

SECOND TAX AMNESTY – PRIORITIZING VALUE ADDED PROCESSING AND RENEWABLE ENERGY UTILIZATION¹²³⁴⁵

INTRODUCTION

The Government is seeking to use Indonesia’s second tax amnesty as a means of encouraging greater investment in certain sectors of the economy that are being prioritized for development.

Encouraging greater investment in priority economic sectors is to be achieved through offering reduced tax rates on newly disclosed assets that are invested/reinvested in these sectors.

The economic sectors that stand to benefit from the second tax amnesty are valued-added natural resource processing and renewable energy utilization. A new ministerial decree, however, makes clear that the reduced tax rates will not automatically apply to newly disclosed assets that are invested/reinvested in any type of natural resource processing or in any type of renewable energy utilization. The types of natural resource processing and renewable energy utilization, that will attract lower tax rates for invested/reinvested newly disclosed assets, are actually very specific. The inclusions and the omissions are, in some cases, surprising.

In this article, the writer will look at how the second tax amnesty is being used to prioritize the development of natural resource processing and renewable energy utilization, with a particular emphasis on activities relevant to mining and power generation.

BACKGROUND

In late 2021, faced with huge expenditure commitments in connection with the Covid-19 pandemic and its aftermath, the Government made numerous amendments to Indonesia’s tax laws with the objective, among other things, of generating more tax revenue. These amendments were incorporated in an omnibus-style legislative enactment, being Law No. 7 of 2021 re Harmonization of Taxation (“**Tax Harmonization Law**”), which came into effect on 29 October 2021.

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Included as part of the revenue raising initiatives, introduced by the Tax Harmonization Law, is a new taxpayer voluntary disclosure program (“**Second Tax Amnesty**”). The Second Tax Amnesty runs from 1 January to 30 June 2022.

The details of the Second Tax Amnesty are set out in (i) Minister of Finance (“**MoF**”) Regulation No. 196 of 2021 re Procedures for Implementation of Taxpayer Voluntary Disclosure Program that was issued on 22 December 2021 (“**MoF Regulation 196/2021**”) and (ii) Press Release of Director General of Taxation entitled “*Not Just Tax Forgiveness, Voluntary Disclosure Program is an Opportunity*” that was issued on 27 December 2021 (“**DGoT Press Release 27/12/2021**”).

The Government clearly hopes that the Second Tax Amnesty will replicate, at least in part, the success of Indonesia’s first tax amnesty in 2016 (“**First Tax Amnesty**”) which generated in excess of US\$9 billion in additional tax revenue from newly disclosed assets. In this regard, the Tax Office has reported that, as of the end of February 2022, nearly 18,000 taxpayers have expressed their intention to participate in the Second Tax Amnesty by declaring previously undisclosed assets of (i) RP18.73 trillion/US\$1.31 billion in Indonesia and (ii) Rp1.3 trillion/US\$91 million abroad.

Unlike the First Tax Amnesty, however, the Second Tax Amnesty is about considerably more than just generating additional tax revenue for the Government. The Second Tax Amnesty also seeks to encourage the investment/re-investment of the “net asset value” (**i.e.**, assessed value/market price less associated liabilities) of newly disclosed assets (“**NAV Investment**”) in sectors of the economy that the Government is prioritizing for development.

MoF Regulation 196/2021 contemplates that MoF will subsequently determine the particular activities to be prioritized as an objective of NAV Investment.

On 24 February 2022, MoF issued a new decree, being MoF Decree No. 52 of 2022 re Business Activities of Natural Resources Processing Sector and Renewable Energy Sector as an Objective of NAV Investment in the Framework of Implementation of Taxpayer Voluntary Disclosure Program (“**MoF Decree 52/2022**”).

ANALYSIS AND DISCUSSION

1. Preliminary Remarks

MoF Regulation 196/2021, DGoT Press Release 27/12/2021 and MoF Decree 52/2022 need to be read together in order to fully understand how the Government intends to use the Second Tax Amnesty to prioritize economic sector development.

2. MoF Regulation 196/2021 and DGoT Press Release 27/12/2021

2.1 Overview: The Second Tax Amnesty applies to assets acquired during the period from (i) 1 January 1985 to 31 December 2015 and not declared by the relevant individual taxpayer as part of the First Tax Amnesty (“**1985/2015 FTA NDA**”) and (ii) 1 January 2016 to 31 December 2020 and not declared in the relevant individual taxpayer’s 2020 tax return (“**2016/2020 NDA**”).

2.2 **Procedural Requirements:** The procedural requirements for participating in the Second Tax Amnesty, by way of disclosing and repatriating (in the case of foreign assets) 1985/2015 FTA NDA and 2016/2020 NDA, are set out in DGoT Press Release 27/12/2021.

The key procedural requirements are (i) electronically submitting a Notice of Disclosure of Assets, together with various supporting documents, to the Directorate General of Taxation by not later than 30 June 2022 and (ii) in the case of foreign assets, completing the repatriation of assets to Indonesia by not later than 30 September 2022.

2.3 **Sector Development to be Prioritized:** MoF Regulation 196/2021 specifies the priority economic sectors for NAV Investment as being:

- (a) processing of raw natural resources into semi-finished goods or finished goods that have added value compared to the raw natural resources (“**Value-Added Processing**”); and
- (b) utilizing energy produced from sustainable/renewable energy resources (“**Renewable Energy Utilization**”) (Article 16(2) and (3) of MoF Regulation 196/2021).

2.4 **Method of Prioritization:** The Government will prioritize the development of Value-Added Processing and Renewable Energy Utilization by offering individual taxpayers, participating in the Second Tax Amnesty, the opportunity to pay the same lower rate of tax on NAV Investment in Value-Added Processing and/or Renewable Energy Utilization that applies to NAV Investment in Government bonds and other Government issued securities (“**SBN**”) (Article 3 of MoF Regulation 196/2021).

2.5 **Differential Tax Treatment:** The different tax treatment of 1985/2015 FTA NDA NAV Investment and 2016/2020 NDA NAV Investment depends upon what the relevant individual taxpayer does or does not do with his/her newly disclosed 1985/2015 FTA NDA and 2016/2020 NDA.

The applicable tax rate, which varies between 6% and 18%, is a function of whether the newly disclosed assets are:

- (a) 1985/2015 FTA NDA or 2016/2020 NDA;
- (b) domestic assets or foreign assets;
- (c) in the case of foreign assets, declared and repatriated to Indonesia or declared but not repatriated to Indonesia; and
- (d) invested in (i) Value-Added Processing and/or (ii) Renewable Energy Utilization and/or (iii) SBN (Article 3 of MoF Regulation 196/2021 and DGoT Press Release 27/12/2021).

This differential tax treatment may be summarized as follows:

APPLICABLE TAX RATES FOR NAV INVESTMENT

Taxpayer Action	1985/2015 FTA NDA		2016/2020 NDA	
	Domestic Assets	Foreign Assets	Domestic Assets	Foreign Assets
1. Declared	8%	11%	18%	18%
2. Declared & <u>Repatriated</u>		8%		14%
3. Declared & Invested in Value-Added Processing/Renewable Energy Utilization/SBN	6%		12%	
4. Declared, <u>Repatriated</u> & Invested in Value-Added Processing/Renewable Energy Utilization/SBN		6%		12%

- 2.6 **Deadline for Qualifying NAV Investment and Minimum Holding Period:** In order to qualify for the reduced tax rates applicable to NAV Investment in Value-Added Processing and Renewable Energy Utilization, the NAV Investment must be fully implemented not later than 30 September 2023 (Article 10(4)(c) of MoF Regulation 196/2021).

There is also a minimum holding period of 5 years for qualifying NAV Investment in Value-Added Processing and Renewable Energy Utilization although it is possible to switch between NAV Investment in Value-Added Processing/Renewable Energy Utilization and NAV in SBN under certain conditions and without losing the benefit of the reduced tax rate (Article 15(5) of MoF Regulation 196/2021).

3. MoF Decree 52/2022

- 3.1 **Overview:** The Appendix to MoF Decree 52/2022 specifies **332** particular activities, comprising Value-Added Processing and Renewable Energy Utilization, in respect of which NAV Investment qualifies for preferential tax treatment.

The specified activities are referenced by their KBLIs and, so, a very detailed description is available as to what, exactly, is covered by each of the specified activities.

3.2 **Valued-Added Processing Activities Relevant to Mining:** It is only the following Activities, specified in MoF Decree 52/2022, that are **directly** relevant to mining:

- (a) KBLI 24202 - Non-ferrous Base Metal Manufacturing Industry: This covers the business activities of refining, smelting, alloying and pouring (i) non-ferrous metals in basic forms (ingots, billets, slabs, rods, pellets, blocks, sheet, pig, alloy and powder) such as brass ingots, aluminum ingots, zinc ingots, copper ingots, tin ingots, brass billets, aluminum billets, brass slabs, slab aluminum, brass rods, aluminum rods, brass pellets, pellet aluminum, bronze alloy, nickel alloy and anti-friction metal (bearing metal) and (ii) rare earth metals and rare earth metal alloys (15 lanthanide elements together with the elements scandium and yttrium).
- (b) KBLI 27201 – Battery Industry: This covers the business activities related to the manufacture of all kinds of batteries including batteries and main cells containing manganese dioxide, mercury dioxide, silver oxide or others, lead acid batteries, Ni-Cad batteries, Ni-Mh batteries, Lithium batteries, dry cell batteries and wet cell batteries.
- (c) KBLI 27203 – Batteries for Electric Motor Vehicle Industry: This covers the business activities of manufacturing all kinds of batteries for electric motor vehicles.
- (d) KBLI 28240 – Mining, Quarrying and Construction Machinery Industry: This covers the business activities of manufacturing machinery for mining, quarrying and construction activities including (i) lifting and conveying equipment, (ii) machines for screening, sorting, separating, washing, crushing mineral materials, drilling, cutting and machining tunnels and sinking (whether for underground purposes or not), (iii) tractors used in mining activities, earthmoving machines, such as bulldozers, angle dozers, graders, scrapers, levellers, shovels, loading shovels and (iv) parts, components and accessories.

3.3 **Renewable Energy Utilization Activities Relevant to Power Generation:** It is only the following activities, specified in MoF Decree 52/2022, that are **directly** relevant to power generation utilizing renewable energy resources:

- (a) KBLI 06202 – Geothermal Business Activity: This covers the business activities of searching and drilling for geothermal energy resources including in forest areas as well as other activities related to the exploitation of geothermal energy.
- (b) KBLI 20115 – Organic Basic Chemical Industry Sourcing from Agricultural Products: This covers various business activities including the manufacture of (i) biofuel in the nature of wood charcoal and coconut shell charcoal and (ii) liquid biofuels (biodiesel and anhydrous bioethanol) and (iii) bio-hydrocarbons (vegetable diesel oil, vegetable gasoline oil, vegetable avtur/jet fuel oil).

- (c) KBLI 35301 – Steam/Hot Water and Cold Air Procurement: This covers various business activities including producing, collecting and distributing steam and hot water for heating, power generation and other uses.

MoF Decree 52/2022 also specifies various activities relevant to processing, refining and separation of Crude Palm Oil and Crude Palm Kernel Oil (**i.e.**, KBLIs 10431, 10432, 10433 and 10434) that are **indirectly** relevant to power generation utilizing renewable energy resources on the basis that the resulting products may be ultimately used in the making of biodiesel.

- 3.4 **Surprising Inclusions:** The inclusion of KBLI 28240 – Mining, Quarrying and Construction Machinery Industry in the Appendix to MoF Decree 52/2022 is something of a surprise. It is hard to readily see how the manufacture of mining machinery qualifies as either a business activity involving Value-Added Processing or as a business activity involving Renewable Energy Utilization. That said, there are many other KBLIs specified in MoF Decree 52/2022 that may be regarded as being at least as problematic as KBLI 28240.
- 3.5 **Surprising Omissions:** The Appendix to MoF Decree 52/2022 does **not** include KBLI 35111 – Electricity Power Generation which covers various activities including the business of **electricity power generation** using (i) **renewable energy sources such as geothermal, wind, bioenergy, solar and hydro** or (ii) hybrid energy sources that combine fossil fuel with renewable energy.

Although KBLI 0602 – Geothermal Business Activity is specified in the Appendix to MoF Decree 52/2022, this KBLI does **not** cover the business activity of converting geothermal power into electricity.

4. **Assessment & Evaluation**

- 4.1 **Preliminary Remarks:** Trying to use the Second Tax Amnesty to promote the development of priority economic sectors, rather than just to raise additional Government tax revenue, is unquestionably a good idea.

Value-Added Processing and Renewable Energy Utilization are also appropriate economic sectors in respect of which to encourage NAV Investment by offering preferential tax treatment.

Specifying NAV Investment in 332 different business activities (as qualifying for preferential tax treatment under the Second Tax Amnesty), however, seems to run the very real risk of spreading NAV Investment so widely that not much will be achieved in respect of the promotion of any particular business activity. It might have made more sense, from a results orientation perspective, to have kept the number of qualifying business activities to just a few of the most important ones, in terms of Government economic development policy objectives, so as to maximize the potential for a significant development boost.

Readers of MoF Decree 52/2022 are also likely to wonder what criteria were used in determining the particular business activities, involving Value-Added Processing and

Renewable Energy Utilization, that actually qualify for preferential tax treatment of related NAV Investment. This concern is dealt with at greater length in 4.2 and 4.3 below.

4.2 **Value-Added Processing:** Given the importance the Government clearly attaches to “fast-tracking” value-added down-stream (i) processing and refining of metal minerals and (ii) coal development and utilization, it might have been thought that value-added processing activities in the minerals and coal mining sector would be the focus of the Value-Added Processing activities specified in MoF Decree 52/2022 as attracting preferential tax treatment for NAV Investment. In fact, however, this is **not** the case. Coal development and utilization (**i.e.**, value-added downstream activity in the coal mining industry) is **not** covered at all by MoF Decree 52/2022. While various business activities related to non-ferrous base metal manufacturing and battery/electric battery manufacturing are covered by MoF Decree 52/2022, the overwhelming majority of Value-Added Processing KBIs, specified in MoF Decree 52/2022, actually relate to a broad cross-section of other natural resources, including meat, fish, salt, sugar, cereals and leather, that have nothing at all to do with the mining industry.

4.3 **Renewable Energy Utilization:** Indonesia’s latest Electricity Procurement Plan (“**RUPTL**”) covers the period 2021 to 2030 (“**RUPTL 2021-2030**”) and sets a target of 51.6% for renewable energy as a percentage of the energy mix for **additional** electricity generating capacity to be added by 2030. This is a very significant increase from the previous target of 30% for renewable energy set out in RUPTL 2019-2028.

RUPTL 2021-2030 envisages that the 51.6% target for renewable energy will be achieved with a combination of (i) hydropower – 25.6%, (ii) solar power – 11.5%, (iii) geothermal - 8.3%, (iv) waste/biomass – 2%, (v) wind – 1% and (vi) other – 3.2%.

Given that hydropower and solar power are projected to be, by far, the largest contributors to the realization of Indonesia’s 2030 renewable energy target, it is hard to understand why MoF Decree 52/2022 offers preferential tax treatment for NAV Investment in geothermal business activity but **no** preferential tax treatment for NAV Investment in (i) hydropower or solar power business activity or (ii) electricity generation using **any** type of renewable energy resource including geothermal. The promotion of Renewable Energy Utilization, as part of the Second Tax Amnesty, is actually very small indeed.

The Government needs to do a whole lot more to encourage investment in Renewable Energy Utilization, in the form of power generation, if there is to be any chance of achieving RUPTL 2021-2030’s 51.6% target for renewable energy by 2030. In this regard, a recent report by the International Institute for Sustainable Development, “*Leveraging Public Funding to Incentivize Private Investment in Indonesia*”, argues that Indonesia’s 2021 investment expenditure of US\$1.51 billion on renewable energy is just 20% of what Indonesia actually needs to invest, each year from 2021 to 2025, if it wants to reach even the 2025 interim target for renewable energy of 23% of the national energy mix. Not much progress, in terms of realizing this required additional investment, is going to be achieved as a result of the Second Tax Amnesty and MoF Decree 52/2022 when NAV Investment in electricity generation, using renewable

energy resources, is **not** being prioritized at all by offering preferential tax treatment of such NAV Investment.

SUMMARY & CONCLUSIONS

Using the Second Tax Amnesty to promote economic development of priority business activities, as well as to raise additional Government revenue, makes sense given the fiscal constraints the Government is currently operating under.

MoF Decree 52/2022 provides much important detail as to which particular business activities, comprising Value-Added Processing and Renewable Energy Utilization, are going to be prioritized for development with the help of preferential tax treatment offered for NAV Investment and as part of the Second Tax Amnesty.

MoF Decree 52/2022 is, however, likely to disappoint parties which expected that (i) preferential tax treatment for NAV Investment in Value-Added Processing would be concentrated in the area of metal minerals and coal and (ii) electricity generation using renewable energy sources would be the main focus of Value-Added Processing. This is definitely **not** the case.

It is questionable whether the specified business activities, to be prioritized for development, are entirely consistent with the Government's often stated policy objectives in respect of mining and power generation.

The failure to include power generation, utilizing renewable energy resources, as a priority business activity, entitled to preferential tax treatment, seems particularly problematic given the ambitious renewable energy target that has been included as part of RUPTL 2021-2030.

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