

MoF Reg. 56/PMK.010/2021 (PMK 56)

Tax-neutral business mergers, consolidations, spinoffs, and acquisitions

By default, assets transferred in a business merger, consolidation, spinoff, and acquisition should be accounted for at fair market value for tax. Gains or loss may therefore result to the transferor which are assessable or deductible for tax. However, based on Minister of Finance (MoF) Reg. 52/PMK.010/2017 as amended by Reg. 205/PMK.010/2018 (PMK 52/2018), under certain conditions such transfers carried out by corporate body taxpayers (businesses) with capital held in shares can also be accounted for at book value resulting in the arrangement being tax-neutral. However, all the arrangements should be based on a specific approval of the Director General of Taxation (DGT).

Issued on 3 June 2021, PMK 56 made a few changes on the conditions for the tax-neutral arrangements:

- For a spinoff aimed at an initial public offering (IPO), the company that would make an IPO, which could be the one conducting the spinoff or the newly established company resulting from the spinoff, ought to show to the DGT an effective statement of registration with the Financial Service Authority (OJK) within two year of the DGT approval date. This is a year more than that required under PMK 52/2018. A possible extension of two years for reasons beyond the control of the taxpayer remains the same;
- With view to establishing a holding company, a state-owned company may adopt a spinoff without establishing a new company, i.e. by transferring some of its assets and liabilities to other state-owned companies.

Other provisions provided in PMK 52/2018 except for those affecting state-owned companies in general remain the same. These include the closed list of business mergers, consolidations, spinoffs, and acquisitions qualifying for tax-neutral transfers of assets.

A qualifying merger (*penggabungan*) under PMK 52/2018 is a combination of two or more *existing* businesses (taxpayers), which may include foreign businesses, by one or more domestic and/or foreign businesses transferring their assets and liabilities to a single domestic business (transferee) resulting in the transferee being the only surviving business with the other businesses dissolved. If the businesses involved have outstanding tax losses, the transferee should be the one with the least or without tax losses.

A qualifying consolidation (*peleburan*) is similar to a merger except that the transferee is a *newly established* domestic company. This is the only company that will survive after receiving assets

and liabilities transferred by the other businesses involved. All other businesses, domestic and foreign, are to be dissolved pursuant to the consolidation.

A spinoff in PMK 52/218 refers to an arrangement whereby a domestic company (taxpayer) splits its business into two or more (companies/taxpayers) and transfers some of its assets and liabilities to the newly established company or companies with the original company remaining to survive. To qualify for a tax-neutral transfer of assets, the spinoff should have the following characteristics:

- The taxpayer has not gone public and intends to make an initial public offering (IPO).
- The taxpayer has gone public and intends to have the newly established company resulting from the spinoff to make an IPO;
- The spinoff is carried out by a taxpayer to separate its sharia business in accordance with the prevailing law and regulations;
- The newly established company resulting from the spinoff receives capital injection from its foreign shareholders amounting to at least IDR500 billion;
- A state-owned company (BUMN) which receives additional capital from the state carries out a spinoff with a view to establishing a holding company of state-owned companies.

A qualifying acquisition under PMK 52/218 is the merging of a permanent establishment (PE) of a foreign bank into an Indonesian PT company (which also engages in banking) by the PE transferring its assets and liabilities to the PT company resulting in the dissolution of the PE.

SE-35/PJ/2021 (SE-35)

Certificates of domicile of foreign taxpayers in tax audits and objections

Issued on 31 May 2021, SE-35 addresses certificates of domicile (COD) delivered by a taxpayer *only* in the process of a tax audit, tax objection, or tax assessment cancelation or reduction. The DGT directs the auditors or the other tax officials in charge in the process to accept the COD if the following conditions prevail:

1. The COD is prepared on a DGT-provided Form DGT;
2. The Form (COD) is filled out correctly, completely and clearly;
3. The COD is signed by the foreign taxpayer concerned or marked properly in accordance with the regulations or normal practice in the treaty partner country concerned;
4. The COD is validated by the Competent Authority of the treaty partner concerned with a signature or an equivalent mark in accordance with the regulations or the normal practice in the treaty partner country;
5. The COD is used in accordance with the period stated therein;
6. The COD contains a statement that the foreign taxpayer does not abuse the tax treaty; and
7. The COD contains a statement that the foreign taxpayer is the beneficial owner wherever required by the tax treaty.

In case the COD does not state any prevailing period or the prevailing period is unclear, the foreign taxpayer may complete the missing information with an additional explanation letter from the Competent Authority and deliver it to the tax auditors or the other tax officials in charge through the related domestic taxpayer concerned.

If the above conditions are not satisfied, SE-35 indicates that the cross-border transactions in question may be subjected to WHT 26 in accordance with the domestic law, i.e. at 20% of the gross amount.

MoF Reg. 63/PMK.03/2021

E-signature to exercise tax rights and fulfill tax obligations electronically

Issued on 7 June 2021, PMK 63 addresses how taxpayers may exercise their tax rights and fulfill tax obligations electronically using an electronic signature (e-Signature). Taxpayers have generally been familiar with “electronic transactions” with the DGT pertaining to their tax rights and tax obligations, such as making *e-Faktur* for tax invoicing, *e-BUPOT* for tax withholding, *e-SPT* for tax returns, and e-filing for submitting the tax returns. PMK 63 sets the basis for the DGT to expand the range of the transactions. Additionally, it allows the DGT to issue decision, assessment, and notification letters and some other documents such as approval letters, treatises, and proceedings in a digital format in lieu of the manual or printout version and submit them to the taxpayer electronically.

An electronic document created and brought by a taxpayer to an electronic transaction with the DGT should be signed electronically by the taxpayer. The DGT should do the same in respect of the electronic document such as a Tax Overpayment Assessment Letter (SKPLB) created in an electronic format and to be issued to a taxpayer. An electronic document signed electronically by the related taxpayer or the DGT in accordance with PMK 63 direction has the same legal power as that of the document had it been signed in a conventional manner.

To be able to sign an electronic document, a taxpayer needs to have an e-signature, which can be certified or uncertified depending on the issuer. It is certified if issued by an electronic certificate organizer (ECO) recognized by the Communication and Information Minister and appointed by the Minister of Finance (MoF) and an electronic certificate is attached to the e-signature. It is uncertified if issued by the DGT in the form of a DGT Authorization Code (DAC). Taxpayers may choose any. Under PMK 63, both have the same status in terms of validity and legal power.

To get a certified e-signature, a request should be submitted electronically to a designated ECO in accordance with the procedures set by the ECO. A similar request should be addressed to the DGT for an uncertified e-signatures (DAC). A DAC request may be submitted electronically

to the DGT at the same time when requesting a Tax ID number (NPWP) or it can be done separately. The DGT will give immediate response, either approved or rejected, to an online request or, for a manual request, a maximum of a day the filing date. Automatic approval prevails if a day has passed without a response.

PMK 63 is not the only tax regulation addressing e-signature. Reg. 63 states that likes issued based on previous tax regulations including MoF Reg. No. 147/PMK.03/2017, DGT Reg. No. PER-41/PJ/2015 as lastly amended by PER-06/2019, and DGT Reg. No. PER-02/PJ/2019 remain prevail up to 22 December 2022.

Please contact us for more information.

PT PreciousNine Consulting

Cyber 2 Tower, 18th Floor
Jl. HR Rasuna Said Blok X-5 Kav. 13,
Jakarta Indonesia
Phone: +62 21 5799 8778, +62 21 2935 2500

Your PreciousNine Contacts

Anindita Hayuningtyas
anindita.hayuningtyas@preciousnine.com

Dian Kusuma
dian.kusuma@preciousnine.com

Fillyanto Sembiring
fillyanto.sembiring@preciousnine.com

Inge Jahja
inge.jahja@preciousnine.com

Lili Tjitadewi
lili.tjitadewi@preciousnine.com

Lina Rosmiana
lina.rosmiana@preciousnine.com

Martias
martias@preciousnine.com

Nandha
nandha@preciousnine.com

Noviana Tan
noviana.tan@preciousnine.com

Nuryadi Mulyodiwarno
nuryadi.mulyodiwarno@preciousnine.com

Randy Adirosa
m.adirosa@preciousnine.com

Robertus Winarto
robertus.winarto@preciousnine.com

The information in this publication is intended as a general update on particular issues for our partners, staff, and selected clients. Though every care has been taken in the preparation of this publication, no warranty is given regarding the correctness of the information covered herein and no liability is accepted for any misstatement, error, or omission. When a problem arises in practice, specific advice may need to be sought and reference to the relevant regulations may be required.