

Tax Holiday extension
with Pillar Two impact ^{P1}

New rules on the tax
treatment of Joint
Operation ^{P2}

Tax Holiday extension with Pillar Two impact

The Minister of Finance (“MoF”) has issued Regulation No.PMK-69¹ as the latest update/revision of the Tax Holiday incentive for substantial new investment in designated Pioneer industries. This regulation extends the granting period to be applicable for Tax Holiday proposals submitted to the Online Single Submission (“OSS”) system up to 31 December 2025.

Whilst the eligibility and benefits of the Tax Holiday facility remain largely the same as in the previous version, this update contains new provisions related to the implementation of Pillar Two, as follows:

- A taxpayer who has obtained a Tax Holiday facility but also falls under a qualifying taxpayer being part of a multinational enterprise group that is subject to Global Minimum Tax under Pillar Two rules, is subject to an additional domestic top up tax under this rule.
- This domestic top up tax would also apply to those who have obtained the Tax Holiday facility prior to the effective date of PMK-69.

Although the MoF has not issued the domestic regulation to implement the Global Anti-Base Erosion (“GloBE”) rules in Indonesia, it is expected that the Qualified Domestic Minimum Top-up Tax (“QDMTT”) will be adopted under the upcoming regulation.

PMK-69 also provides some eligibility, procedural, and administrative changes as follows:

- Taxpayer who has obtained Tax Holiday facility under the National Capital to be named “Nusantara” (*Ibu Kota Negara bernama Nusantara/“IKN”*) facility cannot apply for this Tax Holiday.
- Applicant now needs to submit its own Tax Clearance Letter (*Surat Keterangan Fiskal/“SKF”*) in the online application to use the Tax Holiday facility. Previously, SKF was required for their domestic shareholder. Domestic shareholder is still required to have an automated SKF but no longer needs to be submitted in the application.
- Manual application submission is no longer available, meaning that all application must be submitted only through OSS.
- Reporting obligations for capital investment and production realisation must now be submitted online through OSS.

¹ MoF Regulation No.69 Year 2024 (“PMK-69”) dated and effective from 9 October 2024

New rules on the tax treatment of Joint Operation

The MoF has issued Regulation No.PMK-79² regarding tax treatment of Joint Operation (“JO”/Kerja Sama Operasi) which serves as the first comprehensive implementing regulation on this topic at a PMK level.

PMK-79 defines JO as an entity in the form of a joint arrangement between members of the JO which stipulates that members of the JO have joint control or have rights towards assets and obligations towards liabilities, with any name and in any form.

PMK-79 differentiates the tax treatment for:

- A. JOs that are required to obtain Tax ID (*Nomor Pokok Wajib Pajak*”NPWP”) and to be appointed as VATable Entrepreneur (*Pengusaha Kena Pajak*”PKP”); and
- B. JOs that are not required to obtain NPWP or to be appointed as PKP.

A. JOs required to obtain NPWP and to be appointed as PKP

1. Criteria and administrative requirements

Criteria

JO must obtain an NPWP as a Corporate Taxpayer if the agreement or implementation stipulate that the JO will:

- deliver goods/services;
- receive income; and/or
- incur cost or pay income to other parties, in the name of JO.

Administrative requirements for NPWP registration and PKP appointments

NPWP registration is carried out at the Tax Office where the JO is domiciled, which is determined based on the residence or place of domicile of one of the JO members in Indonesia that is designated in the agreement or letter of appointment to represent the JO. The registration must be done within one month after the following event:

- a) establishment of JO, if the JO agreement meets the above criteria; or
- b) performance of activity within the above criteria, if the JO agreement did not indicate the above criteria.

PKP appointment is applicable for JOs who deliver taxable goods/services when:

- a) the JO has exceeded the small enterprise limitation as stipulated in the MoF Regulation concerning small enterprise limitation for Value-Added Tax (“VAT”) purposes; and/or
- b) One or more JO member has been appointed as PKP.

2. VAT/Luxury-goods Sales Tax (“LST”) treatment

Whilst the rules for crediting Input VAT, payment, and reporting obligation follows the general rules, PMK-79 stipulates the taxable event, tax base, and VAT Invoice issuance based on the flow of delivery of taxable goods/services, as follows:

² MoF Regulation No.79 Year 2024 (“PMK-79”) dated and effective from 18 October 2024

	JO member to JO	JO to Customer
Taxable event	When the JO delivers the taxable goods/services to Customer	
Tax base	Other values based on agreed contribution in the JO agreement, which list down the detailed type of taxable goods/services delivered by each member	Follow general VAT rule
VAT Invoice issuance	At the latest when JO issue VAT Invoice to Customer	

LST on the delivery of luxurious taxable goods are imposed only one time when the JO delivers the goods to the Customer.

3. Income Tax treatment

Taxation at JO level

Income received by JO from Customers is taxable in the hands of the JO and may consist of final-taxed and non-final-taxed income, with the following corporate tax treatment:

	Non-final Income Tax	Final Income Tax
Deductibility	Business-related costs in relation to the non-final income are deductible	Business-related costs in relation to the final-taxed income are not deductible
Costs incurred by JO members	JO's business-related costs include the costs incurred based on the member's contribution, which amount is based on the agreed contribution in the JO agreement, and list down the detailed type of taxable goods/services delivered by each member	
Tax loss compensation	JO losses can only be compensated by the JO and not by the JO members. This includes the loss upon the dissolution of the JO	

Taxation at JO members level

Costs incurred based on the member's contribution are recognised as an income at the JO members level at the time the JO:

- receives the income from Customers and recognises the cost incurred based on the member's contribution – for a JO with non-final-taxed income;
- receives the income from Customers – for a JO with final-taxed income.

The followings are the tax treatments on the **profit-after-tax** distributed by a JO to a JO member who is:

Domestic tax subject (Subjek Pajak Dalam Negeri) or Permanent Establishment ("PE")	<ul style="list-style-type: none"> • Not subject to corporate tax or withholding tax; • Reported by each JO member in their Annual Income Tax Return ("AITR") as income that is not subject to Income Tax; • PE income that is not re-invested in Indonesia is subject to Article 26(4) of Income Tax Law withholding tax
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**Foreign tax subject
(Subjek Pajak Luar
Negeri)**

Subject to withholding tax

With regards to tax losses, JO members' losses can only be compensated by JO members themselves and not by the JO. This includes the losses originating from income and expenses outside of the JO agreement.

4. Withholding tax treatment

JO

- JO is subject to the generally applicable withholding tax (which may also be self-remitted) upon its income, purchases/imports, and exports.
- These withholding tax or self-remitted tax will become an Income Tax credit in its AITR for non-final-taxed income or settlement of Income Tax for final-taxed income.
- In the event that JO receives income from construction services, the withholding tax rate uses the highest rate applicable on its members based on the construction services regulation.
- JO that is required to obtain NPWP also has general withholding tax obligations upon payments to other parties.

JO members

- JO member's income that is received from the JO based on costs incurred in accordance with their contribution is not subject to withholding tax, unless the member is a foreign taxpayer whereby Article 26 withholding tax will still be applicable.
- However, it is subject to normal Income Tax treatment, either final or non-final-taxed. Tax on final-taxed income must be self-remitted by the JO members.
- If the final-taxed income is from the transfer of right on Land and/or Building ("L&B") or binding sale and purchase agreement (*Perjanjian Pengikatan Jual Beli*) for L&B along with the revision, the final tax that was self-remitted by the JO on this transaction becomes the settlement of Income Tax for the JO member.

5. Special rule and transitional provisions

Income Tax treatment for JOs that carry out transfer of right on L&B

Final tax payment from transfer of right on L&B must be validated by the Tax Office. This validation request must be carried out by the JO.

In the process of L&B title transfer at the Ministry of Agrarian Affairs and Spatial Planning, JO must attach:

- a) a statement letter resulting from the tax payment validation process; and
- b) a copy of the JO agreement or JO deed of establishment, in accordance with the original document.

Transitional provisions

JO who already have NPWP prior to effective date of this PMK (i.e. 18 October 2024) and fulfil the criteria as stipulated in PMK-79 are required to:

- a) submit an application to be transferred to the Tax Office where the JO is domiciled, if it is not yet registered in line with PMK-79;

- b) report their business to be appointed as PKP, in the case where the JO has yet to be appointed as PKP but fulfils the criteria as stipulated in PMK-79;
- c) fulfil its tax obligations, in the form of:
 1. VAT/LST collection as stipulated in PMK-79 for the tax period after October 2024; and
 2. Withholding tax obligation as stipulated in PMK-79 starting January 2025 tax period; and
- d) calculate, pay, and report Income Tax as stipulated in PMK-79 starting Fiscal Year 2025.

B. JOs not required to obtain NPWP and not required to be appointed as PKP

1. Criteria and administrative requirements

JOs do not need to register to obtain NPWP or to be appointed as a PKP if the JO agreement or implementation does not fulfil the criteria as stipulated in PMK-79.

The tax rights and obligation related to JO arrangement are carried out at each JO member level.

2. VAT/LST treatment

The following provisions follow the provisions in the existing tax regulations:

- Delivery of taxable goods/services from JO members to Customer which are subject to VAT/LST;
- Taxable event of VAT/LST on the delivery of taxable goods/services;
- Tax base on the delivery of taxable goods/services by JO members;
- Requirement to create VAT Invoice for JO members who are PKP upon the delivery of taxable goods/services;
- Input VAT on the acquisition of taxable goods/services, import of taxable goods, and utilisation of non-tangible taxable goods, and/or utilisation of taxable services from outside area customs to inside customs area, which can be credited by JO members as long as they fulfil the Input VAT credit provisions;
- Requirement to remit and report the payable VAT/LST by the JO member.

3. Income Tax treatment

Income Tax on income received in JO arrangement under this category is calculated, paid, and reported by the JO members according to the agreed proportions in the JO agreement, in accordance with the provisions in the existing tax regulations.

4. Withholding tax treatment

Withholding tax imposition (which may also be self-remitted) upon its income, purchases/imports and exports as well as withholding tax obligations upon payments to other parties that are related to the JO arrangement are carried out by each JO member based on the provisions in the general tax regulations.

5. Transitional provisions

JO who already have NPWP prior to effective date of this PMK (i.e. 18 October 2024) but do not fulfil the criteria as stipulated in PMK-79 are required to:

- a) submit an application to delete the NPWP; or

- b) submit an application to delete the NPWP and revoke the PKP appointment, in the case the JO is a PKP.

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