RETHINKING TAX TREATMENT DURING THE COVID-19 PANDEMIC: A NOTE ON INDONESIA'S OMNIBUS LAW JOB CREATION TAXATION CLUSTER

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ABSTRACT

The Indonesia Omnibus Law Job Creation was released during the COVID-19 pandemic as a shortcut to revise laws, with the aim of realising a welcoming investment climate. The tax treatment in the Omnibus consists of a reduction of corporate income tax rate; tax relief on dividend; a reduction of the tax penalty; the imposition of VAT collected by an assigned foreign supplier; and the repackaging of tax incentives by adding local tax and charges as additional tax incentives. The reduction of corporate income tax has brought Indonesia to a deep tax revenue shortfall, which is added to by tax relief on dividend. However, the reduction of the tax penalty seems to lead to the proportionality principle of sanction. The assignment of foreign suppliers to collect VAT may contribute to VAT revenue, but its potential still could not be met. Finally, the government still has the confidence to offer tax incentive packages, in order to attract investment.

Keyword: omnibus law, tax facilities, income tax

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The author would like to thank the Faculty of Administrative Science Universitas Indonesia for funding the research (research grant FY 2021) as well as Jessikah Niesten for her editorial assistance.

I INTRODUCTION

At the end of 2020, a very controversial Bill, the Job Creation Bill was approved as the 'Job Creation Omnibus Law' (hereafter called as 'Omnibus Law') by the Indonesian House of Representatives. This is also known as 'Law No. 11 of 2020 on Job Creation'.[1] The government initiated the Bill in 2019,[2] in order to ease business activities and be able to realise a welcoming investment climate by simplifying current complex regulation and offering certain kinds of fiscal and non-fiscal instruments, including the offer of tax incentives.[3] From the government and parliament members' perspectives, the Omnibus Law was considered to be a progressive breakthrough, which would overcome the multisectoral problems.[4] The Head of the Investment Coordinating Board claimed that the Omnibus Law would increase investment by about 0.2 to 0.3 per cent at the beginning of its implementation.[5] In fact, the Bill was considered to be quite controversial and even flawed due to a lack of transparency. During the discussion in the House of Representatives it was quickly concluded that the time to conclude the Bill was in fact, illogical.[6] The government justification was that this Bill functioned as a solution to regulatory problems,[7] which had resulted in a less welcoming business environment.[8] Indeed, regulatory overlapping was found to have existed following research conducted by Center for Law and Policy Study, which revealed that there were 7,621 ministerial regulations between 2014–2018. This resulted in the World Bank ranking Indonesia 92

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1 The Omnibus Job Creation Bill consists of the drafting of several Bills, with the main amendment created through the Draft Bill on Employment Creation; the Draft Bill on Development and Strengthening of the Financial Sector; and the Draft Bill on Tax Provision and Facilities for Economic Engagement. See: Ricca Anggraeni and Cipta Indra Lestari Rachman, 'Omnibus Law in Indonesia: Is That the Right Strategy to Advance?' (2020) 140 *Economics, Business and Management Research* 180.

2 The Government spokesperson stated that the Omnibus Law legislation proposed by the Government is a measure to realise the current President's work program (Mr. Joko Widodo) during the campaign for the second running election. See: Julita and Asmara, 'Janji Jokowi Periode II: Realisasikan Omnibus Law', *CNBC Indonesia* (online, 20 October 2019) <https://www.cnbcindonesia.com/news/20191020162418-4-108482/janji-jokowi-periode-ii-realisasikan-omnibus-law>.

3 The Ministry of Finance released the 'academic paper' in 2019, in order to provide justification for the release of the Bill, by arguing it would impact positively on economic activities. See: Kementerian Keuangan, 'Naskah Akademik Rancangan Undang-undang tentang Ketentuan dan Fasilitas Perpajakan untuk Penguatan Perekonomian' (online, February 2020) <https://lokataru.id/wp-content/uploads/2020/02/Naskah-Akademik-RUU-Omnibus-Law-Perpajakan.pdf>.

4 Dewi Amin and Tegar Satrio, 'Omnibus Law Antara Desiderata dan Realita' (2020) 15(2) *Jurnal Hukum Samudra Keadilan* 190–209.

5 'BKPM Klaim Omnibus Law Bisa Tumbuhkan Investasi 0,3 Persen', *CNN Indonesia*, (online 17 February 2020) <https://www.cnnindonesia.com/ekonomi/20200217145125-532-475384/bkpm-klaim-omnibus-law-bisa-tumbuhkan-investasi-03-persen>.

6 R. Argama, 'Major Procedural Flaws Mar the Omnibus Law' (Web Page, 2020) <https://pshk.or.id/blog-id/major-procedural-flaws-mar-the-omnibus-law/> or <https://indonesiaatmelbourne.unimelb.edu.au/major-procedural-flaws-mar-the-omnibus-law/>.

7 Anggraeni and Rachman (n 1).

8 Analisis Alqadri, 'RUU Omnibus Law Perpajakan Terhadap Pemungutan Pajak Daerah' (2020) 4(2) *Tanjungpura Law Journal* 117–132.

out of 193 between 1966–2017.[9] It also was driven by the relatively long duration of time involved in revising the draft of the previous Law. Thus, this Act could be seen as an efficient short-cut to the legislative work required to meet the President's target and its immediate implementation as a measure of economic recovery.

The concept of omnibus in simple terms means 'numerous objects or items at once; many things or having various purposes'. Thus, the Omnibus Law combines several measures together into one and transforms a diverse range of subjects into a single law. The Omnibus Law is therefore known as a statutory act, which is legislated to revoke or change several laws at once for the purpose of simplicity.[10] In February 2021, the Ministry Secretariat announced 49 regulations to be implemented, consisting of 45 Government Regulations and 4 Presidential Regulations,[11] to be implemented in accordance with the many other technical guidelines, which are commonly released under ministry regulation.

With regard to the Taxation cluster, even though overall the Omnibus Law Job Creation is quite controversial, a number of stakeholders including investors and tax consultants supported this new law. The drafting of the taxation cluster in the House of Representatives became part of the agenda amidst the discussion process. Initially, the taxation cluster was not actually one of the priority subjects on Parliament's list in the first place.[12] However, Parliament was able to get the necessary support from government and business, in order to finalise the draft. They claimed this newly implemented law would improve the investment climate due to both the simplicity of the new regulations and a reduction of tax burden, as part of the content of the law. Furthermore, the government claimed that this law could be used as an instrument to accelerate tax reforms, which had previously not gone anywhere.[13] In addition, the government and members of parliament claimed that the Omnibus Law was a breakthrough as a measure for economic recovery on account of the impact of the COVID-19 pandemic.[14] In fact, with this newly stipulated rule, the potential tax revenue, which must be collected by the government would be considerably reduced. On the other hand, schemes detailing how the government will recapture the potential of tax revenue loss are still unavailable.[15]

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9 Anggraeni and Rachman (n 7) 180.

10 Ibid 182.

11 Secretariat of Ministry, Public Affairs Department, 'Daftar Tautan 49 Aturan Pelaksana UU Cipta Kerja' (online, 2021) <https://setkab.go.id/daftar-tautan-49-aturan-pelaksana-uu-cipta-kerja/>.

12 A.G. Victoria, 'Kontroversi Masuknya Aturan Pajak Dalam Omnibus Law UU Cipta Kerja' (Web Page, 2020) <https://katadata.co.id/agustiyanti/finansial/5f7ed578789f9/kontroversi-masuknya-aturan-pajak-dalam-omnibus-law-uu-cipta-kerja>.

13 'Membedah Klaster Perpajakan dan Investasi dalam UU Cipta Kerja', *Hukumonline* (Web Page, 2020) <https://www.hukumonline.com/berita/baca/lt5fe2dd46ca02d/membedah-klaster-perpajakan-dan-investasi-dalam-uu-cipta-kerja-/>.

14 'Kepala BKF Kemenkeu: Omnibus Law Modal Pemulihan Ekonomi 2021', *Sindonews* (online, 2020) <https://nasional.sindonews.com/read/188670/94/kepala-bkf-kemenkeu-omnibus-law-modal-pemulihan-ekonomi-2021-1602051020>.

15 With regard to the recapturing of tax revenue shortfall, in an interview, the spokesperson of Ministry of Finance could not explain in detail how to gather tax expenditure as the result of overwhelming tax

This shows that the Indonesian government has decided to place a reduction in tax as an attractive way to improve investment climate, along with additional tax arrangements. Such a choice in policy would affect tax revenue expenditure with an 'uncertain quantitative multiplier effect'.[16] Notwithstanding this, many studies in the last decade have shown no clear empirical evidence of sacrificing tax expenditure through various types of tax instrument, in order to result in an economic impact.[17] Conversely, this kind of tax instrument is still a popular policy in developing countries,[18] including in Indonesia. This article is intended to discuss the fundamental changes of tax policy prior to the release of Omnibus Law as a mode of economic climate improvement. Further, this article also is aimed to discuss the possible challenges must be tackled by the government due to the release of Omnibus Law taxation cluster.

II RESEARCH METHOD

This research uses a qualitative approach, and the type of this research is descriptive, which aims to provide 'a specific description of the situation, phenomenon or social phenomenon'.[19] This research aims to review the process of legislating the Omnibus Law and the challenges of implementing Omnibus Law Job Creation, specifically with respect to taxation clusters. This research is being completed for academic purposes, with the results used for scientific purposes only. This is also expected as input for non-academic consideration. This research is classified as a cross-sectional study because it was conducted in a certain time period and only took one approach from the social phenomena, which occurred in that one time period.[20] Data collection techniques in this study used qualitative techniques in the form of literature studies, documentation, literature and citation of interviews conducted by the third party with informants. The literature study further examines secondary data obtained from various sources, including books, articles, and electronic publications.

incentives. See: (YouTube, 2020) <https://www.youtube.com/watch?v=luXENcq9uCU> (in Indonesian language).

16 Klemm and Parys, 'Empirical Evidence on the Effect of Tax Incentives' (IMF Working Paper WP/09/136, Fiscal Affairs Department, 2009).

17 Nathan – MSI Group, 'Effectiveness and Economic Impact of Tax Incentives in the SADC Region', (Technical Report, 2004); Alfiansyah, 'The Study of the Impact of Fiscal Incentives on Foreign Direct Investment Flows in Industrial Sectors of Indonesia' (Master Thesis, University of Indonesia, 2017); Herdiyati and Wahyudi, 'Tax Holiday and Foreign Direct Investment in Indonesia (2020) 7(2) Economics, Social and Development Studies 240–259.

18 Sebastian James, 'Incentives and Investments: Evidence and Policy Implementations, Investment Climate Advisory Services of the World Bank Group' (Report, 2009); Saila Naomi Stausholm, 'Rise of Inefficient Incentives: New Empirical Evidence on Tax Holiday in Developing Countries' (Report, 2017).

19 Bach, 'Qualitative Research Method Summary' (2014) *Journal of Multidisciplinary Engineering Science and Technology* 21, 25.

20 Raimundo et al, 'Research Methodology Topic: Cross Sectional Studies' (2018) *Journal of Human Growth and Development* 356, 360.

III Omnibus Law in Indonesia

In many studies, it was found that the frequency in overlapping regulation in Indonesia led to sub-optimal results in economic activities and the provision of public services. It also resulted in a less friendly investment climate.[21] The World Bank gave a score of 74 to Indonesia on the 'Ease of Doing Business Index' in 2019.[22] Several studies suggest that this score has remained stagnant for several years and that it therefore it needs a progressive work to increase the level.[23] When comparing to Indonesia to its neighbour developing countries, the World Bank's 'Ease of Doing Business Index' ranked Malaysia as 12, Thailand as 21 and Vietnam as 70. It is clear that, Indonesia needs to improve its investment climate, in order to attract investment. This can be achieved by reducing the amount of over-lapping regulation and establishing a strong fundamental basis that will ensure certainty for investors, as a means of improving the investment climate. Notwithstanding this, the reformulation of investment-related law should be done in a transparent manner, which considers the rights and interests of society, as well as the sustainable development.

The Omnibus Job Creation Law has successfully revised 79 Law and 1.288 Articles from the previous regulations.[24] However, with such complex regulation which will affect the activities of multi-stakeholders, the legislation process of this Omnibus Law is considered logically too short and lacking in transparency and public participation. As there are many revisions needed, it would be prudent to bring relevant groups of interest to discuss the changes. The timeline of the stipulation of Omnibus Law is as follows.

Table 1: Timeline of the Omnibus Law Legislation

No	Date	Activities
1.	20 October 2019	The elected president, Joko Widodo mentioned the harmonisation of regulation in the second term of his administration
2.	16 December 2019	The Omnibus Law Working Group was established and held by the Coordinator Ministry of Economics and the Chief of the Indonesian Chamber of Commerce and Industry
3.	January 2020	Two Omnibus Package proposed by the government (Executive body)
4.	2 April 2020	The Presidential Letter regarding the Omnibus Bill officially was announced in the House of Representatives. The Parliament assigned the Legislative Committee to start the discussion and drafting process.
5.	14 April 2020	The Legislative Committee officially announced the first meeting to draft Omnibus Bill

21 Eko Noor Kristiyanto, 'Urgensi Omnibus Law dalam Percepatan Reformasi Regulasi dalam Perspektif Hukum Progresif' (2020) *Jurnal Penelitian Hukum De Jure* 233–244.

22 World Bank, 'Ease of Doing Business Index — Indonesia' (Report, 2019) <https://data.worldbank.org/indicator/IC.BUS.EASE.XQ?locations=ID>.

23 Tomi Sentianto, 'Ease of Doing Business in Indonesia: A Long Road' (2020) 10(2) *Jurnal Ekonomi and Pembangunan* 87-96. Abiyoso, 'Improving the Ease of Doing Business in Indonesia: Problems Related to Contract Enforcement in the Court' (online 2018) <https://iopscience.iop.org/article/10.1088/1755-1315/175/1/012032/pdf>.

24 Prakarsa, 'Ecocide Crimes and Omnibus Law: Review of International Law and Its Implication on Indonesia Law' (2020) 12(2) *Dinamika HAM* 14–20.

6.	24 April 2020	The President postponed the Omnibus Bill on Labor Cluster
7.	20 April 2020 – 30 October 2020	The discussion and drafting process of Omnibus Law (which took place over 64 meetings).
8.	3 October 2020	The Legislation Committee finished and agreed with the draft of the Omnibus Bill. The Omnibus Bill reached the final stage in the legislation process before the official stipulation. The agreement about the Omnibus Bill was criticised by the public.
9.	5 October 2020	The House and the government officially stipulated the Omnibus Bill become Omnibus Law Job Creation. The Omnibus Law Job Creation consists of 15 Chapters and 174 Articles. After the Omnibus Law officially was announced by the House, four types of drafts were distributed. Type 1 (5 October, 905 pages), type 2 (October 9, 1,052 pages), type 3, (12 October morning 1,035 pages) and type 4 (12 October, 812 pages). The government announced the official Omnibus Law ran for a total of 812 pages.

Source: Akbar Bayu Tamtomo (2020);[25] Zakki Amali (2020).[26]

Selecting the Omnibus as a method to avoid disharmony in tax regulation is consistent with the concept of 'one drafting for all'. An Omnibus Bill is defined as 'a draft law before a legislature, which contains more than one substantive matter or several minor matters, which have been combined into one bill, ostensibly for the sake of convenience'.[27] The Omnibus Bill was therefore undertaken, in order to harmonise the regulation on a cluster of policies, which were similar policy in nature. This includes, for example, regulation related to budget implementation. Thus, on a conceptual level, the Omnibus must not be drafted to encompass a wide range of regulation as it will only raise further problems.

In fact, the current Omnibus Law in Indonesia has revised many aspects of law, which are related to business activities.[28] It has reshaped rules on the investment ecosystem, in terms of business; labour; protection to small and medium enterprises; ease of doing business; research and innovation' land acquisition and management; the economic zone; government investment and the acceleration of government projects; administrative affairs; and the penalty of the law related to the prevailing rule. However, the release of the law comes has been driven by a simplistic analysis, which places investor interest over public interest. The central position of development is placed in the hands of the capital

25 Akbar Bayu Tamtomo, 'INFOGRAFIK: Rekam Jejak Omnibus Law UU Cipta Kerja' (online, 2020) <https://www.kompas.com/tren/read/2020/10/07/190500565/infografik--rekam-jejak-omnibus-law-uu-cipta-kerja>.

26 Zakki Amali, 'Kronologi Omnibus Law Disahkan hingga Jokowi Terima UU Cipta Kerja' (online, 2020) <https://tirto.id/kronologi-omnibus-law-disahkan-hingga-jokowi-terima-uu-cipta-kerja-f5YM>.

27 Duhaime, *Omnibus Bill Definition* (Web Page) <http://www.duhaime.org/LegalDictionary/O/OmnibusBill.aspx>.

28 The Omnibus Law eliminates the several requirements needed to establish a Limited Corporation with capital sourced from foreign investor. This includes for example: the elimination of negative lists of investment; an enlargement in the variants of non-permanent contracts for workers; a reduction in sanctions for environment degradation; a myriad of tax incentives; and a reduction in business responsibility, in order to provide an environmental feasibility report. See: 'Catatan Kritis dan Rekomendasi RUU Cipta Kerja' (Gadjah Mada University Working Paper, March 2020).

owners, who are the main actors and who obtain a myriad of privileges in accordance with the law. This situation could be viewed as being very detrimental to the community and to the environment. While the Omnibus Law has a strong economic approach, the law itself has not been enacted in such a way as to ensure justice in society.[29]

In November 2020, the Faculty of Law Gadjah Mada University Indonesia published the working paper as a critical note to the Law No. 11/2020. It was expected that this publication would be considered by Parliament and would strive to deliver 'another view' to the public. There were several key criticisms of the law. Firstly, the Omnibus Bill contained the critical issues with the methodological, paradigmatic and substantive policy with which it proposed to deal. Secondly, it is well understood that the principle of sustainable development should not be infringed, in order to improve the investment climate. Thirdly, the problems of the over-regulation and over-lapping of previous investment and economic activities were not solved by the Omnibus Law, as this contains 500 regulated items. This could potentially result in new and complex hyper-regulation. Finally, there should have been careful drafting of the law, as it has the potential to affect people's economic activities.[30]

However, the argument posed by groups who support the Omnibus Law is that it is a progressive piece of legislation, which incorporates existing rules.[31] With all of these facts, the legislation of Omnibus Law seems heavily reliant on the interests of certain limited groups.

A *The Series of Tax Facilities during the Pandemic until the Release of Omnibus Law*

In 2016, Indonesia offered a tax amnesty through the implementation of Law No. 11, which provided a quantifiable measure to collect information about the taxpayer activities that might normally remain undisclosed. This was therefore used as a mode to collect tax revenue.[32] Unfortunately, that has been no clear follow up program with respect to the tax amnesty and thus, it may have only been a short-term program, which was implemented solely to cover the expenses during fiscal year. Certainly, the government revenue during the amnesty period was increasing but the designed program could be considered as a failed project because it did not fulfil the main goals; repatriation of resident asset's kept outside Indonesia and the data collection to enhance the compliance system.[33] The non- continues of follow-up program of tax amnesty is really recognised by the government, saying that the trade-off between compliance and amnesty

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29 Anggono and Firdaus, 'Omnibus Law in Indonesia: A Comparison to the United States and Ireland' (2020) 7(3) *Lentera Hukum* 319–336.

30 Faculty of Law Gadjah Mada University (Policy Paper, 5 November 2020) <https://rispub.law.ugm.ac.id/2020/11/06/kertas-kebijakan-catatan-kritis-terhadap-uu-no-11-tahun-2020-tentang-cipta-kerja/>.

31 Kristiyanto (n 21) 238.

32 Budi Ispriyano, 'Keberhasilan Kebijakan Pengampunan pajak (Tax Amnesty) di Indonesia' (2019) 2(1) *Administrative Law and Governance Journal* 47–59.

33 Ibid 54.

on tax obligation did not exist, but it also has not been sufficient reconsidered by the government prior to the Omnibus Law proposal submitted to the parliament.[34] Using a simple measure, Indonesia tax ratio in each year before and after-tax amnesty are as follow 2014 (13.1%), 2015 (11.6%), 2016 (10.8%), 2017 (10.7%), 2018 (11.6%) and 2019 (10.69%). The tax ratio increased slightly only during the year of the tax amnesty and then decreased again in 2019.[35]

The COVID-19 had a profound effect on the economy. Consequently, the Indonesian government granted several fiscal incentives, in order to support homes and businesses. For this reason, the government exempted the requirement to pay personal income tax for people with a certain category of income. In terms of business, the government granted an exemption on import duties; the reduction of instalments payable for corporate income tax; and eased VAT refunds, as mandated by the Ministry of Finance Regulation No. 23 in 2020. Furthermore, the Legislative also enacted Law No. 2 (2020), which related to the national budget stability in response to the handling of COVID-19 pandemic. This law came in effect on 18 May 2020 and the tax incentives became one of its instruments. As stated in the Art 6 of Law No. 2 (2020), the main feature of the tax incentives are the following:

a) That the tax rate on corporate income tax was reduced to 22% in 2020 and 2021, then to 20% in 2023 and beyond;

b) That the domestic tax subject in the form of (a) public entities; (b) paid capital traded on the Indonesia stock exchange at a minimum of 40%; (c) eligibility on the basis of certain criteria would be granted at 3% lower than the prevailing rate.

However, in mid-November 2020, the Ministry of Finance discovered that only 31.6% of the amount of total incentives granted to all of the targeted entities was given. Then, the Omnibus Law added even more comprehensive tax incentives to the Law No. 2 (2020), which significantly changed Indonesia's taxation landscape.

The Ministry of Finance classified the Omnibus Law's taxation cluster into six pillars. Pillar one related to a corporate income tax rate reduction and a reduction of income tax as a means of increasing of investment volume. Pillar two related to the application of a territorial system through the exemption of dividends remitted to the Indonesian government if the money was invested in Indonesia. Pillar three dealt with the option available to Indonesian citizens who reside outside of Indonesia more than 183 day per year to be considered as a foreign tax subject and thus, be exempt from paying tax in Indonesia. Pillar four concerned the reduction in penalty for non-compliance with interest payments from 2% per month to a maximum of 24 months or 48%. This followed rate of the market interest, in addition to a small percentage imposed by the DGT as an administrative sanction. Pillar five related to digital economics. Under this pillar, the

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[34] The statement based on interview made by Asumsi Journalist with Ministry of Finance spokesperson in February 2020.

[35] Directorate General of Taxes, 'Rasio Pajak (Tax Ratio) dari Masa ke Masa' (online, 2021) <https://www.pajak.go.id/id/86-rasio-pajak-tax-ratio-dari-masa-ke-masa>; Directorate General of Taxes, *No. KEP-389/PJ/2020 Regarding Strategic Plan for Directorate General of Tax 2020-2024* (Report, 2020) <https://pajak.go.id/sites/default/files/2020-09/KEP-389PJ2020.pdf>.

government appointed VAT collectors for businesses which are not permanently established in Indonesia but have been recorded as having a certain volume of transactions in Indonesia. Finally, pillar six offered incentives such as tax holidays, super deductions, tax allowances and the establishment of a special economic zone, as well as other types of local tax incentives. The Indonesian Tax Authority, Directorate General of Taxes ('DGT') referred to these six pillars as the 'Cluster Ease of Doing Business ('EODB') in Taxation.

The Omnibus Law taxation cluster amends three taxation laws; (1) General Tax Procedures; (2) Income Tax Law and (3) Value Added Tax Law. The Omnibus Law taxation cluster will be implemented through three Government Regulations. While these are still in the processed of being drafted, these will consist of: (a) GR for supporting ease of doing business through use of the tax instrument known as 'GR No. 9 (2021)'; (b) GR as the basis of Local Tax and User Charge incentives to enhance investment; and (c) GR as the basis of supporting investment fund institutions. Recently, the Ministry of Finance released the technical guide to GR for supporting the ease of doing business through use of the tax instrument known as the 'Ministry of Finance Regulation No. 18/PMK.02/2021'.

The detail of the taxation cluster — EODB is the following:[36]

TABLE 2: THE TAXATION CLUSTER – EASE OF DOING BUSINESS

INCREASING INVESTMENT	ENCOURAGING VOLUNTARY COMPLIANCE	INCREASING LEGAL CERTAINTY	PROMOTING EQUAL BUSINESS CLIMATE WITHIN THE NATIONS
Gradual reduction of the CIT rate 22% (2020 – 2022) and 20% (2023 and beyond) Reduction of the CIT rate for public taxpayers Elimination of CIT on outbound dividends Exclusion of inbound dividends and profit after tax from CIT objects in so far as they are invested in Indonesia Not subject to CIT for earning shares in cooperatives and hajj funds managed by BPKH Adjustment for CIT art. 26 for interest	Relaxing of input tax crediting rights for taxable entrepreneurs Adjustment on regulations (a) tax administrative penalties and (b) interest	Determination of an individual tax resident (a) Indonesia citizen or foreign citizen residing > 183 days in Indonesia becomes a tax resident of Indonesia (b) Indonesia citizen residing in Indonesia < 183 days may become foreign tax resident (T&C) applicable) IIT for foreign tax resident with specific expertise in receiving income from Indonesia Regarding VAT (a) sale of coal is included as the sale of taxable goods (b)	Tax on electronic transactions: (a) the appointment of the VAT collectors, (b) a foreign tax resident is subject to tax in Indonesia for the electronic transaction conducted in Indonesia ID Number substitutes the TIN of the buyer in tax invoices in case of not having TIN

[36] PwC Indonesia Omnibus Flash, Omnibus Law – Major Changes to Tax Laws (2020) <https://www.pwc.com/id/en/publications/omnibus/omnibus-flash-2020-02.pdf>.

"Imbreng" not subject to VAT	consignment is excluded from the taxable goods transaction
	An excess of social & religious funds is not subject to income tax
	No issuance of tax assessment letter for the concluded tax crime
	Issuance of notice of tax collection (STP) expires in 5 years
	STP can be issued to collect interest returns
	Application of only one administrative penalty
	Termination of the preliminary examination and tax crime investigation
	Refund of credited input tax

Source: Directorate General of Taxes (2020)[37]

IV Results and Discussion

Since the Omnibus Law was officially released to the public, the media has focused on the positive impact of the newly stipulated laws, despite the fact that many civil society organisations and academics protested its release. In fact, The Director General of Taxes stated that the reduction in corporate income tax itself will gradually decline from 25% (2019), to 22% (2020–2022), and finally to 20% (2023 and beyond)[38]. The implementation of territorial system has brought a reduction of tax revenue loss in

[37] 'The Taxation Cluster — Ease of Doing Business' (online, November 2020) <https://www.pajak.go.id/sites/default/files/2020-11/EODB%20Cluster%20Taxation%20%28english%29.pdf>.

[38] Formerly, the corporate income tax rate would be reduced to 20% in 2022, however the government announced that in 2022 the corporate income tax in 2022 will still 22%. Yusuf Iman Santoso and Tendi Mahdi, 'Pemerintah Batal Turunkan Tarif PPh Badan pada 2022' (2021) <https://nasional.kontan.co.id/news/pemerintah-batal-turunkan-tarif-pph-badan-pada-2022-pengamat-cukup-mengejutkan>.

Indonesia to the amount of IDR 80T in 2020.[39] Furthermore, given the types of tax concessions offered as a result of the COVID-19 pandemic, as well as the Omnibus Law, the tax revenue shortfall increased to IDR 334 T for the fiscal year in 2020. This was a much greater shortfall than that in 2019, which amounted to IDR 240T.[40] With this in mind, the government is recommended to revise the target of the tax revenue collection following the new tax architecture and, accordingly, to enlarge the budget deficit.[41]

The impact of income tax on Indonesia's growth long-run was such that income tax alone did not exert a statistically significant impact during the period of 1984–2015.[42] Thus, instead of setting types of tax incentives, the policy maker should focus on improving tax administration and redistribution of equity.[43] The main changes to the taxation system on account of the Omnibus Law, will now be discussed.

A *Reduction of the Income Tax Rate*

The reduction of 3% of corporate income tax in 2020/2021 and 2% in 2022 and beyond has ensured that the government will lose an amount of IDR 57-IDR 78T.[44] Unfortunately, this potential shortfall will only prolong Indonesia's revenue shortfall, which has been affected for more than one decade. However, the government has described this shortfall as the 'new normal'.[45] With current the tax ratio being below the average of an ASEAN member, this act would be a flawed strategy if the government's goal is solely to attract investors through tax incentives. Given that taxation is not considered to be one of the main reasons that draws investors to invest in Indonesia, this increased shortfall would result in unnecessary costs to the government, due to inefficient allocation of capital.[46] Both the stakeholder and the tax administrator were in agreement that the tax rate reduction has been a trend recently. As the average income tax rate has declined,

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[39] 'Omnibus Law Perpajakan, Salah Satu Cara Pemerintah Optimalisasi Penerimaan Tahun 2020', Ministry of Finance (Web Page, 2020) <https://www.kemenkeu.go.id/publikasi/berita/omnibus-law-perpajakan-salah-satu-cara-pemerintah-optimalisasi-penerimaan-tahun-2020/>.

[40] Saran Revisi and Target Pajak, 'CITA: Potensi Shortfall Tembus Rp. 334 T', *Center for Indonesia Taxation Analysis (2020)* (online, 2020) <https://cita.or.id/sarankan-revisi-target-pajak-cita-potensi-shortfall-tembus-rp-334-triliun/>.

[41] The Audit Board of the Republic of Indonesia, 'Target Penerimaan Pajak 2021 Diturunkan' (2020) <https://jdih.bpk.go.id/wp-content/uploads/2020/12/4-Target-Penerimaan-Pajak-2021-Diturunkan.pdf>.

[42] H. Iswahyudi, 'Do Tax Structures Affect Indonesia's Economic Growth?' (2018) 33(3) *Journal of Indonesia Economy and Business* 216–242.

[43] Ibid.

[44] Santoso, 'Bila PPh Badan terus diturunkan, negara brepotensi kehilangan Rp. 87 Triliun' (online, 2019) <https://nasional.kontan.co.id/news/bila-pph-badan-terus-diturunkan-negara-berpotensi-kehilangan-rp-87-triliun>.

[45] 'Interview of Asumsi Journalist with Ministry of Finance Spokesperson' (YouTube) <https://www.youtube.com/watch?v=luXENcq9uCU>.

[46] W.A. Putri, 'Insentif Pajak dalam Membentuk Keputusan Investasi' (2017) 4(2) *Jurnal Moneter* 132, 188.

Indonesia has joined the trend.[47] The spokesperson for the Ministry of Finance confirmed that taxation is not the main consideration in investment decisions. Moreover, in terms of taxation itself, the rate of corporate income tax is not a factor generally taken into consideration by the investor. Instead, they would be more concerned about tax administration simplicity, tax law certainty and the ease of tax refunds.[48] On average, the world corporate tax rate is around 21.4% (2019), while the ASEAN has an average of 22.35%. With this in mind, the income tax rate in Indonesia is below the world average corporate income tax and below the ASEAN average corporate income tax.[49]

It is critical to examine factors including: to what extend the investment volume will increase; how the investment attraction strategy will increase the investment volume driven by government measures other than a reduction of corporate income; what and how the government creates alternative sources of revenue to replace potential tax revenue that has not been clearly disseminated to the public. However, research has shown that a reduction in the tax rate would not result in a competitive market, in order to attract investment. Even without a reduction in the income tax rate, Indonesia has continuously experienced a shortage of tax revenue. However, the reduction in tax expenditure will require the government to closely monitor whether tax incentives increase business productivity.

B *Application of a Semi-Territorial System with the Non-Imposition of Tax on Dividends Generated from Domestic and Foreign Business*

The implementation of the Omnibus Law changed what was formerly a world-wide taxing system, into one that was semi-territorial in nature. The application of semi-territorial system by the government is based on the premise that the non-imposition of tax on dividends received from foreign jurisdictions will encourage those in receipt of such dividends to repatriate their money to Indonesia for investment purposes.[50] The government argued that the non-imposition or exemption of tax on dividends will activate the use of non-productive retained earnings held in foreign entities and that this will result in increasing business productivity in Indonesia.[51] As mentioned in Article 7 of the

[47] Danny Darussalam Tax Centre (YouTube, 2020) <https://www.youtube.com/watch?v=wEebgi9fkTc>.

[48] Ministry of Finance Spokesperson (YouTube, 24 February 2020) <https://www.youtube.com/watch?v=luXENcq9uCU>. In this video, the spokesperson stated that the government understands that the reduction of the corporate tax rate is not an appropriate solution for the lack of investment problems. But the government indicated that Indonesia remains attractive for investment and aims to compete with other jurisdictions. Additionally, the government spokesperson also stated that the ease of administration is not a 'tangible' incentive, however, in conjunction with the corporate tax reduction policy, this mode of investment marketing could be categorised as actual hard selling.

[49] OECD, *Corporate Income Tax Statistics* (OECD Publishing, 2019).

[50] This policy resembles another mode of tax amnesty, which was implemented through Law No. 11 year 2016.

[51] Y. I. Santoso, 'Ini 5 Dampak Pembebasan PPh atas DIviden' (2020) <https://nasional.kontan.co.id/news/ini-5-dampak-pembebasan-pph-atas-dividen-menurut-ddtc>.

Ministry of Finance Regulation No. 21/PMK.18/2021, the exemption of dividend applies for foreign entities abroad, who would invest that dividend through stock exchange or through an alternative certain investment mode. Furthermore, the government contended that the world trend of taxing income has been transformed into territorial in nature,[52] including where ASEAN members have found Indonesia to be 'relevant' as an attractive location.[53] This is despite the fact that in 2017, the Fiscal Policy Office report stated that an exemption of withholding tax on financial investments was not relevant and would potentially lead to revenue loss.[54]

In addition, the government stated that the change to this semi-territoriality system is driven by the trend, which has resulted in a number of countries applying territoriality. Indonesia has moved towards the international trend with the implementation of a tax calculation that does not differentiate between the corporation and individual as a different tax subject.[55] Thus, dividends received from domestic corporations will not be taxed. The government emphasised that the dividend received should be invested on the Indonesian stock exchange or in other formal sectors. However, there must be measures to monitor whether the income invested has complied with the Law. Moreover, if the income generated as a result of the dividend remains solely in the financial instrument, it will deliver even less immediate direct impact on economic growth, in relation to the ongoing sacrifice of tax expenditure.

The government move to a non-imposition of tax on dividends is also based on the argument that it will result in a reduction in the distortion of business financial decisions between capital financing and debt-financing schemes.[56] Research has also indicated that the taxation of dividends negatively influences economic growth, although the effect was quite different where it concerned the taxation of labour and corporate income. However, this research was conducted by using panel data from 1990 to 2008 with respect to18 European countries. As there related to a specific group of countries with similar characteristics, it was therefore not applicable to other regions.[57] With the current policy, the reduction of tax rate could result in a regressive effect amongst taxpayers, who

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52 In 2018, 17 members out of 34 members of the OECD applied a taxing system. By 2018, only 6 the OECD members still applied it.

53 Redaksi Ortax, 'Rezim Beralih ke Sistem Teritorial' (online, 2019) <https://www.ortax.org/ortax/?mod=berita&page=show&id=16689&q=&hlm=>.

54 Fiscal Policy Office Pusat Kebijakan Regional dan Bilateral, 'Analisis Pembebasan Withholding Tax atas Investasi Keuangan Lintas Negara di Kawasan ASEAN dan ASEAN +3' (Report, 2017) <https://fiskal.kemenkeu.go.id/data/document/2018/kajian/analisis_pembebasan_withholding_tax.pdf>.

55 Interview with Ministry of Finance Spokesperson.

56 Septriadi Darussalam and Kristiaji Darussalam, 'Policy Note: Omnibus Law Ketentuan and Fasilitas Perpajakan untuk Penguatan Ekonomi: Suatu Catatan, *DDTC Fiscal Research* (Report, 2020).

57 Margareta Dackehag and Asa Hansson, 'Taxation of Dividend Income and Economic Growth', *The Knutt Wicksell Centre for Financial Studies Lund University School of Economics and Management* (online, April 2016) <https://www.lusem.lu.se/media/kwc/working-papers/2016/kwcwp2016-4.pdf>.

generate money solely as active income, as well as generating greater rewards for passive income earners.

It is certain that the non-imposition of dividends generated from domestic business will lead to a loss of tax revenue. The Indonesian tax authority has released information about how to get the benefit of an exempted dividend as regulated in Ministry of Finance Regulation No. 18/PMK.03/2021. The exempted dividend should be invested in regulated form of investments, including both direct investment and portfolio investment. The recipient of the exempted dividend is expected to submit a report concerning the method and realisation of the investment.[58] Even though there is a requirement that the dividend received should be invested into different kinds of investment instruments, without a proper plan and sufficient monitoring, the benefit of its economic effect in proportion to the tax revenue lost cannot be quantified. Yet, as a result of this situation, employment income, which is considered as active income, will be levied at a higher tax rate than that of dividends, which are passive income. This is exacerbated by the fact that a large proportion of dividend recipients come from wealthy backgrounds. The middle class in Indonesia will therefore bear the brunt of the tax burden, as they comprise the largest percentage of the population. Thus, this raises issued of fairness concerning the application of the law.

C *The Reduction of the Tax Sanction*

The reduction of the tax penalty was a government concern prior to the release of Omnibus Law. Most tax systems rule out interest and tax penalty regimes. Where tax payments are late or underpaid, the calculation of the interest payable is intended to protect the present value of tax in the government budget. As such, the penalty is intended to deter taxpayers from defaulting on their tax obligations and to give punishment, in order to achieve horizontal equity in tax compliance.[59] Since the beginning of tax reforms in 1983 and during the period prior to the Omnibus Law era, the percentage of interest on tax payable had remained the same, with a fixed rate of 2%. After the introduction of the Omnibus Law, the interest on tax payable took into account the market interest rate plus a certain percentage of penalty based on the failure. The sanction in form of the interest rate has resulted in the change from a fixed rate towards a more flexible rate. Several conditions that reduce the tax penalty of the former law, 'General Provision and Tax Procedure and Omnibus Law Job Creation' is outlined as follows:

TABLE 3: THE CHANGE OF TAX PENALTY

CONDITION	GENERAL PROVISION AND TAX PROCEDURE	OMNIBUS LAW JOB CREATION
The revision of the tax return before tax audit	2% per month interest based on tax payable	The interest based on Ministry of Finance Regulation, which refers to

[58] R. B. Latuputty, 'Mau Dividend Bebas Pajak? Segera Lakukan Ini' (2021) <https://www.pajak.go.id/id/artikel/mau-dividen-bebas-pajak-segera-lakukan-ini>.

[59] Waerzeggers, Hillier and Aw, 'Designing Interest and Tax Penalty Regimes' (Tax Law IMF Technical Note 1/2019, IMF Legal Department, 2019).

		the market interest rate +5% /12 x tax payable
The taxpayer discloses the failure to comply the reliable tax return	Audited by the tax auditor, however the process does not require any tax investigation with regard to tax fraud Penalty = 150% x tax payable	The tax auditor undertakes a tax investigation with regard to tax fraud before the case is handed over to the state attorney Penalty = 100% X tax payable
The taxpayer discloses a flaw in their tax return, which is audited by the tax auditor, but without a tax notification being released	Penalty = 50% x tax payable	The interest is based on the Ministry of Finance Regulation, which refers to the market interest rate +10%/12 x tax payable
Tax payable paid after the due date	2% per month interest based on tax payable	The interest based on the Ministry of Finance Regulations, which refers to the market interest rate +5%/12 x tax payable
Underpayment due to the released of Notice of Tax Underpayment Assessment, Notice of Additional Tax Underpayment Assessment, Decision on Appeal and Decision on Case Review	2% per month counted from the due date	The interest is based on the Ministry of Finance Regulations, which refers to market interest rate/12

Source: Directorate General of Taxes (2020).

The re-regulation to the sanction has decreased the penalty for failing to comply with tax obligations. The new law sounds raises concepts of proportionality. Although the sanction given is based on taxpayer behaviour, the determination of the interest rate in the current market is also relevant to determining the economic conditions. Sanctions should be legitimate, which means that they should be proportional to the failure or aggressiveness of the taxpayer.[60] The proportional sanction will be more relevant in increasing tax compliance, as this also takes into account other relevant factors such as the effectiveness of exchange of information; the availability of analytical detection models; use of data matching and risk profiling capacities; and effective tax audits.[61]

D *The Appointment of Foreign VAT Collectors on Digital Based Products/Services Supplied to Indonesia*

One of important improvements to the current VAT regulation which was stipulated in the amid of pandemic is the collection of VAT on the digital economic transaction. In the beginning of 2020, the government released the 'Government Regulation in Lieu Law of Republic of Indonesia (Perppu) No. 1 year 2020', which then became Law No. 2 in 2020. This law was titled, 'The Public Finance and National Financing Stability toward Handling of Covid-19 Pandemic and/or Facing the National Economic Threat'. In Article 6(1) it

60 Alex Raskolnikov, 'Crime and Punishment in Taxation: Deceit, Deterrence and the Self-Adjusting Penalty' (2006) 106(3) *Columbia Law Review* 569–642.

61 Ibid.

states that tax treatment in trading activities through an electronic system (or *Perdagangan Melalui Sistem Elektronik*) shall be done with through the imposition of VAT on the utilisation of Intangible Taxable Goods and/or Taxable Services from outside the Customs Area or within the Customs Area through Trade Through Electronic Systems. The Omnibus Law on Taxation Cluster therefore strengthens the legal basis on which to impose VAT on electronic transactions and for the government to propose a digital provider abroad, who will take part as a VAT collector.

Overseas business sales made to the Indonesian market, which meet the criteria will be appointed as VAT collectors by the Indonesian Government and be responsible for charging VAT on the sale of digital products. This will require the making of a monthly payment to the Indonesian Government and for a quarterly VAT return to be submitted to the Indonesian Directorate General of Taxes (DGT). The criteria to be appointed as VAT collectors are that the value of transaction with buyers in Indonesia exceeds IDR 600 Million in a year or IDR 1 Million in a month and/or the amount of traffic or access in Indonesia exceeds 12,000 in a year or 1,000 in a month[62].

Taxing the digital economy by appointing foreign collectors is intended to locate potential revenue. It also aims to create a level playing field with respect to domestic and foreign business. As emphasised by the OECD in the BEPS Project Action 1, the inequality between the domestic supplier and foreign supplier due to the difference of VAT burden could create market distortion. The appointed VAT collectors consist of: overseas traders, service providers and e-commerce operators or domestic e-commerce operators. The VAT will be imposed on the supply of digital goods, including but not limited to '(a) movies, music, and other audio-visual content; (b) computer software, mobile app and games; and (c) electronic books, magazines, and comics'. It will also be applied to digital services, including but not limited to '(a) web hosting; (b) videoconferencing services; (c) other services delivered through computer network'.[63]

Sellers of digital products who might need to charge Indonesian VAT to Indonesian customers include (a) foreign or online merchants who sell digital products to Indonesian consumers; (b) overseas operators of online marketplaces who supply digital products to Indonesian consumers; and (c) Indonesian operators of online marketplaces who supply foreign digital products to Indonesian customers. A customer will be considered to be an Indonesian customer if they (a) provide an Indonesian billing address or mailing address; and (b) use payment facilities such as credit or debit cards issued by Indonesian financial institution, and/or places orders using an Indonesian IP address or country calling code.

Table 4: List of Assigned VAT Collectors

No	VAT Collectors	Batch (Period)
1.	Amazon Web Services Inc., Google Asia Pacific Pte. Ltd, Google Ireland Ltd., Google LLC, Netflix International B.V. and Spotify AB.	1 (1 August 2020)

62 Darussalam (n 73).

63 Directorate General of Taxes, 'VAT on Sales of Digital Product to Indonesian Customers' (online, 2020) <https://pajak.go.id/sites/default/files/2020-05/the%20VAT%20on%20imported%20digital%20products.pdf>.

2.	Facebook Ireland Ltd., Facebook Payment International Ltd., Facebook Technologies International Ltd., Amazon.com, Services LLC, Audible, Inc., Alexa Internet, Audible Ltd., Apple Distribution International Ltd., Tiktok Pte. Ltd, and the Walt Disney Company (Southeast Asia) Pte. Ltd.	2 (1 September 2020)
3.	LinkedIn Singapore Pte. Ltd, McAfee Ireland Ltd, Microsoft Ireland Operations Ltd., Mojang SB, Novi Digital Entertainment Pte. Ltd, PCCW Vuclip (Singapore) Pte. Ltd., Skype Communication SARL, Twitter Asia Pacific. Ltd., Twitter International Company, Zoom Video Communication, Inc., PPT Jingdong Indonesia Pertama and PT. Shopee International Indonesia	3 (1 October 2020)
4.	Alibaba Cloud (Singapore) Pte Ltd., GitHub, Inc., Microsoft Corporation, Microsoft Regional Sales Pte. Ltd., UCWeb Singapore Pte. Ltd., To The New Pte. Coda Payment Pte. Ltd., and Nexmo Inc.	4 (1 November 2020)
5.	Cleverbridge AG Corporation, Hewlett-Packard Enterprise USA, Softlayer Dutch Holding B.V. (IBM), PT. Bukalapak.com, PT Ecart Webportal Indonesia (Lazada), PT. Fashion Eservices Indonesia (Zalora), PT. Tokopedia, PT. Global Digital Niaga (Blibli.com), Valve Corporation (Steam), and beIN Sports Asia Pte Limited	5 (1 December 2020)
6.	Etsy Ireland Unlimited Company, Proxima Beta Pte. Ltd., Tencent Mobility Limited, Tencent Mobile International Limited, Snap Group Limited, and Netflix Pte. Ltd.	6 (1 January 2021)
7.	eBay Marketplace GmbH dan Nordvpn S.A.	7 (1 February 2021)
8.	Amazon.com.ca, Inc, Image Future Investment (HK) Ltd, Dropbox International Unlimited Company, Freepik Company S.L.	8 (April 1, 2021)
9.	Epic Games International S.à r.l., Bertrange, Root Branch, Expedia Lodging Partner Services Sàrl, Hotels.com, L.P., BEX Travel Asia Pte Ltd, Travelscape, LLC, TeamViewer Germany GmbH, Scribd, Inc., Nexwat Sasu,	9 (4 May 2021)
10	TunnelBear LLC, Xsolla (USA), Inc. Pluralsight, LLC, Automatic Inc, Woocommerce Inc. Bright Market LLC, PT Dua Puluh Empat Jam Online.	10 (3 June 2021)
11	PT. Fashion Marketplace Indonesia (Zalora), Pipedrive OU	11 (12 July2021)
12	Shutterstock, Inc, Shutterstock Ireland, Ltd, Fenix International Limited, Bold LLC, High Morale Develompent Limited, Aceville Pte Ltd.	12 (4 August 2021)

Source: Directorate General of Taxes (2021).[64][65]

The current study with regard to the VAT collection on cross-border digital goods and supplies suggests that assigning foreign tax subjects as a collector has been a feasible way to deal with the existing condition of borderless economic activities[66]. This method of collection of VAT has seemingly been a common practice, as several countries have applied a similar mechanism in assigning the intermediary as a VAT collector. This

64 Directorate General of Taxes, 'DJP Tunjuk Amazon sebagai Pemungut PPN PMSE' (Report, 2021) <https://www.pajak.go.id/siaran-pers/djp-tunjuk-amazon-sebagai-pemungut-ppn-pmse>.

65 SMConsult, 'Daftar Nama Lengkat Perusahaan yang Ditunjuk sebagai Pemungut PPN PMSE Per Agustus 2021' (online, August 2021) <https://smconsult.co.id/id/daftar-lengkap-perusahaan-yang-ditunjuk-sebagai-pemungut-ppn-pmse-per-agustus-2021/>.

66 Schenk and Oldman (2007) 'Value Added'.

includes countries such as Australia[67], Japan and India[68]. The OECD has also released a study about the role of using a digital platform in the collection of VAT/GST on online sales in 2019.[69]

Based on the information published by Ministry of Finance, it would appear that the volume of seven types of overseas electronic transaction in 2017 reached IDR 103,31 T.[70] Thus, it should bring about IDR 10,3T to the government revenue on the basis of a calculation, which uses information from 2017. In fact, the volume of transactions had increased considerably in 2020 to about 29,6%, as compared to the previous year.[71] This number shows the potential of the collection of VAT revenue, should the government choose to propose that foreign digital providers take a part as VAT collectors. However, acquiring data and information with regard to the real potential of cross-border e-commerce transaction is needed, in order to measure whether the collection effort has been optimum. In this case, the government must not solely rely on the collection activities performed by assigned foreign VAT collectors. In December 2020, the Ministry of Finance announced that in the period up until December 2020, the VAT collectors remitted IDR. 566.16 million to the government, which was gathered from 46 VAT collectors.[72] The means that the realisation of potential revenue is 5,39%, following the volume of transactions recorded in 2017. The government initiative to assign foreign VAT collectors to collect VAT might be a progressive step, however, it still less than optimal. In fact, even if the potential revenue from VAT was fully collected, it still would not cover the potential loss due to a reduction in corporate income tax.

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67 ATO, 'GST on Imported Services and Digital Products' (online, 2020) <https://www.ato.gov.au/business/international-tax-for-business/gst-on-imported-services-and-digital-products/>.

68 Mifahudin and Irawan, 'Alternatif Kebijakan PPN atas Konsumsi atau Pemanfaatan Konten dan Jasa Digital dari Penyedia Luar Negeri' (2019) 1(2) *Jurnal Kajian Ilmiah Perpajakan di Indonesia* 131–148.

69 OECD, 'The Role of Digital Platforms in the Collection of VAT/GST on Online Sales' (2021) <https://www.oecd.org/tax/consumption/the-role-of-digital-platforms-in-the-collection-of-vat-gst-on-online-sales.pdf>.

70 The seven types of electronic transaction consisted of (1) software system and application IDR. 14,07 T; (2) Game, Video and Music IDR. 0,88 T; (3) Film Cinema IDR. 7,65T; (4) Software Specialist (engineering, design, etc.) IDR. 1,77 T; (5) Handphone Software IDR. 44,75T; (6) Pay TV/ Broadcast Rights IDR. 16,49T; (7) Fast OTT and social media IDR. 17,07 T. Ministry of Finance, 'Naskah Akademik Rancangan Undang-Undang tentang Ketentuan dan Fasilitas Perpajakan untuk Penguatan Perekonomian' (online, 2019) <https://lokataru.id/wp-content/uploads/2020/02/Naskah-Akademik-RUU-Omnibus-Law-Perpajakan.pdf>.

71 Other sources of information stated that the transaction volume is higher than information, which was officially published by Ministry of Finance. Others source of information, which cited the data from the Indonesian Central Bank can be retrieved through the following site: <https://databoks.katadata.co.id/datapublish/2021/01/29/nilai-transaksi-e-commerce-mencapai-rp-2663-triliun-pada-2020>.

72 Wildan, 'Penerimaan PPN Produk Digital PMSE Tembus Setengah Triliun' (online, 2020) <https://news.ddtc.co.id/penerimaan-ppn-produk-digital-pmse-tembus-setengah-triliun-26061?page_y=0>.

E *Overwhelming Tax Incentives*

The Omnibus Law re-regulates tax incentive packages. The new law includes added local tax and user charge instruments as other new types of tax incentives, in addition to former tax incentive packages. The government's creation of regulation is to offer a package of a comprehensive tax incentives underpinned by a stronger legal basis. Before the release of this law, the government had offered a myriad of tax incentives since 2019 and had released the 16 Economic Policy Package,[73] in order to boost economic growth and as a measure to attract investors[74]. Six out of sixteen of those economic packages were related to tax incentives. Other than those economic packages, various economic zones with tax facilities were also established. These economic zones consisted of the following:

TABLE 5: THE ESTABLISHMENT OF ECONOMIC REGION IN INDONESIA

TYPE OF REGION	LAW BASIS	OBJECTIVE	INSTITUTION THAT MANAGES THE ZONE	FACILITIES
Bonded zone	PP No.33/1996, jo. PP 32/2009	A region with boundaries functioning as the location for the manufacturing of imported supplies for export purposes	The operator and the business agents of the bonded zones with the legal institution	Customs and excise facilities in the form of customs exemption Tax facilities in the form of tax incentives and easy access to permits
Industrial zone	Keppres No. 41/1996 jo. PP 24/2009	Industrial region managed by the companies permitted to locate in the region	Regional government	No specific fiscal facility
Integrated Economic Development Area (KAPET)	PP No. 26/2007	A region which has the potential to grow faster than other regions due to its superior sector and capacity for higher investment return	The development agency is led by Coordinating Minister of Economic Affairs The development agency is organised by the Governor's technical team	Exemption of customs, non-collected VAT, sales tax on luxury goods and non-collected prepaid income tax (art 22)

73 The Sixteen Economic Policy Package emphasises three aspects. Firstly, the expansion of tax facilities such as reduction of corporate income tax and the expansion of tax holiday subject. Secondly, the list of reduction on negative list investments and thirdly, the management of national revenue generated from natural resources. See: Cabinet Secretary Public Affairs, 'Pemerintah Umumkan Paket Kebijakan Eknomi ke-16' (Report, 2018) <https://setkab.go.id/pemerintah-umumkan-paket-kebijakan-ekonomi-ke-16/>.

74 Rosdiana et al, 'Review of Implementation of the Inclusive Framework on Base Erosion and Profit Shifting in Indonesia' (2019) 47(6)–(7) *Intertax* 635–651.

Free Trade Zone and Free Port (KPBPB)	UU No. 37/2000 jo. PP 46, 47, 48/2008	A certain area separated from the customs territory, which has limited imposition of income tax, VAT and excise tax	The National Council led by the Coordinating Minister of Economic Affairs Regional Council from the government	Exemption of customs, VAT and sales tax on luxury goods; and excise for goods that enter and leave from the KPBPB through free ports and airports selected; and under the supervision of the customs office Exemption of customs, VAT, sales tax on luxury goods, and exercise on consumption goods from outside the customs office territory for the needs of citizens inside the KPBPB
Special Economic Zone (KEK)	UU No.39/2009, Perpres No.33/2010, Kepres No.8/2010	A certain location within Indonesia territory used for carrying out economic function with some facilities provided Until 2020, Indonesia has established 16 location of KEK	The National Council led by the Coordinating Minister of Economic Affairs Regional Council led by the Governor Administrator Business entity	Fiscal facilities; tax, customs and excise, trade, immigration and human resources Non-fiscal facilities in the form of easy access to business permits, business activities, banking, capital, industries, trade, free port and security.

Source: Rosdiana, Tambunan & Irianto, 'Review of Implementation of the Inclusive Framework on Base Erosion and Profit Shifting in Indonesia' (2019) 47(6)–(7) 635.

The government's argument in response to the overwhelming tax incentives is that the reduction of the tax burden will, in fact, encourage the tax compliance. However, this is questionable, even though the imposition of a high tax burden will tend to result in the taxpayer seeking to avoid paying taxes. However, the study that supports this finding is inconclusive[75]. Instead of offering a large number of tax facilities, the more established instrument of anti-avoidance rules would appear more crucial in this circumstance and might be more effective in preventing profit shifting practices[76]. It is therefore necessary to examine how the government will compensate the tax revenue loss under the new broadened tax base, and how they will adopt practices, which convert the loss of revenue into quantifiable economic enhancement.

In recent time, research assessing the impact of tax incentives on foreign direct investment (FDI) in Indonesia reaches a different conclusion to that of the Indonesian Government. The research used the FDI data from 1999-2018, regarding the 22 countries

75 Darussalam, Septriadi and Kristiaji, 'Policy Note: Omnibus Law Ketentuan and Fasilitas Perpajakan untuk Penguatan Ekonomi: Suatu Catatan', *DDTC Fiscal Research* (Report, 2020).

76 Ibid.

that invest most in Indonesia. It concludes that as tax incentives increase, the FDI flow has decreased significantly. However, the corporate income tax rate effect is in line with the hypothesis that the lower CIT rate, that the greater FDI will flow. Interestingly, the research further showed that foreign investors are more interested in other factors than tax incentives. This research also highlights that tax incentives might be disadvantageous for the home countries as it could cause higher tax to be paid, when they actually have a lower foreign tax credit policy[77].

Moreover, should there have been an analysis of how taxpayers behave in conditions where there are a myriad of tax incentives, it is likely that such tax incentives would not achieve their aim. Information regarding taxpayer behaviour in Batam,[78] an island established as Free Trade Zone, shows that even where there is a preponderance of tax incentives, many MNEs have successfully avoided paying corporate income tax. This was the case even though the government had relieved VAT, excise and import duty. Ultimately, the sacrifice of potential tax revenue through tax incentives did not result in Batam becoming a centre for economic growth, even in the province where Batam was located.[79]

With respect to the current overwhelming tax incentives, the government must also enhance the monitoring mechanism, in order to determine the extent of the tax incentives offered and to therefore minimise any unnecessary tax expenditure.[80] The procedural and administrative aspects of implementing such tax incentives will not further optimise any rent seeking activities. However, it is expected to lead to an improvement in accountability and effectiveness of tax incentives, as a result of implementing the regulation [81]

In May 2021, the government made public its plan to increase and adjust the VAT rate The increase of VAT was intended to create new source of revenue due to a deep shortfall in the budget.[82] Furthermore, the issue to broaden the VAT objects, which was disseminated to the public, included the potential supply of certain 'premium basic needs'[83] and

77 R. A. Siregar and A. Patunru, 'The Impact of Tax Incentives on Foreign Direct Investment in Indonesia' (2021) 4(1) *Journal of Accounting Auditing and Business* 66, 66–80.

78 Batam has been established as a Bonded Zone, which has served to relieve Value Added Tax, Tax on Luxury Goods, Import Duty and Excise since 1987. This is based on the Decree of Minister of Finance No. 47/KMK.01/1987 (26 January 1987). Until recently, Batam is still as an industrial location with a myriad of tax incentives (Free Trade Zone and Free Port).

79 Tambunan and Sinaga, 'Transfer Pricing and Profit Shifting Practices in a Free Trade Zone: A Case in Batam, Indonesia, Based on Tax Court Decision' (2020) 48(11) *Intertax* 1030, 1030–1044.

80 Ibid.

81 David Matkin, 'Designing Accountable and Effective Economic Development Tax Incentives' (2010) 34(2) *Public Performance and Management Review* 166–188.

82 Jatmiko, 'Wacana Kenaikan PPN Ditolak Sejumlah Pihak' (Web Page, (2021) <https://money.kompas.com/read/2021/05/06/090712926/wacana-kenaikan-ppn-ditolak-sejumlah-pihak?page=all>.

83 'Finance Ministry Clarifies VAT Importation Solely on Premium Basic Necessities', *Medcom.id* (Web Page, 20 June 2021) <https://www.medcom.id/english/business/RkjWXQ3K-finance-ministry-clarifies-vat-imposition-solely-on-premium-basic-necessities>.

education-related services.[84] Formerly, Indonesia implemented a single VAT rate at 10%.[85] However, the government's plan to adjust the rate of VAT and the Tax on Luxury Goods through the Omnibus Law has triggered much debate. This is especially the case regarding the plan to impose VAT on education services. This policy choice could be seen as sacrificing the interests of many, in favour of 'rolling out the red carpet' to the capital owner.

V Conclusion

The Omnibus Law Taxation Cluster is the amendment to three taxation laws: (1) General Provision and Tax Procedures Law; (2) Income Tax Law; and (3) Value Added Tax Law. Important changes to the former tax policy, which have become part of Omnibus Law Taxation Cluster consist of (i) a reduction in income tax rate; (ii) the application of a semi-territorial system; (iii) a reduction in tax penalties; (iv) the appointment of foreign VAT collectors on digital-based products/services; and (v) the offer of tax incentives as a package of tax facilities.

The new tax policy set by the government and Parliament seems to be following the 'world trend. However, in an attempt to be 'relevant' in the global world of tax, the Indonesian Government has failed to sufficiently calculate the impact of the implemented tax policy on revenue obtained solely as a result of investment. Without certain new sources of revenue, this policy may not be financially viable and it may therefore impact on the budget formerly allocated for provision of public goods and public services, in terms of both quantity and quality.

The reduction of the corporate income tax rate has resulted in a significant shortfall in tax revenue, even when taking into account that such a reduction will attract investors. However, there was no clear calculation provided prior to enacting this policy. With this incentive, the government should be able to monitor the tax incentives must bring the increasing on the business productivity. Then, the application of semi-territorial system also was based on the consideration of dividend reinvestment. With this policy, it has no clear monitoring mechanism whether the dividend has been invested into certain sector even though the government has proposed the list of sectors to invest. Similarly, no clear calculation has been brought to public while drafting this policy. Therefore, the availability of monitoring system and the review to the report of investment realisation should be developed.

The reduction of tax penalty has seemingly followed the market interest as formerly, the interest rate for the tax penalty was 2% flat. The proportionality of the sanctions issued if the taxpayer fails to fulfil its tax obligation is expected able to bring fairness to the process and moreover, to increase the tax compliance. The appointment of VAT collectors on digital based products/services is a measure, which will bring potential revenue and in

[84] Riana Friski, 'VAT on Education Services; Threats of Commercialization and School Dropouts' (Web Page, 2021) <https://en.tempo.co/read/1472699/vat-on-educational-service-threats-of-commercialization-and-school-dropouts>.

[85] Article (7)(1) VAT Law states that the VAT rate is 10%. However, Article (7)(3) also mentions that the VAT rate can be adjusted to between 5% and 15%.

addition, will create a fair and level playing field in domestic and foreign business in terms of tax burden. This appears to be progressive step, even though further steps are needed to enhance its implementation. The government is expected to develop tax revenue data, which will show the real potential of the laws, as well as providing details of the remitted VAT revenue. On the basis of this data, the government could implement further strategies as a means of optimising the VAT revenue, so that it is not solely reliant on the appointed foreign VAT collectors' efforts. Finally, the release of Omnibus Law re-regulates tax incentive packages and offers former tax incentive packages, in addition to local tax and user charge instruments as other new types of tax incentives. Indeed, these overwhelming tax incentives will likely result in potential loss, even though the effectiveness of this instrument is questionable. Therefore, the government also must enhance the monitoring mechanisms of the extent of the tax incentives offered, in order to minimise the unnecessary tax expenditure by the business. In conclusion, the Omnibus Law has been released without the provision of detailed economic calculations. Given the insufficient detail provided, it will be necessary to monitor the efforts of the government and to hold them accountable. This will ensure that the laws are implemented in accordance with its objective and will address any consequences to the provision of general public goods and public services.

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