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Regulation on The Taxation of Financial Technology Implementation Services

To follow up on the enactment of Law No. 7 of 2021 on The Harmonisation of Tax Regulations, Indonesia's Minister of Finance (the "MOF") has issued 14 implementing regulations, one of which is MOF Regulation No. 69/PMK.03/2022 on the Income Tax and Value Added Tax on the Organization of Financial Technology ("MOF Reg 69/2022") issued on 30 March 2022, which came into force on 1 May 2022. This Advisory is intended to give a brief information to the Fintech players on the new regulation that may have impact on them.

MOF Reg 69/2022 provides clarity regarding the tax obligations of financial technology providers and users in Indonesia. This regulation mainly discusses the two following topics:

1. Income Tax in Peer-to-Peer ("P2P") lending transactions; and
2. Value Added Tax ("VAT") on the provision of financial technology services.

The following are the key points that must be considered regarding the two main topics above.

A. INCOME TAX IN P2P LENDING TRANSACTIONS

1. The Type of Funds Considered Income that is subject to Income Tax in a P2P Lending Transaction and the Applicable Withholding Tax Rate

In a P2P lending transaction, the lender receives income in the form of interest on the loan (or anything equivalent to this according to Sharia principles) paid by the borrower through the P2P lending provider ("Loan Interest"). This Loan Interest is categorized as income of the lender that it must report in its annual tax return.

The Loan Interest is subject to income tax at the following withholding tax rates, which rates are differentiated according to the type of taxpayer the lender is:

Type of Lender Taxpayer	Withholding Tax Rate
Resident Taxpayers and Permanent Establishments	15% (fifteen percent) of the gross amount of the Loan Interest (Article 23 Income Tax)
Foreign Taxpayers that are not Non-Permanent Establishments	20% (twenty percent) of the gross amount of the Loan Interest (Article 26 Income Tax)

MOF Reg 69/2022 explains to P2P lending providers that:

- a. the lender's Loan Interest (that is paid by the borrower through the P2P lending provider) is not considered a cost and cannot be calculated as a deduction from the P2P lending provider's gross income for determining the amount of the P2P lending provider's taxable income.

However, if the Loan Interest that is paid by the borrower to the P2P lending provider is higher than the actual Loan Interest that the P2P lending provider then forwards to the lender, this difference is deemed income that must be reported in the P2P lending provider's annual tax return; and

- b. P2P lending providers that hold a license or are registered with the Financial Services Authority ("OJK") ("**Licensed P2P Lending Providers**") may receive a fee, commission, *ujrah* or other reward (in any form equivalent to them) from the lender or borrower for the organization of the P2P lending (collectively "**Rewards**"). Neither the borrower nor the lender needs to deduct income tax from these Rewards. However, these Rewards must be reported in the Licensed P2P Lending Providers' annual tax return.

2. The Party Responsible for Withholding the Income Tax Due on the Lender's Loan Interest

MOF Reg 69/2022 names the Licensed P2P Lending Provider as the party responsible for withholding the income tax due on the lender's Loan Interest. However, if the Loan Interest is not paid by the borrower to the Lender through a Licensed P2P Lending Provider, the borrower itself that must withhold the income tax due on the lender's Loan Interest.

When withholding the income tax due on the lender's Loan Interest, the Licensed P2P Lending Provider has the following obligations, among others:

- a. to create proof of its withholding the income tax due and to provide the proof to the lender;
- b. to deposit the Article 23 Income Tax and Article 26 Income Tax which has been deducted into the State Treasury's account; and
- c. to report the income tax withheld.

B. THE VAT DUE ON THE PROVISION OF FINANCIAL TECHNOLOGY SERVICES

The following table describes the key services/goods provided by Financial Technology Providers that are and are not subject to VAT:

Financial Technology Operational Services the fees for which are subject to VAT	Services that are Subject to VAT	Services/Goods that are Not Subject to VAT (Exempt from VAT)
Payment Services	<ol style="list-style-type: none"> 1. Electronic Money services, including: <ol style="list-style-type: none"> a. registering Electronic Money holders; b. providing top-ups; c. making transaction payments; d. transferring funds; and e. making cash withdrawals. 2. Electronic Wallets services, including: <ol style="list-style-type: none"> a. providing top-ups; b. making cash withdrawals through other parties cooperating with Electronic Wallet organizers or using the delivery channels of other parties; c. making transaction payments; d. making bill payments; e. transferring funds; and f. providing pay later services. 3. Payment Gateways services, including: <ol style="list-style-type: none"> a. forwarding payment transaction data (by facilitators) from merchants to acquirers or issuers of Card-Based Payment Instruments; and b. forwarding payment transaction data (by 	<p>Goods: Money in the form of Electronic Money or Electronic Wallet media, including bonus points, top up points, reward points, and loyalty points.</p> <p>Services: Delivery of funds transfer services within the same bank to customers holding giro, time deposits, certificates of deposit, savings, and/or other equivalent forms.</p>

Financial Technology Operational Services the fees for which are subject to VAT	Services that are Subject to VAT	Services/Goods that are Not Subject to VAT (Exempt from VAT)
	<p>facilitators) from merchants to acquirers or issuers of Card-Based Payment Instruments, and end settlement from acquirers.</p> <p>4. Switching services; 5. Clearing services; 6. End Settlements services; and 7. Transferring funds services, including using blockchain technology or distributed ledger services for transferring the funds.</p>	
The Organization of Investment Settlement Transactions	Providing integrated electronic communication facilities that support the settlement of securities transactions through book-entries.	-
Capital Raising Organization	Equity crowd funding (i.e. providing services for securities offers made by issuers to sell securities directly to investors through an open electronic system network).	<p>Services: Placement of funds or financing services provided by investors.</p> <p>Goods: Securities and other financial instruments delivered to investors through electronic communication facilities provided by the crowdfunding operator which constitute securities in accordance with the provisions of laws and regulations.</p>
P2P Lending	-	<p>Services: Placement of funds, lending, or financing services provided by lenders.</p>

Financial Technology Operational Services the fees for which are subject to VAT	Services that are Subject to VAT	Services/Goods that are Not Subject to VAT (Exempt from VAT)
Investment Management	-	<p>Services: Placement of funds services provided by investors to issuers of securities or other financial instruments through electronic communication facilities provided by entrepreneurs engaged in investment management activities.</p> <p>Goods: Securities and other financial instruments referred to in the above 'Services' section, which constitute securities in accordance with the provisions of laws and regulations.</p>
Online Insurance Product Provision Services	This includes providing electronic communication facilities in order to facilitate transactions between insurance companies and policy holders, at least in the form of travel insurance product offerings provided by E-Commerce Operators.	Services: Online insurance services provided by insurance companies.
Market Support Services	This includes providing product information comparison data and providing financial service comparison data.	-
Digital Financial Support Services and Other Financial Services	This includes: a. eco crowdfunding; b. Islamic digital financing, <i>ewaqf</i> , and <i>e-zakat</i> ; c. robo advice and credit scoring; d. trading invoices; e. vouchers or tokens; and f. blockchain application based products.	-

Financial Technology Providers that provide the above services that have been confirmed to be taxable entrepreneurs must collect, deposit and report the VAT payable on the fees charged for the services that are subject to VAT which currently is 11% (eleven percent).

Tax is due on any form of compensation paid, such as fees, commissions, merchant discount rates (specifically for services provided by payment service providers), and other considerations in any name or form received by the above Financial Technology Providers.

C. Sanctions

The Financial Technology Providers who do not comply with their obligation to withhold, deposit and report Income Tax or their obligation to collect, deposit and report the required VAT will be subject to the sanctions that are provided under the prevailing regulations, which in general and among others consist of the following:

1. Administrative Sanctions:
 - a. fines; and
 - b. interest.
2. Criminal Sanctions.



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