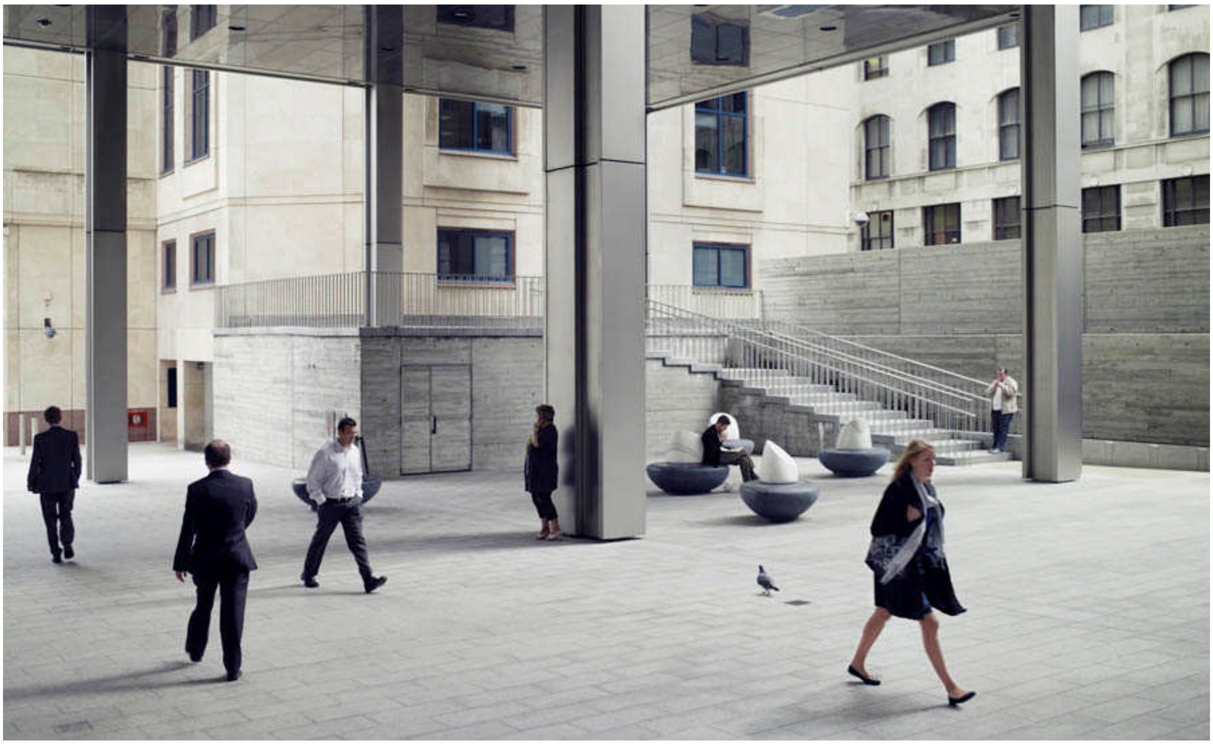
TaxFlash



Tax Amnesty – SPV Rules

The Ministry of Finance (MoF) has issued Regulation No.127/PMK.010/2016 (PMK-127) regarding the Tax Amnesty for taxpayers that indirectly hold assets through a Special Purpose Vehicle (SPV) which is effective starting 23 August 2016.

Scope

The scope of a SPV under PMK-127 is an intermediary company that is:

- Established solely to perform special functions for the interest of its founder, such as investment purchases and/or financing; and
- Does not carry on an active business activity.

What constitutes an active business activity is not further elaborated on.

The Tax Amnesty process for taxpayers that hold indirect assets through a SPV, which do not fulfill the above criteria, should follow the general provisions governed under MoF Regulation No.118/PMK.03/2016.

Asset declaration

Similar to the general provisions, the indirect assets held through a SPV covers onshore and offshore assets and can be offset with liabilities that are directly related to acquire such assets (collectively referred to as 'indirect assets'). The Redemption Money Rates are also the same as in the general provisions, i.e. 2%, 3%, and 5% for onshore and offshore repatriated assets, and 4%, 6%, and 10% for offshore non-repatriated assets.

Value to be disclosed

Taxpayers may or may not have declared their ownership in the SPV in their tax return. In the case that:

- Taxpayers have not declared their ownership in the SPV in their tax return, then the value of the indirect assets must be declared in the full amount of those assets.
- Taxpayers have already declared their ownership in the SPV in their tax return, the value of the indirect assets must be declared in the full amount of those assets minus the value of the SPV ownership that has been declared in the tax return.

If the SPV is owned by more than one taxpayer, the value of the indirect assets is allocated to each taxpayer based on the proportion of their ownership.

Elimination

If a taxpayer provides a loan to the SPV, then the loan at the taxpayer and the SPV level is eliminated.

If the taxpayer, directly or indirectly, places funds at a third party through the SPV, and that third party directly or indirectly provides a loan back to the taxpayer, then the loan value can be deducted from the funds value for the purpose of calculating the Redemption Money.

Implications post-declaration

Taxpayers declaring all indirect assets held through a SPV must dismantle or relinquish ownership of the SPV by transferring the title of the assets from the SPV into the name of the taxpayer or to a legal entity in Indonesia through a title transfer process using the book value of the assets. It appears that the transfer value is different from the fair value used for declaring the previous undeclared assets.

The above legal entity must be in the form of a Limited Liability company whose shares are owned by the taxpayer.

Such title transfer must be disclosed in a Statement Letter explaining the process of the title transfer.

Similar to the general provisions, the title transfer of shares and/or land and/or building in Indonesia can be exempted from income tax if the title transfer agreement is signed by 31 December 2017.

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