



# INDONESIA



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## INTERNATIONAL DEVELOPMENTS

### 1. WHAT ARE THE RECENT TAX DEVELOPMENTS IN YOUR COUNTRY, WHICH ARE RELEVANT TO M&A DEALS AND PRIVATE EQUITY?

In 2017, the Minister of Finance issued Regulation No. 52/PMK.01/2017 regarding The Use of Book Value for Transfer of Assets in the context of mergers, consolidations, expansions or acquisitions, which enables companies to conduct mergers using book value (tax neutral merger).

The following conditions shall be applied to two or more companies that conduct tax neutral mergers:

- ❖ There is no capital gain incurred from the transfer of assets in the context of tax neutral merger.
- ❖ Land and/or building value, which is transferred by the dissolving entity to the surviving entity, is subject to Article 4 paragraph (2) final income tax at the rate of 2.5% of the transaction price or Tax Object Sales Value (NJOP), whichever is higher.

Meanwhile, the surviving entity should pay a 5% Duty on the Acquisition of Land and/or Building Right (BPHTB) from the transaction price or Tax Object Sales Value (NJOP), whichever is higher after deducting Non-Taxable Value of Tax Object Acquisition/NPOPTKP (maximum of IDR 60 million). The surviving entity may request a 50% reduction on this duty from the regional government. This reduction may be applied if the company has received a decision from the tax authority to conduct a tax neutral merger.

No Value Added Tax (VAT) is imposed due to the transfer of assets provided that both the dissolving and surviving entities are registered as Taxable Entrepreneurs.

A business acquisition is specifically defined in the regulation as including a merger of a Permanent Establishment (“PE”) of a bank with a domestic corporate taxpayer whose capital is divided in the form of shares by way of transferring all assets and liabilities of the PE to the domestic corporate taxpayer, in which the PE is dissolved.

### 2. WHAT IS THE GENERAL APPROACH OF YOUR JURISDICTION REGARDING THE IMPLEMENTATION OF OECD BEPS ACTIONS (ACTION PLANS 6 AND 15 SPECIFICALLY) AND, IF APPLICABLE, THE AMENDMENTS TO THE EU PARENT-SUBSIDIARY DIRECTIVE AND ANTI-TAX AVOIDANCE DIRECTIVES?

Upon the issuance of Director General of Taxes Regulation No. PER-10/PJ/2017 dated June 19, 2017 on the Procedures for the Implementation of the Double Taxation Agreements (DTA); the procedures for applying DTA no longer follow the previous provisions of DGT Regulations No. PER-61/PJ./2009, PER-62/ PJ./2009, PER-24/ PJ./2010 and PER-25/PJ./2010, as these have now been revoked.

As stipulated in the Article 10 of the regulation, the term Beneficial Owner (BO) refers to an entity that is not acting as an agent, nominee or conduit; that has controlling rights or disposal rights on the income or the assets or rights that generate the income; where no more than 50% of the entity’s income is used to satisfy claims by other persons; the entity bears the risk on its own assets, capital or liability.

Abuse of the DTA is considered to have occurred, amongst others, if there was a difference between the legal form of a structure/scheme and its economic substance (economic substance). In addition to the conditions above, the misuse of the DTA is also considered to occur if the overseas taxpayer has no activity or active businesses besides receiving income in the form of dividends, interest and or royalty, which originate from Indonesia.

Foreign Taxpayers have to provide a Certificate of Domicile of Non-Residents for Indonesian Withholding Tax, namely Form-DGT 1 (both page 1 and page 2) or Form-DGT 2 (for financial institution), a form used by the Indonesian Tax Office to confirm that the recipient is the Beneficial Owner and the transaction does not aim to



abuse a tax treaty. In PER-10/PJ/2017, it is stipulated that the said Certificate of Domicile shall be reported in the withholding taxpayer's periodic income tax return for the tax payable period (month). If the Certificate of Domicile is not yet available at the time income tax is payable or before the submission deadline of the periodic income tax return (every 20th of the following month), then the taxpayer should use the tariff of income tax according to Article 26 of the Income Tax Law (without regard to the treaty). If the new Certificate of Domicile is available after the withholding of income tax, then the excess withholding may be refunded.

The mechanics for the refund of incorrect reduction or overpayment related to the application of a DTA by overseas taxpayers, may be made pursuant to the Minister of Finance Regulation No.187/PMK.03/2015 or through the Mutual Agreement Procedure (MAP) through the respective treaty partner's authority, if the withholding taxpayer does not submit the periodic tax return or if there is a tax dispute between the authorities of the treaty partners.

## GENERAL

### 3. WHAT ARE THE MAIN DIFFERENCES BETWEEN AN ACQUISITION OF SHARES AND AN ASSET DEAL IN YOUR COUNTRY?

In Indonesia, the main differences between acquisitions made through a share deal versus an asset deal are as follows:

#### A) Share deal

- ❖ Capital gain received by the entity in a share deal is subject to a corporate income tax of 25%, while capital gain received by an individual is subject to an individual income tax at the range of 5% to 30%
- ❖ Since shares are categorised as non-taxable goods, there is no VAT applicable in share deals

#### B) Asset deal

- ❖ Capital gain received by the entity in an asset deal is subject to a corporate income tax of 25%, while capital gain received by an individual is subject to an individual income tax at the range of 5% to 30%
- ❖ Generally, a 10% VAT is imposed on the transfer of moveable assets. However, this condition does not apply to:
  - a. the transfer of non-taxable assets (i.e. mining products, public essential commodities, foods and beverages, gold and commercial paper)
  - b. the transfer of assets that have no relation with the company business

#### Immovable Assets (land and/or building)

- ❖ For the seller, the transfer of immovable assets is subject to a final income tax of 2.5% of market value or Tax Object Sales Value (NJOP) of the assets, whichever is higher (applicable to individuals and corporations).
- ❖ For the buyer, the acquisition of immovable assets is subject to a 5% Duty on Acquisition of Land and Building Right (BPHTB) applied to the transaction price or Tax Object Sales Value (NJOP), whichever is higher after deducting the Non-Taxable Value of Tax Object Acquisition/NPOPTKP (maximum of IDR 60 million).

Generally, a 10% VAT is imposed on the transfer of immovable assets. However, this condition does not apply to immovable assets that have no relation with the company's business.



## BUY-SIDE

### 4. WHAT STRATEGIES ARE IN PLACE, IF ANY, TO STEP UP THE VALUE OF THE TANGIBLE AND INTANGIBLE ASSETS IN CASE OF SHARE DEALS?

In principle, there are no special provisions in the Indonesian income tax law to step up the value of the tangible and intangible assets in case of share deals.

Asset revaluation is usually utilised by companies that need financing, so that the respective companies will have “more” assets to be used as collateral for bank loans. This is also a strategy to step up the value of tangible assets. Subject to Director General of Tax approval, an Indonesian taxpayer may undertake a revaluation of its non-current tangible assets for tax purposes. This may be carried out once every five years. Prior to receiving DGT approval, the taxpayer must have settled all outstanding tax liabilities.

### 5. WHAT ARE THE PARTICULAR RULES OF AMORTISATION OF GOODWILL AND SIMILAR INTANGIBLE ASSETS IN YOUR COUNTRY?

Amortisation of goodwill, which has a useful life exceeding one year, may be proportionally treated as expense during 4 years, 8 years, 16 years, or 20 years using the straight line or double declining balance method.

### 6. WHAT ARE THE LIMITATIONS ON THE DEDUCTIBILITY OF INTEREST EXPENSE? ARE THERE SPECIAL INTEREST LIMITATIONS IN THE CASES OF ACQUISITION OF SHARES AND ASSETS?

There are limitations to the deductibility of interest on borrowings. The limitations were first set out in the regulation from Minister of Finance No. 169/PMK.010/2015 regarding Thin Capitalisation. It was stated in the regulation that Indonesian corporate taxpayers are required to maintain a Debt to Equity Ratio (DER) at no more than 4:1 for tax purposes. On 28 November 2017, the Directorate General of Tax issued Regulation No. PER-25/PJ/2017, and introduced the DER forms consisting of two main forms, i.e. the DER and foreign private debt forms.

In terms of the Debt to Equity provisions, to be able to fully claim the financing cost, the loan amount is limited to four times the equity amount. Furthermore, corporate taxpayers have to be aware of the arm's length principle if the loan is treated as an inter-company loan.

In the event that a taxpayer's debt to equity ratio exceeds 4:1, the interest expense that can be deducted in calculating taxable income shall be limited in accordance with the debt to equity ratio of 4:1.

Please note that in the event that a taxpayer has zero or less balance of equity, the taxpayer's entire interest expense is non-deductible in calculating the taxable income.

Banks, financing institutions, insurance and reinsurance taxpayers, and taxpayers that carry out businesses in the mining and infrastructure fields are excluded from the provisions on the debt to equity ratio.

### 7. WHAT ARE COMMON STRATEGIES TO PUSH-DOWN DEBT ON ACQUISITIONS?

There are no usual strategies to push-down the debt on acquisitions. However, complex tax issues such as transfer pricing, VAT, capital gains and interest deductibility should be considered prior to the implementation.

### 8. ARE THERE ANY TAX INCENTIVES FOR EQUITY FINANCING?

As stipulated in the regulation of the Directorate General of Tax No. Per-25/PJ/2017, the following financing costs are not deductible:

- ❖ The part of the financing costs that exceeds the maximum DER ratio
- ❖ The part of the related party financing costs that fails to conform with the arm's length principle



- ❖ Financing costs to obtain, collect and maintain non-taxable income
- ❖ Financing costs to obtain, collect and maintain income subject to final tax

**9. ARE LOSSES OF A TARGET COMPANY AVAILABLE AFTER AN ACQUISITION IS MADE? ARE THERE ANY RESTRICTIONS ON THE USE OF SUCH LOSSES?**

The losses of the target company are available for a five-year carry-forward. The tax authority might make an adjustment on the fiscal losses based on the tax audit process.

However, in context of a tax neutral merger, the losses of the target company are not available after the effective date of merger.

**10. ARE THERE ANY ITEMS THAT SHOULD BE INCLUDED IN THE SCOPE OF A TAX DUE DILIGENCE THAT ARE VERY SPECIFIC TO YOUR COUNTRY?**

There are no specific items to be included in the scope of a tax due diligence.

**11. IS THERE ANY INDIRECT TAX ON TRANSFER OF SHARES (STAMP DUTY, TRANSFER TAX, ETC.)?**

Securities or documents with any name or in any form whatsoever (including shares), which have nominal values of up to IDR250,000 shall not be subject to Stamp Duty. If the value is above IDR250,000 and up to IDR1,000,000, the securities or documents shall be subject to Stamp Duty at the tariff of IDR3,000, while those with nominal value of more than IDR1,000,000 shall be subject to Stamp Duty at the tariff of IDR6,000.

**12. ARE THERE ANY RESTRICTIONS ON THE CORPORATE TAX DEDUCTIBILITY OF ACQUISITION COSTS?**

Acquisition costs shall be the value of shares or assets and additional costs related to the acquisition, such as advisory fees from the corporate finance advisor and/or legal fees.

The value of shares or asset shall be recorded as assets.

There are no specific tax regulations that set forth the tax treatment for additional costs related to shares or asset acquisition. Therefore, it shall comply with the treatment of the prevailing Indonesian Financial Accounting Standard (PSAK).

❖ **Acquisition of Shares**

In case of a share deal, there are no restrictions on the deductibility of additional costs. The additional costs shall be treated as expense in the year of the acquisition (PSAK 22).

❖ **Acquisition of Assets**

The additional cost for asset acquisition, which have a useful life exceeding 1 year, shall be capitalised and shall be depreciated over its useful life (PSAK 16). The depreciation may be treated as expenses proportionally over the duration of 4 years, 8 years, 16 years, or 20 years, using the straight line or double declining balance method.

**13. CAN VAT (IF APPLICABLE) BE RECOVERED FROM ACQUISITION COSTS?**

Generally, VAT input from an asset acquisition may be compensated with VAT output in the following fiscal period or be claimed as a tax refund at the end of the fiscal year. There is no VAT input for a share acquisition.



However, VAT input for assets categorised as non-capital goods acquired by a company that has not yet delivered taxable goods or services cannot be compensated with VAT output in the following fiscal period or be claimed as tax refund at the end of fiscal year.

The VAT input from the additional costs related to the shares or asset acquisition can be compensated with VAT output in the following fiscal period or be claimed as a tax refund at the end of the fiscal year

#### **14. ARE THERE ANY PARTICULAR TAX ISSUES TO CONSIDER IN THE ACQUISITION OF A DOMESTIC COMPANY BY A FOREIGN COMPANY?**

##### **❖ Asset Deals**

Foreign companies are not allowed to directly acquire land and/or buildings in Indonesia.

##### **❖ Share Deals**

The prevailing Indonesian law (President Regulation No. 44 of 2016), regulates the percentage of foreign ownership allowed for different types of businesses in certain sectors.

In general, all types of businesses are open to foreign investment, except certain closed types of businesses and limitations of maximum ownership in several industries

#### **15. CAN THE GROUP REORGANISE AFTER THE ACQUISITION IN A TAX NEUTRAL MANNER THROUGH MERGERS OR A TAX GROUPING?**

Yes, the group is allowed to reorganise after the acquisition in a tax neutral environment through mergers.

To apply for a tax neutral merger, certain conditions must be satisfied. The conditions are the following:

- ❖** submitting an application using the book value for the merger to the Director General of Taxes, along with the justification and purpose of the merger,
- ❖** paying all tax payable from every related entity, and
- ❖** satisfying the requirements of the business purpose test.

#### **16. ARE THERE ANY PARTICULAR ISSUES TO CONSIDER IN THE CASE OF A TARGET COMPANY THAT HAS SIGNIFICANT REAL ESTATE ASSETS?**

VAT input for a company that purchases real estate as its inventory cannot be credited in cases in which the company has not yet sold or delivered taxable goods or services to other parties.

#### **17. IS FISCAL UNITY/TAX GROUPING ALLOWED IN YOUR JURISDICTION AND IF SO, WHAT BENEFITS DOES IT GRANT?**

There is no fiscal unity/tax grouping under Indonesian tax law.

#### **18. DOES YOUR COUNTRY HAVE ANY SPECIAL TAX STATUSES, SUCH AS PATENT BOX FOR COMPANIES THAT HOLD INTANGIBLE ASSETS?**

There are no special tax statuses such as patent box for companies that hold intangible assets.

#### **19. DOES YOUR COUNTRY IMPOSE ADVERSE TAX CONSEQUENCES IF THE OWNERSHIP OF INTANGIBLES IS TRANSFERRED OUT OF THE COUNTRY?**

There are no adverse tax consequences for the time being if the ownership of the intangibles is transferred out of the country.



## SELL-SIDE

### 20. HOW ARE CAPITAL GAINS TAXED IN YOUR COUNTRY? WHAT, IF ANY, GAINS ARISING IN AN M&A CONTEXT ARE ELIGIBLE FOR SPECIAL TREATMENT?

Capital gain must be combined with the company's revenue from its main business after deducting expenses. The net profit is subject to a 25% corporate income tax. For individuals, capital gain after it is combined with their income shall be subject to individual income tax within the range of 5% until 30%.

There is no participation exemption regime available in Indonesia.

### 21. IS THERE ANY FISCAL ADVANTAGE IF THE PROCEEDS FROM THE SALE OF SHARES OR ASSETS ARE REINVESTED?

There is no fiscal advantage if the proceeds from the sale are reinvested.

### 22. ARE THERE ANY LOCAL SUBSTANCE REQUIREMENTS FOR HOLDING COMPANIES?

The prevailing Indonesian law (President Regulation No. 39 of 2014) regulates the limitation of foreign ownership for finance companies. Meanwhile, the limitation of foreign ownership of a holding company in Indonesia depends on the type of industries of the operating companies under the holding company.

### 23. ARE THERE ANY SPECIAL TAX CONSIDERATIONS REGARDING MERGERS/SPIN-OFFS?

There are no special tax considerations regarding mergers/spin-offs. However, a registration with the Investment Coordinating Board in the framework of the Initial Public Offering must become effective within one year for the taxpayer who applied for spin-offs using the book value.

## MANAGEMENT INCENTIVES

### 24. WHAT ARE THE TAX CONSIDERATIONS IN YOUR JURISDICTION FOR MANAGEMENT INCENTIVES IN CONNECTION WITH SELLING OR BUYING A COMPANY?

There are no specific tax considerations for management incentives. However, any remuneration received by an individual is subject to individual tax.

## FOR MORE INFORMATION CONTACT:

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