

**CONSOLIDATION OF LAW OF THE REPUBLIC OF INDONESIA
NUMBER 7 OF 1983
CONCERNING
INCOME TAX
AS LASTLY AMENDED BY LAW NUMBER 36 OF 2008**

**CHAPTER I
GENERAL PROVISION**

Article 1 (Law No. 10 Of 1994)

Income tax shall be imposed on any taxable person in respect of income during a taxable year.

Elucidation Article 1(Law No. 36 Of 2008)

This Law regulates income tax imposed on Tax Subject in relation to income received or accrued in taxable year. The Tax Subject will be subject to tax if the person receives or accrues income. A Tax Subject who receives or accrues income is called a Taxpayer under this law. A Taxpayer is taxed on the income received or accrued during a taxable year or a fraction of a taxable year, if the tax obligation commences or ends in a taxable year. The term a taxable year under this law means a calendar year, however, a Taxpayer may use an accounting year which is different from the calendar year insofar as the accounting year has a period of 12 (twelve) months

**CHAPTER II
TAXABLE PERSON**

Article 2 (Law No. 36 Of 2008)

- (1) Tax Subject consist of:
 - a. 1. individual;
 2. undivided inheritance as a unit in lieu of the beneficiaries;
 - b. entity; and
 - c. permanent establishment.
- (1a) A permanent establishment is a Tax Subject which, for taxation purposes, is treated as a corporate taxpayer.
- (2) Tax Subject consists of resident and non-resident Taxpayer.
- (3) The term "resident Taxpayer" means:
 - a. individual who resides in Indonesia, an individual who has been present in Indonesia for more than 183 (one hundred and eighty-three) days within any 12 (twelve) months period, or an individual who has been residing in Indonesia within a particular taxable year and intends to reside in Indonesia;
 - b. entity established or domiciled in Indonesia, except part of government bodies which fulfills these criteria as follows:
 1. Its establishment is pursuant to the laws;
 2. financed by State Budget or Local Government Budget;
 3. Its revenues are included in State Budget or Local Government Budget; and
 4. Its book keeping is audited by the government auditor; and
 - c. Any undivided inheritance as a unit in lieu of beneficiaries.
- (4) The term "non-resident tax payer" means:
 - a. An individual who does not reside in Indonesia, has been present in Indonesia for not more than 183 (one hundred and eighty-three) days within any 12 (twelve) months period, and an entity which is not established and is not domiciled in Indonesia conducting business or carrying out activities through a permanent establishment in Indonesia; and
 - b. Any individual who does not reside in Indonesia, has been present in Indonesia for not more than 183 (one hundred and eighty-three) days within any 12 (twelve) months period, and any entity which is not established and is not domiciled in Indonesia, which may receive or accrue income from Indonesia other than from conducting business or carrying out activities through permanent establishment.
- (5) A permanent establishment is an establishment used by an individual who does not reside in Indonesia, an individual who has been present in Indonesia for not more than 183 (one hundred and eighty-three) days within

any period of 12 (twelve) months, and an entity which is established outside Indonesia and is not domiciled in Indonesia conducting business or carrying out activities which may include:

- a. a place of management;
- b. a branch;
- c. a representative office;
- d. an office;
- e. a factory;
- f. a workshop;
- g. a warehouse;
- h. a space for promotion and selling;
- i. a mine and a place of extraction of natural resources;
- j. an area of oil and gas mining;
- k. a fishery, animal husbandry, agriculture, plantation, or forestry;
- l. a construction, installation or assembly project;
- m. any kind of services provided by employees or any other persons, provided that the services were done in more than 60 (sixty) days within a period of 12 (twelve) months;
- n. an individual or entity acting as a dependent agent;
- p. an agent or employee of insurance company which is established outside Indonesia and is not domiciled in Indonesia, receiving insurance premium or insuring risk in Indonesia; and
- p. computer, electronic agent or automatic equipments owned, rented, or used by any electronic transaction provider to conduct business through internet.

- (6) The residence of an individual or the domicile of an entity shall be stipulated by Director General of Taxes in accordance with the real situation.

Elucidation Article 2

Paragraph (1)

Subparagraph a

An individual as a tax subject may reside or be present in Indonesia or outside Indonesia. An undivided inheritance as a unity constitutes as a substitute to tax subject, substituting those who have the right thereof, namely the heirs/heiresses. The purpose of designating an undivided inheritance as a substitute tax subject is to allow DGT to collect tax originating there from.

Subparagraph b

The term entity is defined as a group of persons and/or capital as a unity whether or not it conducts business or activity which covers limited companies, limited partnerships, other types of companies, state-owned or local-owned enterprises in whatever name and form, firm, kongsi, cooperative, pension fund, partnership, association, foundation, public organization, social-political organization or other similar organization, institution, and other forms of entities including collective investment contracts and permanent establishment. State-owned and local-owned enterprise are tax subject, regardless of their names and forms, thus any unit of the government body, such as institution, entity, and others, owned by the central government and the local government which conducts business or activities to derive income, constitutes as tax subject. The term society includes associations, unions, organization, or association of parties who have the same interests.

Subparagraph c

Sufficiently clear.

Paragraph (1 a)

Sufficiently clear.

Paragraph (2)

The term tax subject comprises Resident taxpayer and Non-resident taxpayer. A Resident Taxpayer constitutes a Taxpayer if he/she derives income that exceeds personal exemption. A resident corporate taxpayer constitutes a taxpayer since it is established, or is domiciled in Indonesia. Non-resident taxable persons, both individual or as an entity corporate, constitutes a taxpayer because of income they received and/or obtains from Indonesia or because of income shall mean any individual or any entity who/which has already fulfilled its subjective and objective obligation.

With respect to the Taxpayer Identification Number, an Individual Taxpayer receiving income less than personal exemption is not necessary to register himself or herself to obtain a Taxpayer Identification Number.

Principal differences between Resident and Nonresident Taxpayers are in the manner that they fulfill their tax obligation, among others are as follows:

- a. A Resident Taxpayer is taxed on his income derived from Indonesia and overseas, whereas a Non-resident Taxpayer is taxed only on the income originating from sources in Indonesia;*
- b. A Resident Taxpayer is taxed based on the net income with a general rate, whereas a Non-resident Taxpayer is taxed based on the gross income with an appropriate rate; and*
- c. A Resident Taxpayer is obliged to submit Annual Return as means for assessing his tax obligation in a taxable year, whereas a Non-resident Taxpayer is not, because his tax obligation are fulfilled through with holding tax, which is final in nature.*

Non-resident Taxpayers doing business or conducting activities through permanent establishment in Indonesia are equivalent with Resident Taxpayers in the manner of the fulfillment of their taxation as regulated in this Law and The Law on General Provisions and Tax Procedures.

Paragraph (3)

Subparagraph a

In principle, an individual who constitutes a resident taxpayer is an individual residing or staying in Indonesia. Included in the term "individuals residing in Indonesia" are those who have the intention to reside in Indonesia, the determination of which shall be considered is based on the facts and circumstances. To meet the criterion of "present in Indonesia for more than 183 (one hundred and eighty-three) days", an individual does not have to be consecutively present. It shall be determined by the total number of days the said individual is in Indonesia within a period of 12 (twelve) months since his/her arrival.

Subparagraph b

Sufficiently clear.

Subparagraph c

An undivided inheritance inherited by an individual as a resident taxpayer shall be assumed as a Resident Taxpayer under this Law. To meet the taxation obligations thereof, the said undivided inheritance substitutes the obligations of the heirs/heiresses who have the right thereof. If the said undivided inheritance has already been distributed, then the taxation obligation thereof shall be transferred to the heir/heiresses. An undivided inheritance inherited by an individual as a Non-resident taxpayer not doing business or conducting activities through a permanent establishment in Indonesia is not assumed as a substitute to the taxpayer because the tax imposed on income derived by the said individual shall be inherent to the object.

Paragraph (4)

Subparagraph a and subparagraph b

A non-resident taxpayer is an individual or entity residing or domiciled outside Indonesia, who derives income from Indonesia, through or not through a permanent establishment. An individual not residing in Indonesia, but staying in Indonesia for less than 183 (one hundred and eighty-three) days within a period of 12 (twelve) months, is a Nonresident Taxpayer. If the income is derived through a permanent establishment, the individual or entity is taxed through the permanent establishment. The said Individual or entity shall maintain the status of Nonresident Taxpayer. Therefore, the permanent establishment substitutes the individual or entity as non-resident Taxpayer in fulfilling the taxation obligation in Indonesia. In the case that the income is not derived through a permanent establishment, the tax is imposed directly to the non-resident taxpayer.

Paragraph (5)

A permanent establishment contains the concept of the existence of a place of business, namely facilities that may be in the form of lands and buildings, including machinery and equipments, warehouses and computers or electronic agent of automated equipment owned, rented or used by any electronic transaction provider to carry on business through internet. The place of business is permanent in nature and used to carry out the business or to conduct the activities of any individual not residing or any entity not established and domiciled in Indonesia. The concept of permanent establishment also includes individuals or entities as agents that are not independent, acting for and on behalf of any individual or any entity not residing or domiciled in Indonesia. An individual not residing or an entity not established and not domiciled in Indonesia shall not be assumed to have a permanent establishment in Indonesia if the individual or the entity, in conducting his/its business or activities in Indonesia uses any agent, broker or intermediary who have independent status, provided that the agent, broker or intermediary in reality fully acts in the framework of carrying out his own business/activities. An insurance company established or domiciled outside Indonesia is deemed to have a permanent establishment in Indonesia, if it collects insurance premium in Indonesia or bears risk in Indonesia through its employees, representatives or

agents in Indonesia. Bearing risk in Indonesia shall not mean that the event causing the risk occurs in Indonesia. There is a matter of concern that the insured party shall reside, stay or domicile in Indonesia.

Paragraph 6

The determination of an individual's residence or an entity's domicile is important to ascertain which Tax District Office shall have the taxation jurisdiction on the income derived by the individual or entity.

Basically, an individual's residence or an entity's domicile shall be determined based on the facts and the circumstances. Therefore the determination of a residence or a domicile shall not only be based on formal condition, but shall also on the reality.

Several matters necessarily considered by the Director General of Taxes in determining the residence of an individual or the domicile of an entity among others are the domicile, residential address, residence of the family, the place to conduct the main business, or other essential matters to facilitate the implementation of the tax obligation fulfillment.

Article 2A (Law No. 10 Of 1994)

- (1) Tax obligations of an individual referred to in paragraph (3) subparagraph a of Article 2, shall commence at the time the individual is born, is present, or intends to reside in Indonesia and shall cease at the time such person passes away or leaves Indonesia permanently.
- (2) Tax obligations of an entity referred to in paragraph (3) subparagraph b of Article 2, shall commence at the time the entity is established or domiciled in Indonesia and shall cease at the time the entity is dissolved or is no longer domiciled in Indonesia.
- (3) Tax obligations of an individual or an entity referred to in paragraph (4) subparagraph a of Article 2, shall commence at the time the individual or the entity starts its business or engages in activities referred to in paragraph (5) of Article 2 and shall cease at the time the businesses or activities through a permanent establishment are terminated.
- (4) Tax obligations of an individual or an entity referred to in paragraph (4) subparagraph b of Article 2, shall commence at the time the individual or the entity derives income from Indonesia and shall cease at the time the individual or the entity no longer derives such income.
- (5) Tax obligations of an undivided inheritance referred to in paragraph (1) subparagraph a. point 2) of Article 2, shall commence at the time the undivided inheritance starts to exist and shall cease at the time the inheritance is divided.
- (6) In case tax obligations of an individual who resides or is present in Indonesia consist only a fraction of a taxable year, such fraction shall be treated as a taxable year.

Elucidation Article 2A

Income Tax constitutes a subjective tax the obligation of which is inherent to the Taxable Person concerned, which means that the said tax obligation is intended not to be shifted to another Taxable Person. Therefore, in the framework of providing legal certainty, the stipulation of the starting and ending moment of subjective tax obligation is important.

Paragraph (1)

The subjective tax obligations of an individual residing in Indonesia shall commence at the time he is born in Indonesia. For an individual staying in Indonesia for more than 183 (one hundred and eighty-three) days within a 12 (twelve) months, his tax obligation commences on the first day he is in Indonesia. The subjective tax obligation ends at the time he passes away or permanently leaves Indonesia.

The term "permanently leaves Indonesia" is based on real facts at the moment the said individual leaves Indonesia. If at the time he leaves Indonesia, there is a strong fact evidencing his wish to leave Indonesia forever, at that moment he is no longer a Resident Taxable Person.

Paragraph (2)

Sufficiently clear.

Paragraph (3)

For individuals not residing in Indonesia and staying in Indonesia for no longer than 183 (one hundred and eighty-three) days, and entities not established and not domiciled in Indonesia, but doing business or carrying out activities in Indonesia through a permanent establishment, the subjective tax obligations shall commence at

the time the permanent establishment exists in Indonesia and ends at the time the permanent establishment is no longer in Indonesia.

Paragraph (4)

An individual not residing in Indonesia or staying in Indonesia for no longer than 183 (one hundred and eighty-three) days, and an entity not established or domiciled in Indonesia and not doing business or conducting activities through a permanent establishment in Indonesia shall be a Nonresident Taxable Person as far as the individual or the entity has an economic relationship with Indonesia. An economic relationship with Indonesia is assumed to exist if the individual or entity derives income originating from sources in Indonesia.

The subjective tax obligations of the said individual or entity shall commence at the time the individual or entity has an economic relationship with Indonesia, namely deriving income from sources in Indonesia, and shall end at the time the individual or entity no longer has any economic relationship with Indonesia.

Paragraph (5)

The subjective tax obligation of an undivided inheritance shall commence at the time of the emergence of the undivided inheritance, namely at the time the predecessor passes away. Afterwards, the fulfillment of the taxation obligation thereof shall be inherent to the said undivided inheritance. The subjective tax obligation of the said undivided inheritance should end at the time the undivided inheritance is distributed to the heirs. Subsequently, the fulfillment of the tax obligations thereof shall be transferred to the heirs.

Paragraph (6)

It may occur, that an individual becomes a Taxable Person not for a full one taxable year, for instance an individual who commences to become a Taxable Person in the middle of a taxable year, or who permanently leaves Indonesia in the middle of a taxable year. The period which is less than one taxable year is called a fraction of a taxable year, which substitutes the taxable year.

Article 3 (Law No. 36 Of 2008)

- (1) Tax Subject as referred to in Article 2 does not include the following:
 - a. representative office of foreign countries;
 - b. officials of diplomatic and consular missions, or any other foreign official and any individual who work for and stay with them provided that they are not Indonesian citizens, and in Indonesia they do not receive nor accrue income other than from their position and their official duty in Indonesia, provided that the aforementioned country grants reciprocal treatment;
 - c. any international organization provided that:
 1. Indonesia is a member of the aforementioned organization ; and
 2. they do not conduct business or engage in other activities to derive income from Indonesia, except providing the government with loan which the fund comes from the members' contribution;
 - d. the officials of the representative of international organizations as referred to in sub paragraph c, provided that they are not Indonesian citizens and do not conduct any business, engage in activities nor other employment to derive income from Indonesia.
- (2) The international organizations excluding from the tax subject as meant in paragraph (1) letter c shall be stipulated by a decree of the Minister of Finance.

Elucidation Article 3

Paragraph (1)

In accordance with the international custom, any representative offices of a foreign country, as well as diplomatic, consular and other officials, shall be exempted from the definition of a tax subject at the place where they represent their country. The exemption of those officials as tax subject shall not be in affect if they earn income outside from their official duties, or if they are Indonesian citizens. Therefore, if a foreign representative official earns income in Indonesia other than income from official duties, then he or she shall be a tax subject, who can be taxed on the said other income.

Paragraph (2)

Sufficiently clear.

**CHAPTER III
TAXABLE OBJECT**

Article 4 (Law No. 36 Of 2008)

- (1) Taxable Object is income, which is defined as any increase in economics capacity received by or accrued by aTaxpayer from Indonesia as well as from offshore, which may be utilized for consumption or increasing the taxpayer's wealth, in whatever name and form, including:
- a. compensation or remuneration received or accrued in respect of employment or service rendered, including salary, wage, allowance, honorarium, commission, bonus, gratuity, pension, or other forms of remuneration, unless otherwise stipulated by this Law;
 - b. lottery prizes, or gifts in respect of employment or activities, and reward;
 - c. business profits;
 - d. gains from the sale or transfer of property, including:
 1. gains from a transfer of property to a company, a partnership, and other entity in exchange for shares or capital contribution;
 2. gains accrued by a company, a partnership or other entities from the transfer of property to its shareholders, partners or members;
 3. gains from a liquidation, merger, consolidation, expansion, split-up, acquisition, or reorganization in whatever name and form
 4. gains from transfer of property in the form of grant, aid or donation, unless they are given to relatives within one degree of direct lineage, and to religious body, educational or other social entity including foundation, cooperative, or to any individual who conducting micro and small business which stipulated by Minister of Finance, provided that aforementioned parties have no business, employment, ownership nor control relationship; and
 5. gains from the sale or the transfer of part or all of mining rights, participation in financing, or capitalization in a mining company;
 - e. refund of tax payments which already deducted as an expense and any additional payment of tax refund;
 - f. interest including premium, discounts, and compensation for loan repayment guarantees;
 - g. dividends, in whatever name and form, including dividends from an insurance company to its policyholders, and distribution of net income by a cooperative;
 - h. royalty or compensation from the use of right;
 - i. rents and other income from the use of property;
 - j. annuities;
 - k. gains from the discharge of indebtedness up to a certain amount stipulated by Government Regulation;
 - l. gains from foreign exchange
 - m. gains from revaluation of assets;
 - n. insurance premium;
 - o. contribution received by or accrued by an association from its members who are taxpayers engaged in business or independent services;
 - p. an increase in net wealth from income which has not been taxed;
 - q. income from sharia business;
 - r. compensation as stipulated by Laws concerning General Provisions and Tax Procedures; and
 - s. surplus of Bank of Indonesia.
- (2) The following income may be subject to a final income tax:
- a. income in the form of interest from deposit and other savings, interest bonds and state bonds, interest paid by a cooperative to its individual members;
 - b. income in the form of lottery prizes;
 - c. income from a transaction of shares and other securities, derivative transactions traded in exchange, and sales of share or transfer of capital contribution from its company partner received by a venture-capital company;
 - d. income from transfer of property such as land and/or building , construction services business, real estate business, and renting land and/or building; and
 - e. other certain incomes;
- which are stipulated by or based on a Government Regulation
- (3) There shall be excluded from taxable object:
- a. 1. aids or donations, including zakat received by amil zakat board or other amil zakat institutions established or approved by the Government and received by eligible zakat recipients or compulsory religious donation for the followers of religions acknowledged by the Government, received by religious institutions established and approved by the Government and received by eligible donations recipients, which are stipulated by or based on a Government Regulation ; and
 2. gifts received by relatives within one degree of direct lineage, and to religious body, educational or other social entity including foundation, cooperative, or to any individual who conducting micro and small business which stipulated by or based on a Minister of Finance Regulation,

- provided that aforementioned parties have no business, employment, ownership nor control relationship; and
- b. inheritance;
 - c. assets including cash received by an entity referred to in Article 2 paragraph (1) subparagraph b, in exchange for shares or capital contribution;
 - d. consideration or remuneration in the form of benefits in kinds in respect of employment or services received or accrued from a Taxpayer or the Government, except given by a non Taxpayer, Taxpayer which is imposed by final tax or Taxpayer using deemed profit as referred to in the Article 15
 - e. payments by an insurance company to an individual in connection with health, accident, life or education insurance;
 - f. dividends or distribution of profit received by or accrued by a resident limited corporation, cooperative, state-owned enterprises, or local government-owned enterprises through ownership in enterprise established and domiciled in Indonesia, provided that:
 1. dividends are paid out from retained earnings;
 2. limited corporations and state-owned enterprises and local-owned enterprises receiving the dividends must own at least 25% of the total paid-in capital;
 - g. contributions received or accrued by a pension fund which its establishment is approved by the Minister of Finance, either paid by an employer or an employee;
 - h. income from a capital investment of the pension fund as referred to in sub paragraph g, in certain sectors as determined by the Minister of Finance Decree;
 - i. distribution of profit received or accrued by a member of a limited partnership, whose capital does not consists of shares, partnership, association, firma, and kongsi, including a unit holder of collective investment contract;
 - j. Deleted;
 - k. income received or accrued by a venture-capital company in the form of profit distribution of a joint-venture company established and conducting business or engage in activities in Indonesia, provided that:
 1. the investee is a micro, small, medium-sized enterprise, or engaged in activities in business sectors stipulated by or based on the Minister of Finance Regulation; and
 2. the investee's shares are not traded in the stock exchange in Indonesia;
 - l. scholarships that fulfill certain requirements which are stipulated by or based on the Minister of Finance Regulation;
 - m. a surplus received or accrued by an institution or a non-profit organization engaged in education and/or research and development, which has been listed in corresponding institutions, which is reinvested in the forms of infrastructures of education and/or research and development, within no more than 4 (four) years period of time since it is received or accrued, as stipulated by or based on the Minister of Finance Regulation.
 - n. aid or donation paid by The Social Security Agency to a certain Taxpayer, as stipulated by or based on the Minister of Finance Regulation.

Elucidation Article 4

Paragraph (1)

This Law adheres to the principle of taxation on income in a broad meaning, in a sense that the tax shall be imposed on any increase in economic capability received by or accrued by a Taxpayer from whatever source which can be used for consumption or for increasing the wealth of the Taxpayer.

The meaning of income in this Law shall concern whether it comes from a particular source, but on its additional economic capability. The said increase received by or accrued by a Taxpayer constitutes the best measure of the capability of the Taxpayer to participate in sharing the burden of expenditure needed by the government for routine and development activities.

From the standpoint of flow of the increase of economic capability to the Taxpayer, income could be classified into:

- i. income from any employment or independent work, such as salary, honorarium, income derived by a physician, notary, actuary, accountant, lawyer, et cetera;*
- ii. income from conducting business and activities.*
- iii. income from capital in the form of movable or immovable property, such as interest, dividend, royalty, rent, gain on sales of property, or rights which are not used for the business; and*
- iv. other income, such as discharge of indebtedness, and gift.*

From the standpoint of the utilization thereof, income may be used for consumption or put into savings to increase the wealth of a Taxpayer.

Because this Law adheres to the concept of income in a broad meaning, all types of income received or earned in a taxable year shall be combined to establish a basis for tax imposition. Therefore, if in a taxable year a business or an entity suffers a loss, the said loss may be compensated with other income (horizontal compensation), except if the loss is incurred abroad. However, if a type of income is taxed with a rate which is final in nature or is exempted as a Taxable Income, then the said income shall not be combined with other income, which is imposed with the general tax rate.

The examples of income referred to in these provisions are intended to clarify the concept of income in a broad meaning, which is not limited to the examples.

Subparagraph a

All payments or remuneration in connection with employment, such as wages, salaries, life insurance and health insurance premium paid by an employer, or compensation in any other form, shall be Taxable Income. The term "compensation in another form" shall include benefit in kind, which essentially constitutes an income.

Subparagraph b

The term "gift" shall include prizes from lotteries, work, and activities, such as the prize in a saving lottery, the prize of sport competition, et cetera. The term "award" shall mean compensation granted in connection with certain activities, such as compensation received in connection with archaeological findings.

Subparagraph c

Sufficiently clear

Subparagraph d

If a Taxpayer sells property at a price higher than the book value, or at a price higher than the acquisition cost or value, the difference in price is regarded as profit. If the sale of such property occurs between a company and its shareholders, the sale price shall be used as the basis for calculation of profit is the market price.

Example: Company 'S' owns a car used for business activities with a book value of Rp40,000,000.00 (forty million rupiahs). The car is sold based on the market price of Rp60,000,000.00 (sixty million rupiahs). The profit earned by Company 'S' on the sale of the car is Rp20,000,000.00 (twenty million rupiahs). If the car is sold to one of the shareholders for Rp55,000,000.00 (fifty five million rupiahs), the sale value of the car shall still be calculated on the basis of market price of Rp60,000,000.00 (sixty million rupiahs). The Rp20,000,000.00 (twenty million rupiahs) difference is profit to Company 'S', while for the shareholder purchasing the car, the difference of Rp5,000,000.00 (five million rupiahs) counts as income.

If an entity is liquidated, profit from the sale of property, namely the difference between the sale price based on market price and the book value, will be regarded as taxable income. The similar standard as above is also for the positive difference between the market price and the book value in the case of a liquidation, merger, consolidation, expansion, split up or acquisition constitutes income. If there is a transfer of property in exchange for shares or capital participation, any profit in the form of difference between the market price of the property transferred and the book value constitutes income. Profit, in the form of the difference between the market price and the purchase price or book value on a transfer of property in the form of gifts, aid or donation is considered income to the party undertaking the transfer, unless the property is transferred to a relative in direct lineage of one degree. Similarly, the profit in the form of the difference between market price and the acquisition value or book value of the transfer of property as aids or donation and grants to religious organizations or educational and social institutions, including foundations or small businesses including cooperatives or any individual which are regulated by the Minister of Finance Regulation, provided that there is no business, work, ownership or control relationship between the parties concerned.

In the case of a Taxpayer who owns mining rights transfers a part or the whole rights to other Taxpayer, the profit gained is subject to tax.

Subparagraph e

A tax refund regarded as an expense at the time of calculating Taxable Income, is considered as taxable income. For example, if Tax on Land and Buildings which has been paid and accounted for as an expense is subsequently refunded for whatever reason, the total amount of the refund is regarded as income.

Subparagraph f

The term 'interest' includes premiums, discounts and compensation in connection with guarantees loan. A premium occurs if, for example, a bond is sold above its par value while a discount occurs if a bond is

purchased below the par value. The premium is income for the issuer of the bond while discount is income for the purchaser.

Subparagraph g

Dividend is the share of profit received by shareholders or insurance policyholders, or the distribution of net income of a cooperation received by its members.

The term dividend shall include:

- 1) distribution of profit, directly or indirectly and under whatever name or form;*
- 2) refund in a liquidation in excess of the paid-up capital;*
- 3) bonus shares received without payment, including bonus shares derived from the capitalization of premiums on new shares;*
- 4) distribution of profit in the form of shares;*
- 5) records of additional capital with out payment;*
- 6) the sum exceeding the amount of paid-in capital received or accrued by shareholders on a buyback shares by the company concerned;*
- 7) whole or partial refund of paid-in capital, if in previous years profits have been made, except where the refund is caused by a legal reduction in the statutory capital;*
- 8) payment related to rights of profit, including that received as redemption of the rights;*
- 9) a share of profit in connection with bond ownership;*
- 10) a share of profit received by policy holders;*
- 11) distribution of net income to members of a cooperative;*
- 12) company expenditures for the personal benefit of shareholders, which are charged as company expenses.*

In practice, it often happens that distribution or payment of dividend is not transparent, for instance, where shareholders, who have fully paid-in capital, grant a loan to the company which is repaid with a rate of interest higher th an appropriate. In such a case, the positive difference between the interest paid and the market rate will be treated as dividend. The portion of interest treated as dividend cannot be charged as an expense by the company concerned.

Subparagraph h

In principle, compensation in the form of royalties comprises three types, namely payment for the use of:

- 1. rights over intangible property, such as copyrights in the field of literature, art, or scientific masterpiece, patents, design or model, plans, formulas or secret process, company trade secrets, or intellectual/industrial rights or other similar rights;*
- 2. rights over tangible property, such as rights over industrial, commercial, and scientific equipment;*
- 3. Transfer of knowledge or information in the field of scientific, technical, industrial, or commercial;*
- 4. Additional aids or complement relating to the use or rights to use rights referred to as paragraph 1, the use of right to use tools/equipments referred to in paragraph 2, or transfer of knowledge or information referred to in paragraph 3, in the form of:*
 - a) the acceptance of or the right to receive the recorded image or voice recording, or both, which is distributed to the public via satellite, cable, fiber optics, or similar technology;*
 - b) the use or right to use the recorded image or voice recording, or both, for television or radio broadcast / emanated through satellite, cable, fiber optics, or similar technology;*
 - c) the use or right to use some or all of the radio spectrum communication;*
- 5. the use or right to use picture film (motion picture films), film or video tape for television broadcast, or the soundtrack to the radio broadcast; and*
- 6. The release all or part of the rights associated with the use or provision of intellectual property / industrial or other rights, as mentioned above.*

Subparagraph i

Rent includes compensation received or obtained in whatever name or form in connection with the use of movable or immovable property, such as rent of a car, rent of an office, rent of a house or rent of a building.

Subparagraph j

Receipts in the form of periodic payments such as alimony or a lifetime allowance paid regularly at certain times.

Subparagraph k

Discharge of indebtedness by a creditor is considered income to the debtor, while it can be charged as an expense by the creditor. However, as determined by the Government Regulations, discharge of indebtedness for small debtors, such as for Business loan for low income family (Kredit Usaha Keluarga Prasejahtera, Kukesra), Farmer Business Loan (Kredit Usaha Tani, KUT), Loans for small housing, and other small loans up to certain amount, are exempted from Taxable income.

Subparagraph I

Gains from the fluctuation in foreign currency are taxed based on the accounting system adopted by and for which the Taxpayer has complied with consistently congruent with the Financial Accounting Standard which prevails in Indonesia.

Subparagraph m

Gains from the fluctuation in foreign currency are taxed based on the accounting system adopted by and for which the Taxpayer has complied with consistently congruent with the Financial Accounting Standard which prevails in Indonesia.

Subparagraph n

Gains from the fluctuation in foreign currency are taxed based on the accounting system adopted by and for which the Taxpayer has complied with consistently congruent with the Financial Accounting Standard which prevails in Indonesia.

Subparagraph o

Sufficiently clear

Subparagraph p

An increasing in the net wealth is basically the accumulation of income, whether it has already been taxed, or it is not a taxable object, or it has not yet been taxed. If it is found that there is an increase in the net wealth that exceeds the accumulation of income whether it has been taxed or it is not a taxable object, the increase is regarded as income.

Subparagraph q

Business activities with a Sharia-based platform has a-different philosophy from conventional business. However, the revenue received or earned from a Sharia-based business activity is still considered taxable income according to this Law.

Subparagraph r

Sufficiently clear

Subparagraph s

Sufficiently clear

Paragraph (2)

In accordance with the provisions in Article 1, the earnings referred to in this paragraph is a taxable income. Based on considerations such as:

- *the necessary impetus in the growth of investment and community's savings;*
- *simplicity in tax collection;*
- *reduced administrative burden for both Taxpayers and the Directorate General of Taxes Taxes;*
- *considering economic development and monetary,*

those earnings should be treated separately in the tax imposition.

Special treatment on the imposition of tax over the said income, is including the nature, magnitude, and the implementation of the payment procedure, cutting, or the polling is regulated by the Government Regulation.

Bond as referred to in this paragraph includes debt which has more than 12 (twelve) months, such as the Medium Term Note, Floating Rate Note which its period is more than 12 (twelve) months.

Government bonds as referred to in this paragraph covers State Obligation and State Treasury.

Paragraph (3)

Subparagraph a

Aid and donations are not taxable income for the recipient provided that they are not received in connection of a work, business, ownership, or controlled relationships between the parties concerned. Zakat received by amil zakat board or other amil zakat institutions established or approved by the

government and eligible zakat recipients is treated the same as aids or donations. The term zakat shall be referred to in Law Number 38 Year 1999 on Management of Zakat.

A business relationship may occur between a donor and a recipient. For example, Company 'A' is a producer of a type of goods, the main raw materials from which are produced by Company 'B'. If Company 'B' makes a donation of raw material as a gift to Company A, then the donation is a taxable income.

Gifts do not constitute taxable income to the recipient if they are received by relatives in one degree of direct lineage, or by a religious or by an educational or social entity, including a foundation or small sized enterprises, including a cooperation, as determined by the Minister of Finance, provided that such gifts are not received in the context of a work, business, ownership or controlled relationship between the parties concerned.

Subparagraph b

Sufficiently clear

Subparagraph c

In principle, property including cash deposits-received by an entity constitutes an increase in the economic capability of that entity. Under this provision, however, since the property is received as a consideration for shares or capital participation, it is not treated as a taxable income.

Subparagraph d

Payment or compensation in the form of benefit in kind related to work or services constitutes a non- cash increase in economic capability. Payment or compensation in kind such as rice, sugar, etc. and in benefit such as the use of a car, house, medical facilities etc., is not regarded as taxable income.

If the provider of compensation in kind or benefit is not a Taxpayer or a Taxpayer who is subject to final Income Tax and subject to Income Tax based on deemed profit, then such compensation in kind or benefit is income for the recipient.

For example, an Indonesian citizen becomes an employee at a foreign diplomatic representative office in Jakarta. The employee obtains benefits in the form of accommodation provided by the foreign representative office or other benefits. These benefits are regarded as income to the employee since the representative diplomatic office concerned is not a Taxpayer.

Subparagraph e

Consideration or reimbursement received by an individual from an insurance company related to a medical, accident, life, dual purpose or educational insurance policy does not constitute a taxable income. This is in line with the provisions of Article 9 paragraph (1) Subparagraph d, under which insurance premiums paid by an individual Taxpayer for his or her own benefit are not deductible in the calculation of taxable income.

Subparagraph f

In accordance with this provision, dividend originating from profits after deducted by tax and received or earned by a limited corporation as a resident taxpayer, a cooperative, and a state-owned company or local-owned company, as a result of its participation in other companies established and domiciled in Indonesia, with the participation of at least 25% (twenty- five percent), and the recipient of the dividend derived income from business profit other than the income from the participation, are not considered as a taxable income. The term a state-owned company and a local-owned company in this paragraph includes, for instance, limited companies (Persero), government banks, local development banks.

It should be noted, however, if the recipient of the dividends or share of profits is a Taxpayer other than the a-fore mentioned entities, such as an individual resident and non- resident taxpayer, a firm, a limited partnership, a foundation and other similar organizations, income in the form of dividends or share of profits remains as taxable object.

Subparagraph g

The exemption from taxable object referred to in this paragraph only applies to pension funds whose establishment has been approved by the Minister of Finance. Exempted from taxable income is contribution received from pension members, either by self-payment or paid by the employer. Basically, the contributions received by the pension fund belong to the pension members, which will be refunded at a certain time. Tax imposition on the contribution will reduce the right of the pensioner. Therefore, the contribution is exempted from taxable object.

Subparagraph h

As mentioned in Subparagraph g, the exemption from taxable object referred to in this provision is only valid for pension fund whose establishment has been approved by the Minister of Finance. Exempted from taxable object under this circumstance is income from capital invested in certain sectors stipulated by the Decree of the Minister of Finance. The purpose of capital investment by pension fund is to accumulate fund for repayment to the pension members in the future; therefore, the capital investment needs to be directed to non-speculative or high risks sectors. Therefore, the determination of the certain sectors shall be stipulated by the Decree of the Minister of Finance.

Subparagraph i

For the purpose of tax imposition, entities referred to in this provision, which constitutes a group of members is subject to tax as a unit, namely on the level of the entity itself. Therefore, the share of profit received by each member is not regarded as a taxable object.

Subparagraph j

Sufficiently clear

Subparagraph k

A venture capital company is a company whose main business is financing of business enterprise (as a joint-venture) in the form of capital participation for a certain period. Under this provision, the share of profits received or earned from the joint-venture is not treated as a taxable object, provided such joint-venture is a small or medium-sized enterprises, or is engaged in business or activities in certain sectors as determined by the Minister of Finance, and the shares of the company concerned are not traded on the Indonesian stock market.

If the business partner of the venture capital company meets the provisions of paragraph (3) Subparagraph f, the dividends received or accrued by the venture capital company will not be treated as taxable object.

In order to direct a venture capital company toward sectors of economic activity, which has the priority in development, such as increasing non-oil and gas exports, the business or activities of a joint-venture company shall be regulated by the Minister of Finance.

Since a venture capital company represents alternative financing in the form of capital participation, such participation by a venture capital company should be directed toward companies not having access to the stock market.

Subparagraph l

Sufficiently clear.

Subparagraph m

In order to support business quality improvement of human resources through education and / or research and development, facilities and adequate infrastructure are needed. Therefore, it is necessary to provide facilities such as tax exemption on the surplus received or accrued provided that the said surplus is injected back in the form of development and provisioning the said facilities. Reinvestment of the surplus should be realized within 4 (four) years since the surplus is more received or accrued.

To ensure the achievement of the goal of this facility, the institution or agency providing education should be for non profit purposes. Education and research and development is held open to everyone and have received confirmation from the corresponding institutions.

Subparagraph n

Aid or donation given by Social Security Agency to a particular taxpayer is considered as social donation given especially to Taxpayer or community member who are incapable or encounter natural disaster or calamity.

Article 5 (Law No. 10 Of 1994)

- (1) Taxable object of a permanent establishment consists of:
 - a. income from its businesses or activities and from its owned or controlled properties;
 - b. income of the head office from businesses or activities, sales of goods, or furnishing services in Indonesia which are similar to those undertaken by the permanent establishment in Indonesia;
 - c. income referred to in Article 26 received or accrued by the head office provided that the properties or activities giving rise to the aforesaid income is effectively connected with a permanent establishment.
- (2) Expenses related to gross income referred to in paragraph (1) subparagraph b and subparagraph c may be deducted from the permanent establishment's income.
- (3) In calculating the profit of a permanent establishment:
 - a. administrative expenses incurred by the head office for the purpose of the permanent establishment is deductible subject to limitations regulated by the Director General of Taxes;
 - b. the following payments to its head office are not deductible:
 - 1) royalties or other payments paid in respect of the use of properties, patents, or other rights;
 - 2) payments in respect of management services or other services;
 - 3) interest, except in banking business;
 - c. payments referred to in subparagraph b received or accrued from the head office shall not be included in taxable object, except interest in banking business.

Elucidation Article 5

Any individual not residing in Indonesia, or any entity neither established nor domiciled in Indonesia, yet conducting business or engaged in activities through a permanent establishment in Indonesia, is subject to tax in Indonesia through that permanent establishment.

Paragraph (1)

Subparagraph a

A permanent establishment will be taxed on income from its business or activities and from its owned or controlled property. Accordingly, all income concerned is subject to tax in Indonesia

Subparagraph b

In accordance with this provision, income derived by a head office from business or activities, sale of goods or furnishing services which are similar to those undertaken by the permanent establishment is considered income of the permanent establishment because such business or activities fall within the scope of, and could be undertaken by, the permanent establishment. Example: Business or activities similar to those of a permanent establishment occurs where a foreign bank with a permanent establishment in Indonesia directly provides a loan to a company in Indonesia and not through its permanent establishment.

Sale of goods similar to those sold by a permanent establishment occurs where an overseas head office having a permanent establishment in Indonesia directly sells products similar to those sold by its permanent establishment to Indonesian buyers.

Furnishing services similar to those furnished by a permanent establishment occurs where a head office of an offshore consultant company directly provides consultancy services similar to those provided by the permanent establishment to clients in Indonesia.

Subparagraph c

Income referred to in Article 26 received or accrued by the head office is treated as income of a permanent establishment if the properties or activities giving rise to the aforesaid income is effectively connected with a permanent establishment. For example, "X" Inc. concludes a license agreement with PT "Y" for the use of the trademark of "X" Inc. Upon the use of that right, "X" Inc. receives compensation in the form of royalties from PT "Y". In connection with this agreement, "X" Inc. also provides management services to PT "Y" through a permanent establishment in Indonesia in the course of marketing products of PT "Y" bearing the trademark. In this case, the use of the "X" Inc. trademark by PT "Y" has an effective connection with the permanent establishment in Indonesia, consequently, X Inc.'s income in the form of royalties is treated as income to the permanent establishment.

Paragraph (2)

Sufficiently clear.

Paragraph (3)

Subparagraph a

Administration expenses incurred by a head office to support the business or activities of a permanent establishment in Indonesia may be deducted from the income of the permanent establishment. The type and amount of expenses that may be deducted are stipulated by the Director General of Taxes.

Subparagraphs b and c

Basically a permanent establishment and its head office are considered as a single unit, therefore, payments made by the permanent establishment to its head office, such as royalties on the use of head office property, are considered as a flow of funds within one company. Therefore, under this provision, payments made by a permanent establishment to its head office, such as royalties, compensation for services and interest is not deductible from the income of the permanent establishment. Where, however, the head office and the permanent establishment are engaged in a banking business, payments in the form of interest loan may be charged as an expense. As a consequence of the foregoing, payments of a similar type received by a permanent establishment from its head office are not considered as taxable income, except for interest received by a permanent establishment from its head office related to a banking business.

- (1) Resident Taxpayers and permanent establishments are entitled to claim the deductions in the form of expenses to earn, to collect and secure income from their gross income, including:
- a. costs which are directly or indirectly related to business, among others:
 - 1. costs of materials;
 - 2. costs in relation with employment or services including wages, salaries, honoraria, bonuses, gratuities and remuneration in the form of money;
 - 3. interest, rents and royalties;
 - 4. Travel expenses;
 - 5. Waste processing expenses;
 - 6. Insurance premiums;
 - 7. advertisement and selling expenses as stipulated by or based on the Minister of Finance Regulation
 - 8. Administrative expenses;
 - 9. Taxes other than income tax;
 - b. depreciation of tangible asset and amortization of rights and other expenditures which have useful life of more than 1 (one) year as referred to in Article 11 and Article 11 A;
 - c. contributions to a pension fund which its establishment is approved by the Minister of Finance;
 - d. losses incurred from the sale or transfer of properties owned and used in business or used for the purpose of earning, collecting and securing income;
 - e. losses from foreign exchange;
 - f. costs related to research and development carried out in Indonesia;
 - g. scholarships, apprenticeships and training expenses;
 - h. debts which are actually uncollectible, provided that:
 - 1. it has been expensed in commercial profit and loss statement.
 - 2. the Taxpayer shall submit the list of bad debts to the Directorate General of Taxes;
 - 3. the case has been filed to court or government agencies which handle state's receivables or there is a written agreement on the discharge of indebtedness between the debtor and creditor; or it has been published in media; or there is creditor's which states certain amount of bad debts have been written off
 - 4. the requirement stated in number 3 does not apply for small debtors as specified in article 4 paragraph (1) subparagraph k.
the procedure of which shall be stipulated by or based on Minister of Finance Regulation.
 - i. donation for national disaster which is stipulated by a Government Regulation;
 - j. donation for research and development conducted in Indonesia which is stipulated by a Government Regulation.
 - k. costs of social infrastructure development which is stipulated by a Government Regulation ;
 - l. donation in the form of education facilities which is stipulated by a Government Regulation ;
 - m. donation for sport enhancement which is stipulated by a Government Regulation.
- (2) The loss incurred, after subtracting the deductions referred to in paragraph 1 from gross income, shall be carried forward for a maximum of five successive years
- (3) An individual who is a resident Taxpayer is entitled to claim personal exemptions as referred to in Article 7.

Elucidation Article 6

Paragraph (1)

Charges which may be deducted from gross income are divided into 2 (two) categories, namely charges or expenses which have a useful life of not more than 1 (one) year and which has a useful life of more than 1 (one) year. Charges having a useful life of one year or less are treated as expenses for the year concerned, for example, salaries, administrative interest, routine expenses for waste disposal, etc. On the other hand, expenditures which have a useful life of more than one year will be deducted through depreciation or amortization. In addition, if within a taxable year there are losses with respect to a disposition of property or fluctuation in exchange rates, such losses may be deducted from the gross income.

Subparagraph a

Expenses as referred to in this subparagraph are commonly called daily expenditures, which can be deducted as expenses in the year of disbursement. In order to be deducted as expenses, the expenditures

must be either directly or indirectly connected with the business or activities for earning, collecting and securing income as a taxable object.

Therefore, expenditures for earning, collecting and securing income, which does not constitute a taxable object may not be deducted as expenses

Example:

Pension Fund "A", whose establishment has been approved by the Minister of Finance, derives gross income comprising as follows:

a)	income which is not treated as a taxable object	Rp100,000,000.00
	under Article 4 paragraph (3) h	
b)	other gross income:	<u>Rp300,000,000.00 (+)</u>
	Total gross income:	Rp400,000,000.00

If the total expenditure is Rp200,000,000.00 (two hundred million rupiahs), the expense which may be deducted in respect of earning, collecting and securing income is $\frac{3}{4} \times \text{Rp}200,000,000.00 = \text{Rp}150,000,000.00$.

Similarly, interest on loans used to buy stocks may not be deducted as an expense, provided that the dividends derived do not constitute a taxable object as described in paragraph (3) f of Article 4. That interest which cannot be deducted may be capitalized to add the acquisition cost of the stocks.

Expenditures which is not related with the activities of earning, collecting and securing income, such as expenditures for the personal benefits of shareholders, interest payment in respect of loans which is used for the personal benefit of debtors, and insurance premium payment for personal benefit, may not be deducted as an expenses.

A payment of insurance premium by an employer for the benefit of its employee may be deducted as a company expense; however, for the employee, the premiums constitute an income.

In order to be able to be deducted, expenditures with respect to employment must be made in cash. Expenditures in kind or benefit, such as free accommodation, cannot be deducted as expenses, and for the recipient they are not treated as income. However, certain expenditures in kind or benefit as provided in paragraph (1) e of Article 9 may be deducted as expenses, and for the recipient they are not treated as income.

Expenditures which may be deducted shall be made in the ordinary course of a business. Therefore, if such expenditures exceed the limits of fairness for the reason of dealing with a related person, the amount in excess of the fair limit may not be deducted from the gross income.

See also the provisions of paragraph (1) f of Article 9 and Article 18 and their respective elucidations.

Tax expenses for business purposes other than income tax, such as tax on land and building (PBB), stamp duty (BM), tax on hotel and restaurant, may be deducted as an expenses.

With respect to expenditures for advertisement, it is necessary to distinguish between expenses which are actually paid for advertisement and those which substantially constitute a donation. Expenses which are actually paid for advertisement may be deducted from gross income.

The amount of advertisement and selling expenses incurred which are allowed as gross income deduction shall be stipulated by Minister of Finance Regulation.

Subparagraph b

Expenditures to acquire tangible property and intangible property and other expenditures which have a useful life of more than one year shall be deducted through depreciation or amortization.

See also the provisions of paragraph (2) of Article 9, Article 11 , and Article 11 A and their respective elucidations.

Expenditures which by their nature constitute advance payments, such as rental payment for several years which is paid in advance, shall be expensed through allocation.

Subparagraph c

Contributions to a pension fund whose establishment has been approved by the Minister of Finance may be deducted as an expense, whereas contributions paid to a pension fund whose establishment has not been or has not yet been so approved may not be deducted as an expenses.

Subparagraph d

Losses due to a sale or disposition of property which, according to its initial purpose, was not intended to be sold or disposed and which was owned and used for a business or held for earning, collecting and securing income, may be deducted from the gross income.

Losses due to the sale or disposition of property which is owned by a company but not used for its business or which is not used for earning, collecting and securing income may not be deducted from the gross income.

Subparagraph e

Losses due to fluctuating foreign exchange rates could be recognized based on the accounting system adopted and shall be calculated consistently according to the prevailing Financial Accounting Standard in Indonesia.

Subparagraph f

Research and development expenditures incurred by a company which is carried out in Indonesia in reasonably sizeable amounts to discover new technology or new systems for the development of the company, may be expensed.

Subparagraph g

Expenditures on scholarships, apprenticeships, and training for the purpose of enhancing the quality of human resources may be expensed, by taking into consideration the fairness, including scholarships that could be deducted as expense are scholarships for students and other parties.

Subparagraph h

Sufficiently clear

Subparagraph i

Sufficiently clear

Subparagraph j

Sufficiently clear

Subparagraph k

Sufficiently clear

Subparagraph l

Sufficiently clear

Subparagraph m

Sufficiently clear

Paragraph (2)

If a loss is incurred after the expenditures allowed under paragraph (1) have been deducted from gross the income, the loss may be offset against the net income or taxable profit over 5 (five) successive years starting from the year following that in which the loss is incurred.

Example:

In 2009, PT "A" suffers a tax loss of Rp1,200,000,000.00 (one billion and two hundred rupiahs) . In the following 5 (five) years, the taxable profit/loss of PT "A" is as follows:

2010: tax profit Rp200,000,000.00
2011: tax loss (Rp300,000,000.00)
2012: tax profit Rp NIHIL
2013: tax profit Rp100,000,000.00
2014: tax profit Rp800,000,000.00

Calculation of the loss is as follows:

Tax loss in 2009	(Rp 1,200,000,000.00)
Tax profit in 2010	<u>Rp 200,000,000.00 (+)</u>
Balance of tax loss from 2009	(Rp 1,000,000,000.00)
Tax loss in 2011	<u>(Rp 300,000,000.00)</u>
Balance of tax loss from 2009	(Rp 1,000,000,000.00)
Tax profit in 2012	<u>Rp. NIHIL (+)</u>
Balance of tax loss from 2009	(Rp 1,000,000,000.00)
Tax profit in 2013	<u>Rp 100,000,000.00 (+)</u>
Balance of tax loss from 2009	(Rp 900,000,000.00)
Tax profit in 2014	<u>Rp 800,000,000.00 (+)</u>
Balance of tax loss from 2009	(Rp 100,000,000.00)

The balance of tax loss from 2009 amounting to Rp100,000,000.00 (one hundred million rupiahs) in the year 2014 may not be offset against the tax profit in year 2015 since the 5 year period has already expired; however, the tax loss 2011 amounting to Rp300,000,000.00 (three hundred million rupiahs) may be offset against the tax profit in 2015 and 2016, because the 5 year period for this loss commences in 2012 and finishes at the end of year 2016.

Paragraph (3)

In determining the taxable income of a resident individual Taxpayer, a deduction is given in the form of personal exemption (PTKP) under the provisions of Article 7

Article 7 (Law No. 36 Of 2008)

- (1) The amount of personal exemptions is as follows;
 - a. Rp15.840.000,00 (fifteen million eight hundred and forty thousand rupiah) for an individual Taxpayer;
 - b. additional Rp1.320.000,00 (one million three hundred and twenty thousand rupiah) for a married Taxpayer;
 - c. additional Rp15.840.000,00 (fifteen million eight hundred and forty thousand rupiah) for married Taxpayers' spouse provided they file a joint tax return as referred to in paragraph (1) of article 8;
 - d. additional Rp1.320.000,00 (one million three hundred and twenty thousand rupiah) for each dependent family member related by blood and by marriage in a direct lineage, and an adopted child with a maximum of three dependents;
- (2) The application of paragraph (1) is based on the facts and circumstances at the beginning of a taxable year or fraction of a taxable year;
- (3) The Minister of Finance, after consultation with the House of Representatives, shall stipulate the adjustment of personal exemptions;

Elucidation Article 7

Paragraph (1)

In determining the taxable income of an individual resident Taxpayer, personal exemption is deducted from the net income. In spite of personal exemption for a Taxpayer himself, an additional amount of personal exemption is available to a married Taxpayer.

A Taxpayer whose wife receives or derives income which is combined with his own income is given an additional personal exemption in respect of his wife amounting to Rp15.840.000,00 (fifteen million eight hundred and forty thousand rupiahs).

A Taxpayer whose relatives through blood or marriage in direct lineage are fully dependent on the Taxpayer, such as parents, parents-in-law, children or adopted children, is granted an additional personal exemption for up to a maximum of 3 (three) people. Family members who are fully dependent means family members who have no income and whose entire living expenses are borne by the Taxpayer.

Example:

Taxpayer "A" has a wife and 4 (four) dependent children. If his wife has income from an employer who has withheld income tax under Article 21 and the employment has no relationship to the business of her husband or other members of the family, the non-taxable income of Taxpayer "A" is Rp 21,120,000.00 {Rp 15,840,000.00 + Rp 1,320,000.00 + (3 x Rp 1,320,000.00)}. As for the wife, at the time of Article 21 tax withheld by her employer, there is a personal exemption of Rp15,840,000.00. If the wife's income is combined with that of her husband, the non-taxable income granted to Taxpayer "A" would be Rp 36,960,000.00 i.e. Rp 21,120,000.00 + Rp 15,840,000.00.

Paragraph (2)

The computation of personal exemption under paragraph (1) is determined by the status of the Taxpayer at the beginning of a taxable year or at the beginning of part of a taxable year. For instance, on January 1, 2009, Taxpayer "B" is married and has 1 (one) child. If a second child is born after January 1, 2009, the personal exemption of Taxpayer "B" for taxable year 2001 remains based on the marital status with 1 (one) child.

Paragraph (3)

Under this provision, the Minister of Finance is given an authority to adjust the personal exemption as described in paragraph (1) after consultations with the House of Representatives and by taking into consideration economic and monetary developments as well as developments in the annual cost of living index.

- (1) Income or losses of a married woman at the beginning of a taxable year or fraction of a taxable year, including loss originating from previous years that have not been offset as referred to in paragraph (2) of Article 6, shall be deemed as income or loss of her husband, except where the income is received or accrued exclusively from one employer and from which tax has been withheld in accordance with Article 21 and the employment is not related to the business or independent personal service of husband or any other relative.
- (2) Income of a married individual shall be taxed separately if;
 - a. they live separately based on a court decision;
 - b. it is requested in writing by both the husband and wife on the basis of an agreement for the separation of property and income;
 - c. it is requested by the wife who chooses to meet her tax right and obligation separately.
- (3) The net income of a married individual referred to in paragraph (2) subparagraph b and c shall be taxed on aggregate net income of the married individual, and the amount of tax to be paid by each of them shall be in proportion to their respective net income;
- (4) The income of a minor child shall be added up to the income of the parents.

Elucidation Article 8

Taxation system under this Law construes a family as a single economic unit which means that the income or loss of all family members is combined into one taxable unit and the fulfillment of the tax obligations is carried out by the head of the family. In certain cases, however, the fulfillment of tax obligations is conducted separately.

Paragraph (1)

Income or loss of a married woman at the beginning of a taxable year or at the beginning of a fraction of a taxable year is regarded as her husband's income or loss and taxed as a single unit.

Such aggregation shall not be made if the income of the wife is from employment and has been subjected to withholding tax by the employer, provided that:

- a. *the wife's income is solely obtained from one employer; and*
- b. *the wife's income is derived from employment which has no relationship with the business or independent personal service of the husband or any other member of the family.*

Example:

Taxpayer "A", who derives net income from business amounting to Rp100,000,000.00, (one hundred million rupiahs) has a wife who is an employee with Rp70,000,000.00 (seventy million rupiahs) of net income. If the wife's income is derived from one employer and tax on it has already been withheld by her employer and such work has no relationship with the business of her husband or any other member of the family, her net income amounting Rp70,000,000.00 (seventy million rupiahs) is not combined with that of Taxpayer "A" and the tax imposed on the income of the wife is final.

If, in addition to being employed, the wife of Taxpayer "A" runs a business, for example a beauty salon with a net income of Rp80,000,000.00 (eighty million rupiahs), her entire income of Rp155,000,000.00 (Rp70,000,000.00 + Rp80,000,000.00) is combined with the net income of Taxpayer "A". As a result, Taxpayer "A" will be taxed on his net income of Rp250,000,000.00 (Rp100,000,000.00 + Rp70,000,000.00 + Rp80,000,000.00). The tax withheld on his wife's income is not final, meaning that it may be credited against the tax due on the total income of Rp250,000,000.00 (two hundred and fifty million rupiahs) which will be reported in the husband's annual tax return.

Paragraph (2) and (3)

If a husband and his wife lives separately based on a court decision, the taxable income and tax payable are determined separately. If a husband and his wife have has a written agreement for separation of property and income or if his wife chooses to meet her tax right and obligation individually, the tax is determined based on the sum of their net income and each of them bears the tax in proportion to his/her respective net income.

Example:

The determination of tax for a husband and his wife who have a written agreement for separation of income or if his wife chooses to meet her tax right and obligation individually is as follows: If in the example in paragraph (1) the wife owns a beauty salon, the tax on the total income is determined based on the income amounting of Rp250,000,000.00 (two hundred and fifty million rupiahs). If the taxable income is Rp27,550,000.00 (twenty

seven million five hundred and fifty thousand rupiahs), then the amount of tax for the husband and his wife is determined as follows:

- Husband : $(Rp100,000,000.00/Rp250,000,000.00) \times Rp27,550,000,000.00 = Rp 11,020,000,000.00$

- Wife : $(Rp150,000,000.00/Rp250,000,000.00) \times Rp27,550,000,000.00 = Rp 16,530,000.00$

Paragraph (4)

Income of a minor child derived from any source with any characteristic is combined with that of the parents in the same fiscal year. The term "minor" means a person under the age of 18 (eighteen) who has never been married. If a minor, whose parents are separated, derives income, the tax is imposed by combining such income with that of the father or mother based on actual circumstances.

Article 9 (Law No. 36 Of 2008)

- (1) In determining the taxable income of a resident Taxpayer and a permanent establishment, the following are not deductible
- a. distribution of profit in whatever name or form, such as dividends, including dividends paid by an insurance company to policyholders, and any distribution of the surplus by a cooperative;
 - b. expenses charged or incurred for the personal benefit of shareholders, partners or members;
 - c. formation or accumulation of reserves, except:
 1. reserve for bad debt of a bank and other business which conduct business as a creditor, financial lease company, consumer finance company and factoring company;
 2. reserves in an insurance business including reserve for social aid made by Social Security Agency;
 3. guarantee reserve for Deposit Guarantor Institutions.
 4. reserves for cost of reclamation in general mining,
 5. reserve for cost of reforestation in forestry business;
 6. reserve for closing and maintaining industrial waste site conducted by industrial waste processing business.
 - d. the terms and conditions of which shall stipulated by or based on the Minister of Finance Regulation;
 - d. insurance premiums for health, accident, life, dual purpose, and education insurance which are paid by an individual Taxpayer, except those paid by an employer where premiums is treated as income of the Taxpayer;
 - e. consideration or remuneration related to employment or services given in the form of a benefit in kind, except provision of food and beverages for employees or consideration or remuneration given in the form of a benefit in kind in certain regions and in connection with employment as stipulated by or based on the Minister of Finance Regulation;
 - f. excessive compensation paid to shareholders or other associated parties as a consideration for work performed;
 - g. gifts, aid or donations, and inheritances as referred to in Article 4 paragraph (3) subparagraph a and subparagraph b, except donations as referred to in Article 6 paragraph (1) subparagraph i to subparagraph m and zakat received by an Amil Zakat Board or other amil zakat institutions established or approved by the government or compulsory religious donation for the followers of religions acknowledged by the Government, received by religious institutions established and approved by the Government, which are stipulated by or based on a Government Regulation.
 - h. income tax;
 - i. cost incurred for the personal benefit of a Taxpayer or his dependents
 - j. salary paid to a member of an association, firm, or limited partnership the capital of which does not consist of stocks;
 - k. administrative penalty in the form of interest, fines, and surcharges, as well as criminal penalty in the form of fines imposed pursuant to the tax laws.
- (2) Expenditures for earning, collecting, and securing of income having a useful life of more than one year, shall not be charged directly to income but shall be deducted through depreciation or amortization as referred to in Article 11 or Article 11 A.

Elucidation Article 9

Paragraph (1)

Expenditures incurred by a Taxpayer can be divided into deductible expenses and non-deductible expenses. Basically, deductible expenses which may be subtracted is the expense which has a direct or indirect relationship with the business or activities for earning, collecting and securing income which constitutes as a taxable income,

which may be made in the year of disbursement or over the useful life of the expenditure. Non-deductible expenses comprises of consumption of income, or those which exceed fairness.

Subparagraph a

Distribution of profits in whatever name or form, including dividend payments to shareholders, distribution of net income of a cooperative to its members, and dividend payments by an insurance company to its policyholders, may not be deducted from the income of the distributing entity since the profit distributed is part of the entity's income which will be taxed under this law.

Subparagraph b

There shall not be allowed as deduction expenses incurred or charged by a company for personal benefit of shareholders, partners, or members, such as renovation of personally owned houses, travel expenses, or insurance premiums paid by the company for the personal benefit of the shareholders or their families.

Subparagraph c

Sufficiently clear

Subparagraph d

Premiums for health, accident, life, dual purpose, and educational insurance paid by an individual Taxpayer himself may not be deducted from gross income, and any reimbursement or compensation paid by insurance company received by the individual does not constitute a taxable income. If the insurance premiums are paid or borne by the employer, such payments may be deducted as expenses by the employer and for the employee the payments are considered as a component of taxable income.

Subparagraph e

Consideration or compensation in kind or benefit as described in the elucidation of paragraph (3) d of Article 4 is not considered a taxable income. Consequently, such consideration or compensation cannot be deducted as an expense by the employer. However, stipulated or based on the Minister of Finance Regulation, the following compensation in kind or benefit may be deducted from the gross income of the employers and shall not be considered as income for the employees received.

- 1. consideration or compensation in kind or benefit provided in connection with work carried out in certain areas in line with the Government policy for stimulating the development in remote regions.*
- 2. consideration or compensation in kind or benefit given as necessities for the implementation of work as means for safety work or, because of work characteristics, such as safety equipment, uniforms for security guard, transportation to and from office and accommodation for a ship's crew and its similarity; and*
- 3. food and beverage provided for all employees in connection with work implementation.*

Subparagraph f

In respect of an employment, there is the possibility of compensation being paid to an employee who is also a shareholder. Since deductible expenses to earn, collect and secure income are limited to a fair amount in accordance with common business practice, on the basis of this provision any amount exceeding fairness may not be charged as an expense. As an example is an expert who happens to be a shareholder of a corporate provides some services to that corporate for compensation of Rp 50,000,000.00 (fifty million rupiahs).

Where for the same services rendered by another expert of equal ability, the payment is only Rp20,000,000.00 (twenty million rupiahs), the difference of Rp30,000,000.00 (thirty million rupiahs) may not be charged as an expense. For the expert who is also a shareholder, the Rp30,000,000.00 (thirty million rupiahs) is deemed as dividend.

Subparagraph 9

Sufficiently clear

Subparagraph h

The term of Income Tax in this provision is Income Tax payable by the relevant Taxpayer.

Subparagraph i

Cost incurred for the personal benefit of a Taxpayer or his dependents are personal consumption by the Taxpayer. Therefore such expenditure may not be deducted from the gross income of a firm.

Subparagraph j

An association, firma, or limited partnership the capital of which does not consist of stock are treated as a single unit, so that there is no payment of salaries. Therefore any salaries received by the members do not constitute payments that are deductible from the gross income of the entity.

Subparagraph k

Sufficiently clear

Paragraph (2)

In accordance with common business practice, expenditure related to the flow of income for several years should be charged over the number of years in which such expenditure has contribution to the income. In line with the principle of matching cost with revenue, in this provision, expenditure to earn, collect and secure income which has a useful life of more than 1 (one) year can not be deducted in one lump sum as an expense of the company in the year the expenditure is disbursed but must be charged through depreciation or amortization over its useful life as provided for in Article 11 and Article 11 A.

Article 10 (Law No. 10 Of 1994)

- (1) Acquisition cost or selling price in an arm's length transaction referred to in paragraph (4) of Article 18 shall be the amount actually paid or actually received; whereas, in a transaction between related Taxpayers, is the amount which should have been paid or received.
- (2) Acquisition value or selling value in the case of an exchange of assets shall be the amount which should be paid or received on the basis of the market price.
- (3) Acquisition value or transfer value of transferred asset in the case of liquidation, merger, split-up, spin-off, split-off, or taking over of a business shall be the amount which should be paid or received in accordance with the market price except the Minister of Finance otherwise determines.
- (4) In case of a transfer of asset:
 - a. that qualifies for paragraph (3) subparagraph a and subparagraph b of Article 4, the basis of the asset in the hands of the transferee shall be the book value in the hands of the transferor or other value determined by the Director General of Taxes;
 - b. that does not qualify for paragraph (3) subparagraph a of Article 4, then the basis of the asset in the hands of the transferee shall be the market value of the assets.
- (5) In case of a transfer of asset referred to in paragraph (3) c of Article 4, the basis of the transferred asset in the hands of the transferee shall be the market value of the asset.
- (6) Inventories and the use of inventories for the calculation of the cost of goods sold shall be valued at cost under weighted average or first-in first-out method.

Elucidation Article 10

This provision regulates the methods for valuing property, including inventories, in order to calculate income related to the use of property by a company, profit or loss on a sale or transfer of property, and income from a sale of inventory.

Paragraph (1)

Generally in the sale and purchase of property, the acquisition price to the purchaser is the price actually paid and the selling price to the seller is the price actually received. Included in the acquisition price are the purchase price and expenses incurred to obtain the asset, such as import duty, transportation expenses and installation costs. Therefore, in a sale and purchase between parties having a special relationship referred to in Article 18 paragraph (4), for the buyer the acquisition value is the amount that would have been paid if the parties were dealing at arms' length. A special relationship between a buyer and a seller may cause the acquisition price to be greater or less than that in an arm's length transaction. Consequently, this provisions regulate that acquisition value or purchase value of property of those parties is the amount that would have been paid or the sale price which should have been received.

Paragraph (2)

For property acquired through an exchange for other property, the acquisition value or sale value is the amount which would be paid or received if the transaction were based on market price.

Example:

	PT A (Prop.x)	PT B (Prop. Y)
Book Value	Rp10,000,000.00	Rp12,000,000.00
Market Price	Rp20,000,000.00	Rp20,000,000.00

There is an exchange of property between PT "A" and PT "B". Although there is no payment between the parties concerned, since the market price of the property exchanged is Rp20,000,000.00, then this amount of

Rp20,000,000.00 will be regarded as the acquisition price which should have been paid or the sale price which should have been received.

The difference between the market price and the book value of the property exchanged constitutes profit which is subject to tax. PT "A" obtained a profit of Rp10,000,000.00 (Rp20,000,000.00 - Rp10,000,000.00) and PT "B" obtained a profit of Rp8,000,000.00 (Rp20,000,000.00 - Rp12,000,000.00).

Paragraph (3)

In principle, if there is a transfer of property, the valuation of the property transferred should be based on market price. A transfer of property may be carried out in a business expansion by way of merger, consolidation, expansion, separation or take-over. Alternatively, a transfer may take place in the context of liquidation of business, or for other reasons.

The difference between the market price and the book value of the property being transferred is regarded as Taxable Income.

Example:

PT "A" and PT "B" merge and form a new company, PT "C". The book value and market price of the property of the two companies are as follows:

	PT A	PT B
Book Value	Rp200,000,000.00	Rp300,000,000.00
Market Price	Rp300,000,000.00	Rp450,000,000.00

The value of property contributed by PT "A" and PT "B" in the formation of PT "C" is the market price. On this basis, PT "A" derives a profit of Rp100,000,000.00 (Rp300,000,000.00 - Rp200,000,000.00) and PT "B" derives a profit of Rp150,000,000.00 (Rp450,000,000.00 - Rp300,000,000.00). Meanwhile, PT "C" records all the property as having a book value of Rp750,000,000.00 (Rp300,000,000.00 + Rp450,000,000.00).

In order, however, to reflect policies in the social, economic, investment, monetary and other fields, the Minister of Finance is authorized to determine a value other than the market price, that is, on the basis of book value ("pooling of interest"). In this instance, PT "C" would record the book value of property received from PT "A" and PT "B" as Rp 500,000,000.00 (Rp200,000,000.00 + Rp 300,000,000.00).

Paragraph (4)

In the event of a transfer of property through gift, aid or donation which meets the requirements of paragraph (3) a of Article 4, or inheritance, the acquisition value to the transferee is the book value of the property from the transferor. If a Taxpayer does not keep books so that the book value can not be known, the acquisition value will be specified by the Director General of Taxes.

In the case of a transfer by gift, aid or donation which does not fulfill the conditions of paragraph (3) a of Article 4 the acquisition value for the transferor is the market price.

Paragraph (5)

Participation by a Taxpayer in the capital of an entity may be achieved through a cash deposit of a transfer of property.

This provision regulates the method for valuation of property delivered in exchange for shares or capital participation, that is, valuation based on the market price of the property transferred.

Example:

Taxpayer "X" delivers 20 units of lathes with a book value of Rp25,000,000.00 to PT "Y" in place of capital participation with par value of Rp20,000,000.00. The market price of the machines is Rp40,000,000.00. In this case PT "Y" records the lathes as property valued at Rp40,000,000.00 which is not regarded as income for PT "Y". The difference between the par value of the shares and the market value of the property, which amounts to Rp 20,000,000.00 (Rp40,000,000.00 - Rp20,000,000.00) is recorded as additional paid-in capital (agio). For Taxpayer "X" the difference of Rp15,000,000.00 (Rp40,000,000.00 - Rp25,000,000.00) is considered as a Taxable income.

Paragraph (6)

In general, there are 3 (three) categories of inventories: finished goods or goods for sale, work in process, and raw materials and supplies.

The provisions of this section stipulate that the valuation of inventory may only be at acquisition cost. Valuation of inventory to calculate the cost of goods sold may only be on the basis of the average method or the "first-in-first-out" method. In accordance with common practice, this method of valuation also applies to securities.

Example:

1. Initial Inventory 100 units @ Rp9.00
2. Purchase 100 units @ Rp12.00
3. Purchase 100 units @ Rp11.25
4. Sold/used 100 units
5. Sold/used 100 units

The calculation of the cost of goods sold and inventory value using the average method is as follows:

No.	Purchased	Used	Balance of inventory
1			100 @ Rp 9.00 = Rp 900.00
2	100 @ Rp12.00 = Rp1,200.00		200 @ Rp10.50 = Rp2,100.00
3	100 @ Rp11.25 = Rp1,125.00		300 @ Rp10.75 = Rp3,225.00
4		100 @ Rp10.75 = Rp1,075.00	200 @ Rp10.75 = Rp2,150.00
5		100 @ Rp10.75 = Rp1,075.00	100 @ Rp10.75 = Rp1,075.00

Calculation of the cost of goods sold and the inventory value using the "FIFO" method is, for instance, as follows:

No.	Purchased	Used	Balance of Inventory
1			100 @ Rp 9.00 = Rp 900.00
2	100 @ Rp12.00 = Rp1,200.00		100 @ Rp 9.00 = Rp 900.00 100 @ Rp12.00 = Rp1,200.00
3	100 @ Rp11.25 = Rp1,125		100 @ Rp 9.00 = Rp 900.00 100 @ Rp12.00 = Rp1,200.00 100 @ Rp11.25 = Rp1,125.00
4		100 @ Rp 9.00 = Rp 900.00	100 @ Rp12.00 = Rp1,200.00 100 @ Rp11.25 = Rp1,125.00
5		100 @ Rp12.00 = Rp1,200.00	100 @ Rp11.25 = Rp1,125.00

Once a Taxpayer has selected one of the methods of valuation for goods used to calculate the cost, the same method must be used for the following years.

Article 11 (Law No. 36 Of 2008)

- (1) Depreciation with respect to cost of purchasing, erecting, expanding, improving, or replacing tangible assets, except land that bears ownership right, a right to build, a right to cultivate, and a right to use that is held for earning, collecting, and securing of income that has a useful life of more than one year, shall be calculated on a straight line basis over the useful life stipulated for the assets.
- (2) Depreciation with respect to tangible assets as referred to in paragraph (1), other than building, may also be calculated under the declining balance method over the useful life of the asset by applying the rate of depreciation to the book value, and at the end of the useful life the remaining of the book value shall be fully depreciated, provided that the method is adopted consistently.
- (3) Depreciation shall commence in the month expenditures are incurred; except for the asset still in progress, the depreciation shall commence in the month when the process is completed.
- (4) Subject to the approval of the Director General of Taxes, a Taxpayer may start to claim depreciation at the beginning of the month the asset is used to earn, to collect and to secure income or of the month the asset produces income.
- (5) If a Taxpayer revalues the asset as referred to in Article 19, then the basis of depreciation for the asset shall be the value resulting from the revaluation.
- (6) For the purpose of calculating depreciation, the useful life and the rate of depreciation for tangible asset shall be as follows:

Group of Tangible Assets	Useful Life	Rate of Depreciation under	
		Paragraph (1)	Paragraph (2)
I. Non Building Class:			
Group 1	4 years	25%	50%
Group 2	8 years	12,5%	25%
Group 3	16 years	6,25%	12,5%
Group 4	20 years	5%	10%
II. Building Class:			
Permanent	20 years	5%	
Non Permanent	10 years	10%	

- (7) Further regulation related to depreciation of tangible assets owned and used in certain business shall be stipulated by a Minister of Finance Regulation.
- (8) If there is a transfer or withdrawal of asset as referred to in paragraph (1) subparagraph d of Article 4 or a withdrawal of asset for other reasons, then the remaining book value of the asset shall be deducted as a loss and the selling price or insurance payment received or accrued shall be treated as income in the year the asset is withdrawn.
- (9) If the insurance payment can only be identified at a later date, then subject to the approval of the Director General of Taxes the amount of the loss as referred to in paragraph (8) shall be deducted at a later date.
- (10) If there is a transfer of tangible assets which qualifies for paragraph (3) subparagraph a and subparagraph b of Article 4, then the remaining book value of the asset may not be treated as a loss by the transferor.

- (11) Further regulation related to classification of tangible assets according to their useful life as referred to in paragraph (6) shall be stipulated by The Minister of Finance Regulation.

Elucidation Article 11

Paragraph (1) and paragraph (2)

Expenditures to acquire tangible property which have a useful life of more than 1 (one) year must be charged as expenses to earn, collect and secure income by allocating the expenditures during the useful life of the property through depreciation. Initial expenses to acquire land that bears ownership rights, including land with rights to build status, rights to cultivate and rights to use shall not be depreciated except if the land is used by the company or owned to earn income provided that the value of the land decreases through the business activities, for instance, the land is used by a roof tile manufacturer, ceramics manufacturer or a brick manufacturer.

The term initial expenses to acquire rights to build, rights to cultivate and rights to use means acquisition cost and administrative expenses initially paid to authorized agencies, whereas expenses to extent rights to build, rights to cultivate and rights to use shall be amortized over the useful life of those rights.

The methods of depreciation allowed under this provision are:

- a. in equal amounts over the useful life of the property (the straight line method); or*
- b. in decreasing amounts, by applying the appropriate depreciation rate to the balance of the book value (declining balance method).*

Methods of the depreciation of property must be applied consistently.

If a Taxpayer chooses the declining balance method, the book value must be fully depreciated by the end of the useful life.

In accordance with the bookkeeping system used by a Taxpayer, small tools of the same kind or a similar kind may be depreciated in one class.

Example of the implementation of the straight-line method.

A building is acquired for Rp1,000,000,000.00 (one billion rupiahs) and with a useful life of 20 (twenty) years, depreciation each year is Rp50,000,000.00 (fifty million rupiahs) (Rp1,000,000,000.00 : 20).

Example of the implementation of the declining balance method:

A machine is bought and installed in January 2009 for Rp150,000,000.00 (one-hundred fifty million rupiahs). Its useful life is 4 (four) years. If, for example, the depreciation rate is 50% (fifty percent), depreciation will be as follows:

<i>Year</i>	<i>Rate</i>	<i>Depreciation</i>	<i>Book Value</i>
<i>Acquisition cost</i>			<i>150,000,000.00</i>
<i>2009</i>	<i>50%</i>	<i>75,000,000.00</i>	<i>75,000,000.00</i>
<i>2010</i>	<i>50%</i>	<i>37,500,000.00</i>	<i>37,500,000.00</i>
<i>2011</i>	<i>50%</i>	<i>18,750,000.00</i>	<i>18,750,000.00</i>
<i>2012</i>	<i>Fullyamortized</i>	<i>18,750,000.00</i>	<i>0</i>

Paragraph (3)

Depreciation commences in the month the expense is incurred, or the property is completely finished, so that the depreciation of the first year is calculated on pro-rate basis.

Example 1:

Expenditures to build a building is Rp1,000,000,000.00 (one billion rupiahs). The development starts in October 2009 and is finished in March 2010. The depreciation of the acquisition cost starts in March of the taxable year of 2010.

Example 2:

A machine is bought and installed in July 2009 for Rp1 00,000,000.00 (one hundred million rupiahs). Its useful life is 4 (four) years. If, for example, the depreciation rate is 50% (fifty percent), the depreciation shall be calculated as follows:

<i>Year</i>	<i>Rate</i>	<i>Depreciation</i>	<i>Book Value</i>
<i>Acquisition cost</i>			<i>100,000,000.00</i>
<i>2009</i>	<i>6/12 x 50%</i>	<i>25,000,000.00</i>	<i>75,000,000.00</i>
<i>2010</i>	<i>50%</i>	<i>37,500,000.00</i>	<i>37,500,000.00</i>
<i>2011</i>	<i>50%</i>	<i>18,750,000.00</i>	<i>18,750,000.00</i>
<i>2012</i>	<i>50%</i>	<i>9,375,000.00</i>	<i>9,375,000.00</i>
<i>2013</i>	<i>Fully amortized</i>	<i>9,375,000.00</i>	<i>0</i>

Paragraph (4)

Based on the approval from the Director General of Taxes, depreciation may commence in the month the property is used to earn, collect or secure income or in the month the property yields. The time the property yields mentioned above is connected with the time the property produces and isn't connected with time the income earned.

Example:

Company "X", which operates in plantation, buys a tractor in 2009. The plantation begins to yield harvest in 2010. With the approval of the Director General of Taxes, the depreciation of the tractor could commence in the year 2010.

Paragraph (5)

Sufficiently clear

Paragraph (6)

To provide legal certainty for the Taxpayer in the depreciation of expenditure on tangible assets, this provision regulates groups of assets on the basis of period of utility and the depreciation rate, both for the straight line method and for the declining balance method.

The term a non-permanent building means a building that is a temporary in nature and constructed of materials which do not last long, or a movable building with a useful life of not more than 10 (ten) years; for example, barracks and dormitories made of wood and used by employees.

Paragraph (7)

In the context of recognizing the specific characteristics of certain business sector, such as hardwood plantations, forestry and animal husbandry, special arrangements are required for the depreciation of tangible assets used by such businesses, the provisions of which shall be regulated by or based on the Minister of Finance Regulation.

Paragraph (8) and (9)

In general, profit or loss on a transfer of property is taxed in the year of the transaction.

If property is said or lost due to fire, the net income from such property, namely the difference between the sale price and expenses incurred related to the sale and/or any insurance compensation, is recorded as income for the year the transaction occurs or the year the insurance compensation is received and the book value of the assets is charged as loss in the taxable year concerned.

If the certain amount of insurance compensation can only be certain out later, a Taxpayer may submit a request to the Director General of Taxes to have an amount equal to the loss expensed in the year the insurance compensation is received.

Paragraph (10)

Notwithstanding the provisions of paragraph (8), for a transfer of a tangible asset that meet the requirements as referred to in paragraph (3) a and b of Article 4, the book value may not be expensed as a loss by the transferor.

Paragraph (11)

To provide uniformity for the Taxpayer in effecting depreciation, the Minister of Finance is authorized to determine the types of property included in each group of useful life which must be followed by Taxpayers.

- (1) Amortization with respect to cost of acquiring intangible asset and other costs including cost of extending right to build, right to cultivates, right to use, and goodwill that has a useful life of more than one year which is used to earn, to collect and to secure income shall be calculated under straight line method or declining balance method by applying the amortization rate to the costs or the book value and at the end of the useful life the remaining of the book value shall be fully amortized provided that the method is adopted consistently.
- (1a) Amortization shall commenced in the month where the expenditures are incurred except for certain businesses which shall be stipulated by the Minister of Finance Regulation;
- (2) For the purpose of calculating amortization, the useful life and the rate of amortization shall be as follows:

Group of Intangible Assets	Useful Life	Rate of Amortization under	
		Straight Line Method	Declining Balance Method
Group 1	4 years	25%	50%
Group 2	8 years	12,5%	25%
Group 3	16 years	6,25%	12,5%
Group 4	20 years	5%	10%

- (3) Expenditures incurred prior to the establishment and the capital expansion of an entity shall be deducted in the year the expenditures are incurred or amortized as stipulated in paragraph (2).
- (4) Amortization of expenditures to acquire rights and other expenditures that have a useful life of more than one year in oil and gas industry shall be calculated under the unit of production method.
- (5) Amortization of expenditures to acquire mining rights other than referred to in paragraph (4), rights on forestry concession and rights on the exploitation of natural resources and other natural products that have a useful life of more than one year, shall be calculated using the unit of production method, up to a maximum of 20% (twenty percent) per year.
- (6) Expenditures incurred prior to commercial operations, which have useful life of more than one year, shall be capitalized and amortized as stipulated in paragraph (2).
- (7) In case of transfer of intangible asset or rights referred to in paragraph (1), paragraph (4) and paragraph (5), the book value of the asset or the rights shall be deducted as a loss and the payment received shall be treated as income in the year the transfer occurred.
- (8) In case of a transfer of intangible asset that complies with the conditions as referred to in paragraph (3) subparagraph a and subparagraph b of article 4, the book value of such asset shall not be treated as a loss by the transferor.

Elucidation Article 11

Paragraph (1)

The acquisition cost of intangible asset and other expenditure including cost of extending rights to use of a building, rights to cultivate, rights to utilize, and goodwill that have a useful lifes of more than one year shall be amortized with the following method:

- a. *in equal amounts every year in its useful life, or;*
- b. *in decreasing amount every year by applying amortization rate to its book value.*

For amortization of intangible assets using the declining balance method, the book value of the asset shall be fully amortized by the end of the useful life.

Paragraph (1a)

Amortization shall commence in the month expenditures are incurred, so the first year of amortization is calculated on a pro-rate basis.

In order to fit with the characteristics of certain businesses, amortization in these businesses will be regulated by the Minister of Finance Regulation.

Paragraph (2)

The determination of useful life and amortization rate for intangible assets is intended to provide uniformity for Taxpayers in conducting amortization. A Taxpayer may amortize in accordance with the method selected as referred to in paragraph (1) based on the actual useful life of each intangible assets. The applicable amortization rate is based on the group of useful life as set out in this provision. Where the useful life of an intangible asset does not correspond with any of those listed, the Taxpayer should use the nearest useful life

group. For example, an intangible asset with an actual useful life of 6 (six) years may use the listed group of useful life 4 (four) years or that of 8 (eight) years. If the actual useful life is 5 (five) years, the asset is amortized using the rate applicable to the 4 (four) years group of useful life.

Paragraph (3)

Sufficiently clear

Paragraph (4)

The unit of production method is implemented by applying an amortization rate equivalent to the ratio of oil and gas production in the relevant year to the estimated total reserves of oil and gas in that location.

If the amount of actual production is less than their estimated reserves, so that there is unamortized expenditure to acquire rights or any other expenditure, the whole remaining balance may be expensed in the tax able year concerned.

Paragraph (5)

Expenditures to acquire mining rights other than for oil and gas, forestry concessions, natural resources concessions or other natural products such as concessions over sea products are amortized based on the unit of production method up to maximum of 20% (twenty percent) per year.

Example:

Expenditure amounting to Rp500,000,000.00 (five hundred million rupiahs) to acquire a forestry concession with a potential of 10,000,000.00 (ten million) tons of wood is amortized in accordance with the percentage of production units actually produced in the relevant year. If, in any taxable year, the production is 3,000,000.00 (three million) tons, i.e. 30% (thirty percent) of the available potential, then despite the 30% (thirty percent) production, the maximum amount of amortization deductible from gross income in that year is 20% (twenty percent) of the expenditure, or Rp100,000,000.00 (one hundred million rupiahs).

Paragraph (6)

Pre-operating expenditures are expenses incurred before the commercial operation begins, for example feasibility studies and cost of trial production, but not including routine operational expenses such as employee salaries, electricity, telephone and other office expenses. Routine operational expenditures may not be capitalized but must be expensed immediately in the year of disbursement.

Paragraph (7)

Example:

Expenditure by Company "X" to acquire oil and natural gas exploration rights at a given location amounts to Rp 500,000,000.00. The estimated petroleum content in the area is 200,000,000 (two hundred million) barrels. After oil and gas production has reached 100,000,000 (one hundred million) barrels, Company "X" sells the exploration mining rights to another party for Rp300,000,000.00. Calculation of profit and loss from the transfer of the right is as follows:

Acquisition cost	= Rp500,000,000.00
Amortization expensed	
100,000,000/200,000,000 barrels (50%)	= Rp250,000,000.00
Book value of asset	= Rp250,000,000.00
Transfer price	= Rp300,000,000.00

Therefore, the book value of Rp250,000,000.00 is charged as loss, and Rp300,000,000.00 is recorded as income.

Paragraph (8)

Sufficiently clear

Article 12 (Law No. 10 Of 1994)

Deleted

Elucidation Article 12

Sufficiently clear

Article 13 (Law No. 10 Of 1994)

Deleted

Elucidation Article 13

Sufficiently clear

Article 14 (Law No. 36 Of 2008)

- (1) Deemed profit to determine net income shall be formulated and adjusted from time to time, and issued by the Director General of Taxes.
- (2) An individual Taxpayer whose gross income of business activities or independent service in on year is less than Rp4.800.000.000,00 (four billion eight hundred million rupiah), may calculate his net income by applying the deemed profit as referred to in paragraph (1), provided that it is communicated to the Director General of Taxes within the first three months of the taxable year concerned.
- (3) A Taxpayer who calculates net income using the deemed profit as referred to in paragraph (2), shall be obliged to keep records as referred to in the provisions of the Law on General Rules and Procedures of Taxation.
- (4) A Taxpayer who fails to inform the Director General of Taxes to choose deemed profit as referred to in paragraph (2) is deemed to choose to keep books of account.
- (5) A Taxpayer who is obliged to keep books of account or records, including a Taxpayer as referred to in paragraphs (3) and (4), but fails to keep or completely keep records or books of account, or fails to reveal records or books of account or supporting evidence, in such case the net income will be calculated using deemed profit and the gross income will be calculated in other basis as stipulated by or based on the Minister of Finance Regulation.
- (6) Deleted.
- (7) The amount of gross income as referred to in paragraph (2) may be adjusted by the Minister of Finance Regulation.

Elucidation Article 14

Correct and complete information concerning a Taxpayer's income is very important to impose a fair and appropriate amount of tax in accordance with economic capability of the Taxpayer. To provide such information, a Taxpayer must keep proper books of account. It is apparent, however, that not all Taxpayer are capable of keeping of books of account. All non-individual Taxpayer and permanent establishment are obliged to keeps of account. Individual Taxpayers conducting business or performing independent work within a specified turnover are not obliged to keep books of account.

To facilitate calculation of the net income for such Taxpayers, Director General of Taxes is authorized to issue a deemed profit.

Paragraph (1)

Deemed profit is a guideline to determine net income, issued by the Director General of Taxes and continuously adjusted. The use of deemed profit is mainly applied under the following conditions:

- a. *there is no better basis for calculation, i.e. complete books, or*
- b. *the books or records on gross income performed by the Taxpayer appear to be untrue.*

The deemed profit shall be formulated on the basis of research or other data and by having regard to fairness.

For a Taxpayer who is not capable to keep books of account, the deemed profit is expected to be helpful in computing net income.

Paragraph (2)

The deemed profit may only be used by an individual Taxpayer whose gross income does not exceed Rp4,800,000,000.00 (four billion and eight hundred million rupiahs). For this purpose, the Taxpayer shall communicate to the Director General of Taxes within the first 3 (three) months of the taxable year concerned.

Paragraph (3)

An individual Taxpayer who uses deemed profit is obliged to keep records on gross income as regulated in the Law on General Rules and Procedures on Taxation. The records are intended to facilitate in applying the deemed profit.

Paragraph (4)

An individual Taxpayer entitled to use the deemed profit but failing to notify the Director General of Taxes within the prescribed duration of time, is deemed to choose to keep books of account.

Paragraph (5)

A Taxpayer who is obliged to keep books of account and or is obliged to keep records and or deemed to choose to keep books of account but:

- a. fails to or not fully keep complete books of account or record;*
- b. fails to reveal the books of account or record or their supporting evidence during the audit;*

so the real gross income is unknown, his gross income will be calculated on other basis determined by or based on the Minister of Finance Regulation and his net income will be calculated on the basis of deemed profit.

Paragraph (6)

Sufficiently clear

Paragraph (7)

The Minister of Finance may adjust the limit of gross income as referred to in paragraph (2), having regard to the economical development and the capability of Taxpayers to keep books of account.

Article 15 (Law No. 10 Of 1994)

Specific deemed profit for calculating net income of certain Taxpayer whose income cannot be calculated by the provision of paragraph (1) or paragraph (3) of Article 16 shall be determined by the Minister of Finance.

Elucidation Article 15

This provision regulates the Special Deemed Profit for certain Taxpayer, among others are international shipping or aircraft companies, gas and geothermal drilling companies, foreign trading companies and companies investing in the form of "build, operate and transfer".

To avoid difficulties in calculating Taxable Income for such Taxpayer, and having regard to practical considerations, or in accordance to normal practice for tax imposition in such business sectors, the Minister of Finance is authorised to stipulate a specific deemed profit to be applied in calculating the net income for such Taxpayer.

**CHAPTER IV
METHODS OF TAX CALCULATION**

Article 16 (Law No. 36 Of 2008)

- (1) Taxable income of a resident Taxpayer in a taxable year shall be income as referred to in paragraph (1) of Article 4 reduced by allowable deductions as referred to in paragraph (1) and (2) of Article 6, paragraph (1) of Article 7 and paragraph (1) subparagraph c, subparagraph d, subparagraph e and subparagraph g of Article 9.
- (2) Taxable income of Taxpayer as referred to in Article 14 shall be calculated by applying deemed profit as stipulated in that article, and in case of an individual Taxpayer, the amount as calculated by applying the deemed profit is deducted with personal exemptions as referred to in paragraph (1) of Article 7.
- (3) Taxable income of a non resident Taxpayer conducting business or engaged in activities through a permanent establishment in Indonesia in a taxable year, shall be income as referred to in paragraph (1) of Article 5 with regard to paragraph (1) of Article 4 reduced by allowable deductions as referred to in paragraph (2) and (3) of Article 5, paragraph (1) and (2) of Article 6, and paragraph (1) subparagraph c, subparagraph d, subparagraph e, and subparagraph g of Article 9.
- (4) In case the tax obligation of an individual resident Taxpayer covers only a fraction of a taxable year as referred to in paragraph 6 of Article 2A, his taxable income is calculated by multiplying the net income therefrom with a fraction which would arrive at a full year net income.

Elucidation Article 16

Taxable Income is the basis for calculating the amount of income tax payable. In this Law, there are two classes of Taxpayer, namely resident Taxpayer and non-resident Taxpayer.

For resident Taxpayer, there are basically two methods for determining the amount of Taxable Income, namely the common calculation method and application of deemed profit method.

In addition, there is a Special Deemed Profit which is applied to certain Taxpayers based on the Minister of Finance Decree.

For non-resident Taxpayer, the determination of Taxable Income can be differentiated between:

1. *non-resident Taxpayers conducting business or engaged in activities through a permanent establishment in Indonesia;*
2. *other non-resident Taxpayers.*

Paragraph (1)

For resident Taxpayers who keep books of account and records, Taxable Income is calculated by using the common method, as in the following example:

- Gross Income	Rp 6,000,000,000.00
- Expenses to earn collect and secure income	<u>(Rp 5,400,000,000.00) (-)</u>
- Profit (net business income)	Rp 600,000,000.00
- Other income	Rp 50,000,000.00
- Expenses to earn, recover and secure other income	<u>(Rp 30,000,000.00) (-)</u>
	Rp 20,000,000.00 (+)
- Total net income	Rp 620,000,000.00
- Compensation for loss	<u>(Rp 10,000,000.00) (-)</u>
- Taxable Income (for entity Taxpayer)	Rp 610,000,000.00
- Personal exemption for individual Taxpayer (wife + 2 children)	<u>(Rp 19,800,000.00) (-)</u>
- Taxable Income (for individual Taxpayer)	Rp 590,200,000.00

Paragraph (2)

For individual Taxpayers who are not obliged to keep books, Taxable Income is calculated using the deemed profit, as in the following example:

- Gross Income	Rp 4,000,000,000.00
- Net Income (in accordance with deemed profit) for instance 20%	Rp 800,000,000.00
- Other Net Income	<u>Rp 5,000,000.00 (+)</u>
- Total Net Income	RP 805,000,000.00
- Personal exemption (wife + 3 children)	<u>(Rp 21,120,000.00) (-)</u>

- Taxable Income Rp 783,880,000.00

Paragraph (3)

For a non-resident Taxpayer which conducts business or engage in activities through a permanent establishment in Indonesia, the method of calculating Taxable Income is basically the same as for an entity resident Taxpayer. Since a permanent establishment is obliged to keep books, Taxable Income is calculated by the common method.

Example:

- Gross Income	Rp 10,000,000,000.00
- Expenses to earn, collect and secure income	<u>(Rp 8,000,000,000.00) (-)</u>
	Rp 2,000,000,000.00
- Income from interest	Rp 50,000,000.00
- Income derived by head office from sale of goods of the same kind as those sold through the permanent establishment	Rp 2,000,000,000.00
- Expenses to earn, collect & secure income	<u>Rp 1,500,000,000.00 (-)</u>
	Rp 500,000,000.00
- Dividend derived by head office, which is effectively connected with the permanent establishment	<u>Rp 1,000,000,000.00 (+)</u>
	Rp 3,550,000,000.00
- Expenses referred to in paragraph (3) of Article 5	<u>Rp 450,000,000.00 (-)</u>
- Taxable Income	Rp 3,100,000,000.00

Paragraph (4)

An individual who is not married and whose tax obligations as a resident Taxpayer covers only 3 (three) months derives income of Rp 150,000,000.00 within such period. His/her taxable income shall be computed as follows:

Income within 3 (three) months	Rp 150,000,000.00
Income within a year:	
360 : (3 x 30) x Rp 150,000,000.00	Rp 600,000,000.00
Personal exemption 1 wife + 3 children	<u>(Rp 15,840,000.00) (-)</u>
Taxable Income	Rp 584,160,000.00

Article 17 (Law No. 36 Of 2008)

(1) The tax rate applicable to each taxable income brackets is as follow:

a. Resident Individual Taxpayer

Taxable Income Tax Brackets	Tax Rate
Rp 50,000,000.00 (fifty million rupiah) or less	5% (five percent)
Over Rp 50,000,000.00 (fifty million rupiah) - Rp 250,000,000.00 (two hundred fifty million rupiah)	15% (fifteen percent)
over Rp 250,000,000.00 (two hundred fifty million rupiah) - Rp 500,000,000.00 (five hundred million rupiah)	25% (twenty five percent)
over Rp 500,000,000.00 (five hundred million rupiah)	30% (thirty percent)

b. Tax rate applicable to entities as a resident Taxpayer and permanent establishment is 28% (twenty eight percent).

(2) The highest tax rate as referred to in paragraph (1) subparagraph a may be lowered but shall not be lower than 25% (twenty five percent) which is stipulated by the Government Regulation.

(2a) The tax rate as referred to in paragraph (1) subparagraph b becomes 25% (twenty five percent) which applies starting from the tax year of 2010.

(2b) Entity as a resident Taxpayer and public company whose at least 40% of their paid in capital are traded in the Indonesian stock exchange and meet other certain requirements can obtain a rate of 5% (five percent) lower than the tax rate as referred to in paragraph (1) subparagraph b and paragraph (2a), which is stipulated by or based on Government Regulation.

(2c) Tax rate applicable to dividend received by an individual resident Taxpayer is a maximum of 10% (ten percent) and final in nature.

- (2d) Further regulation related to tax rate as referred to in paragraph (2c) shall be stipulated by the Government Regulation
- (3) The amount of taxable income bracket as referred to in paragraph (1) subparagraph a may be adjusted by the Minister of Finance Decree.
- (4) For the purposes of the application of tax rates as referred to in paragraph (1), the amount of taxable income shall be rounded down in thousands.
- (5) Where an individual resident Taxpayer's obligation covers only a fraction of a taxable year referred to in paragraph (4) of Article 16, his tax payable is calculated by the fraction of the number of days divided by 360 and multiplied by the amount of the tax payable for one full year.
- (6) For the purpose of the calculation of tax payable as referred to in paragraph (5), one month is deemed to be 30 (thirty) days.
- (7) A special rate on income as referred to in paragraph (2) of Article 4 may be applied by virtue of the Government Regulation, provided that it does not exceed the highest marginal rate as referred to in paragraph (1).

Elucidation Article 17

Paragraph (1)

Subparagraph a

An individual who is not married and whose tax obligations as a resident Taxpayer covers only 3 (three) months derives income of Rp 150,000,000.00 within such period. His/her taxable income shall be computed as follows:

Taxable Income *Rp 600,000,000.00*

Income Tax Payable:

5% x Rp 50,000,000.00 = Rp 2,500,000.00

15% x Rp 200,000,000.00 = Rp 30,000,000.00

25% x Rp 250,000,000.00 = Rp 62,500,000.00

35% x Rp 100,000,000.00 = Rp 30,500,000.00 (+)

Rp 125,000,000.00

Subparagraph b

An example of computation of tax payable of corporate Taxpayers and permanent establishments are as follows:

Taxable Income *Rp 1,250,000,000.00*

Income Tax Payable : 28% x Rp 1,250,000,000.00 = Rp 350,000,000.00

Paragraph (2)

The adjustment of marginal rate referred to in this paragraph shall nationally have an effect on January 1st and be published no later than 1 (one) month before the adjusted rate is effective, and it shall be presented by the government to the Parliaments in the proposed national budget arrangement discussion.

Paragraph (2a)

Sufficiently Clear

Paragraph (2b)

Sufficiently Clear

Paragraph (2c)

Sufficiently Clear

Paragraph (2d)

Sufficiently Clear

Paragraph (3)

The amount of taxable income brackets as referred to in paragraph (1) subparagraph a shall be adjusted to the adjustment factor, such as inflation rate, which is stipulated by the Minister of Finance Decree.

Paragraph (4)

Example:

For the implementation of tax rate, the taxable income of Rp.5,050,900.00 shall be rounded down into Rp.5,050,000.00.

Paragraph (5) dan (6)

Example:

Taxable Income of one year (computed in accordance with paragraph (4) of Article 16) Rp.584,160,000.00

Income tax of one year:

<i>5% x Rp 50,000,000.00 =</i>	<i>Rp 2,500,000.00</i>
<i>15% x Rp 200,000,000.00 =</i>	<i>Rp 30,000,000.00</i>
<i>25% x Rp 250,000,000.00 =</i>	<i>Rp 62,500,000.00</i>
<i>30% x Rp 84,160,000.00 =</i>	<i><u>Rp 25,248,000.00 (+)</u></i>
	<i>Rp 120,248,000.00</i>

Income tax payable of a fraction of taxable year (3 months):

(3 x 30) : 360 x Rp 120,248,000.00 = Rp 30,062,000.00

Paragraph (7)

This provision authorizes the government to determine a special rate of certain types of income as referred to in paragraph (2) of Article 4, which shall be treated as final, provided that it does not exceed the highest marginal rate as referred to in paragraph (1). The determination of a special rate shall be based on the principle of simplicity, fairness and equal tax treatment.

Article 18 (Law No. 36 Of 2008)

- (1) The Minister of Finance is authorized to issue a regulation on debt equity ratio for the purposes of computing tax payable in accordance with this law.
- (2) The Minister of Finance is authorized to determine as when dividends accrued by a resident Taxpayer on participation in an offshore company other than public companies, provided that one of the following condition is met;
 - a. the Taxpayer owns at least 50% of the paid in capital of the company; or
 - b. the Taxpayer together with other resident Taxpayer own at least 50% of the paid in capital of the company.
- (3) Director General of Taxes is authorized to reallocate income and deductions between related parties and to characterize debt as equity for the purposes of the computation of taxable income to assure that the transaction are those which would have been made between independent parties using price comparison method between independent parties, resale price method, cost-plus method, or other methods.
- (3a) The Director General of Taxes is authorized to conclude an agreement with a Taxpayer and with a tax authority from other countries on transfer pricing method between related Taxpayers as referred to in paragraph (4) which may cover a certain period and to evaluate it as well as to renegotiate after the agreement is expired.
- (3b) A Taxpayer who purchases shares or assets of other entity through a special purpose company can be deemed as the real party who conducts the transaction, provided that such taxpayer is the affiliation of the special purpose company and the price of the transaction is unfairly settled.
- (3c) The sale or transfer of shares of a conduit company or special purpose company which is established or domiciled in tax haven countries and the conduit company or the special purpose company is the affiliation of an entity established or domiciled in Indonesia or a permanent establishment in Indonesia, could be deemed as the sale or transfer of shares of an entity that is established or domiciled in Indonesia or permanent establishment in Indonesia.

- (3d) The amount of income that individual resident taxpayer has received from an employer which is the affiliation of non residents entity may be adjusted by tax authority, in case of the employer transfers the payment in forms of expenses or other expenditures which is paid to his affiliation.
- (3e) The implementation of regulation as referred to in paragraph (3b), paragraph (3c) and paragraph (3d) shall be stipulated by or based on the Minister of Finance Regulation.
- (4) The term "related Taxpayer" as referred to in paragraphs (3) to paragraphs (3d), paragraph (1) subparagraph (f) of Article 9, and paragraph (1) of Article 10 means:
- a. A Taxpayer who owns directly or indirectly at least 25% of equity of other Taxpayers; a relationship between Taxpayer through ownership of at least 25% of equity of two or more Taxpayer, as well as relationship between two or more Taxpayer concerned;
 - b. A Taxpayer who controls other Taxpayer; or two or more Taxpayers are directly or indirectly under the same control;
 - c. a family relationship either through blood or through marriage within one degree of direct or indirect lineage.
- (5) Deleted;

Elucidation Article 18

Paragraph (1)

This law authorizes the Minister of Finance to prescribe the ratio of the company's liabilities to the company's equity, which shall be valid for tax purposes. In a commercial business, there is a certain level of arm's length debt equity ratio. If debt equity ratio of a company is higher than the arm's length debt equity ratio, in general the company is economically not in good condition. In such case, this law considers it as disguise equity for the purpose of computation of taxable income.

The term "equity" shall be referred to the term equity in accordance with the general accounting principles, and the term arm's length or ordinary business means fairly engage in business activities.

Paragraph (2)

In line with the globalization and the enhancement of economic and international trade, resident Taxpayers may invest in an offshore company. To minimize tax avoidance, the Minister of finance is authorized to determine as when dividends accrued by a resident Taxpayer on participation in an offshore company other than public company.

Example:

PT. A and PT. B respectively own share of 40% and 20% in X Ltd. which is domiciled in country Q. X Ltd. is not a public company. In 2009, X Ltd's net income after tax is Rp 1,000,000,000.00 (one billion rupiah).

In such case, the Minister of Finance is authorized to determine as when dividend is accrued and the basis of computation.

Paragraph (3)

The purpose of this provision is to prevent tax avoidance due to the existence of special relationship. When special relationship exists, there is a possibility that income or expense may be understated or overstated. In such case, the Director General of taxes is authorized to reallocate income or expense to assure that the transactions are those which would have been made between independent parties. In reallocating those income and/or expenses, the following methods are used, namely comparable uncontrolled price method, resale price method, cost-plus method, or other methods such as profit split method and transactional net margin method.

There is also a possibility that equity is stated as debt, namely disguised equity. In such case, the Director General of Taxes is authorized to characterize debt as equity. This re-characterization may be made by comparing the ratio of the company's liabilities to the company's equity of independent parties, or based on other data. As a result, interest paid with respect to that debt is not deductible and in the hands of shareholders the payment is considered as dividend which is subject to tax.

Paragraph (3a)

The term "Advance Pricing Agreement" (APA) means an agreement between Taxpayer and the Director General of Taxes on transfer pricing methodology for transactions between related parties. The purpose of APA is to reduce a mistreatment of transfer pricing practice by multinational enterprises. APA may cover prices of goods, amounts of royalty etc. depending on the agreement. The benefit of APA is, in addition providing a legal certainty of treatment to the Taxpayers and easier tax calculation, the Tax Authority does not have to adjust the selling price and profits of products sold by a Taxpayer to another Taxpayer in the same group. APA may be done unilaterally whereby the APA is concluded between the Taxpayer and Director General of Taxes, or bilaterally whereby the APA is concluded with a competent authority of a treaty country concerning the Taxpayers of that country.

Paragraph (3b)

This provision is intended to prevent tax evasion by tax payers who purchase shares / participation in a resident entity through special purpose company.

Paragraph (3c)

Example:

X Ltd, established and domiciled in country A which provides tax protection (tax haven country), has a 95% (ninety-five percent) shares of PT X which was established and domiciled in Indonesia. X Ltd is a conduit company which was established and fully owned by Y Co, a resident company in country B whose goal as a conduit company in the ownership of majority shares of PT X.

If Y Co sells all of its shares of X Ltd to the PT Z which is resident taxpayer, from legal formal point of view, this transaction can be categorized as transfer of shares of nonresident entity by nonresident entity. However, in fact this is transaction is a transfer of ownership (shares) of resident entity by nonresident entity so that income derived from this transfer is subject to the Income Tax.

Paragraph (3d)

Sufficiently clear

Paragraph (3e)

Sufficiently clear

Paragraph (4)

A special relationship between Taxpayers may result from the dependency or the relationship of the following condition between those parties:

- a. An ownership or share of equity*
- b. A participation in management or technology.*

In addition, related parties between individual Taxpayers may also result from their relationship by blood or by marriage.

Subparagraph a

A special relationship is deemed to exist if there is a direct or indirect ownership of at least 25% of equity.

For instance, PT. A owns 50% of PT. B's shares. Such ownership is categorized as direct ownership.

Furthermore, PT. B owns 50% of PT. C's shares, accordingly PT. A as shareholder of PT. B indirectly owns 25% of PT. C's shares. In such case, PT.A, PT.B, and PT.C are related parties. If PT.A also owns 25% of PT. D's shares, PT. B, PT. C, and PT. D are also related parties.

The ownership may also exist between individual and entity.

Subparagraph b

A special relationship between Taxpayers may also result from a participation in management or technology even though there is no ownership.

A special relationship is deemed to exist if one or more enterprises are controlled by the same persons, or the relationship between enterprises is controlled by the same person.

Subparagraph c

The term "relationship by blood in one degree of direct lineage vertically" means parents, and son or daughter. The term "relationship by blood in one degree of direct lineage horizontally" means relatives.

The term "relationship by marriage in one degree of direct lineage vertically" means parents in law, and stepson or stepdaughter. The term "relationship by marriage in one degree of direct lineage horizontally" means relatives in law.

Paragraph (5)

Sufficiently clear

Article 19 (Law No. 36 Of 2008)

- (1) The Minister of Finance is authorized to issue a regulation concerning revaluation of assets and adjustment factor when elements of expenditures and income are in appropriate due to inflation.
- (2) By virtue of the Minister of Finance Regulation, a certain tax rate, not more than the rate applied as referred to in paragraph (1) of Article 17, shall be applied to the excess value of revaluation of asset.

Elucidation Article 19

Paragraph (1)

A sharp increase in price and an alteration in monetary policy may cause a disparity between expenditure and income, which may result in an improper tax payable. In such case, The Minister of Finance is authorized to prescribe a regulation concerning revaluation of asset or adjustment of income and expenditure.

Paragraph (2)

Sufficiently clear

CHAPTER V TAX PAYMENT DURING THE CURRENT YEAR

Article 20 (Law No. 10 Of 1994)

- (1) The income tax payable in any taxable year shall be paid up by way of withholding by other persons and self payment by the Taxpayer.
- (2) The tax payment referred to in paragraph (1) shall be carried out on a monthly basis or other period to be prescribed by the Minister of Finance.
- (3) The tax payment referred to in paragraph (1) shall be treated as an tax installment which may be credited against income tax payable at the end of taxable year concerned, except for final tax which is applicable to a certain type of income.

Elucidation Article 20

Paragraph (1)

To make a tax payment in a taxable year close to a tax payable in a year concerned, the payment shall be carried out by way of as follows:

- a. *Withholding tax by other persons on income derived by Taxpayers from employment, services or any activities referred to in Article 21; withholding tax on business income referred to in Article 22; and withholding tax on income from equity, services and certain activities referred to in Article 23.*
- b. *Self-payment by Taxpayer referred to in Article 25.*

Paragraph (2)

Generally, tax payment in a current year is carried out on a monthly basis, however the Minister of Finance can determine other period, such as at the time the transaction is done or at the time income is received or accrued so that the tax payment is carried out in a proper way.

Paragraph (3)

The tax payment in a taxable year shall be treated as an installment of tax payment, which may be credited against income tax payable at the end of a taxable year concerned. Base on the principle of easiness, simplicity, certainty, timeliness of tax imposition, and other consideration, there shall be a regulation concerning tax payment in a current year which is final and it shall be applicable to certain types of income referred to in Paragraph (2) of Article 4, Article 21, Article 22, and Article 23. The final tax can not be credited against income tax payable.

Article 21 (Law No. 36 Of 2008)

- (1) The following persons are obliged to withhold tax on remuneration in whatever form received or accrued by individual resident Taxpayer in respect of employment, services rendered, or any other similar activities:
 - a. an employer who pays salaries, wages, honoraria, allowances, and other similar remuneration in respect of an employment exercised either by permanent employees or non-permanent employees;
 - b. a government treasurer who pays salaries, wages, honoraria, allowances, and other similar remuneration in respect of an employment, services, and any other similar activities;
 - c. pension fund or other entity that pays pension and any other similar remuneration in whatever form in consideration of past employment;
 - d. an entity that pays honoraria or other similar remuneration in respect of services rendered, including professional services or any other activities of an independent character; and
 - e. a person who organizes an activity and pays remuneration in respect of services connected therewith.
- (2) Notwithstanding the preceding provisions, a diplomatic agent and international organization as referred to in the Article 3 are not obliged to withhold tax as referred to in paragraph (1) subparagraph a.
- (3) An income to be withheld monthly derived by a permanent employee or a retired person shall be the amount of gross income after deducted by an official expenditure or pension expenditure determined by the Minister of Finance Regulation, pension contribution, and personal exemption.
- (4) An income to be withheld derived by a daily wage earner, weekly wage earner, and other non permanent employee shall be the amount of gross income after deducted by a portion of income which is exempt from withholding tax as determined by the Minister of Finance Regulation.
- (5) A rate applicable to income as referred to in paragraph (1) shall be the rate under paragraph (1) subparagraph a of article 17, except otherwise determined by the Government Regulation.
- (5a) The tax rate applicable as referred to in paragraph (5) for unregistered resident Taxpayer is 20% (twenty percent) higher than those registered resident Taxpayer.
- (6) Deleted;
- (7) Deleted;
- (8) Regulation concerning guidelines for with holding of tax on income in connection with any employment, services, or activity shall be stipulated by or based on the Minister of Finance Regulation

Elucidation Article 21

Paragraph (1)

This provision governs tax payment in a current year by way of withholding tax on income derived by individual Taxpayer in respect of employment, services and other activities. The persons who are obliged to withhold tax are employers, government treasurers, pension funds, entities, and event organizers.

Subparagraph a

An employer who is obliged to withhold tax is an individual or an entity, including a head office, a branch, a representative office or a unit of an entity who pays salaries, wages, allowances, honorariums, and other remuneration in whatever form to a board of director, a permanent employee or non-permanent employee in consideration of employment, services, or any other activities. The term employer shall also include an international organization, which is not exempted from the obligation to withhold taxes.

The term "other remuneration" means remuneration in whatever form other th an salaries, wages, allowances, and honorariums or other remuneration such as bonus, gratuity, and profits share.

The term "non-permanent employee" means an individual who derives income from his/her employer in respect of non-permanent employment, such as artist who derives honorarium from an employer.

Subparagraph b

A government treasurer includes central governments, local governments, government institutions, statutory bodies, and Indonesian embassies in an offshore who pay salaries, wages, allowances, honorarium, and other remuneration in consideration of employment, services, or any other activities.

Also included as treasurers are cash holders and other officials who conduct the same functions.

Subparagraph c

Included as "other entities" are, for example, Institution of Social Security which pays pension, annuity, and other similar remuneration in whatever form.

The term pension or other similar remuneration shall include allowance whether it is payable periodically or not and which is paid to recipient of pension, annuity, and other similar remuneration.

Subparagraph d

The term entity shall include international organization that is not treated as a non-taxable person as referred to paragraph (2). It shall also include professional services, such as physicians, lawyers, and accountants who perform any independent activities.

Subparagraph e

A person organizing activities is obliged to withhold tax on prizes or award in whatever form derived by an individual resident Taxpayer in consideration of activities. It shall also include entities, government institutions, and organizations including international organization, institution, individual or any other institution organizing activities. The term activities include sports, religious activities, and arts.

Paragraph (2)

Sufficiently clear

Paragraph (3)

A taxable income of a permanent employee shall be gross income deducted by an official expenditure, pension expenditure, and personal and dependent allowances. The term pension expenditure shall also include annuity contribution which is contributed by an employee.

A taxable income of a pensioner shall be gross income deducted by pension expenditure and personal and dependent allowances. The term pensioner shall also include recipient of annuity.

Paragraph (4)

A taxable income of a daily wage earner, weekly wage earner, and other non-permanent employee shall be gross income deducted by a portion of income which is exempt from withholding tax prescribed under the Regulation of the Minister of Finance and it shall be subject to the applicable personal and dependent allowances.

Paragraph (5)

Sufficiently clear

Paragraph (5a)

The ownership of Tax Identification Number can be proved by taxpayers by showing the Tax Identification Number card.

Example:

Taxable income Rp 75,000,000.00

Income tax must be withheld for taxpayer with Tax Identification Number is as follows:

<i>5% x Rp 50,000,000.00</i>	<i>= Rp 2,500,000.00</i>
<i>15% x Rp 25,000,000.00</i>	<i>= <u>Rp 3,750,000.00</u></i>
<i>Total</i>	<i>Rp 6,250,000.00</i>

Income tax must be withheld for taxpayer without Tax Identification Number is as follows:

<i>5% x 120% x Rp 50,000,000.00</i>	<i>= Rp 3,000,000.00</i>
<i>15% x 120% x Rp 25,000,000.00</i>	<i>= <u>Rp 4,500,000.00</u></i>
<i>Total</i>	<i>Rp 7,500,000.00</i>

Paragraph (6)

Sufficiently clear

Paragraph (7)

Sufficiently clear

Paragraph (8)

Sufficiently clear

Article 22 (Law No. 36 Of 2008)

- (1) The Minister of Finance may designate:
 - a. government treasurers to withhold tax in connection with payment for supply of goods
 - b. certain entities to withhold tax from Taxpayer who conduct in import activities or other business activities; and
 - c. certain entities to withhold tax from Taxpayer who purchase very Luxurious Goods
- (2) Regulations governing the tax base for withholding purposes, the criterion, the characteristic and amount of withholding of taxes as referred to in paragraph (1), shall be stipulated by or based on the Minister of Finance Regulation
- (3) Withholding tax rate as referred to in paragraph (2) for unregistered resident Taxpayer is 100% (one hundred percent) higher than those registered resident Taxpayer

Elucidation Article 22

Paragraph (1)

Pursuant to this provision a person who is appointed as a withholding agent shall be:

- *Government treasurers either for central or local governments, government institutions or any other statutory bodies in respect of the payment for supply of goods, also included as treasurers are the cash holder and other officials who conduct the same functions;*
- *Certain institutions either government or private entities that carry out import activities, or any other business activities, such as a producer of certain goods, among others: automotive and cement; and*
- *Certain entities to withhold tax from Taxpayers who purchase very Luxurious Goods. Tax withheld by certain entities shall be applied to the purchase of goods that meet certain criteria as very luxurious goods in both goods and prices, such as cruises, very luxurious houses, very luxurious condominium and apartments, and very luxurious vehicle.*

The application of this provision shall be prescribed by the Minister of Finance, which shall take into account the following considerations:

- *selective withholding agent election for efficiency and effectiveness;*
- *not interfering with goods transportation;*
- *simplified withholding, payment and reporting procedures.*

The purpose of withholding tax according to this provision is to enhance public participation in collecting of fund by way of tax payment system and to achieve the principle of easiness, simplicity, and timely tax imposition. In this respect, withholding tax based on this provision shall be final in nature.

Paragraph (2)

Sufficiently clear.

Paragraph (3)

The ownership of a Tax Identification Number can be proved by taxpayers by showing the Tax Identification Number card.

Article 23 (Law No. 36 Of 2008)

- (1) The following income, in whatever name and form, paid, apportioned to be paid, or on the due date of payment by a government institution, a resident taxable entity, a person who organizes an activity, a permanent establishment or a representative of any other non-resident enterprises to a resident Taxpayer or permanent establishment, shall be subject to withholding tax of:
 - a. 15% (fifteen percent) of the gross amount of:
 1. Dividends as referred to in paragraph (1) subparagraph g of Article 4;
 2. interest as referred to in paragraph (1) subparagraph f of Article 4;
 3. royalties; and
 4. Prizes and awards, bonus, and similar payments other than those that have been withheld under paragraph (1) subparagraph e of Article 21;
 - b. Deleted;
 - c. 2% (two percent) of the gross amount of:
 1. rent and other income in connection with the use of property, except rent and other income in connection with the use of property that have been withheld under paragraph (2) of Article 4.
 2. compensation in connection with technical, management, construction, consultation and other services, except those that have been withheld under Article 21;
- (1a) With holding tax rate as referred to in paragraph (1) for unregistered resident Taxpayer is 100% (one hundred percent) higher than those registered resident Taxpayer.
- (2) Further Regulation related to other services as referred to paragraph (1) subparagraph c (2) shall be stipulated by or based on the Minister of Finance Regulation.
- (3) An individual who is a resident Taxpayer may be appointed by the Director General of Taxes as a withholding agent as referred to in paragraph (1).
- (4) With holding tax as referred to in paragraph (1) shall not apply to:
 - a. income paid or owed to a bank;
 - b. lease payment in finance lease agreements;
 - c. dividends as referred to in paragraph (3) subparagraph f of Article 4 and dividends received by individual taxpayers as referred to in subparagraph (2c) of Article 17;
 - d. Deleted;
 - e. distributed profit as referred to in paragraph (3) subparagraph i of Article 4;
 - f. profit which is distributed by a cooperative to its members;
 - g. Deleted;and
 - h. income paid or payable to a financial service entity which serves as a loan intermediary and/or financing stipulated by the Minister of Finance Regulation;

Elucidation Article 23

Paragraph (1)

Sufficiently clear.

Paragraph (1 a)

The ownership of Tax Identification Number can be proved by taxpayers by showing the Tax Identification Number card.

Paragraph (2)

Sufficiently clear.

Paragraph (3)

Sufficiently clear.

Paragraph (4)

Sufficiently clear.

Article 24 (Law No. 36 Of 2008)

- (1) Tax paid or tax payable in foreign countries on offshore income by resident Taxpayer may be credited in the same taxable year against the tax payable under this Law.
- (2) The amount of allowable tax credit as referred to in paragraph (1) shall be equal to the amount of foreign tax, but shall not exceed the tax payable calculated under this Law.
- (3) In calculating the limit of allowable tax credit, the source of income shall be determined as follows:
 - a. the source of income from shares and other securities and capital gain from transfer of share is the country where the issuing company resides;
 - b. the source of income in the form of interest, royalty, and rent in connection with the use of movable assets is the country where the payer or the party who claims the deductions there from is a resident;
 - c. The source of income in the form of rent in connection with the use of immovable assets is the country where the assets are located;
 - d. the source of income in the form of compensation for services, employment and other activities is the country where the payer or the party who claims deductions there from is a resident;
 - e. the source of income of a permanent establishment is the country where the permanent establishment conducts business or is engaged in activities.
 - f. The source of income of the transfer of some parts or all of mining rights or the proof of participating in financing or funding in the mining company is the country where the location of the mines is situated;
 - g. gains derived from transfer of immovable property is the country where the immovable property is located; and
 - h. gains derived from transfer of assets that is part of a permanent establishment is the country where the permanent establishment is situated.
- (4) The determination of the source of income other than income as referred to in paragraph (3), shall adopt the same principles contained therein.
- (5) If foreign tax on offshore income that has been credited is later either reduced or refunded, the amount of tax payable pursuant to this Law shall be added to the amount for the year in which the reduction or refund is made
- (6) The implementation of tax credits in respect of offshore income shall be stipulated by or based on the Minister of Finance Regulation.

Elucidation Article 24

Basically, resident Taxpayers are payable for the total income, including income received or accrued from offshore. To lessen the possibility of double tax burden due to imposition of tax upon income earned offshore, this provision provides the determination of income tax paid or payable in foreign countries, which is creditable against the tax payable on total income of a resident Taxpayer.

Paragraph (1)

Tax on income paid or payable in foreign countries, which is creditable against tax payable in Indonesia is only tax imposed directly on income derived by a Taxpayer.

Example:

PT A in Indonesia is a sole shareholder of Z Inc. In country X, in 1995 Z inc gains profit of US \$100,000.00. The applicable tax rate in country X is 48% for income tax and 38% for dividends. The tax on dividends is calculated as follows:

<i>Profit of Zinc</i>	<i>US\$ 100,000.00</i>
<i>Corporate income tax (48%)</i>	<i>US\$ 48,000.00 (-)</i>
	<i>US\$ 52,000.00</i>
<i>Tax on dividends</i>	<i>US\$ 19,760.00 (-)</i>
<i>Dividends transfer to Indonesia</i>	<i>US\$ 32,240.00</i>

The creditable income tax is a tax imposed directly on income derived abroad. In the above example is US\$19,760.00.

The corporate income tax of Z Inc of US\$48,000.00 may not be credited against Income tax of PT. A because that tax is not imposed directly on the income derived in that country instead of tax on profit of Z Inc in country X.

Paragraph (2)

In order to give an equal treatment between income derived from Indonesia and income derived from offshore, the tax paid or payable in abroad may be credited against tax payable in Indonesia, but the allowable tax credit shall not exceed the tax determined under this Law. The method of calculation of allowable tax credit shall be determined by the Minister of Finance pursuant to Paragraph (6).

Paragraph (3) and (4)

The determination of source of income will be an important issue in calculating allowable tax credit on income paid or payable offshore under this law. Further, this provision rules the source of income in calculating tax credit.

Having regard to the broad definition of income under this law, in accordance with the provision of Paragraph (4) the determination of source of income other than mentioned in Paragraph (3) applies similar principal as stated in Paragraph (3), for example, "A " a resident Taxpayer owns a house in Singapore and in 1995 the house was sold. Gain from the alienation of house is an income whose source is in Singapore.

Paragraph (5)

If there is a tax reduction or refund on income paid abroad, so that the amount of allowable tax credit in Indonesia becomes lesser than that in previous calculation, the difference amount shall be added to income tax payable under this law. For example, in 1996 Taxpayer get a reduction of Rp5,000,000.00 on offshore income for taxable year of 1995, which has been included in tax credit against income tax for taxable year of 1995, therefore the amount of Rp5,000,000.00 shall be added to Income tax payable in 1996.

Paragrah (6)

Sufficiently clear.

Article 25 (Law No. 36 Of 2008)

- (1) Monthly tax installment during the current taxable year that must be paid by Taxpayers, shall be equal to the tax payable according to the tax return of the preceding year, less the following:
 - a. Income Tax withheld as referred to in Article 21, Article 23, and Income Tax withheld as referred to in Article 22; and
 - b. foreign tax paid or payable that is allowable for tax credit as referred to in Article 24, divided by 12 (twelve) or the number of months of a fraction of the taxable year.
- (2) The monthly tax installment for periods prior to the due date of income tax return lodgment is equal to the monthly tax installment of the latest month of the preceding taxable year.
- (3) Deleted;
- (4) If during a current taxable year an assessment notice of the preceding taxable year is issued, the monthly tax installment shall be recalculated according to the notice and shall commence from the following month after the issuance of the notice.
- (5) Deleted
- (6) The Director General of Taxes is authorized to stipulate the calculation of monthly tax installment during the current taxable year in the following circumstances:
 - a. Taxpayer is entitled to loss carry forward;
 - b. Taxpayer receives irregular income;
 - c. Annual Tax Return for the preceding year is filed after the due date;
 - d. Taxpayer is granted an extension of the due date to file the Annual Tax Return;
 - e. Taxpayer amends the Annual Tax Return on his own initiative that results in monthly tax installment greater than the monthly tax installment before the amendment, and;
 - f. there is a change in Taxpayer's business or activities.
- (7) The Minister of Finance determines the calculation of the amount of tax installment for:
 - a. new taxpayer;
 - b. banks, state-owned enterprises, local state-owned enterprises, listed companies, and other taxpayers according to any prevailing law obliged to make periodic financial statements; and
 - c. Individual Taxpayer as certain entrepreneur with rate not more than 0,75% (zero comma seventy-five percent) from the gross revenue.
- (8) Individual resident taxpayer who does not have a Tax Identification Number, 21 (twenty-one) years old or more, and travel abroad shall pay taxes in accordance with Government Regulation;
- (8a) The provisions as referred to in paragraph (8) applies until 31 December 2010

(9) Deleted.

Elucidation Article 25

This article governs the calculation of monthly installments, which must be paid by the Taxpayer in current year.

Paragraph (1)

Example 1:

<i>Income tax payable based on Annual Income Tax Return 2009</i>		<i>Rp 50,000,000.00</i>
<i>Income tax withheld by employer (art 21)</i>	<i>Rp 15,000,000.00</i>	
<i>Income tax withheld by other parties (art 22)</i>	<i>Rp 10,500,000.00</i>	
<i>Income tax withheld by other parties (art 23)</i>	<i>Rp 2,500,000.00</i>	
<i>Offshore income tax credit (art 24)</i>	<i>Rp 7,500,000.00 (+)</i>	
<i>Total tax credit</i>		<i>Rp 35,000,000.00 (-)</i>
<i>Difference</i>		<i>Rp 15,000,000.00</i>

The amount of tax installment must be paid by Taxpayer for year of 2010 is Rp1,250,000.00 (Rp 15,000,000.00 : 12)

Example 2:

If the income tax in above example associates with income derived from a fraction of taxable year which covers the period of 6 months in 2009, the amount of monthly installments for 2010 is Rp2,500,000.00 (Rp15,000,000.00 : 6).

Paragraph (2)

Since the expiration date of filing tax return for individual is at the end of third month of the following taxable year and for the entity is at the end of fourth month of the following taxable year, the amount of tax installment that must be paid by Taxpayer himself prior to the expiration date of filing tax return has not be calculated under the provision of paragraph (1).

According to this provision, the amount of tax installment for the months prior to the expiration date of filing income tax return is equal to the tax installment of the last month in the previous year.

Example:

If Annual Income Tax Return is submitted by the Taxpayer on February 2010, hence the amount of tax installment must be paid by Taxpayer for January 2010 is equal to the amount of tax installment for December 2009, for instance Rp1,000,000.00.

If on September 2009 the Decree of Tax Installment Reduction was issued, and according to the Decree the tax installments becomes null, as a consequence tax installment from October to December 2009 becomes null, hence the amount of tax installment for January 2010 is equal to the tax installment for December 2009 which is null.

Paragraph (3)

Sufficiently clear.

Paragraph (4)

If in the current year the Notice of Tax Assessment is issued for the previous taxable year, as the consequence, the tax installment shall be calculated based on the Notice of Tax Assessment. The tax installment adjustment applies from the following month after the issuance of the Notice of Tax Assessment.

Example:

In accordance with the Annual Income Tax Return of 2009 submitted on February 2010, the calculation of tax installment must be paid is Rp1,250,000.00. On June 2010 The Notice of Tax Assessment for taxable year of 2009 is issued resulting the amount of monthly tax installment of Rp2,000,000.00 (two million Rupiah). In accordance with this provision, the amount of tax installment from July 2010 is Rp2,000,000.00. (two million Rupiah). The assessment based on Tax Assessment Notice may be equal, lesser or more than tax installment based on Annual Tax Return.

Paragraph (5)

Sufficiently clear.

Paragraph (6)

Principally the amount of tax installment payment paid by Taxpayer himself in the current year shall be as close as the amount of tax payable in the year end. As a consequence, in accordance to this provision, the Director General of Taxes is authorized to adjust the calculation of the amount of tax installment paid by Taxpayer himself in certain cases, for example in case of loss carry over, in case Taxpayer derives irregular income, or the alteration of Taxpayer business or activities.

Example 1:

- Income of PT. X in 2009	Rp120,000,000.00
- Loss carryover from previous year	<u>Rp150,000,000.00</u>
- Loss after carryover in 2009	Rp 30,000,000.00

The determination of income tax of Article 25 for 2010 is as follows:

Income as a basis for determination of income tax installment of Article 25 =
Rp120,000,000.00 - Rp30,000,000.00 = Rp90,000,000.00

Income tax payable:
28% x Rp90,000,000.00 = Rp 25.200.000,00

If in 2009 there is no tax withheld by other party and no tax paid and payable in foreign countries pursuant to Article 24, the amount of monthly tax installment of PT X in 2010 shall be : $1/12 \times \text{Rp } 25.200.000,00 = \text{Rp } 2.100.000,00$

Example 2:

A regular business income of Taxpayer "A" in 2009 is Rp48,000,000.00 (fourty million rupiah) and an irregular income is Rp72,000,000.00 (seventy two million rupiah). The income as a basis for the determination of monthly income tax installment of Article 25 for Taxpayer A in 2010 shall be the regular income only.

Example 3:

Increasing and decreasing of the business may affect performance of Taxpayer business. PT. B, a yarn-producing company pays a monthly tax installment of Rp15,000,000.00 in 2009.

On June 2009, the "B" factory is burned, hence, in accordance with The Decree of Director General of Taxes beginning from July 2009; a monthly tax installment of "B" may be adjusted become less than Rp15,000,000.00 (fifteen million rupiah).

On the other hand, where PT. B enhances their business, for example, due to an increasing sales and it is estimated that taxable income will be larger than that of preceding year, the Director General of Taxes may adjust the amount of monthly tax installment.

Paragraph (7)

Principally the calculation of a monthly tax installment for the current year shall be based on the previous Annual Tax Return. However, this provision gives authority to the Minister of Finance to determine the basis for the calculation of a monthly installment other than the aforementioned principle. This approach is intended to be more fairness calculation of monthly installment because it is based on the entity's latest business data.

Subparagraph a

It is necessary to regulate the basis for the calculation of monthly installment for the Taxpayer who commences their business in the current because the Annual Tax Return has not filed yet. Facts and

circumstances of Taxpayer's business shall be taken into account in the determination of the amount of tax installment,

Subparagraph b

For Taxpayers operating in banking business, state-owned companies and local government-owned companies, and listed companies, and and other Taxpayers which according to the regulated laws are required to submit periodic financial reports, determination of their tax installments need to need to set apart because they are required to submit financial reports in respect of their financial managements for a certain period to the government institutions. Such report may be used as a basis for the determination of tax installment in the current year.

Subparagraph c

For the certain individual Taxpayers nemely individual Taxpayers who have more than 1 (one) business spreading in many places, the highest tax installment is 0,75% (zero point seventy five per cent) of his gross income.

Paragraph (8)

Sufficiently clear

Paragraph (8a)

Sufficiently clear

Paragraph (9)

Sufficiently clear

Article 26 (Law No. 36 Of 2008)

- (1) The following income, in whatever name and form, paid, apportioned to be paid, or on the due date of payment by a government institution, resident taxable entity, a person who organizes activities , permanent establishment, or a representatives of a non-resident company to a non-resident Taxpayer other than a permanent establishment in Indonesia, shall be subject to with holding tax of 20% (twenty percent) of the gross income:
 - a. dividends;
 - b. interest including premium, discount. and compensation for loan repayment guarantees.
 - c. royalties, rent and other income in connection with the use of the property;
 - d. compensation in connection with services, works, and activities;
 - e. prizes and awards;
 - f. pension and other periodic payments
 - g. premium of swap and other hedging transactions; and / or
 - h. gains from the discharge of indebtedness.
- (1a) The domicile country of the foreign taxpayer other than those who conducting business or performing business through a permanent establishment in Indonesia referred to in paragraph (1) is the country or where the foreign taxpayer resides where he or she actually receives benefit from that income (beneficial owner).
- (2) Gains from the sale or transfer of assets in Indonesia other than that governed by paragraph (2) of Article 4, derived by a non-resident Taxpayer other than a permanent establishment in Indonesia, and insurance premiums paid to a foreign insurance company, shall be subject to withholding tax of 20% (twenty percent) on the deemed profit.
- (2a) Gains from the sale or transfer of shares as referred to in paragraph (3c) of Article 18 is subject to withholding tax of 20% (twenty percent) of the estimated net income.
- (3) The implementation of the regulations as referred to in paragraph (2) and (2a) is stipulated by or based on the Minister of Finance Regulation.
- (4) Taxable Income after deducted from income tax of a permanent establishment in Indonesia is subject to be taxed of 20% (twenty percent), unless the profit is re-invested in Indonesia, the further regulation is stipulated by or based on the Minister of Finance Regulation.
- (5) The withholding tax as referred to in paragraph (1), (2), paragraph (2a), and (4) is treated as final tax, unless:
 - a. The with holding tax on income as referred to in paragraph (1) subparagraph b and c of Article 5; and
 - b. The with holding tax on income received or accrued by a non-resident individual or non-resident company that has changed its status into a resident taxpayer or a permanent establishment.

Elucidation Article 26

For income received or accrued by a non-resident Taxpayer from domestic source, this law adopts two systems of tax imposition, namely fulfillment of tax obligations by non-resident Taxpayers who conduct business or is engaged in activities through a permanent establishment in Indonesia, and withholding by payer for other non-resident Taxpayers.

This provision regulates withholding tax in respect of income derived from sources in Indonesia and received or accrued by a non-resident Taxpayer other than a permanent establishment.

Paragraph (1)

The withholding tax under this provision is obliged to be carried out by a government entity, a resident taxable person, organizer of activities, permanent establishment or the representative office of a foreign company who make payment to a non-resident Taxpayers other than a permanent establishment in Indonesia, at a rate of 20% (twenty percent) of the gross amount.

The types of income on which withholding must be done can be categorized into:

- 1. Income derived from capital in the form of dividend, interest including premium, discount, and compensation for a guarantee loan, royalties, rent and other income related to the use of property;*
- 2. Compensation for services, employment and activities;*
- 3. Gift and rewards in whatever name or form;*
- 4. Pensions and other periodic payment.*
- 5. Swap premiums and other hedge transactions*
- 6. Gains from discharge of indebtedness*

Under this provision, for instance, a resident taxable person who pays royalty of Rp100,000,000.00 (one hundred million rupiah) to a non-resident Taxpayer is obliged to withhold tax of 20% (twenty percent) of Rp100,000,000.00 (one hundred million rupiah).

Another example, a foreign athlete who participates marathon in Indonesia and wins a cash prize is subject to withholding tax of 20% (twenty percent) .

Paragraph (1 a)

Domicile country for non-resident Taxpayer, other than those who conducts business or carries out activities through a permanent establishment who receives income from Indonesia, shall be determined based on the real residence or domicile of Taxpayers who actually receive the benefits of these income (beneficial owner) . Therefore, domicile country is determined based on not only certificate of domicile but also residence or domicile of the beneficial owner of aforementioned income.

In case of the beneficial owner is an individual, his domicile country is a country where he resides or presents. On the other hand, if the beneficial owner is an entity, its domicile country is a country where the owner or the majority shareholders (more than 50%) either separately or collectively domicile or where its effective management is located.

Paragraph (2)

This provisions regulate with holding tax on income derived by a non-resident Taxpayer from income originating from Indonesia, other than income referred in to paragraph (1), namely gain on sale or transfer of asset and insurance premiums, including reinsurance premiums. Such income is subject to 20% (twenty percent) with holding tax on the deemed net profit which is treated as a final tax. The Minister of Finance is authorized to determine the deemed net profit and any other issues related to the withholding tax.

This provision is not applicable where the non-resident Taxpayer conducts business or is engaged in activities through a permanent establishment in Indonesia, or if the gain on transfer of asset has been taxed under the provision of paragraph (2) of Article 4.

Paragraph (2a)

Sufficiently clear

Paragraph (3)

Sufficiently clear

Paragraph (4)

On profit after tax of a permanent establishment in Indonesia shall be subject to 20% (twenty percent) of withholding tax.

Example:

<i>Taxable income for permanent establishment in Indonesia for 2009</i>	<i>Rp 17,500,000,000.00</i>
<i>Income tax:</i>	
<i>28% x 17,500,000,000.00 =</i>	<i>Rp 4,900,000,000.00 (-)</i>

Taxable income after tax

Rp 12,600,000,000.00

Branch profit tax referred to in Article 26

20% x Rp12,600,000,000.00= Rp 2,520,000,000.00

If, however, income after tax of Rp12,600,000,000.00 (twelve billion and six hundred million rupiah) is reinvested in Indonesia in accordance with or based on the Minister of Finance Regulation, such income shall not be subject to withholding tax.

Paragraph (5)

In principle, the withholding tax on income of a non-resident Taxpayer is treated as final, however, for income as referred to in Article 5 paragraph (1) b and c, and income derived by an individual or an entity non-resident Taxpayer which changes his status become a resident Taxpayer or a permanent establishment, the withholding tax shall not be treated as a final, therefore tax withheld may be credited in the Annual Income Tax Return.

Example:

"A" is a foreign employee, enters a contract with resident Taxpayer PT. "B" to work in Indonesia for five months commencing 1 January 2009. On 20 April 2009 the contract of work is extended to 8 (eight) months, then, it will be end on 31 August 2009.

If the contract of work had not been extended, the status of "A" would remain that of a non-resident Taxpayer. With the extension of the contract of work, the status of "A" changes from a non resident Taxpayer to a resident Taxpayer beginning from 1 January 2009. For the period January to March 2009, PT "B" has withheld income tax from the gross income of "A" under Article 26.

Under this provision, to determine income tax payable of "A" for the period January to August 2009, income tax withheld under Article 26 and deposited by PT "B" up to March may be credited against the tax of "A" as a resident Taxpayer.

Article 27 (Law No. 10 Of 1994)

Deleted

Elucidation Article 27

Sufficiently clear

**CHAPTER VI
CALCULATION OF TAX AT THE END OF THE YEAR**

Article 28 (Law No. 10 Of 1994)

- (1) Resident Taxpayers and permanent establishments are entitled to claim tax credit against tax payable for the same taxable year:
 - a. tax withheld on income from employment, personal services and activities referred to in Article 21 ;
 - b. tax withheld on income in connection with payment on import activities or other business activities referred to in Article 22;
 - c. tax withheld on dividends, interest, royalties, rent, gifts and rewards, and compensation for services referred to in Article 23;
 - d. creditable foreign tax paid or payable on offshore income referred to in Article 24;
 - e. self tax payments during current taxable year referred to in Article 25;
 - f. tax withheld on income referred to in paragraph (5) of Article 26.
- (2) An administrative penalty in the form of interest, fine and surcharge, or a criminal penalty in the form of a fine in connection with the implementation of the prevailing tax laws, may not be credited against tax payable referred to in paragraph (1).

Elucidation Article 28

Paragraph (1)

Tax which has been paid for the current year either by the Taxpayer himself or withheld and collected by other parties may be credited against the tax payable in the yearend.

Example:

<i>Income tax payable</i>	<i>Rp 80,000,000.00</i>	
<i>Tax credit:</i>		
<i>With holding tax from work (Article 21)</i>	<i>Rp 5,000,000.00</i>	
<i>With holding tax by other party (Article 22)</i>	<i>Rp 10,000,000.00</i>	
<i>With holding tax on Capital (Article 23)</i>	<i>Rp 5,000,000.00</i>	
<i>Foreign tax credit (Article 24)</i>	<i>Rp 15,000,000.00</i>	
<i>Tax paid by Taxpayers himself (Article 25)</i>	<i><u>Rp 10,000,000.00 (+)</u></i>	
<i>Total tax credit</i>		<i><u>Rp 45,000,000.00 (-)</u></i>
<i>Income tax must be paid</i>		<i>Rp 35,000,000.00</i>

Paragraph (2)

Sufficiently clear.

Article 28A (Law No. 10 Of 1994)

In case tax payable in a taxable year is less than the allowable tax credit referred to in paragraph (1) of Article 28, then after a tax audit is conducted, the excess tax shall be refunded after being offset against outstanding tax and penalties.

Elucidation Article 28A

In accordance with the provisions of paragraph (1) of Article 17 B of the Law on General Rules and Procedures on Taxation, the Directorate General of Taxes or an authorized official may conduct an audit before refund or calculation of tax overpaid.

Any substance must be considered before a tax refund or calculation of overpayment carried out include:

- a. *the validity of the amount of Income tax payable;*
- b. *the validity of evidence of with holding tax together with proof of tax payment by the Taxpayer himself for taxable year concerned.*

For the purpose of audit, the Directorate General of Taxes or another authorized official is authorize to conduct audit on financial statements, books, other records and to conduct other audit related to determining the amount of income tax payable, the correctness of the amount of tax payable and the amount of tax credit and to determine the amount of tax overpaid that must be refunded.

The purpose of the audit is to ensure that any money to be refunded to the Taxpayer is, indeed, the Taxpayer's righ

Article 29 (Law No. 36 Of 2008)

In case tax payable in taxable year is greater than the allowable tax credit as referred to in paragraph (1) of Article 28, the outstanding tax shall be paid before the Annual Tax Return is submitted.

Elucidation Article 29

The provisions place an obligation on a Taxpayer to pay underpaid tax payable in accordance with this Law before an Annual Income Tax Return is filed and at the latest before tax return is filed. If the accounting year is the same as the calendar year, any tax underpaid must be paid at the latest by 31 March for individual or by 30 April for entity after the end of the taxable year, while if the accounting year is different from the calendar year, for instance it runs from 1 July until 30 June, the tax underpaid must be paid at the latest by 30 September for individual or by 31 October for entity

Article 30 (Law No. 10 Of 1994)

Deleted

Elucidation Article 30

Sufficiently clear.

Article 31 (Law No. 10 Of 1994)

Deleted

Elucidation Article 31

Sufficiently clear.

**CHAPTER VII
OTHER PROVISIONS**

Article 31A (Law No. 36 Of 2008)

- (1) Taxpayer who invest capital in certain sectors and/or certain regions that are high priority in the national scale, may be given tax facilities in the form of:
 - a. Up to 30% (thirty percent) investment allowance;
 - b. accelerated depreciation and amortization;
 - c. extended loss carried forward but shall not exceed 10 (ten) years; and
 - d. the imposition of Income Tax on dividend as referred to in Article 26 of 10% (ten percent), unless the tax rate under the relevant tax treaty is lower.
- (2) Further regulations concerning certain sectors and/or certain regions that are high priority in the national scale as well as the tax facilities as referred to in paragraph (1) shall be stipulated by the Government Regulation.

Elucidation Article 31A

Paragraph (1)

One of the principles to be upheld in tax law is that of equality in treatment for all Taxpayers or all cases of taxation, which is the same as holding firmly to the valid law. Therefore, each incentive must be guided by the above principle and requires overseeing to ensure there is no divergence in its application from the meaning and purpose for which the incentives is granted.

The meaning and purposes of granting tax incentives are primarily to promote the direct investment in Indonesia either foreign investment or domestic investment in certain business sectors or certain areas which have the highest national priority.

This provision can also be used to cover the possibility of agreements with another country or countries in the field of trade, investment and other areas.

Paragraph (2)

Sufficiently clear

Article 31B (Law No. 36 Of 2008)

Deleted

Elucidation Article 31B

Sufficiently clear.

Article 31C (Law No. 36 Of 2008)

- (1) Tax revenue collected from individual resident taxpayers and Income Tax of Article 21 withheld by the employer, shall be shared with the share of 80% for the central government and 20% for Local Government where the taxpayer is registered.
- (2) Deleted

Elucidation Article 31C

Sufficiently clear.

Article 31D (Law No. 36 Of 2008)

The provisions on taxation for businesses in the sector of oil and gas, geothermal, general mining including coal mining, and shariah-based business stipulated by or based on the Government Regulation.

Elucidation Article 31D

Sufficiently clear.

Article 31E (Law No. 36 Of 2008)

- (1) Resident entity taxpayer with gross income of Rp 50.000.000.000,00 (fifty billion rupiah) receives facilities in the form of reduction of the rate by 50% (fifty percent) of the rate as referred to in paragraph (1) subparagraph b and (2a) of Article 17 imposed on taxable Income from the part of the gross revenue of Rp4.800.000.000, 00 (four billion, eight hundred millian rupiah).
- (2) The amount of the gross revenue as referred to in paragraph (1) can be increased with the Minister of Finance Regulation.

Elucidation Article 31E

Paragraph (1)

Example 1:

Gross income of PT Y for taxable year 2009 is Rp4.500.000.000,00 (four billion and five hundred million rupiah) and taxable income is Rp500.000.000,00 (five hundred million rupiah).

Calculation for tax payable:

All of taxable income derive from those gross income is taxed by 50% (fifty percent) from existing corporate income tax because it's gross income does not exceed Rp4.800.000.000,00 (four billion and eight hundred million rupiah).

Tax payable:

(50% x 28%) x Rp500.000.000,00 = Rp70.000.000,00

Example 2:

Gross income of PT X for taxable year 2009 is Rp30.000.000.000,00 (thirty billion rupiah) and taxable income is Rp3.000.000.000,00 (three billion rupiah)

Calculation for tax payable:

1. The amount of taxable income resulted from part of gross income which entitle tax facility:
(Rp4.800.000.000,00 : Rp30.000.000.000,00) x Rp3.000.000.000,00 = Rp480.000.000,00
2. The amount of taxable income resulted from part of gross income which does not entitled tax facility:
Rp3.000.000.000,00 - Rp480.000.000,00 = Rp2.520.000.000,00

Tax payable:

- (50% x 28%) x Rp480.000.000,00 = Rp 67.200.000,00
- 28% x Rp2.520.000.000,00 = Rp 705.600.000,00(+)

The total amount of taxable income Rp 772.800.000,00

Paragraph (2)

Sufficiently clear

Article 32 (Law No. 36 Of 2008)

The procedure in relation to the imposition of tax and its penalties under this law shall be governed by Law Number 6 Year 1983 on the General Provisions and Tax Procedures as lastly amended by Law Number 28 of 2007 on the Third Amendment of the Law No. 6 Year 1983 on the General Provisions and Tax Procedures.

Elucidation Article 32

Sufficiently clear

Article 32A (Law No. 17 Of 2000)

The Government is authorized to conclude an agreement with the government of foreign countries for the avoidance of double taxation and the prevention of tax evasion

Elucidation Article 32A

In efforts of promoting economic and trade relationship with other countries, it is necessary to have a special set of law (*Iex-specialis*) which regulates taxing rights of each country covered in the law to provide legal certainty, to avoid double taxation and to prevent tax evasion. Forms and substances of such law refer to the international convention, other regulations, and also the national tax regulation of each country.

Article 32B (Law No. 36 Of 2008)

The provisions on the imposition of taxes on interest or discount on the State Bond traded in other countries based on reciprocal treatment agreements with other countries is stipulated by the Government Regulation.

Elucidation Article 32B

In order to expand the market of government bond, the government can impose a special rate which lower or apply a tax exemption to the government bond traded on stock exchange in other country. Government can only impose this special treatment provided that other country gives the same treatment to its bond traded on Indonesian stock exchange.

CHAPTER VIII INTERIM PROVISIONS

Article 33 (Law No. 7 Of 1983)

- (1) A Taxpayer whose accounting year is ended on the 30th of June 1984, and those ended between the 30th of June 1984 and the 31st of December 1984 may elect Corporate Income Tax Ordinance of 1925 or Individual Income Tax Ordinance of 1944 or this law in calculating its tax.
- (2) Tax incentives that have been granted on or before December 31, 1983
 - a. where the incentives extend to a certain period of time, the Taxpayers can continue to enjoy such incentives until the time expired.
 - b. where the incentives do not have any time limit, they can be enjoyed up to taxable year before 1984 taxable year.
- (3) Taxable income received or accrued from the oil or natural gas sector or other mining sectors in the form of a Contract of Work or a Production Sharing Contract that remains in force at the time this law takes effect, shall be governed by Corporate Income Tax Ordinance of 1925 and the Tax Law on Interest, Dividends and Royalties of 1970 and their implementing regulations.

Elucidation Article 33

Paragraph (1)

For a Taxpayer whose taxable year is the accounting year, there is possibility that a fraction of the taxable year is covered in the calendar year of 1984. According to the provision of this paragraph, if 6 (six) months of the said taxable year is included in the 1984 calendar year, then the Taxpayer is allowed to choose, whether he desires to apply the income tax ordinance 1944 or the corporate tax ordinance 1925, or to choose the application of the provisions contained in this law, the opportunity for such a choice shall also apply to a Taxpayer with 6 (six) months or more of his taxable year are included in calendar year of 1984.

Paragraph (2)

Sub paragraph a

A tax incentive of which the period is limited, for example the tax incentive pursuant to Law number 1 of 1967 on foreign investment, and Law number 6 of 1968 on domestic investment, granted up to December 31, 1983, can still be utilised until the expiration of the said tax incentives.

Sub paragraph b

A tax incentive of which the period is not determined can no longer be utilised from the date this law takes into effect, for example:

- *The tax incentives granted to PT. Danareksa, namely corporate tax exemption on business profit and exemption of capital stamp duty for the subscription and deposit of share capital pursuant to the Minister of Finance Decree number: KEP-1680/MK/II/2/1076 dated December 28, 1976;*
- *Tax incentive granted to Limited Corporation selling shares through the Capital market, namely a corporation tax rate reduction pursuant to the Minister of Finance Decree number: 112/MK/04/1979 dated March 27, 1979.*

Paragraph (3)

The Corporate Tax Ordinance 1925, and the Tax Law on interest, dividend and royalty 1970, as well as implementation regulations thereof shall remain effective on taxable income derived from oil and natural gas mining, conducted within the frame of Contract of Work and Production Sharing Contract, as long as the said Contract of Work and Production Sharing Contract agreements are still effective at the moment this law takes into effect.

The provision of this law shall only apply to taxable income derived from oil and natural gas mining, conducted within the frame of Contract of Work and Production Sharing Contract agreements, if said Contract of Work and Production Sharing Contract agreements, are drawn up after this law comes into force.

Article 33A (Law No. 10 Of 1994)

- (1) Taxpayers whose accounting year ends after the 30th June 1995, shall be obliged to calculate their taxes based on the provisions of Law Number 7 of 1983, as lastly amended by this law.
- (2) Taxpayers who have been granted tax incentives and have obtained a notification of the commencement of commercial production before the 1st January 1995, may continue to enjoy the incentives in accordance with the time period stipulated therein.

- (3) Except as provided in paragraph (2), any existing tax incentives previously granted shall cease to exist as of the 31st December 1994.
- (4) Income tax payable of Taxpayers who conduct business in the oil and natural gas, general mining sector and other mining sector under a Production Sharing Contract, Contract of Work or other cooperation agreement that remains valid at the time this law takes effect, shall be computed on the basis of the provisions contained in the Production Sharing Contract, Contract of Work or cooperation agreement until the termination of the contract or agreement.

Elucidation Article 33A

Paragraph (1)

If a Taxpayer uses an accounting year that ends on or before 30 June 1995, the accounting year concerned is the taxable year of 1994. Tax payable in that year will continue to be calculated on the basis of Income Tax Law Number 7/1983 as amended by Law Number 7/1991. However, a Taxpayer whose accounting year ends after 30 June 1995 must calculate tax for the 1995 and subsequent tax years on the basis of Law Number 7/1983 as amended by this law.

Paragraphs (2) and (3)

A Taxpayer who has obtained the Minister of Finance Decree concerning tax incentives relating to the time of commencement of production, and which has been issued before 1 January 1995 shall be continue enjoy the tax incentive for the period determined by the Decree concerned. Therefore, as of 1 January 1995 there will be no further Decree concerning the time at which production starts.

Paragraph (4)

Tax provisions in a Production Sharing Contract, Contract of Work or Cooperation Agreement for a mining business which still valid at the time this Law takes into effect, remain valid until the termination of the Production Sharing Contract, Contract of Work or Cooperation Agreement concerned. Notwithstanding the effective date of this Law, the tax obligation of a Taxpayer bound by Production Sharing Contract, Contract of Work or Cooperation Agreement for a mining business will continue to be determined on the basis of the contract or agreement concerned.

Accordingly, the provisions of this Law will apply to the imposition of tax on income derived by a Taxpayer in the oil and gas industry and other general mining sectors, where the activities are governed by a Production Sharing Contract, Contract of Work or Cooperation Agreement signed after the coming into effect of this law.

Article 34 (Law No. 10 Of 1994)
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As this law takes effect, all implementing regulations related to Income Tax, shall remain valid provided that they are not contrary to the provisions of this law.

Elucidation Article 34

Sufficiently clear

**CHAPTER IX
CLOSING PROVISIONS**

Article 35 (Law No. 36 Of 2008)

Matters that are not dealt with in this law is further stipulated by the Government Regulation.

Elucidation Article 35

Matters not covered by this Law will be further taken care of by the Government Regulation, including transitional and other regulations required to enable this Law to be implemented as effectively as possible.