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Challenges in Implementing the Global Minimum Tax Standard Versus Tax Incentives for Investors in Indonesia's New Nusantara Capital

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Abstract. Tax incentives continue to be a favoured instrument used by the Indonesian government to attract investors, especially in Indonesia's new capital, Nusantara. These incentives result in low to zero income tax burdens. However, as a G20 member, Indonesia is committed to implementing the Global Minimum Tax (GMT). This commitment to the GMT poses new challenges when the applied incentives result in tax burdens below 15%. This article discusses the urgency, challenges, and sustainability of income tax incentive policies in the new capital in the context of the concurrent implementation of the GMT. Utilizing qualitative methods, this research was based on data collection through a literature review, document analysis, and interviews with key informants. The findings suggest that the Indonesian government considers it necessary to implement incentives for investors, particularly in the new capital, Nusantara, to provide legal certainty. The government faces challenges in formulating policies, particularly related to the complexity of interactions among interested parties. Tax incentive policies will be applied while

the government awaits global developments related to the GMT. The government is also considering redesigning tax incentives after the official implementation of the GMT, potentially introducing adjustments in the form of Qualified Refundable Tax Credits (QRTC) and Marketable Transferable Tax Credits (MTTC).

Keywords: tax incentives; Global Minimum Tax; Qualified Refundable Tax Credit (QRTC); Marketable Transferable Tax Credit (MTTC); Nusantara Capital; Indonesia.

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Introduction

The concept of the Global Minimum Tax (GMT) under OECD's Pillar Two, with the implementation of a minimum rate of 15% and a top-up tax, presents a new challenge for developing countries. According to Mullins (2022), the benefits that developing countries may derive from Pillar Two are likely to be more limited compared to developed economies such as Chinese Taipei and the Republic of Korea. This is due to the presence of numerous parent companies of multinational enterprise groups (MNE) located in these developed countries. The impact of the reform on tax revenues for developing countries, especially in Asia, is likely to be minor. However, the ultimate consequences of this reform remain uncertain.¹ The GMT concept was agreed upon at the G20 Finance Ministers and Central Bank Governors meeting under the Italian Presidency on July 9, 2021.²

¹ Mullins, P. (2022). *Taxing developing Asia's digital economy*. Asian Development Bank. <https://www.adb.org/sites/default/files/institutional-document/782851/ado2022bp-taxing-developing-asia-digital-economy.pdf>.

² G20 Finance Ministers and Central Bank Governors' Meeting. (December 20, 2023). *Italian G20 Presidency*. <http://www.g20italy.org/italian-g20-presidency/ministerial-meetings/g20-finance-ministers-and-central-bank-governors-meeting.html>.

Tax incentives are the instruments that can and are often used by developing economies to attract investment interest.³ Some types of tax incentives widely used by various countries include reductions in income tax rates, tax credits, tax exemptions, tax allowances, and other similar measures. Developing countries compete to offer incentives that provide the greatest benefits for taxpayers and attract investment interest.⁴ Such measures may also be implemented through the establishment of designated regions governed by preferential regulatory regimes aimed at stimulating economic growth.⁵ Common tax incentive schemes implemented by many developing countries include exemptions from tax obligations and reductions in tax rates. Moreover, in 2015, more than half of the total 107 developing economies offered tax incentives in the form of tax holidays.⁶ The provision of tax incentives leads to losses in global revenue. This is because many multinational enterprises (MNEs) avoid taxes by shifting their profits to countries that offer tax incentives or have lower tax rates.⁷

Indonesia heavily relies on tax incentives as one of the instruments to attract foreign direct investment. This is evident from the increasing number of tax incentive policies in Indonesia each year. According to data from the 2021 Fiscal Policy Agency tax expenditure report, there were 137 tax incentive policies in Indonesia.⁸ This number is higher than the total in the previous year, 2020, which had 134 policies, and in 2019, which had 114 policies. The number of tax incentives in Indonesia is also expected to continue increasing, given the many new government projects that require funding through investment, one of which is the New Indonesian Capital City project, Nusantara. The development of this new capital city requires a budget of about IDR 466 trillion (or around USD 29.57 billion).⁹ Funding for this project does not

³ Zee, H. H., Stotsky, J. G., & Ley, E. (2002). Tax incentives for business investment: A primer for policy makers in developing countries. *World Development*, 30(9), 1497–1516.

⁴ Madies, T., & Jean-Jacques, D. (2024). *Fiscal Competition in Developing Countries: A Survey of the Theoretical and Empirical Literature*. Policy Research Working Paper WPS5311.

⁵ Vasiliev, S., Motsnaya, Yu., & Potapova, L. (2025). Territories with a special regime in BRICS Countries. *BRICS Law Journal*, 12(3), 81–100.

⁶ Kronfol, H. & Steenbergen, V. (2020). *Evaluating the Cost and Benefit of Corporate Tax Incentives*. World Bank Report. <https://documents1.worldbank.org/curated/en/180341583476704729/pdf/Evaluating-the-Costs-and-Benefits-of-Corporate-Tax-Incentives-Methodological-Approaches-and-Policy-Considerations.pdf>

⁷ According to the OECD. (2022). Report, the tax incentives utilized by developing countries include: Full and Temporary Tax Exemptions (25 countries), Tax Allowances (23 countries), Permanent Tax Rate Reductions (19 countries), Temporary Tax Rate Reductions (18 countries), Full and Permanent Tax Exemptions (9 countries), and Tax Credits (4 countries).

⁸ *Addressing the Needs of Tax Incentive Reform under Pillar Two—Global Minimum Tax Model Rules*. Policy Brief, T20. https://www.t20indonesia.org/wp-content/uploads/2022/10/TF7_Addressing-the-Needs-of-Tax-Incentive-Reform-Under-Pillar-Two-%E2%80%93-Global-Minimum-Tax-Model-Rules.pdf

⁹ USD to IDR, 1 USD = around IDR 15.757.

only depend on the State Budget (APBN) but also involves collaboration between the government, business entities, and private investment. The importance of this collaboration is reflected in a financing scheme that includes contributions from the private sector and collaboration with business entities. To encourage investment interest, the Indonesian government provides tax incentives while offering legal certainty to the private parties involved in this project.

The Indonesian government utilizes tax incentives by reducing the Corporate Income Tax rate to attract investor interest in the Nusantara Capital project. The Indonesian government has issued Government Regulation No. 12 of 2023 on Business Licensing, Business Ease, and Investment Facilities for Entrepreneurs in the Nusantara Capital (PP 12/2023), with the primary goal of creating legal certainty and stimulating investor interest to participate in the investment process related to the new Nusantara Capital. One of the strategies implemented by the Indonesian government through this regulation is the provision of tax incentives known as the tax holiday. Under this framework, the government offers a reduction in Corporate Income Tax of up to 100% for Corporate Taxpayers who decide to invest in the Nusantara Capital area, by meeting certain predefined criteria. This is expected to support economic growth, encourage investment, and accelerate development in the region. The provision of tax incentives in this new capital project has been effective since 2023. On the other hand, the GMT is planned to be implemented from 2024, and Indonesia is one of the G20 member countries committed to its implementation. The application of tax incentives with a reduction in Corporate Income Tax up to 100% will become irrelevant with the implementation of the Global Minimum Tax of 15%. Therefore, an analysis and review of the urgency and existence of the implementation of Income Tax Incentives in the new National Capital project after Indonesia's commitment to OECD Pillar 2 is necessary.

This article outlines why the Indonesian government continues to implement income tax incentives in the Nusantara Capital after Indonesia's commitment to OECD Pillar 2. Additionally, it addresses the obstacles and challenges in applying income tax incentives in the Nusantara Capital following this commitment. Ultimately, the article will analyze the sustainability of income tax incentives in the Nusantara Capital post Indonesia's commitment to OECD Pillar 2.

1. Research Methodology

This research utilizes a qualitative approach. A qualitative research approach is a method used in studies aimed at exploring and understanding the meanings held by individuals or groups within a social framework.¹⁰ In this case, the researcher

¹⁰ Creswell, J. W., & Creswell, J. D. (2018). *Research design: Qualitative, quantitative, and mixed methods approaches*. Sage Publications.

intends to thoroughly elucidate the urgency of implementing income tax incentive policies in the Nusantara Capital project, as well as the existence of such policies following the potential implementation of the Global Minimum Tax (GMT). This research focuses on the dilemma of implementing income tax incentive policies in the context of the Nusantara Capital project. The dilemma arises because the duration of these policies is expected to coincide with the implementation of the GMT, which is anticipated to nullify some benefits of the tax incentive policies.

The researchers will combine data from two primary sources, namely primary and secondary data. Primary data consists of information obtained from field studies through in-depth interviews with research subjects, aiming to gain a deeper understanding of the phenomenon under study. Meanwhile, secondary data refers to information obtained through a literature review relevant to the research topic, which will provide the theoretical foundation and context supporting this research.

The in-depth interviews conducted by the researchers were carried out with key informants. The questions posed during these interviews are structured and open-ended, designed to elicit responses and information from the informants' perspectives. These questions relate to the research problem topics, including the implementation of income tax incentive policies at the Nusantara Capital, the application of GMT in Indonesia, and the future existence of income tax incentive policies at the Nusantara Capital. The informants consist of representatives from the Indonesian Tax Authority, including (a) the representative of Fiscal Policy Office Analyst, (b) Directorate of Tax Agreement, Cooperation and International Tax, from sub directorate of Directorate General of Taxes. Then, government officer representing the Indonesian Ministry of Investment, from sub directorate Direct Investment Affairs. Representative from Directorate General of Customs and Excise, Ministry of Finance, and lastly taxation practitioners, and academics. Interviews and data collection were conducted between December 2023 and February 2024.

2. Income Tax Incentive in the Nusantara Capital

Through Law No. 3 of 2022, Indonesia has officially declared the relocation of the national capital from Jakarta to Nusantara, East Kalimantan. The Deputy IV of the Presidential Chief of Staff's Office (KSP) reported that the new capital city development project requires a budget of approximately Rp 466 trillion or around USD 29.57 billion. The Presidential Chief of Staff also stated that the funding for this project does not solely rely on the State Budget (APBN), but also involves collaboration between the government, business entities, and private investment. To attract investors, Indonesia offers specific tax incentives to investors in the Nusantara Capital, as outlined in Government Regulation No.12 of 2023 regarding Business Licensing, Business Facilitation, and Investment Facilities for Entrepreneurs in the Nusantara Capital. Details of these incentives can be found in the Annex I.

The Indonesian government emphasizes the development scheme of the Nusantara Capital project on cooperation with business entities through investment. During 2023, from the first phase of development preparations through to the third phase, the amount of investment that has entered the Nusantara Capital amounts to IDR 41.4 trillion, as reported by the Nusantara Capital Authority Agency. Furthermore, the Nusantara Capital has also secured 330 Letters of Intent (LOI) for investment interest. Additionally, to date, several investors have planned to construct various towers in the Nusantara Capital, although these investors are still considering legal certainty regarding investment. Citing a tax and legal advisor of prospective investors, “the factors of political stability and legal certainty are the primary concerns, ranking first and third along with bureaucratic processes when deciding on investments.”¹¹

Government Regulation in Lieu of Law (Perpu) No. 2 of 2022 on Job Creation fundamentally changes the regulations regarding investment in Indonesia. Before the existence of this regulation, Article 18 of the Investment Law provided the basic provisions and regulations concerning the types of facilities granted to investment in Indonesia. The provisions related to investment specify that the regulations concerning tax incentives for investment activities shall ultimately refer to the legislation in taxation, which is governed by Article 31A of the Income Tax Law. This article states that the incentives granted to taxpayers who make investments include a maximum net income reduction of 30%, accelerated depreciation and amortization, longer compensation for losses, and a 10% income tax imposition on dividends.

Fundamentally, there is a lack of a strong legal basis in the legislative rules discussing the income tax exemption from investments as regulated in Government Regulation No. 12 of 2023, which governs fiscal incentives in the Nusantara Capital. This situation indicates a discrepancy between Government Regulation No. 12 of 2023 and the Investment Law and Tax Law in terms of investment incentives. This condition fundamentally creates uncertainty due to differing interpretations and implementation of tax incentives for investors. Moreover, this situation also contradicts the applicable legal hierarchy in Indonesia and has created legal uncertainty regarding tax policy.¹² Ideally, the formulation of the basic provisions related to tax incentives in

¹¹ Based on an interview with the Tax and Legal Advisor of the investor, it was mentioned that the government emphasizes the Nusantara Capital project through public-private partnerships (PPP) and private investments. This is because the state budget (APBN) only covers approximately 20% of the project, with the remaining 80% expected to come from PPP and private investments. Certainty regarding the Nusantara Capital project, along with current political conditions, is crucial. The project is being implemented during the second term of President Joko Widodo but will remain incomplete by the end of his term. The end of his leadership raises concerns about whether the Nusantara Capital project will continue to be prioritized under the next president. As a result, the provision of tax incentives for the Nusantara Capital project is intended to offer certainty and demonstrate the government’s commitment to its development.

¹² In Indonesia, legal norms are structured in a hierarchy from the highest to the lowest regulation. Referring to Hans Kelsen’s concept in the context of the application of the legal structure in Indone-

the Nusantara Capital should refer to a structure that establishes the order or level of various types of laws and legal regulations within a legal system, and legal certainty is obtained when the legal hierarchy is followed with consistency and firmness. In a legal hierarchy, there are tiered norms according to the legal order where a lower norm applies, is sourced from, and is based on a higher norm.¹³

The uncertainty of providing income tax incentives in the Nusantara Capital is also reinforced by Indonesia's commitment to international agreements regarding the Global Minimum Tax. Under the Global Minimum Tax scheme, there is a rule for a global minimum tax of 15% for multinational companies that meet certain criteria. Through this policy, tax incentives that would result in an Effective Tax Rate (ETR) below 15% become ineffective. Providing corporate income tax reductions will cause the ETR to fall below 15% and lead to a top-up tax, ensuring that taxpayers will still pay a tax of 15%. The Indonesian government has prepared a Ministerial Regulation of Finance (RPMK) as a basis for the implementation of the global minimum tax in accordance with Pillar 2. The Director of International Taxation at the Directorate General of Taxes (DJP) reaffirms the Indonesian government's commitment to implementing the income inclusion rule (IIR) and qualified domestic minimum top-up tax (QDMTT) starting in 2024. The Minister of Finance's regulation serves as the implementing regulation from the provisions of tax incentives in the Nusantara Capital.

There are income tax incentives in Government Regulation No. 12 of 2023 that could be impacted by the Global Minimum Tax scheme, such as income tax exemptions that would cause the Effective Tax Rate (ETR) of taxpayers to be below 15%. When the GMT is officially implemented both in Indonesia and in the taxpayer's country of residence, these income tax incentives will not be effective, considering taxpayers will still pay a top-up tax for the difference between the global minimum rate of 15% and the ETR. This is evident from the criteria for taxpayers who receive incentives in the form of a reduction in Corporate Income Tax up to 100% as per Government Regulation No. 12 of 2023. On the other hand, the government is also anticipating sectors that might be impacted by providing a Corporate Income Tax reduction of only 85% as regulated in Article 32 paragraph (5) of Government Regulation No. 12 of 2023.

sia; See, Susanti, B. (2017). Menyoal Jenis dan Hierarki Peraturan Perundang-undangan di Indonesia. *Jurnal Jentera*, 128–143. (In Indonesian).

Article 7(1) of Law No. 12/2011 regulates the types and hierarchy of legislation, which consists of (1) The 1945 Constitution of the Republic of Indonesia, (2) Decrees of the People's Consultative Assembly, (3) Laws/Government Regulations in Lieu of Law, (4) Government Regulations, (5) Presidential Regulations, (6) Provincial Regulations, (7) Regency/Municipal Regulations. Following the enactment of Law No. 12/2011, issues related to the basic order of legislation are often not fully adhered to. It is common for the hierarchy of legislation to be unclear, the scope of content within a regulation to be too broad, and for there to be overlapping content between different regulations. See, Anggono, B.D. (2014). *Asas Materi Muatan yang Tepat dalam Pembentukan Undang-undang serta Akibat Hukumnya: Analisis Undang-undang RI yang Dibentuk Pada Era Reformasi 1999–2012*. Fakultas Hukum Universitas Indonesia. (In Indonesian).

¹³ Kelsen, H. (2010). *Theory of law and state*. Nusa Media.

Table 1: Illustration of Top Up Tax Calculation on Income Tax Payable with Tax Incentives

No	Description	Without tax incentive	Reduction CIT rate 100%	Reduction CIT rate 85%	Assumption
1	Net Profit	100,000,000	100,000,000	100,000,000	Assumption
3	Tax Base for CIT	100,000,000	100,000,000	100,000,000	
4	GloBE Income	100,000,000	100,000,000	100,000,000	
Top-Up Tax Calculation					
5	Covered Taxes	22,000,000	22,000,000	22,000,000	DPP x 22%*
6	Tax incentive (CIT Reduction)	0	22,000,000	18,700,000	
7	CIT Payable	22,000,000	0	3,300,000	
8	ETR	22%	0%	3%	CIT Payable/ GloBE Income
9	Top-Up Tax	0	15%	12%	15% – ETR

* Indonesia current corporate income tax rate

We can see that if taxpayers falling within the Global Minimum Tax (GMT) criteria receive a 100% tax incentive, there will likely be a 15% top-up tax collected by the country of residence as long as Indonesia has not implemented the Qualified Domestic Minimum Top-Up Tax (QDMTT). However, if taxpayers under the GMT criteria receive a tax incentive in the form of an 85% reduction in Corporate Income Tax, they still benefit by not paying the entire tax due, but only 15%, of which 3% is paid in Indonesia and 12% in the country of residence. The government's initial approach while awaiting the implementation of the GMT is to secure the tax base but still provide benefits to taxpayers. Table 1 shows that there is potential for a top-up tax to be charged to taxpayers once the Global Minimum Tax is officially implemented both in Indonesia and in the country of residence. This will prevent taxpayers from fully enjoying the tax incentives provided. Moreover, Indonesia will still lose 12% of its taxation rights if QDMTT is not implemented when the taxpayer's country of residence has already implemented GMT with the Income Inclusion Rule (IIR). This will reduce the attractiveness of the tax incentive itself for attracting investment to the Nusantara Capital.

3. Challenges in Implementing Income Tax in the Nusantara Capital

a. Policy Complexity

An initial challenge is the scale of the tax incentives in the Nusantara Capital, which are greater compared to ordinary tax incentives. The Minister of Investment or the Head of the Investment Coordinating Board (BKPM), through the Indonesia Maju Media Center on November 4, 2023, conveyed that no assessment of potential revenue loss has yet been conducted from the tax incentive policies provided in the Nusantara Capital. There is a significant difference in the criteria for granting various types of tax incentives in the Nusantara capital compared to the general tax incentives provided by the government, which should be a primary consideration in calculating the potential loss of state revenue.

Table 2 shows the differences in tax incentives in the Nusantara capital compared to other tax incentives in Indonesia. One type of tax incentive that exhibits a very striking difference is the tax holiday. The tax holiday or reduction in corporate income tax, as stipulated in Ministerial Regulation of Finance (PMK) No. 130 of 2020 regarding the Provision of Corporate Income Tax Reduction, states that a reduction in corporate income tax is granted for investments between IDR 100–500 billion with a maximum duration of 20 years. However, in Government Regulation No. 12 of 2023, the Indonesian government provides a corporate income tax reduction incentive for investments starting from a minimum of IDR 10 billion with a maximum duration of 30 years. Additionally, another difference can be seen in the type of super tax deduction incentive. The super tax deduction in the Nusantara Capital is granted with a maximum gross income reduction of 350%, whereas the reduction in gross income stipulated in PMK No. 128 of 2019 only allows a reduction with a maximum value of 200%.

Table 2: Differences in Tax Incentives in the Nusantara Capital Compared to Other Tax Incentives in Indonesia

No	Types of Tax Incentives	Tax Incentives in Nusantara Capital	Other Types of Tax Incentives in Indonesia
1	Tax Holiday	Minimum investment volume IDR 10 Billion (around USD 635,325) for maximum period 30 years (Government Regulation No. 12 of 2023)	Minimum investment volume IDR 100 Billion (around USD 6,353,256) for maximum period 20 years (GR No. 12 of 2023)
2	Superdeduction for Vocational Activities	Maximum reduction of gross income (deductible expenses) by 250% (Government Regulation No. 12 of 2023)	Maximum reduction of gross income (deductible expenses) by 100% (Ministry of Finance Regulation 128 of 2019)

3	Superdeduction for R&D	Maximum reduction of gross income (deductible expenses) by 350% (Government Regulation No. 12 of 2023)	Maximum reduction of gross income (deductible expenses) by 200% (Ministry of Finance Regulation 128 of 2019)
4	Superdeduction for charity	Maximum reduction of gross income (deductible expenses) by 200% (Government Regulation No. 12 of 2023)	Maximum reduction of gross income (deductible expenses) by 100% (Government Regulation No. 93 of 2020)
5	Final Income Tax 0% for SMEs	Revenue under IDR 50 billion is tax-exempt and granted to individual taxpayers and business entities (Government Regulation No. 12 of 2023)	A final income tax rate of 0.5% applies to individual and corporate taxpayers with revenues under IDR 4.8 billion (Government Regulation No. 23 of 2018)
6	Employment Income borne by Government	This incentive applies to all employees residing in the Nusantara Capital and there is no income limit	Income Tax Article 21 is borne by the government for employees who meet the criteria set out in Article 2 paragraph (3) of the Finance Ministerial Regulation No. 86 of 2020 (PMK No. 86 of 2020)
7	Income tax incentive for financial center	Tax Holiday of up to 25 years with a 100% exemption rate for banking and insurance, both conventional and Sharia, and 85% for other financial sectors	–
8	Corporate Income Tax incentive for relocating headquarters from abroad	Tax Holiday of 100% for the first 10 years and 50% for the following 10 years	–

Source: Ministry of Finance No. 128 year 2019 and Government Regulation No. 12 of 2023

The pronounced differences in tax incentives within the Nusantara Capital may be viewed as a deliberate attempt by Indonesia to accelerate the progression of the Nusantara Capital project. Nonetheless, these notable discrepancies in the criteria for granting tax incentives also highlight inconsistencies and potentially discriminatory practices within Indonesia's tax incentive framework. Furthermore, offering substantial tax incentives involves greater risks. For instance, when the Indonesian government provides extensive income tax rate reductions to taxpayers for a duration of 30 years, it potentially risks diminishing its revenue sources over that period, similar to other tax incentive schemes. A primary concern with offering prolonged tax incentives is the possible significant reduction in national revenue over an extended timeframe. This presents a substantial challenge for the government in formulating the implementing regulations for tax incentives in Nusantara Capital.

Another consideration that adds complexity to the formulation of this policy is the international tax context, particularly concerning Pillar 2 of the OECD Global Minimum Tax. GloBE (Global Anti-Base Erosion) is a taxation system designed to ensure that multinational corporations continue to contribute by paying taxes above the predetermined minimum effective rate, which is 15% (OECD, 2021). The implementation of a minimum tax of 15% is enforced with a top-up tax scheme that will be collected by the country of residence if the source country does not implement GMT with QDMTT. Therefore, there is a possibility that tax incentives in the form of a tax holiday may become ineffective.

b. Stakeholder Engagement

Another major challenge in implementing income tax incentives in the Nusantara Capital is managing the involvement of diverse stakeholders. In formulating policies related to this project, the government strives to engage various parties to create agreements that accommodate the interests of all involved. The business entity appointed as the project manager has conducted a series of discussions with academics and investors to evaluate various aspects, including control over investments for a specified period. One example of investor interests is the consideration of political stability and legal certainty, as previously explained. These two factors rank first and second as the primary factors in determining investment.¹⁴ Private parties that have held discussions with the development entity of Nusantara Capital are investors planning to build several residential towers in the Nusantara Capital. These private parties have expressed their desire to manage assets such as towers in the Nusantara Capital for a period of 10-15 years. After this period, it is expected that management rights can be returned to the government. However, from the government's perspective, a longer duration is expected given the considerable time needed for economic development in the Nusantara Capital. Therefore, tax incentive policies need to consider the interests of both parties so that investments in the Nusantara Capital can proceed smoothly.

Furthermore, the government is also making efforts to simplify the administration related to this project. The administrative simplification, which is embodied in the Minister of Finance Regulation (PMK) currently in the finalization stage, focuses on the provisions in the procedures for implementing tax incentives. This involves cooperation with the Online Single Submission (OSS) or the Integrated Electronic Business Licensing System.¹⁵ Therefore, collaboration is required between policy makers (BKF) and the OSS development team organized by the Investment Coordinating Board (BKPM) to ensure that the digitalization of administrative

¹⁴ Khoidin. (2019). *Hukum Penanaman Modal (Suatu Pengantar)*. Laksbang Justitia. (In Indonesian).

¹⁵ Ministry of Investment. *UU Cipta Kerja: Dorong Investasi, Ciptakan Lapangan Kerja*. <https://oss.go.id/informasi/artikel/uu-cipta-kerja--dorong-investasi,-ciptakan-lapangan-kerja>. (In Indonesian).

aspects is in accordance with policy formulations and coordinated with the policy implementation body, the Directorate General of Taxes.

4. Implementation of the Global Minimum Tax in Indonesia

Numerous countries, particularly developing nations, employ tax incentives as a mechanism to attract Foreign Direct Investment (FDI) to their regions. The OECD study in 2022 titled “Building an Investment Tax Incentives Database: Methodology and Initial Findings for 36 Developing Countries” illustrates the various tax incentives provided by these 36 nations.¹⁶ Prevalent tax incentive strategies among many developing countries include exemptions from tax liabilities and reductions in tax rates. Additionally, in 2015, over half of the 107 surveyed developing countries granted tax incentives in the form of tax holidays.¹⁷ Offering tax holidays of extended duration may be susceptible to exploitation for tax planning purposes by taxpayers.¹⁸ Such tax planning leads to tax competition, where taxpayers vie to relocate their profits to jurisdictions with more favourable tax rates.

Harmful tax competition remains a significant concern that has attracted widespread attention internationally. The Organization for Economic Co-operation and Development (OECD) has undertaken a variety of initiatives to address issues related to harmful tax competition. This commitment was evident as early as 1998 when the OECD published a report detailing criteria to identify nations engaging in adverse tax practices.¹⁹ Additionally, the OECD launched the Base Erosion and Profit Shifting (BEPS) Action Plan 5 on Harmful Tax Practices, specifically designed to counteract detrimental tax competition.²⁰ The latest initiative by the OECD to mitigate harmful tax competition is the implementation of a global tax agreement known as the Global Minimum Tax (GMT), also known as the Global Anti Base Erosion (GloBE).

According to data presented by the Investment Coordinating Board (BKPM), the four countries that are the primary domiciles of the majority of investors in Indonesia

¹⁶ Celani, A., Dressler, L., & Wermelinger, M. (2022). *Building an investment tax incentives database: Methodology and initial findings for 36 developing countries*. OECD Working Papers on International Investment No. 2022/01. OECD Publishing. https://www.oecd.org/content/dam/oecd/en/publications/reports/2022/02/building-an-investment-tax-incentives-database_c2eb9643/62e075a9-en.pdf

¹⁷ Kronfol, H. & Steenbergen, V. (2021). *Taxing Times: The Role of Investment Incentives in Economic Recovery and Growth*. World Bank.

¹⁸ Holland, D., & Vann, R. J. (1988). Income tax incentives for investment. In V. Thuronyi (Ed.), *Tax law design and drafting, Vol. 2* (Chapter 23). International Monetary Fund.

¹⁹ OECD. (1998). *Harmful Tax Competition: An Emerging Global Issue*. <https://www.oecd.org/ctp/harmful/1904176.pdf>

²⁰ OECD. (2025). *Action 5 Harmful Tax Practices*. <https://www.oecd.org/tax/beeps/beeps-actions/action5/>

throughout 2022 are Singapore, China, Hong Kong, and Japan.²¹ Singapore and Hong Kong will implement the Global Minimum Tax (GMT) in their countries starting in 2025, China in the second half of 2024, and Japan is expected to do so on April 1, 2024, by implementing the Income Inclusion Rule (IIR). Observing the development of the GMT implementation in these countries, Indonesia urgently needs to finalize regulations on the implementation of the GMT in Indonesia. The implementation of the Global Minimum Tax in Indonesia is mentioned in the Tax Harmonization Law, which will be enforced in 2024 through the Minister of Finance Regulation. The Director of International Taxation at the Directorate General of Taxes (DJP) reaffirms the Indonesian government's commitment to implement the income inclusion rule (IIR) and the qualified domestic minimum top-up tax (QDMTT) starting in 2024, even though it is still expected that this tax concession package will attract investors.²²

The type of tax incentive that will be most impacted by the implementation of the 15% global minimum tax rate under OECD Pillar 2 is the income tax incentive that results in an Effective Tax Rate (ETR) below 15%, such as tax holidays. The provision of tax incentives in the form of tax rate reductions will become ineffective after the introduction of the Global Minimum Tax (GMT). Further details on the types of tax holidays affected by GMT include:

1. Corporate Income Tax Rate Reduction for the financial center sector. Article 32(3) of Government Regulation No. 12 of 2023 states that domestic corporate taxpayers and permanent establishment forms conducting financial sector business activities in the Nusantara Capital Financial Center are granted a 100% reduction in Corporate Income Tax on the portion of income used for investment or financing the development, expansion, and economic activities in the Nusantara Capital and Partner Areas.

2. Corporate Income Tax Reduction for the Establishment and/or Relocation of Headquarters and/or Regional Offices. Article 35(1) of Government Regulation No. 12 of 2023 states that business entities that are foreign tax subjects establishing and/or relocating their headquarters and/or regional offices to the Nusantara Capital are granted a 100% reduction in Corporate Income Tax from the tax due for 10 years. Based on this information, there are potential GMT implications for taxpayers who receive and meet GMT provisions and will reduce their ETR. A Corporate Income Tax rate reduction in the Nusantara Capital of 100% and 85% will result in an ETR below 15%, causing the company to be subject to a top-up tax by the country of residence.

²¹ Ministry of Investment/Indonesia Investment Coordinating Board. (2021). *Laporan Kinerja Kementerian Investasi/Badan Koordinasi Penanaman Modal*. <https://ppid.bkpm.go.id/wp-content/uploads/2022/09/LAKIN-Kem-InvestasiBKPM-Tahun-2021.pdf>

²² The former Minister of Investment mentioned that the GMT would seem to benefit developed countries in attracting investment because businesses would focus on investing in their own developed countries. See, TP News. (2023). *Indonesia calls global minimum tax a "trick" by developed nations*. <https://transferpricingnews.com/indonesia-calls-global-minimum-tax-a-trick-by-developed-nations/>

An initial illustration with a 100% Corporate Income Tax rate reduction results in an ETR of 0% and a Top Up Tax of 15%. A similar situation applies with an 85% Corporate Income Tax reduction, which results in an ETR of 3% and a top-up tax of 12%. Therefore, a rate reduction of 85% is still not sufficient to anticipate GMT in the future.

3. Corporate Income Tax Reduction on the Transfer of Rights over Land and/or Buildings. Article 57(1) of Government Regulation No. 12 of 2023 states that taxpayers who transfer rights over land and/or buildings in the Nusantara Capital are granted an incentive for the reduction of Income Tax on the transfer of rights over land and/or buildings as referred to in Article 27(1) letter "i." The reduction in Corporate Income Tax is 100% and it is applicable until 2035.

Table 3: Illustration of Top-Up Tax Calculation with Corporate Income Tax Reduction

No.	Description	Tax Holiday 100%	Tax Holiday 85%	Explanation
1	Location	Indonesia		
2	The status of entity	Subsidiary		
Calculation				
3	Net Profit	100,000,000	100,000,000	
4	Corporate Income Tax	22,000,000	22,000,000	22% * Net Income (22% ID Corporate Income Tax)
5	CIT Reduction	-(22,000,000)	-(18,700,000)	
6	Income Tax Paid	0	3,300,000	
7	Effective Tax Rate	0%	3%	Income tax paid
8	Top-up tax	15%	12%	15%-ETR
Excess Profit Calculation				
9	Local asset	10,000,000	10,000,000	Assumption
10	SBIE	500,000	500,000	Local asset * 5%
11	Excess Profit	99,500,000	99,500,000	Net Profit – SBIE
12	Top-up tax calculation	14,925,000	11,641,500	Excess Profit * Top Up Tax

Source: Illustration by the authors

The Indonesian government has considered the potential for changes in the tax incentive policies of the Nusantara Capital, particularly the income tax incentives that

will be affected by the Global Minimum Tax policy.²³ These changes will, of course, take into account the developments in the implementation of the Global Minimum Tax and its consequences in Indonesia. The changes will occur in several stages:

- **Prioritizing the Implementation of the GloBE Rules and the QDMTT.** The first point of the policy changes in tax incentives in the Nusantara Capital will emphasize the implementation of the Global Minimum Tax (GMT) using the Qualified Domestic Minimum Top-Up Tax (QDMTT) method. In this context, QDMTT will be applied to ensure that, although tax incentives are provided to investors in the Nusantara Capital, the government can still benefit from the taxes that should be paid under the GMT rules. Thus, even if investors receive tax incentives, the government will collect an additional tax (top-up tax) if their Effective Tax Rate (ETR) is below the minimum percentage established by GMT.

- **Redesigning Tax Incentives.** The second point of the policy changes in tax incentives in the Nusantara Capital involves redesigning tax incentives. This is undertaken with the understanding that simply implementing the Qualified Domestic Minimum Top-Up Tax (QDMTT) is insufficient to maintain competitiveness. The form of the tax incentive will also change to prioritize tax incentives that do not reduce the Effective Tax Rate (ETR), thus continuing to benefit taxpayers. Such tax incentives could include a cash refund that helps to increase the ETR for taxpayers. The types of tax incentives to consider are the Qualified Refundable Tax Credit (QRTC) and Marketable Transferable Tax Credit.²⁴ Tax credits that meet the QRTC and MTTC criteria will be treated as additional income in the calculation of the ETR under the GloBE rules. Illustration of QRTC and MTTC calculations in the ETR computation.

Table 4: Illustration of ETR Calculation with QRTC and MTTC Incentives

No	Description	QRTC	MTTC	Explanation
	Assumption	<p>1. The tax credit conditions of the taxpayer meet the Qualified Refundable Tax Credit (QRTC) criteria with a value of 60,000,000</p> <p>2. The tax credit conditions of the taxpayer do not meet the QRTC criteria but qualify for the Marketable Transferable Tax Credit (MTTC) with a value of 50,000,000.</p>		

²³ Interview with the Fiscal Policy Office: In the drafting process, we are concurrently analyzing the existing tax incentives in Indonesia. Based on our analysis, the primary impact is on the tax holiday; the effect on other incentives is only moderate. However, once Indonesia implements the Global Minimum Tax, we will apply it through the Qualified Domestic Minimum Top-Up Tax (QDMTT). (2024, January 12).

²⁴ Interview with the Fiscal Policy Office: Going forward, tax incentives may be directed towards Qualified Refundable Tax Credits (QRTC) and Marketable Transferable Tax Credits if still within the realm of tax incentives.

1	Net profit	100,000,000	100,000,000	Assumption
2	Additional income QRTC/MTTC	60,000,000	50,000,000	
3	DPP PPh Badan	100,000,000	100,000,000	
4	GloBE Income	160,000,000	150,000,000	
Top-Up Tax Calculation				
5	Covered Taxes	22,000,000	22,000,000	DPP x 22%
6	Tax Holiday 100%	0	0	
7	Income tax payable	22,000,000	22,000,000	
8	ETR	14%	15%	PPh terutang / GloBE Income
9	Top-Up Tax	1%	0%	15% – ETR
Excess Profit Calculation				
10	Local Fixed Assets	150,000,000	150,000,000	Assumption
11	SBIE	7,500,000	7,500,000	Local Assets x 5%
12	Excess Profit	152,500,000	142,500,000	GloBE Income – SBIE
Top-Up Tax Value		1,906,250	475,000	Excess Profit x Tarif Top-Up Tax

Source: Illustration by the authors

The table illustrates the calculation of the Effective Tax Rate (ETR) with the implementation of the Qualified Refundable Tax Credit (QRTC) and the Marketable Transferable Tax Credit (MTTC). These tax incentives are treated as additional income in the ETR calculation under the GloBE Rules, which do not result in a reduction of the ETR. Such types of tax incentives should be considered by the government for implementation as a response to the Global Minimum Tax (GMT). This is because these tax incentives still provide benefits to taxpayers by not lowering the ETR or increasing the amount of top-up tax that taxpayers must pay.

Conclusion

The tax incentive policy in the Nusantara Capital is designed to attract investment by offering legal certainty amidst challenges. However, its effectiveness is limited due to several issues. Firstly, tax incentives are not the primary determinant of investor interest, and the introduction of the Global Minimum Tax (GMT) may further reduce their appeal, as it clashes with the intended favorable tax incentives.

Secondly, discrepancies between regulations create legal uncertainty, undermining confidence in the policy. Additionally, challenges arise from the need to harmonize diverse tax incentives within a single framework and to align with international tax commitments. Effective implementation requires collaboration among various stakeholders, including the government and the private sector, to address regulatory complexities and ensure alignment with GMT provisions.

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Annex I

Table 1: Tax Incentives for Investments in the Nusantara Capital

No	Types of Tax Incentives	Explanation
1	Tax Holiday	Investment limit of IDR 10 billion for a maximum duration of 30 years
2	Superdeduction for vocational	Maximum reduction of Gross Income up to 250% (actual cost + additional reduction of up to 150%)
3	Superdeduction R&D	Maximum reduction of Gross Income up to 350% (actual cost + additional reduction of up to 250%)
4	Superdeduction for charity affairs	Maximum reduction of Gross Income up to 200% (actual cost + additional reduction of up to 100%)
5	Final income tax 0% for SMEs	Revenue under IDR 50 billion is not subject to tax and is granted to individual taxpayers and business entities

6	Employment income tax borne by government	This incentive applies to all employees residing in the Nusantara Capital and there is no income limit
7	Income tax incentive for financial center	Tax Holiday of up to 25 years with a 100% exemption rate for banking and both conventional and Islamic insurance, and 85% for other financial sectors
8	Corporate Income Tax incentive for relocating headquarters from abroad	Tax Holiday of 100% for 10 years and 50% for the subsequent 10 years
9	VAT and Sales Tax on Luxury Goods	Value Added Tax (VAT) is not collected on the transfer of properties, electric vehicles, property rental services, construction services, and waste management services

Source: Government Regulation No. 12 of 2023 regarding Business Licensing, Business Facilitation, and Investment Facilities for Entrepreneurs in the Nusantara Capital

Additional explanations regarding incentives for investors investing in the National Capital:

a. Tax incentives in the form of a tax holiday are also granted to the financial sector in the Nusantara Capital Financial Center. The Nusantara Capital Financial Center is designated as a technology development center and a financial services hub. Article 32 of Government Regulation No. 12/2023 specifies that this type of tax incentive is given to Domestic Taxpayers and Permanent Establishments (PE) conducting financial sector business activities in the Nusantara Capital Financial Center. The business activities in the financial sector at this Financial Center include banking, insurance, Islamic finance, capital markets, derivatives finance, carbon trading, pension funds, financing, venture capital, financial sector technology innovation, guarantees, international commodity trading/exchanges, bullion, fund management, financial instrument management, financial conglomerate holding companies, financial market infrastructure, money markets, foreign exchange markets, derivative transactions, payment system services, and other financial services.

b. The super tax deduction outlined in Government Regulation No. 12 of 2023 applies to several categories. First category, gross income reduction for vocational activities is granted up to 250% for costs from work practice activities, apprenticeships, and/or learning for the coaching and development of human resources based on specific competencies. Second category, gross income reduction for certain research and development activities in the Nusantara Capital is granted up to 350% with actual costs plus an additional reduction of up to 250% of the costs for research

and development activities in the Nusantara Capital. Third category, gross income reduction for donations and/or costs for the construction of public facilities, social facilities, and/or other non-profit facilities. The reduction in gross income in this category is up to 200% with actual costs plus a maximum reduction of 100%.

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