

LAW NO. 36 OF 2008
THE FOURTH AMENDMENT
TO LAW NUMBER 7 YEAR 1983 REGARDING INCOME TAX

Article 2

(Amended by Law No. 36/2008)

- (1) Referred to as tax subject shall be:
 - a.
 - 1. individual;
 - 2. inheritances not yet divided as a single unit that replaces the entitled parties;
 - b. entity; and
 - c. permanent establishment.
- (1a) Permanent establishment shall be tax subject the tax treatment of which is similar to that of corporate tax subject.
- (2) Tax subject shall be classified into resident tax subject and foreign tax subject.
- (3) Resident tax subject shall be:
 - a. any individual who resides in Indonesia, individual who lives in Indonesia for more than 183 (one hundred eighty three) days in a period of 12 (twelve) months, or any individual who in one fiscal year lives in Indonesia and has the intention to reside in Indonesia;
 - b. any entity that is established or that has domicile in Indonesia, except certain unit of government agency complying with the following criteria:
 - 1. its establishment is based on the provisions of laws and regulations;
 - 2. its financing originates from State Revenues and Expenditures Budget or Regional Revenues and Expenditures Budget;
 - 3. its earnings are included in the budget of Central Government or Regional Government; and

- 4. its bookkeeping is audited by state functional supervisory apparatuses; and
 - c. inheritances not yet divided as a single unit that replaces the entitled parties.
- (4) Foreign tax subject shall be:
 - a. any individual who does not reside in Indonesia, individual who lives in Indonesia for not more than 183 (one hundred eighty three) days in a period of 12 (twelve) months, and any entity that is not established and has no domicile in Indonesia, that carries on business or conducts activity through permanent establishment in Indonesia; and
 - b. any individual who does not reside in Indonesia, individual who lives in Indonesia for not more than 183 (one hundred eighty three) days in a period of 12 (twelve) months, and any entity that is not established and has no domicile in Indonesia, that can receive or earn incomes from Indonesia not from carrying on business or conducting activity through permanent establishment in Indonesia.
- (5) Permanent establishment shall be a business form that is used by individual who does not reside in Indonesia, individual who lives in Indonesia for not more than 183 (one hundred eighty three) days in a period of 12 (twelve) months, and entity that is not established and has no domicile in Indonesia to carry on business or conduct activity in Indonesia, that can be in the form of:
 - a. domicile of management;
 - b. branch of company;
 - c. representative office;
 - d. office building;
 - e. factory;
 - f. workshop;
 - g. warehouse;
 - h. space for promotion and sale;
 - i. mining and quarrying of natural resources;
 - j. working area of natural oil and gas mining;
 - k. fisheries, animal husbandry, agriculture, plantation, or forestry;

- l. construction project, installation, or assembling project;
 - m. furnishing of services in any form by an employee or any other persons, as long as conducted more than 60 (sixty) days in a period of 12 (twelve) months;
 - n. person or entity that acts as agent with dependent position;
 - o. agent or employee of insurance company that is not established and has no domicile in Indonesia that receives insurance premium or covers risk in Indonesia; and
 - p. computer, electronic agent, or automatic equipment that is owned, leased, or used by operator of electronic transaction to conduct business activity by internet.
- (6) Residence of individual or domicile of entity shall be stipulated by the Director General of Taxation according to the real conditions.

Article 2A

(Amended by Law 10/1994)

- (1) The obligation of subjective tax of an individual as referred to in Article 2 paragraph (3) (a), shall commence at the time when the individual is born, present, or intends to reside in Indonesia and shall end when the individual passes away or leaves Indonesia permanently;
- (2) The obligation of subjective tax of a body/entity as referred to in Article 2 paragraph (3) (b) shall commence at the time when the body/entity is established or domiciled in Indonesia and shall end at the time of its liquidation or when it is no longer domiciled in Indonesia.
- (3) The obligation of subjective tax of an individual or a body/entity as referred to in Article 2 paragraph (4) (a) shall commence at the time when such individual or body/entity perform business or conduct activities as determined in Article 2 paragraph (5) and shall end when they no longer perform business or conduct activities through a permanent establishment.
- (4) The obligation of subjective tax of an individual or a body/entity as referred to in Article 2 paragraph (4) (b) shall commence at the time when such individual or body/entity receives or obtains income from Indonesia and shall end when the individual or body/entity ceases receiving or obtaining the said income.

- (5) The obligation of subjective tax of undivided inheritance as referred to in Article 2 paragraph (1) (a) number 2) shall commence at the time of the occurrence of such undivided inheritance and shall end at the time when the apportionment of such inheritance is settled.
- (6) If the obligation of subjective tax of an individual residing or present in Indonesia covers only a part of a fiscal year, such part of fiscal year shall replace the fiscal year.

Article 5

(Amended by Law 10/1994)

- (1) The Tax Object of a permanent establishment is:
 - a. any income from the business or activities of such permanent establishment and from the property owned or controlled;
 - b. any income of the head office from the business or activities, sales of goods, or services rendered in Indonesia of the same type as performed or conducted by the permanent establishment in Indonesia;
 - c. any income as stated in Article 26 received or obtained by the head office, as long as there is an effective relationship between the permanent establishment and the property or activities providing such income.
- (2) The costs related to the income as referred to in paragraph (1) (b) and (c) may be deducted from the income of the permanent establishment.
- (3) In calculating the amount of profit of any permanent establishment:
 - a. administrative costs of the head office which may be charged are the costs related to the business or activities of the permanent establishment, of which amount shall be stipulated by the Director General of Taxes;
 - b. payments to the head office which may not be charged as costs shall be:
 - 1) royalty or any other compensation related to any utilization of property, patent, or other rights;

- 2) compensation related to the management services and any other services;
 - 3) interest, except interest which is related to any banking activities.
- c. any income as referred to in (b) which is received or obtained from the head office shall not be considered a Tax Object, except interest related to banking activities.