

GOVERNMENT REGULATION IN LIEU OF LAW OF THE REPUBLIC OF
INDONESIA
NUMBER 1 YEAR 2017
CONCERNING

ACCESS TO FINANCIAL INFORMATION FOR TAX PURPOSES

BY THE GRACE OF GOD ALMIGHTY

PRESIDENT OF THE REPUBLIK INDONESIA,

Considering : a. that to support the national development of the Unitary State of the Republic of Indonesia and as an effort to promote public welfare and prosperity of all people of Indonesian equally and fairly, funding revenue funding particularly from tax is required and for meeting the tax revenue requirements, wide access for tax authority is important for receiving and obtaining financial information for tax purposes;

b. that currently there is a limit for Indonesian tax authority to receive and obtain financial information regulated under tax, banking, sharia banking and capital market laws and other laws and regulations, which may bring about a constraint for tax authority in strengthening the tax database for meeting tax revenue requirements and maintain the sustainability of the effectiveness of tax amnesty policy;

c. that Indonesia has been bound itself by international agreements in tax matters which requires the government to meet the commitment to implement Automatic Exchange of Financial Account Information and the

Indonesian government is required to immediately issue the law concerning access to financial information for tax purposes prior to 30 Juni 2017;

- d. that if Indonesia does not meet the requirements prior to the due date as referred to in letter c, Indonesia will be considered fail to meet its commitment to Automatic Exchange of Financial Account Information which may lead to significant loss for Indonesia, for example lower credibility as a member of G20, lower investor confidence which may potentially disrupt national economic stability and Indonesia can become an illicit fund transfer destination;
- e. that under the considerations as referred to in letter a, letter b, letter c, and letter d, and considering that there is an urgency to provide tax authority with wide access for receiving and obtaining financial information for tax purposes, Government Regulation In Lieu of Law concerning Access to Financial Information for Tax Purposes is deemed necessary;

In view of : Article 22 paragraph (1) of the 1945 Constitution of the Republic of Indonesia;

BE IT HERE RESOLVED:

To stipulate : GOVERNMENT REGULATION IN LIEU OF LAW CONCERNING ACCESS TO FINANCIAL INFORMATION FOR TAX PURPOSES

Article 1

Access to financial information for tax purposes shall cover the access to receive and obtain financial information in order to impose the tax law and regulation and implement international agreements in tax matters.

Article 2

- (1) Director General of Taxes is authorized to access to financial information for tax purposes, as referred to in Article 1, from financial service institutions with activities in the banking sector, capital market, insurance, other financial service institutions, and/or other entities categorized as financial institutions according to the standard for exchange of financial account information in the international agreements in tax matters.
- (2) Financial service institutions, other financial service institutions, and/or other entities as referred to under paragraph (1) shall submit to Director General of Taxes:
 - a. report containing financial information in accordance with the standard for exchange of financial account information based on the international agreements in tax matters for each financial account identified as the reportable account; and
 - b. report containing financial information for domestic tax purposes,
managed by financial service institutions, other financial service institutions, and/or other entities referred to during a calendar year.
- (3) Report containing financial information as referred to under paragraph (2) at least shall contain:

- a. the identity of financial account holder;
- b. financial account number;
- c. the identity of financial institution;
- d. financial account balance or value; and
- e. income related to the financial account.

(4) In order to submit reports as referred to under paragraph (2) letter a, financial service institutions, other financial service institutions, and/or other entities as referred to under paragraph (1) shall apply the due diligence procedures according to the standards for exchange of financial account information under the international agreements in tax matters.

(5) The due diligence procedures as referred to under paragraph (4) shall include but not to limited to the following activities:

- a. the verification to determine the residence jurisdiction(s) for tax purposes, of financial account holder, both for individual or entity;
- b. the verification to determine if an account holder as referred to in letter a is a reportable person;
- c. the verification to determine if a financial account held by an account holder as referred to in letter a is a reportable account;
- d. the verification of any entity that is an account holder to determine if a controlling person of the entity is a reportable person; and
- e. the documentation for all activities pursuant to the due diligence procedures, including keeping the documents obtained or used.

- (6) Financial service institutions, other financial service institutions, and/or other entities as referred to under paragraph (1), shall not be allowed to serve:
 - a. new financial account opening for new account holder;
or
 - b. new transaction for pre-existing account holder,
who refuse to comply with the due diligence procedures as referred to under paragraph (4).
- (7) In case of being requested by the Director General of Taxes, financial services institutions, other financial services institutions and/or other entities as referred to under paragraph (1) that obtain or conduct documentation in a language other than Bahasa Indonesia, shall provide with the Bahasa Indonesia translation.
- (8) In case of financial services institutions, other financial service institutions and/or other entities as referred to under paragraph (1) are bound with confidentiality obligation under the laws and regulations, the obligation shall be inapplicable under this Government Regulation In Lieu of Law.

Article 3

- (1) The obligation to submit the report as referred to in Article 2 paragraph (2) shall be carried out with the following procedure:
 - a. the electronic mechanism through Financial Services Authority which is applicable on financial service institutions as referred to in Article 2 paragraph (1), for the report as referred to in Article 2 paragraph (2) letter a;

- b. the non-electronic mechanism as long as the electronic mechanism is not available yet, and it shall be delivered to Director General of Taxes, which is applicable on other financial services institutions and other entities as referred to in Article 2 paragraph (1), for the report as referred to in Article 2 paragraph (2) letter a; and
- c. non-electronic mechanism as long as electronic mechanism is not available yet, and it shall be delivered to Director General of Taxes, for the report as referred to in Article 2 paragraph (2) letter b.

(2) In case of mechanism change as referred to under paragraph (1), Minister of Finance may determine other mechanism after acquiring a consideration from the Chairman of Board of Commissioners of the Financial Services Authority.

(3) Regarding the submission of reports through mechanism as referred to under paragraph (1) letter a, the following provisions shall apply:

- a. the financial service institutions as referred to in Article 2 paragraph (1) shall submit the report to Financial Services Authority 60 (sixty) days at the latest prior to the due date of the period of exchange of financial information between Indonesia and other jurisdictions under international agreements in tax matters; and

b. Financial Services Authority shall submit the report to the Directorate General of Taxes 30 (thirty) days at the latest prior to the due date of the period of exchange of financial information between Indonesia and other jurisdictions under international agreements in tax matters.

(4) The report submission through the mechanism as referred to under paragraph (1) letter b and letter c shall be conducted by financial services institutions, other financial service institutions and/or other entities as referred to in Article 2 paragraph (1) to the Director General of Taxes 4 (four) months at the latest after the end of the calendar year.

Article 4

(1) In addition to receiving the report as referred to in Article 2 paragraph (2), Director General of Taxes is authorized to request information and/or evidence or affidavit from financial services institutions, other financial service institutions and/or other entities.

(2) Financial services institutions, other financial service institutions and/or other entities shall provide information and/or evidence or affidavit as referred to under paragraph (1) to Director General of Taxes.

(3) Financial information contained in the report as referred to in Article 2 paragraph (2) and the information and/or evidence or affidavit as referred to under paragraph (1) shall be used as taxation database for Directorate General of Taxes.

Article 5

Under the international agreement in tax matters, Minister of Finance is authorized to exchange financial information as referred to in Article 2 paragraph (2) and/or information and/or evidence or affidavit as referred to in Article 4 paragraph (1) with competent authority of other jurisdictions.

Article 6

- (1) Minister of Finance and/or the employees of Ministry of Finance, in performing duties related to implementation of access and exchange of financial information for tax purposes, cannot be prosecuted in criminal lawsuit as well as civil lawsuit.
- (2) Top management and/or the employees of Financial Services Authority who fulfill the obligation to submit the report as referred to in Article 3 paragraph (1) letter a, cannot be prosecuted in criminal lawsuit as well as civil lawsuit.
- (3) Top management and/or employees of financial services institutions, top management and/or employees of other financial service institutions, and top management and/or employees of other entities as referred to in Article 2 paragraph (1) that fulfill the obligation to submit the report as referred to in Article 2 paragraph (2), and/or giving information and/or evidence or affidavit as referred to in Article 4 paragraph (2), cannot be prosecuted in criminal lawsuit as well as civil lawsuit.

Article 7

- (1) Top management and/or employees of financial services institutions, top management and/or employees of other financial service institutions, and top management and/or employees of other entities as referred to in Article 2 paragraph (1), that:
 - a. does not submit the report as referred to in Article 2 paragraph (2);
 - b. does not implement the due diligence procedure correctly as referred to in Article 2 paragraph (4); and/or
 - c. does not provide information and/or evidence or affidavit as referred to in Article 4 paragraph (2), shall be fined a maximum of Rp1,000,000,000.00 (one billion rupiah).
- (2) Financial services institutions, other financial services institutions, and other entities as referred to in Article 2 paragraph (1), that:
 - a. does not submit the report as referred to in Article 2 paragraph (2);
 - b. does not implement the due diligence procedure correctly as referred to in Article 2 paragraph (4); and/or
 - c. does not provide information and/or evidence or affidavit as referred to in Article 4 paragraph (2), shall be fined a maximum of Rp1,000,000,000.00 (one billion rupiah).

(3) Any person who makes a false statement or conceals or omits the actual information from the information that must be submitted in the report as referred to in Article 2 paragraph (2) shall be penalized to imprisonment for a maximum period of 1 (one) year or a maximum fine of Rp1,000,000,000.00 (one billion rupiah).

Article 8

On the date of promulgation of this Government Regulation In Lieu Of Law shall be effective:

1. Article 35 paragraph (2) and Article 35A of the Law Number 6 of 1983 on General Provisions and Tax Procedures (State Gazette of the Republic of Indonesia Year 1983 Number 49, Supplement to the State Gazette of the Republic of Indonesia Number 3262) as amended by the Law Number 16 of 2009 concerning the Stipulation of Government Regulation in Lieu of Law Number 5 of 2008 concerning the fourth amendment of Law Number 6 of 1983 on General provisions and Tax Procedures Into Law (State Gazette of the Republic of Indonesia Year 2009 Number 62, Supplement to the State Gazette of the Republic of Indonesia Number 4999);

2. Article 40 and Article 41 of the Law Number 7 of 1992 concerning Banking (State Gazette of the Republic of Indonesia Year 1992 Number 31, Supplement to State Gazette of the Republic of Indonesia Number 3472) as amended by the Law Number 10 of 1998 on Amendments to the Law Number 7 of 1992 concerning Banking (State Gazette of the Republic of Indonesia Year 1998 Number 182, Supplement to the State Gazette of the Republic of Indonesia Number 3790);
3. Article 47 of the Law Number 8 of 1995 concerning Capital Market (State Gazette of the Republic of Indonesia Year 1995 Number 64, Supplement to the State Gazette of the Republic of Indonesia Number 3608));
4. Article 17, Article 27, and Article 55 of the Law Number 32 Year 1997 concerning Commodities Futures Trading (State Gazette of the Republic of Indonesia Year 1997 Number 93, Supplement to the State Gazette of the Republic of Indonesia Number 3720) as amended by the Law Number 10 Year 2011 on Amendments to the Law Number 32 Year 1997 concerning Commodities Future Trading (State Gazette of the Republic of Indonesia Year 2011 Number 79, Supplement to the State Gazette of the Republic of Indonesia Number 5232); and; and
5. Article 41 and Article 42 of the Law Number 21 of 2008 concerning Sharia Banking (State Gazette of the Republic of Indonesia Year 2008 Number 94, Supplement to the State Gazette of the Republic of Indonesia Number 4867), shall be declared no longer valid insofar as it relates with the implementation of the exchange of financial information under this Government Regulation In Lieu of Law.

Article 9

In the event that technical guidance for access and exchange of financial information under this Government Regulation In Lieu of Law, Minister of Finance may issue a Minister of Finance Regulation.

Article 10

This Government Regulation In Lieu of Law shall enter into force on the date of enactment.

For everyone cognizance, this Government Regulation In Lieu of Law shall be promulgated by placing it in State Gazette of the Republic of Indonesia..

Enacted in Jakarta
on the date of 8 May 2017
PRESIDENT OF THE REPUBLIC OF
INDONESIA,

JOKO WIDODO

Promulgated in Jakarta
on the date of 8 May 2017
MINISTER OF JUSTICE AND HUMAN RIGHTS
OF THE REPUBLIC OF INDONESIA,

YASONNA H. LAOLY

STATE GAZETTE OF THE REPUBLIC OF INDONESIA YEAR 2017 NUMBER 95

ELUCIDATION
OF
GOVERNMENT REGULATION IN LIEU OF LAW OF THE REPUBLIC OF
INDONESIA
NUMBER 1 YEAR 2017
CONCERNING
ACCESS TO FINANCIAL INFORMATION FOR TAX PURPOSES

I. GENERAL

For national development of the Unitary State of the Republic of Indonesia with aims for prosperity of all the people of Indonesia equally and fairly, in accordance with the mandate of the Preamble of the 1945 Constitution of the Republic of Indonesia, funding derived from state revenue is required, especially derived from taxes. State's taxing right to withhold is regulated in Article 32A of the 1945 Constitutions of the Republic of Indonesia which states that taxes and other charges for state purposes are governed by law.

The largest component of the state revenue is derived from tax revenue. However, constraints from internal factors and external factors still obstruct tax revenue. To resolve constraints from internal factors, Government of Indonesia is currently undertaking tax reforms at the Directorate General of Taxes with aim of improving the organization, work processes, management banking data and information management, and human resources. While from external factors, aside from the decreasing of the economy and global trade, there are still many taxpayers who are discovered conducting tax evasion outside Indonesia. Tax haven problem and the absence of mechanisms and rules regulation required for the exchange of information between jurisdictions complicate tax collection efforts in Indonesia that based on self-assessment system.

Meanwhile, supervision of taxpayer compliance taxpayer supervision in fulfilling its tax obligations by self-assessment is essential to increase tax revenue. Such supervision can be implemented optimally as long as the access for tax authorities to receive and obtain financial information is available to construct a stronger and a more accurate taxation database.

The provisions of laws and regulations in the field of taxation, banking, sharia banking, and capital markets, and other prevailing laws and regulations have limited the access for tax authorities to receive and obtain financial information, both in terms of procedures and requirements. This access limitation is used by the taxpayer to disobey his obligation for reporting his actual income and asset. It can be a constraint for the sustainability of the effectiveness of the tax amnesty policy and the strengthening building of taxation database, also and Indonesia could potentially become the jurisdiction for illicit fund transfer destination.

Currently, Indonesia has entered into international taxation agreements in the field of taxation with many jurisdictions, which also regulate the exchange of information including the automatic exchange of financial account information automatically in accordance with based on agreed international standards. One of the requirements that Indonesia need to must fulfill in order to automatically implement the automatic exchange of financial account information is to enact domestic legislation that enable the concerning the authority for tax authority to access financial information, regulate the obligation for financial institutions to automatically report financial information to tax authority, regulate the obligation for financial institutions to conduct the due diligence procedures for reporting purposes, and regulate the imposition of sanctions for non-compliance as well.

The Global Forum on Transparency and Exchange of Information for Tax Purposes (Global Forum) which now has 139 member jurisdictions including Indonesia, has assessed the transparency and effectiveness of the exchange of

information in each member and has rated 113 jurisdictions, including Indonesia. According the overall assessment, Indonesia has been rated as a "Partially-Compliant" jurisdiction, because of the absence of the power of Directorate General of Taxes as a tax authority in Indonesia to obtain and provide financial information which comes from of Directorate General of Taxes as a tax authority in Indonesia. It is the consequences of the limitation of access to financial information for tax purposes in the law in the field of taxation, banking, sharia banking, and capital markets laws, as well as other legislation.

The rating "Partially-Compliant" for Indonesia means that Indonesia is considered as a non-transparent and less-effective jurisdiction for the exchange of financial information by the entire exchange of information jurisdictions partners and a number of international agencies.

The exchange of financial information for tax purposes, besides being conducted by requests, can also be conducted automatically (Automatic Exchange of Financial Account Information/AEOI). Currently, there are 100 jurisdictions, including Indonesia,, has declared its commitment to implement automatic exchange of financial account information based on Common Reporting Standard (CRS), which was drafted by the Organization for Economic Cooperation and Development (OECD) and G20. Indonesia's commitment is manifested by the signing the Multilateral Competent Authority Agreement on AEOI on 3 June 2015 and Indonesia agreed to start to automatically exchange the financial account information in September 2018.

Related to the requirements to implement the automatic exchange of financial account information (AEOI), the Global Forum has rated Indonesia as a at-risk jurisdiction to meet AEOI's commitments due to the absence of a primary legislation in the level of law to implement AEOI in Indonesia. If Indonesia has not yet enacted any primary legislation by 30 June 2017,

Indonesia will be published as a fail to meet its commitment jurisdiction for the implementation of AEOI.

If Indonesia being published as a jurisdiction which fail to meet its commitment for the implementation of AEOI according to the Standard, Indonesia will be included in the list of non-cooperative jurisdictions. This will result in significant losses for Indonesia, including the decreased level of credibility of Indonesia as a member of G20, declining investor confidence, and the potential disruption of national economic stability. Also, Indonesia will become a destination jurisdiction for illegal funds placement.

Based on the considerations abovementioned, it is urgent to immediately provide a broad access for tax authorities to receive and obtain financial information for tax purposes by establishing a primary legislation in the level of law.

II. ARTICLE BY ARTICLE

Article 1

“International agreements in tax matters” shall mean any agreements, in certain forms and names, governed by international laws, such as Tax Treaties, Tax Information Exchange Agreements, Convention on Mutual Administrative Assistance in Tax Matters, including any technical agreements or any implementing technical agreements of an agreement, such as Bilateral/Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information, Intergovernmental Agreement for Foreign Account Tax Compliance Act/FATCA, that is effective before, since, or after this Government Regulation in Lieu of Law has entered into force.

Article 2

Paragraph (1)

“Other financial service institutions” shall mean other financial service institutions as stipulated under the Law concerning Financial Service Authority.

“Other entities categorized as financial institutions” shall mean legal person, such as cooperation or foundation, or legal arrangement such as partnership or trust, that carry out activities other than in banking sector, capital market, and insurance, but meet the criteria under the standard for exchange of financial account information in the international agreements in tax matters.

“Standard for exchange of financial account information in the international agreements in tax matters” shall mean the standard that is referred to or governed under international agreement in tax matters for exchange of information between jurisdictions, such as Common Reporting Standard/CRS and Commentaries that are drafted by OECD and G20, which are referred in Bilateral/Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information.

Paragraph (2)

“Financial account” shall mean any accounts in banks, sub-security accounts in securities companies and custodial institution, insurance policy in insurance company, and/or other financial account for other financial service institutions and other entities.

Obligation in submission the report in this paragraph shall mean obligation to submit nil report, in case financial service institutions, other financial service institutions, and/or other entities do not discover any reportable account in a calendar year.

Paragraph (3)

Sufficiently clear.

Paragraph (4)

Sufficiently clear.

Paragraph (5)

Letter a

“Entity” shall mean legal person such as cooperation or foundation, or legal arrangement such as partnership or trust.

Letter b

Sufficiently clear.

Letter c

Sufficiently clear.

Letter d

“Controlling person” shall mean natural person who exercise control over an entity.

Letter e

“Documentation” shall mean any activity in conducting, keeping, and maintaining documentation in related to the due diligence procedures conducted by financial service institution, other financial service institution, and/or other entities according to the standard for exchange of financial account information under the international agreements in tax matters.

Paragraph (6)

Sufficiently clear.

Paragraph (7)

Sufficiently clear.

Paragraph (8)

Sufficiently clear.

Article 3

Paragraph (1)

Sufficiently clear.

Paragraph (2)

“Mechanism change” shall mean the mechanism change from non electronic mechanism to electronic mechanism.

Paragraph (3)

“Days” shall mean the calendar year.

For example:

If the due date of the exchange of the information with other jurisdictions according to international agreements in tax matters is 30 September 2018, it means:

- a. The report from financial service institutions as referred to under paragraph (1) to Financial Service Authority shall be submitted on 1 August 2018 at the latest; and
- b. Financial Service Authority submit the related report to Directorate General of Taxes on 31 August 2018 at the latest.

Paragraph (4)

Sufficiently clear.

Article 4

Paragraph (1)

Sufficiently clear.

Paragraph (2)

Sufficiently clear.

Paragraph (3)

Tax database is used to implement international agreements in tax matters and to impose the tax law.

Article 5

Sufficiently clear.

Article 6

Paragraph (1)

Sufficiently clear.

Paragraph (2)

Sufficiently clear.

Paragraph (3)

“Top management” shall mean the top management with duties and authorities according to article of association or other equivalent documentation maintained by financial service institution, other financial service institution, and/or other entities.

“Employees” shall mean any employees in financial service institution, any employees in other financial service institution, and/or any employees in other entities.

Article 7

Sufficiently clear.

Article 8

Sufficiently clear.

Article 9

Sufficiently clear.

Article 10

Sufficiently clear.