

Client Update: Indonesia

1 November 2023

Unlocking Opportunities in Indonesia's New Capital through Business-Friendly Reforms



In line with the ongoing development in Indonesia's new capital, Ibu Kota Nusantara, commonly referred to as IKN, the government has enacted Government Regulation No. 12 of 2023 concerning the Provision of Business Licenses, Ease of Doing Business, and Investment Facilities for Investors in Ibu Kota Nusantara ("**Regulation**") in March of this year. Among others, the Regulation introduces conveniences and facilities for investors to encourage them to invest in IKN and its partner regions, which are specific areas in Kalimantan established for the development and growth of IKN's economic superhub in collaboration with the IKN authority.

This alert will highlight the conveniences and investment facilities under the Regulation and how investors can benefit from them.

Taxpayer Status Confirmation

Currently, the applicable tax regulations require government agencies to conduct a confirmation of a taxpayer's status (*konfirmasi status wajib pajak* or "**KSWP**") before providing public services to the taxpayer. Examples of these public services are the processing of amendments to articles of association, as well as the processing of licences. If the Directorate General of Taxes ("**DGT**") is unable to confirm a

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taxpayer's KSWP – thus resulting in an invalid KSWP – such taxpayer will not be able to access these public services, e.g. amend its articles of association, until it fulfils the requirements of a valid KSWP.

In order for the DGT to issue a valid KSWP, the taxpayer must ensure that the data in its NPWP (i.e., its name and its tax identification number) matches the data in the DGT's system and that it has submitted its annual income tax return for the last two tax years.

Under the Regulation, investors in IKN are exempted from the requirement to obtain a confirmation of taxpayer's status (*konfirmasi status wajib pajak* or "**KSWP**"). However, the Regulation does not address the arrangements and schemes for this exemption.

Foreign Ownership Restrictions

Investors in IKN will benefit from a considerable concession by not being subject to the foreign ownership restrictions under Presidential Regulation No. 49 of 2021 on the Amendment to Presidential Regulation No. 10 of 2021 on Investment Business Fields. The Regulation stipulates that foreign ownership restrictions will not apply to specific business sectors in IKN and its partner regions.

Unfortunately, there is no clarity yet regarding which business sectors will enjoy this concession. Moreover, the Regulation states that certain business sectors in IKN and the partner regions require a partnership with micro, small, and medium-sized enterprises or cooperatives.

Employment of Foreign Workers

On employment of foreign workers, the Regulation introduces several provisions that ease the process for investors to hire these workers for specific positions. Among these provisions, the approval for the Foreign Worker Utilisation Plan (*Rencana Penggunaan Tenaga Kerja Asing* or "**RPTKA**") in the IKN and partner regions will be valid for 10 years, subject to extension. This validity exceeds the current period that applies throughout Indonesia of six months to five years.

Furthermore, investors employing foreign workers, including those engaged in government-owned strategic projects in IKN, are exempted from the obligation to pay the Foreign Worker Utilisation Compensation Fund (*Dana Kompensasi Penggunaan Tenaga Kerja Asing* or "**DPTKA**") for a specified period. Currently, the applicable regulations require businesses to pay DPTKA at a rate of USD100 per position, per person, per month, which is considered as regional income in the form of local levies.

Additionally, a foreign worker in IKN and its partner regions can receive a residence permit that is valid for a maximum of 10 years, which may be extended based on the term of the employment agreement. Like the RPTKA, the validity period of the residence permit exceeds the current maximum period of a Limited Stay Permit (*Izin Tinggal Terbatas* or ITAS), which currently stands at a maximum of five years, subject to an extension that does not exceed 10 years in total.

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Tax Facilities

The Regulation details the investment facilities that investors can receive in the form of fiscal and non-fiscal incentives. The granting of these facilities, including tax facilities, falls under the jurisdiction of the central government or the IKN authority, and the incentives will be granted through the minister responsible for state financial affairs.

Several of these incentives apply to specific business sectors:

1. **Corporate income tax reduction for domestic corporate taxpayers**

A corporate income tax reduction will be granted for an investment valued at a minimum of IDR10 billion. Moreover, the investment must also be in a business sector that is considered strategically important for accelerating the development and growth of IKN, namely:

- (i) In the infrastructure and public service sectors, there will be a 100% reduction in the corporate income tax owed for 20 to 30 tax years, depending on the year of investment.
- (ii) For investments whose purpose is for economic development (*bangkitan ekonomi*), there will be a 100% reduction in the corporate income tax owed for 10 to 20 tax years, depending on the year of investment.
- (iii) For other business sectors, there will be a tax reduction for 10 tax years, ranging from 50% to 100% of the total corporate income tax owed, depending on the year of investment.

Additionally, a domestic corporate taxpayer investing in the partner regions with a minimum investment value of IDR10 billion in infrastructure and public services will receive a 100% reduction in the corporate income tax owed for 15 to 25 tax years, depending on the year of investment.

2. **Income tax in financial sector activities**

A domestic corporate taxpayer or a permanent establishment conducting activities in the financial centre of IKN (which is an area dedicated to financial services and technology development and supporting services in the financial services sector) will receive a reduction in its corporate income tax, subject to the following provisions:

- (i) For the banking, insurance, and Islamic finance sectors, there will be a 100% reduction in the corporate income tax owed on the portion of income used for investment or financing the development, growth, and economic activities in IKN and/or the partner regions for 20 to 25 tax years, depending on the year of investment.
- (ii) For other financial sectors, there will be an 85% reduction in the corporate income tax owed for 20 to 25 tax years, depending on the year of investment, on the following portions:

- (a) The income derived from the foreign investors for the financial sector encompassing capital markets, financial derivatives, carbon markets, and international commodity trading; or
- (b) The income derived from businesses and/or individuals located in IKN for the financial sector encompassing pension funds, financing, venture capital, financial technology innovation, insurance, bullion, trust fund management, financial instrument management (special purpose vehicle), financial holding companies, financial market infrastructure, money markets, foreign exchange markets and their derivative transactions, payment system services, and/or other financial services.

Additionally, any income derived from investments in the financial centre in IKN that is received or obtained by foreign taxpayers will be exempted from withholding and/or collection of income tax for 10 years, starting from the initial placement of funds in the financial centre of IKN.

3. ***Corporate income tax reduction for establishment and/or relocation of headquarters or regional office***

Conscious that investments in IKN are likely to involve relocation or establishment of offices, the Regulation states that businesses that establish and/or relocate their headquarters or regional offices will receive a 100% reduction in corporate income tax for the initial 10 years and a subsequent 50% reduction for the following 10 years, until 2045, on the total corporate income tax owed.

A foreign investor holding a foreign taxpayer status that establishes and/or relocates its headquarters and/or regional office to IKN will be eligible for a corporate income tax reduction if it meets the following conditions:

- (i) It owns a minimum of two affiliated units and/or related business entities outside of Indonesia, such as subsidiaries, branches, joint ventures, or similar entities;
- (ii) It demonstrates economic substance in IKN; and
- (iii) It has established a legal entity in the form of a limited liability company in Indonesia.

A domestic taxpayer establishing its headquarters and/or regional office in IKN will also enjoy the corporate income tax reduction facility for income received or obtained from businesses in IKN or from residents of IKN if it satisfies criteria (ii) and (iii) above.

Moreover, the Regulation defines “economic substance”, whereby a taxpayer will be deemed as having economic substance if:

- (i) Its business activities are managed by its own management, which has sufficient authority to run its operations;

- (ii) It possesses sufficient and adequate fixed and non-fixed assets to conduct business activities within the IKN region;
- (iii) It has an adequate number of employees with specific skills and expertise relevant to the industry in which it operates in;
- (iv) It engages in active business activities other than receiving income in the form of dividends, interest, royalties, and/or profits from asset transfers; and
- (v) It carries out strategic activities for the company and/or business group, such as making strategic decisions, consolidating the implementation of new investments, expansion, mergers, acquisitions, affiliate dissolution, financial management consolidation, and/or human resources.

4. **Gross income reduction facility for research and development activities**

The Regulation grants a gross income reduction facility to a domestic taxpayer whose business and/or operational activities pertaining to research and development activities in IKN. This reduction is granted up to 350% of the total expenses incurred for the research and development activities within a specified period until 2035.

While the Regulation states that only some research and development activities will qualify for this tax facility, it does not explicitly state what research and development activities will be sufficient. Instead, the Regulation states that the research and development activities are carried out to create inventions, develop innovation, achieve proficiency in new technologies, and/or transfer technology for the development of industries aimed to enhance the competitiveness of the national industry.

5. **0% final income tax facility on income from gross turnover of MSMEs**

Domestic taxpayers, excluding permanent establishments, who invest less than IDR10 billion in IKN may be subject to a final income tax rate of 0% on the income generated from its gross turnover up to IDR50 billion within one tax year if such income is received or obtained in IKN. This tax facility will be available until 2035, provided that the taxpayer:

- (i) Continue residing or has a registered office or branch office in IKN;
- (ii) is engaged in business activities in IKN;
- (iii) is registered as a taxpayer at the tax service office whose jurisdiction covers IKN or holds a tax identification number at a place of business located in IKN;
- (iv) has made investment in IKN and is qualified as a micro, small, and medium-sized business by the relevant authority; and

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- (v) has applied to utilise the final income tax facility no later than three months from the date of investment and obtained an approval for the provision of the final income tax facility.

If a taxpayer has multiple places of business or branches in IKN, the investment value limit in IKN will be determined based on the total value of all the taxpayer's locations in IKN.

Key Takeaways

While details in the Regulation are sparse, it nonetheless gives us an illustration of the facilities available in IKN and the partner regions. Moreover, in light of the ongoing development in IKN, this is a golden period for businesses intending to invest in IKN and the partner regions. From various perspectives, the facilities have the potential to yield substantial long-term benefits, including non-material benefits, such as time saved due to streamlined requirements and extended permit durations.

All in all, seizing the opportunities offered by the Indonesian government in IKN can set the stage for a successful and rewarding business endeavour. Nonetheless, careful consideration of the benefits available will be pivotal in establishing a solid foothold in the evolving IKN region.

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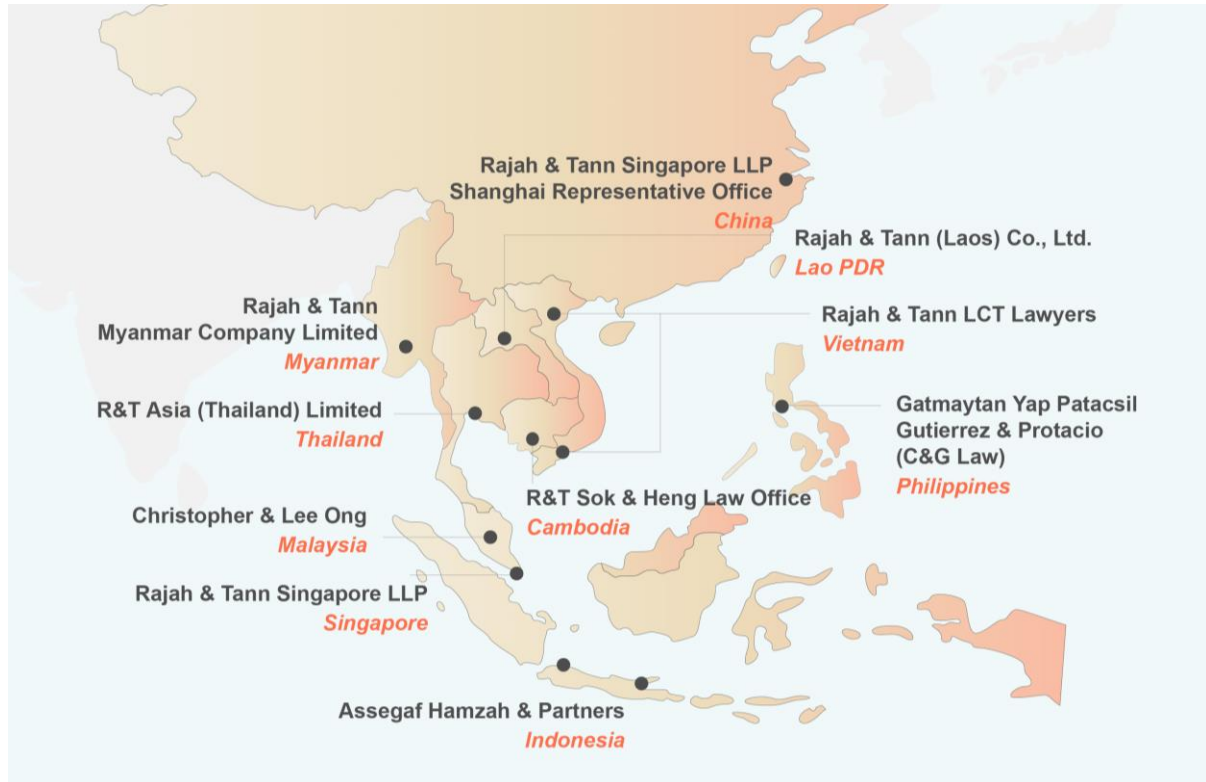
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