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## CLIENT UPDATE

### 01 JULY 2016

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#### TAX & CUSTOMS

## Tax Amnesty: A Game Changer?

### 1. Introduction

After months of prolonged debate and considerable controversy, the House of Representatives (DPR) finally approved the Government-initiated Tax Amnesty Bill during a plenary session on Tuesday, June 28. The Tax Amnesty (the “**Amnesty**”) was proposed by the Government as a stop-gap measure to shore up declining tax revenues amid the ongoing economic downturn. The Government hopes that up to Rp 165 trillion will be repatriated as a result of the Amnesty, although the figures vary wildly depending on which government department is doing the talking. This has led many economists and commentators to question whether the government is actually in possession of accurate data as to the true amount of Indonesian funds parked overseas that would come within the scope of the Amnesty.

The new legislation will come into effect upon its signing by the President and publication in the Official Gazette.

In this Client Update, we take a look at the key features of the Amnesty.

### 2. Highlights

- The Amnesty provides the waiver of taxes due, administrative sanctions, and criminal sanctions upon the declaration of undeclared onshore or offshore assets, as the case may be, and the paying of a special fee (“*Uang Tebusan*”) to the government.
- All taxpayers who have a Tax ID Number (“*Nomor Pokok Wajib Pajak*”/“*NPWP*”) are eligible to benefit from the Amnesty, unless the taxpayer in question is believed to have committed a tax crime and the case file has been submitted by the Prosecution Service to the court for trial, or the taxpayer in question has been convicted of a tax crime and is serving a penal sentence.
- The Amnesty covers tax obligations in relation to Income Tax and Value Added Tax (“VAT”) and Luxury-Goods Sales Tax (“LST”).
- The Amnesty Bill sets out the following rates:
  - 1) For taxpayers whose assets are located in Indonesia (“onshore assets”) or who agree to repatriate offshore assets and invest them in Indonesia within at least 3 years (“offshore assets”):
    - 2% for amnesty applications submitted between 1 July 2016 – 30 September 2016;
    - 3% for applications submitted between 1 October 2016 – 31 December 2016; and
    - 5% for applications submitted between 1 January 2017 – 31 March 2017.
  - 2) For taxpayers who declare their assets but do not repatriate them to Indonesia (“offshore assets”):
    - 4% for amnesty applications submitted between 1 July 2016 – 30 September 2016;
    - 6% for applications submitted between 1 October 2016 – 31 December 2016; and
    - 10% for applications submitted between 1 January 2017 – 31 March 2017.
  - 3) For small and medium enterprises with turnovers of up to Rp 4.8 billion as of 31 December 2015:
    - 0.5% for declared assets amounting to up to Rp 10 billion; and
    - 2% for declared assets in excess of Rp 10 billion.

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- The deadlines for the repatriation and investment in Indonesia of offshore assets through a bank designated to receive payments of state revenues by the Minister of Finance (“state payments bank”) are:
  - 31 December 2016 for amnesty applications submitted between 1 July 2016 – 30 September 2016 and 1 October 2016 – 31 December 2016; and
  - 31 March 2017 for amnesty applications submitted between 1 January 2017 – 31 March 2017.
- The investment should be retained for a minimum of 3 years after the repatriation date and may take the form of an investment in:
  - (a) Government bonds;
  - (b) Bonds issued by state-owned enterprises;
  - (c) Bonds issued by state-owned financial institutions;
  - (d) Financial instruments issued by state payments banks;
  - (e) Bonds issued by private corporations that are subject to supervision by the Financial Services Authority (“Otoritas Jasa Keuangan”/”OJK”);
  - (f) Investments in infrastructure involving a collaborative scheme between a business entity and the government;
  - (g) Investments in the real sector in line with areas prioritized by the government;
  - (h) Other forms of investment based on the prevailing regulations.
- In the event the tax office finds any information concerning assets that have not been declared or have been underdeclared subsequent to the issuance of a Amnesty Notification, such assets will be deemed to be additional income as of the date on which the information became known and will be subject to income tax in accordance with the prevailing tax regulation, plus a surcharge of 200% of the tax payable.
- Any disputes related to the implementation of the Amnesty may only be adjudicated by the Tax Court. Should a taxpayer be unhappy with the Tax Court’s decision, there is no appeal in cassation to the Supreme Court. However, the taxpayer in question may seek a Supreme Court review of the Tax Court’s decision based on new evidence (*Peninjauan Kembali*).
- Information garnered as part of the Amnesty process will be administered by the Ministry of Finance and may not be used as the basis for the launching of a preliminary investigation, investigation and/or criminal prosecution against the taxpayer concerned.
- The Minister of Finance and other officials involved in the implementation of the Amnesty are prohibited from divulging, distributing, and/or sharing information on a participating taxpayer with third parties and any breaches of this confidentiality requirement are liable to a prison term of up to 5 years.
- Information on a taxpayer participating in the Amnesty may not be sought by or provided to a third party, even where this is authorized by other legislation, except with the consent of the taxpayer.
- The Amnesty Law requires the Minister of Finance to issue a regulation containing the procedures for the Amnesty’s implementation, the designation of government payment banks to receive repatriated assets, the rules governing investment and reporting, and the appointment of officials to put the Amnesty into effect.

### 3. AHP Commentary

The Government finds itself in a serious predicament on the fiscal front. The economy is showing few signs of recovery, the beneficial effects of the economic reform program have yet to kick in, infrastructure spending is less than expected and household spending remains subdued. Meanwhile, the assumptions contained in the 2016 Supplementary Budget, which was approved by DPR on the same day as the Amnesty, have been almost universally criticized as being unrealistic. The Government appears to be pinning its hopes on windfall revenues from the Amnesty in order to keep the budget deficit in check. While there appear to be good grounds for believing that the Amnesty will indeed result in a significant repatriation of

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funds, and thereby provide a revenue boost for the Government, we are not convinced that the amounts involved will be anywhere near as vast as the Government appears to believe.

Therefore, in order to maximize the fund repatriations, the Government will need to pull out all the stops to ensure that the Amnesty is applied efficiently and impartially.

The need to maximize the effectiveness of the Amnesty is further reinforced by the reality that whatever windfall gains accrue to the Government in the coming months will not be repeated. At the same time, the current headwinds are set to keep buffeting the economy for quite some time to come, and may even strengthen if the fallout from Brexit worsens.

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### ***ASEAN Economic Community Portal***

With the launch of the ASEAN Economic Community (“AEC”) in December 2015, businesses looking to tap the opportunities presented by the integrated markets of the AEC can now get help a click away. Rajah & Tann Asia, United Overseas Bank and RSM Chio Lim Stone Forest, have teamed up to launch “Business in ASEAN”, a portal that provides companies with a single platform that helps businesses navigate the complexities of setting up operations in ASEAN.

By tapping into the professional knowledge and resources of the three organisations through this portal, small- and medium-sized enterprises across the 10-member economic grouping can equip themselves with the tools and know-how to navigate ASEAN’s business landscape. Of particular interest to businesses is the “Ask a Question” feature of the portal which enables companies to pose questions to the three organisations which have an extensive network in the region. The portal can be accessed at <http://www.businessinasean.com/>.

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