Mining in Indonesia

Investment, Taxation and Regulatory Guide

September 2023, 13th Edition

pwc

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The guide

This guide is not intended to be a comprehensive study of all aspects of the mining industry in Indonesia but rather a general guide to certain key considerations relating to investment and taxation in the sector. Readers should note that information will require updating as regulations change.

Companies intending to invest in Indonesia will need to carry out further research and obtain updated information about the investment and operational requirements. They should also consider the social, political, and economic developments in Indonesia which can have a significant impact on the success of any investment.

PwC Indonesia recommends that investors contact our specialist mining team as they consider investment opportunities. Please see Appendix F for the contact details of PwC Indonesia's mining specialists.

Photo source: PT Gunung Raja Paksi Tbk

Cover photo courtesy of: PT Agincourt Resources

Regulatory information is current to 31 August 2023.

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Glossary

Term	Definition
AMDAL	*Analisis Mengenai Dampak Lingkungan* (Environmental impact assessment)
BKPM	*Badan Koordinasi Penanaman Modal* (Indonesia's Investment Coordinating Board)
BI	Bank Indonesia
BIK	Benefit-in-Kind
BUMN	*Badan Usaha Milik Negara* (National state-owned companies)
BUMD	*Badan Usaha Milik Daerah* (Regional government-owned companies)
CbCR	Country-by-Country Reporting
CCA	Coal Co-operation Agreement
CCoW	Coal Contract of Work
CIF	Cost, Insurance and Freight
CIT	Corporate Income Tax
CoW	Contract of Work
Contracts	CoW/CCoW/CCA
CSR	Corporate Social Responsibility
DER	Debt-to-Equity Ratio
DPR	*Dewan Perwakilan Rakyat* (House of Representatives)
DGoFT	Directorate General of Foreign Trade
DGoMC	Directorate General of Minerals and Coal
DGT	Directorate General of Taxation
DHE	*Devisa Hasil Ekspor* (Mining Export Proceeds)
DMO	Domestic Market Obligation
ESC	Energy, Sustainability and Climate
ESG	Environmental, Social and Governance
Energy Law	Law No. 30/2007
Environmental Law	Law No. 32/2009
EBITDA	Earnings Before Interest, Tax, Depreciation, and Amortisation
E&E	Exploration and Evaluation

Term	Definition
EPC	Engineering, Procurement, and Construction
EU&R	Energy, Utilities and Resources
EV	Electric Vehicle
FOB	Free on Board
Forestry Law	Law No. 41/1999, as amended by Law No. 19/2004
Government	Government of Indonesia
GR 22/2010	Government Regulation [Reference Number]/[Issuance Year]
GAR	Gross as Received
GDP	Gross Domestic Product
GHG	Greenhouse Gas
ha	Hectare
HPB	*Harga Patokan Batubara* (Coal Benchmark Price)
HPM	*Harga Patokan Mineral* (Mineral Benchmark Price)
IDX	Indonesia Stock Exchange
IFRS	International Financial Reporting Standards
Investment Law	Law No. 25/2007
IP	*Izin Penugasan* (Assignment Licence)
IPO	Initial Public Offering
IPR	*Izin Pertambangan Rakyat* (Peoples' Mining Licence)
IRA	Inflation Reduction Act
ITL	Law No. 36/2008 (the prevailing Income Tax Law)
IUJP	*Izin Usaha Jasa Pertambangan* (Mining Services Business Licence)
IUP	*Izin Usaha Pertambangan* (Mining Business Licence)
IUPK	*Izin Usaha Pertambangan Khusus* (Special Mining Business Licence)
IUP-OP	*Izin Usaha Pertambangan Operasi Produksi* (Operation Production Mining Business Licence)
IUPK-OP	*Izin Usaha Pertambangan Khusus Operasi Produksi* (Operation Production Special Mining Business Licence)

Term	Definition
KADIN	*Kamar Dagang dan Industri Indonesia* (Indonesian Chamber of Commerce and Industry)
KAPET	*Kawasan Pengembangan Ekonomi Terpadu* (Integrated Economic Development Zones)
KBLI	*Klasifikasi Baku Lapangan Usaha Indonesia* (Indonesian Formal Business Field Classification)
KP	*Kuasa Pertambangan* (Mining Rights)
L/C	Letter of Credit
LPEI	*Lembaga Pembiayaan Ekspor Indonesia* (Indonesian Export Financing Agency)
LST	Luxury Sales Tax
Mining Law	Law on Mineral and Coal Mining No. 4 of 2009, as amended by Law No. 3/2020
MoEMR	Ministry of Energy and Mineral Resources
MoF	Ministry of Finance
MoT	Ministry of Trade
MSME	Ministry of Micro, Small and Medium Enterprises
mt	Metric Tonne
NIB	*Nomor Induk Berusaha* (Business Identification Number)
NIK	*Nomor Identitas Kepabeanan* (Customs Identification Number)
NPWP	*Nomor Pokok Wajib Pajak* (Tax Payer Identification Number)
OJK	*Otoritas Jasa Keuangan* (Financial Services Authority of Indonesia)
OSS	Online Single Submission
PEB	*Pemberitahuan Ekspor Barang* (Export Declaration of Goods)
PBB	*Pajak Bumi dan Bangunan* (Land and Building Tax)
PerMen 28/2009	MoEMR Regulation [Reference Number]/[Issuance Year]
PerMenDag 4/2015	*Peraturan Menteri Perdagangan* (MoT Regulation) [Reference Number]/[Issuance Year]
Perpres	*Peraturan Presiden* (Presidential Regulation)
PMA	*Penanaman Modal Asing* (Foreign Investment)
PMDN	*Penanaman Modal Dalam Negeri* (Domestic Investment)
PMK	*Peraturan Menteri Keuangan* (MoF Regulation)
PNBP	*Penerimaan Negara Bukan Pajak* (Non-Tax State Revenue)

Term	Definition
PPE	*Pemberitahuan Pabean Ekspor* (Export Customs Declarations)
PTBA	PT Bukit Asam Tbk, state-owned coal mining company
PwC	PwC Indonesia, or the PwC global network of firms, as the context requires
RKAB	*Rencana Kerja dan Anggaran Biaya* (Work Plan and Budget)
RUKN	*Rencana Umum Ketenagalistrikan Nasional* (National Electricity General Plan)
SFAS	Statement of Financial Accounting Standards
SIPB	*Surat Izin Penambangan Batuan* (Rock Mining Business Licence)
UKL	*Upaya Pengelolaan Lingkungan* (Environmental Management Effort)
UoP	Units of Production
VAT	Value Added Tax
WIUP	*Wilayah Izin Usaha Pertambangan* (Mining Business Licence Area)
WIUPK	*Wilayah Izin Usaha Pertambangan Khusus* (Special Mining Business Licence Area)
WHP	*Wilayah Hukum Pertambangan* (Mining Jurisdiction Area)
WHT	Withholding Tax
WP	*Wilayah Pertambangan* (Mining Area)
WPN	*Wilayah Pencadangan Negara* (State Reserve Area)
WPR	*Wilayah Pertambangan Rakyat* (Peoples' Mining Area)
WUP	*Wilayah Usaha Pertambangan* (Commercial Mining Business Area)
WUPK	*Wilayah Usaha Pertambangan Khusus* (Special Mining Business Area)

Foreword

Welcome to the 13th edition of PwC Indonesia's ***Mining in Indonesia: Investment, Taxation and Regulatory Guide***.

This edition of the guide focuses on updating readers on the latest tax, regulatory and commercial changes since our previous edition. This publication has been written as a general investment and taxation guide for all stakeholders interested in the mining sector in Indonesia. We have therefore endeavoured to create a publication which can be of use to existing investors, potential investors, and others who might have a general interest in the status of this important sector for the Indonesian economy.

Over the past three years, there have been many developments affecting Indonesia's mining industry. The COVID-19 pandemic, global energy crisis, geopolitical instability from the Russia-Ukraine conflict, supply disruption and commodity price volatility have resulted in an unpredictable macroeconomic situation. The industry is also being impacted by the global energy transition which affects not only fossil fuels such as coal, but also causes increased demand for critical minerals essential to the energy transition. The new laws and regulations issued by the Government in the last few years have also continued to significantly affect Indonesia's mining industry, and in some instances, create more uncertainty for mining companies operating in Indonesia.

More than a decade after the Mineral and Coal Mining Law No. 4 of 2009 (the "Mining Law") was promulgated, the Government issued Law No. 3/2020 (the "Amendment to the Mining Law") on 10 June 2020, after the House of Representatives (*Dewan Perwakilan Rakyat* or "DPR") approved the law on 12 May 2020. Investor reaction has generally been positive, with the amendments demonstrating the Government's desire to address some long-standing industry concerns. These include addressing the regulatory certainty over the issuance and extension of mining business licences, dealing with the continuation of operations by Contract of Work ("CoW") and Coal Contract of Work ("CCoW") holders, dealing with overlapping mining areas, improving coordination between the Central and Regional Governments, promoting investment in exploration activities and dealing with illegal mining.

The issuance of the Amendment to the Mining Law was then followed by the issuance of Government Regulation No. 96 of 2021 ("GR 96/2021") on "Implementation of Mining Business Activities", which generally has also been well received by investors since it addresses some concerns on the divestment requirements. GR 96/2021 provides foreign investors with a longer period to satisfy share divestment obligations. For instance, in operations which include underground mining with integrated processing and/or refining facilities, foreign investors are now only required to commence divestment from the 20th year of production. Previously, foreign shareholders had to divest their interest in stages, commencing from the fifth year of production, so that the shareholding was a maximum of 49% by the tenth year of production.


Photo source: PT Agincourt Resources

While there has been some progress in addressing long-outstanding industry issues, there remains regulatory uncertainty that has raised investor concerns. For example, the higher royalty on coal and mineral sales of mining companies in Indonesia under GR 15/2022 and GR 26/2022, payment obligations for the coal mining companies who do not meet the Domestic Market Obligation ("DMO") requirement stipulated under Ministry of Energy and Mineral Resources ("MoEMR") Decree No. 267.K/MB.01/MEM.B/2022 ("KepMen 267/2022"), and the issuance of GR 36/2023 which introduces heavier penalties and requirements for exporters of natural resources to deposit their foreign exchange export proceeds (*Devisa Hasil Expor dari Barang Ekspor Sumber Daya Alam* or "DHE SDA") in the Indonesian financial system, have further increased investors' perception that regulatory activity remains an inherent risk for the Indonesian mining industry.

However, as investors view Indonesia as still having significant geological potential, particularly for critical minerals necesary for the energy transition, there is a real opportunity to attract more investment to drive an increase in this sector's contribution to the economy. This is what all stakeholders should be focused on.

This publication aims to support investors in navigating the Indonesian mining investment climate, and to support the growth of the industry. Readers should note that the regulatory content in this publication was current as at August 2023. Whilst every effort has been made to ensure that all information was accurate at the time of printing, many of the topics discussed are subject to interpretation, and regulations are changing continuously. As such, this publication should only be viewed as a general guidebook and not as a substitute for up to date professional advice. As such, we recommend that you contact PwC's mining specialists (see page 165) as you consider investment opportunities in the Indonesian mining sector.

We hope that you find this publication interesting and useful, and we wish all readers success with their endeavours in the Indonesian mining sector.

1 The Industry in Perspective

Coal and Mineral Prices

Since mid-2020, there has been a broad rise in mineral and coal prices driven by a strong demand recovery from the COVID-19 pandemic and the restoration of business activities, as well as some pandemic-related supply constraints. The upward trend in mineral prices continued during the first quarter of 2022, with mineral prices surging and reaching record highs in March 2022. The upward trend in coal prices lasted even longer, with coal prices surging to record levels in September 2022.

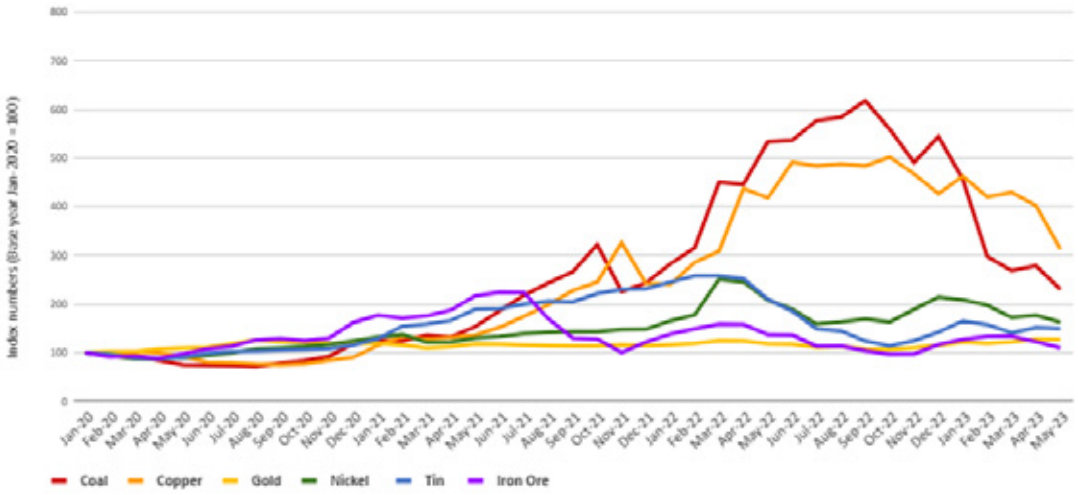
One of the main reasons for the mineral and coal prices surge is the Russian invasion of Ukraine, which has caused major disruptions to the supply of commodities. Russia was one of the world's largest exporters of natural gas and nickel and also accounted for a significant share of coal, crude oil and refined aluminium exports. The disruptions have exacerbated existing stresses in commodity markets following the recovery from the COVID-19 pandemic, which saw rebounding global demand and constrained supplies.

However, since reaching record highs in 2022, mineral and coal prices have been softening and by June 2023, the price surges that followed the Russia-Ukraine conflict had largely been wiped out due to a combination of slowing global economic activity, the easing of various supply disruptions and the redirection of the trade of key commodity exports from Russia and Ukraine.

Mineral and coal prices have been extremely volatile and we expect volatility to continue throughout 2023.

Photo source: PT Adaro Energy Indonesia Tbk

Mineral and Coal Prices



Source: World Bank, PwC Analysis

Coal – Contrary to many market watchers' expectations, the average price of coal rose year-on-year by 127% and 150% in 2021 and 2022, respectively. Increased demand for thermal coal in Asia and Europe, tight supplies of natural gas, and sanctions on Russian coal exports were some of the factors supporting the coal price surge during these periods. However, the coal price fell during the fourth quarter of 2022, which was then followed by a sharp decline in 2023. Compared to 2022, the average coal price during the first half of 2023 declined by 42%, with the average coal price in June 2023 representing only one third of the record high coal price seen in September 2022. Several constraints that led to the sharp coal price surge in 2022 have continued to unwind. In China and India (the world's two largest coal consumers), the demand for coal is expected to be lower, as manufacturing producers in both countries, especially steel, have completed their stockpiling and are halting their coal purchases. Coal production in China and India has also increased considerably in the last two years in response to higher prices and concern over energy security. The recent decline in natural gas prices also means that coal demand from Europe is expected to sharply decrease in 2023, particularly given carbon emission concerns. On the supply side, coal production from Indonesia, the world's largest thermal coal exporter, continues to increase while Australian coal production and exports have recovered from disruptions due to weather issues in 2022. All of these will continue to put pressure on coal prices. Currently, consensus forecasts indicate that prices for thermal coal will decrease significantly over the next decade. With renewable energy becoming increasingly cost-competitive and with net-zero targets set by many countries, more thermal-coal power plants are set to be shut down over the next decade.

Nickel – The average price of nickel increased by 40% in 2022 but decreased by 6% during the first half of 2023. After reaching its peak in the first quarter of 2022, the nickel price softened during the second and third quarters of 2022 as the price surges that followed the Russia-Ukraine conflict had largely unwound. Weak demand for the nickel used in stainless-steel production and rapidly expanding nickel pig iron production from Indonesia were the major contributors to the nickel price fall in 2023.

Going forward, the global nickel market will continue to be affected by demand-supply imbalance for the nickel used in stainless-steel production, which represents about two thirds of global nickel use, and the nickel used in the production of lithium-ion batteries, which represents about one quarter of global nickel use. Demand for stainless-steel products remains subdued, although demand for nickel-containing batteries continues to grow. The dynamics in the automotive sector around growing demand for electric vehicle ("EV") are expected to support the demand for nickel as a major component of battery production, although the development of non-nickel batteries, such as lithium-iron-phosphate batteries, may pose a downside risk for the longer-term outlook for nickel demand and prices.

Copper – The average price of copper increased by 51% in 2021 but decreased by 5% in 2022 and by another 1% during the first half of 2023. Contrary to the expected increase due to the ongoing drive towards clean energy transformation, the average copper price fell due to the concerns over the slowdown of the global economy. In the short term, the average price of copper will be affected by the issues in China's property sector as China is the world's largest copper consumer, as well as increase in supply from the world's major copper producers such as Chile, Peru, the Democratic Republic of Congo and Indonesia. In the longer term, copper is set to benefit from the clean energy transition because it is a key metal that enables electrification and renewable energy.

Tin – After a price surge of 89% in 2021, which continued until the first quarter of 2022, the average tin price softened and fell by 3% in 2022 and by another 16% during the first half of 2023, primarily due to weak demand from the electronics sector and the higher inventory level of this metal. On the supply side, output from key tin-producing countries, such as Indonesia and Malaysia, is expected to increase as supply disruptions ease. In the longer term, however, tin demand prospects remain positive and stand to benefit from the clean energy transition and green technologies.

Iron ore – The average price of iron ore fell by 25% in 2022 but remained essentially unchanged during the first half of 2023. The price fall in 2022 was affected by the slowdown in global industrial and construction activities, particularly in China. In the longer term, the projected oversupply in the iron ore market may put pressure on iron ore prices.

Gold – The performance of gold remained essentially unchanged during 2021 and 2022, with prices relatively consistent year on year. During the first half of 2023, the average price for gold increased by 9% from 2022 due to a weakening US Dollar, continued geopolitical uncertainty related to the Russia-Ukraine conflict and persistently high inflation, which have driven some investors to invest in gold as a safe-haven asset.


Photo source: PT Vale Indonesia Tbk

Indonesian Production of Coal and Minerals

The coal production of Indonesia has shown steady growth over the last decade. Indonesia consistently recorded coal production increases, except for the years 2014-2015 when coal production decreased due to the decline in coal price and the attempt by the Government of Indonesia ("the Government") to limit coal production increases, and in 2020 due to the decline of global and domestic demand for coal during the onset of the COVID-19 pandemic, which drove the decision of coal producers to cut production and reduce investment. Despite the declining production, the 2020 coal production of 561 million tonnes was still above the target of 550 million tonnes.

In 2021, coal production increased to 614 million tonnes, on the back of a significant increase in demand and prices. In 2022, the coal production target was set at 663 million tonnes. Initially, Indonesian coal miners were expected to struggle to meet this target due to interruptions to their production plans from coal export restrictions imposed by the Government in January 2022 to tackle the issue of the lack of domestic coal supply for power stations. However, coal production reached 687 million tonnes in 2022, well surpassing the target, driven by strong global demand and because the sanctions on Russian coal exports tightened the coal market in 2022. In 2023, the Government set the coal production target at 695 million tonnes. As of May 2023, coal production had reportedly reached 302.54 million tonnes, or 44% of the target.

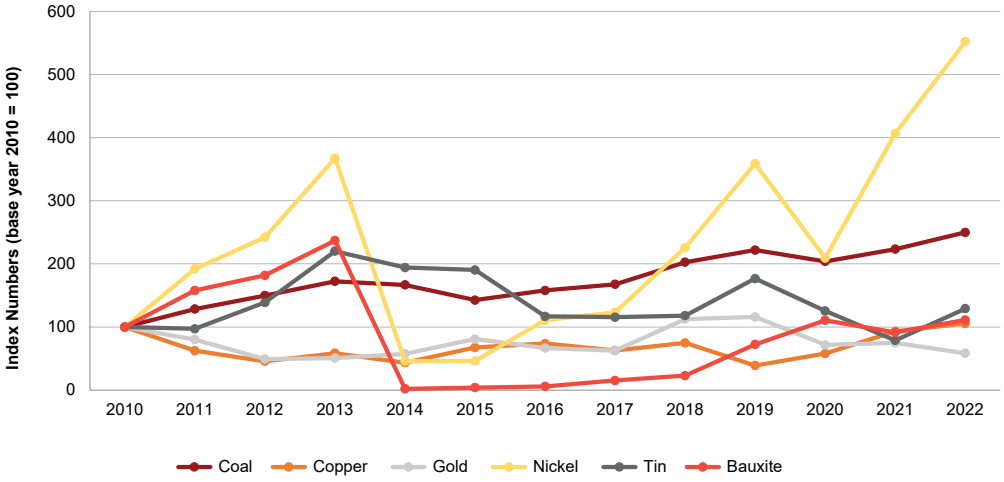
Since 2013, tin production in Indonesia has significantly decreased as a result of the Government's effort to limit export quotas to deal with illegal mining and reserve depletion, and also due to the suspension of operations in several tin mines due to environment-related issues. In the 2016-2018 period, the production level was steady but represented less than half of tin production in 2013. Tin production showed improvement in 2019 with a 50% increase from 2018. However, the production of tin in 2020 and 2021 declined significantly with production in 2021 only representing half of the 2019 production level. The decline was caused by several factors, including the restrictions imposed during the pandemic, the illegal mining issue and the declining grade of tin produced in the last few years. In 2022, tin production rose, back to the production level in 2020, as tin miners increased their production to capitalise on the strong tin price. Since 2022, the Government has been considering the plan to ban the export of tin ingots to further build the country's mining downstream industry. If materialised, this plan would significantly affect the level of tin production in Indonesia considering the domestic market is not yet able to fully absorb the current level of production.

Copper production in Indonesia has been significantly affected by production at the Grasberg mine. In 2018, copper production increased mainly due to improved production at the Grasberg mine after the resolution of the protracted negotiations between Freeport-McMoran and the Government around the divestment of shares and the conversion of the permit from a CoW to an IUPK-OP. The Grasberg mine's transition from open-pit to underground mining resulted in a decrease in the copper production of Indonesia in 2019. The Grasberg underground mine started ore extraction in 2020, reaching optimum production in mid-2020 and becoming a major contributor to copper production. In 2022, copper production increased by 14%, pushed by the ramp-up of production from the Grasberg mine.

The production of nickel and bauxite has also continued to increase after the relaxation of the ban on exports of nickel ore and washed bauxite by the Government at the beginning of 2017. Another factor contributing to the increase has been the production from the new nickel smelters that have been coming online since 2017 together with higher global nickel prices driven by increased demand from the EV industry. The significant increase in the production of nickel in 2019 was primarily due to the Government's decision to accelerate the full ban on exports of low-grade nickel ore two years ahead of the initial schedule, which was announced in August 2019 and became effective in January 2020. A similar trend of nickel production increase was also seen in 2013 when the full ban on exports of nickel ore was initially applied at the beginning of 2014. In 2020, nickel production fell due to the pandemic, but then recovered strongly in 2021 and 2022, supported by increasing demand and the waning impact of the pandemic. Meanwhile, the production of bauxite increased by 21% in 2022, ahead of the ban on exports of washed bauxite imposed by the Government in June 2023.

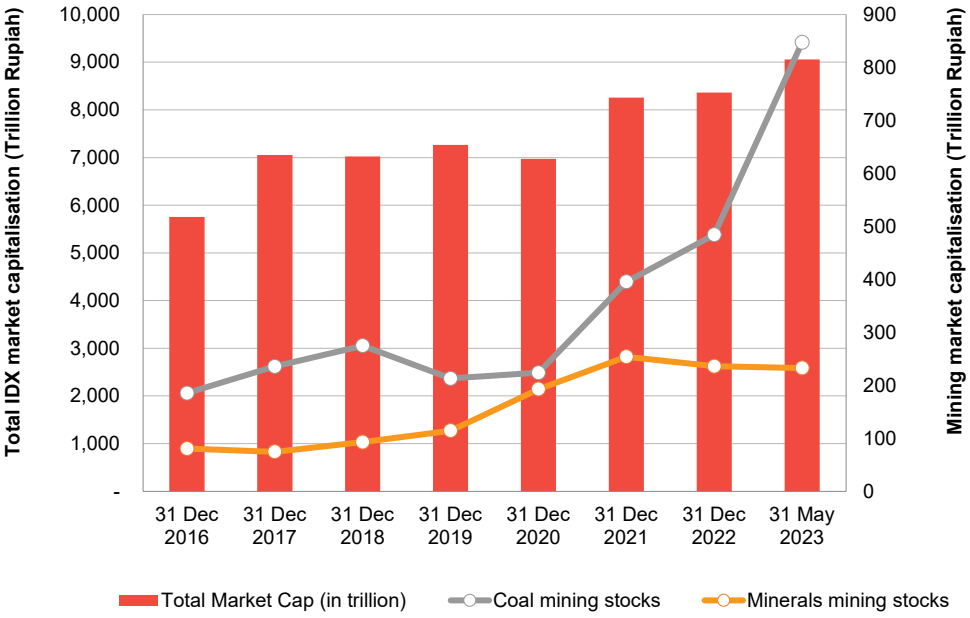
Historical Indonesian coal and mineral production trends are presented in the diagram below (indexed to the base year 2010 = 100).

Indonesian Coal and Mineral Production Trends



Source: Directorate General of Mineral and Coal, Central Statistic Bureau, PwC Analysis

Market Capitalisation of Mining Companies in Indonesia



Source: Indonesia Stock Exchange ("IDX")

The movements in the market capitalisation of listed coal and mineral mining companies on the IDX generally follow the fluctuations in mineral and coal prices.

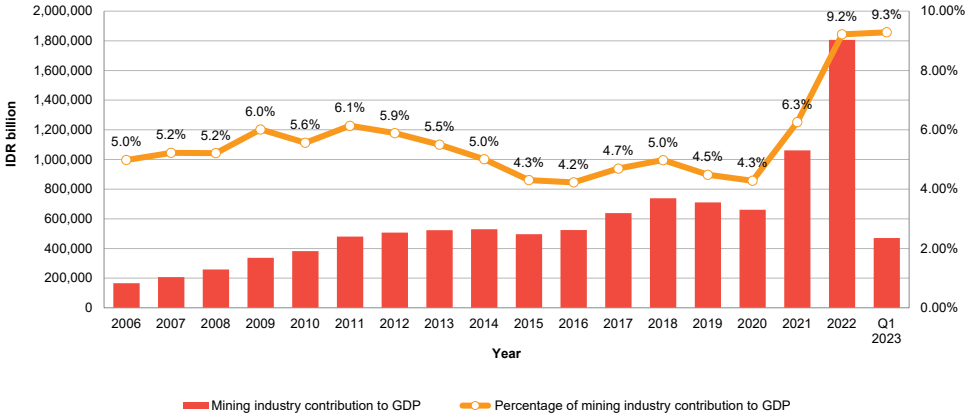
During the period from December 2016 to December 2022, the market capitalisation of listed coal and mineral mining companies on the IDX has shown steady growth which corresponds to the upward trend in mineral and coal prices over the period. The exception was 2019, where the market capitalisation of listed coal and mineral mining companies on the IDX dropped by 11% from IDR 370 trillion at 31 December 2018 to IDR 327 trillion at 31 December 2019. Even during the time when many businesses were heavily affected by the impact of the COVID-19 pandemic in 2020, the market capitalisation of mining stocks on the IDX still increased by 27% from IDR 327 trillion at 31 December 2019 to IDR 417 trillion at 31 December 2020.

From the period of December 2016 to December 2022, the market capitalisation of listed coal mining companies on the IDX increased by 162% from IDR 185 trillion at 31 December 2016 to IDR 484 trillion at 31 December 2022. This occurred despite the pressures on coal from the global transition to clean energy and the rising Environmental, Social and Governance ("ESG") expectations from governments and other stakeholders such as employees, local communities and customers. The geopolitical issues experienced in 2022 have confirmed the continuing role that coal plays in maintaining energy security in many parts of the world, which has contributed to the increased demand for coal and value of coal mining companies. The market capitalisation of listed coal mining companies on the IDX further increased by 75% from IDR 484 trillion at 31 December 2022 to IDR 847 trillion at 31 May 2023. However, this increase was largely affected by PT Bayan Resources' stock split in December 2022 because the market capitalisation of other listed coal companies on the IDX has generally been decreasing in 2023 following the significant decline in coal price that began since the fourth quarter of 2022.

Meanwhile, the market capitalisation of mineral mining companies listed on the IDX has increased by 191%, from IDR 81 trillion at 31 December 2016 to IDR 236 trillion at 31 December 2022. Strong performance of nickel, copper and gold prices in the last few years and the important roles that nickel and copper play in the global transition to clean energy have been the major factors supporting the remarkable growth of the mineral stocks on the IDX in the last few years. However, the softening of mineral prices since the second quarter of 2022 has really hit investors' confidence in the mineral stocks on the IDX with the market capitalisation of mineral mining companies listed on the IDX falling significantly from IDR 352 trillion at 31 May 2022 to IDR 233 trillion at 31 May 2023.

The Mining Industry's Contribution to the Indonesian Economy

Contribution of Mining Industry to Indonesian Gross Domestic Product ("GDP")

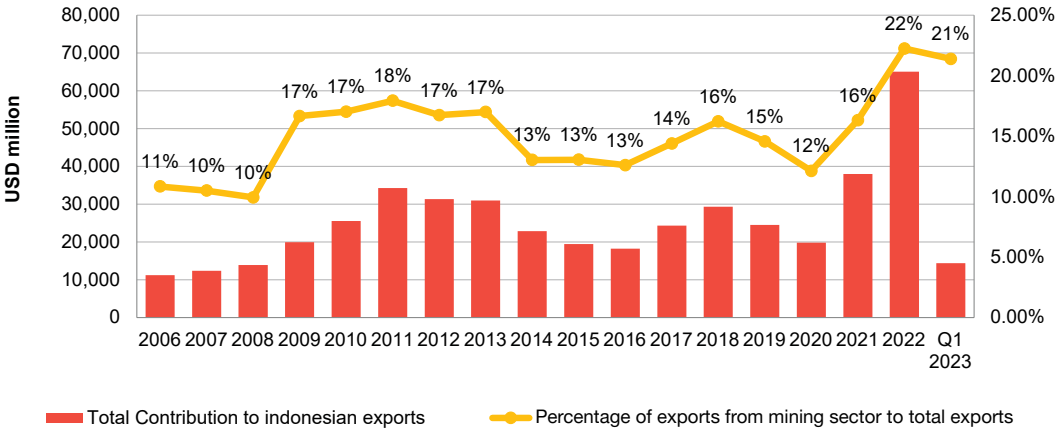


Source: Bank Indonesia

The mining sector has been one of the key sectors contributing to Indonesia's economic growth over many decades. The sector makes a significant contribution to Indonesian GDP, its exports, Government revenue, employment, and perhaps most importantly, to the development of the many remote regions of Indonesia. Mining companies are in many cases the only significant employers in some of these remote areas.

The mining sector's contribution to Indonesian GDP slightly declined from 4.5% in 2019 to 4.3% in 2020. As Indonesia's coal and metal production and export quantities mostly decreased in 2020 due to the weakening of global demand during the COVID-19 pandemic, the mining contribution to GDP also decreased. However, mineral and coal prices strengthened significantly in 2021 and 2022 following a strong demand recovery from the COVID-19 pandemic, with commodity prices further strengthened by recent geopolitical tensions. As a result, the mining sector's contribution to Indonesian GDP improved significantly to 6.3% in 2021 and an impressive 9.2% in 2022. In the first quarter of 2023, the mining sector's contribution to Indonesian GDP hit a record of 9.3%. In addition to higher coal prices, the significant expansion in nickel production on the back of the Government's focus on in-country downstream processing has driven the increased contribution of the mining sector to Indonesian GDP. This is likely to continue with the increased demand for critical minerals for the energy transition.

Mining Products as a Percentage of Total Indonesian Exports



Source: Bank Indonesia

The mining sector contributes an even more significant share of Indonesian exports, particularly as mining products are generally priced in US Dollars. After 2014, the mining sector's contribution to Indonesian exports fell off for a few years, following the implementation of the ban on exports of unprocessed (or insufficiently processed) minerals in January 2014 and the introduction of a significant export duty on mineral concentrates. During the period from 2014 to 2016, the mining industry's contribution to Indonesia's total export revenues was consistent at around 13%, down from 17% in 2013.

However, the mining industry's contribution to total exports increased to 14% and 16% in 2017 and 2018, respectively, primarily due to increased coal export revenues, increasing from US$ 14.6 billion in 2016 to US$ 20.5 billion in 2017 and to US$ 24 billion in 2018 on the back of higher coal prices. The relaxation of the export ban on low-grade nickel ores and washed bauxite, which took effect in 2017, also contributed to the improvement of the mining industry's contribution to total exports, with nickel exports providing an additional US$ 155 million and US$ 628 million in 2017 and 2018, respectively, while bauxite exports posted a remarkable increase of US$ 66 million and US$ 265 million in 2017 and 2018, respectively, from only US$ 430,000 in 2016.

In 2019, nickel and bauxite exports further increased to US$ 1.1 billion and US$ 468 million, respectively. For nickel, the significant increase in exports was also affected by the Government's decision to accelerate the full ban on exports of low-grade nickel ore two years ahead of the initial schedule. However, despite the improvement contributed by nickel and bauxite exports, the mining industry's contribution to total exports decreased to 15% in 2019 as a result of lower coal exports, which decreased from US$ 24 billion in 2018 to US$ 21.6 billion in 2019 due to the weakening of global coal prices.

Since January 2020, the Government has officially banned the export of nickel ore. This policy was designed to boost the development of smelter construction and also for the preservation of the country's mineral reserves, especially nickel. Also, coal export value and quantity decreased 24% and 11.3%, respectively, in 2020 due to the global and domestic demand weakening in light of the COVID-19 pandemic. As a result of these, the mining industry's contribution to total exports further decreased to 12% in 2020, despite bauxite exports increasing to US$ 555 million.

In 2021 and 2022, mineral and coal prices strengthened significantly following a strong demand recovery after the COVID-19 pandemic. As a result, the mining sector's contribution to total exports also significantly improved to 16% in 2021 and 22% in 2022. In the first quarter of 2023, the mining sector's contribution to total exports slightly declined to 21%. This decline is expected to continue during the remainder of 2023 considering the downward trend in coal and mineral prices, while in the long-term increased demand for critical minerals is likely to drive growth in the industry.

The Era of Critical Minerals

The race to net zero is changing what it means to be a miner. Demand for critical minerals is surging and operating environments are getting more challenging. The market for mining materials is reconfiguring in fundamental ways. The energy transition and the race to reach net-zero emissions are creating a surge in demand for 'critical minerals'. These are the commodities needed to generate low-emission energy — elements such as lithium, nickel, cobalt and graphite for energy storage; copper and aluminium for energy transmission; and silicon, uranium and rare-earth elements for solar, wind and nuclear energy generation.

Demand for critical minerals is expected to grow significantly over the next three decades. The International Energy Agency estimates that the annual demand for critical minerals from clean energy technologies will surpass US$400bn by 2050. This might seem like a long way off, but miners are already struggling to keep up with the demand for critical minerals. For example, copper, lithium and cobalt are already experiencing supply constraints, and supply imbalances are likely in the near term. In addition, there is significant under-investment in these critical minerals, which will exacerbate the supply-demand situation over the near-to-medium term.

The industry's inability to meet demand could have major implications for the cost – and ultimately the pace – of the global uptake and installation of energy transition technologies. Raw materials are the largest cost component of an EV battery. The supply and price of the input battery metals will have the greatest impact on whether EVs will reach cost parity with, and replace, traditional internal-combustion vehicles.

The mining industry, therefore, plays a fundamental role in the global transition to clean energy. The shift to net zero will require more mining, not less. The rapid scaling of the low-emission energy systems of the future – solar and wind power, EVs and grid-scale batteries – will be highly material-intensive. The production of a solar farm requires three times more mineral resources than a similar-sized coal plant, and constructing a wind farm needs 13 times as much as a comparable gas-fired plant. But providing resources for the energy transition is not simply a matter of mining more of the same materials in the same way. Instead, the world will need more critical minerals and raw materials to power the global economy of the future, and these resources will need to be mined sustainably.

The era of critical minerals has arrived, and it is the most momentous change the industry has seen in decades. Miners can no longer depend on yesterday's portfolios and practices to create value in this newly dynamic and fiercely competitive landscape. Mining CEOs seem to know it: of those polled in PwC's 26th Annual Global CEO Survey, 41% don't think their companies will be economically viable in ten years if they continue on their current path. The era of critical minerals must therefore be an era of reinvention.


Photo source: PT Timah Tbk

One shift that demands a response is the emergence of an important new player in the critical minerals market: governments. After seeing rapid demand growth and risky levels of supply chain concentration, governments have formed alliances, instituted new policies and mobilised funding to secure access to critical minerals.

Recently, many countries have introduced legislation addressing critical minerals production, processing and manufacturing. Canada updated its Critical Minerals Strategy (December 2022), the EU released its Critical Raw Materials Act (March 2023), the UK refreshed its Critical Minerals Strategy (March 2023) and Australia is due to release an update to its existing strategy in 2023. But the most significant of these is the US Inflation Reduction Act ("IRA"), the largest piece of climate-focused legislation in US history. With approximately US$370 billion in spending and tax credits to support clean-energy industries and supply chains, the IRA significantly increases the volume of public capital available for critical minerals investments.

Another recent trend has seen governments establish funds to invest in critical minerals projects and supply chains. For example, Australia's export credit agency, Export Finance Australia, set up the Critical Minerals Facility to fill gaps in private financing for critical minerals projects. In 2022, the agency agreed to lend Australia miner Iluka Resources US$1.05 billion to build a fully integrated rare earths separation facility in Western Australia. The Australian Government is also directing a portion of its US$15 billion National Reconstruction Fund to critical minerals companies that build processing, refining or manufacturing capacity in the country.

These moves by governments are rapidly changing the competitive landscape for critical minerals companies and miners more broadly. The inflow of public funds, for example, means that miners must rethink the rates of return they can expect on mining or supply chain assets.

Due to lower interest rates on government borrowings, the financing cost available to the public sector is lower than that available to the private sector, even for companies with the highest credit ratings. Government-backed funds are likely to have nominal (or inflation-linked) return requirements that are lower than the usual expected returns on investment for a mining company or its shareholders. As more governments use their capital to finance critical minerals and supply chain projects, miners may need to lower their target rates of return to compete. Miners will also need to contend with heightened investment risk and greater competition as governments alter the playing field with incentives and interventions.

Mining companies must adjust now to stay ahead of their rivals and to position themselves strategically, and with urgency, to benefit from the changing market dynamics and the growth in demand for the critical minerals and materials necessary for the energy transition.

ESG – Delivering Sustained Outcomes and Building Trust

Often heard in today's boardrooms and C-suites and their virtual equivalents: a mixture of anxiety and enthusiasm about ESG issues. "*What risks are we sitting on?*" leaders (and investors) are asking, as pressure for ESG disclosures mount. "*How do we measure and manage them when there are no common standards? Where should we focus, when the list of potential issues is a mile long?*" And, critically – which is where the enthusiasm comes in – "*As we take a hard look at our business, what opportunities can we identify to solve big problems and create value in new ways?*" The answers to these questions are interrelated, as are the initiatives those answers will motivate: reimagined reporting, strategic reinvention, and, ultimately, wholesale business transformation.

The underlying forces at work are well known. Investors, lenders, and rating agencies expect greater visibility of an ever-broader range of non-financial metrics to better understand diverse social and environmental risks. Governments' ambitious, top-down commitments to limit carbon emissions are increasingly backed by new regulations and new taxes. More – much more – can be expected. Activist shareholders, among many other stakeholders, are advocating for net-zero policies and for tighter linkages between ESG targets and executive compensation packages. Socially conscious consumers are more inclined to vote with their wallets, encouraging businesses to reappraise their products and purpose, including their role as employers of diverse, engaged workforces.

In Indonesia, the ESG landscape has been gradually evolving since the inception of the International Paris Accord Agreements in 2016. The Government's commitment to adopt ESG measures in order to advance national efforts to achieve its updated sustainability target of net zero emissions by 2060 is apparent in a number of initiatives: the establishment of a coherent roadmap (i.e. the Sustainable Finance Roadmap Phase II (2021-2025) guidebook) issued by the Financial Services Authority of Indonesia (*Otoritas Jasa Keuangan* or "OJK"); the creation of the 2021-2040 National Electricity General Plan (*Rencana Umum Ketenagalistrikan Nasional* or "RUKN"); and the issuance of a standard for "investor-grade" ESG reporting amongst publicly listed companies.

Furthermore, the OJK has mandated sustainability reporting for financial service institutions, issuers, and publicly listed companies through OJK Regulation No. 51/ POJK.03/2017 and OJK Circular Letter No. S-264/D.04/2020. Typical ESG metrics that must be reported follow Global Reporting Initiative standards, which cover areas such as greenhouse gas ("GHG") emissions, energy consumption, environmental compliance, management of effluent and waste and procurement practices, among others.

In October 2021, the Government issued Law No. 7/2021 on the Harmonisation of Taxation Regulations, which includes a carbon-tax scheme on energy-intensive sectors. The OJK and the IDX are currently developing the regulations for a carbon trading market.

Increased scrutiny from investors, new regulatory requirements and shifting consumer expectations mean mining companies in Indonesia face new pressures to measure, disclose and make progress on ESG initiatives. Stakeholders across the business spectrum see ESG as a window into a company's future, where robust ESG reporting is an important indicator of a company's overall health.

Against this backdrop, many mining companies in Indonesia are still in the early stages of their ESG journey. Mining companies should realise that ESG presents both risks and opportunities. Unlocking ESG potential and demonstrating good will for sustainability has the opportunity to create additional opportunities for access to finance, increase stakeholder confidence, reduce costs, and increase productivity. Likewise, failing to respond appropriately to the progress of peers on ESG issues, new regulations, and changing consumer, employee and investor expectations will likely lead to value erosion.

For mining companies, maintaining a robust social licence to operate is more essential than ever for success. Strengthening that social licence starts with forming genuine partnerships that truly respect and benefit local communities and the rights of indigenous peoples. The miners of the future are community-centred and focused on providing skills, decent jobs, worker protection, social and economic development, and inclusion and fairness. Environmental stewardship – responsibly addressing biodiversity conservation, tailings management, water quality and mine closure – is of paramount importance to a miner's legacy. Rightly or wrongly, whole industries are often judged by a few bad projects or companies. Every miner has a role in improving mining's social licence.

Mining companies will see tangible business benefits by re-orientating operations around a value proposition that puts people and planet alongside profit. As miners work to provide the minerals to achieve a net-zero future, the societal impact on communities and the broader ecosystem of stakeholders must be front of mind.

Lastly, mining executives need to understand that ESG is more than ticking boxes. It is about recognising the transformation taking place in capital, enterprise and society. ESG can be a strategic lever that helps mining companies align themselves within this transformation. ESG should be considered at the heart of what a miner is; this will lead to sustained outcomes that drive value and growth while strengthening our environment and societies.

Messages from B20

As part of the recently concluded G20 Indonesia Presidency, B20 Indonesia, which was hosted by the Indonesian Chamber of Commerce and Industry (*Kamar Dagang dan Industri Indonesia* or "KADIN"), brought together global business and thought leaders to identify the most pressing problems of the day and compile potential solutions from a business perspective.

Three key areas were prioritised in the official communique of the B20 to G20 – accelerating the green transition, promoting inclusive growth, and creating equitable access to healthcare.

All three are critically important for different reasons, but ultimately feed into a collective aspiration to accelerate progress on the unfinished development agenda. But even amongst these, accelerating the green transition takes precedence as our continuing reliance on fossil fuels for primary energy supply and associated GHG emissions, primarily CO_2, are causing global warming and climate change. Left unaddressed, such factors will result in catastrophic climate change, which will threaten the very existence of life on the planet as we know it.

One of the cornerstones of the policy recommendations of the B20 Energy, Sustainability and Climate ("ESC") Task Force, for which PwC Indonesia was a knowledge partner, is the need for enhanced cooperation on a global scale to ensure broad basing and acceleration of the energy transition in a manner that addresses the energy security and affordability concerns of all countries.

It must, however, be noted that any change to the status quo will result in uneven impacts on different stakeholders. A change on the scale of the energy transition will magnify these distributional impacts, especially in countries that are major producers and suppliers of fossil fuels. Securing the social and political licence for this critically needed transition requires that stakeholder impacts are well considered and addressed through appropriate interventions from governments and external development partners to ensure a just transition. This is not just the right thing to do, but also the necessary thing to do, as achieving a successful energy transition while increasing inequality will be unsustainable.

B20 ESC TF Policy Recommendations

Policy Recommendation	Policy Action No.	Policy Action
Enhance global cooperation on accelerating the transition to sustainable energy use by reducing carbon intensity of energy use through multiple pathways	1.1	Enhance the pace of energy efficiency improvement across the transport, buildings, and industrial sectors
	1.2	Progressively reduce the carbon intensity of electricity by reducing emissions from coal fired generation and accelerating renewable energy deployment, according to national circumstances
	1.3	Accelerate the mitigation of carbon emissions from hard-to-abate sectors
	1.4	Progressively enhance the quantum, predictability & ease of financing flows to developing countries
	1.5	Support climate technology innovation by supporting start-ups, and research universities with technology, financing, skilled manpower, knowledge & facilities sharing
Enhance global cooperation on ensuring a just, orderly, and affordable energy use across developed and developing countries	2.1	Ensure an orderly transition in primary energy sources
	2.2	Ensure Ministry of Micro, Small and Medium Enterprises ("MSME") participation in energy transition activities with financing and capacity building
	2.3	Assist transition readiness by ensuring human capital ability to accommodate change (e.g. transfer knowledge, upskilling & workshop)
	2.4	Ensure sustainable practices for mining of essential minerals for energy technologies
Enhance global cooperation on enhancing consumer level access and ability to consume clean, modern energy	3.1	Accelerate deployment of integrated electricity access solutions, including off grid with community participation and gris-based electrification to expand energy access and enhance economic prosperity
	3.2	Facilitate adoption of technology by households and MSMEs for efficient, clean, modern energy usage
	3.3	Ensure broad basing of the transition by addressing affordability barriers in developing countries

2 Regulatory Framework

2.1 Introduction

Mineral and coal mining activities are governed by the Mining Law. The introduction of the Mining Law in 2009 marked a significant change to the previous regulatory regime for Indonesian mining. Contract based concessions are no longer available for new mining projects, and both the well-regarded CoW and CCoW frameworks for foreign investors, as well as the Mining Rights (*Kuasa Pertambangan* or "KP") framework for Indonesian investors, were replaced by a licensing system, based on specified mining areas.

Since its introduction, the Mining Law has encountered a number of issues, including around domestic processing and/or refining requirements, export restrictions for unprocessed and/or unrefined mining products, divestment requirements, domestic market obligations and the conversion of CoWs and CCoWs to comply with the new licensing system. To address some of these issues, a revision to the Mining Law had been under discussion since 2015.

On 12 May 2020, the House of Representatives DPR finally passed the Bill (*Rancangan Undang-Undang*) on the amendment to the Mining Law. On 10 June 2020, Law No. 3 of 2020 on the Amendment of Law No. 4 of 2009 on Minerals and Coal Mining (the "Amendment to the Mining Law") was formally enacted.

The Amendment to the Mining Law amends, clarifies and adds provisions regarding, mining business activities, licensing, transfers of mining licences and shares in mining companies, extensions of CoWs and CCoWs, the centralisation of government decisions in the mining sector, and several other matters.

In 2022, other than the issuance of the Amendment to the Mining Law, another significant regulatory change affecting all industries, including mining, was made through the Government Regulation in Lieu of Law No. 2 of 2022 on Job Creation ("GR in Lieu of Law 2/2022") which was enacted to become Law pursuant to Law No. 6 of 2023 ("Job Creation Law") which amends several laws including the Mining Law. The Job Creation Law is aimed to increase job opportunities, provide protection and empowerment for small businesses, increase ease and certainty in doing business and encourage investment growth in Indonesia amidst the global economic uncertainty.

Photo source: PT Timah Tbk

Previously, Law No. 11 of 2020 on "Job Creation Law" had been enacted in November 2020. However, on 25 November 2021, the law was then declared by the Constitutional Court to be conditionally unconstitutional and contradict the 1945 Constitution. Under its decision, the Constitutional Court stated that the Job Creation Law shall be adjusted within two years since the date of the Constitutional Court's decision (i.e. 25 November 2021). As a follow up, the Job Creation Law was then revoked by GR in Lieu of Law 2/2022 which was issued as a form of improvement to the Job Creation Law. Later in March 2023, the Government issued Law No. 6 of 2023 on "The Stipulation of the Government Regulation in Lieu of Law No. 2 of 2022 on Job Creation to become Law" which stipulates GR in Lieu of Law 2/2022 as a law.

The Job Creation Law amends a number of laws including the Mining Law. To the Mining Law, the Job Creation Law adds one new article regarding royalty imposition for coal and revises one article regarding sanctions. On the royalty imposition for coal, Government Regulation No. 25 of 2021 on the Implementation of Energy and Mineral Resources Business ("GR 25/2021") provides further provisions which will be elaborated in Section 2.5 of this Guide, "Royalties and the Fiscal Regime".

The key objective of the Mining Law is to support sustainable national development, for which purpose it imposes on investors the demand to perform the following regarding mining activities:

- Good mining practices;
- Increase the added value of mining products;
- Improve society;
- Be cautious regarding environmental impacts; and
- Maintain good governance and bookkeeping.

To support the requirements above, the Mining Law is dependent upon a significant number of implementing regulations that provide detailed guidelines regarding how it will be administered. Most of the fundamental implementing regulations have been issued, although some clarifications are still required. At the time of writing, a number of GRs (including amendments) had been issued relating to the following areas:

- Mining Areas (GR 25/2023);
- Mining Business Activities (GR 96/2021);
- Reclamation and Mine Closure (GR 78/2010);
- Mineral and Coal Mining Direction and Supervision (GR 55/2010);
- Royalty Rates (GR 26/2022 and GR 25/2021);
- Treatment of Taxation and/or Non-Tax State Revenue (*Penerimaan Negara Bukan Pajak* or "PNBP") in Minerals Mining Businesses (GR 37/2018); and
- Treatment of Taxation and/or PNBP in Coal Mining Businesses (GR 15/2022).

Please note that GR 25/2021, GR 26/2022, GR 15/2022 and GR 37/2018 were not issued specifically as implementing regulations of the Mining Law, but are regulations that remain relevant to mining companies operating in Indonesia. GR 26/2022 provides guidance on the rates of production royalties that the holder of an IUPK should pay - please refer to the discussion regarding this GR in Section 2.5 of this Guide, "Royalties and the Fiscal Regime". GR 15/2002 and GR 27/2018 provide guidance on the treatment of the taxation and/or PNBP of which Indonesian coal and mineral mining companies should be aware. Please refer to the discussion regarding this GR in Section 4.2 of this Guide, "The Tax Regime for an IUP, IUPK, People's Mining Licence (*Izin Pertambangan Rakyat* or "IPR"), and Rock Mining Business Licence (*Surat Izin Penambangan Batuan* or "SIPB") Company".

A number of PerMen have also been issued by the MoEMR. Some of the key regulations relate to:

a. The Procedures for the Granting of Areas, Licences, and Reporting in the Business Activity of Mineral and Coal Mining (PerMen 7/2020 as amended by PerMen 16/2021);
b. The Mineral and Coal Mining Business (PerMen 25/2018 as lastly amended by PerMen 17/2020);
c. The Determination of Mining Areas (PerMen 37/2013);
d. The Delegation of Authority for Issuing Mining Licences (PerMen 25/2015 as amended by PerMen 19/2020);
e. The Supervision of Business Activities in the Sectors of Energy and Mineral Resources (PerMen 48/2017 as partly revoked by PerMen 41/2018 and PerMen 7/2020 as amended by PerMen 16/2021);
f. The Procedures for Setting the Benchmark Prices of Metal Minerals and Coal (PerMen 7/2017 as amended by PerMen 44/2017, PerMen 19/2018, and PerMen 11/2020);
g. The Coal Price Determination for Mine Mouth Power Plants (PerMen 9/2016 as amended by PerMen 24/2016);
h. The Divestment Procedures and the Mechanism for the Determination of the Price of Divestment Shares (PerMen 9/2017 as amended by PerMen 43/2018);
i. The Implementation of Good Mining Practice and the Supervision of Minerals and Coal Mining (PerMen 26/2018); and
j. The Continuation of the Construction of Domestic Metal Mineral Processing Facilities (PerMen 7/2023).

In addition to the above regulations, several other regulations are also applicable to mining companies operating in Indonesia:

- GR 36/2023, concerning "Foreign Exchange From Export Proceeds From Natural Resources Business, Management, And/Or Processing Activities". Please refer to Chapter 6 of this Guide, "Additional Regulatory Considerations for Mining Investment", and the sub-section "Requirement to Deposit DHE with an Indonesian FX Bank", for further discussion of GR 36/2023.
- Ministry of Finance ("MoF") Regulation (*Peraturan Menteri Keuangan* or "PMK") No. 39/PMK.010/2022 as lastly amended by PMK No.123/PMK.010/2022 concerning the "Determination of Export Goods that are Subject to Export Duty and Export Duty Tariffs" ("PMK 39/2022"). Please refer to Section 2.4 of this Guide, "Mandatory In-Country Processing and Export Restrictions", for further discussion of PMK No. 39/PMK.010/2022 as lastly amended by PMK No. 123/PMK.010/2022.
- Minister of Trade Regulation (*Peraturan Menteri Perdagangan* or "PerMenDag") No. 40/2020, as amended by PerMenDag 65/2020, concerning the "Provisions for the Use of Sea Transportation and National Insurance for the Export and Import of Certain Goods". Please refer to Section 2.4 of this Guide, "Mandatory In-Country Processing and Export Restrictions", and the sub-section on the "Use of National Sea Transportation and Insurance for Coal Exports", for further discussion of PerMenDag 40/2020, as amended by PerMenDag 65/2020.
- PerMenDag 94/2018, as amended by PerMenDag 102/2018, concerning the "Provisions for the Use of Letters of Credit for the Export of Certain Goods". Please refer to Section 2.4 of this Guide, "Mandatory In-Country Processing and Export Restrictions", and the sub-section on the "Letter of Credit ("L/C") Requirements for Exports of Minerals Resources", for further discussion of PerMenDag 94/2018 as amended by PerMenDag 102/2018.
- Presidential Regulation (*Peraturan Presiden* or "Perpres") No. 55/2022, concerning "Delegation of Granting Business Permits in the Mineral and Coal Mining Sector".

Hierarchy of the current regulatory framework is shown in the diagram below:

Mining Law No. 4/2009 as amended by the Amendment to Mining Law No. 3/2020

GRs

- **Mining Areas** GR 25/2023
- **Mining Business Activities** GR 96/2021
- **Reclamation and Mine Closure** GR 78/2010
- **Mineral and Coal Mining Direction and Supervision** GR 55/2010
- **Type and Tariff of Non-Tax State Revenue Applicable to Minister of Energy and Mineral Resources** GR 26/2022
- **Tax and Non-Tax State Revenue Treatment in the Mineral Mining Sector** GR 37/2018
- **Tax and Non-Tax State Revenue Treatment in the Coal Mining Sector** GR 15/2022
- **Implementation of Energy and Mineral Resources Sector** GR No. 25/2021

MoEMRs

- **Mining Areas, Licensing and Reporting in Mineral and Coal Mining** PerMen 7/2020 as amended by PerMen 16/2021
- **Determination of Mining Areas** PerMen 37/2013
- **Delegation of Authority for Issuing Mining Licences** PerMen 25/2015 as amended by MoEMR 19/2020
- **Supervision of Business Activities in the Sector of Energy and Mineral Resources** PerMen 48/2017 as partly revoked by PerMen 41/2018 and PerMen 7/2020
- **Benchmark Pricing** PerMen 7/2017 as amended by PerMen 44/2017, PerMen 19/2018, and PerMen 11/2020
- **Coal Price Determination for Mine Mouth Power Plants** PerMen 9/2016 as amended by PerMen 24/2016
- **DMO** PerMen 25/2018 as amended by PerMen 50/2018, PerMen 11/2019 and PerMen 17/2020
- **Increasing Mineral Value Added Through Processing and Refining Activities** PerMen 25/2018 as amended by PerMen 50/2018, PerMen 11/2019, Permen 17/2020 and Permen 7/2023
- **Restriction on Exports of Processed and Refined Minerals** PerMen 25/2018 as amended by PerMen 50/2018, PerMen 11/2019 and PerMen 17/2020
- **Divestment Procedures and Mechanism of Price Determination** PerMen 9/2017 as amended by PerMen 43/2018
- **Mine Reclamation and Closure** PerMen 26/2018

Photo source: PT Antam Tbk

2.2 Mining Areas, Mining Licences, and Reporting in the Minerals and Coal Business Activities

A. Mining Areas

Based on the Mining Law, there are several terms used to describe mining areas, as follows:

- Mining Jurisdiction Area (*Wilayah Hukum Pertambangan* or "WHP") means the entire land space, or sea space, including the space under the earth as one unit of area, namely the Indonesian archipelago, the land under the water, and the continental shelf;
- Mining Area (*Wilayah Pertambangan* or "WP") means a potential area for the extraction of minerals and/or coal that is not bound by governmental administrative boundaries as part of the national spatial planning;
- Mining Business Area (*Wilayah Usaha Pertambangan* or "WUP") means a part of a mining area for which data, geologicaly potential, and/or information about geology has already been obtained;
- Mining Business Licence Area (*Wilayah Izin Usaha Pertambangan* or "WIUP" means an area for which authorisation has been granted to an IUP or SIPB holder;
- A People's Mining Area (*Wilayah Pertambangan Rakyat* or "WPR") means a part of a mining area where small-scale mining activities are carried out;
- A State Reserve Area (*Wilayah Pencadangan Negara* or "WPN") means a part of a mining area that is reserved for the national strategic interest;
- A Special Mining Business Area (*Wilayah Usaha Pertambangan Khusus* or "WUPK") means a part of a mining area for which data, geologicaly potential, and/or information about geology that may be commercialised has already been obtained; and
- A Special Mining Business Licence Area (*Wilayah Izin Usaha Pertambangan Khusus* or "WIUPK") means an area for which authorisation has been granted to a Special Mining Business Licence holder.

The implementing regulations of the Mining Law that provide further guidance about mining areas are GR 25/2023, GR 96/2021, PerMen 37/2013 and PerMen 7/2020 as amended by PerMen 16/2021.

Based on the Amendment to the Mining Law:

- WPs as part of the WHP are to be stipulated by the Central Government (i.e. the MoEMR), after being determined by the Regional Government at the provincial level and consulted on with the DPR of the Republic of Indonesia.
- Determination of WPs includes the determination of WUPs, WPRs, WPNs, and WUPKs.
- WPN can be utilised in part or in whole upon the approval of DPR of the Republic of Indonesia.

Pursuant to GR 25/2023, the preparation of a WP is to be conducted through investigation and research on a WHP and a preparation plan on the WP. The investigation and research on a WHP are conducted by the MoEMR to obtain data and information on the distribution of carrier rock formations, indications, resources and/or mineral and/or coal reserves. The MoEMR may assign state research institutions and/or regional research institutions to conduct such investigation and research on a WHP. GR 25/2023 further stipulates that the WP preparation plan shall be prepared by the MoEMR and shall be used as the basis of WP determination.

One WUP may include one or several WIUPs. WIUPs consist of:

- Radioactive mineral WIUPs;
- Metal mineral WIUPs;
- Coal WIUPs;
- Non-metal mineral WIUPs;
- Non-metal mineral of certain type WIUPs; and/or
- Rock WIUPs.

Furthermore, according to GR 25/2023, the MoEMR may assign a state research institution, National State-Owned Companies (*Badan Usaha Milik Negara* or "BUMN"), Regional Government-Owned Companies (*Badan Usaha Milik Daerah* or "BUMD"), or private business entities to conduct investigation and research on a WIUP for the preparation of a metal-mineral or coal WIUP or coal WIUP for development and/or utilisation. Such assignment shall be conducted through the offering of assignment areas from the MoEMR to the state research institution, BUMNs, or BUMDs or the application of assignment areas from BUMNs, BUMDs, or private business entities. The assignment shall be granted for a maximum period of 3 years and may be extended twice for one year each.

Additionally, pursuant to the GR 25/2023, the determination of WUPs, WPRs, WPNs, WUPKs, WIUPs, and WIUPKs prior to the issuance of GR 25/2023 shall remain valid and must be adjusted to the provisions under GR 25/2023 within two years of the enactment of GR 25/2023 (i.e. 5 May 2025). GR 25/2023 does not provide further details on the aspects to be adjusted with regard to the mining area determination made prior to GR 25/2023.

The Determination and Granting of Non-Metal Mineral and Rock WIUPs

Based on GR 25/2023, the MoEMR determines the total areas and boundaries of non-metal mineral or rock WIUPs, based on the applications that are submitted by business entities, cooperatives, or individual companies (*perusahaan perseorangan*). Based on PerMen 7/2020, prior to the determination of a non-metal mineral and rock WIUP:

- The MoEMR shall receive a recommendation from the Governor and/or the relevant governmental institution; and
- The Governor shall receive a recommendation from the Regent/Mayor and/or the relevant institution.

The recommendation by the Governor or the Regent/Mayor shall be provided no later than five business days after the date on which the request for such a recommendation was received.

The DGoMC, on behalf of the MoEMR or the Governor, shall perform administrative and technical evaluations on the requests that are submitted by business entities, cooperative, or individuals and, based on the results of the evaluation, the DGoMC, on behalf of the MoEMR or the Governor, shall make a decision to accept or refuse the request for the WIUP determination, no later than ten business days after the date when the request was received.

When the request has been accepted, the DGoMC will issue a payment instruction letter to the requesting party to pay reserve funds. On behalf of the MoEMR or Governor, the DGoMC shall provide a determination for a non-metal mineral and/or rock WIUP to the requesting party that has provided proof of payment of reserve funds into the state treasury.

The implementing guidelines for the determination of non-metal mineral and/or rock WIUPs are stipulated in MoEMR Decree No. 1798 K/30/MEM/2018 as amended by MoEMR Decree No. 24 K/30/MEM/2019 and partially revoked by MoEMR Decree No. 110.K/HK.02/MEM.B/2021 ("KepMen 1798/2018"). Although KepMen 1798/2018 is the implementing regulation of PerMen 11/2018 (which has been revoked by PerMen 7/2020), PerMen 7/2020 stipulates that any ministerial decrees issued as implementing regulations of PerMen 11/2018 shall remain valid as long as they do not contradict PerMen 7/2020. In this case, KepMen 1798/2018 remains relevant, as the reference for the determination of non-metal minerals and/or rock WIUPs.

In relation to the WIUP and the WIUPK, the MoEMR issued MoEMR Decree No. 23.K/MB.01/MEM.B/2023, which provides the calculation formula for information data compensation for the WIUP and the WIUPK. Investors are now able to access data detailing the location and coordinates of coal and mineral contents, as well as data relating to the exploration stage, covering both coal and mineral reserves.

On 11 April 2022, the Government issued Presidential Regulation (*Peraturan Presiden* or "Perpres") No. 55/2022 concerning "The Delegation of Granting Business Permits in the Mineral and Coal Mining Sector". This Perpres 55/2022, regulates the delegation of authority from the Central Government to Regional Governments, among others, it covers:

- Granting and determining the area of business licences of non-metal mineral mining, mining of certain types of non-metal minerals and rock mining areas;
- Determination of benchmark prices for non-metal minerals, certain types of non-metal minerals and rock mining.

The Determination and Granting of Metal, Minerals and Coal WIUPs

Pursuant to the Amendment to the Mining Law and GR 25/2023, WIUPs are stipulated and granted by the MoEMR, as follows:

a. The size and boundaries of radioactive mineral WIUPs shall be determined by the MoEMR based on the recommendation provided by the relevant government institution in the nuclear sector;
b. The size and boundaries of metal mineral and coal WIUPs shall be determined by the MoEMR after being determined by the Governor; and
c. The size and boundaries of non-metal mineral, certain type of non-metal minerals, and rock WIUPs shall be determined by the MoEMR based on the application submitted by business entities, cooperatives, or individual companies (*perusahaan perseorangan*).

A metal mineral and coal WIUP is granted to a business entity, a cooperative, or an individual through an auction. The announcement of the auction shall be made at least one month prior to the auction, based on the following requirements:

- It shall be announced in at least one local newspaper and/or one national newspaper;
- It shall be announced at the office of the MoEMR, or through its official website; and/or
- It shall be announced at the office of the Provincial Government that manages minerals and coal, or through its official website.

The auction shall be performed by:

- The MoEMR, if the metal mineral and coal WIUP is located between two provinces or is in a sea area that is more than 12 sea miles from the coastline to the sea and/or archipelagic waters; or
- The Governor, if the metal, minerals and coal WIUP is located in one province, or is in a sea area that is less than or equal to 12 sea miles from the coastline to the sea and/or archipelagic waters.

Based on PerMen 7/2020, the parties that are allowed to participate in a metal, minerals or coal WIUP auction are determined by the size of the WIUP acreage, as follows:

≤ 500 ha	> 500 ha
• Local BUMDs; • (Local) National enterprises*; • Cooperatives; and/or • Individuals (consisting of individual person, limited partnerships (*perusahaan komanditer*), or firms (*perusahaan firma*))	• BUMN; • BUMDs • National enterprises*; • Foreign held entities PMA; and/or • Cooperatives

Note:
**) A national enterprise is defined as a fully Indonesian-owned company*

The auctions of the metal, minerals and coal WIUPs are carried out in two stages, as follows:

i. **Pre-qualification**
   During the pre-qualification stage, the evaluation of the auction participants is based on the administrative, technical, and financial requirements. The auction participants are required to meet certain administrative, technical, and financial requirements. The technical requirements include experience in mining, the availability of human resources, and work plans.
ii. **Qualification**
   Every auction participant who passes the pre-qualification stage submits an offer price.

Based on PerMen 7/2020, the prospective winner of the auction is to be determined by the Auction Committee, based on the weighted average results of the evaluation that was performed at the pre-qualification and qualification stages, with the pre-qualification result carrying 40% and the offering price carrying 60%.

Previously, PerMen 11/2018 placed greater importance on the pre-qualification aspects, where the weighting for the pre-qualification result was set at 70%, and the weighting for the offering price was set at 30%. However, PerMen 11/2018 was amended by PerMen 7/2020, which basically applies the same calculation criteria but places a greater focus on the offering price.

The guidelines regarding the implementation, organisation, tasks, and authority of the members of the Auction Committee, the terms and conditions applicable to the participants in a metal mineral or coal WIUP auction, and the implementation of the metal mineral and coal WIUP auctions are stipulated in KepMen 1798/2018.

The Determination and Granting of Metal, Minerals and Coal WIUPKs

WIUPKs are determined from WUPKs. Pursuant to GR 25/2023, the MoEMR shall designate WUPKs upon the determination of the WUPKs by the Governor. WUPKs may be determined from:

a. WPN that will be exploited and determined to be WUPK;
b. Mining areas of CoWs/CCoWs determined to be WIUPK;
c. Ex-WIUP or WIUPK determined to be WUPK based on the MoEMR's evaluation; and/or
d. Ex-mining areas of CoWs/CCoWs determined to be WUPK based on the MoEMR's evaluation.

There are two mechanisms for the determination and granting of metal, minerals and coal WIUPKs, as follows:

a. The Determination and Granting of Metal, Minerals and Coal WIUPKs by Priority

The determination and granting of metal, minerals and coal WIUPKs by priority is managed by the MoEMR, and is available only to BUMNs and BUMDs. Priority for the granting of the WIUPK shall be given to BUMDs established by the Provincial or Regional/City Government and located at the WIUPK that is going to be offered.

Based on PerMen 7/2020 (as amended partially by PerMen 16/2021), BUMNs and BUMDs may engage private business entities whose capital is wholly sourced from domestic investment as partners in the bidding by priority to be granted with metal, minerals and coal WIUPKs. This requirement did not exist under the previous regulation (i.e. PerMen 11/2018).

Based on PerMen 7/2020, a BUMN or BUMD that intends to obtain the WIUPK needs to meet the administrative, technical, and financial requirements. In the event that a private business entity is engaged as a partner by the BUMN or BUMD, this partner must also meet the administrative, technical, and financial requirements.

If there is only one BUMN that is interested and eligible, the WIUPK shall be directly granted to such BUMN. In this case, the DGoMC, on behalf of the MoEMR, shall deliver the direct appointment letter to the BUMN, and shall also instruct the BUMN to provide a share investment for the BUMD of at least 10%, provided that the BUMN can either:

- Form a new joint venture entity no more than 90 calendar days after the appointment date; or
- Appoint an affiliate no more than 60 calendar days from the appointment date.

In providing this share participation, the BUMN shall coordinate with the Provincial and Regional/City Government where the WIUPK is located. If, following such coordination, BUMDs established by both the provincial and the Regional/City Governments are interested in making the share investment, then the share investment shall be divided into:

- 40% of the total percentage of the share investment for a BUMD that is established by the Provincial Government;

- 60% of the total percentage of the share investment for a BUMD that is established by the Regional/City Government.

The share participation by BUMN and BUMD in a new joint venture entity or in a BUMN affiliate must be at least 51%. Further, based on PerMen 7/2020 (as amended partially by PerMen 16/2021), a BUMN may offer share participation in the new joint venture entity, or in the BUMN affiliate referred to above, to a private business entity whose capital is entirely generated from domestic investment.

If there is only one BUMD that is interested and eligible, the WIUPK shall be directly granted to such BUMD. In this case, the DGoMC, on behalf of the MoEMR, shall deliver the direct appointment letter to the BUMD, and shall inform it that:

- The BUMD itself can directly carry out mining activities within the WIUPK; or
- The BUMD can form a new business entity as a joint venture within no more than 90 calendar days of the date of the direct appointment letter.

A private business entity may have a share participation in the BUMD, or in a new joint venture entity as referred to above, but such investment by a private business entity is capped at a share ownership of 49%.

b. The Determination of Metal Mineral and Coal WIUPKs by Auction

The auction process for metal, mineral and coal WIUPKs is conducted by the MoEMR when more than one BUMN or BUMD is interested in the WIUPK being offered.

The process of auctioning the WIUPKs to private business entities that are engaged in the mineral and coal mining businesses will only be conducted when:

- No BUMN or BUMD is interested in the WIUPK offer; and/or
- No BUMN or BUMD is able to meet the administrative, technical, and financial requirements.

Based on PerMen 7/2020 (as amended partially by PerMen 16/2021), the auction procedures, evaluation of pre-qualification phase documents, the evaluation of bid prices, the weighting values of the results of the evaluation of the pre-qualification documents and the bid prices, as well as the ranking determination of the prospective auction winner of the metal, mineral and coal WIUPK are similar to those for metal, mineral and coal WIUP auctions.

The following table summarises the provisions in PerMen 7/2020 (as amended partially by PerMen 16/2021), when the WIUPK auction is won by a BUMN, a BUMD, or a private business entity:

When the WIUPK auction is won by a BUMN	When the WIUPK auction is won by a BUMD	When the WIUPK auction is won by a private business entity
• The MoEMR shall announce the BUMN as the auction winner, and shall instruct the BUMN to provide a share participation by a BUMD of at least 10%, provided that the BUMN can: i. form a new joint venture entity within 90 calendar days of the determination of the auction winner; or ii. appoint its affiliate within 60 calendar days of the determination of the auction winner. • In providing the share participation, the BUMN shall coordinate with the Provincial and Regional/ City Governments in the area where the WIUPK is located. • If, following such coordination, both the Provincial and Regional/ City Governments are interested in taking the share investment, the 10% share investment shall be divided as follows: - 40% of the total percentage of the share investment shall be given to a BUMD established by the Provincial Government; and - 60% of the total percentage of the share investment shall be given to a BUMD established by the Regional/ City Government. • The share participation of a BUMN and BUMD in a new joint venture entity, or in the BUMN affiliate, as referred to above, must be at least 51%.	• The MoEMR shall announce the BUMD as the auction winner, and shall inform the BUMD that it can: i. directly operate the mining activities within the WIUPK; or ii. form a joint venture entity no more than 90 calendars days after the determination of the auction winner. • A private business entity may have a share participation in the BUMD or in a new joint venture entity as referred to above, with a maximum share ownership of 49%.	• The MoEMR shall announce the private business entity as the auction winner and instruct the entity to provide the BUMD with share participation of 10%, provided that the private business entity can: i. directly perform mining activities within the WIUPK; or ii. form a joint venture entity no more than 90 calendar days after the determination of the auction winner. • In providing the share participation, the private business entity shall coordinate with the Provincial and Regional/ City Governments in the area where the WIUPK is located. • If, following such coordination, both the Provincial and Regional/ City Governments are interested in taking the share participation, the 10% share participation shall be divided as follows: - 40% of the total percentage of the share investment shall be given to a BUMD established by the Provincial Government; and - 60% of the total percentage of the share investment for a BUMD established by the Regional/City Government.

The implementing guidelines for the determination of metal, minerals and coal WIUPKs by priority and the procedures for metal, mineral and coal WIUPK auctions are stipulated in KepMen 1798/2018. Although these guidelines are set out under KepMen 1798/2018, being the implementing regulation of PerMen 11/2018 that has been revoked by PerMen 7/2020, PerMen 7/2020 stipulates that any Minister's decrees issued as implementing regulations of PerMen 11/2018 shall remain valid as long as they do not contradict PerMen 7/2020.

Types of Mining Business Licences

Under the Mining Law, mining licences may be issued to one or more parties within the designated WPs, as follows:

- An IUP is a general licence to conduct mining business activities in a WUP area;
- An IUPK is a licence for conducting mining activities in a specific WPN area in which mining business activities can be carried out; and
- An IPR is a licence for conducting a mining business in a WPR area of a limited size and investment. IPRs are not available to foreign investors.

The implementing regulations of the Mining Law that provide further guidance on mining licences are GR 96/2021, PerMen 25/2015, and PerMen 7/2020.

Based on PerMen 7/2020, mining business licences are as follow:

a. Exploration Mining Business Licence ("Exploration IUP")

An Exploration IUP is a mining business licence that is granted for the performance of general surveys, exploration, and feasibility studies within a WIUP.

b. Exploration IUPK

An Exploration IUPK is a mining business licence that is granted for the performance of general surveys, exploration, and feasibility studies within a WIUPK.

c. IUP-OP ("*Izin Usaha Pertambangan-Operasi Produksi*")

An IUP-OP is a mining business licence that is granted for performing production operation activities (i.e. construction, mining, processing and/or refining, transportation, and sales) within the WIUP.

d. IUPK-OP

An IUPK-OP is a mining business licence that is granted for performing production operation activities (i.e. construction, mining, processing and/or refining, transportation, and sales) within the WIUPK.

e. Mining Business Licence for Production Operation Specifically for Processing and/or Refining ("IUP-OP Specifically for Processing and/or Refining")

An IUP-OP Specifically for Processing and/or Refining is a mining business licence tAn IUP-OP Specifically for Processing and/or Refining is a mining business licence that is granted specifically for purchasing, transporting, processing, and refining, as well as for selling mineral and coal commodities.

Under Article 104 of the Mining Law, an IUP-OP Specifically for Processing and/or Refining is required for a company, cooperative, or individual entering into a cooperation arrangement to carry out processing and refining for the benefit of the holders of an IUP-OP and an IUPK-OP. However, pursuant to Article 104 (1) of the Amendment to the Mining Law, the IUP-OP Specifically for Processing and/or Refining

is no longer required for a non-integrated refining and processing business, or for the benefit of IUP-OP and IUPK-OP holders. Instead, it requires an industrial business licence that is issued based on laws and regulations in the industrial sector. For existing IUP-OP Specifically for Processing and/or Refining licences, issued before the enactment of this law, Article 169C point e of the Amendment to the Mining Law stipulates that it shall be adjusted into an industrial business licence that is issued based on the laws and regulations in the industrial sector within one year at the latest since the Law entering into force (i.e. 10 June 2020).

Before the enactment of the Amendment to the Mining Law, a company, a cooperative, or an individual carrying out processing and refining was also required to obtain an Industrial Business Licence (*Izin Usaha Industri*) in addition to an IUP-OP Specifically for Processing and/or Refining. Following the issuance of the Amendment to the Mining Law, this dualism licensing issue. which caused confusion and is presumed to be a factor slowing down the development of the smelter industry, has now been clarified and addressed.

Under GR 96/2021, the MoEMR shall submit a list of holders of IUP-OP Specifically for Processing and/or Refining and IUP-OP Specifically for Processing and/or Refining documents to the Ministry of Industry within the one-year period. During the one-year period which shall end on 10 June 2021, the MoEMR shall still be the authorised institution in monitoring the mining activities carried out by the IUP-OP Specifically for Processing and/or Refining. Afterwards, the supervision of the standalone processing and/or refining activities shall be supervised by and subject to the provisions regulated by the Ministry of Industry.

f. Mining Business Licence for Production Operation Specifically for Transportation and Sales ("IUP-OP Specifically for Transportation and Sales")

An IUP-OP Specifically for Transportation and Sales is a mining business licence granted specifically for purchasing, transporting, and selling mineral and coal commodities.

g. Mining Service Business Licence (*Izin Usaha Jasa Pertambangan* or "IUJP")

An IUJP is a mining business licence that is granted for performing core mining service business activities in relation to certain phases/parts of the mining business activities.

Pursuant to the Amendment to the Mining Law, the scope of the mining services business is limited to the implementation of general surveys, exploration, feasibility studies, mining construction, transportation, mining environments, reclamation and post-mining activities, and/or mining.

In order to improve the welfare of the community around the mine site, the holder of an IUP-OP or IUPK-OP may assign the alluvial mineral sediment excavation to the community through a partnership programme, with prior consent from the DGoMC, on behalf of the MoEMR. The community around the mine site shall have an IUJP, which is issued by the Governor. The partnership programme shall be based on a cooperation agreement between the holder of the IUP-OP or IUPK-OP and the holder of the IUJP, in compliance with the criteria set out under PerMen 7/2020.

PerMen 7/2020 stipulates that business entities that are not engaged in the mining business but intend to sell minerals or coal excavated (as a by-product of their mining activities), are still required to obtain an IUP-OP for Sales. Business entities that utilise the excavated minerals or coal for their own use and for non-commercial purposes are not required to have an IUP-OP for Sales.

Based on the Transitional Provisions of PerMen 7/2020:

- The Clear and Clean Status and/or the Clear and Clean Certificates that were issued before the enactment of PerMen 7/2020 shall remain valid;
- Non-metal minerals and rock IUPs issued before the enactment of PerMen 7/2020 do not require Clear and Clean Status nor a Clear and Clean Certificate; and
- An IUP issued after the enactment of PerMen 7/2020 does not require Clear and Clean Status.

In addition to these mining business licences, the 2020 Amendment to the Mining Law introduces the following mining business licences:

a. **SIPB**
SIPB is a mining business licence granted to permit engagement in the mining of certain types of rock for construction needs or for the purpose of supporting the development of projects funded by the Central Government and/or Regional Government. The coverage of SIPB includes planning, mining, processing, transportation and sales.

b. **Assignment Licence (*Izin Penugasan* or "IP")**
An IP is a mining business licence granted for the exploitation of any radioactive mineral in accordance with the provisions of the laws and regulations governing the nuclear sector.

c. **IUPK as a Continuation of Operation of a CoW/CCoW (*IUPK sebagai Kelanjutan Operasi Kontrak/Perjanjian*)**
An IUPK as a Continuation of the Operations of a CoW/CCoW is a mining business licence granted as an extension of a CoW or CCoW upon the expiry of the respective CoW or CCoW. Although the Mining Law does not mention the IUPK as a Continuation of the Operations of a CoW/CCoW, this licence was introduced through the previous implementing regulations of the Mining Law to accommodate the ongoing operations of CoW/CCoW holders. The issuance of an IUPK as a Continuation of the Operations of a CoW/CCoW is elaborated further in subsequent sections of this guide.

Ownership of Mining Business Licences

Based on the Mining Law, the Amendment to the Mining Law, and PerMen 7/2020, mining business licences may be issued to the following parties:

Exploration IUP and IUP OPs	Exploration IUPK and IUPK-OPs	IUP-OP Specifically for Transportation and Sales	IUJP
• Business entities • Cooperatives • Individuals	• Business entities	• Business entities • Cooperatives • Individuals	• Business entities • Cooperatives • Individuals*

**) Individuals who are holders of IUJPs may be engaged only in the mining services business in consultation and/or planning activities.*

In the above table, the business entities include BUMNs, BUMDs, and private business entities. PerMen 7/2020 does not further define private business entities. However, based on GR 96/2021, private business entities include Domestic Investment (*Penanaman Modal Dalam Negeri* or "PMDN") and PMAs. Under the previous Mining Law 11/1967, a CoW/CCoW could be held by either foreign or domestic investors, whilst a KP could be issued only to domestic investors.

The Mining Law therefore removes some of the distinctions between Indonesian and foreign investors in the mining sector and is consistent with the current Positive List of Foreign Investment issued by Indonesia's Investment Coordinating Board (*Badan Koordinasi Penanaman Modal* or "BKPM"), which allows 100% foreign investment in the mining sector, subject to the share divestment rules discussed in Section 2.6 of this Guide, "Divestment of Foreign Shareholdings".

Authority to Issue IUPs

One of the key points of the 2020 Amendment to the Mining Law is the greater control of the Central Government over mining activities. Pursuant to Article 35 of the Amendment to the Mining Law, mining business licences shall be issued by the Central Government. The Central Government may delegate its authority to grant mining business licences to the Regional Government at the provincial level. Article 169c of the Amendment to the Mining Law further stipulates that the authority of the Regional Government granted under the Mining Law and other laws regulating the authority of the Regional Government in mining activities must be interpreted as the authority of the Central Government unless otherwise stipulated in the Amendment to the Mining Law. For instance, based on Perpres 55/2022, the Central Government delegates the authority to grant business licences of non-metal mineral mining to the Regional Government.

In 2022, following the issuance of Perpres 55/2022, the MoEMR issued Circular Letter No. 1.E/HK.03/MEM.B/2022 on the Guidance for the Implementation of Presidential Regulation No. 55 of 2022 regarding the Delegation for the Issuance of Business Licensing in the Mineral and Coal Mining Sector ("Circular Letter 1/2022"). Circular Letter 1/2022 includes the following key provisions:

1. Perpres 55/2022 shall come into force as of 11 April 2022;
2. Starting from 11 April 2022, the authority of the Central Government in the management of mineral and coal mining passes to the provincial Regional Government, which includes among others:

a. grant non-metal mineral WIUPs and rock WIUPs;
b. service for the issuance of certain IUPs, SIPBs, IPRs, Transportation and Sales Business Licences, IUJPs, and IUP-OPs for Sales; and
c. stipulate the benchmark price for non-metal minerals, certain types of non-metal minerals and rocks;

3. The licences above shall be applied for through the Online Single Submission ("OSS") system as a one-door integrated service and the applicants must obtain a Business Identification Number (*Nomor Induk Berusaha* or "NIB") in accordance with the correct Standard Indonesian Business Field Classifications (*Klasifikasi Baku Lapangan Usaha* or "KBLI");

Based on PerMen 7/2020 and the Amendment to the Mining Law, the issuance of IUPs is performed as follows:

Exploration IUP*	
Grantor	**Condition**
MoEMR	If the WIUP is located: • across more than one province; • in sea territory that is more than 12 miles from the shoreline towards the open sea and/or towards archipelagic waters; or • directly adjacent to another country. The Exploration IUP is also granted by the MoEMR if: • the application of the Exploration IUP is made by a listed/public company; and • the application of the licence is made for more than one metal mineral or coal IUP.
Governor	If the WIUP is located: • within one province; or • in ocean territories that are up to 12 miles from the shoreline towards the open sea and/or towards archipelagic waters.

**According to Circular Letter 1/2022, the provincial regional government shall provide the issuance service of IUP for a PMDN company (penanaman modal dalam negeri or domestic investment company) engaging in non-metal mineral, certain types of non-metal mineral, and rock mining business activities if the WIUP is located within one province or in ocean territories that are up to 12 miles from the shoreline.*

IUP-OP	
Grantor	**Condition**
MoEMR	If the mining location, processing and/or refining location, as well as the special port location are located: • across more than one province; or • directly adjacent to another country. The IUP-OP is also granted by the MoEMR if: • the application of the IUP-OP is made by a listed/public company; and • the application of the licence is made for more than one metal mineral or coal IUP.
Governor	If the mining location, processing and/or refining location, as well as the location of the special port are within one province.

Exploration IUPK and IUPK-OP	
Grantor	**Condition**
MoEMR	Exploration IUPK and IUPK-OP can only be granted by the MoEMR.

IUP-OP Specifically for Processing and/or Refining*	
Grantor	**Condition**
MoEMR	If: • the mining commodities to be processed are from other provinces outside the location of the processing and/or refining facilities; • the mining commodities to be processed are from abroad; and/or • the processing and refining facilities are located across more than one province.
Governor	If: • the mining commodities to be processed are from the same province as the location of the processing and/or refining facilities; and/or • the location of the processing and/or refining facilities is within one province.

IUP-OP Specifically for Transportation and Sales	
Grantor	**Condition**
MoEMR	If the transportation and sales are carried out between provinces and/or nations.
Governor	If the transportation and sales take place in one province.

IUJP	
Grantor	**Condition**
MoEMR	If the mining service business activities are conducted throughout Indonesia.
Governor	If the mining service business activities are conducted in one province.

**According to Article 169C point 3 of the Amendment to the Mining Law, the existing IUP-OP Specifically for Processing and/or Refining licences issued before the enactment of the Amendment to the Mining Law shall be adjusted to an industrial business licence that is issued based on the laws and regulations in the industrial sector within one year of the Amendment to the Mining Law coming into force (i.e. no later than 10 June 2021).*

The authority of the Governor to issue each of the above-mentioned mining business licences must be interpreted in a way that the Central Government has delegated its authority to do so (which authority for managing the issuance of certain mining business licences has been passed to the provincial regional government as stipulated under the Circular Letter 1/2022 as elaborated above). As discussed above, this is because the authority of mining business licence issuance pursuant to Article 35 of the Amendment to the Mining Law is now under the sole authority of the Central Government. Article 169C of the Amendment to the Mining Law stipulates that governors must hand over to the MoEMR all IUP Exploration, IUP-OP, IPR, IUP-OP Specifically for Transportation and Sales, and IUJP licences that fell within their authority before the Law was issued within two years of the law coming into force, for those mining business licences to be updated and evaluated by the MoEMR. The implementing guidelines for the evaluation of those mining business licences are stipulated in MoEMR Decree No. 78.K/MB.01/MEM.B/2022 issued in April 2022.

While the Governor as the head of the Provincial Government may still have the right to issue a mining business licence, that is not the case for Mayors/Regents. All relevant provisions in the Mining Law granting authority to Mayors/Regents to issue mining business licences based on the location of the mining area have been removed.

Such authority was removed from PerMen 11/2018 (as amended by PerMen 22/2018 and PerMen 51/2018) and continues under Permen 7/2020. There is no provision stipulating that the Mayor/Regent can grant mining business licences. The authority for issuing IUPs under PerMen 7/2020 is only given to the MoEMR and the Governor. This is in line with

the provisions of the Regional Autonomy Law No. 23/2014 and its amendments, which stipulate that Regencies/Municipal Governments do not have the authority to issue IUPs.

Following this change, the Central Government now has greater control over the process of issuing mining business licences.

Following the issuance of the Amendment to the Mining Law, GR 96/2021 also stipulates that IUPs shall be granted by the MoEMR and the Governor. An IUP shall be issued provided that the applicant has met the administrative, technical, environment, and financial requirements. Under GR 96/2021, holders of Exploration IUPs may carry out operation production activities after obtaining approval from the MoEMR to upgrade their Exploration IUPs to IUP-OPs.

Through PerMen 25/2015 as amended by PerMen 19/2020 ("PerMen 25/2015"), the MoEMR has delegated to BKPM the authority to issue the following licences (on behalf of the MoEMR):

- IUPs including extensions;
- IUPKs including extensions;
- IUPK as a Continuation of the Operations of a CoW/CCoW;
- Termination/revocation or adjustment of certain licences;
- IUP Specifically for Transportation and Sales including extensions;
- SIPB including extensions;
- IUP for Sales;
- IPR and extensions; and
- IUJPs, including extensions.

Licence Terms and Extensions

Based on the Amendment to the Mining Law, mining business licences are issued and extended as follows:

Types of Licences	Licence Terms		Extensions	Notes
Exploration IUPs	Coal	7 years	1 year (please see notes)	• Pursuant to Article 42a on the Amendment to the Mining Law, the exploration period may be extended for one year for each extension, provided that all requirements are met. • Applications to change an Exploration IUP to an IUP-OP should be submitted no later than: i. Six months before the expiration of the Exploration IUP (for metal minerals, certain types of non-metal minerals, or coal); ii. Three months before the expiration of the Exploration IUP (for non-metal minerals or rocks).
	Metal Minerals	8 years	1 year (please see notes)	
	Non-Metal Minerals	3 years *)	N/A	
	Rocks	3 years	N/A	
Exploration IUPKs	Coal	7 years	1 year (please see notes)	• Pursuant to Article 83a of Amendment to Mining Law, the exploration period may be extended for one year for each extension, provided that all of the requirements are met. • Applications to change an Exploration IUPK to an IUPK-OP should be submitted no later than six months before the expiration of the Exploration IUPK.
	Metal Minerals	8 years	1 year (please see notes)	

Types of Licences	Licence Terms		Extensions	Notes
IUP-OPs	Coal	Maximum 20 years ***)	2 x 10 years	Applications for extensions of licences should be submitted: • No earlier than five years and, at the latest, one year prior to the expiration of the IUP-OP (for metal minerals, non-metal minerals of certain types, or coal); • No earlier than two years and, at the latest, six months before the expiration of the IUP-OP (for non-metal minerals or rock).
	Metal Minerals	Maximum 20 years ****)	2 x 10 years	
	Non-Metal Minerals	Maximum 10 years **)	2 x 5 years **)	
	Rocks	Maximum 5 Years	2 x 5 years **)	
IUPK-OPs	Coal	Maximum 20 years ***)	2 x 10 years	Applications for extensions of licences should be submitted no earlier than five years and, at the latest, one year prior to the expiration of the IUPK-OP.
	Metal Minerals	Maximum 20 years ****)	2 x 10 years	
IUP-OP Specifically for Processing and/or Refining		30 years	20 years for each extension	Applications for extensions of licences should be submitted no earlier than five years and, at the latest, one year prior to the expiration of the IUP-OP Specifically for Processing and/or Refining. However, it should be noted that existing IUP-OP Specifically for Processing and/or Refining licences issued before the enactment of the Amendment to the Mining Law shall be converted into an industrial business licence issued based on laws and regulations in the industrial sector within one year at the latest since this Law came into force.
IUP-OP Specifically for Transportation and Sales		5 years	5 years for each extension	Applications for extensions of licences should be submitted at the latest one month prior to the expiration of the IUP-OP Specifically for Transportation and Sales.
IUJPs		5 years	5 years for each extension	Applications for extensions of licences should be submitted, at the latest, one month prior to the expiration of the IUJP.

**) Certain non-metal mineral companies may be granted an Exploration IUP for a period of seven years.*
***) Certain non-metal mineral companies may be granted an IUP-OP for a maximum of 20 years, which is extendable twice, for a period of ten years for each extension.*
****) Pursuant to the Amendment to the Mining Law, coal operation production activities that are integrated with development and/or utilisation activities (activities to increase the value of the coal) may be granted for a maximum of 30 years, which is extendable for ten years for each extension.*
*****) Pursuant to the Amendment to Mining Law, metal mineral production activities that are integrated with the processing and/or refining facility may be granted for a maximum of 30 years, which is extendable for ten years for each extension.*

Once the second extension of an IUP-OP expires, the relevant WIUP must be returned to either the Central or the Regional Government. If the WIUP relates to metal minerals and coal, then it could be determined as either a WPN or WIUP/WIUPK. The WIUP would be offered via an auction, while the offering of a WIUPK would be via priority or auction (where the previous IUP-OP holder would have the right to match the tender offer).

Procedures for the Issuance of an IUPK-OP as a Continuation of CoW/CCoW Operations

The procedures for the issuance of an IUPK-OP as a continuation of the operations of a CoW/CCoW are stipulated in PerMen 7/2020, which was issued in March 2020.

Based on PerMen 7/2020, a holder of a metal minerals CoW can request the conversion of the CoW into an IUPK-OP prior to the expiration of the CoW. An application for the conversion of a CoW to an IUPK-OP must be submitted to the MoEMR, through the DGoMC, with the following documents attached:

- Area maps and coordinate borders, according to the provisions of the applicable rules and regulations;
- Proof of the complete payment of any fixed fees and production fees; and
- A Work Plan and Budget (*Rencana Kerja dan Anggaran Biaya* or "RKAB").

The DGoMC, on behalf of the MoEMR, shall evaluate applications submitted by the holders of metal minerals CoWs, and the MoEMR shall issue the IUPK-OP, based on the results of an evaluation performed by the DGoMC.

The IUPK-OP shall be issued for a period of time in accordance with the remaining validity period for the metal mineral CoW and may be extended twice, for two periods of ten years each. The holder of the IUPK-OP has rights and obligations according to the provisions of the applicable rules and regulations.

Under PerMen 7/2020, all approvals that were issued by the Central Government and the Regional Government shall remain valid so long as they comply with the prevailing laws and regulations.

The implementing guidelines for the application, evaluation, and approval of IUPK-OPs resulting from the conversion of metal mineral CoWs are stipulated in MoEMR Decree No. 1796 K/30/MEM/2018 ("KepMen 1796/2018").

The DGoMC, on behalf of the MoEMR, shall evaluate applications that are submitted by the holders of metal mineral CoWs. Based on the DGoMC's evaluation, the MoEMR may approve or reject the application for the IUPK-OP as a continuation of the operation of a CoW/CCoW up to two months prior to the expiration of the CoW or CCoW, at the latest.

The IUPK-OP as a continuation of the operation of a CoW/CCoW is considered as:

- The first extended IUPK-OP for an application submitted by the holders of a CoW or a CCoW who have not previously obtained an extension; or
- The second extended IUPK-OP for an application submitted by the holders of a CoW or a CCoW who have previously obtained an extension.

The IUPK-OP as a continuation of the operation of a CoW/CCoW is provided for a period of ten years. The first extended IUPK-OP may be extended for another ten years, according to the provisions of the applicable rules and regulations. The IUPK-OP as a continuation of the operation of a CoW/CCoW has rights and obligations, according to the provisions of the applicable laws and regulations.

Photo source: PT Antam Tbk

The implementing guidelines for the application, evaluation, and approval of the IUPK-OP as a continuation of the operation of a CoW/CCoW are stipulated in KepMen 1796/2018.

PerMen 7/2020 provides that the MoEMR may stipulate other provisions for the holder of an IUPK-OP, as a continuation of the operations of a CoW or a CCoW, in order to guarantee the effectiveness of the implementation of mineral and coal mining business activities and to ensure a conducive business climate, by taking into account:

- The scale of the investment;
- The operational characteristics;
- The volume of production; and/or
- The environmental carrying capacity.

With regard to the IUPK as continuation of the operations of a CoW or a CCoW, the Amendment to the Mining Law regulates that a CoW/CCoW is guaranteed to be extended as an IUPK as a Continuation of the Operation of a CoW/CCoW by taking into account increments in the state revenue through the rearrangement of tax and non-tax state revenue, as well as by ensuring the mining area according to the development plan of all contract areas approved by the MoEMR. The extension period given to a CoW or CCoW under the Amendment to the Mining Law is ten years; however, for a CoW/CCoW that has not previously been extended, up to two extensions may be granted, each for a maximum of ten years.

Application for the IUPK as a Continuation of the Operation of a CoW/CCoW shall be submitted at the earliest five years and at the latest one year prior to the expiration of the CoW or CCoW. This provides a longer period for the CoW or CCoW holders to have their extension applications processed by the MoEMR. The application will be evaluated by considering the continuation of the applicant's operations, the optimisation of the potential of mineral or coal reserves as well as the national interest. The MoEMR has a right to reject the application if the evaluation result does not indicate good mining exploitation performance.

Rights, Obligations and Prohibitions of Holders of Mining Business Licences

The rights, obligations, and prohibitions of each type of IUP holder are stipulated in PerMen 7/2020, as follows:

Holders of	Rights	Obligations	Prohibitions
IUPs and IUPKs	There is an exhaustive list in PerMen 7/2020. Some examples are as follows: • To conduct mining business activities at a WIUP or a WIUPK in accordance with the provisions of the laws and regulations; • To have the minerals, including associated minerals or coal produced, after fulfilling the production dues, except for radioactive minerals; • To build facilities and/or infrastructure to support the mining business activities; • To sell minerals or coal, including selling overseas after the fulfilment of domestic needs, and to sell minerals or coal that have been excavated during exploration activities or feasibility study activities, in accordance with the provisions of the legislation; • To obtain rights to the land, in accordance with the provisions of the legislation; • To use foreign workers in accordance with the approval of the agencies that administer manpower matters, in accordance with the provisions of legislation; and • To make any changes to investment and financing sources, including the charging of paid-up capital, and placing them in accordance with the approval of the annual RKAB;	There is an extensive list in PerMen 7/2020. Some examples are as follows: • To conduct all the mining business activities in accordance with the provisions of the legislation; • To prepare and submit an annual RKAB to the MoEMR or the Governor; • To prioritise the fulfilment of coal and mineral needs in the country, and to adhere to the controls over production and sales; • To prepare and obtain approval for reclamation and post-mining plans and introduce reclamation and post-mining guarantees; • To increase the added value of mineral or coal mining products in the country, in accordance with the provisions of the relevant laws and regulations; • To prepare, implement, and submit reports on the implementation of the community development and empowerment programmes; • To submit all the data obtained from the activities of the exploration and production operations to the MoEMR or the Governor; • To prioritise the utilisation of local manpower, goods, and services in the country, in accordance with the provisions of the legislation; • For PMA IUP and IUPK holders, to divest shares to Indonesian participants, in accordance with the provisions of the legislation; and • To pay financial obligations, in accordance with the laws and regulations;	• To sell the mining products abroad, before processing and/ or refining the products domestically in accordance with the provisions of the laws and regulations; • To sell mining products that have not been produced by its own mining concessions; • To perform blending activities for coal originating from the holders of an IUP- OP, IUPK-OP or an IPR, without receiving approval from the DGoMC or governors in accordance with their level of authority; • To perform the processing and/or refining of the mining products, without having the IUP, IPR, or IUPK; • To engage subsidiaries and/or affiliates as mining service providers, without receiving approval from the DGoMC on behalf of the MoEMR; • To have an IPR, an IUP-OP Specifically for Processing and/ or Refining*), an IUP-OP Specifically for Transportation and Sales, and an IUJP; • To pledge the IUP/ IUPK and/or mining commodities for other parties; and • To perform a general inspection and exploration, and to conduct a feasibility study, before the annual RKAB for the Exploration IUP is approved.

Holders of	Rights	Obligations	Prohibitions
IUPs and IUPKs (Continued)	• To apply to the Minister or Governor, in accordance with the correct authority, for an IUP or IUPK in order to search for other mining commodities in the WIUP or WIUPK, by forming a new Business Entity in accordance with legislation; • To build transport facilities, storage/ stockpiling facilities, and to purchase and use explosives in accordance with the approval of the annual RKAB; and • To propose a request to use the area outside the WIUP or WIUPK to the MoEMR or Governor to support mining activities.	• To obtain approval from the MoEMR or the Governor for any changes to shareholders and the Boards of Directors/ Commissioners; • To pay adequate compensation to the relevant communities, in the event of any errors in the conduct of the mining business activities that have a direct negative impact on those communities; • (Pursuant to the Amendment to Mining Law) to construct or cooperate with other IUP/IUPK holders who construct mining roads or other parties which own roads that may be utilised as mining roads; • (Pursuant to the Amendment to the Mining Law) to provide a mineral and coal reserves resistance budget for the mining of coal or mineral reserves.	• To perform any construction, mining, processing and/or refining activities, as well as any transportation and sales activities, including advanced exploration, before the annual RKAB for the IUP-OP is approved; • To perform mining business activities in areas that are prohibited by the legislation; • To transfer the IUP/ IUPK to another party, without the prior consent of the MoEMR or the Governor; • To conduct a transfer of shares, such that the BUMN and BUMD ownership share in a business entity that holds an IUPK becomes less than 51% for IUPKs obtained through the granting of WIUPK with priority given to BUMN; • To conduct a transfer of shares, such that the BUMD ownership share in a business entity that holds an IUPK becomes less than 51% for IUPKs obtained through the granting of WIUPK with priority given to BUMN; • (Pursuant to the Mining Law) to encumber the IUP/IUPK, including its commodities, on another party.

Holders of	Rights	Obligations	Prohibitions
IUP-OP Specifically for Processing and/or Refining*	• To process and/or refine mining commodities from the holders of: 1. IUP-OPs; 2. IUPK-OPs; 3. IUP-OPs Specifically for Processing and/or Refining; 4. IPRs; 5. IUP-OPs Specifically for Transportation and Sales; 6. CoWs; and 7. CCoWs. • To enter into cooperative agreements with other parties for the utilisation of the residual and/or by-products of the processing and/or refining of domestic industrial raw materials; • To mix mining commodity products in order to meet the buyer's specifications; and • To utilise public facilities and/or infrastructure to support business activities, in accordance with the provisions of the legislation.	There is an expansive list in PerMen 7/2020. Some examples are as follows: • To prepare and submit the annual RKAB to the MoEMR or the Governor, in order to obtain the necessary approval; • To obtain approval for the use of foreign workers, from the agencies that administer the affairs in the field of manpower; • To obtain approval for any changes in investment and financing sources, including changes in paid-up capital and issued capital in accordance with annual RKAB approval; • To comply with restrictions on processing and/or refining, in order to conduct overseas sales in accordance with the provisions of the legislation; • To comply with the benchmark prices for mineral or coal sales, in accordance with the provisions of the legislation; • To prioritise the fulfilment of domestic mineral and coal needs; and • To prepare, implement, and submit reports on the implementation of any community development and empowerment programmes; • To prioritise the utilisation of local manpower, goods, and services in the country; • To obtain approval from the MoEMR or the Governor for any changes to shareholders.	• To undertake the processing and/or refining of mining products that do not originate from the holders of: 1. IUP-OPs 2. IUPK-OPs 3. IUP-OPs Specifically for Processing and/or Refining 4. IPRs 5. IUP-OPs Specifically for Transportation and Sales 6. CoWs 7. CCoWs • To have the IUP, IPR, IUPK, and IUJP; and • To transfer the IUP-OP specifically for Processing and/or Refining to another party. • To transfer the IUP-OP Specifically for Processing and/or Refining to another party.

Holders of	Rights	Obligations	Prohibitions
IUP-OP Specifically for Transportation and Sales	• To buy, transport, and sell the mineral and coal mining commodities from and to IUP holders (i.e. the holders of IUP-OP, IUPK-OP, IUP-OP Specifically for Processing and/ or Refining, IPR, CoW, CCoW, and other holders of IUP-OPs Specifically for Transportation and Sales); and • To construct and/or use the transportation and sales facilities and infrastructure, including stockpiles, ports, or special ports, in accordance with the provisions of the legislation.	• To send a copy of the agreements/contracts with IUP holders to MEMR; • To comply with the legislation in the field of traffic and road traffic, if the holder uses public road facilities, which includes complying with the load capacity level requirement that is adjusted with the class of the road, the traffic of the road, and the traffic accident risks; • To file a periodic report of its business operations to the MoEMR or the Governor every three months, or whenever it is needed; and • To file a report on the Verification Results that are issued by the surveyor on a monthly basis to the MoEMR or the Governor, no later than ten days after the end of the month.	• To perform any transportation or sales activities relating to any mineral or coal commodities that have not originated from the areas of IUP holders (i.e. holders of an IUP-OP, IUPK-OP, IUP-OP Specifically for Processing and/ or Refining, IPR, CoW, CCoW, and any other holders of the IUP-OP Specifically for Transportation and Sales); • To perform any transportation or sales activities relating to any mineral or coal commodities between provinces and/or states for the holder of an IUP-OP Specifically for Transportation and Sales issued by the Governor; • To purchase mineral or coal commodities in the mine mouth; • To transfer the IUP to another party; and • To have an IUP, IPR, IUPK, IUJP or IUP-OP Specifically for Processing and/or Refining.

Holders of	Rights	Obligations	Prohibitions
IUJPs	• To perform activities in accordance with the scope of the business; • To change the scope of the business activities by filing a request for a change to the MoEMR or Governor; and • To obtain an extension of the IUJP once all of the requirements have been fulfilled.	• To prioritise the use of local products; • To prioritise the use of local subcontractors pursuant to its competency; • To prioritise the use of local workers; • To perform activities in accordance with the scope of the business activities; • To perform environmental management measures in accordance with the provisions of the laws and regulations; • To optimise the use of either local mining equipment or local services that are required during the course of the service and business activities; • To perform the mining safety requirements in accordance with the provisions of laws and regulations; • To prepare and submit a report of the activities to MoEMR or the Governor according to the holder's authorities and through a holder of the IUP/ IUPK, in accordance with the provisions of laws and regulations; • To appoint the person in charge of operations as the supreme leader in the field; and • To have competent mining technical personnel in accordance with the provisions of laws and regulations.	• To hold an IUP, IPR, IUPK, IUP- OP Specifically for Processing and/ or Refining, and an IUP- OP Specifically for Transportation and Sales; and • To perform activities that are not in accordance with the IUJP.

**) However, it should be noted that existing IUP-OP Specifically for Processing and/or Refining licences issued before the enactment of the Amendment to the Mining Law shall be adjusted to industrial business licences that shall be issued based on the laws and regulations in the industrial sector within one year of the Law coming into force.*

Prohibition Against Receiving Fees from a Mining Services Company

The IUP/IUPK holder is prohibited from receiving any fees from a mining services company. This appears to have been introduced to eliminate practices whereby the mining licence owner assigns all of the mining operations to a third party, then receives compensation based on a share of the profits or a quantity of coal/minerals produced.

One Mining Licence per Company

A key feature of the Mining Law is that a privately held company can only hold one licence (i.e. one IUP/IUPK), and only companies listed on the IDX and companies that have been granted non-metal mineral and/or rock WIUPs are entitled to hold more than one licence.

Pursuant to the Amendment to the Mining Law, an IUP holder may hold more than one IUP and/or IUPK. However, such provision shall only be applicable for IUPs and/or IUPKs owned by a BUMN or for IUPs of non-metal minerals or rocks. Please note that GR 96/2021 stipulates that for a company listed on the IDX holding more than one IUP prior to the enactment of the Amendment to the Mining Law, such mining licences shall remain valid until their expiry dates and may be granted an extension in accordance with the provisions set out under GR 96/2021.

Adjustment of Licence Areas

One of the key aspects of GR 96/2021 is that the size of an Exploration IUP may be reduced based on an application submitted by the IUP and IUPK holders to the MoEMR or based on the evaluation of the MoEMR. Previously, under GR 23/2010, the size of an Exploration IUP for coal and metal minerals had to be reduced as set out below:

Exploration IUP		Downsizing after 3 years of exploration (under GR 23)	Production IUP
Coal	5,000 ha – 50,000 ha	Must be reduced to a maximum of 25,000 ha	Max 15,000 ha
Metal minerals	5,000 ha –100,000 ha	Must be reduced to a maximum of 50,000 ha	Max 25,000 ha
Non-metal minerals	100 ha – 25,000 ha	12,500 ha (applies after 2 years)	Max 5,000 ha
Rocks	5 ha to 5,000 ha	2,500 ha (applies after 1 year)	Max 1,000 ha

Exploration IUPK		Downsizing after 3 years of exploration (under GR 23)	Production IUPK
Coal	Max 50,000 ha	Must be reduced to a maximum of 25,000 ha	Max 15,000 ha
Metal minerals	Max 100,000 ha	Must be reduced to a maximum of 50,000 ha	Max 25,000 ha

Pursuant to the Amendment to the Mining Law, an Exploration WIUP no longer requires any minimum area to be granted to the licence holders. The Amendment to the Mining Law also stipulates that the size of one WIUPK for the Operation Production of metal minerals or coal shall be granted based on the MoEMR's evaluation of the development plan of all areas proposed by the IUPK holders.

On reductions of mining areas, GR 25/2023 provides that the MoEMR shall conduct evaluation on the reduced or returned WIUPs. Upon such evaluation, the WIUPs can be re-determined by the MoEMR to become WUPs, WPRs, WUPKs, and/or WPNs.

Additionally, it is worth noting that GR 96/2021 stipulates that metal mineral or coal IUP-OP and IUPK-OP holders may apply to the MoEMR to expand the WIUPs and WIUPKs for the purpose of mineral and coal conservation. Such expansion must fulfil the following criteria:

a. The total area of the WIUP or WIUPK resulting from the expansion shall be as follows:
    1. maximum of 25,000 hectares ("ha") for metal mineral WIUP;
    2. maximum of 15,000 ha for coal WIUP; and
    3. in accordance with the MoEMR's evaluation for WIUPK.
b. The expanded areas are close to the initial WIUP or WIUPK; and
c. The expanded areas have sustainability potential for the minerals or coal.

MoEMR Decree No. 266.K/MB.01/MEM.B/2022 on Guidance for the Application, Evaluation and Processing of WIUP and WIUPK Areas Expansion for the Conservation of Mineral and Coal ("KepMen 266/2022") has been issued to further regulate applications to expand the WIUPs and WIUPKs. Pursuant to KepMen 266/2022, IUP or IUPK holders must obtain approval for WIUP or WIUPK Expansion Workplan from the DGoMC prior to submitting the application for expansion approval.

An IUP or IUPK is issued for a particular type of mineral or coal. If other minerals are discovered in the licence area, then the relevant government authority would need to issue further IUPs or IUPKs for those different minerals. The holder of the Exploration IUP will be given priority to acquire a licence to mine the additional mineral(s), before the relevant government authority grants a mining licence to another investor. Pursuant to Article 40 paragraphs (2) and (3) of the Amendment to the Mining Law, an IUP holder may be granted another IUP and/or IUPK, subject to the provision that the holder is a BUMN or the IUP is for non-metal minerals and/or rocks.

Transfer Restrictions

a. Transfer of Licence

The Amendment to the Mining Law addresses this issue through Article 93, which allows the holders of IUP and IUPK licences to transfer licences to other parties with the approval of the MoEMR. Under GR 96/2021, such MoEMR approval will be granted if the following requirements are satisfied:

(i) The holder of the licence has completed the exploration activities, as evidenced by data on the relevant resources and their reserves;
(ii) In compliance with all administrative, technical, environmental and financial requirements; and
(iii) Submitting documents of the transferee.

Under GR 96/2021, parts of the WIUP/WIUPK of a BUMN at the stage of operation production can be transferred to another entity that is at least 51% owned by a BUMN holder of an IUP/IUPK subject to approval from the MoEMR. Note that the ownership of such BUMN in the transferee entity cannot be diluted to less than 51%.

On 12 November 2021, the MoEMR issued MoEMR Decree No. 221.K/HK.02/MEM.B/2021 as further guidance on IUP/IUPK and WIUP/WIUPK transfers. Under this decree, the approval to transfer a WIUP/WIUPK partially at the stage of operation production for a BUMN is subject to the following conditions:

(i) The transfer is intended to support the implementation of a national strategic program, a national priority program or a coal and mineral added value project that requires capital investment of at least IDR1,000,000,000,000 (one trillion Indonesian Rupiah);
(ii) The transferred WIUP/WIUPK has resource and reserve data;
(iii) The development plan on top of the transferred WIUP/WIUPK has been approved; and
(iv) The ownership of a BUMN in the transferee is at least 51%.

The MoEMR may impose certain additional requirements that must be satisfied by the transferor and/or transferee.

b. Transfers of Shares

The Amendment to the Mining Law addresses this issue through Article 93A, which allows the holders of IUP and IUPK licences to transfer shares to other parties with the approval of the MoEMR. Under GR 96/2021, such MoEMR approval will be granted if at least the following requirements are satisfied:

(i) The holder of the licence has completed the exploration activities, as evidenced by data on the relevant resources and their reserves; and
(ii) In compliance with all administrative, technical, environmental and financial requirements.

The Amendment to the Mining Law does not further elaborate on the type of IUPs and IUPKs that allow the holder to transfer its shares. The Amendment to the Mining Law further clarifies that shares shall mean shares that are not listed on the IDX. This implies that transfers of shares listed on the IDX do not require approval from the MoEMR. The holder of the IUP/IUPK must report to MoEMR if it conducts the transfer of shares by way of an initial public offering on the IDX.

The requirements regarding the transfer of shares of certain mining companies are set out in PerMen 48/2017. Please note, however, that PerMen 48/2017 only applies to the holders of:

- IUPs issued by the MoEMR;
- IUPKs; and
- CoWs or CCoWs.

It is not clear why the scope of PerMen 48/2017 is only limited to holders of the above types of licences. No explanation has been provided in PerMen 48/2017 to explain this narrow scope.

Based on PerMen 48/2017, the transfer of shares in the above types of IUP, CoW or CCoW must be approved by the MoEMR prior to transfer. In order to obtain approval, an application must be submitted to the MoEMR through the DGoMC, with certain administrative and financial requirements being met. The DGoMC shall then evaluate the application, and based on the results of the evaluation the MoEMR will make a decision within 14 business days of the receipt of the application.

C. Reporting of Mineral and Coal Business Activities

Based on PerMen 7/2020, IUP holders are required to prepare and submit an annual RKAB and periodic written reports on the annual RKAB, as well as on the performance of the business activities. These two documents need to be submitted regularly to the MoEMR (through the DGoMC) or the Governor.

The key provisions regarding these reporting requirements can be summarised as follows:

Aspects	Key Provisions
The types of IUPs that are subject to the Reporting Requirements	• Exploration IUPs and IUPKs; • IUP-OPs and IUPK-OPs; • IUP-OPs Specifically for Transportation and Sales; and • IUJPs.
The timeframe for the submission of the Annual RKAB	• Initial reporting: no later than 30 calendar days after the issuance of the IUP; • Subsequent reporting: at least 90 calendar days after and no later than 45 calendar days before the end of the fiscal year, which also includes the obtaining of the consent for the annual RKAB; and • In the event of an IUP being issued within 45 calendar days of the end of the fiscal year, the IUP holder shall submit the annual RKAB to obtain consent either: (i) before the performance of the annual RKAB in the current year; or (ii) no later than the end of the fiscal year for next year's annual RKAB.
The Evaluation and Approval Process for the Annual RKAB	• On behalf of the MoEMR or the Governor, the DGoMC shall perform an evaluation of the annual RKAB and provide approval for, or a response on the annual RKAB no more than 14 business days after the date when the annual RKAB was completely and properly received; • IUP holders are required to deliver the revised version of the annual RKAB, which must accommodate the response from the DGoMC, no more than five days after the date on which the response from the DGoMC was received; and • The DGoMC shall grant approval for the revised version of the annual RKAB no more than 14 business days after the date when the revised annual RKAB was fully and properly received.
Amendments to the Annual RKAB and Reports (Subsequent to Obtaining Approval from the MoEMR or the Governor)	• Holders of Exploration IUPs and IUPKs, IUP-OPs, or IUPK-OPs, may apply for one amendment to the annual RKAB in the current year. The application for an amendment to the annual RKAB must be submitted after the IUP holder has submitted its Q1 Quarterly Report, and it has to be submitted, at the latest, by 31 July of the current year; • In the event that any *force majeure*, environmental capacity condition, or other difficulty occurs, an amendment to the Annual RKAB may be applied by the holders of IUP-OPs, or IUPK-OPs, more than once. • The evaluation and approval process for an amendment to the annual RKAB follows the provisions explained in the previous point; • Holders of IUP-OPs and IUPK-OPs must submit amendments to their Reports on the Feasibility Study, should there be any changes to technical, economic, or environmental variables, according to the provisions of the applicable rules and regulations; and • Holders of Exploration IUPs and IUPKs, IUP-OPs, or IUPK-OPs must report any amendments to the utilisation of their mining services in the current year.

At the time of writing, the Government was in the process of simplifying the regulations and/ or licences in the coal and minerals sectors. Going forward, the MoEMR will optimise the use of the annual RKAB as a source of information to streamline the process for obtaining licences and/or recommendations.

This initiative is expected to reduce bureaucracy, shortening the time required for industry players to obtain a particular licence/recommendation, and thus increase the attractiveness of the mining industry for potential investors. Below are several examples of licences/ recommendations that previously required to be obtained individually, but that have now been revoked by the Government and replaced with approvals granted in conjunction with the annual RKAB submitted by the IUP holders:

- Approvals for Exploration Reports;
- Approvals for Changes to Investment Plans and Financing Sources, including Changes to the Issued and Paid-Up Capital;
- Approvals for Blending Coal from the holder of the IUP-OP or IUPK-OP;
- Approvals for Carrying Out Sleep Blasting;
- Approvals for the Operation of Dredger/ Suction Boats;
- Permits and Recommendations for the Loading, Storage, and Usage of Explosives;
- Recommendations for Facilities for the Import, Re-Export, Temporary Import, or Transfer of Goods; and
- A recommendation from the DGoMC is no longer necessary to be acknowledged as a Registered Coal or Pure Lead Bar Exporter by the Ministry of Trade ("MoT"). Instead, IUP holders can use the annual RKAB to apply directly to the DGoMC for such licence.

In addition to the annual RKAB submission requirement, PerMen 7/2020 also requires IUP holders to submit three additional reports: (a) a Periodic Report; (b) a Final Report; and (c) a Special Report, with various levels of requirement, depending on the type of IUP holder, as summarised below:

Mining Licence	Periodic Reports	Final Reports	Special Reports
Exploration IUPs and IUPKs	• Report for the Annual RKAB; • Report on Mining Water Waste Quality; • Statistical Report on Mining Accidents and Dangerous Events; • Statistical Report on Workers' Diseases; • Report on Reclamation in relation to the Release or Closing of the Reclamation Facility; and • Internal Audit Report on the Implementation of the Safety Management System for Minerals and Coal Mining.	• Complete Report on Exploration; and • Report on the Feasibility Study.	• Early Notice of Accidents; • Early Notice of Dangerous Events; • Early Notice of Events Caused by Diseases Infecting Workers; • Report on Illnesses Caused by Work; • Report on Environmental Incidents; • Report on the Mining Technical Study; and/or • The External Audit Report on the Safety Management System for Minerals and Coal Mining.

Mining Licence	Periodic Reports	Final Reports	Special Reports
IUP-OPs and IUPK-OPs	• Report for annual RKAB; • Report on the Mining Water Waste Quality; • Statistical Report on Mining Injuries and Dangerous Events; • Statistical Report on Workers' diseases; • Report on Reclamation to Release or Close the Reclamation Facility; • Internal Audit Report on the Implementation of the Safety Management System for Mineral and Coal Mining; • Report on Conservation; and • Report on the Post-Mining Activities to close the Post-Mining Facility.	• Report on the Boundary Installation; and • Final Report on the Production Activities of Operations.	• Early Notice of Accidents; • Early Notice of Dangerous Events; • Early Notice of Events Caused by Diseases Infecting Workers; • Report on Illnesses Caused by Work; • Report on Environmental Incidents; • Report on the Mining Technical Study; and/or • The External Audit Report on the Safety Management System for Mineral and Coal Mining.
IUP-OP Specifically for Processing and/or Refining*	• Report for the Annual RKAB; • Report on Mining Water Waste Quality; • Statistical Report on any Mining Accidents and Dangerous Events; • Statistical Report on Workers' Diseases; and • Internal Audit Report on the Implementation of the Safety Management System for Mineral and Coal Mining.	Not applicable.	• Early Notice of Accidents; • Early Notice of Dangerous Events; • Early Notice of Events Caused by Diseases Infecting Workers; • Report on Illnesses Caused by Work; • Report on Environmental Incidents; • Report on the Mining Technical Study; and/or • The External Audit Report on the Safety Management System for Minerals and Coal Mining.
IUP-OP Specifically for Transportation and Sales	• Realisation Report for Mineral or Coal Purchases; and • Realisation Report for Mineral or Coal Sales.	Not applicable.	Not applicable.
IUJPs	• Report of Mining Services Business Activities; and • Internal Audit Report on the Implementation of Safety Management System of Mineral and Coal Mining.	Not applicable.	Not applicable.

**) As stated previously, according to Article 169C point 3 of the Amendment to the Mining Law, existing IUP-OP Specifically for Processing and/or Refining licences issued before the enactment of this Law shall be converted to industrial business licences shall be issued based on the laws and regulations in the industrial sector within one year of the Law coming into force.*

Set out below is a summary of the reporting timeframe for each of the reports mentioned in the previous table:

Type of Reports	Reports Submission Period
Periodic Reports	• The monthly reports need to be submitted to the MoEMR (through the DGoMC) or the Governor, no later than five calendar days after the end of a fiscal month, and 15 calendar days after the end of a fiscal month for the Report on the Mining Water Waste Quality, specifically; and • Quarterly reports need to be submitted to the MoEMR (through the DGoMC) or the Governor, no later than 30 calendar days after the end of the last month in the quarter.
Final Reports	• PerMen 7/2020 has yet to set out a specific timeframe for the submission of this type of report • A MoEMR Decree will be issued to set out further guidelines for the implementation, drafting, delivery, evaluation, and/or acceptance of the Final Reports.
Special Reports	All types of Special Report need to be submitted immediately after the occurrence of the triggering events. For example: • Early Notice of Accidents and the Early Notice of Dangerous Events reports need to be submitted immediately after the occurrence of the accident or the incident; • Reports on Illnesses Caused by Work need to be submitted immediately after the diagnosis and inspection results have been issued; and • Reports on Environmental Incidents need to be submitted within 1 x 24 hours after the environmental incident occurs.

The DGoMC (on behalf of the MoEMR) or the Governor evaluates and may provide a response to the submitted periodical reports. PerMen 7/2020 does not stipulate a specific deadline for the government to provide its response, but it does stipulate a maximum time frame of no more than five working days for the IUP holders to reply to the DGoMC and/or the Governor.

Based on the Transitional Provisions of PerMen 7/2020:

- An Annual RKAB that has been submitted to and/or approved by the MoEMR (through the DGoMC) or the Governor before the enactment of PerMen 7/2020 shall remain valid as the basis for the implementation of mining activities, and must be adjusted in accordance with the provisions set out in PerMen 7/2020, especially those related to the type of permit for which approval has been issued in the Annual RKAB; and
- The provisions in PerMen 7/2020, concerning the approval of the annual RKAB, as well as any changes to shareholders and the Boards of Directors and/or Commissioners, shall be applied to CoWs and CCoWs.

The implementing guidelines for the preparation, evaluation, and approval of the RKAB, as well as the reports on minerals and coal mining business activities, are stipulated in MoEMR Decree No. 1806 K/30/MEM/2018.

2.3 Controls Over the Production and Sale of Mineral and Coal Products

Due to the non-renewable nature of coal and mineral resources, which are essential to national development, and in order to guarantee sufficient supplies to fulfil national needs, the Central Government considers it important to limit national coal and mineral production.

The MoEMR, in coordination with the relevant Government Agency and/or Provincial Government, may determine the national production volume of minerals and coal in the national interest. The MoEMR may also determine the volumes and types of minerals and coal required for the DMO, and the volumes and types of minerals and coal that can be exported.

DMO

This policy is intended to guarantee supplies that are necessary to meet increasing domestic demand, especially for coal. The Central Government has authority to control the production and the exporting of each mining product. The Regional Government is obliged to comply with the production and export controls imposed by the Central Government. In principle, GR 96/2021 has stipulated that operation production IUP or IUPK holders must prioritise the domestic demands for mineral and/or coal.

Details of the DMO procedures were previously stipulated in PerMen 34/2009. However, PerMen 34/2009 has since been revoked by PerMen 25/2018.

The DMO applies to all types of coal and minerals. Broadly, mining companies must comply with the DMO requirements by selling a portion of the minerals/coal that they produce to domestic consumers.

Neither PerMen 34/2009 nor PerMen 25/2018 set a specific DMO percentage. Rather, the decision for each particular year is made by the MoEMR through the issuance of a MoEMR Decree, which is typically issued annually. At the time of writing, the DMO has only been applied to coal.

The latest annual determination issued, MoEMR Decree No. 267.K/MB.01/MEM.B/2022 dated 21 November 2022 concerning the "Coal Domestic Market Obligation" ("KepMen 267/2022"), stipulates that the holders of Operation Production stage CCoWs, coal IUP-OPs and coal IUPK-OPs, and IUPK-OPs as a continuation of the operations of a CCoW licence are required to meet the minimum coal DMO of 25% of the coal production plan stated in the annual RKAB. In the event that the annual RKAB is amended, the 25% DMO percentage shall be determined based on the coal production plan, whichever is higher between the initial annual RKAB and the amended annual RKAB.

Based on KepMen 267/2022, the coal mining companies who do not meet the DMO requirement, are subject to the following payment obligations:

a. Compensation fund for licence holders whose coal specification is below 4,200 Kkal/kg GAR up to 5,200 Kkal/kg GAR with sulphur content of more than 3% or coal specification more than 5,200 Kkal/kg GAR;
b. Fines for licence holders whose coal specification is 4,200Kkal/kg GAR up to 5,200 Kkal/kg GAR with sulphur content equal to or less than 3%;
c. Fines and compensation fund for licence holders whose coal specification is 4,200 Kkal/kg GAR up to 5,200 Kkal/kg GAR with sulphur content equal to or less than 3%, if there is an increase of coal production

plan stated in the amended annual RKAB, with the following provisions:

1) The fines are for the lack of fulfilment of DMO in accordance with the production plan in the approved annual RKAB; and
2) The compensation funds are for the difference between the obligation to meet DMO in accordance with the production plan in the amended annual RKAB and the original annual RKAB.

KepMen 267/2022 also established a coal sales price for coal supply of electricity for public use capped at US$70/mt with certain coal specifications.

Further, KepMen 267/2022 stipulates that the coal mining companies that do not fulfil their obligation to pay fines and/or compensation funds are subject to administrative sanctions in the form of (imposed in stages):

- Prohibition to export coal for a maximum period of 30 (thirty) calendar days, if the company does not pay the compensation fund and/or fines on the due date;
- If during such 30 (thirty) calendar day period the licence holder does not fulfil the payment obligation, such licence holder shall be imposed with temporary suspension of all production operations for a maximum period of 60 (sixty) calendar days;
- If during such 60 (sixty) calendar day period the licence holder remains non-compliant with its obligation to pay the compensation fund and/or fine, the IUP/IUPK shall be revoked or CCoW shall be terminated (as relevant).

Monitoring of the realisation of coal sales for DMO is based on the results of the evaluation of the coal sales report submitted by the coal mining companies every month, which is to be submitted no later than ten calendar days after the end of each month.

As the Government continues to prioritise security of supply, it can be expected that the DMO for coal set by the Government will continue to increase in the coming years.

Coal and Minerals Price Benchmarking

PerMen 7/2017 (as lastly amended by PerMen 11/2020) and PerMen 25/2018 (as lastly amended by PerMen 17/2020) set out the framework authorising the MoEMR to set the minerals and coal sales benchmark prices.

Under PerMen 25/2018, the metal Mineral Benchmark Prices (*Harga Patokan Mineral* or "HPM") and the Coal Benchmark Prices (*Harga Patokan Batubara* or "HPB") are determined by the MoEMR for each type of metal-mineral or coal commodity. HPM and HPB are the floor prices for the calculation of the production fee (*iuran produksi*). The MoEMR is generally authorised to set out the selling price formula for coal and metal minerals for certain purposes; for example, national interest purpose and in-country value added purpose.

DGoMC Regulation No. 999.K/30/DJB/2011 (as amended by DGoMC Regulation No. 644.K/30/DJB/2013), concerning the "Procedures for Determining the Adjustment Costs of the Coal Benchmark Price" was issued to provide guidelines for the determination of the allowable adjustment costs to the benchmark price, for the purpose of implementing PerMen 17/2010 which was revoked by PerMen 25/2018. Under this regulation, the allowable adjustments to the benchmark prices include transhipment, barging, surveyor and insurance costs. Interestingly, MoEMR Decree No. 1823 K/30/MEM/2018, concerning the "Guidelines on the Implementation of the Imposition, Collection, and Payment of Mineral and Coal Non-Tax State Revenue" as partially revoked by MoEMR Decree No. 18.K/HK.02/MEM.B/2022 stipulates that the allowable standard adjustment to the benchmark

prices only includes transhipment and barging costs. Therefore, there are inconsistencies between DGoMC Regulation No. 999.K/30/DJB/2011 (as amended by DGoMC Regulation No. 644.K/30/DJB/2013) and MoEMR Decree No. 1823 K/30/MEM/2018, with regard to the allowable adjustment costs to the benchmark price.

The benchmark prices for metal minerals may include the following commodities:

a. Nickel, in the form of nickel ore; ferronickel; mixed hydroxide precipitate; mixed sulphide precipitate; nickel metal shots; nickel pig iron; nickel ingots; and/or nickel-matte;
b. Cobalt, in the form of cobalt ore; cobalt concentrate; cobalt ingots; and/ or cobalt sulphide;
c. Lead, in the form of lead ore; lead concentrate; lead ingots; and/or lead bullion;
d. Zinc, in the form of zinc ore; zinc ingots; zinc concentrate; and/or zinc oxide;
e. Bauxite, in the form of bauxite ore; aluminium ingots; chemical grade alumina; and/or smelter grade alumina;
f. Iron, in the form of iron ore; iron concentrate; iron sand; iron sand pellets; sponge iron; and/or pig iron;
g. Gold, in the form of gold metal;
h. Silver, in the form of silver metal;
i. Tin, in the form of tin ingots;
j. Copper, in the form of copper ore; copper concentrate; and/or copper metal;
k. Manganese, in the form of manganese ore; and/or manganese concentrate;
l. Chromium, in the form of chromium ore; and/ or chromium metal;
m. Titanium, in the form of ilmenite concentrate; and/or titanium concentrate; and
n. Other certain metal minerals.

The benchmark prices for metal minerals and coal are based on the benchmark price formula, which takes certain factors into account. For metal minerals, these factors include, but are not limited to, the value/content of the metal mineral; Mineral Reference Price (*Harga Mineral Acuan* or "HMA"); corrective factors; treatment costs and refining charges; and/or mineral payable. Metal HPM also applies to holders of metal minerals IUP-OP who sell nickel ore to their affiliates.

The benchmark price will be updated on a monthly basis, and will be determined in accordance with market prices (comprising a basket of recognised global and Indonesian coal indices, in the case of coal). Under PerMen 7/2017 (as lastly amended by PerMen 11/2020), the following aspects need to be considered in the determination of the benchmark prices for metal minerals and coal:

a. The market mechanism and/or in accordance with generally applicable international market price;
b. The increment of in-country added value of mineral or coal; and/or
c. The implementation of good mining principles.

In February 2023, the MoEMR issued MoEMR Decree No. 41.K/MB.01/MEM.B/2023 concerning Guidelines for the Determination of Benchmark Prices for Coal Sales ("KepMen 41/2023"), which was then revoked by MoEMR Decree No. 227.K/MB.01/MEM.B/2023 concerning Guidelines for the Determination of Benchmark Prices for Coal Sales ("KepMen 227/2023") issued in August 2023. Both regulations provide guidelines for the determination of benchmark prices for coal sales and stipulates the HPB formula and Coal Price Reference (*Harga Batubara Acuan* or "HBA") formula, although the HPB and HBA formulas are different under KepMen 41/2023 and KepMen 227/2023.

In addition, KepMen 227/2023 stipulates that reference specifications and calculations in determining:

(i) the selling price of coal for supply of electricity for public interests, and
(ii) the selling price of coal to meet domestic industrial raw materials/fuel needs other than metal mineral processing and/or refining industry, shall refer to the reference specifications and calculations regulated in the relevant MoEMR Decree stipulating the selling price of coal for such purposes. KepMen 41/2023 did not stipulate this provision.

Pursuant to PerMen 11/2020, the requirements relating to the quantity and quality verifications for minerals and coal must be implemented prior to the selling of such minerals and coal. Furthermore, the holders of metal-mineral IUP OPs and IUPK OPs must appoint a third party as an umpire (*wasit*) for sale and purchase contracts that are entered into with domestic buyers, as mutually agreed with the domestic buyer.

It is important to note that any instances of non-compliance with the requirement to refer to the benchmark prices in selling metal-mineral or coal commodities will be subject to the following administrative sanctions:

1. Written warning;
2. Temporary suspension of, partially or wholly, the mining activities; and/or
3. Revocation of the IUP-OP or the IUPK-OP.

Coal Price for Electricity that is Supplied in the Public Interest

On 9 September 2021, GR 96/2021 on "Implementation of Mineral and Coal Mining Business Activities" was issued. Under GR 96/2021, the MoEMR shall determine the selling prices of coal supplied specifically for the fulfilment of domestic needs.

Furthermore, based on PerMen 19/2018, the MoEMR shall determine the selling price of coal to meet domestic needs based on the quality of the coal. The MoEMR considers the public interest when determining the coal price. On 9 March 2018, KepMen 1395/2018, concerning the "Coal Selling Prices for the Electricity Supply for the Public Interest", was issued as an implementing regulation of PerMen 19/2018; however, on 26 December 2019, KepMen 1395/2018 was then revoked by Kepmen 261/2019.

The key provisions of KepMen 261/2019 are as follows:

1. The selling price of coal for electricity supplied in the public interest is set at US$ 70/mt, FOB Vessel, for coal that meets the following specifications: calorific value of 6,322 kcal/kg GAR; total moisture of 8%; total sulphur of 0.8%; and ash content of 15%. The royalty to be paid to the Government on coal sales is calculated by multiplying the applicable royalty tariff by the sales volume and selling price.
2. If the coal specifications differ from those above, and the HBA for this coal is equal to or exceeds US$ 70/mt, then the selling price of coal for electricity supplied in the public interest is based on the formula set out in Annex of KepMen 261/2019. The royalty to be paid to the Government from the coal sales is calculated by multiplying the applicable royalty tariff by the sales volume and the selling price.
3. If the coal specifications differ from those given above, and the HBA is lower than US$ 70/mt, then the selling price of the coal is based on the formula set out in the Annex to KepMen 261/2019. The royalty to be paid to the Government from coal sales is calculated by multiplying the applicable royalty tariff by the sales volume or the selling price or the coal benchmark price, whichever is higher.

4. The coal benchmark price used to determine the selling prices of coal for electricity supplied in the public interest for spot transactions is the coal benchmark price at the time of the transaction.
5. The coal benchmark price used to determine the selling price of coal for electricity supplied in the public interest for a term (fixed period) transaction is calculated based on 50% of the coal benchmark price for the month of the contract signing plus 30% of the coal benchmark price one month before the contract signing, plus 20% of the coal benchmark price two months before contract signing, and can be reviewed at the earliest every three months.
6. KepMen 261/2019 shall become effective from 1 January 2020.

Coal Price for Fulfilment of Domestic Industrial Raw Material/Fuel Needs

On 23 March 2022, MoEMR issued Ministerial Decree No. 58.K/HK.02/MEM.B/2022 ("KepMen 58/2022") regarding the Selling Price of Coal for Fulfilling Domestic Raw Material/Industrial Fuel Needs and revoked Ministerial Decree No. 206.K/HK.02/MEM.B/2021 which established the coal sales price for domestic raw materials or fuel supply of all domestic industries (except the metal mineral processing and/or refining industry (smelters)) of US$90/mt FOB Vessel with benchmark specifications of 6,322 kcal/kg GAR, total moisture of 8%, total sulphur of 0.8% and ash of 15%. Previously, the coal price of US$90/mt was only applied to the cement and fertiliser industries. KepMen 58/2022 became effective from 1 April 2022.

Coal Price Determination for Mine Mouth Power Plants

PerMen 9/2016 as amended by PerMen 24/2016 ("PerMen 9/2016"), sets out guidance regarding the supply and pricing of coal for mine mouth power plants.

Under PerMen 9/2016, the coal price for mine mouth power plants is based on the basic coal price plus the exploitation fee/royalty. The basic coal price is based on the agreement between the coal mine owner and the power plant company, and it is calculated based on the production cost formula plus a margin (from 15% to 25%), and in consideration of an escalation factor. The escalation factor is adjusted on an annual basis, based on the changes in the US Dollar/Rupiah exchange rate, fuel prices, the consumer price index, and the regional minimum wage. The margin is based on the agreement between the coal mine owner and the power plant company, within the range provided for in PerMen 9/2016. The basic coal price must be communicated to the MoEMR. The basic coal price is valid for the duration of the Power Purchase Agreement. Transport costs are excluded, except for the transportation of coal from the mine to the power plant's stockpiling facility.

Mines supplying mine mouth power plants must be listed in the Clean and Clear list, and they must have a reserve allocation and the coal quality required by the power plant. PerMen 9/2016 also requires the mine owner to hold a minimum of 10% of the equity of the power plant company. The distance between the mine and the power plant must be a maximum of 20 kilometres. Note, however, that based on PerMen 7/2020, a Clean and Clear certificate is no longer required.

2.4 Mandatory In-Country Processing and Export Restrictions

Holders of coal IUPs and IUPKs are required to carry out processing in order to increase the value added to the coal they produce, either directly or in cooperation with other companies, IUP holders, or IUPK holders.

- "Processing" by a holder of a coal IUP-OP or a coal IUPK-OP covers the following activities:

Coal upgrading	Coal briquetting	Coke making
Coal liquefaction	Coal gasification, including underground coal gasification	Coal slurry/coal water mixture

- "Processing" by a holder of a coal Processing IUP-OP covers the following activities:

Coal blending	Coal upgrading	Coal briquetting	Coke making
Coal liquefaction	Coal gasification	Coal slurry/coal water mixture	

The holders of mineral IUPs and IUPKs are required to carry out in-country processing and refining to increase the value added to the minerals they produce, either directly or in cooperation with other companies, IUP holders, or IUPK holders. PerMen 25/2018 specifically sets out the requirements for in-country mineral processing and refining.

Minerals for which the added value can be increased include:
- Metal minerals;
- Non-metal minerals; and
- Rocks.

Processing covers activities that improve the quality of the minerals or rocks, without changing their physical and chemical properties, such as conversion into metal mineral concentrates or polished rocks. Refining is defined as activities that improve the quality of metal minerals, through an extraction process and by increasing the purity of the mineral, to produce a product with different physical and chemical properties from the original, such as metals and alloys.

The increase in the value added to minerals shall be achieved through the following activities:
- Processing and refining of metal minerals;
- Processing of non-metal minerals; and
- Processing of rocks.

Holders of an IUP-OP, IUPK-OP, or a Processing and Refining IUP are required to meet the minimum in-country processing and refining requirements for various types of metal minerals, non-metal minerals, certain rocks, as well as the by-products, and residues from the refining of metal mineral mining commodities (in the form of copper, tin, lead, and zinc), and by-products or residues from the refining of lead concentrates in slag form.

These specific minimum in-country processing and refining requirements are detailed in Attachments I to IV of PerMen 25/2018 (see Appendix A of this Guide for the minimum in-country processing and refining requirements for metal minerals prior to export).

The obligation to meet the minimum in-country processing and refining requirements, as set out in PerMen 25/2018, is not applicable if the products are directly used in the domestic interest, and the minerals are exported for research and development purposes, subject to a recommendation from the DGoMC, on behalf of the MoEMR and Export 39 approval from the Directorate General of Foreign Trade ("DGoFT").

Following the end of the COVID-19 pandemic, the MoEMR issued Decree No. 89.K/MB.01/MEM.B/2023 regarding the Guidance on the Imposition of Administrative Penalties for Delays in the Construction of Metal Mineral Domestic Smelter Facilities ("KepMen 89/2023"). Pursuant to KepMen 89/2023, holders of IUP-OPs or IUPK-OPs that export certain types of metal minerals must meet a percentage of physical progress in the construction of refining facilities of not less than 90% every six months, based on the report on the results of the verification of physical progress from an independent verifier. If this requirement is not fulfilled, such IUP-OP or IUPK-OP holders must pay an administrative fine of 20% of the cumulative value of metal mineral exports for each delay period with a certain calculation formula stated under KepMen 89/2023. The administrative fine is applicable to the holders of IUP-OPs or IUPK-OPs for metal minerals who experienced delays in the construction of refinery facilities during the period from October 2019 to June 2023. KepMen 89/2023 revoked MoEMR Decree No. 154.K/30/MEM/2019 regarding the Guidance on the Imposition of Administrative Penalties for Delays in the Construction of Smelter Facilities ("KepMen 154/2019"). However, please note that under KepMen 89/2023, the IUP-OP or IUPK-OP holders who have not fulfilled their obligation under KepMen 154/2019 to provide security deposits as assurance for the smelter construction must still provide such security deposits.

Later in June 2023, the MoEMR issued PerMen 7/2023 which regulates the continuation of the domestic metal-mineral smelters that are being constructed by IUP/IUPK holders of copper, iron, lead and zinc mining commodities. Pursuant to PerMen 7/2023, such IUP/IUPK holders, subject to fulfilling certain requirements under this regulation, may export their mining products up until 31 May 2024 to encourage the completion of the smelter construction. PerMen 7/2023 came into effect from 11 June 2023 (see further discussion below in the section on "*Relaxation of the Ban on Exports of Unprocessed Minerals*").

Processing and refining can be conducted in cooperation with other IUP and IUPK holders, as well as the holders of Processing and/or Refining IUPs. This cooperation may be in the form of:

a. Sales and purchases of ore/concentrates; or
b. Processing and/or refining activities.

The cooperation plans must be submitted to the MoEMR, for the attention of the DGoMC (or Governor), for approval. A holder of an IUP-OP or IUPK-OP that supplies ores, concentrates, or intermediate mineral products to other processing and/or refining parties must submit its sales plans to the MoEMR, for the attention of the DGoMC (or Governor).

Following the enactment of the Amendment to the Mining Law which no longer requires an IUP-OP Specifically for Processing and/or Refining, such cooperation for processing and refining activities may be conducted by the IUP-OP or IUPK-OP holders with another party who holds the licence required under the industrial sector.

Pursuant to Article 104 of the Amendment to the Mining Law, IUP-OP and IUPK-OP holders may conduct independent processing and/or refining activities integrated with or in cooperation with:

a. Other holders of IUP or IUPK in the stage of Production Operation activities who own processing and/or refining facilities in an integrated manner; or
b. Other parties who conduct processing and/or refining business activities that are not integrated with mining activities whose licensing is issued based on the provisions of laws and regulations in the industrial sector.

Furthermore, the Amendment to the Mining Law stipulates that coal development and/or utilisation may be conducted in cooperation with other holders of IUP and IUPK in the stage of Operation Production activities or other parties who conduct coal development and/or utilisation activities. Development and/or utilisation includes activities carried out to increase the quality of coal without changing the physical and chemical characteristics of the coal. Coal development and/or utilisation shall be carried out to increase the added value of the coal.

Investment Considerations for Building In-Country Refining Facilities

In the event that a mining company intends to build a smelter in Indonesia, some key considerations for investors considering investments in processing/refining facilities and associated infrastructure are as follows:

a. Whether it is favourable to include the processing/refining facilities and infrastructure within the company holding the IUP-OP (i.e. the mining company) or under a separate company holding an industrial business licence;
b. If a separate company is to be established, the most beneficial arrangement with the mining company, whether trading or a processing service arrangement;
c. Whether any tax facilities are available, such as an income tax holiday or import facilities;
d. The relevant tax considerations in relation to the Engineering, Procurement, and Construction ("EPC") contract;
e. How financing can be arranged in the most tax-efficient manner; and
f. The right model for cooperation between shareholders (mining companies, off takers, financial investors, domestic, foreign, etc.).

PwC Indonesia recommends that investors contact our specialist mining team should they require further advice. Please see Appendix F for the contact details of PwC Indonesia's mining specialists.

Relaxation of the Ban on Exports of Unprocessed Minerals

In an attempt to alleviate the impact on miners and the country's export revenues from the ban on the exports of unprocessed or insufficiently processed minerals, the Government issued PerMen 25/2018, which allowed mining companies to continue exporting semi-processed products and certain types of ores up until 11 January 2022.

Following the payment of export duties based on the relevant laws and regulations, and the fulfilment of the minimum domestic processing and refining requirements, and having obtained export approval from the DGoFT and Export Recommendation from the MoEMR, the holders of metal mineral IUP-OPs, metal mineral IUPK-OPs, and processing and/or refining licences for anode mud were allowed to export certain approved quantities of their semi-processed products up until 10 June 2023.

Based on PerMen 25/2018, there are specific rules applicable to metal minerals with particular criteria (i.e. nickel with a content of < 1.7% and washed bauxite with an Aluminium Oxide content of ≥ 42%). The holders of IUP-OP, IUPK-OP, or IUP-OP Specifically for Processing and/or Refining licences, and other parties that are engaged in metal mineral processing and/or refining, are required to utilise metal minerals with particular criteria produced from domestic mining to meet domestic utilisation goals, by:

a. processing and refining metal minerals with particular criteria in their own processing and/or refinery facilities;
b. suppling metal minerals using particular criteria for processing and/or refining facilities built by other holders of IUP-OP, IUPK-OP, IUP-OP Specifically for Processing and/or Refining licences, and other parties engaged in metal mineral processing and/ or refining; or
c. receiving a supply of metal minerals with particular criteria from other holders of IUP-OP, IUPK-OP, IUP-OP Specifically for Processing and/or Refining licences, and other parties that are engaged in metal minerals processing and/or refining.

The holders of IUP-OP, IUPK-OP, or IUP-OP Specifically for Processing and/or Refining licences were allowed to export certain approved quantities of product that did not meet the mineral content requirements, including nickel with a content of < 1.7% and washed bauxite with an Aluminium Oxide content of ≥ 42% until 11 January 2021, provided they had constructed or were in the process of constructing a refining/smelting facility, either individually or jointly with other parties, and had paid export duties under the relevant laws and regulations.

However, due to concern around the depletion of the country's nickel reserves, in August 2019, the Government of Indonesia announced its decision to accelerate the full ban on exports of low-grade nickel ore two years ahead of the initial schedule. This was then followed with the issuance of PerMen 11/2019, the second amendment of PerMen 25/2018, by the MoEMR which effectively prohibited nickel mining companies in Indonesia from exporting unprocessed nickel ore from 1 January 2020.

In November 2020, the Government introduced further relaxation through the issuance of PerMen 17/2020, the third amendment of PerMen 25/2018. Based on PerMen 17/2020, the holders of an IUP-OPs/IUPK-OPs for metal minerals were allowed to continue exporting semi-processed products and certain types of ores (excluding nickel ore) up until 10 June 2023, subject to the conditions set out in the implementing regulations. Holders of existing processing and/or refining licences were allowed to export products in a certain amount up until the expiry date of its export licence (which pursuant to GR 96/2021 would have been 10 June 2023 at the latest).

The export relaxation under PerMen 17/2020 above was stipulated following the issuance of the Amendment to the Mining Law in which unprocessed metal minerals (at a certain level and with a total volume of processed metal minerals) may continue to be exported for three years from the enactment of the Amendment to the Mining Law (i.e. until June 2023) for mining companies which have conducted processing and refining activities (and/or are constructing facilities and/or are in cooperation for the processing and refining activities).

Later in June 2023, the MoEMR issued PerMen 7/2023, which provides further relaxation on the export ban. Pursuant to PerMen 7/2023, certain IUP/IUPK holders, subject to fulfilling the requirements thereunder, may export their mining products (copper, iron, lead, zinc) up until 31 May 2024 to encourage the completion of smelter construction. PerMen 7/2023 came into effect from 11 June 2023.

PerMen 7/2023 also stipulates that to conduct the export, such IUP/IUPK holders must obtain export approval from the DGoFT and a recommendation from the MoEMR. As set out in PerMen 25/2018, in order to obtain a recommendation, mining companies must apply to the MoEMR for the recommendation, for the attention of the DGoMC.

The DGoMC shall evaluate the application for an export recommendation and, based on this evaluation, the DGoMC, on behalf of the MoEMR, will approve or reject the application within 14 working days of receiving the application. The implementing guidelines for the application, evaluation, and approval of grants of recommendation for export are stipulated under MoEMR Decree No. 1826 K/30/MEM/2018.

The DGoMC, on behalf of the MoEMR, shall supervise the implementation of mineral export sales and the monitoring of the progress of the refinery facilities (including the physical progress of the refinery facilities and the value of the development costs incurred to build the refinery facilities).

The physical progress of the development of the refinery facilities must reach at least 90% of the approved plan for any given month, cumulatively calculated up to the last month, by an Independent Verifier.

In the event that, based on a six-monthly review, the percentage of physical progress of the development of the refinery facilities does not reach 90%, the DGoMC, on behalf of the MoEMR, shall issue a recommendation to the DGoFT to revoke the export approval previously granted.

Other than the revocation of the recommendation for export approval, the holders of metal mineral IUP-OPs, IUPK-OPs, and IUP-OPs Specifically for Processing and/or Refining may be subject to administrative fines amounting to 20% of the cumulative value of the mineral export sales.

If the administrative fine is not paid within one month of imposition, the holders of metal mineral IUP-OP, IUPK-OP, and IUP-OP Specifically for Processing and/or Refining licences may be subject to further administrative sanctions in the form of temporary suspensions of some or all business activities, for at most 60 days, by the MoEMR or the Governor, as applicable.

PMK 39/2022 sets out the rates of export duty for the various forms of processed metal minerals. Under PMK 39/2022, the export duty rates are linked to the physical progress of the refining facility development, as set out in the export recommendation issued by the MoEMR, according to the following three stages:

- Stage I – the level of the physical progress of the development is not more than 30% of the total development;
- Stage II – the level of the physical progress of the development is more than 30% but not more than 50% of the total development; and
- Stage III – the level of the physical progress of the development is more than 50% of the total development.

Photo source: PT Freeport Indonesia

PMK 39/2022 sets out the export duty rates, as follows:

No	Types of Mineral	Export Duty Rate			
		The stage of the physical progress of the refining facility's development			Minerals with certain criteria
		Stage I	Stage II	Stage III	
1	Copper concentrate with concentration > 15% Cu	5%	2.5%	0%	N/A
2	Iron concentrate (hematite, magnetite) with concentration > 62% Fe and < 1% TiO_2	5%	2.5%	0%	N/A
	Laterite iron concentrate (goethite/laterite) with concentration > 50% Fe and concentration of (Al_2O_3+SiO_2) > 10%	5%	2.5%	0%	N/A
	Iron sand concentrate (magnetite-ilmenite lamellae) with concentration > 56% Fe and 1% < TiO_2 < 25%	5%	2.5%	0%	N/A
	Iron sand concentrate pellet (magnetite-ilmenite lamellae) with concentration > 54% Fe and 1% < TiO_2 < 25%	5%	2.5%	0%	N/A
3	Manganese concentrate with concentration > 49% Mn	5%	2.5%	0%	N/A
4	Lead concentrate with concentration > 56% Pb	5%	2.5%	0%	N/A
5	Zinc concentrate with concentration > 51% Zn	5%	2.5%	0%	N/A
6	Ilmenite concentrate with concentration > 45% TiO_2	5%	2.5%	0%	N/A
	Other titanium concentrates with concentration > 90% TiO_2	5%	2.5%	0%	N/A

However, in 2021, in light of the COVID-19 pandemic, the MoEMR issued Decree No.46.K/MB.04/MEM.B/ 2021 concerning the "Recommendations on Export Sales for Metal Minerals during the COVID-19 Pandemic". Based on this MoEMR Decree, the holder of an IUP-OP or IUPK-OP for Minerals that didn't meet the percentage of physical progress construction of Smelter Facility at the minimum of 90% on evaluation periods, since Presidential Decree No.12/2020 became effective, are eligible for the recommendation for mineral export sales. However, the holders of IUP-OP and IUPK-OP are still subject to an administrative penalty, which is calculated from the cumulative export sales in the evaluation period.

Use of National Sea Transportation and Insurance for Coal Exports

The requirement for the use of national sea transportation and insurance for coal exports is set out in PerMenDag 40/2020 (as amended by PerMenDag 65/2020) on "Provisions for the Use of Sea Transportation and National Insurance for the Export and Import of Certain Goods" and DGoFT Regulation No. 2/DAGLU/PER/1/2019 concerning "Technical Guidance for Implementing the Requirement for the Use of National Insurance for the Export and Import of Certain Goods" ("DGoFT Reg. 02/2019").

Based on PerMenDag 40/2020 (as amended by PerMenDag 65/2020), coal exporters are principally required to use domestic sea transportation companies, and obtain insurance from domestic insurance companies or a consortium of domestic insurance companies. The obligation to utilise domestic sea transportation companies and domestic insurance, shall apply to coal exporters that transport coal with capacity up to 10,000 (ten thousand) deadweight tonnage using sea transportation. Domestic sea transportation companies are defined as marine transportation companies incorporated in Indonesia and that carry out sea transportation activities within the territorial waters of Indonesia and/or to and from ports abroad.

Under DGoFT Reg. 02/2019, insurance is defined as an agreement between two parties, namely an insurance company and a policyholder, that serves as the basis for the receipt of premiums by an insurance company in return for:

a. Providing compensation to the insured party or policyholder due to losses, damages, costs incurred, loss of profits, or legal responsibility to third parties that may be experienced by the insured party or policyholder due to the occurrence of an uncertain event; or
b. Providing payment based on the death of the insured party or payment based on the life of the insured party with a benefit in an amount established and/or based on the results of fund management.

National (domestic) insurance companies are defined as any general insurance company or Sharia general company incorporated in Indonesia that has already secured a licence from the Financial Services Authority. The type of insurance must be marine cargo insurance, and the insurance company or the consortium of the insurance companies issuing such insurance must be registered in the MoT.

Under PerMenDag 40/2020, coal exporters are also required to submit a report on the use of sea transportation and national insurance to the DGoFT via Inatrade which is an integrated online platform at the MoT (*http://inatrade.kemendag.go.id*). The report must include the scanned copy of Exporter/Importer's tax invoice and at least the following:

(i) The name of domestic sea transportation company;
(ii) The identification number of International Maritime Organisation;
(iii) The name of domestic insurance company or the government-owned export financing institution; and
(iv) The number and the policy date or the insurance certificate.

Exporters and importers who fail to comply with the mandatory use of domestic sea transportation companies and domestic insurance companies and the reporting obligation will be subject to administrative sanctions in the form of a recommendation to suspend their NIB.

L/C Requirements for Exports of Mineral Resources

The requirement for the use of an L/C for exports of coal and minerals is set out in PerMenDag 94/2018 (as amended by PerMenDag 102/2018). This requirement is also regulated under MoEMR Decree No. 1952 K/84/MEM/2018 concerning the "Use of Domestic Banks or Overseas Branches of Indonesian Banks for Exports of Mineral and Coal" ("KepMen 1952/2018"). These regulations are intended to result in more accurate information being obtained about foreign exchange revenue from exports.

Pursuant to PerMenDag 94/2018 (as amended by PerMenDag 102/2018) and KepMen 1952/2018:

a. The use of an L/C is mandatory for exports of mineral products including for full returns of the proceeds generated from the sale of minerals and coal overseas through a domestic bank account or an overseas branch of a domestic bank;
b. Violation of the obligation stated in point a above is subject to sanctions in the form of a revocation of mineral export approval or status as a registered coal exporter, written warnings and the temporary suspension of activities;
c. The price stated in the L/C should not be lower than the global market price. In the event that global market prices are not available, the prices determined by the government or the prices in the country of destination shall be used as the export prices;
d. The payment should be made to a domestic foreign exchange bank (*bank devisa*) or the export financing institution (*lembaga pembiayaan ekspor*) established by the Government. In receiving a payment made by the L/C, the export financing institution shall refer to the provisions of the Bank of Indonesia ("BI") Regulation regarding Foreign Exchange Resulting from Exports;
e. The L/C mechanism should be declared in the export declaration of goods (*Pemberitahuan Ekspor Barang* or "PEB");
f. The L/C documentation is subject to audit by a surveyor appointed by the MoT;
g. Exporters must submit a report to the DGoFT on the realisation of the exports completed, with the final price of the L/C, on a monthly basis, no later than the 15th day of the subsequent month;
h. In the event that an exporter is unable to implement the L/C terms, it should apply to The MoT for a deferral. The approval from the MoT will consider the following:
    - The terms adopted in sales contracts for exports of coal and/or minerals between exporters and overseas customers that were drawn up before PerMenDag 94/2018 became effective;
    - The ability of the exporter to adjust the means of settlement using an L/C within a certain period of time; and
    - Written confirmation of the stamp duty on both points above.
i. No exports will be allowed if they fail to satisfy the L/C requirements.

Exporters of mineral products should closely examine the procedures and requirements to avoid unnecessary sanctions, including the suspension of export/import activities. However, it remains unclear how the rules can be effectively applied for inter-company sales, non-sales exports, and exports under trustee arrangements, among others.

2.5 Royalties and the Fiscal Regime

Royalties and Non-Tax State Revenue

All IUP/IUPK holders are required to pay production royalties at varying rates, depending on the mining scale, the production level, and the mining commodity price. GR 26/2022 imposes a significantly higher royalty rate compared to the previous regulation (i.e. GR 81/2019) and came into effect from 15 September 2022. Currently, under GR 26/2022, a range of percentages on the sales proceeds apply to different types of coal and minerals (please refer to below table summarising the rates from GR 26/2022 for each commodity).

However, specifically for coal, Article 39 of the Job Creation Law adds Article 128A to the Mining Law which stipulates that business owners who conduct activities to add value to the coal shall be eligible for certain state income incentives. Such incentives may be in the form of a 0% royalty rate imposition. GR 25/2021 has been issued as an implementing regulation of the Job Creation Law, which stipulates that the incentive is granted by taking into account the energy independence and fulfilment of industrial materials demand. Prior approval for the amount, requirements, and procedures for the 0% royalty rate must be obtained from the MoF.

As contemplated by the 2009 Mining Law, holders of an IUPK are required to pay an additional levy (or "profit share") of 10% of net profit. Based on GR 15/2022, the Central Government is entitled to receive 40% of this additional levy, while the remaining is to be shared between the relevant province and regencies. Since this additional charge is determined based on net profit, it is expected that the Government will take a greater interest in monitoring the capital expenditure and mining operating costs of IUPKs.

The current production royalty rates for key Indonesian commodities are set out in the table below. For the rates applicable under a CoW/CCoW, reference should be made to the relevant agreement (see Chapter 3 and Appendix E for further details of the CoW terms).

IUP Royalty Rates	
Commodity	**Production Royalty Rate**
Coal a) Open pit coal • HBA < USD70 • USD70 < HBA < USD90 • HBA >= USD90 b) Open pit coal • HBA < USD70 • USD70 < HBA < USD90 • HBA >= USD90	 5% - 9.5% 6% -11.5% 8% -13.5% 4% - 8.5% 5% -10.5% 7% -12.5%
Nickel	1% - 10%
Zinc	2% - 4%
Tin	1% - 4%
Copper	2% - 10%
Iron	2% - 10%

IUP Royalty Rates	
Commodity	**Production Royalty Rate**
Gold • Price <= USD1,300/ounces • USD1,300/ounces < Price <= USD1,400/ounces • USD1,400/ounces < Price <= USD1,500/ounces • USD1,500/ounces < Price <= USD1,600/ounces • USD1,600/ounces < Price <= USD1,700/ounces • USD1,700/ounces < Price <= USD1,800/ounces • USD1,800/ounces < Price <= USD1,900/ounces • USD1,900/ounces < Price <= USD2,000/ounces • Price > USD2,000/ounces	 3.75% 4% 4.25% 4.50% 4.75% 5% 6% 8% 10%
Silver	3.25%
Iron Sand	2% - 10%
Bauxite	1 % - 7%

Note: the Job Creation Law through GR 25/2021 allows for a 0% royalty rate for coal business owners who conduct activities to add value to the coal.

Guidance on the imposition, collection, and payment of royalties is set out in MoEMR Decree No. 1823 K/30/MEM/2018 concerning "Guidelines on the Imposition, Collection, and Payment of Mineral and Coal Non-Tax State Revenue", as partially revoked by MoEMR Decree No. 18.K/HK.02/MEM.B/2022 ("KepMen 18/2022"). Pursuant to KepMen 18/2022, the payment of dead rent and royalty fee shall be made through the electronic system of non-tax state revenue or e-PNBP and can only be processed after the taxpayer is registered with the DGoMC.

On 11 April 2022, the Government issued GR 15/2022 to provide special rules in relation to both the tax and royalty arrangements for the coal mining sector. GR 15/2022 introduces a new royalty on coal sales per tonne for holders of an IUPK as a continuation of a CCoW. The royalty is calculated based on a certain formula with progressive rates according to fluctuations in the coal benchmark price. It is calculated by multiplying the progressive rates with the sales price and the result is deducted with the royalty and the fee for the utilisation of Government-owned assets ex CCoW.

The royalty progressive rates under GR 15/2022 are as follows:

Coal benchmark price	Royalty Rates	
	IUPK Continuation with *lex-specialis* provisions[1]	**IUPK Continuation without *lex-specialis* provisions[2]**
<USD70	14%	20%
USD70 up to < USD80	17%	21%
USD80 up to < USD90	23%	22%
USD90 up to < USD100	25%	24%
> USD100	28%	27%

1) IUPK Continuation with lex-specialis provisions is IUPK Continuation of CCoW where the tax provisions are nailed down.
2) IUPK Continuation without lex-specialis provisions is IUPK Continuation of CCoW where the tax provisions are following prevailing tax regulations.

For coal sales for which the price is specifically regulated (specific coal sales), the PNBP rate is fixed at 14%. The specific coal sales refer to sales:

- within one island in accordance with the provisions under the Mining Law;
- of certain coal types (i.e. fine coal, reject coal, coal with certain impurities) and needs as stipulated in the provisions of the Mining Law;
- to fulfil domestic needs where the coal price or formula is determined by the MoEMR; and
- for certain transactions as stipulated in the provisions of the Mining Law.

Fiscal Regime

There are no specific articles outlining the details of the tax or other fiscal provisions in the Mining Law. However, the Government issued GR 37/2018, concerning "The Treatment of Taxation and/or Non-Tax State Revenue in the Mineral Mining Business" in August 2018, to provide special rules on both the tax and PNBP arrangements for the mineral mining sector. In April 2022, the Government issued GR 15/2022 to provide special rules on both the tax and PNBP arrangements for the coal mining sector.

Please refer to Chapter 4 for further details regarding GR 37/2018 and GR 15/2022 and mining-specific taxation matters.

Photo source: PT Bukit Asam Tbk

2.6 Divestment of Foreign Shareholdings

Under GR 96/2021, the maximum shareholding a foreign investor can hold in a company that holds an IUP/IUPK depends on the relevant mining activities carried out by the mining company and whether it has integrated processing and/or refining facilities.

The share divestment requirements stipulated under GR 96/2021 are as follows:

Operation Production IUP and IUPK	Integrated Processing and/or Refining Facilities	Divestment Share Obligation (applicable since production stage)
Surface mining	No	10th year: 5% 11th year: 10% 12th year: 15% 13th year: 20% 14th year: 30% 15th year: 51%
Surface mining	Yes	15th year: 5% 16th year: 10% 17th year: 15% 18th year: 20% 19th year: 30% 20th year: 51%
Underground mining	No	15th year: 5% 16th year: 10% 17th year: 15% 18th year: 20% 19th year: 30% 20th year: 51%
Underground mining	Yes	20th year: 5% 21st year: 10% 22nd year: 15% 23rd year: 20% 24th year: 30% 25th year: 51%

Under GR 96/2021, holders of an IUP or IUPK whose foreign shares are above 49% may transfer such shares to other parties before the stipulated year set out in the table above provided that such foreign shares are first offered to a BUMN.

In addition to the restrictions above, PerMen 9/2017 (as lastly amended by PerMen 43/2018) stipulates the following:

- Holders of an IUP-OP or IUPK-OP licence for which shares must be divested are prohibited from providing loans to Indonesian parties for the purpose of acquiring the divestment shares. This provision is likely intended to prevent foreign shareholders from maintaining control through nominee arrangements.
- Holders of an IUP-OP or IUPK-OP licence are prohibited from pledging shares that are obliged to be divested.
- In terms of the issuance of new share capital that dilutes the Indonesian shareholder's ownership percentage, the entities holding IUP-OP and IUPK-OP licences should in the first instance offer the new shares to the existing Indonesian shareholder, or to other Indonesian participants (the Central Government, the Provincial Government, a BUMN, a BUMD, or a domestic private business entity), if the existing Indonesian shareholder does not opt to exercise its rights.

The divestment procedures including the timeline, the divestment price, the approval processes, and the payment mechanism should follow the requirements of PerMen 9/2017 (as amended by PerMen 43/2018). On 8 April 2020, the MoEMR issued MoEMR Decree No. 84 K/32/MEM/2020, which stipulates the detailed requirements for the implementation of the divestment.

Divestments are to be made (in order of preference) to the Central Government, the Provincial Government, Regency/Municipal Government, a BUMN or BUMD, or a domestic private business entity (referred to collectively as the "Indonesian Participants"). Divestment may be conducted through the issuance of new shares and/or the transfer or sale of existing shares, either directly or indirectly.

The Central Government, through the MoEMR, must provide a written response to the divestment offering no later than 30 calendar days after the expiration of the period for the evaluation and negotiation of the divestment share price.

If the Central Government is not interested or does not provide a written response to the divestment offering within the required timeline, the divestment offering is to be made (in order of preference) to the Provincial Government or Regency/Municipal Government, a BUMN or BUMD, or a domestic private business entity. The Provincial Government or Regency/ Municipal Government must be the Provincial Government or Regency/Municipal Government where the mining business activity takes place.

The holders of IUP-OP or IUPK-OP licences must offer share divestments to the Provincial Government or Regency/Municipal Government within a period of no more than seven calendar days following (i) the Government's confirmation that it is not interested, or (ii) the Government not providing a written reply to the divestment offering within the required timeline. MoEMR Decree No. 84 K/32/MEM/2020 stipulates the details regarding the supporting documents that are to be provided in such offerings to the Provincial Government or Regency/Municipal Government. The Provincial Government or Regency/ Municipal Government must provide a written reply to the divestment offering no later than 30 calendar days after the date of the offer.

In the event that the Provincial Government or Regency/Municipal Government is not interested, or does not provide a written reply within the required timeline, PerMen 9/2017 stipulated that the holders of IUP-OPs or IUPK-OPs are required to offer share divestments to BUMNs and BUMDs by way of a tender. Based on PerMen 43/2018, the divestment offer to BUMNs and BUMDs is no longer conducted by way of a tender. In the event that more than one BUMN or BUMD expresses interest in the divestment offer, the MoEMR shall coordinate the determination of the number of divested shares to be purchased by the BUMN or the BUMD. The offer should be made by the BUMN or BUMD no more than seven calendar days after the Provincial Government or Regency/Municipal Government confirming that it is not interested or not providing a written reply to the divestment offering within the required timeline. The BUMN or BUMD must provide a written reply to the divestment offering no more than 30 calendar days after the offer date.

In the event that a BUMN or BUMD is not interested, or does not provide a written reply within the required timeline, the holders of IUP-OP or IUPK-OP licences are required to offer the share divestment to domestic private business entities, via a tender, no more than seven calendar days following the BUMN or BUMD confirming that they are not interested, or the deadline for providing a written reply has passed.

Domestic private business entities must provide a written reply to the divestment offering no more than 30 calendar days after the offer date.

During the implementation of the divestment procedure, the holders of IUP-OPs or IUPK-OPs must grant access to Indonesian Participants to conduct due diligence procedures.

In the event that the divestment offering to Indonesian Participants is not implemented, the share divestment can be carried out through the offering of the divestment shares on the IDX.

Pricing of Shares that are Subject to Divestment

PerMen 9/2017 stipulates that the divestment share price is based on the "fair market value", without considering the value of the mineral or coal reserves at the time when the divestment is conducted. This pricing mechanism could be a significant concern for foreign investors, given that it is likely to result in a price lower than the fair market value, which is generally understood to include the net present value of the cash flows generated from the exploitation of the reserves over the remaining life of the mine.

However, the above provision regarding the divestment share price has been changed by PerMen 43/2018. Based on PerMen 43/2018, the fair market value shall not include mineral or coal reserves, except those that may be mined within the period of the IUP-OP or IUPK-OP. Furthermore, the calculation of the fair market value shall be conducted based on the discounted cash flow method, using the economic benefits within the divested implementation period until the end of the IUP-OP or IUPK-OP, and/or market data benchmarking.

Based on PerMen 9/2017, the regulated divestment share price would become:

a. The maximum price offered to the Central Government, Provincial Government or Regency/Municipal Government; or
b. The minimum price offered to a BUMN, BUMD, or domestic private business entity.

PerMen 43/2018 amended the above provision, and stipulates that the regulated divestment share price would become:

a. The maximum price offered to the Central Government, Provincial Government or Regency/Municipal Government, BUMN, BUMD, or a special purpose vehicle that has been established or appointed by the Government through the MoEMR, together with the Provincial Government or Regency/Municipal Government, BUMN and/or BUMD; or
b. The minimum price to be offered to a domestic private business entity through a tender.

PerMen 43/2018 states that in order to determine the fair market value, the calculation may use the discounted cash flow method and/or the market data benchmarking method. MoEMR Decree No. 84 K/32/MEM/2020 further explains the use of the discounted cash flow method in greater detail, including the financial assumptions that are to be considered.

The Government (via the MoEMR) may engage an independent valuer to evaluate the divestment share price. If agreement cannot be reached regarding the divestment share price, PerMen 9/2017 stipulates that the divested shares are to be offered based on the divestment share price that is calculated in reference to the evaluation that has been performed by the Government. This provision has now been removed in PerMen 43/2018. However, based on MoEMR Decree No. 84 K/32/MEM/2020, the Government can check whether the holder of the IUP-OP or IUPK-OP has used the predetermined method and, if not, the Government may return the offer to the holder, for it to be revised in accordance with the predetermined method.

Divestment via Initial Public Offering ("IPO")

PerMen 27/2013 stated that divestment via the Indonesian capital market will not be treated as satisfying the divestment requirements. Following the revocation of PerMen 27/2013 by PerMen 9/2017 (as amended by PerMen 43/2018), this provision has been removed. Instead, PerMen 9/2017 stipulates that divestment can be carried out by offering shares on the IDX in the event that none of the Central Government, the Provincial Government or Regency/Municipal Government, a BUMN, a BUMD, or a domestic private business entity is interested in taking the divested shares. Such provision has also been included in GR 96/2021. This implies that divestment via the Indonesian capital markets can be treated as satisfying the divestment requirements.

2.7 Reclamation and Mine Closure

On 20 December 2010, the Government released GR 78/2010, which deals with reclamation and post-mining activities for both IUP-Exploration and IUP-OP holders. On 29 February 2014, the MoEMR issued PerMen 7/2014 (the implementing regulation for GR 78/2010), which details the requirements and guidelines for the preparation of reclamation and post-mining plans. PerMen 7/2014 has been revoked by PerMen 26/2018, and the guidelines regarding reclamation and mine closure have now been provided by PerMen 26/2018.

An Exploration IUP/IUPK holder must include a reclamation plan in its exploration RKAB, among other requirements, and provide a reclamation guarantee in the form of a time deposit placed at a state-owned bank. The reclamation plan for the exploration phase needs to be prepared before any exploration activities are undertaken. After an application for an IUP-OP has been submitted, the reclamation plan for the production phase and the post- mining plan are also to be prepared by the IUP/IUPK holder, and this plan should cover a five-year period (or the remainder of the mine life, if shorter).

On 7 May 2018, MoEMR Decree No. 1827 K/30/MEM/2018 concerning Guidelines for the Implementation of Good Mining Techniques ("KepMen 1827/2018") was issued as the implementing guidelines for the provisions under PerMen 26/2018. Based on PerMen 26/2018 and KepMen 1827/2018, an IUP-OP/IUPK-OP holder must provide the following, among other requirements:

- A five-year reclamation plan;
- A post-mining plan;

- A reclamation guarantee, which may be in the form of (i) a joint account, a time deposit placed at a state-owned bank in IDR or USD currency for a reclamation guarantee at the exploration stage; and (ii) a time deposit placed at a state-owned bank in IDR or USD currency for a reclamation guarantee at the operation production stage;
- A post-mining guarantee, in the form of a time deposit with a state-owned bank in IDR or USD currency; and
- Periodical report on the implementation of reclamation and post-mining activities.

The requirement to provide reclamation and post-mining guarantees does not release the IUP holder from the requirement to perform reclamation and post-mining activities. PerMen 26/2018 and KepMen 1827/2018 also set out the procedures for the preparation of the reclamation and post-mining activities report, which must be submitted to the MoEMR periodically. The reclamation and post-mining activities will be evaluated for the release of the reclamation guarantee and post-mining guarantee. In the event that the reclamation and post-mining criteria are not met, the MoEMR or the governor shall appoint a third party to carry out the reclamation or post-mining activities.

Please refer to Annex of KepMen 1827/2018 for the detailed requirements and procedures of the reclamation plan, post-mining plan, placement and release of guarantees, and reporting obligations.

The transitional provisions in GR 78/2010 and PerMen 26/2018 make it clear that CoW/CCoW holders are also required to comply with this regulation.

Aside from the above, pursuant to the Amendment to the Mining Law, prior to the WIUP or WIUPK being reduced or returned, reclamation and mine closure activities must be implemented and must reach 100% completion. Ex holders of IUP or IUPK licences that have expired must reach 100% completion for reclamation and mine closure activities.

2.8 Penalty Provisions and Dispute Resolution

Penalty Provisions

The Mining Law also regulates the consequences of infringement of the Law by the IUP/IUPK holder and illegal miners.

A breach of the Mining Law can be punished by both administrative and criminal sanctions, including the revocation of the IUP/IUPK, the imposition of fines, and prison terms. The Job Creation Law provides a minor additional provision whereby anyone who hinders or interferes with the mining business activities of IUP, IUPK, IPR or SIPB holders will be included as a subject of sanctions for causing nuisance to mining activities.

Dispute resolution

Disputes regarding IUPs/IUPKs should be settled through court procedures and domestic arbitration, in accordance with the prevailing laws and regulations.

2.9 Transitional Provisions

CoWs/CCoWs/Coal Co-Operation Agreements ("CCAs")

The 2020 Amendment to the Mining Law confirms that all existing CoWs/CCoWs/CCAs (collectively referred to hereafter as the "contract(s)") will continue until their expiry dates, and may be extended without the need for a tender (where further extensions are still available under the contracts).

However, the extended licences will be granted under the IUPK system, rather than under the CoW framework. If a licence has been extended once, the second extension will also be granted without the need for a tender. Before issuing the IUPK, the MoEMR should already have issued its approval for the relevant mine area as a WIUPK OP. Failure to fulfil these requirements may result in the mine area being opened for tender.

Detailed guidance on applications for extensions of IUPK-OPs is outlined in GR 96/2021 and PerMen 7/2020.

Although the terms of existing contracts will be honoured, the Law specifically provides that holders of existing contracts must, within five years of the enactment of the Law, comply with the obligation under the Law to conduct onshore processing and ore refining.

Contract holders who have already commenced some form of activity are required, within one year of the enactment of the Mining Law, to submit a mining activity plan for the entire contract area. If this requirement is not fulfilled, the contract area may be reduced to the size allowed for IUPs under the new Law.

Furthermore, the Mining Law indicates that the provisions of existing contracts must be amended within one year to conform with the provisions of the new Mining Law, other than the terms relating to state revenue (which is not defined, but presumably includes State Tax Revenue and PNBP, such as royalties). It is not stated in the Mining Law which provisions the existing contracts must conform to, but this could include alignment with the Mining Law's provisions on divestment obligations, the resizing of the mining areas, reduced production periods, prohibitions on using affiliated mining contractors, and the like. Many of these matters were raised by the Government during the contract renegotiations with the holders of the contracts. At the time of writing, all CCoW holders and substantially all CoW holders has completed the negotiation process and signed contract amendments with the Government. Please refer to the discussion in Section 3.5 of this Guide, "CoW and CCoW Renegotiation", for the latest status of the negotiations between the Government and the holders of the contracts.

Photo source: PwC

3 Contracts of Work

3.1 General Overview and Commercial Terms

CoW

The CoW system for regulating mining operations has played a key role in the success of Indonesia's mining industry. This system, which was introduced in 1967, has been gradually refined and modernised over the past 40 years to reflect the changing conditions in Indonesia and abroad. To date, there have been seven generations of CoWs. A comparison of the various generations is provided in Appendix E.

After the 2009 Mining Law was amended with the new Mining Law, several articles were amended, with one of the most interesting amendments being that regarding the Government guarantee for CoW and CCoW extension. Under the Amendment to the Mining Law, the Government created a new type of licence, an "IUPK as a continuance of CoW/CCoW operations". This allows holders of a CoW/CCoW to extend their mining business for up to 20 years (given in two ten-year extensions) or will provide a ten-year licence if the CoW or CCoW has previously been extended prior to the Amendment to the Mining Law.

CoWs were regulated by MoEMR Decision Letter No. 1614/2004, which has been revoked by PerMen 8/2018. In essence, a CoW is a comprehensive contract between the Government and an Indonesian company. The company could be 100% foreign-owned. However, if the company was 100% foreign owned, it might be subject to divestment requirements at a later date. As a practical matter, most CoWs have some level of Indonesian ownership.

The CoW sets out the company's rights and obligations with respect to all phases of a mining operation, including exploration, pre-production development, production, and mine closure. A CoW applies to a specifically defined geographical area (the contract area).

The CoW company is the sole contractor for all the mining activities in the CoW area, other than for oil and gas, coal, and uranium. The CoW company has control over, management of, and responsibility for all of its activities, which include all aspects of mining such as exploration, development, production, refining, processing, storage, transport, and sales.

Photo source: PwC

The CoW outlines a series of stages with defined terms:

Stage	Term (Years)	Available Extension[1]
General survey [1]	1	6 months – 1 year
Exploration [2]	3	1 – 2 years
Feasibility study	1	1 year
Construction	3	-
Production	30	20 years or another period as approved by the Government

Notes:
1) Dependent on the CoW generation. For the details, refer to Appendix E.
2) For the first generation, the maximum period from the general survey to the feasibility study was 18 months, which could be extended for a maximum of 6 months.

Some of the important considerations that are covered by a CoW include: expenditure obligations; import and export facilities; marketing; fiscal obligations; reporting requirements; records; inspections; work programmes; employment and training of Indonesian nationals; preferences given to Indonesian suppliers; environmental management and protection issues; regional cooperation in relation to infrastructure; provision for infrastructure for the use of the local population; and local business development. It is a tribute to the Government and to the industry that these important matters can be appropriately addressed in a concise legal contract.

The CoW covers all the tax, royalty, and other fiscal charges, including: dead rent in the contract area; production royalties; income tax that is payable by the company; employees' personal income tax; withholding taxes ("WHT") on dividends, interest, rents, royalties, and similar payments; VAT; stamp duty; import duty; and Land and Building Tax (*Pajak Bumi dan Bangunan* or "PBB").

CCA and CCoW

CCoWs were regulated under MoEMR Decision Letter No. 1614/2004. Since November 1997, coal mining has been brought more into line with general mining through the CoW structure. There have been two generations of CCA (first-generation and second-generation contracts) and one generation of CCoW, which is typically referred to as the third generation CCoW.

The first generation of CCAs was regulated under Presidential Decree No. 49/1981, dated 28 October 1981, regarding the Principal Regulation for CCAs between PT Tambang Batubara Bukit Asam (now PT Bukit Asam Tbk or "PTBA"), the state-owned coal mining company, and the contractor. Presidential Decree No. 49/1981 was replaced by Presidential Decree No. 21/1993, dated 27 February 1993, which regulated the second generation of CCAs. The third generation of CCoWs was issued pursuant to Presidential Decree No. 75/1996, dated 25 September 1996.

CCA

The key difference between the CCA and the CoW system is that, under a CCA, the foreign mining company acted as a contractor to the Indonesian state-owned coal mining company PTBA. Legislation has since been enacted and CCAs have been amended to transfer the rights and obligations of PTBA under the CCAs to the Government, as represented by the MoEMR.

Under the CCA, the coal contractor is entitled to an 86.5% share of the coal that is produced by the area, and the contractor bears all the costs of mine exploration, development, and production. The Government (previously PTBA), retains its entitlement to the remaining 13.5% of production. However, in accordance with Presidential Decree No. 75/1996, dated 25 September 1996, the contractors pay the Government's share of the production in cash, which represents 13.5% of sales after the deduction of the selling expenses.

For the first generation of CCA, equipment purchased by the coal contractor became the property of the Indonesian Government (previously PTBA), although the contractor had exclusive rights to use the assets and was entitled to claim depreciation. For the second and third generations of CCA and CCoW, the equipment purchased by the contractor remains the property of the contractor.

Foreign shareholders that own 100% of a first generation CCA are required to offer shares to Indonesian nationals or companies so that, after ten years of operating, foreign ownership in the company is reduced to a maximum of 49%.

CCoW

Under the CCoWs, the mining company is, in effect, entitled to 100% of the coal production. However, a royalty of 13.5% of sales revenue is paid to the Government.

The CCAs and CCoWs outline a series of stages with defined terms:

Stage	Term (Years)	Available Extension (Years)
General survey	1	1 year
Exploration	3	2 years for the third generation, but not specifically mentioned in other generations
Feasibility study	1	1 year for the third generation, but not specifically mentioned in other generations
Construction	3	-
Production	30	-

Pre-Contract Expenses

The shareholder of the contract company typically incurs significant expenditure before the contract company is incorporated and the contract is signed. This pre-incorporation expenditure may be transferred from the shareholder to the contract company, as deferred pre-operating costs, and it will be amortised starting from the period in which the production commences. These expenses are subject to an audit by a public accountant and approval by the Minister and the Directorate General of Taxation ("DGT").

Exploration and Development

These stages coincide with the decision points for the relinquishment of part of the contract area. This section deals with the general survey, exploration, feasibility, and construction stages.

Following the signing of the contract, the company is required to lodge a security deposit, in US Dollars, in a state-owned bank account. The security deposit is released upon the completion of the following:

- The satisfactory completion of the General Survey period (50% of security deposit amount); and
- The submission of a general geological map to the Ministry within 12 months of the completion of the Exploration Stage (50% of security deposit amount).

For the seventh generation of CoWs, or the third generation of CCoWs, the security deposit is released upon the completion of the following:

- The satisfactory completion of the General Survey period (25% of security deposit amount);
- The end of the first year of exploration (25% of security deposit amount); and
- The submission of a general geological map within 12 months of the completion of the Exploration Stage (50% of security deposit amount).

During the pre-production stage, all the companies signing the contract are required to submit detailed quarterly progress reports to the MoEMR. Under the contracts, the companies have responsibility for all the financing requirements of the project and details are to be reported to the MoEMR.

For a company holding a contract, obligations are imposed throughout the life of the contract with respect to environmental restoration, the employment and training of Indonesian nationals, preference for Indonesian nationals, preference for Indonesian suppliers, and the provision of infrastructure for use by the local community. The company also has the following obligations under the contract:

CoW	CCA/CCoW
• General Survey Stage The company is obliged to spend an agreed amount during the General Survey stage. At the end of the period, the company must submit a report detailing the items and the amount of expenditure, and it is required to relinquish at least 25% of the original contract area.	• General Survey Stage The company is obliged to spend an agreed amount during the General Survey stage. At the end of the period, the company must submit a report detailing the items and the amount of expenditure, and it is required to relinquish at least 25% of the original contract area for the second and third generations, and 40% for the first generation.

CoW	CCA/CCoW
• Exploration Stage In the Exploration Stage, the company is obliged to spend an agreed amount per year on exploration activities. At the commencement of this stage, the company must submit an annual programme and budget to the MoEMR. At the end of the Exploration Stage, the company is required to file the following with the MoEMR: - A summary of its geological and metallurgical investigations and all the data that has been obtained; and - A general geological map of the contract area. On or before the second anniversary of the commencement of the Exploration Stage, the company is required to have reduced the contract area to not more than 50% of the size of the original contract area.	• Exploration Stage In the Exploration Stage, the company is obliged to spend an agreed amount per year on exploration activities. At the commencement of this stage, the company must submit an annual programme and budget to the MoEMR. At the end of the Exploration Stage, the company is required to file the following with the MoEMR: - A copy of the drill holes, pits, and assays of the samples; and - A copy of the geophysical or geological maps of the contract area. On or before the second anniversary of the commencement of the Exploration Stage, the third-generation company is required to have reduced the contract area to not more than 25% of the size of the original contract area. First and second generation contractors are required to have reduced the contract area to not more than 20%.
• Feasibility Study Stage At the end of the Feasibility Study Stage, the company is required to submit a feasibility study, including environmental impact studies, to the MoEMR, and to design the facilities. At the end of the Feasibility Study stage, the company is required to have reduced the contract area to not more than 25% of the size of the original contract area.	• Feasibility Study Stage At the end of the Feasibility Study Stage, the company is required to submit a feasibility study, including environmental impact studies, the MoEMR, and to design the facilities. At the end of the Feasibility Study, the third generation CCoW companies are required to have reduced the contract area to not more than 25,000 ha.
• Construction Stage The company undertakes the construction of the facilities.	• Construction Stage The company undertakes the construction of the facilities.
• Dead Rent Throughout the life of the CoW, the company is required to pay dead rent. This is an annual amount that is based on the number of hectares in the CoW area and the stage of the CoW.	• Dead Rent Throughout the life of the contract, the company is required to pay dead rent. This is an annual amount that is based on the number of hectares in the approved area and the stage of the mining.

Production

During the production phase, the company is required to provide the following Exploitation reports to the MoEMR:

- A fortnightly statistical report;
- A monthly statistical report;
- A quarterly report concerning the progress of operations;
- An annual report; and
- Other reports to various departments.

The company may export its production, but it is encouraged to meet domestic demand first. Sales to associates are required to be at arm's length prices. Sales contracts exceeding three years are subject to Government approval.

The contract also requires contractors to provide the following reports to the MoEMR:

- A monthly statistical report;
- A quarterly report concerning the progress of operations; and
- An annual report, for the third generation of CCoWs.

The contract company may choose to operate the mine itself, or it may sub-contract the operations of the mine, but the outsourcing of mining operations should now be considered in light of the rules that are contained in the Mining Law and its implementing regulations, which may be applicable to contracts.

Because a company can be party to only one contract (either a CoW, CCA, or CCoW), it is common for mining groups to have more than one company in Indonesia. Group overheads can be borne by yet another company that has been formed to service the group contract companies. This can provide operational efficiencies, but its tax implications should be considered further.

Other Financial Obligations

Royalties

Royalties are payable quarterly to the Government based on the actual volume of the production or sales according to the provisions that are set out in the contract. However, in practice, the royalty is currently to be paid to the Government prior to shipment, as required by MoEMR Decree No. 1823 K/30/MEM/2018 concerning "Guidelines on the Implementation of the Imposition, Collection, and Payment of Mineral and Coal Non-Tax State Revenues".

Dead Rent and PBB

The company is required to pay dead rent and PBB as set out in the contract. Dead rent is an annual charge that is based on the number of hectares in the mining area. During the pre-production stage, PBB is equal to the amount of dead rent. Once the operating stage commences, the PBB for the mining area is equal to the amount of dead rent plus a certain percentage of gross revenue from mining operations. The PBB for the area outside the mining area used by the company for its facilities which will be closed to the public will follow the calculation method outlined in the relevant contract.

3.2 The Fiscal Regime Under CoWs, CCoWs, and CCAs

All generations of contracts, except for the second generation CCAs, are based on the taxation and other laws and regulations that were in place at the time of the agreements being signed. In many circumstances, this means that the regulations affecting the mining companies operating under such contracts differ from the current regulations. This often creates difficulties in interpreting the agreements and in doing business with other companies. Potential investors in mining properties that are covered by earlier generation contracts should seek professional assistance in order to examine such issues.

Many earlier generation contracts also include divestment requirements for foreign shareholders.

Please note that the contract renegotiations (see Section 3.5 of this Guide, "CoW and CCoW renegotiation", and Section 4.3 of this Guide, "Tax Regime for a CoW/CCoW/CCA company", below) generally incorporate the adoption of the prevailing fiscal rules effective from 1 January 2019. Nevertheless, the fiscal regime of each contract should be reviewed on a case-by-case basis.

3.3 Termination of the Contract

If at any time during the term of a contract the company believes that the contract area is unworkable it may terminate the contract. The procedures for terminating the contract may be summarised as follows (this matter is not specifically mentioned in first and second generation CCoWs):

- Submit a written notice to terminate the contract, attaching a closure plan, related documents, maps, plans, worksheets, and other technical data and information.
- Provided that the data and the fulfilment of the company's obligations are considered acceptable to the MoEMR, the MoEMR will issue confirmation within six months of the date when the company submitted the notice. Otherwise, the contract is automatically considered to be terminated, and the company shall be relieved of its obligations.

A general summary of the implications of the termination of a contract, at the various stages of the contract, is set out below. All sales, removals, or disposals of property will be subject to the tax rules that are set out in the contract:

a. General Survey and Exploration Period

- The company has a period of 6 months to sell or remove its property, otherwise the property becomes the property of the Government; and
- The company is required to provide any information that has been gained from the work that it has performed to the Department of Mines and Energy.

b. Feasibility Study Period

- The company is required to offer all of the property that is located in the contract area to the Government at market value;
- The offer is valid for 30 days. If the Government accepts the offer, it is required to settle within 90 days; and

- If the Government does not accept the offer, the company then has 6 months to sell or remove its property, otherwise the property reverts to the Government without any compensation paid to the company.

c. Construction Period

- The conditions are identical to those for the Feasibility period, except that, if the Government does not accept the offer, the company has 12 months to remove or sell its property.

d. Operating Period or Expiration of the contract

- The company is required to offer all of the property that is located in the contract area to the Government at market value;
- The offer is valid for 30 days. If the Government accepts the offer, then it is required to settle within 90 days; and
- If the Government does not accept the offer, the company then has 12 months to sell or remove its property, otherwise the property reverts to the Government without any compensation paid to the company.

Following the termination of the contract, any property that is used for public purposes, such as roads, schools, and hospitals, and any associated equipment, immediately becomes the property of the Government, without any compensation paid to the company.

3.4 Transfer of the Contract

The Purchase and Sale of Shares in a Contract Company

Due to the difficulties that are involved in transferring a direct interest in a contract (see below) it is common for such interests to be transferred indirectly through the transfer of shares in the company holding the contract, or through a transfer of the shares of the holding companies above the company holding the contract.

However, the shareholders of the contract company cannot transfer any shares prior to the commencement of the operating period without the written consent of the Government.

The shareholders in the contract company also require the prior written consent of the MoEMR for a transfer of the shares of the contract company after the commencement of the operating period. Under the terms of the contract such consent shall not be unreasonably withheld or delayed.

Consent is not required in the case of a transfer of shares to:
- Indonesian Participants (as defined); or
- An affiliate or subsidiary of the shareholder

The Purchase and Sale of Direct Interests in a Contract

The contract does not allow CoW/CCA/CCoW companies to transfer or assign all or any part of their interest in the contract without the prior written consent of the Government (which is also very unlikely to occur). In such a transfer, the company is not relieved of any of its obligations under the contract except to the extent that the transferee or the assignee assumes and performs such obligations.

Farm-Ins

Neither the contracts nor the income tax legislation specifically address farm-ins, per se. As a commercial matter, a typical farm-in to a mineral property involves the eventual transfer of an interest in the property. Accordingly, the farm-in arrangement, and the tax treatment thereof, must be considered by the Minister in conjunction with the approval of the transfer. A farm-in can usually be achieved more easily through a transfer of shares in the holding company or offshore investing company.

3.5 CoW and CCoW Renegotiations

As discussed above, pursuant to the Mining Law of 2009 as amended by the new Mining Law, it is intended that the terms of the existing mining contracts (CoWs and CCoWs) are to be brought into line with the provisions of the Mining Law. Accordingly, the Government has approached all the CoW and CCoW holders in order to amend the terms of the contracts.

The renegotiation process began in 2010, with 31 CoW and 68 CCoW holders. As of the time of writing, it has been reported that all CoW and CCoW holders have agreed with all the terms in the proposed amendments.

Based on the MoEMR's press releases, six strategic issues were being negotiated and were included in the contract amendments. These issues, were the size of the mining areas; the continuation of the mining operations; the state revenue; the obligation to process and refine minerals in Indonesia; the obligation to divest shares; and the obligation to utilise local goods and services.

Our understanding is that most fiscal matters have been renegotiated onto a "prevailing law" basis, other than the Corporate Income Tax ("CIT") tax rate in certain cases.

4 Tax Regimes for the Indonesian Mining Sector

4.1 General Overview of the Indonesian Tax Systems

On 2 November 2020, the Government issued Law No. 11 Year 2020 concerning Job Creation ("Job Creation Law"). Some of the important changes introduced under the Job Creation Law include the exemption of dividends from tax, the inclusion of coal as a VAT-able product (previously exempted) and several changes in the VAT rules that offer more favourable outcomes for taxpayers.

The Government issued the following implementing regulations of the Job Creation Law:

a) Government Regulation No. 9 Year 2021 ("GR 9/2021") which has been effective since 2 February 2021; and
b) MoF Regulation No. 18/PMK.03/2021 ("PMK 18/2021") which has been effective since 17 February 2021.

Please refer to the discussion regarding this Job Creation Law in Section 2.1 of this Guide.

On 29 October 2021, Law No. 7 Year 2021 concerning the Harmonisation of Tax Regulations ("HPP Law") was passed, which stipulates, amongst other things, that the CIT rate is to remain at 22% from 2022 onwards, that the provision of all Benefit-in-Kind ("BIK") is to be deductible for the provider but taxable for the employee, that a useful life of longer than 20 years will be used for permanent buildings and intangible assets, that there will be a further limitation on interest deduction, that there will be an increase in the VAT rate from 10% to 11% (from 1 April 2022) and to 12% (from 1 January 2025), that certain mining products taken directly from the source will become VAT-able and there will be the introduction of a carbon tax. The effective date of the income tax-related provisions is 1 January 2022, whilst the provisions related to VAT and carbon tax became effective on 1 April 2022. For further details, please refer to our December 2021 Energy, Utilities & Resources NewsFlash No. 71.

PwC Indonesia publishes the Indonesian Pocket Tax Book on an annual basis. This publication provides a general guide to the prevailing Indonesian tax laws as lastly amended by the HPP Law and its accompanying regulations. The Indonesian Pocket Tax Book is freely available on PwC Indonesia's website (*https://www.pwc.com/id/en/pocket-tax-book/english/pocket-tax-book-2023.pdf*).

Photo source: PT Bis Industries

4.2 The Tax Regime for an IUP, IUPK, IPR, and SIPB Company

General

The Mining Law stipulates that any IUP, IUPK, IPR, and/or SIPB is subject to the prevailing Income Tax Law ("ITL") and its accompanying regulations.

The IUP, IUPK, IPR, and SIPB company is required to register for tax and to obtain a taxpayer identification number, which is called a *Nomor Pokok Wajib Pajak* ("NPWP"). Such companies is also required to register for tax at the local tax office in the jurisdiction in which the mine operates. This includes the company meeting VAT obligations (if applicable and not centralised in the head office) as well as WHT obligations.

CIT – General

The prevailing ITL stipulates that the Government will issue Government Regulations that cover specific tax provisions that are applicable for general mining (including coal) business activities.

Minerals

The Government issued GR No. 37 Year 2018 ("GR 37/2018"), which provides specific rules covering both the tax and PNBP arrangements that are generally applicable from the 2019 tax year onwards for the following mineral mining "concession" holders:

a. IUPs;
b. IUPKs;
c. IPRs;
d. IUPK-OPs, being a mining business licence that is granted for this stage of the activities (i.e. not just the actual mining, but also the construction, processing and/or refining, transportation, and sales) within a State Reserve Area. The IUPK-OPs that are referred to in GR 37/2018 are limited to those relating to the conversion of an "active" CoW that has not expired into an IUPK-OP (which is directly relevant to a number of the historical concessions that are now being converted from the CoW format); and
e. a CoW with tax provisions that follow the prevailing tax regulations (i.e. with no *lex specialis* provisions).

Coal

On 11 April 2022, the Government issued GR No. 15 Year 2022 ("GR 15/2022") which provides specific rules covering both the tax and PNBP arrangements that are generally applicable from the 2023 tax year onward for the following coal mining "concession" holders:

a. IUPs;
b. IUPKs;
c. IUPKs as continuation of CCoW Operations, being a mining business licence that is granted for this stage of the activities (i.e. not just the actual mining, but also the construction, processing and/or refining, transportation, and sales) within a State Reserve Area. The IUPKs as continuation of CCoW Operations that are referred to in GR 15/2022 are limited to those relating to CCoWs that have expired and been given an IUPK as continuation of CCoW Operations; and
d. CCoWs, with tax provisions that follow the prevailing tax regulations (i.e. with no *lex specialis* provisions).

CIT Rate

Under the prevailing ITL as last amended by the HPP Law, a company is subject to CIT on its net taxable profit. The net taxable profit is calculated as the gross income minus the allowable expenditures. The CIT is imposed at a rate of 22% from net taxable profit for all mineral and coal concession holders.

Under Law No. 2 Year 2020 regarding the determination of Government Regulation in Lieu of Law No. 1 Year 2020 regarding State Financial Policy and Financial System Stability for handling the Corona Virus Disease 2019 Pandemic and/or in the Context of Facing Threats that Harm the National Economy and/or the Financial System Stability to Become Law, a 3% income tax reduction is applicable for companies that are listed on the IDX, subject to meeting certain requirements around trading liquidity.

However, GR 37/2018 stipulates that a CIT rate of 25% applies for mineral IUPK-OP holders.

General Expenses

Deductible expenses are expenses that have been incurred in order to generate, maintain, and collect taxable income, and generally include amounts that have been paid or accrued for: (a) expenditure that is attributable to the company's operations, and (b) that have a useful life of less than one year.

The specific operating expenses relating to a mining operation may include supplies, contracted services, insurance, royalties on intellectual property, processing expenses, repairs and maintenance, etc. These should be deductible in the year in which they are incurred.

Selling and general and administrative expenses are generally tax deductible in the year in which they are incurred.

Income

Gross income usually represents the sales of mining products and any other income that has been earned by the mining company.

Minerals

Under GR 37/2018, the values of mineral mining product sales are to be based on one of the following prices, as determined at the time when the sale occurs:

a. the market price of the "metal" mineral in question (e.g. aluminium as per the London Metal Exchange, zinc as per the Asian Metal Exchange, etc.);
b. the market price of the "non-metal" mineral in question (e.g. iron and steel as per the prices published on international or domestic commodity markets);
c. the market price of the relevant "rock-like" material in question (e.g. as per the prices published on international or domestic commodity markets); or
d. the actual selling price (but only if there is no market price reference).

Notwithstanding this, if the actual selling price is higher than the published market price, the actual selling price should be used. However, taxpayers can only use the actual selling price if the discrepancy is within 3% of the relevant published market price.

Coal

Under GR 15/2022, the values of coal mining product sales are to be determined at the time when the sale occurs based on the higher of:

a. the lower of the coal benchmark price (HPB) as stipulated by the MoEMR or coal price index (e.g. Indonesia Coal Index, Newcastle Export Index, Globalcoal etc.); or
b. the actual selling price that is supposed to be received by the seller.

However, if the HPB or coal price index is not available, the values are calculated by the actual selling price that is supposed to be received by the seller.

The above approach to determining taxable value for mineral and coal miners represents a significant departure from general income tax principles.

Exploration and Development Expenses

Exploration and development expenses include expenses relating to camp construction, drilling, access roads, project communication facilities, etc.

On-site exploration expenses are generally deductible in the year in which they are incurred, provided that the expenses meet the general deductibility criteria.

Major exploration and mine development expenses should generally be capitalised as intangible assets and amortised upon spending rather than production.

Under the HPP Law, intangible assets with a useful life of more than 20 years can be amortised using either a diminishing balance or straight-line approach over a useful life of 20 years or the actual useful life based on the taxpayer's bookkeeping.

Stripping/Overburden Removal Costs

Minerals

Under GR 37/2018, stripping costs that were incurred prior to the start of production operations by mineral mining companies should be capitalised and:

- amortised proportionally over the contract period; or
- amortised according to the unit of production method over the contract period.

Amortisation starts from the month that production operations are approved by the MoEMR.

Stripping costs that are incurred during production operations, such as the cost of overburden removal, the cost of opening underground pits (including to find new reserves), etc. should be deducted outright.

These rules are also applicable to taxpayers that hold more than one mining licence and simultaneously carry out both pre-production operations and production operations.

Overall, the new stripping arrangements could operate such that the pre-production spending may be recoverable (in terms of tax) over a longer period. This could be problematic for projects with mine lives that are significantly shorter than the accompanying concession period. The recovery of any post-production spending is also effectively subject to the five-year tax loss carry forward limit.

Coal

Under GR 15/2022GR-15, for coal mining companies that follow the prevailing ITL (e.g. coal IUPs), pre-operating expenditures that have a useful life of more than one year (which arguably includes the stripping costs incurred during pre-production) should be capitalised and amortised starting from the month that production operations are approved by the MoEMR via either: proportionally over the contract period; or the unit of production method over the contract period.

Since stripping costs incurred during production operation are not specifically regulated under GR 15/2022, if such costs have a useful life of more than one year, these cost should be capitalised and amortised starting in the year the expense is incurred using either a diminishing balance or straight-line approach over a useful life.

Depreciation of Fixed Assets

Fixed assets are categorised into four categories, according to the nature of the asset and its expected useful life. The rate at which assets can be depreciated will depend upon the category of the asset. Assets are generally depreciated over four, eight, 16, or 20 years, and taxpayers may apply a diminishing balance or straight-line approach.

The HPP Law stipulates that if a permanent building has a useful life of more than 20 years the depreciation can be carried out using the straight-line method using either the useful life of 20 years or the actual useful life based on the taxpayer's bookkeeping. Since the HPP Law has been effective from 1 January 2022 and the depreciation method should be applied consistently, it is unclear whether this new rule will be applicable to existing buildings or only for new buildings acquired from 1 January 2022 onwards.

Minerals

Specifically for holders of IUPK-OPs that have been converted from CoWs, the fiscal depreciation and/or amortisation under GR 37/2018 shall be calculated in accordance with the following:

a) for assets that were obtained prior to the issuance of the IUPK-OP:
   i. the depreciation or amortisation rules that are outlined in the original CoW (except for buildings) apply until the end of the fiscal year in which the IUPK-OP was issued;
   ii. the prevailing depreciation or amortisation rules apply (except for buildings) for the fiscal years following the issuance of the IUPK-OP, with the depreciation or amortisation over the remaining useful lives being based upon the tax book value at the beginning of the fiscal year following the issuance of the IUPK-OP;
   iii. there is an entitlement to depreciate or amortise the residual tax book value of the assets with useful lives that end in the fiscal year following the issuance of the IUPK-OP; and
   iv. the depreciation rules that are outlined in the original CoW apply to existing buildings for the life of the IUPK-OP;
b) for assets that were obtained after the issuance of the IUPK-OP, these follow the prevailing depreciation or amortisation rules; and
c) if the IUPK-OP for some reason ends prior to the date that is set out in the IUPK-OP, the residual value may be deducted.

Coal

Specifically for holders of an IUPK as a continuation of CCoW Operations, the fiscal depreciation and/or amortisation under GR 15/2022 shall be calculated in accordance with the following:

a) for assets that were obtained prior to the issuance of the IUPK and that are still owned by the IUPK holders or that have become the property of the State:
   i. there is an entitlement to depreciate all the residual tax book value of the tangible assets in the fiscal year in which the IUPK was issued;
   ii. the amortisation rules that are outlined in the original CCoW apply until the end of the fiscal year in which the IUPK was issued;
   iii. there is an entitlement to amortise the residual tax book value of intangible assets with useful lives that end in the fiscal year following the issuance of the IUPK;
   iv. the prevailing amortisation rules apply for the fiscal years following the issuance of the IUPK, with the amortisation over the remaining useful lives being based upon the tax book value at the beginning of the fiscal year following the issuance of the IUPK; and
b) for assets that were obtained after the issuance of the IUPK, these follow the prevailing depreciation or amortisation rules.

Amortisation of Intangible Assets

Intangible assets include pre-operating costs, patents, rights, licences, etc. Intangible assets can be amortised over an effective life of either four, eight, 16 or 20 years, using either a diminishing balance or straight-line approach. The HPP Law stipulates that intangible assets with a useful life of more than 20 years can be amortised using either a diminishing balance or straight-line approach over a useful life of 20 years or the actual useful life based on the taxpayer's bookkeeping.

Any costs that are incurred on the acquisition of mining rights with a beneficial life of more than one year should be amortised using a unit of production method not exceeding 20% per annum.

Reclamation Reserve

For accounting purposes, a mining company is usually required to maintain a reclamation reserve in its accounts, in order to cover the environmental management and reclamation work that is to be conducted during the mining period and at the end of the life of the mine.

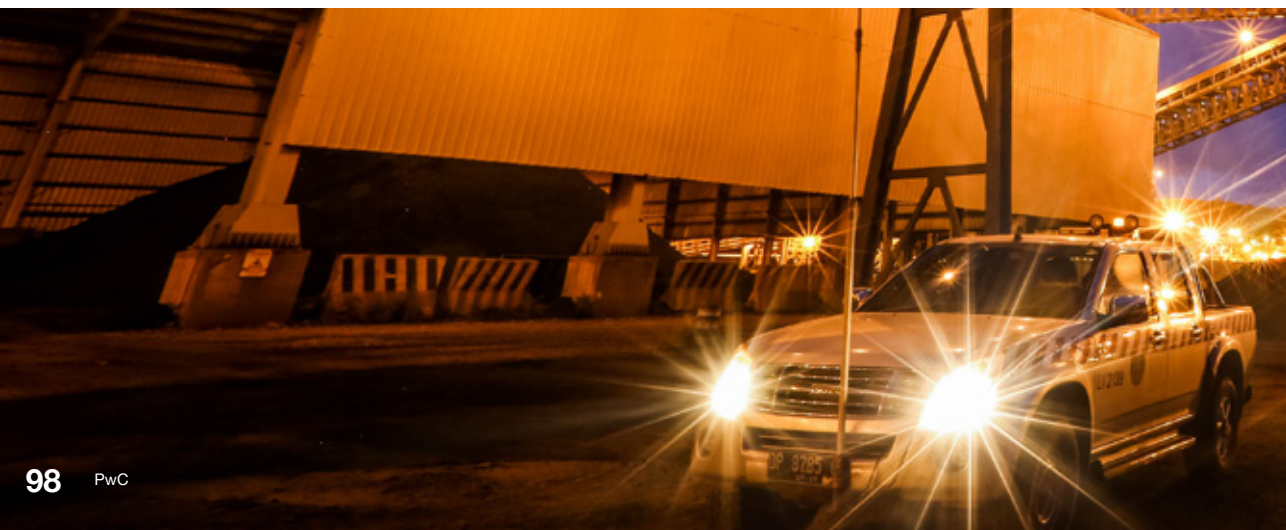
The reclamation reserve should be deductible, provided that it is calculated in accordance with the prevailing energy/mineral resource sector laws/regulations. If the actual costs exceed the value of the reserve, then the balance will generally be deductible.

Mine Closure

The prevailing ITL is not clear on whether provisions for mine closures (e.g. mine infrastructure demobilisation costs) are deductible. Since mine closure costs usually occur in the later stages of a mine's life when the company is earning little or no income, proper planning is necessary in order to ensure the utilisation of the deductions of these costs. The current regulations relating to reclamation reserves are silent on the matter of mine closure reserves, meaning that mine closure reserves are unlikely to be deductible until the costs occur.

Non-Interest-Bearing Loans

It is common for a shareholder not to charge interest on loans to mining companies during the exploration and development stages. However, care should be taken to structure the terms and conditions of the loan to ensure that transfer pricing rules are observed. Non-interest-bearing loans from shareholders are only allowed if certain requirements are met.



Thin Capitalisation Rule

Effective from fiscal year 2016 onwards, the MoF has put in place "thin capitalisation" rules, under Regulation No. 169/PMK.010/2015 (PMK 169). PMK 169 provides a maximum Debt-to-Equity Ratio ("DER") of 4:1 for the deduction of interest expenses.

PMK 169 disallows deductions on interest expenses in the following circumstances:

- Entirely, if the equity is zero or negative;
- Partly, according to the portion of the loan exceeding the DER;
- Partly, according to the portion of the loan that is associated with the generation of income that is subject to final tax (e.g. land and/or building rentals);
- Entirely, for the non-reporting of private offshore loans.

PMK 169 defines interest as including discounts or premiums, arrangement fees, interest on leases, compensation for loan guarantees, and any related foreign exchange expenses. Even when the DER is within the permitted level, the ITL requirements should still be complied with – meaning that a challenge on interest deductions would still be possible if, for example, the loan was used to generate Indonesian bank interest income; the loan was used to finance BIKs; the interest rate was not at arm's length; or the related party loan leverage was beyond usual industry practices.

Director General of Tax Regulation No. PER-25/PJ/2017 ("PER 25"), as the implementing regulation for PMK 169, outlines the DER calculation form and introduces the Foreign Loan Report form that should be attached to the annual CIT return of the company that is subject to the DER. The requirement to submit the forms in the CIT return started in fiscal year 2017.

The HPP Law has now expanded the acceptable methods for calculating deductible financing cost to include other methods commonly used internationally, such as the use of the Percentage of Earnings Before Interest, Taxes, Depreciation and Amortisation ("EBITDA").

The details of these changes are yet to be provided, but both could substantially impact project economics. Further details on this Thin Capitalisation Rule shall be stipulated in Government Regulation. As GR 37/2018 and GR 15/2022 stipulate that deductibility of interest expense for the mining sector shall also follow the prevailing ITL, developments around interest deductibility in particular need to be monitored, although the move away from the current "one-size-fits-all" 4:1 ratio would generally be welcomed.

Photo source: PT Vale Indonesia Tbk

BIKs

Prior to the HPP Law, BIKs provided by the employer were typically not taxable in the hands of the employee and did not constitute deductible expenses for employers. However, BIKs which were required for the execution of a job, for example protective clothing, uniforms, transportation costs to and from the place of work, the cost of providing food and beverages to all employees, and BIKs in remote areas were not taxable in the hands of the employee but could be treated as deductible expenses by employers.

Companies that are located in remote areas were required to submit an application to the DGT in order to obtain validation that their place of business was indeed located in a remote area.

However, under the HPP Law, the BIKs, in general, are now deductible expenses for employers starting from 1 January 2022. The BIKs are taxable in the hands of employees starting from 1 January 2023, except for the following BIKs which are deductible for employers but not taxable in the hands of employees:

- Food and beverages provided for all employees;
- BIKs provided in certain areas (generally remote);
- BIKs necessary to carry out work;
- BIK financed by the regional/state, revenue budget, or
- Certain other BIKs to be specified.

Transactions with Related Parties

Payments to affiliates may be deductible if they are directly attributable to mining operations. However, the amount of the deduction is limited to the amount that would have been paid to a non-related party for the same service.

The DGT has increased its audit focus on related-party transactions. Taxpayers must disclose significant detail in their CIT return regarding the number of related party transactions that exist, and they must also be able to justify the use of a particular pricing methodology. The DGT has been actively performing transfer- pricing audits. As a result, taxpayers with related-party transactions must carefully consider their transfer pricing positions. In addition, the DGT now requires the preparation of standard transfer pricing documents, i.e. a Master File, a Local File, as well as Country-by-Country Reporting (“CbCR”).

The Master File and the Local File should be submitted by the filing deadline for the CIT return. The CbCR should also be filed with the Tax Office. For fiscal year 2022, the notification should be filed by 31 December 2023 at the latest.

Tax Losses Carried Forward

Tax losses can be carried forward for up to five years under the prevailing ITL, and they are recouped on a first-in-first-out basis. Tax losses cannot be carried back.

Photo source: PT Antam Tbk

Article 22 Income Tax Collection

Purchases of coal and minerals from an entity (or individual) holding an IUP are subject to a requirement to collect and remit Article 22 income tax at 1.5% of the purchase price at the time of the purchase. Article 22 income tax at 1.5% is also applicable to exports of coal and minerals by IUP companies (which is remitted upon export).

The sale of gold bars, other than when they are sold to BI or when they are processed into jewellery for export, is subject to Article 22 income tax at 0.45%. This is collected by the gold producer.

Article 22 income tax constitutes a CIT prepayment, and therefore it constitutes a cash-flow concern only.

Bookkeeping in US Dollars

For tax purposes, a Foreign Investment (*Penanaman Modal Asing* or "PMA") company may request authorisation to maintain its bookkeeping in US Dollars and in the English language. The company must request approval no later than three months after its establishment, or no later than three months before the commencement of the US Dollar accounting year (for an established company).

Following the adoption of accounting standards regarding the use of an appropriate functional currency (consistent with International Financial Reporting Standards ("IFRS")), wholly Indonesian-owned entities, in addition to PMA companies, can now opt to use US Dollars rather than the Indonesian Rupiah as their bookkeeping currency for tax purposes when a currency other than the Rupiah is their functional currency. The same deadlines apply to the applications.

For tax purposes, however, the US Dollar is the only alternative to the Indonesian Rupiah.

Tax Holidays

On 24 September 2020, the MoF issued Regulation No. 130/PMK.010/2020 ("PMK 130") as the latest update/revision of the Tax Holiday incentive for substantial new investment in designated Pioneer industries.

PMK 130 provides a Tax Holiday facility that remains largely the same as in the previous relevant regulation, i.e. MoF Regulation No. 150/PMK.010/2018 ("PMK 150") regarding Tax Holidays. Below are the available tax facilities under PMK 130.

<table>
<tr><th rowspan="2">Provision</th><th colspan="2">Capital Investment Plan</th></tr>
<tr><th>IDR 100 billion – IDR 500 billion</th><th>≥ IDR 500 billion</th></tr>
<tr><td>CIT reduction rate</td><td>50%</td><td>100%</td></tr>
<tr><td>Concession period (from the start of commercial production)</td><td>5 years</td><td>5 – 20 years, depending on the investment value:
<table>
<tr><th>No.</th><th>Investment (in IDR)</th><th>Period (in years)</th></tr>
<tr><td>1</td><td>500 billion up to < 1 T</td><td>5</td></tr>
<tr><td>2</td><td>1 T up to < 5 T</td><td>7</td></tr>
<tr><td>3</td><td>5 T up to < 15 T</td><td>10</td></tr>
<tr><td>4</td><td>15 T up to < 30 T</td><td>15</td></tr>
<tr><td>5</td><td>≥ 30 T</td><td>20</td></tr>
</table></td></tr>
<tr><td>Transition</td><td>25% CIT reduction for the next 2 years</td><td>50% CIT reduction for the next 2 years</td></tr>
</table>

The available tax holidays are applicable to relevant pioneer industry taxpayers that have new capital investment plans of at least IDR 100 billion, that meet the 4:1 DER, that have committed to start realising the investment plan at the latest one year after the issuance of the Tax Holiday approval, and that have not received any of the following:

a) Decision on approval for or notification to reject the provision of the tax holiday facility;
b) Decision on approval for provision of the tax allowance facility;
c) Notification on provision of additional net income deduction based on, either new investment or certain business field expansion, on labour intensive industry; and
d) Decision on the provision of the income tax facility in Special Economic Zone.

PMK 130 does not require investors to commit to a time deposit in an Indonesian bank that is equal to 10% of the planned investment value. However, PMK 130 does require the taxpayer applying for the tax holiday to demonstrate that its domestic shareholders have fulfilled their tax obligations in Indonesia by presenting a Tax Clearance Letter (*Surat Keterangan Fiskal*) that has been issued by the DGT.

For the mining sector, a tax holiday is available for the integrated upstream basic metal industry (with or without its integrated derivative product processing facilities). Many smelter companies expect to be eligible for a tax holiday facility. However, by including the smelter business in the (separate) tax allowance incentive, the Government wishes to encourage investors in smelters to (only) apply for the tax allowance (and not for the tax holiday).

BKPM Regulation No. 7 Year 2020 ("BKPM 7") provides the KBLI list of business fields that are eligible to access the tax holiday facility. However, companies for which the business field is outside the KBLI list within BKPM 7 can also apply for the tax holiday facility through a separate channel to the MoF, provided that they fulfil the other general eligibility requirements.

The tax holiday facility is available for recommendations that are generated by the OSS system, or applications that are submitted by BKPM to the MoF via the DGT for up to four years following the effective date of PMK 130, i.e. until 8 October 2024.

The provision of tax holiday facility as intended in PMK 130 shall be evaluated from time to time, providing chances for the tax holiday facility to be amended or revoked in the future.

Tax Allowances

The Government issued Regulation No.78 Year 2019 ("GR 78/2019"), regarding tax allowances that are available for companies that invest in certain business sectors and/or regions. GR 78/2019 revokes a series of previous GRs (i.e. GR No. 18 Year 2015 which was amended by GR No. 9 Year 2016).

The facilities allowance package consists of:

- A reduction in net taxable income of up to 30% of the amount that was invested, in the form of qualifying fixed assets (including land), prorated at 5% for six years, provided that the assets that have been invested in are not being misused or transferred out within a certain period.
  The assets in question shall satisfy the following conditions:
  i. They are new, unless originating from a complete relocation from another country;
  ii. They are listed on the principal licence, investment licence and investment registration, issued by BKPM and the provincial/regional one-stop service agency or on the business licence issued by the OSS agency as the basis for obtaining a tax allowance facility; and
  iii. They are directly owned by the taxpayer (not through a lease) and are utilised for the main business activity.
- Accelerated depreciation and amortisation for assets acquired for investment purposes;
- WHT on the dividends that are paid to non-residents at 10%; and
- Longer tax loss carry-forward period, from five years to a maximum of ten years.

Mining sector tax incentives are also available, subject to the satisfaction of certain criteria, for:

- Basic iron and steel manufacturing;
- Iron sand processing and refining;
- Gold and silver processing and refining;
- Certain brass, iron ore, uranium, thorium, tin, lead, copper, bauxite/aluminium, zinc, manganese, and nickel processing and refining activities; and
- Coal in the form of coal gasification, coal liquefaction, and coal upgrading.

Particularly with regard to coal liquefaction and coal upgrading, these income tax incentives are generally only applicable to activities that are undertaken outside Java.

GR 78/2019 sets out the criteria under each designated business sector and/or region relating to the investment value, the number of Indonesian workers, and the level of local content. This regulation only sets out the high-level criteria that are required to enjoy the tax incentives, and it leaves the detailed requirements to be determined by the relevant Ministers.

GR 78/2019 confirms that taxpayers who obtain this tax allowance facility cannot use other tax facilities, such as:

- those for Integrated Economic Development Zones (*Kawasan Pengembangan Ekonomi Terpadu* – "KAPET");
- those granted a tax holiday facility; and
- those granted a super deduction facility on labour-intensive industries, as provided under GR No. 94, Year 2010, as amended by GR No. 45, Year 2019.

VAT

The delivery of goods and services in Indonesia is generally subject to VAT, except for the delivery of certain pre-determined types of goods and services. The current VAT rate is 11%. Companies delivering VAT-able products are entitled to claim input VAT from goods and/or services, provided that the goods and/or services are necessary for the companies' business.

Apart from mining companies that produce gold bars for the Government's foreign exchange reserve, mining companies generally will need to register for VAT purposes.

VAT Rate

Under the HPP Law, the VAT rate is to be increased from previously 10% to:

a) 11% - starting from 1 April 2022.
b) 12% - by 1 January 2025.

VAT Object on Mining Products

Pursuant to the Job Creation Law, the supply of coal, even in an unprocessed state, has become a VAT-able supply. As a result, coal miners need to register for VAT purposes. The miner should then be entitled to an input credit for the VAT incurred on relevant costs but needs to add VAT to coal supplies at the prevailing VAT rate. The rate is currently 11% for domestic supply and 0% for exports.

On 28 June 2021, the Government of Indonesia issued GR No. 70 Year 2021, which stipulates that gold granules remain subject to VAT but not collected (previously VAT collected), with the following requirements:

a) having a diameter of 7 (seven) millimeters;
b) having refinement purity of 99.99% based on the Indonesian National Standard and/or accredited by London Bullion Market Association Goods Delivery; and
c) be production proceeds and delivered by CoW, IUP, IUPK or IUPR holders to entrepreneurs, who will further process the gold granules to produce main products in the form of gold bars and/or gold jewellery.

Upon failure to fulfil the above requirements, the VAT will be collected accordingly.

Under the HPP Law and GR No. 49 Year 2022, the following VAT treatments have beenin effect since 1 April 2022:

a) minerals (except for those mentioned in point b) below) are subject to VAT at 11%;
b) iron ore, tin ore, gold ore, copper ore, nickel ore, silver ore and bauxite ore are subject to VAT but exempted;
c) gold bars, other than those for the Government's foreign exchange reserve are subject to VAT but not collected; and
d) gold bars for the Government's foreign exchange reserve are not subject to VAT.

Pre-Production VAT

During the pre-production stage, under VAT Law as last amended by the HPP Law, subject to the fulfilment of the creditability criteria, all input VAT that has been incurred is creditable. This is different from the previous treatment in which only input VAT on purchases of capital goods was creditable. This could eliminate the tax issues regarding the eligibility to claim input VAT on land purchases/rentals.

Furthermore, since the company will not have any output VAT during the pre-production period, VAT overpayment is likely.

The claim for the refund of pre-production VAT overpayment should be requested at the end of the fiscal year (previously could be refunded on a monthly basis). Further, if the company fails to commence production (defined as the delivery and/or export of VAT-able goods/services) within three years (which can be five years for certain sectors, including the mining sector, that produce taxable mining goods) of the date on which the company first credited the input VAT, then the company must repay the VAT refund by the end of the month following the failure to deliver the VAT-able goods/services. This timing requirement obviously presents a problem for long-term mining projects, which may take several years to enter into production.

IUPK-OP Holders as VAT and Luxury Sales Tax Collectors

On 19 December 2018, the Government issued MoF regulation No. 166/PMK.03/2018 ("PMK 166"), which appoints the holder of mineral IUPK-OPs that originated from the conversion of "active" CoW and that were issued no later than 31 December 2019 as a VAT and Luxury Sales Tax ("LST") Collector.

Being a VAT and LST Collector requires the holder of the mineral IUPK-OP to remit VAT and LST on purchases/imports directly to the State Treasury. Supplies of up to IDR 10 million per annum (inclusive of VAT and/or LST) and payments for purchases of oil and non-oil fuels from Pertamina are exempted.

Where the VAT Collector obligations are exempted, the standard VAT mechanism applies, meaning that the vendor in question will charge and collect VAT and/or LST from the IUPK-OP holder.

WHT

Mining companies are obliged to withhold tax on payments for dividends, interest, royalties, and most types of services.

WHT is payable on interest and royalty payments to Indonesian companies at the rate of 15%.

WHT of 2% is applicable to payments for most types of services that are made to Indonesia- resident entities. If the payments are made to a non-resident, the WHT rate is 20%. A tax treaty may provide outright relief on service payments and reduce the WHT on payments of dividends, interest, and royalties (generally to 10% or 15%). The DGT-regulated procedures must be followed in order to access the benefits of a tax treaty, including a pre-determined disclosure form and measures to prevent tax treaty abuse.

The Job Creation Law outlines a number of proposed changes to the tax treatment of dividends:

a) Income tax and WHT will no longer be imposed on the dividends paid to Indonesian companies.
b) Foreign-sourced dividends have become non-taxable, provided that at least 30% of profits are reinvested in Indonesia.

Final Tax on Interest from Mining Export Proceeds (*Devisa Hasil Ekspor* or "DHE") Deposits

Interest income, either in United States Dollars or in Rupiah on the DHE deposits that have been placed domestically with a bank that is incorporated or domiciled in Indonesia, or a branch of a foreign bank in Indonesia, shall be subject to final income tax at certain rates (0% – 10%) depending on the time period of the deposit, as shown in the table below.

Timeline	Final Income Tax Rate for DHE Deposits	
	IDR currency	US$ currency
One Month	7.5%	10%
Three Months	5%	7.5%
Six Months	0%	2.5%
More than Six Months	0%	0%

PBB

Under MoF Regulation No. 186/PMK.03/2019 concerning the classification and procedure for determining the sale value of PBB objects for certain sectors, including the mining sector (minerals and coal) ("PMK 186"), PBB in the mining industry generally covers land and/or buildings that are located in the mining areas, including locations within the mining licence area and outside the mining licence area that are used for mining activities. PBB is applicable to both onshore and offshore activities.

PMK 186 defines PBB objects as follows:

- Land surfaces, including: (1) onshore areas (such as reserve production areas, unproductive areas, emplacement areas, security areas, etc.); (2) offshore areas;
- Earth bodies; and
- Building structures that are permanently attached to the land, and that are used for mining activities.

The PBB rate is 0.5% of the taxable sale value of the PBB object. The taxable value for mining is stipulated as a proportion of the sale value of the PBB object, i.e. 40% of the sale value for PBB objects.

The sale value of PBB objects is determined by the DGT on behalf of the MoF, and updated periodically, depending on the economic development of the region in question.

PMK 186 stipulates the following:

- For land surfaces, the sale value of PBB objects will vary according to the characteristics of their use (e.g. not yet utilised, production reserve area, unproductive area, safety area and emplacement area). This is obviously relevant to mineral and coal mining.
- For earth bodies, the sale value of PBB objects will depend on net mining operating revenue from the previous year if already in the production stage. Otherwise, the sale value of PBB objects will be determined by the DGT's decision.
- For buildings, the sale value of PBB objects is based on the "New Acquisition Price". This is defined as all the costs that are incurred to acquire the PBB object at the time of its assessment, less depreciation, based on the physical condition of the PBB object.

4.3 Tax Regime for a CoW/CCoW/CCA Company

One of the key features of a CoW/CCoW/CCA (in this section, referred to as the "contract") is its *lex specialis status*, meaning that the terms in the contract override the general law. For example, when certain tax rules are set out in a contract, these tax rules generally take precedence over the prevailing Tax Laws.

Generally, the tax rules in a contract reflect those that were in force at the time when the contract was signed, although there may be some exceptions. Typically, a contract fixes the tax rules for the duration of the contract (with the exception of second-generation coal contracts, which generally follow the prevailing tax regulations).

Taxation matters that are not governed by the contract should follow the prevailing Tax Laws and regulations.

The advantages of having *lex specialis* tax rules in a contract include tax stability throughout the life of the project, or at least until the end of the contract term.

The disadvantage of *lex specialis* tax rules is that the mining company may not always be able to take advantage of favourable changes in the ITL, such as reductions in income tax rates or introductions of tax incentives. Despite this, *lex specialis* tax rules have historically been favoured by investors, particularly for high-capital long-life mining projects. This is because they provide stability for various aspects of the mining operations, including tax.

The mining tax regime that is included in a contract is relatively straightforward. In some cases, however, the language of the contract may be widely interpreted, which can result in disputes between the mining company and the DGT.

The transitional provisions of the Mining Law (Article 169) provide that existing contracts will remain effective until their expiration date. However, confusingly the contracts are still required to be adjusted within one year in order to conform with the Mining Law, except for the provisions regarding state revenue (except, again, if there are efforts to increase the state revenue). Accordingly, the Government has approached all the CoW and CCoW holders in order to amend the terms of the contracts, a process that has now largely been completed (see Section 3.5 of this Guide, "CoW and CCoW Renegotiation", for further details).

Appendix E summarises the typical tax treatments for particular generations of contracts. Not all generations of contracts have specific tax rules and, as such, those contracts may simply require the tax treatments to follow the prevailing ITL. In assessing the applicable tax regime, a detailed review of the contract is necessary. In addition, the tax treatments that are described in this guide are generic, and variations may exist between the various generations of contracts.

CoWs and CCoWs with *lex specialis* tax provisions are to be honoured until the end of the contract period, so they are not directly impacted by GR 37/2018 or GR15/2022 (although most of these CoWs and CCoWs are being phased out, in any case).

Tax Registration

A company holding a contract is required to register for tax and to obtain an NPWP. The contract company should register for tax at the local tax office where the mine operates. This includes meeting the obligations for VAT (if this is applicable and has not been centralised at the head office) and WHT.

CIT

Similar to an IUP/IUPK company, a contract company is subject to income tax on its net taxable profit. In the contract, the expenditure that is described below is normally allowed to be deducted from the gross income.

Mineral CoWs typically have *lex specialis* CIT rules. With regard to a CCA/CCoW, the first-generation and most of the third-generation contracts include *lex specialis* CIT provisions, while the second-generation and remaining third-generation CCoWs do not. Where the *lex specialis* tax rules do not apply, the company must follow the prevailing income tax rules for the CIT calculation.

Bookkeeping in US Dollars

For tax purposes, a contract company may opt to apply bookkeeping in US Dollars and in the English language. The company needs to notify the DGT of the bookkeeping in US Dollars no later than a month before the start of the accounting year in US Dollars.

Irrespective of the currency and language that are used, the company may settle its CIT liabilities in either Rupiah or US Dollars and file its tax returns in the Indonesian language.

With respect to CIT, the relevant tax returns should be presented in US Dollars alongside the equivalent figures in Rupiah in the annual CIT return.

Exploration and Development Expenses

On-site exploration expenses are generally deductible in the year in which the expenses are incurred, provided that the expenses relate to the contract area. Mine development expenses should generally be capitalised and amortised in accordance with the amortisation rules in the contract.

Pre-Incorporation Expenses

The shareholder(s) of a contract company may incur expenditure before the contract company is incorporated and the respective mining contract is signed.

A contract normally allows these pre-incorporation expenses to be transferred from the shareholder(s) to the contract company. The pre-incorporation expenses are recognised as deferred pre-operating costs and they may be claimed as deductions, by way of amortisation, starting from the beginning of the production operations.

Most contracts require these pre-incorporation expenses to be audited by a public accountant and approved by the DGT. The implementation of this rule is not entirely clear.

There are also a number of transactional tax issues that need to be addressed relating to the transfer of pre-incorporation expenses from the shareholder(s) to the company, including the VAT and WHT obligations (although VAT may be exempt under the contract).

Reclamation Reserve

As per the prevailing tax rules, some generations of contracts may require reference to the previous ITL and/or a deposit with a state-owned bank in order for the reclamation provision to be deductible.

Operating Expenses

Generally, as per the prevailing law.

Selling and General & Administration Expenses

Generally, as per the prevailing law.

Asset Revaluation

Generally, as per the prevailing law.

Employee Benefits/ Facilities

Contracts normally provide for concessional tax treatments on benefits that are provided to employees who reside in the contract area. The costs of most of the benefits that are provided to employees who are located in the contract area are deductible, but such benefits are not taxed in the hands of the employees.

Depreciation of Fixed Assets

Fixed assets are generally deductible through depreciation. Different generations of contracts include different depreciation rules, but most offer an accelerated rate.

Mining infrastructure, such as buildings, roads, bridges, and ports, is generally depreciable. Public infrastructure, such as roads, schools, and hospitals, is usually deductible through depreciation under a contract's rules.

Fixed assets should be classified into categories that are based on their useful lives. Accelerated depreciation rates may be available for fixed assets that are located in the contract area. Earlier generations of CCoWs/ CCAs usually provide an investment allowance (i.e. a hypothetical depreciation) and have a fixed depreciation rate that is based on the straight-line method, irrespective of the type of assets.

For certain contracts, if the mine's life is shorter than the asset's fiscal useful life, then the remaining book value may be fully depreciated at the end of the mine's life.

Imports of Capital Equipment

Most contracts provide an exemption from Import Duty, VAT, and income tax on imports of capital equipment for up to the tenth year after the commencement of commercial production.

If no import facility is available under a contract, then relief or exemptions may be available under the prevailing laws.

On 13 August 2019, the MoF issued MoF regulation No. 116/ PMK.04/2019 ("PMK 116") to revoke MoF regulation No. 259/PMK.04/2016. Effective from 11 October 2019, PMK 116 sets out the requirements for the transfer, re-export, or destruction of goods that have been imported by CoW and CCoW companies, and that have obtained exemptions from Import Duty and VAT upon import. In general, any transfer/re-export/ destruction of goods that have been imported with exemptions within five years requires a recommendation from the BKPM and approval from the Customs Office. Failure to meet these requirements may lead to Import Duty and VAT being payable, plus associated penalties.

Interest Expenses

Most CoWs and CCoWs provide specific rules regarding DER. If such rules are not available in the contract, the company should follow the DER as stipulated in PMK-169 and PER 25.

Amortisation of Intangible Assets

Intangible assets may include pre-operating costs, patents, rights, licences, etc.

Expenses that are incurred prior to production (with a useful life that is greater than one year, although some contracts do not require this) may be capitalised and amortised once production commences. These may also include expenses that have been incurred by the contract company's shareholder(s) prior to the formation of the company (i.e. pre-incorporation expenses).

Carried Forward Tax Losses

Tax losses can be carried forward for the period stipulated in the contract. This is generally more than the five-year carry-forward that is allowed under the prevailing ITL. Tax losses cannot be carried back.

PBB

PBBs for CoW and CCoW companies are usually specifically governed by the contract.

VAT

With the exception of first-generation CCA companies that are subject to sales tax (see below), CoW/CCoW companies are subject to VAT on the utilisation of services and goods.

During pre-production, the company will not have any output VAT, as there will not yet have been any deliveries of mining products. Therefore, VAT overpayment is likely, as the company should pay input VAT to vendors for its purchases of taxable goods or services.

Until 2004, mining companies were designated as VAT Collectors, meaning that the mining companies should collect and pay the VAT that was charged by vendors (i.e. input VAT) directly to the State Treasury, rather than to the respective vendors. Some contract companies are required to continue to act as VAT Collectors under their relevant contracts.

Subject to the tax rules in the contract, the company may claim a refund on the input VAT that has been paid, but it must undergo a tax audit.

All VAT payments are denominated in Rupiah. If the company keeps its books in US Dollars, then any outstanding VAT receivables could give rise to foreign-exchange issues, particularly if the receivables are long outstanding.

Sales Tax

Before the enactment of the VAT Law in 1984, Indonesia adopted a sales tax. Under the lex specialis rules, the sales tax is still applicable to first-generation CCA companies. The sales tax is imposed at a maximum of 5% of certain services that are provided to CCA companies, and it is payable on a self-remittance basis (similar to WHT).

From 1 January 2013, MoF regulation No. 194/PMK.03/2012 has also provided that first-generation CCA companies should not collect VAT on these services.

WHT

CoW and CCoW companies are obliged to withhold tax from payments of dividends, interest, royalties, and most types of services. The WHT rate will depend on the tax rules that are stipulated in the contract, the type of payment, and whether the recipient is a resident or a non-resident.

However, pursuant to MoF regulation No. 39/PMK.011/2013, the MoF requires CoW and CCoW companies to apply the prevailing WHT rates to income that is payable to other parties (although this is often disputed by CoW and CCoW companies under the *lex specialis* principles).

Latest Developments

At the time of writing, it has been reported that most CoW and CCoW holders have finished the renegotiation which resulted in amended CoWs/ CCoWs. As a follow up to the explanation in Section 3.5, the tax provisions in the amended CoWs and CCoWs generally keep the higher CIT rate and adjust the other tax rules to follow the prevailing tax laws and regulations. Nevertheless, the fiscal regime of each contract should be reviewed on a case-by-case basis. The new tax provisions will take effect on the signing date of the amended CoWs and CCoWs.

4.4 Other Taxation Considerations

Carbon Tax

The Carbon Tax is a significant new tax that was planned to be implemented from 1 April 2022. The Carbon Tax, which follows on from a "voluntary" programme, is complemented with a Presidential Regulation dated 29 October 2021.

However, considering the readiness of the carbon market mechanism, the application of the Carbon Tax has been postponed and will only start to be applicable in 2025.

A large number of areas of clarification remain outstanding in regard to the proposed Carbon Tax. However, the HPP Law indicates that the key framework will be as follows:

a) Tax objects: being those carbon emissions that have a "negative environmental" impact. This criterion will be progressively refined according to Indonesia's Carbon Tax "roadmap", which will ultimately cover:
   i) carbon emission reduction strategies;
   ii) priority sector targets;
   iii) alignment with new and renewable energy development; and
   iv) alignment between various other policies;

b) Tax subjects: being individuals or corporations who:
   i) buy goods containing carbon; or
   ii) carry out activities that generate carbon emissions within a specified period. The elucidation to the HPP Law states that the Carbon Tax will be prioritised towards corporate taxpayers and, at least initially, apply only to coal-fired power producers (as was the case during the voluntary trial period).

c) Initial milestones: the Carbon Tax programme is to be gradually implemented as follows:
   i) for 2021: development of a carbon trading mechanism;
   ii) for 2022 – 2024: introduction of a tax mechanism based on emission limits (i.e. following a "cap and tax" formula) to be applied for coal-fired power plants from 1 April 2022 at IDR 30/kg CO_2e (circa USD2.10/CO_2 tonne p.a.);
   iii) for 2025 onwards: full implementation of:
      a) a carbon trading mechanism; and
      b) the expansion of carbon taxation according to the readiness of the relevant sectors by considering economic conditions, the readiness of the players, etc.;

d) Tax rate: being the higher of:
   i) the price set by the domestic carbon market (on a kg CO_2e basis); or
   ii) IDR 30/kg CO_2e;

e) Facility: taxpayers who participate in carbon trading and the offsetting of emissions (as well as other mechanisms) can be given:
   i) a Carbon Tax reduction; and/or
   ii) other incentives for the fulfilment of Carbon Tax obligations;

f) Implementing rules: these will be in accordance with the roadmap and the allocation of Carbon Tax revenue for greater climate change control. Implementing regulations will stipulate key features including the tax rate, tax base, administrative mechanism, and procedures aimed at reducing Carbon Tax or other fulfilments of Carbon Tax obligations.

On 12 December 2022, the Government issued Government Regulation No 50 Year 2022 (GR-50) which stipulates the following administrative mechanisms as follows:

- Carbon Tax Taxpayer is defined as individuals or companies purchasing goods containing carbon or carrying-out activities which result in a certain level of carbon emissions within a certain period are the parties subject to the Carbon Tax, and Carbon Tax Collector.
- Carbon Tax is paid by self-payment or by collection by a Carbon Tax Collector. A Carbon Tax Taxpayer must submit an Annual Income Tax Return to report the calculation and payment of Carbon Tax at the latest 4 months after the end of the calendar year. While a Carbon Tax Collector must submit a monthly tax return at the latest on the 20th of the following month. Late submission will be subject to the same penalty as other types of tax reporting. Certain taxpayers may be exempted from the Carbon Tax reporting.
- Carbon Tax Taxpayers and Collectors must conduct recording of the activities emitting carbon or the sale of goods containing carbon, so that the Carbon Tax due can be properly calculated. The recording of documents and information should be conducted in accordance with the general bookkeeping requirements and failure to do so will be subject to the same penalty as that given for the failure of conducting bookkeeping.

Non-Tax State Revenue

Royalties

Royalties are payable to the Government on a quarterly basis, based on the actual volume of production or the sales. For CoW/CCoW companies, this is based on the terms of the contract. However, based on the prevailing regulations and the current practice, the royalties should be paid prior to the shipment.

The prevailing royalty rates that are applicable to IUP/IUPK/IUPK-OP holders are set out in Chapter 2.

Dead Rent

Throughout the lives of all of its mining interests, the company is required to pay dead rent. This is due annually, with the amount normally being based on the number of hectares in the mining area and the stage of the mining operations (e.g. there are different rates for the general survey, exploration, and exploitation stages).

Regional Tax

Mining companies shall be subject to prevailing regional taxes. On 5 January 2022, Law No. 1 Year 2022 concerning the Financial Relationship between the Central Government and the Regional Government (“HKPD Law”) as the amendment of Law No. 28 Year 2009 concerning Regional Tax and Retribution (“PDRD Law”) was passed. A mining company may be liable for a number of regional taxes and retributions (except for first- generation CCoWs). The rates range from 1.5% to 25%, however starting on 5 January 2025 the range will become 1.2% to 25% of a wide number of reference values that will be determined by the relevant Regional Government.

Contracts may limit the additional types and rates of regional tax that are introduced after the signing date of the contract. A summary of the different types of regional taxes is included in Appendix B.

Photo source: PT Antam Tbk

Government Profit Share Under an IUPK-OP

Minerals – under an IUPK-OP

Specifically for holders of an IUPK-OP (a mining business licence that is a conversion from an active CoW), in addition to the royalties, dead rent, land and buildings tax, and environmental and forestry regulations, the Government via GR 37/2018 also requires the IUPK-OP holder to make the following "profit share" payments:

- A Central Government profit share that is due at 4% of net profit – as per the Mining Law and regulations; and
- A Regional Government profit share that is due at 6% of net profit – as per the Mining Law and regulations.

The above obligations are applicable from the calendar year following the issuance of the IUPK-OP. The net profit is determined after deducting CIT, based on the audited financial statements. The nature and tax deductibility of the "profit share" should be carefully considered.

Importantly, the Central Government and the Regional Government payment calculations appear to follow accounting profit rather than taxable income. In addition, it is not likely that the payments will constitute "taxes" for foreign tax credit or other fiscal purposes, so any home country tax treatment should be considered carefully. Finally, there will doubtless be scope for different calculation interpretations between the various Government bodies.

Coal – under an IUPK as continuation of CCoW Operations

Similar to the above government share for IUPK-OP for minerals.

Purchase and Sale of Mining Interests

The direct transfer of a contract is subject to a number of requirements, making such transfers uncommon. The transfer of ownership (in whole or in part) is therefore generally achieved through the disposal of an interest in the company holding the contract.

The prevailing ITL stipulates that gains from the sale or transfer (partly or wholly) of mining rights, participation in financing, or capital in a mining company constitutes a tax object (and is therefore taxable). Although this provision has been in effect from 1 January 2009, the operation of this provision is not entirely clear.

Purchases and Sales of Shares in an IUP/IUPK or Contract Company

This approach is common for the acquisition of mining properties in Indonesia. For a domestic seller, income tax is imposed on the profits that are earned from the sale. For a non-tax-resident seller, 5% income tax on the gross proceeds is due, unless relief is available under a tax treaty or the company being sold is a listed company in Indonesia (in this case, final tax of 0.1% is due on the sale proceeds, subject to certain requirements).

The prevailing ITL provides for a long-arm capital gains tax provision. The DGT can treat the sale of a conduit or special purpose company that has been established in a tax haven country, and that has an Indonesian subsidiary, as the sale of an interest in an Indonesian company. In this case, the DGT can impose the 5% final income tax on the gross proceeds of the sale.

To date, there has been no definition of a tax haven, or what the implications will be if the indirect ultimate shareholder of the tax haven company is resident in a jurisdiction with which Indonesia has a tax treaty.

Some Key Tax Considerations for Investments

A tax-efficient investment structure can create significant tax savings over the life of a mine. A favourable structure can also be effective for project financing. Some relevant contract and IUP/IUPK issues to be aware of include the following:

- Apart from state-owned enterprises and/or non-mineral and rock commodity IUP holders which may hold more than one IUP and/or IUPK under the prevailing Mining Law, an individual legal entity can generally only hold one contract or one IUP or IUPK. This ring-fencing rule, together with the fact that there is no group relief for income tax purposes, means that careful planning is required, particularly for the use of service companies within one group, as well as inter-company charges, inter-company borrowing, etc.
- A tax-efficient shareholding structure can enhance a project's feasibility (note that under some tax treaties, and subject to the fulfilment of Certificate of Domicile and no treaty abuse rule requirements, the WHT on dividends may be reduced from 20% to 15%, 10%, or even 5%).
- Sales of shares in a contract or in IUP/IUPK companies that are not listed on the IDX by foreign investors are taxed at 5% on the gross proceeds, unless protected by a tax treaty.
- Some contracts offer a reduced WHT rate for dividend payments to foreign founder shareholder(s).
- Project financing strategies or intra-group financing should consider the latest development on the thin capitalisation rules and note that debt forgiveness is subject to tax in Indonesia (this issue is common in unsuccessful exploration projects).
- The overall investment structure should consider both mineral processing and any refinery or downstream businesses.

5 Accounting Considerations

This accounting considerations section discusses certain accounting issues that are commonly faced by mining companies operating in Indonesia. However, please note that the discussion in this guide does not attempt to cover all the accounting requirements that are applicable to mining companies operating in Indonesia. Please contact one of our advisers (listed in Appendix F) to discuss these further.

5.1 Exploration and Evaluation ("E&E")

Exploration costs are incurred to discover mineral resources. Evaluation costs are incurred to assess the technical feasibility and commercial viability of the resources found. Exploration starts when the legal rights to explore have been obtained. Expenditure incurred before obtaining the legal right to explore is generally expensed; an exception to this would be separately acquired intangible assets, such as payment for an option to obtain legal rights.

The accounting treatment of E&E expenditures (capitalising or expensing) can have a significant impact on financial statements and reported financial results, particularly for entities at the exploration stage with no production activities.

Statement of Financial Accounting Standard ("SFAS") No. 64 "Exploration for and evaluation of mineral resources" sets out the accounting for E&E expenditures. Under SFAS No. 64, an entity shall determine an accounting policy specifying which expenditures are recognised as E&E assets, and apply the policy consistently. In making this determination, an entity considers the degree to which the expenditure can be associated with finding specific mineral resources. An entity may change its accounting policies for E&E expenditures, if the change makes the financial statements more relevant to the economic decision-making needs of users and no less reliable, or more reliable and no less relevant to those needs. An entity shall judge the relevance and reliability using the criteria in SFAS No. 25, "Accounting Policies, Changes in Accounting Estimates and Errors".

Photo source: PT Antam Tbk

Expenditures incurred in exploration activities should be expensed unless they meet the definition of an asset. An entity recognises an asset when it is probable that economic benefits will flow to the entity as a result of the expenditure. These economic benefits might be available through the commercial exploitation of mineral reserves, the sales of exploration findings, or further development rights. It is often difficult for an entity to demonstrate that the recovery of exploration expenditure is probable.

Evaluation activities are advanced further than exploration activities, and hence they are more likely to meet the criteria for recognising an asset. However, each project needs to be considered on its merits. The amount of evaluation work that is required to conclude that a viable mine exists will vary for each area of interest.

Management needs to develop a consistent and transparent accounting policy that is applied through the various phases of E&E activity, highlighting the cut-off point before the capitalisation of costs commences. The costs incurred after probability of economic feasibility is established are capitalised only if the costs are necessary to bring the resource to commercial production. Subsequent expenditures should not be capitalised after commercial production commences, unless they meet the asset recognition criteria.

E&E assets can be measured using either the cost model or the revaluation model. In practice, most companies use the cost model. Depreciation and amortisation of E&E assets do not usually commence until the assets are placed in service. The E&E assets recognised should be classified as either tangible or intangible according to their nature.

E&E assets are reclassified from the E&E account when evaluation procedures have been completed. E&E assets for which commercially viable reserves have been identified are reclassified to development assets. E&E assets are tested for impairment immediately prior to their reclassification from E&E, and when impairment indicators are identified, which include but are not limited to when:

- Rights to explore in an area have expired or will expire in the near future, without renewal;
- No further exploration or evaluation has been planned or budgeted for;
- A decision has been made to discontinue E&E in an area because of the absence of commercial reserves; and
- Sufficient data exists to indicate that the book value will not be fully recovered from future development and production.

5.2 Development

Development expenditures are costs that have been incurred in order to obtain access to proven and probable reserves and to provide facilities for extracting, treating, gathering, transporting, and storing the minerals.

Development expenditures are capitalised to the extent that they are necessary to bring the property to commercial production. They should be directly attributable to an area of interest, or be capable of being reasonably allocated to an area of interest. Costs that could meet these criteria include:

- the purchase price for development assets, including any duties and any non-refundable taxes;
- costs directly related to bringing the asset to the location and condition for intended use such as drilling costs or cost for the removal of overburden to establish access to the ore reserve; and
- the present value of the initial estimate of the future costs of dismantling and removing the item and restoring the site on which it is located, where such obligations arise when the asset is acquired or constructed.

Allocation of expenditure includes direct and indirect costs. Indirect costs are included only if they can be directly attributed to the area of interest. These may include items such as road construction costs and costs to ensure conformity with environmental regulations. Costs associated with re-working engineering design errors or those attributed to inefficiencies in development should not be capitalised.

General or administrative overheads relating to the whole entity, rather than to specific phases of operations, are expensed as incurred. Time charges from head office staff may be capitalised where there is a clear and direct allocation of their time to specific development activities.

Entities should also consider the extent to which “abnormal costs” have been incurred in developing the asset. SFAS 16 requires that the cost of abnormal amounts of labour or other resources involved in constructing an asset should not be included in the cost of that asset. Entities will sometimes encounter difficulties in their mining plans and make adjustments to these. There will be a cost associated with this, and entities should develop a policy on how such costs are assessed as being normal or abnormal.

Expenditures incurred after the point at which commercial production has commenced should only be capitalised if the expenditures meet the asset recognition criteria.

Pre-Production Sales

There may be a long commissioning period for a mine, sometimes longer than twelve months, during which production is gradually increased towards design capacity. An entity may receive revenue from the saleable material that is produced during this phase. Where test production is considered necessary for the completion of the asset, the proceeds from the sales and the cost to produce the material should be recognised in profit or loss.

5.3 Production

Revenue Recognition

Mining companies in Indonesia apply SFAS 72, "Revenue from Contracts with Customers" to determine the timing and amount of revenue that can be recognised for the sale of goods and services. SFAS 72 is adopted from IFRS 15, "Revenue from Contracts with Customers". The revenue recognition model under SFAS 72 emphasises the satisfaction of performance obligations identified in a contract with customers for a seller to recognise revenue. Entities apply a five-step approach to determine when and how much revenue can be recognised:

STEP

1. Identify the contract with the customer;
2. Identify the separate performance obligations in the contract;
3. Determine the transaction price;
4. Allocate the transaction price to the separate performance obligations; and
5. Recognise revenue when (or as) the performance obligation is satisfied.

Entities need to exercise judgment when considering the terms of the contract and all the facts and circumstances, including implied contract terms. Revenue recognition can present challenges for mining entities, so they need to analyse the facts and circumstances in order to determine when and how much revenue to recognise. Extracted mineral ores may need to be moved long distances and may need to be of a specific type in order to meet the smelter or refinery requirements. Entities may exchange products in order to meet logistical, scheduling, or other requirements.

The following are common challenges relating to revenue recognition in the mining industry:

a. Agency Relationships: Principal versus agent considerations

Mining entities will often engage in other activities in addition to selling extracted ore, such as providing transportation of products. It is important to identify whether a mining entity is acting as a principal or an agent in transactions as it is only when the entity is acting as a principal that it will be able to recognise revenue based on the gross amount received, or a receivable in respect of its performance under a sales contract. Entities acting as agents do not recognise revenue for any amounts received from a customer to be paid to the principal. Revenue is recognised for the commission or fee earned for facilitating the transfer of goods and services. Whether the entity is acting as agent or principal depends on the facts of the relationship, which can require significant judgment.

An entity is the principal in an arrangement if it obtains control of the goods or services of another party in advance of transferring control of those goods or services to the customer. Obtaining a title momentarily before transferring a good or service to a customer does not necessarily constitute control.

An entity is an agent if its performance obligation is to arrange for another party to provide the goods or services. Indicators that the entity is an agent include the following:

- the other party is primarily responsible for the fulfilment of the contract;
- the entity does not have inventory risk;
- the entity does not have latitude in establishing prices;
- the entity does not have customer credit risk; and
- the entity's consideration is in the form of a commission.

An agent recognises revenue for the commission or fee earned for facilitating the transfer of goods or services. Its consideration is the "net" amount retained after paying the principal for the goods or services that were provided to the customer.

b. Delivery – Cost, Insurance and Freight ("CIF") versus FoB

An entity will recognise revenue when (or as) a good or service is transferred to the customer and the customer obtains control of that good or service. Control of an asset refers to an entity's ability to direct the use of and obtain substantially all of the remaining benefits (that is, the potential cash inflows or savings in outflows) from the asset.

Resources are often extracted from remote locations and require transportation over great distances. Transportation by truck instead of railway can be a significant cost. There are two main variants of contract that address the future shipping costs – CIF and FOB.

CIF contracts mean that the selling entity will have the responsibility of paying the costs, insurance and freight until the goods reach a final destination, such as a refinery or an end user. FOB contracts mean that the selling entity delivers the goods when the goods are delivered to an independent carrier. The buyer has to bear all the costs and risks of loss pertaining to the goods from that point.

In both approaches, contractual terms mean that risk and title (and therefore control) of the commodity normally pass at the ship's rail, although the timing of revenue recognition could change under the new standard, depending on the terms of trade. The difference between the shipping terms affect which party is responsible for freight costs.

Sales of goods

An entity recognises revenue when it satisfies a performance obligation by transferring a promised good or service to a customer. Revenue is recognised at the point when control transfers to the customer. Under CIF and FOB terms, this will generally follow the terms of the contract, and is usually when the goods pass the rail on a vessel that has been selected by the buyer, at which point the buyer will control the goods.

Transportation

SFAS 72 requires an entity to account for each distinct good or service as a separate performance obligation. Freight or transportation services may meet the definition of a distinct service. A performance obligation for transportation generally meets the criteria for a performance obligation that is settled over a period of time, and the revenue will be recognised over the period of transfer to the customer. If it does not meet the criteria, the performance obligation will be settled at a future point in time, and revenue will likely be recognised when the customer receives the goods.

Factors that might indicate that there is a separate performance obligation for transportation include the following:

- Specialism of any of the vehicles or technology involved with providing the transportation;
- Level of cost, distance or time associated with providing the transportation; and
- Whether the terms of the contract allow the customer to opt out of the transportation element and collect the commodity themselves.

c. Provisional Pricing Arrangements

Sales contracts for commodities often incorporate provisional pricing. Provisional pricing might arise for a variety of reasons:

- The time taken to transport the product might mean that the customer wishes to pay the market price at the date of eventual delivery at the final destination – in such situations, a provisional price is charged on the date at which control of the product initially transfers. The final price is generally an average market price for a particular future period, or a final assayed amount.
- The product is being transported in concentrated form and the final quality and volume of component commodities will not be known until further processing at its final destination.

Revenue will be recognised when the performance obligation is satisfied, when the customer obtains control of the product. The entity will also need to determine the transaction price, which is the amount of consideration it expects to be entitled to in the transaction. Management should first consider whether provisionally priced contracts include embedded derivatives that are in the scope of financial instrument guidance. A mining entity will apply the separation and/or measurement guidance in other standards first, and then apply the guidance in the revenue standard to the remaining portion of the contract.

The transaction price might be variable or contingent on the outcome of future events, which would include provisional pricing arrangements. Variable consideration is subject to a constraint. The objective of the constraint is that an entity should recognise revenue through the performance obligations being satisfied, to the extent that a significant revenue reversal is not “highly probable”, in future periods. Such a reversal would occur if there were a significant downward adjustment of the cumulative amount of revenue recognised for that performance obligation. Judgment will be required to determine if the amount to be recognised is subject to a significant reversal. SFAS 72 has a list of factors that could increase the likelihood or magnitude of a revenue reversal. Management’s estimate of the transaction price will be reassessed each reporting period.

d. Take-or-pay and similar long-term supply agreements

Long-term sales contracts are common in the mining industry. Producers and buyers may enter into sales contracts that are often a year or longer in duration, to secure supply and reasonable pricing arrangements. Contracts will typically stipulate the sale of a set volume of product over the period at an agreed price. There are often clauses within the contract relating to price adjustment or escalation over the course of the contract to protect the producer and/or the seller from significant changes to the underlying assumptions in place at the time the contract was signed. Long-term commodity contracts frequently offer the counterparty flexibility and options in relation to the quantity of the commodity to be delivered under the contract.

Mining entities should continue to first assess whether these arrangements represent financial instruments, or contain embedded derivatives that should be accounted for under the financial instrument standards (e.g., they should assess whether a contract with volume flexibility contains a written option that can be settled net in cash or with another financial instrument). In addition, mining entities should continue to evaluate whether such arrangements convey the right to use a specific asset, and therefore constitute a lease under the leasing standards.

In relation to take-or-pay contracts, only the minimum amount specified would generally be considered a contract, as this is the only enforceable part of the agreement. Options in the contract to acquire additional volumes will likely be considered a separate contract at the time the customer exercises the option, unless such options provide the customer with a material right (e.g., an incremental discount). Where there is a material right, the option should be accounted for as a separate performance obligation in the original contract. This will require the total transaction price to be allocated to the separate performance obligations, using standalone selling prices.

Customers may not exercise all their contractual rights to receive a good or service in the future. Unexercised rights are often referred to as breakage. An entity should recognise estimated breakage as revenue in proportion to the pattern of exercised rights. Management might not be able to conclude whether there will be any breakage, or the extent of such breakage. In this case, they should consider the constraint on variable consideration, including the need to record any minimum amounts of breakage. Breakage that is not expected to occur should be recognised as revenue when the likelihood of the customer exercising its remaining rights becomes remote. The assessment should be updated at each reporting period.

In take-or-pay arrangements, this may mean that an entity may be able to recognise revenue in relation to breakage amounts in a period earlier than when the breakage occurs, provided that it can demonstrate it is expected that the customer will not exercise these rights. Given the nature of these arrangements and the inherent uncertainty in being able to predict a customer's behaviour, it may be difficult to satisfy this requirement.

Stripping Costs During the Production Phase

An entity usually obtains two kinds of benefits from its stripping activity. These are extraction of ore in the current period in the form of inventory and improved access to the ore body for future periods. As a result, two different kinds of assets are created. If the stripping activity in the current period does not provide an identifiable benefit, the associated costs are expensed in the current period.

To the extent that the benefits from the stripping activity are realised in the form of inventory produced, the associated costs are recorded in accordance with the principles of SFAS 14: Inventories.

To the extent that the benefits are realised in the form of improved access to the ore body in the future, the associated costs are recognised as a "stripping activity asset" if all of the following conditions are met:

a. It is probable that the future economic benefit associated with the stripping activity will flow to the entity;
b. The entity can identify the component of the ore body for which access has been improved; and
c. The costs relating to the stripping activity associated with that component can be measured reliably.

Identifying components of the ore body is a complex process involving management's judgment. It might be difficult to separately identify costs of producing inventory and of improving access to the ore body. In such cases, costs are allocated between the inventory produced and the stripping activity asset with reference to a relevant production measure. Allocation of costs cannot be based on a sales measure.

Stripping assets are initially measured at cost and subsequently measured at cost less depreciation, amortisation and impairment losses. While rare in practice, the stripping activity assets may also be carried at revalued amounts if the existing asset of which it is a part is carried at its revalued amounts. The stripping activity asset is typically depreciated based on the Units of Production ("UoP") method, unless another method is more appropriate.


Photo source: PT Bis Industries

Leases

Mining companies in Indonesia apply SFAS 73, "Leases" which is adopted from IFRS 16, "Leases". The SFAS 73 model requires lessees to capitalise nearly all leases on the balance sheet to reflect the right to use an asset for a period of time, as well as the associated liability for payments to use the asset, except for certain short-term leases for a period of less than twelve months and leases of low-value assets.

Mining companies will need to carefully consider all major arrangements that they have entered into that may increase both assets and liabilities on the balance sheet under the lease standard such as mining equipment and vehicles, as well as land and buildings. Similarly, mining contractor companies will need to consider all major arrangements that they have entered into, such as leases over construction equipment and vehicles, as well as land and buildings, that may give rise to balance sheet lease accounting under the current leases standard.

Determining whether a contract contains a lease

SFAS 73 prescribes that a contract contains a lease when:

a. There is an identified asset; and
b. The contract conveys the right to control the use of the identified asset for a period of time in exchange for consideration.

An asset can be identified implicitly or explicitly in the contract. A contract may explicitly define a particular asset; or do so implicitly when the supplier can fulfil the contract only through the use of a particular asset. A right to substitute an asset if it is not operating properly, or if there is a technical update required, does not prevent the contract from being dependent on an identified asset.

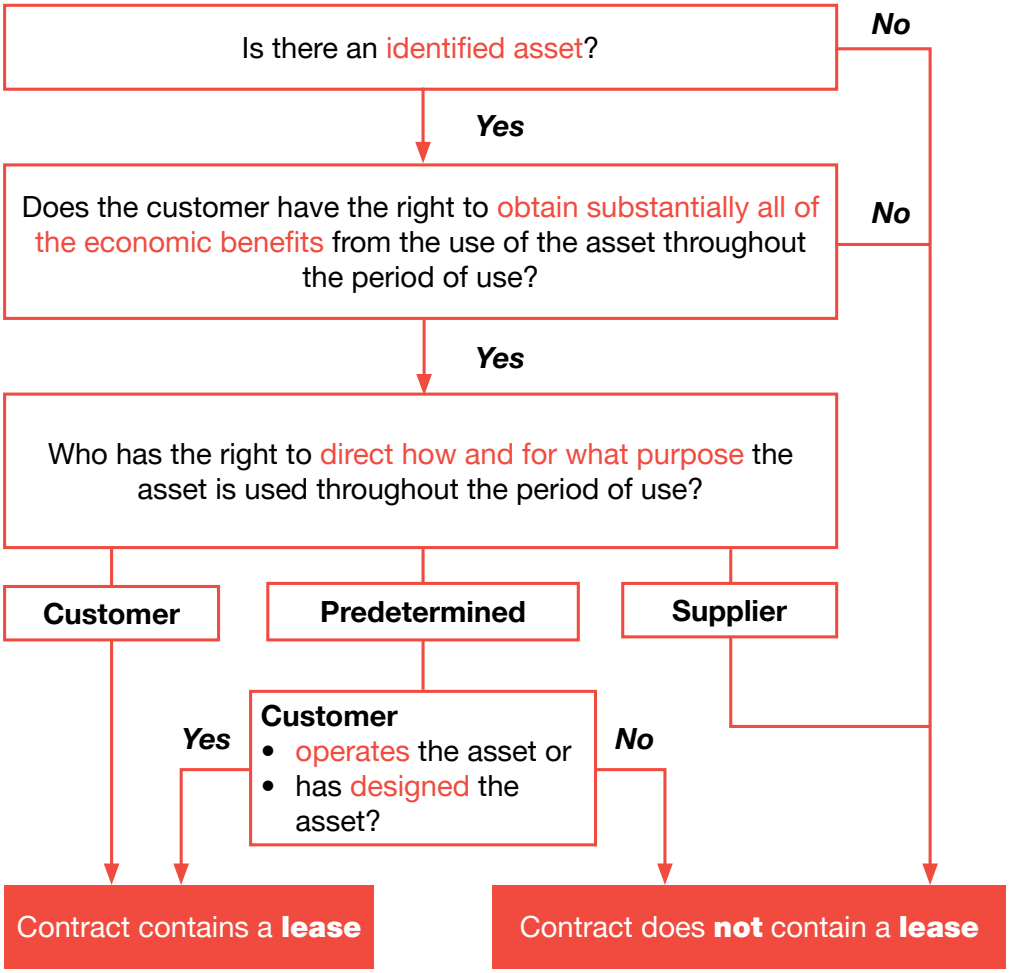
The definition of a lease is now much more driven by the question of which party to the contract controls the use of the underlying asset for the period of use. A customer needs to have the right to obtain substantially all of the benefits from the use of the asset (the "benefits" element), while also having the ability to direct the use of the asset (the "power" element).

The right to control the use of an identified asset is the key distinguishing factor, because in a lease, the customer has control over the right to use the identified asset, whereas under a simple supply contract, the supplier retains control over the use of the particular asset. The key question to address, therefore, is which party (that is, the customer or the supplier) has the right to direct how and for what purpose the identified asset is used throughout the contract period. SFAS 73 gives several examples of relevant decision-making rights:

a. The right to change what type of output is produced;
b. The right to change when the output is produced;
c. The right to change where the output is produced; and
d. The right to change how much of the output is produced.

This list is not exhaustive and none of the above criteria are independently exclusive, meaning there is no threshold to determine whether any of the criteria are more important than the others. The relevance of each of the decision-making rights depends on the underlying asset being considered.

The flowchart below summarises the analysis that needs to be made to determine whether a contract contains a lease:

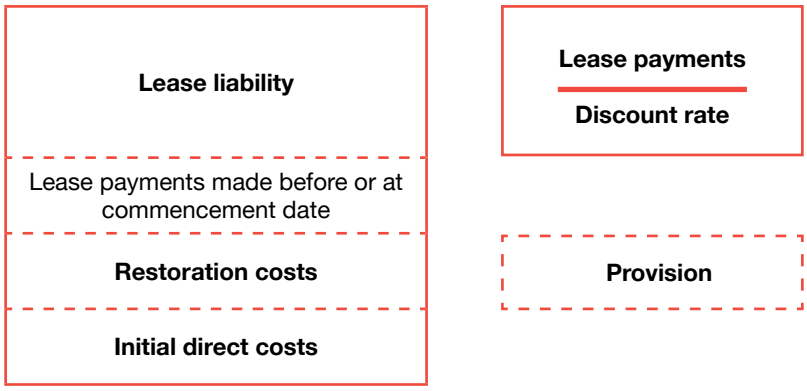


Lease Accounting for a Lessee

Initial recognition

The lease liability is initially capitalised on the date of commencement and measured at an amount equal to the present value of the lease payments during the lease term that are not yet paid. The value of the right-of-use of the asset is equal to the lease liability at the commencement of the lease, plus any direct costs incurred to obtain the contract and contractually obligated restoration costs.

The lessee uses as its discount rate the interest rate implicit in the lease. If this rate cannot be readily determined, the lessee should instead use its incremental borrowing rate.

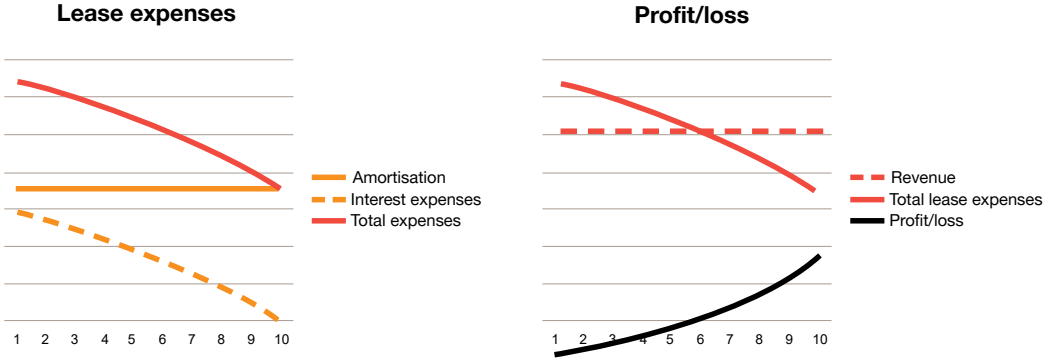


Subsequent measurement

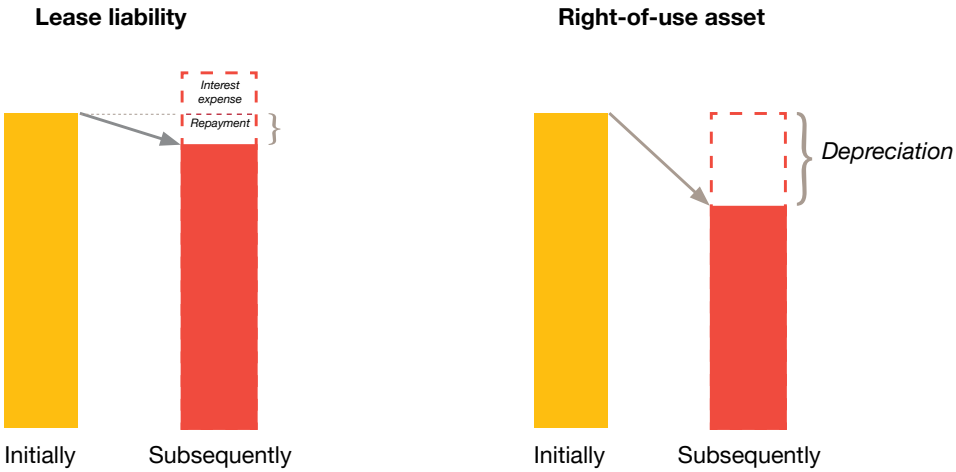
The lease liability is measured in subsequent periods using the effective interest rate method.

The right-of-use asset is depreciated in accordance with the requirements in SFAS 16, "Property, Plant and Equipment", which will result in depreciation on a straight-line basis or another systematic basis that is more representative of the pattern through which the entity expects to consume the right-of-use asset.

The combination of the straight-line depreciation of the right-of-use asset and the effective interest rate method applied to the lease liability results in a decreasing total lease expense throughout the lease term. This effect is sometimes referred to as *frontloading*.



The carrying amount of the right-of-use asset and the lease liability will no longer be equal in subsequent periods. Due to the frontloading effect described above, the carrying amount of the right-of-use asset will, in general, be below the carrying amount of the lease liability.



Any subsequent change in the measurement of the provision for the restoration costs, due to a revised estimation of expected costs, typically results in an adjustment to the 'right of use' asset.

Lease Accounting for a Lessor

The accounting for a lessor is practically the same under SFAS 73 as it was previously under SFAS 30. The lessor still has to classify leases as either finance or operating, depending on whether substantially all of the risks and rewards incidental to the ownership of the underlying asset have been transferred. For a finance lease, the lessor recognises a receivable at an amount equal to the net investment in the lease, which is the present value of the aggregate of the lease payments receivable by the lessor and any unguaranteed residual value. If the contract is classified as an operating lease, the lessor continues to present the underlying assets.

5.4 Closure and Rehabilitation

The mining industry can have a significant impact on the environment. Closure or environmental rehabilitation work at the end of the useful life of a mine or installation may be required by law, the terms of operating licences or an entity's stated policy and past practice.

An entity that promises to remedy damage or that has done so in the past, even when there is/was no legal requirement to do so, may have created a constructive obligation and thus a liability under SFAS. There may also be environmental clean-up obligations for contamination of land that arises during the operating life of the mine or installation. The associated costs of remediation/restoration can be significant. The accounting treatment of closure and rehabilitation costs is therefore critical.

A provision is recognised when an obligation exists to perform the rehabilitation. The local legal regulations should be taken into account when determining the existence and extent of the obligation. An obligation might arise if an entity has a policy and past practice of performing rehabilitation activity. A provision is recorded if others have a reasonable expectation that the entity will undertake the restoration. Obligations to decommission or remove an asset are created at the time when the asset is put in place. Mining infrastructure, for example, must be removed at the end of its useful life, typically upon the closure of the mine.

Closure provisions are updated at each balance-sheet date for changes in the estimates of the amount or timing of future cash flows and changes in the discount rate. Changes to provisions that relate to the removal of an asset are added to or deducted from the carrying amount of the related asset in the current period. However, the adjustments to the asset are restricted. The asset cannot decrease below zero and cannot increase above its recoverable amount:

- If the decrease in provision exceeds the carrying amount of the asset, the excess is recognised immediately in profit or loss;
- Adjustments that result in an addition to the cost of the asset are assessed to determine if the new carrying amount is fully recoverable or not. An impairment test is required if there is an indication that the asset may not be fully recoverable.

The accretion of the discount on a closure liability is recognised as part of finance expense in profit or loss.

Photo source: PT Freeport Indonesia

6 Additional Regulatory Considerations for Mining Investment

Investment Law

Law No. 25/2007 as amended by the Job Creation Law (the "Investment Law") is the prevailing law that generally regulates investments in Indonesia, and serves as the legal basis for the provision of an integrated one-stop service to simplify business licensing. The Government also recently introduced the OSS system, to enable investors to expedite the process of obtaining business licences.

Upon the issuance of the Job Creation Law, the Government set out a new investment principle in which all business sectors are basically open for foreign investment except for those (i) that are explicitly stipulated to be fully restricted for foreign investment, and (ii) for which investment may only be carried out by the Central Government. Under Perpres No. 10/2021 (as lastly amended by Perpres No. 49/2021) ("Perpres No. 10/2021"), several mining commodities are prioritised to obtain fiscal and non-fiscal incentives so long as they meet certain requirements. It must also be noted that pursuant to Perpres No. 10/2021, foreign investors can only conduct businesses under the large scale business category[1] if they fulfill the minimum IDR 10 billion investment value (excluding land and buildings).

The obligations for Limited Liability companies set out in the Investment Law include:

- Prioritising the use of Indonesian manpower;
- Creating a safe and healthy working environment;
- Implementing good corporate governance principles;
- Providing regular investment reports and submitting such reports to the BKPM;
- Creating a healthy business competition environment, anticipating any monopoly practices, and other aspects that may be harmful to the state;

[1] Pursuant to Law No. 20 of 2008 on Micro, Small, and Medium Businesses (as lastly amended by the Job Creation Law, large-scale business means businesses with net assets or annual sales higher than those of a medium-scale businesses and consist of private or state-owned businesses, joint ventures, and foreign investors conducting economy activities in Indonesia.

Photo source: PT Bukit Asam Tbk

- Complying with all prevailing laws and regulations;
- Implementing Corporate Social Responsibility ("CSR"); and
- Environmental conservation.

Specifically, the Investment Law provides that investors exploiting non-renewable natural resources must also allocate funds in stages for site restoration, in line with environmental standards. Sanctions for non-compliance with certain aspects of the Investment Law (including those on CSR) include the restriction, suspension, or revocation of business activities and licences.

The Central Government provides protection against nationalisation, unless such nationalisation is required by law, in which case, the Central Government will provide compensation based on the market value. In addition, investors are given the right freely to transfer and repatriate foreign currency, in forms including royalties, dividends, loan repayments, sales of investments, and management and technical service fees.

Forestry Law

Indonesia has resource-rich soil, which includes forest resources. The use of forest resources is therefore strictly controlled by the Central Government, especially the resources of protected forests. It is common for mining concession areas to overlap with forestry areas (either protected or productive forests), meaning mining activities can be impacted by the rules applicable to such forests.

Law No. 41/1999, as amended by Law No. 19/2004 and the Job Creation Law and as partially revoked by Law No. 18 of 2013 on the Prevention and Eradication of Forest Destruction (the "Forestry Law"), allows 13 open-pit mines in protected forests, provided that the mining companies had signed their contracts prior to the introduction of the Forestry Law (as governed by and listed under Presidential Decree No. 41/2004 as lastly amended by Presidential Decree No. 3/2023).

Under Government Regulation No. 23 of 2021 on Forestry, the utilisation of Forest Areas for non-forestry activities (including mining) is permitted in both production forest areas and protected forest areas, subject to the obtaining of a Forest Area Utilisation Approval from the Ministry of Forestry. "Protected forest" areas are open for mining activities, provided that the mining is conducted in the form of underground mining (and not through an open pit), subject to a number of conditions.

For areas that are designated as production forest areas, both underground and open pit mining are permitted. Mining is prohibited in areas that are designated as conservation forest areas.

Holders of Forest Area Utilisation Approval are required to pay a certain amount of PNBP compensation for provinces that lack sufficient forest areas. Forest Area Utilisation Approval holders must also carry out reclamation and/or reforestation on forest areas that are no longer used.

Energy Law

Given the importance of energy resources, it is necessary for the Central Government to create an energy management plan to ensure that the national energy needs can be met long-term. Law No. 30/2007 (the "Energy Law") established the National Energy Council as the government body responsible for designing and formulating national energy policy, determining the national energy general plan, determining the steps to be taken in an energy crisis and in emergency conditions, and monitoring the implementation of policy in energy fields with cross-sectoral characteristics.

Environmental Laws and Regulations

There is a difficult balance to strike between protecting the environment and preserving natural resources, on the one hand, and maintaining a viable mining industry, on the other. Environmental protection in Indonesia is governed by various laws, regulations, and decrees, and non-compliance can give rise to fines and penalties and, in extreme cases, the revocation of licences and/or permits and imprisonment.

Law No. 32 of 2009 on the Protection and Management of the Environment as amended by the Job Creation Law ("Environmental Law") requires the Central Government and regional governments to prepare a strategic environmental analysis, and to ensure that the principles of sustainable development have been integrated into the development of each particular region.

Both the Mining Law and the Environmental Law require mining companies that are exploiting natural resources and that have an environmental or social impact to create and maintain an environmental impact assessment (*Analisis Mengenai Dampak Lingkungan* or "AMDAL"), which should consist of an environmental impact assessment, an environmental management plan, and an environmental monitoring plan. Environmental management effort documents, Environmental Management Effort (*Upaya Pengelolaan Lingkungan* or "UKL") and Environment Monitoring Efforts (*Upaya Pemantauan Lingkungan* or "UPL"), generally need to be prepared in situations where an AMDAL document is not required. Furthermore, pursuant to the Environmental Law, mining companies must obtain an Environmental Approval. The Environment Feasibility Decree (*Keputusan Kelayakan Lingkungan Hidup*) which approves the AMDAL document shall serve as the Environmental Approval. The Environmental Law stipulates that the Environment Feasibility Decree is a requirement to obtain a business licence.

The sanctions that are applied for breaches of the Environmental Law range from three to fifteen years of imprisonment and/or a fine of between IDR 100 million and IDR 750 million (potentially up to IDR 9 billion in certain cases). The Environmental Law also stipulates the minimum penalties applicable, depending on the nature of the breach.

The environmental quality requirements regarding emissions and wastewater temperature levels have been the subject of industry concerns, due to the time lag that is necessary for implementing the new processes and technologies, and the increased production costs.

Bank Indonesia Regulation on the Reporting of Foreign Exchange Trading

BI Regulation No. 16/22/PBI/2014, regarding the Reporting of Foreign Exchange Trading and the Reporting of the Application of Prudential Principles in Foreign Loan Administration for Non-Bank Corporations (as partially revoked by BI Regulation No. 21/2/PBI/2019), includes a requirement for companies to report their foreign currency loans to BI on a quarterly basis. Furthermore, the fourth quarterly report each year needs to be verified by an independent public accountant. Failure to comply with this reporting obligation will trigger an administrative sanction of IDR 10 million.

In January 2019, BI Regulation No. 21/2/ PBI/2019 regarding the Reporting of Foreign Exchange Trading was issued to revoke certain provisions of BI Regulation No. 16/22/ PBI/2014. The Concluding Provision of BI Regulation No. 21/2/PBI/2019 stipulated that, from the effective date of BI Regulation No. 21/2/PBI/2019 (i.e. 1 March 2019), the provisions in BI Regulation No. 16/22/PBI/2014 that regulated the reporting of foreign exchange trading would be revoked. All laws and regulations that constitute implementing regulations of BI Regulation No. 16/22/PBI/2014 shall remain effective insofar as they do not conflict with BI Regulation No. 21/2/PBI/2019.

The prudential principles under BI Regulation No. 16/21/PBI/2014 as amended by BI Regulation No. 18/4/PBI/2016, BI Circular Letter No. 16/24/ DKEM of 2014 as amended by BI Circular Letter No. 17/18/ DKEM of 2015, and BI Circular Letter No. 18/6/DKEM of 2016 are as follows:

a. The minimum hedging ratio is 25% of the negative difference between foreign exchange assets and foreign exchange liabilities that will be due within three months and that will be due between three and six months from the end of the reporting quarter. Only companies that have a "negative difference" of more than US$ 100,000 are required to fulfil the minimum hedging ratio;
b. The minimum liquidity ratio is 70%, calculated by comparing the company's foreign exchange assets and foreign exchange liabilities that will be due within three months of the end of the reporting quarter; and
c. The minimum credit rating of "BB-" or equivalent from the credit ratings agencies recognised by BI.

Requirement to Deposit DHE with an Indonesian FX Bank

In July 2023, the Government of the Republic of Indonesia issued GR No. 36 of 2023, which revokes GR 1/2019, regarding Foreign Exchange Export Proceeds from Business, Management, and/or Processing of Natural Resources ("**GR 36/2023**"). GR 36/2023, which was effective as of 1 August 2023, stipulates new requirements for exporters of natural resources to deposit their foreign exchange export proceeds (*Devisa Hasil Expor dari Barang Ekspor Sumber Daya Alam* – "**DHE SDA**") in the Indonesian financial system. To implement GR 36/2023, Bank Indonesia and the Minister of Finance have issued the following regulations:

(i) Bank Indonesia Regulation No. 7 of 2023 regarding Foreign Exchange of Export and Foreign Exchange of Import Payment ("**BI Regulation 7/2023**")
(ii) Minister of Finance Decree No. 272 of 2023 regarding the Stipulation of Types of Natural Resource Export Goods with the Obligation to Deposit Foreign Exchange Export Proceeds into the Indonesian Financial System ("**MOF Decree 272**"), and
(iii) Minister of Finance Regulation No. 73 of 2023 regarding Imposition and Revocation of Administrative Sanctions for Violation of Provisions on Foreign Exchange Export Proceeds from Business, Management and/or Processing Activities of Natural Resources ("**PMK 73/2023**").


Photo source: PT Bukit Asam Tbk

Pursuant to GR 36/2023 in conjunction with BI Regulation 7/2023, exporters of natural resources (including mining commodities) that have a DHE SDA with an export value of equal or more than USD 250,000 (or its equivalent) in their Export Customs Declarations (*Pemberitahuan Pabean Ekspor* – "PPE") must deposit at least 30% of its DHE SDA in the Indonesian financial system, for a minimum period of three months since the placement of the deposit.

The DHE SDA deposit can be placed in one of the following instruments.

- A special account opened at the Indonesian Export Financing Agency (*Lembaga Pembiayaan Ekspor Indonesia* or "LPEI") or at a foreign exchange bank;
- Banking instruments, e.g., foreign exchange time deposit;
- Financial instruments issued by LPEI, i.e, promissory note in foreign exchange; and/or
- Financial instruments issued by Bank Indonesia, i.e, conventional open market operation term deposit in foreign exchange in Bank Indonesia.

Pursuant to BI Regulation 7/2023, DHE SDA deposited in the above banking and financial instruments have several benefits for the exporters, among other things, for funds deposited into a special account, it could be used for a forex swap transaction between the exporters and the banks and such instruments may also be used by the exporters as a loan security (in Rupiah currency). Furthermore, according to GR 36/2023, DHE SDA deposited in the special account may be used by exporters for the payment of export duty and other levies in export sector, loan, import, profits/dividends, and/or other needs for investment (e.g. transfer of DHE SDA to another party). The Government also provides incentives for the exporters and to the income arising from the financial instruments by reducing the final tax on the interest, the details of which are elaborated further in Chapter 4.

Administrative sanctions, in the form of suspension of export services/ facilities, will be imposed to the exporters of natural resources for non-compliance of the following obligations:

- Failure to deposit DHE SDA on special accounts;
- Failure to deposit DHE SDA of at least 30% of their export proceeds and below 3 months; and/or
- Failure to create an escrow account on or transfer overseas escrow account to LPEI and/or certain banks conducting activities in foreign exchanges.

Monitoring and supervision over compliance to these regulations will be carried out by the Financial Services Authority (*Otoritas Jasa Keuangan* or "OJK") and Bank Indonesia. PMK 73/2023 stipulates that OJK and/or Bank Indonesia may revoke the administrative sanction imposed on an exporter upon fulfilment of the outstanding obligations by the exporter.

GR 36/2023 introduces heavier penalties than GR 1/2019 on exporters failing to comply with the regulation. The requirement for the exporters to deposit at least 30% of their DHE SDA for a minimum of three months may cause concerns for the exporters (including Indonesian mining companies) in managing their cash flows.

Listing Rules for Mining Companies

Pursuant to the issue of IDX Decision No. KEP00100/BEI/10-2014, the listing rules for mining (mineral and coal) companies have been simplified. The rules cover mining companies (and prospective mining companies) that have a mining business licence, or holding companies that (or that will) consolidate 50% of a mining subsidiary's income, where the mine:

- has commenced sales; or
- is already in the production phase but has not commenced sales; or
- is not yet in the production phase.

To qualify for listing, the prospective issuers must fulfil the following conditions (among others):

- Net tangible assets and deferred exploration costs must be at least IDR 100 billion for listing on the Main Board, or IDR 5 billion for listing on the Development Board;
- One or more of the company's directors must have technical expertise and at least five years' work experience in the mining sector, within the past seven years;
- The issuer must maintain proven and probable reserves that have been certified by a competent authority (in some other jurisdictions this is referred to as either a "Competent Person's report" or a "Qualified Person's report");
- The issuer must have a clean and clear certificate; and
- The issuer must have undertaken a feasibility study within three years of the date when the listing request is submitted. Other requirements are detailed in the IDX Regulations. Mineral and coal companies whose shares were listed on the IDX before the issuance of this decision should have fulfilled the requirements regarding the directors' qualifications by 1 July 2015.

In respect of the requirement to have a clean and clear certificate, please note that this clean and clear certificate is no longer required, as regulated under PerMen 7/2020. However, at the time of writing, IDX Decision No. KEP00100/BEI/10-2014 had not yet been amended to conform with PerMen 7/2020.

Bank Indonesia Regulation on the Obligation to Use Rupiah

BI Regulation No. 17/3/PBI/2015 on the Obligation to Use Rupiah for Transactions in Indonesia has been effective since 1 July 2015 ("BI Reg 17/2015"), with the stated aim of stabilising the rupiah exchange rate.

BI Reg 17/2015 stipulates that all parties shall be obligated to use the rupiah in transactions within the territory of Indonesia. Such transactions include any transaction having the purpose of a payment, the settlement of obligations using money, and/or other financial transactions.

Pursuant to BI Reg 17/2015, the mandatory use of the Rupiah shall not apply for the following transactions:

a. Certain transactions within the framework of implementing state revenue and expenditures;
b. Acceptance or disbursement of grants from or to overseas;
c. International trade transactions, covering:
    - Exports and/or imports of goods to or from outside the customs territory of the Republic of Indonesia; and/or
    - Services trading activities that cross the state's territorial borders, conducted by way of:

(i) Cross border supply; and
(ii) Consumption abroad.

d. Savings at banks in the form of foreign exchange;
e. International financing transactions; or
f. Transactions in a foreign currency conducted pursuant to the provisions of the Law.

The press release states that MoEMR and BI will form a task force to facilitate the implementation of BI Reg 17/2015 so that it does not affect ongoing business activities. In addition, the MoEMR and BI will issue a guideline for the implementation of BI Reg 17/2015 for the energy sector. At the time of writing, however, no guideline had been issued by either the MoEMR or BI to regulate procedures for the implementation of the BI Regulation on the mineral and coal mining sector. In general, BI has issued BI Circular Letter Number 17/11/ DKSP 2015 concerning the Obligation to Use Rupiah in the Territory of the Unitary State of the Republic of Indonesia. Nevertheless, other than the types of transactions exempted from the obligation to use the rupiah, BI Reg 17/2015 mentions that strategic infrastructure projects may also be exempted from using the rupiah, with prior BI approval. To apply for BI approval, the requesting party must first obtain a confirmation or support letter from the relevant ministry or government body.

Based on the Circular Letter of the Ministry of Energy and Mineral Resources No: 04.E/30/ DJB/2017 concerning Exceptions and Postponement of the Enforcement of BI Reg 17/2015, in order to effectively use the rupiah so as not to hinder transactions in the mineral and coal mining sector, Bank Indonesia has granted the following approvals:

a. Exceptions to the implementation of the mandatory use of rupiah for three types of transactions constituting the implementation of the State Budget, namely payments of fixed fees, payments of Royalty or Coal Production Results, and payments of annual lump sum or PBB and Regional Taxes;
b. Exceptions to the implementation of the mandatory use of rupiah for two types of transactions whose implementation refers to the prevailing laws and regulations, namely the payments of reclamation guarantees and payments of post-mining guarantees;
c. Postponement of the implementation of the mandatory use of rupiah in the form of the use of foreign currency quotes and payments of rupiah for ten types of transactions related to mineral and coal mining business activities;
d. Postponement of the implementation of the mandatory use of the rupiah in the form of the use of foreign currency quotes and payments in foreign currency or rupiah for one type of transaction, namely domestic sales of minerals and coal from the concession holder to the holder of a Production Operation Mining Business Licence; specifically for transportation and sales or holder of a Production Operation Mining Business Licence, specifically for processing and refining that has an export orientation. Specifically for this transaction, business actors are required to submit a written application to Bank Indonesia accompanied by supporting documents showing export sales activities, namely the Customs Identification Number (*Nomor Identitas Kepabeanan* or "NIK") and the latest PEB.

The period for postponing the implementation of the mandatory use of rupiah is given until 23 February 2026 and during that period, Bank Indonesia will monitor the readiness of mineral and coal industry players to implement the mandatory use of rupiah.

The holders of the CoW, CCoW and business licences in the field of mineral and coal mining are directed to use the Jakarta Interbank Spot Dollar Rate ("JISDOR") exchange rate as a reference in calculating the rupiah price of goods and/or services originally offered in foreign currencies.

Other Regulations Related to Mining Operations

Other regulations applicable to Indonesian mining operations include regulations regarding land acquisition, the use of groundwater, technical guidelines for controlling air pollution from fixed sources, water quality and pollution, waste management and storage, electricity for private use, use of heavy equipment, used oil regulations, and the storage of production chemicals. Non-compliance may lead to fines, penalties, and, in extreme cases, the revocation of licences or permits.

CSR

Contractors are required to comply with the relevant laws and regulations on CSR and Community Development.

Under Article 74 of Law No. 40 of 2007 on Limited Liability Companies (as amended by the Job Creation Law), companies that are carrying out natural resources business must implement CSR, and this must be budgeted for in the companies' expenditure plans. Failure to comply with the CSR obligation may be subject to sanctions. Law 40/2007 provides that CSR means commitment of companies to participate in sustainable economic development to increase the quality of lives and environment for the interests of the company, local communities, and the public in general.

Government Regulation No. 47 of 2012 on Social and Environmental Responsibilities of Limited Liability Companies ("GR 47/2012") provides further provisions on CSR. Pursuant to GR 47/2012:

(i) CSR shall be carried out by the Board of Directors of the company based on the company's annual work plan which includes the plan and budget for the implementation of CSR after obtaining the approval of the Board of Commissioners or General Meetings of Shareholders in accordance with the company's articles of association.

(ii) The implementation of CSR shall be elaborated in the company's annual report and delivered to the General Meeting of Shareholders.

Photo source: PT Timah Tbk

Appendices

Photo source: PT Gunung Raja Paksi Tbk

Minimum in-country processing and refining requirements for metal minerals prior to export[1]

No	Commodity		Minimum Limit			
	Ore	Mineral	Processing		Refining	
			Products	Quality	Products	Quality
1.	Copper (fusion process)	Chalcopyrite Digenite Bornite Cuprite Covelitte	Copper Concentrates	≥15% Cu	Copper Cathode	Copper Metal ≥ 99.9% Cu
					Copper Telluride	a. Copper Metal, Cu ≥ 99.9%; b. Tellurium Metal, Te ≥ 99%; c. Tellurium Dioxide, TeO_2 ≥ 98%; d. Tellurium Hydroxide, $Te(OH)_4$ ≥ 98%; and/or e. Copper telluride alloy Te ≥ 20%.
	Copper (leaching process)	Chalcopyrite Digenite Bornite Cuprite Covelitte	-	-	Metal	a. Copper Metal, Cu ≥ 99.9%; b. Gold Metal, Aul ≥ 99%; c. Silver Metal, Ag ≥ 99%; d. Palladium Metal, Pd ≥ 99%; e. Platinum Metal, Pt ≥ 99%; f. Selenium Metal, Se ≥ 99%; g. Tellurium Metal, Te ≥ 99%; h. Tellurium Dioxide, TeO_2 ≥ 98%; i. Tellurium Hydroxide, $Te(OH)_4$ ≥ 98%; and/or j. Rare metals and rare earth elements (refer to the requirement for rare-earth metal terms for tin).
2.	Nickel and/or cobalt (fusion process) a. Saprolite b. Limonite	Pentlandite Garnierite Serpentinite Carolite	-	-	Nickel Matte, Metal Alloys, Nickel Metal, and Metal Oxide	a. Ni Mate, Ni ≥ 70%; b. FeNi Metal, Ni ≥ 8%; c. Nickel Pig Iron (NPI) 2% < Ni < 4%, and Fe > 75%; d. Nickel Pig Iron (NPI), Ni ≥ 4%; e. Nickel Metal, Ni ≥ 93%; and/or f. Nickel Oxide (NiO), Ni ≥ 65%.

[1] pursuant to the Regulation of the Minister of Energy and Mineral Resources of the Republic of Indonesia Number 25 of 2018 on Mineral and Coal Mining Businesses as amended by Regulation of the Minister of Energy and Mineral Resources Number 17 of 2020

No	Commodity		Minimum Limit			
	Ore	Mineral	Processing		Refining	
			Products	Quality	Products	Quality
	Nickel and/or cobalt (leaching process) Limonite	Pentlandite Garnierite Serpentinite Carolite	-	-	Metal, Metal Oxide, Metal Sulphide, mix hydroxide/ sulphide precipitate, and hydroxide nickel carbonate	a. Nickel Metal, Ni ≥ 93%; b. Mix Hydroxide Precipitate (MHP), Ni ≥ 25%; c. Mix Sulfide Precipitate (MSP), Ni ≥ 45%; d. Hydroxide Nickel Carbonate (HNC), Ni ≥ 40%; e. Nickel Sulfate and Nickel Sulfate Hydrate ($NiSO_4$ and $NiSO_4.xH_2O$), Ni ≥ 20%; f. Cobalt Sulfate and Cobalt Sulfate Hydrate ($CoSO_4$ and $CoSO_4.xH_2O$) Co ≥ 19%; g. Nickel Chloride and Nickel Chloride Hydrate ($NiCl_2$ and $NiCl_2.xH_2O$), Ni ≥ 20%; h. Cobalt Chloride and Cobalt Chloride Hydrate ($CoCl_2$ and $CoCl_2.xH_2O$), Co ≥ 19%; i. Nickel Carbonate ($NiCO_3$), Ni ≥ 40%; j. Cobalt Carbonate ($CoCO_3$), Co ≥ 40%; k. Nickel Oxide (NiO), Ni ≥ 65%; l. Cobalt Oxide (CoO), Co ≥ 65%; m. Nickel Hydroxide ($Ni(OH)_2$), Ni ≥ 50%; n. Cobalt Hydroxide ($Co(OH)_2$), Co ≥ 50%; o. Nickel Sulfide (NiS), Ni ≥ 40%; p. Cobalt Metal, Co ≥ 93% q. Cobalt Sulfide (CoS), Co ≥ 40%; and/or r. Chromium Metal, Cr ≥ 99%.

No	Commodity		Minimum Limit			
	Ore	Mineral	Processing		Refining	
			Products	Quality	Products	Quality
	Nickel and/or cobalt (reduction process) a. Saprolite b. Limonite		-	-	Metal Alloys	a. Sponge FeNi, 2% ≤ Ni < 4%, and Fe ≥ 75%; b. Sponge FeNi, Ni ≥ 4%; c. Luppen FeNi, 2% ≤ Ni < 4%, and Fe ≥ 75%; d. Luppen FeNi, Ni ≥ 4%; e. Nugget FeNi, 2% ≤ Ni < 4%, and Fe ≥ 75%; and/or f. Nugget FeNi, Ni ≥ 4%.
3.	Bauxite	Gibbsite Diaspora Boehmite	-	-	Metal Oxide/ Hydroxide and Metal	a. Smelter Grade Alumina, Al_2O_3 ≥ 98%; b. Chemical Grade Aumina, Al_2O_3 ≥ 90%; c. Alumina Hydroxide, $Al(OH)_3$ ≥ 90%; d. Proppants: 1) Al_2O_3 ≥ 72% (Granulated); 2) Able to rupture at a pressure of 7.500psi, the size of the fraction: -20+40 mesh ≤ 5.2%; -30+50 mesh ≤ 2.5%; or -40+70 mesh ≤ 2.0%. 3) Apparent Specific Gravity (ASG) 3.27. and/or e. Aluminum Metal, Al ≥ 99%.
4.	Iron	Hematite Magnetite	Iron concentrates *)	Fe ≥ 62% and TiO_2 ≤ 1%	Sponge, Metal, and Metal alloys	a. Sponge iron, Fe ≥ 72%; b. Sponge ferro alloy, Fe ≥ 72%; c. Pig iron, Fe ≥ 75%; and/or d. Ferro alloy, Fe ≥ 75%.
		Goethite Hematite Magnetite (Laterite iron)	Laterite iron concentrates **)	Fe > 50% and (Al_2O_3 + SiO_2) > 10%		
		Lamela magnetite-ilmenite (iron sand)	Iron sand concentrates ***)	Fe ≥ 56%; and 1% < TiO_2 ≤ 25%	Metal	a. Sponge iron, Fe ≥ 72%; and/or b. Pig iron, Fe ≥ 75%.
			Pellet iron sand concentrates ****)	Fe ≥ 54% and 1% < TiO_2 ≤ 25%		
			Ilmenite concentrates *****)	≥ 45% TiO_2	Metal oxide, Metal chloride, and Metal alloys	a. Titanium Dioxide Synthetic, TiO_2 ≥ 85%; b. Titanium Tetrachloride, $TiCl_4$ ≥ 87%; and/or c. Titanium metal alloy, Ti ≥ 65%.

No	Commodity		Minimum Limit			
	Ore	Mineral	Processing		Refining	
			Products	Quality	Products	Quality
5.	Tin	Cassiterite	-	-	Metal	Tin Metal, Sn ≥ 99.90%
			Zircon concentrates	Refer to the requirements for zirconium and zircon.	Refer to the requirements for zirconium and zircon.	Refer to the requirements for zirconium and zircon.
			Ilmenite Concentrate	TiO_2 ≥ 45%	Metal oxide, Metal chloride, and Metal alloys	a. Refined Titanium Dioxide, TiO2 ≥ 85%; b. Titanium Tetrachloride, TiCl4 ≥ 87%; and/or c. Titanium metal alloy, Ti ≥ 65%.
			Rutile concentrates	TiO_2 ≥ 90%	Metal chloride and Metal alloys	a. $TiCl_4$ ≥ 98%; and/or b. Titanium alloy ≥ 65% Ti.
			Monazite and xenotime concentrates	-	Metal Oxide, Metal hydroxide, and Rare Earth Metal	a. Rare earth metal oxide (REO) ≥ 99%; b. Rare earth metal hydroxide (REOH) ≥ 99%; and/or c. Rare earth metal ≥ 99%.
6.	Manganese	Pyrolusite Psilomelane Braunite Manganite	Manganese concentrates	Mn ≥ 49%	Metal, Metal alloys and Manganese Chemical	a. Ferro Manganese (FeMn), Mn ≥ 60% b. Silica Manganese (SiMn), Mn ≥ 60% c. Manganese Monoxide (MnO), Mn ≥ 42% MnO_2 ≤ 4%; d. Manganese Sulfate ($MnSO_4$) ≥ 90%; e. Manganese Chloride ($MnCl_2$) ≥ 90% f. Refined Manganese Carbonate ($MnCO_3$) ≥ 90%; g. Potassium Permanganate ($KMnO_4$) ≥ 90%; h. Manganese Oxide (Mn_3O_4) ≥ 90%; i. Refined Manganese Dioxide (MnO_2) ≥ 98%; j. Manganese Sponge (Direct Reduced Manganese) Mn ≥ 49%, MnO_2 ≤ 4%; and/or k. Electrolytic Manganese Dioxide MnO_2 ≥ 90% and K < 250 ppm

No	Commodity		Minimum Limit			
	Ore	Mineral	Processing		Refining	
			Products	Quality	Products	Quality
7.	Lead and Zinc	Galena Sphalerite Smithsonite Hemimorphite (chalamid)	Zinc concentrates	Zn ≥ 51%	Metal and Metal oxide/hydroxide	a. Bullion Zinc, Zn ≥ 90%; b. Zinc Oxide, ZnO ≥ 98%; c. Zinc Peroxide, ZnO_2 ≥ 98%; and/or d. Zinc Hydroxide, $Zn(OH)_2$ ≥ 98%.
					Gold Metal and/or silver	a. Gold Metal, Au ≥ 99%; and/or b. Silver Metal, Ag ≥ 99%.
			Lead concentrates	Pb ≥ 56%	Metal and Metal oxide/hydroxide	a. Bullion Lead, Pb > 90%; b. Lead Oxide, PbO ≥ 98%; c. Lead Hydroxide, $Pb(OH)_2$ ≥ 98%; and/or d. Lead Dioxide, PbO_2 ≥ 98%;
					Gold Metal and/or silver	a. Au Metal ≥ 99%; and/or b. Au Metal ≥ 99%.
8.	Gold	a. Native b. Associated minerals	-	-	Gold Metal	Gold Metal, Au ≥ 99%
9.	Silver	a. Native b. Associated minerals	-	-	Silver Metal	Silver Metal, Ag ≥ 99%
10.	Chromium	Chromite	Chromite concentrates	Cr_2O_3 ≥ 40% and Fe ≥ 13%	Metal, Metal Alloys, and Chromium Chemical	a. Chromium Carbonate ($Cr_2(CO_3)_3$), Cr ≥ 16%; b. Chromium Sulfate ($Cr_2(SO_4)_3$), Cr ≥ 14%; c. Chromium Sulfite ($Cr_2(SO_3)_3$), Cr ≥ 28%; d. Chromium Phosphate ($CrPO_4$), Cr ≥ 20%; e. Chromium Nitrate and Chromium Nitrate Hydrate ($Cr(NO_3)_3$ and $Cr(NO_3)_3.xH_2O$), Cr ≥ 12%; f. Chromium Nitrite ($Cr(NO_2)_3$, Cr ≥ 25%; g. Chromium Hydroxide ($Cr(OH)_3$), Cr ≥ 47%; h. Chromium Chlorate ($Cr(ClO_3)_2$), Cr ≥ 16%; i. Chromium Permanganate ($Cr(MnO_4)$), Cr ≥ 12%; j. Chromium Metal, Cr ≥ 99%; and/or k. Chromium metal alloys, Cr ≥ 60%.

No	Commodity		Minimum Limit			
	Ore	Mineral	Processing		Refining	
			Products	Quality	Products	Quality
11.	Zirconium		-	-	Zircon chemical, zircon sponge, zirconia, zircon Metal, and hafnium	a. Zirconium Oxychloride (ZOC), $ZrOCl_2 \cdot 8H_2O \geq 90\%$; b. Zirconium Sulfate (ZOS), $Zr(SO_4)_2 \cdot 4H_2O \geq 90\%$; c. Zirconium Basic Sulfate (ZBS), $Zr_5O_8(SO_4)_2.xH_2O \geq 90\%$; d. Zirconium Basic Carbonate (ZBC) $ZrOCO_3.xH_2O \geq 90\%$; e. Ammonium Zirconium Carbonate (AZC), $(NH_4)_3ZrOH(CO_3)_3 \cdot 2H_2O \geq 90\%$; f. Zirconium Acetate (ZAC), $H_2ZrO_2(C2H_3O_2)_2 \geq 90\%$; g. Kalium Hexafluoro Zirconate (KFZ), $K_2ZrF_6 \geq 90\%$; h. Zirconium Sponge, $Zr \geq 85\%$; i. Zirconia (ZrO_2+HfO_2) ≥ 99%; j. Zirconium Metal, $Zr \geq 95\%$; and/or k. Hafnium Metal, $Hf \geq 95\%$.
			Ilmenite	$TiO_2 \geq 45\%$	Metal oxide, Metal chloride and Metal alloy	a. Titanium Dioxide Synthetic, $TiO_2 \geq 85\%$; b. Titanium Tetrachloride, $TiCl_4 \geq 87\%$; and/or c. Titanium metals alloy, $Ti \geq 65\%$.
			Rutile	$TiO_2 \geq 90\%$	Metal chloride and Metal alloy	a. Titanium Tetrachloride, $TiCl_4 \geq 98\%$; and or b. Titanium metals alloy, $Ti \geq 65\%$.
12	Antimony	Stibnite	-	-	Antimony Metal	a. Antimony Metal, $Sb \geq 99\%$; and/or b. Diantimony Pentaoxide, $Sb_2O_5 \geq 95\%$.

Remarks:

*) This represents iron concentrates that contain hematite/magnetite minerals with an iron component of Fe ≥ 62% and Titanium oxide compound concentration of TiO2 ≤ 1%.

**) This represents laterite iron concentrates that contain goethite/hematite/magnetite minerals with an iron component of Fe ≥ 50% and alumina (Al2O3) and silica (SiO2) components of ≥ 10%.

***) This represents iron concentrates that contain lamella magnetite-ilmenite minerals with an iron component of Fe ≥ 56% and compound concentration Titanium oxide of 1% < TiO2 ≤ 25%.

****) This represents pellets iron sand concentrates that contain lamella magnetite-ilmenite minerals with an iron component of Fe ≥ 54% and compound concentration Titanium oxide of 1% <TiO2 ≤ 25%.

*****) This represents ilmenite concentrates that contain lamella magnetite-ilmenite minerals with compound concentration Titanium oxide of TiO2 ≥ 45%.

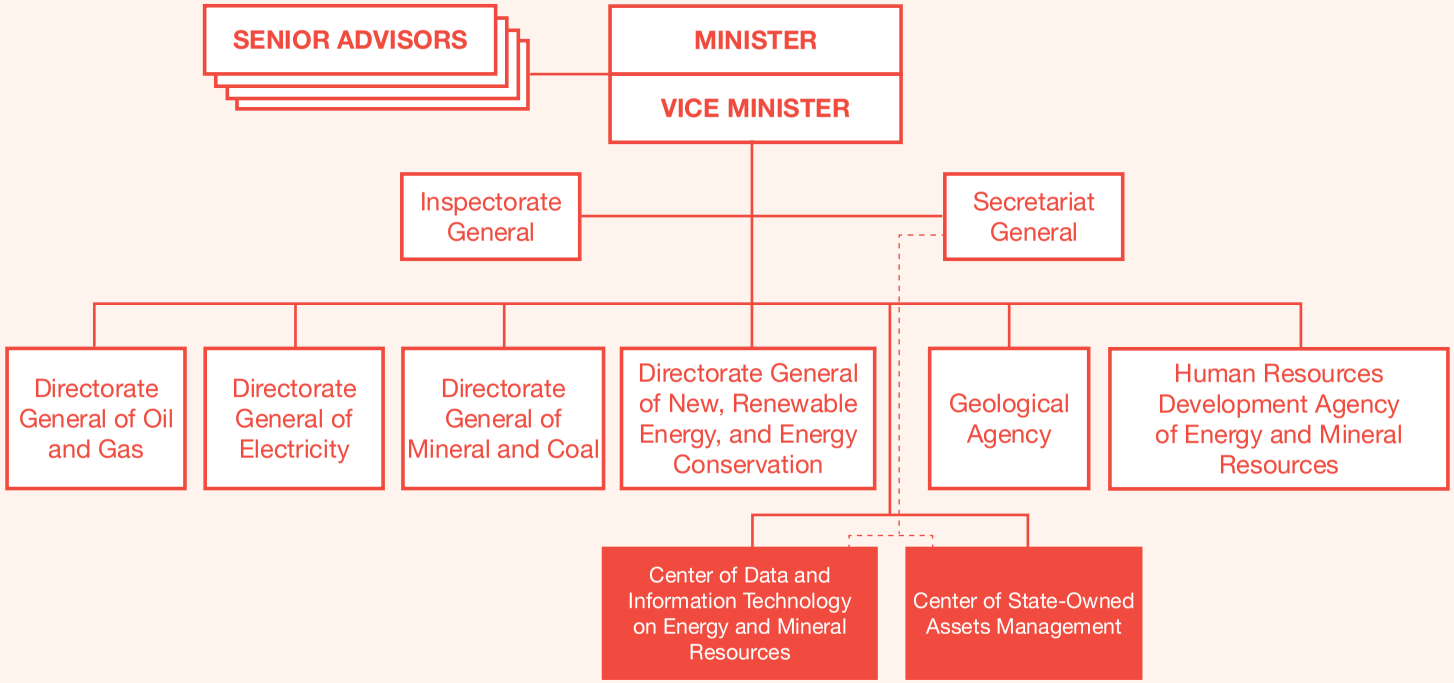
Regional Taxes

This table represents a selection of the various regional taxes that are relevant to the mining industry.

Type of Regional Tax		Maximum Tariff	Current Tariff	Imposition Base
A. Provincial Taxes				
1	Taxes on motor vehicle	10%	Non-public vehicles	
			1%-2% for the first vehicle owned. Starting 5 January 2025 will become maximum 1.2%.	Calculated by multiplication of two factors: a. Motor vehicle sales value; and b. Motor vehicle weight (which contributes to level of road deformation and/or environmental damage caused due to motor vehicle utilisation
			2% - 10% for the second vehicle owned and above. Starting 5 January 2025 will become maximum 6%.	
			0.5% - 1% for public Vehicles. Starting 5 January 2025 will become maximum 0.5%.	
			Starting 5 January 2025 there will be additional 66% of taxes on motor vehicle (Opsen).	
2	Title transfer fees on motor vehicle, and water surface vessels	20%	Motor vehicles	
			20% on the first title Transfer. Starting 5 January 2025 will become maximum 12%.	-
			1% on the second title transfer and above. Starting 5 January 2025 will become maximum 12%.	-
			Starting 5 January 2025 there will be additional 66% of title transfer fees on motor vehicle, and above - water vessels (Opsen).	-
3	Tax on heavy equipment	0.2%	Set by region	Calculated by reference to the sales value and a weight factor (size, fuel, type, etc.). A government table will be published on an annual basis to enable this calculation.

Type of Regional Tax		Maximum Tariff	Current Tariff	Imposition Base
4	Tax on motor vehicle fuel	10%	For public vehicles: at least 50% lower than the tax on non-public vehicle fuel (depending on each region)	Sales price of fuel (gasoline, diesel fuel, and gas fuel)
5	Tax on the collection and utilisation of surface water	10%	Set by region	Purchase value of water (determined by applying a number of factors).
B. Regency and Municipal Taxes				
6	Catering	10%	10%	Purchase value
7	Tax on electric power	10%	3% forutilisation by industry	Sales on electricity
			1.5% for personal use	-
8	Tax on non-metal minerals and rocks (formerly the C-Category mined substance collection)	25%	Set by region	-
			Starting 5 January 2025 there will be additional 25% of tax on non-metal minerals and rock (opsen).	-
9	Tax on groundwater	20%	Set by region	Purchase value
10	Land and Building Tax	0.5%	Set by region	Land and buildings sale value
11	Duty on the acquisition of land and buildings rights	5%	Set by region	Land and buildings sale value

Ministry of Energy and Mineral Resources Organisational Structure



Note:
1. Senior Advisor to the Minister for Strategic Planning
2. Senior Advisor to the Minister for Institutional Relationship
3. Senior Advisor to the Minister for Natural Resources Economics
4. Senior Advisor to the Minister for Environment and Spatial Planning

IMA (the Indonesian Mining Association)

IMA was founded on 29 May 1975, as a non-governmental, non-political, and non-profit organisation that was established in accordance with the laws of the Republic of Indonesia. The headquarters and the registered office of the association are located in Jakarta.

The association serves as a link between the Government and the mining industry, organising lectures, seminars, and training activities for members, as well as organising periodic conferences on mining in Indonesia, publishing proceedings and mining information, and representing the Indonesian mining industry at national and international meetings. IMA is a founding member of the ASEAN Federation of Mining Associations, and it currently provides the secretariat for the Federation.

IMA's Purpose

The aims and objectives of the association are to support the government and its policies in order to encourage the development of the mining industry and to utilise non-confidential and non-proprietary information to promote the exploration, mining, mineral beneficiation and metallurgical aspects in Indonesia through:

1. Studying problems relating to the above aspects of the mining industry at the national level and finding possible solutions to these problems.
2. Studying modern methods in the mining industry, which have been adopted in other countries, for their potential application in Indonesia.
3. Fostering a mutual respect between the members of the association, both private and governmental (it being understood that no decision or action of the association shall affect any contracts to which any of the members are party).
4. Advancing new ideas relating to the above aspects of the mining industry.
5. Fostering a spirit of scientific research among the members of the association.
6. Establishing contact and cooperating with similar professional organisations outside Indonesia.
7. Disseminating objective information and analysis concerning the above aspects of the mining industry.
8. Maintaining a high standard of professional conduct on the part of the Association's members.
9. Promoting the development of the infrastructure that is necessary to support the mining industry in Indonesia.
10. Familiarising the general public and educational institutions with current developments and problems in the mining industry.
11. Giving assistance to and encouraging potential university graduates to prepare for a career in the mining industry.

APBI-ICMA (the Indonesian Coal Mining Association)

ASOSIASI PERTAMBANGAN
BATUBARA INDONESIA
INDONESIAN **COAL**
MINING ASSOCIATION

APBI-ICMA was founded on 20 September 1989 as a response to the challenges of the coal mining industry in Indonesia.

The APBI-ICMA is a non-government, non-profit and non-political organisation that embraces both upstream (exploration and exploitation) and downstream (marketing and distribution, utilisation, and mining services) aspects of the coal industry in Indonesia.

The association aims to create an environment that allows its members to discuss common concerns and exchange ideas, and it works towards a common goal for the coal mining industry.

The APBI-ICMA also acts as a partner to relevant government Institutions and provides them with the industry's views on how to encourage a favourable environment for investment and competition.

The APBI-ICMA works collaboratively with all stakeholders to enhance investment in and strengthen the economic health of the coal mining industry in order to deliver greater benefits to government, investors, communities, employees, customers, and the environment.

APNI (Asosiasi Penambang Nikel Indonesia)

APNI was formed by the Mineral and Coal Directorate of the Ministry of Energy and Mineral Resources on 6 January 2017 and was appointed to the FORMATUR management by the Director of Mineral Development, Mr. Bambang Susigit, on 6 March 2017.

APNI's vision is to become the best association organisation that creates superior values and work programs that are able to synergize all Indonesian nickel mining actors and become a source of pride for all nickel mining stakeholders in Indonesia, the government and Indonesian society in general.

APNI's mission is committed to creatively transforming nickel mineral natural resources for people's welfare and sustainable development with an environmental perspective through the best mining management practices "best mining practise" by prioritising the welfare and peace of members and the community in general, human resource development, social responsibility and environment, occupational safety and health and job creation

Summary of CCoW generations

No	Item	First Generation	Second Generation	Third Generation	Remarks
1	**Dead rent – in US$ per hectare per annum unless stated otherwise**				
	a. General Survey	0.01 – 0.03	0.05 – 0.10	0.025 – 0.05	Second Generation's dead rent follows the prevailing dead rent tariff
	b. Exploration	0.08 – 0.20	0.20 – 0.70	0.10 – 0.35	
	c. Feasibility	0.20	1.00	0.50	
	d. Construction	0.20	1.00	0.50	
	e. Operation	1.00	2.00 - 4.00	1.50 – 3.00	
2	**Production royalty rate (%)**	13.5%	13.5%	13.5%	Based on the coal sales price minus certain marketing/ selling expenses
3	**CIT**				
	a. Tax Rates	35% for the first ten years of the Operating Period; 45% thereafter	25%*)	Incremental CIT rate to 30% (or a lower rate that is subject to a GR)	
	b. Depreciation rates				
	Non-building assets:				
	i. Straight line	12.5%	5% - 25%*)	10% - 50% (for tangible assets that are located in the Contract Area); otherwise 5% - 25%	
	ii. Declining balance	Not Applicable	10% - 50%*)	20% - 100% (for tangible assets that are located in the Contract Area); otherwise 10% - 50%	
	Building assets:				
	i. Straight line	12.5%	5% - 10%*)	10% - 20% (for tangible assets that are located in the Contract Area); otherwise 5% - 10%	
	ii. Declining balance	Not Applicable	Not Applicable*)	Not Applicable	

No	Item	First Generation	Second Generation	Third Generation	Remarks
	c. Amortisation rates (%)				
	a. Straight line	12.5%	10% - 25%*)	10% -50%	Under most CCoWs, the costs incurred prior to commercial operation may be deferred and amortised
	b. Declining balance	Not applicable	10% - 50%*)	20% - 100%	
	d. Accelerated Depreciation				
	Non-building assets:	25%	Not Applicable*)	Not Applicable	Accelerated depreciation can be claimed only within the first four years of the life of the assets
	Building assets:	10%	Not Applicable*)	Not Applicable	
	e. Investment allowance	20% of total investment	Not Applicable*)	Not Applicable	At the rate of 5% a year
	f. Deductible expenses:				
	Operating Expenses:				
	i. Cost of materials, supplies, equipment, and utilities	✓	✓	✓	
	ii. Expenses for contracted services	✓	✓	✓	
	iii. Premiums for insurance	✓	✓	✓	
	iv. Damages/ losses that are not compensated for under insurance	✓	✓	✓	
	v. Payments of royalties or other payments in respect of patents, designs, technical information, and services	✓	✓	✓	
	vi. Losses from obsolescence or destruction of inventory	✓	✓	✓	Provision is not deductible
	vii. Rentals	✓	✓	✓	

No	Item		First Generation	Second Generation	Third Generation	Remarks
	viii.	Dead rent, surface rent, production royalties, stamp duty, and other levies	✓	✓	✓	
	ix.	Sales tax	✓	Silent	Silent	
	x.	Uncredited VAT	Silent	✓	✓	
	xi.	Expenses for treatments, washing, processing, repairs and maintenance, handling, storage, loading, transportation, and shipping	✓	✓	✓	
	xii.	Expenses for commission and discounts	✓	✓	✓	
	xiii.	Expenses for environment/ reclamation	Silent	✓	✓	
	xiv.	Expenses incurred prior to the establishment of the company by a shareholder	Silent	x	✓	For the Third Generation, these are deductible, provided that the expenditures have been audited by an independent auditor and approval from the DGT has been obtained
	Sales, General & Administation					
	i.	Salaries and wages	✓	✓	✓	
	ii.	Costs of specified BIKs in the Contract Area	✓	x	✓	For Second Generation, these are not deductible unless the holder obtains remote area approval from the DGT
	iii.	Research expenses	✓	✓	✓	For the Second Generation, this should be performed in Indonesia
	iv.	Travel expenses	✓	✓	✓	Only for business purposes
	v.	Technical fees	✓	✓	✓	

No	Item		First Generation	Second Generation	Third Generation	Remarks
	vi.	Management fees and other fees for services performed abroad	✓	✓	✓	
	vii.	Communication and office expenses	✓	✓	✓	
	viii.	Dues and subscriptions	✓	✓	✓	
	ix.	Advertising and other selling expenses, public relations, and marketing	✓	✓	✓	
	x.	Legal and auditing expenses	✓	✓	✓	
	xi.	General overhead expenses	✓	✓	✓	
	xii.	Exploration expenses	✓	✓	✓	
	xiii.	Other relevant expenses	✓	✓	✓	
	xiv.	Reserve for reclamation	Silent	✓	✓	For the Third Generation, this is subject to a deposit being placed in a State-Owned bank, audited by a public accountant, and approved by the DGT
	g. Interest deductibility					
		Maximum DER	1.5 to 1	4 to 1[7] refer to PMK-169	Not Applicable	
		Maximum DER for Investments <=US$ 200m	Not Applicable	Not Applicable	5 to 1	
		Maximum DER for Investments >US$ 200m	Not Applicable	Not Applicable	8 to 1	

No	Item			First Generation	Second Generation	Third Generation	Remarks
	h. Tax loss carried forward			Four years (losses before the fifth anniversary of the Operating Period can be utilised in any year)	Five years	Eight years	
4	**WHT rates**						
		i.	Dividends, interest and royalties	10%	15% for domestic taxpayers, 20% for foreign taxpayers	15% for domestic taxpayer, 20% for foreign taxpayer	For the Second and Third Generation, the reduced tax rate is available under a tax treaty; However, please note that the WHT rates under CCoWs may be irrelevant, based on PMK-39
		ii.	Dividends (founder shareholders)	10%	Silent	7.5%	
		iii.	Rental, technical fees, management fees and other service fees (domestic/ foreign)	10%	2% to 20%	15%/20% of deemed net income	
		iv.	EIT	Applicable*)	Applicable*)	Applicable*)	
5	**VAT rates**						
		i.	VAT on coal sales	Not Applicable*	Exempted*)	10% on domestic sales; 0% on export sales	Third Generation CCoW VAT obligations are grandfathered to the 1994 VAT Law. Any VAT that is paid should be creditable/ refundable
		ii.	VAT on domestic purchases	Not Applicable*	10% paid to vendor*)	10% collected by the mining company	Input VAT cannot be credited/refunded by Second Generation CCoW holders, but this is deductible for CIT purposes
		iii.	VAT on import	Not Applicable*	10% paid to Custom Office*)	Could be exempted in accordance with the prevailing regulations	
		iv.	VAT on offshore services	Not Applicable	10% on a self-assessment basis*)	10% on self assessment basis	

No	Item	First Generation	Second Generation	Third Generation	Remarks
6	**Sales Tax rates**	2 - 2.5% on domestic services that are provided to contractors; and 0 - 5% on goods (for one Contractor only)	Not Applicable	Not Applicable	The Sales Tax was repealed in 1984, when VAT was introduced; A list of services (and goods) is provided in PMK-194t
7	**Import of capital goods:** **a. Import duty** **b. Article 22 Income Tax**	Exempted	a. Exempted/ reduced rates up to the 10th anniversary of the Operating Period, in accordance with the prevailing regulations; b. Could be exempted in accordance with the prevailing regulations	a.Exempted/ reduced rates up to the 10th anniversary of the Operating Period, in accordance with the prevailing regulations; b. Could be exempted in accordance with the prevailing regulations	Exemption from import duty is subject to either CCoW or BKPM Master List approval
8	**Other taxes and levies**				
	a. Regional taxes (e.g. motor vehicles and street lighting levies)	Regional Development Tax (IPEDA): maximum of US$ 100,000 a year	Applicable*	Follows the prevailing Regional Tax Law at a rate not exceeding the prevailing rate at the signing date	
	b. Land and building tax	Silent	0.5% x 40% of the sale value of PBB objects*) (refer to PER-47)	Pre-production period: equal to deadrent; Operating production period: deadrent plus 0.5% x 30% of gross revenue from the mining operations	
9	**Stamp duty**	1/1000 of the total loan amount	Rp3,000/ Rp6,000*)	Silent	

Note:
*) follows the prevailing tax laws and regulations

Summary of Mineral CoW Generations

No	Item	Third Generation	Fourth Generation	Fifth Generation	Sixth Generation	Seventh Generation	Remarks
1	**Dead rent – in US$ per hectare per annum, unless stated otherwise:**						
	a. General Survey	0.01 - 0.03	0.025 - 0.05	0.025 - 0.05	0.025 - 0.05	0.025 - 0.05	-
	b. Exploration	0.08 - 0.2	0.1 - 0.35	0.1 - 0.35	0.1 - 0.35	0.1 - 0.35	
	c. Feasibility	0.2	0.5	0.5	0.5	0.5	
	d. Construction	0.2	0.5	0.5	0.5	0.5	
	e. Operation	1.00 - 2.00	1.50 - 3.00	1.50 - 3.00	1.50 - 3.00	1.50 - 3.00	
2	**Production royalty rate (%)**	Annex E	Annex F	Annex F	Annex F	Annex F	Annex F of the CoW usually provides details of the royalty rates.
3	**CIT:**						
	a. Tax Rates	Follows the prevailing laws, but not higher than: - 35% for the first five years of the Operating Period; - 40% for the second five years of the Operating Period; - 45% thereafter.	Maximum of 35%	Maximum of 35%	Incremental CIT rate up to 30% (or lower rate, subject to a GR)	Incremental CIT rate up to 30% (or lower rate, subject to a GR)	-
	b. Depreciation rates						
	Non-building assets:						
	i. Straight line	12.5%	Not Applicable	Groups 1 and 2 follow ITL 1984 Group 3: 12.5%	10% -50% (for tangible assets located in the Contract Area); otherwise 5%-25%	10% -50% (for tangible assets located in the Contract Area); otherwise 5%-25%	For the fifth generation, the tax depreciation rates only apply to tangible assets that are located in the Contract Area. Otherwise, the provisions under the 1984 Income Tax Law should prevail
	ii. Declining balance	Not Applicable	25%	Groups 1 and 2 follow ITL 1984	20% - 100% (for tangible assets located in the Contract Area); otherwise 10%-50%	20% - 100% (for tangible assets located in the Contract Area); otherwise 10%-50%	-
	Building assets:						
	i. Straight line	12.50%	25%	12.50%	10%-20% (for tangible assets that are located in the Contract Area); otherwise 5%-10%	10%-20% (for tangible assets that are located in the Contract Area); otherwise 5%-10%	-
	ii. Declining balance	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	-
	c. Amortisation rates						
	a. Straight line	12.5%	Not Applicable	25.0%	10% -50%	10% -50%	Under most CoWs, the costs incurred prior to commercial operation may be deferred and amortised
	b. Declining balance	Not Applicable	25%	Not Applicable	20% - 100%	20% - 100%	-
	d. Accelerated Depreciation						
	Non-building assets:	25%	Not Applicable	Not Applicable	Not Applicable	Not Applicable	For the third generation, accelerated depreciation can only be claimed within any one of the first four years of the life of the assets
	Building assets:	10%	Not Applicable	Not Applicable	Not Applicable	Not Applicable	

No	Item		Third Generation	Fourth Generation	Fifth Generation	Sixth Generation	Seventh Generation	Remarks
	e. Investment allowance		20% of total investment	Not Applicable	Not Applicable	Not Applicable	Not Applicable	At the rate of 5% a year
	f. Deductible expenses:							
	Operating Expenses:							
	i.	Cost of materials, supplies, equipment and utilities	✓	✓	✓	✓	✓	-
	ii.	Expenses for contracted services	✓	✓	✓	✓	✓	-
	iii.	Premiums for insurance	✓	✓	✓	✓	✓	-
	iv.	Damage/losses not compensated for by insurance	✓	✓	✓	✓	✓	-
	v.	Payments of royalties or other payments in respect of patents, designs, technical information, and services	✓	✓	✓	✓	✓	Third Generation - payment to affiliates is subject to approval from the DGT
	vi.	Losses from obsolescence or destruction of inventory	✓	✓	✓	✓	✓	-
	vii.	Rentals	✓	✓	✓	✓	✓	-
	viii.	Deadrent, surface rent, production royalties, stamp duty, and other levies	✓	✓	✓	✓	✓	-
	ix.	Sales Tax	✓	Silent	Silent	Silent	Silent	-
	x.	Uncredited VAT	Silent	✓	✓	✓	✓	-
	xi.	Expenses for treating, processing, repairs and maintenance, handling, storage, transportation and shipping	✓	✓	✓	✓	✓	-
	xii.	Expenses for commissions and discounts	✓	✓	✓	✓	✓	-
	xiii.	Environmental expenses	Silent	Silent	Silent	✓	✓	-
	xiv.	Expenses incurred prior to the establishment of the company and expended by a shareholder	✓	✓	✓	✓	✓	It is deductible, provided that the expenditures have been audited by an independent auditor and approval from the DGT has been obtained

No	Item		Third Generation	Fourth Generation	Fifth Generation	Sixth Generation	Seventh Generation	Remarks
	Sales and General & Administration:							
	i.	Salaries and wages	✓	✓	✓	✓	✓	-
	ii.	Costs of specified BIKs in the contract area	✓	✓	✓	✓	✓	-
	iii.	Research expenses	✓	✓	✓	✓	✓	-
	iv.	Travel expenses	✓	✓	✓	✓	✓	Only for business purposes
	v.	Technical fees	✓	✓	✓	✓	✓	-
	vi.	Management fees and other fees for services performed abroad	✓	✓	✓	✓	✓	-
	vii.	Communication and office expenses	✓	✓	✓	✓	✓	-
	viii.	Dues and subscriptions	✓	✓	✓	✓	✓	-
	ix.	Advertising and other selling expenses, public relations, and marketing expenses	✓	✓	✓	✓	✓	-
	x.	Legal and auditing expenses	✓	✓	✓	✓	✓	-
	xi.	General overhead expenses	✓	✓	✓	✓		-
	xii.	Exploration costs	✓	✓	✓	✓	✓	-
	xiii.	Other relevant expenses	✓	✓	✓	✓	✓	-
	xiv.	Reserve for reclamation	Silent	Silent	Silent	✓	✓	Subject to a deposit being placed in a State-Owned bank, audited by a public accountant, and approved by the DGT
	g. Interest deductibility:							
	Maximum debt to equity ratio		1.5 to 1	3 to 1	Not Applicable	Not Applicable	Not Applicable	-
	Maximum debt to equity ratio for Investment <=US$200m		Not Applicable	Not Applicable	5 to 1	5 to 1	5 to 1	-
	Maximum debt to equity ratio for Investment >US$200m		Not Applicable	Not Applicable	8 to 1	8 to 1	8 to 1	-
	h. Tax losses carried forward		Four years (a loss before the fifth anniversary of the Operating Period can be utilised in any year)	Eight years	Five to eight years	Eight years	Eight years	-
4	**WHT rates:**							
	i.	Dividends, interest and royalties	10%	15% for domestic taxpayers; 20% for foreign taxpayers	15% for domestic taxpayers; 20% for foreign taxpayers	15% for domestic taxpayers; 20% for foreign taxpayers	15% for domestic taxpayers; 20% for foreign taxpayers	Please note that the WHT rates under CoWs may be irrelevant based on PMK-39
	ii.	Dividends (founder shareholder)	See above	See above	See above	7.5%	7.5%	-
	iii.	Technical, management fees and others	Prevailing law	2% to 20%	9% for domestic taxpayers; 20% for foreign taxpayers	15% of deemed net income/20%	15% of deemed net income/20%	-
	iv.	Rentals	Prevailing law	15% for domestic taxpayers; 20% for foreign taxpayers	15% for domestic taxpayers; 20% for foreign taxpayers	15% of deemed net income/20%	15% of deemed net income/20%	-
	v.	EIT	Applicable	Applicable	Applicable	Applicable	Applicable	Follows the prevailing tax laws and regulations

No	Item	Third Generation	Fourth Generation	Fifth Generation	Sixth Generation	Seventh Generation	Remarks
5	**VAT rates:**						
	i. VAT on sales	Silent	10% on domestic sales; 0% on export sales	10% on domestic sales; 0% on export sales	10% on domestic sales; 0% on export sales	10% on domestic sales; 0% on export sales	The fifth generation VAT obligations are grandfathered to the 1984 VAT Law
	ii. VAT on domestic purchases	Silent	10% paid to vendor	10% collected by the mining company	10% collected by the mining company	10% collected by the mining company	The sixth and seventh generations VAT obligations are grandfathered to the 1994 VAT Law
	iii. VAT on imports	Silent	Deferred up to the 10th anniversary of the Operating Period	Deferred up to the 10th anniversary of the Operating Period[7]	Could be exempted, in accordance with the prevailing regulations	Could be exempted, in accordance with the prevailing regulations	-
	iv. VAT on offshore services	Silent	10% on a self assessment basis	10% on a self assessment basis	10% on a self assessment basis	10% on a self assessment basis	-
6	**Sales Tax rates**	Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	The Sales Tax was repealed in 1984, when VAT was introduced
7	**Import of capital goods**: a. Import Duty b. Article 22 Income Tax	a. Exempted up to the 10th anniversary of commercial production; b. Silent	a. Exempted/reduced rates up to the 10th anniversary of the Operating Period, in accordance with the prevailing regulations; b. Silent	a. Exempted/reduced rates up to the 10th anniversary of the Operating Period[7], in accordance with the prevailing regulations; b. Silent	a. Exempted/reduced rates up to the 10th anniversary of the Operating Period, in accordance with the prevailing regulations; b. Could be exempted in accordance with the prevailing regulations	a. Exempted/reduced rates up to the 10th anniversary of the Operating Period, in accordance with the prevailing regulations; b. Could be exempted in accordance with the prevailing regulations	Exemption of import duty is subject to either CoW or BKPM Master List approval
8	**Other taxes and levies:**						
	a. Regional taxes (e.g. motor vehicles and street lighting levies)	- Regional charges - Regional Development Tax ("IPEDA"): amount equal to deadrent and an amount based on the non-public area	Applicable	Applicable	Applicable	Applicable	Generally capped at the rate not exceeding the rate prevailing at the CoW signing date
	b. Land and building tax	Silent	Applicable	Applicable	Applicable	Applicable	-
	c. Stamp duty	1/1000 of the total loan	Applicable	Applicable	Applicable	Applicable	-

About PwC

The firms of the PwC global network (www.pwc.com/id) provide industry-focused assurance, tax, legal, advisory, and consulting services for public and private companies. More than 327,000 people in 152 countries connect their thinking, experience and solutions to build trust and enhance value for clients and their stakeholders.

PwC is organised into lines of service, each staffed by highly qualified experienced professionals who are leaders in their fields, providing:

Assurance provide assurance over any system, process or controls and over any set of information to the highest PwC quality.

- Financial Statement Audit
- Risk Assurance:
  - Governance, Risk and Compliance
  - Digital Trust Solutions
  - Internal Audit
- Capital Markets & Accounting Advisory Services:
  - Accounting Advisory Services
  - Capital Market Services
  - Integrated Financial Reporting
- ESG Reporting and Assurance

Tax Services optimises tax efficiency and contribute to overall corporate strategy through the formulation of effective tax strategies and innovative tax planning. Some of our value-driven tax services include:

- Corporate Tax
- International Tax
- Transfer Pricing (TP)
- Mergers and Acquisitions (M&A)
- VAT
- Tax Disputes
- International Assignments
- Customs
- Investment and Corporate Services
- Tax Technology & Strategy
- Carbon Tax Advisory

Deals Advisory implements an integrated suite of solutions covering deals and transaction support from deal strategy through to execution and postdeal services:

- Business Recovery Services
- Capital Projects & Infrastructure
- Corporate Finance
- Valuation
- Deal Strategy
- Delivering Deal Value
- Transaction Services
- ESG and Energy Transition Services

Consulting helps organisations to work smarter and grow faster. We consult with our clients in order to build effective organisations, to innovate and grow, to reduce costs, to manage risk and regulations, and to leverage talent. Our aim is to support you in designing, managing, and executing lasting beneficial change:

- Digital Transformation
- Risk
- Strategy

Legal Services provides solutions of the highest quality through the provision of cutting edge legal solutions to support and facilitate legal developments in Indonesia. We work with you to understand your commercial objectives and offer you seamless end-to-end service across the lifecycle of your project. Our core value is providing legal services that put the needs and priorities of our clients first, while continuously improving our approach and continuing to do business ethically. Our legal services include:

- Mergers & Acquisitions and Corporate
- Advisory
- Finance and Financial Regulation
- Capital Markets
- Regulatory


Photo source: PT Antam Tbk

For companies operating in the Indonesian mining sector, there are some compelling reasons to choose PwC Indonesia as your professional services firm:

- The PwC network is the leading adviser to the mining industry, both globally and in Indonesia, working with more explorers, producers and related service providers than any other professional services firm. We have operated in Indonesia since 1971 and have over 2,800 professional staff, including 90 partners and technical advisors, specialised in providing assurance, advisory, tax and legal services to Indonesian and international companies.
- Our Energy, Utilities and Resources ("EU&R") practice in Indonesia comprises over 300 dedicated professionals across our lines of service. This body of professionals brings deep local industry knowledge and experience with international industry expertise and provides us with the largest group of industry specialists in the Indonesian professional services market. We also draw on the PwC global EU&R network which includes more than 21,300 people focused on serving energy, power and mining clients.
- Our commitment to the mining industry is unmatched and demonstrated by our active participation in industry associations around the world and our thought leadership on the issues affecting the industry. Through our involvement with the Indonesian Mining Association, Indonesian Coal Mining Association and Indonesian mining companies, we help shape the future of the industry.
- Our client service approach involves learning about your organisation's issues and seeking ways to add value to every task we perform. Detailed industry knowledge and experience ensures that we have the background and understanding of industry issues and can provide sharper, more sophisticated solutions that help clients accomplish their strategic objectives.

Contact us to discuss your plans for investment in the Indonesian mining sector.

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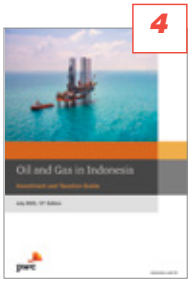

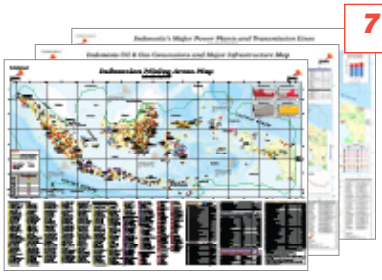

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