

# TaxFlash



## ***The use of tax book value on the transfer of assets for business mergers, consolidation, expansion, or acquisition***

On 17 April 2017, the Minister of Finance (“MoF”) issued Regulation No.52/PMK.010/2017 (“PMK-52”) on the use of tax book value on the transfer of assets for business mergers, consolidation, expansion, or acquisition (collectively referred to as “business transaction”). PMK-52 revokes MoF Regulation No.43/PMK.03/2008 (“PMK-43”).

Key changes stipulated in PMK-52 are as follows:

### **Scope**

Previously, PMK-43 only covered the use of tax book value on the transfer of assets for business mergers, consolidation, or expansion. PMK-52 now adds business acquisition as one of the qualifying conditions for the use of tax book value on the transfer of assets.

The definition of business acquisition that is covered in PMK-52 is specifically defined as a merger of a Permanent Establishment (“PE”) of a bank with a domestic corporate taxpayer whose capital is divided in the form of shares (“domestic corporate taxpayer”) by way of transferring all assets and liabilities of the PE to the domestic corporate taxpayer and dissolving the PE.

The scope of business merger and consolidation under PMK-52 now includes inbound cross-border merger and consolidation, i.e. the merger or consolidation results in the domestic corporate taxpayer as the surviving entity while the offshore entity that is merged or consolidated with the domestic corporate taxpayer must be dissolved.

Nevertheless, this cross-border merger or consolidation can only be carried out once the legal regulatory framework is available.

PMK-52 now only requires that the surviving entity for the qualifying merger must be the one having no or the least tax loss. Commercial loss status is no longer considered under PMK-52.

The scope of a qualifying business expansion under PMK-52 also adds spin-offs of a Syariah business unit in order to fulfil a business spin-off obligation as required by law. No Initial Public Offering is required for this type of Syariah spin-off transaction.

## Requirements

The application requirements are similar, as follows:

1. The application is filed within six months after the effective date of the business transaction by attaching the reason and purpose of the business transaction;
2. Fulfilling the business purpose test; and
3. Obtaining a tax clearance letter (*Surat Keterangan Fiskal*/"SKF") for each of the relevant domestic corporate taxpayers or PE - *changed*

Previously, the third requirement above required all relevant taxpayers to settle all of their tax payable. This requirement is also required under the application of a SKF. Although it seems that this is only a partial change to the process, this means that there are now two separate applications that need to be conducted by the taxpayer, i.e. SKF application prior to the application of the use of tax book value on the transfer of assets for business transactions. Please refer to Director General of Tax ("DGT") Regulation No. PER-32/PJ/2014 for the latest regulation on the requirements to apply for a SKF.

## Asset sale restriction

Assets that are approved to be transferred using tax book value cannot be transferred to another party within two years after the effective date of the business transaction, except if it is carried out as part of increasing the company's efficiency. PMK-52 now clarifies that the scope of this restriction only applies to fixed assets.

PMK-52 now requires the taxpayer to apply for an approval if they want to transfer the assets as part of increasing the company's efficiency. Previously, the taxpayer was only required to submit a written statement, and no approval process was stipulated.

Failure to apply for an approval within the timeline or receiving a rejection on the application will result in a revocation of the tax book value approval and the transfer value of the assets will be recalculated using market value.

The timeline, template, and document requirement for the approval request is similar to the previous written statement stipulated under PMK-43. The request must be submitted within one month after the transfer of the assets.

## Procedures

In the case of incomplete application, the DGT can ask taxpayer to complete the documents within 15 working days after the application is received. Taxpayer needs to respond within five working days, and thus the DGT will not process the application nor issue any decision. In this case, the taxpayer may reapply.

The DGT issues an approval or rejection decision to the taxpayer within one month after the complete application is received, otherwise the application is deemed approved and DGT must issue an approval within five working days after the one month deadline.

## Permanent Establishment dissolution

As required under a qualifying business acquisition, the PE of the bank must be dissolved within two years after the effective date of the business acquisition by way of obtaining a Financial Services Authority (*Otoritas Jasa Keuangan*/"OJK") decree on the business licence revocation of the PE.

This two year deadline can be extended for another year with the approval of the DGT if there are unexpected circumstances beyond the taxpayer's power. This approval must be requested within one month prior to the two year

deadline and the taxpayer must have already applied for the preparation of the business licence revocation to the OJK prior to the two year deadline.

Failure to apply for an approval within the timeline or receiving a rejection on the application will result in a revocation of the tax book value approval and the transfer value of the assets will be recalculated using market value.

The procedures and consequences of this application process are similar to the application under asset sale restriction above.

### **Limitation under cross-border mergers and consolidations**

The surviving taxpayer under a qualifying cross-border merger or consolidation cannot claim deduction for any offshore tax or other charges payable by the offshore entity.

### **Monthly corporate tax instalments**

The monthly corporate tax instalments of the surviving taxpayer of a qualifying merger, consolidation or acquisition must not be lower than the total instalment amounts of the relevant entities prior to the merger, consolidation or acquisition. While the total instalment amounts of the relevant entities after a qualifying expansion must not be lower than the instalment amount of the entity prior to the expansion.

PMK-52 clarifies that this requirement is applicable until the annual Corporate Income Tax Return (for the year where the business transaction took place) is submitted.

### **Transitional provisions**

Application to use tax book value on the asset transfer under business transactions which took place up to 31 December 2016 will still be processed under PMK-43. PMK-52 will be applicable to process applications for business transactions which take place starting 1 January 2017.

The detailed provisions for application procedures and issuance of the decisions will be further regulated under a DGT regulation.

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