid or donation paid by BPJS.*

Dividen Bebas Pajak

Masih berkaitan dengan objek pajak, terutama menyangkut pembebasan PPh atas dividen. UU Cipta Kerja mengubah ketentuan Pasal 4 ayat (3) huruf f, yakni mengenai pembebasan PPh atas dividen yang berasal dari dalam maupun luar negeri, serta penghasilan lain dari luar negeri.

Sebelumnya, dividen yang dibebaskan dari PPh meliputi:

1. Dividen yang berasal dari cadangan laba ditahan;
2. Dividen yang diterima PT, BUMN atau BUMD yang memiliki saham paling rendah 25% dari jumlah modal yang disetorkan; dan
3. Dividen dari modal yang merupakan dana pensiun.

Dengan terbitnya UU Cipta Kerja, kriteria dividen yang dikecualikan sebagai objek pajak diperluas menjadi seperti berikut:

1. Dividen dalam negeri yang diterima orang pribadi sepanjang diinvestasikan kembali di Indonesia dalam jangka waktu tertentu;

Tax-Free Dividends

It is still related to the tax object, especially concerning the exemption of income tax on dividends. The Job Creation Law amends the provision of Article 4 paragraph (3) letter f, namely regarding the exemption of tax on dividends originating locally and abroad, as well as other incomes from overseas.

Previously, dividends that were exempted from income tax only included:

1. *Dividends derived from retained earnings reserve;*
2. *Dividends received by PT, BUMN (State-Owned Enterprise) or BUMD (Regional Government-Owned Enterprise) that has a stake of at least 25% of the total paid-up capital; and*
3. *Dividends from capital that is a pension fund.*

With the issuance of the Job Creation Law, the criteria for dividends that are exempted from tax objects are expanded to be as follows:

1. *Domestic dividends received by individuals as long as they are reinvested in Indonesia within a certain period of time;*

2. Dividen dalam negeri yang diterima badan usaha dalam negeri;
3. Dividen dari perusahaan di luar negeri sepanjang diinvestasikan kembali minimal 30% di Indonesia dalam jangka waktu tertentu. Jika investasi kurang dari 30% maka selisih laba tersebut akan dikenakan pajak sesuai ketentuan yang berlaku.
4. Dividen dari BUT di luar negeri yang sahamnya tidak diperdagangkan di bursa efek sepanjang diinvestasikan Indonesia sebelum terbit surat ketetapan pajak
5. Penghasilan luar negeri non-BUT yang diinvestasikan di Indonesia dikecualikan dari pengenaan PPh sepanjang berasal dari usaha aktif dan bukan dari perusahaan yang dimiliki di luar negeri.

2. *Domestic dividends received by domestic business entities;*
3. *Dividends from overseas companies as long as they are reinvested at least 30% in Indonesia within a certain period of time. If the investment is less than 30%, the profit difference will be taxed according to applicable regulations.*
4. *Dividends from Permanent Establishments (BUT) abroad whose shares are not traded on the stock exchange as long as they are invested in Indonesia before the issuance of a tax assessment letter (SKP);*
5. *Non-Permanent Establishment's foreign income invested in Indonesia is excluded from the imposition of income tax as long as it comes from active businesses and not from companies owned abroad.*

Pajak atas dividen atau penghasilan lain yang sudah terlanjur dibayarkan di luar negeri tidak dapat dikreditkan atau direstitusi. Pelanggaran terhadap ketentuan re-investasi di Indonesia secara otomatis mengugurkan pembebasan pajak dan pajak yang sudah terlanjur dibayarkan di luar negeri dapat dikreditkan.

Taxes on dividends or other incomes that have been paid abroad cannot be credited or refunded. Any breach of the re-investment provisions in Indonesia automatically aborts tax exemption and the taxes paid abroad may be credited.

Fleksibilitas Tarif PPh Pasal 26

The Flexibility of Income Tax Rate Article 26

Omnibus Law Cipta Kerja juga memberikan diskresi bagi pemerintah untuk menyesuaikan tarif PPh atas transaksi pembayaran gaji, bunga, dividen, royalti dan sejenisnya kepada Wajib Pajak Luar Negeri, tanpa harus mengubah UU PPh. Selama ini, ketentuan itu diatur di Pasal 26 UU PPh, yang mematok tarif PPh sebesar 20% (bersifat final) atas jumlah bruto dari pendapatan-pendapatan tersebut.

The Omnibus Law on Job Creation also provides discretion for the government to adjust the income tax rate for payment of salaries, interest, dividends, royalties, and so forth to Non-Resident Taxpayers, without having to change the Income Tax Law. The provision is stipulated in Article 26 of the Income Tax Law, which sets the income tax rate of 20% (final) on the gross amount of those incomes.

Diskresi penyesuaian tarif diamanatkan UU Cipta Kerja dengan menambahkan ayat (1b) di pasal 26 UU PPh, yang menekankan bahwa tarif PPh final 20% dari jumlah bruto oleh pihak yang wajib membayarkan bunga termasuk premium, diskonto, dan imbalan sehubungan dengan jaminan pengembalian utang, dapat diturunkan dengan Peraturan Pemerintah.

The tariff adjustment discretion is mandated by the Job Creation Law by adding paragraph (1b) in Article 26 of the Income Tax Law, which emphasizes that the final income tax rate is 20% of the gross amount by parties obliged to pay interest, including premiums, discounts, and rewards in connection with debt repayment guarantees, can be lowered by Government Regulation (PP).

Adapun UU PPh pasal 26 tersebut mengatur tentang pengenaan PPh atas penghasilan yang diperoleh atas:

1. Dividen
2. Bunga termasuk premium, diskonto dan imbalan sehubungan jaminan penembalian utang
3. Royalti, sewa dan penghasilan lain sehubungan penggunaan harta

The Income Tax Law Article 26 regulates the imposition of income tax on income earned on:

1. *Dividend*
2. *Interest including premiums, discounts, and rewards on debt repayment guarantee*
3. *Royalties, leases, and other incomes in connection with the use of property*

1. Imbalan atas jasa, pekerjaan dan kegiatan lain
2. Hadiah, premi swap dan transaksi lindung nilai
3. Keuntungan atas pembebasan utang.

4. Rewards for services, work, and other activities
5. Prizes, swap premiums, and hedging transactions
6. Profit on debt relief

***Catatan:**

Ketentuan ini mengacu pada draft Undang-Undang Cipta Kerja yang naskah resminya masih dalam tahap finalisasi di Badan Legislasi DPR. Semua kebijakan baru yang tertulis di atas masih mungkin berubah mengingat Mahkamah Konstitusi membuka ruang uji materi UU Cipta Kerja.

***Disclaimer:**

These provisions refer to the draft of the Job Creation Law, the official text of which is still in the finalization process at the House of Representatives (DPR) Legislation Body. All new policies mentioned may still change considering that the Constitutional Court has opened the possibility of review for the Job Creation Law.

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