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## Tax book value for business spin-offs and acquisitions

The Minister of Finance (MoF) recently issued PMK-56<sup>1</sup> entitled *the use of tax book value for asset transfers/procurements in business mergers, consolidations, spin-offs, and acquisitions*. PMK-56 amends the spin-off and acquisition rules applicable for restructurings by State-Owned Enterprises (SOEs), taxpayers undertaking Initial Public Offerings (IPOs), and banking Permanent Establishments (PE).

### Spin-offs

Under PMK-56, business-related spin-offs which are eligible to apply tax book value on asset transfers are those which are carried out:

- a. by forming a new company and transferring some of the assets and liabilities (A&L) to the new company without liquidating the existing company;
- b. by transferring some of the A&L to one or more company:
  - i) without forming a new company,
  - ii) without liquidating the existing company, and
  - iii) where the transaction falls under the spin-off definition in the Value Added Tax Law; – **new** or
- c. by transferring some of the A&L of two or more existing companies and combining these into one company without liquidating the existing company. – **new**

Companies eligible to apply tax book value in points (b) and (c) above are:

- a) an SOE which obtains additional capital from the Government and the spin-off is to form an SOE holding company; or
- b) an SOE carrying out a spin off, as long as:
  - i. the restructuring is carried out by the beginning of Fiscal Year 2021 (FY21);
  - ii. the transfer of shares is not carried out by selling or exchanging assets; and

<sup>1</sup> MoF Regulation No.56/PMK.010/2021 (PMK-56) dated and effective from 4 June 2021 as an amendment to MoF Regulation No.52/PMK.010/2017 as lastly amended by MoF Regulation No.205/PMK.010/2018

- iii. the restructuring and transfer of assets is approved by the Minister of SOEs.

All tax book value applications for business-related spin-offs must be made by the transferring entity.

For eligible taxpayers undertaking an IPO, the IPO must be completed within two years after the tax book value approval is granted, which is an extension of one year from the previous PMKs. This provision is not restricted to SOEs.

### **Acquisitions**

PMK-56 also extends the tax book value eligibility to acquisitions as follows:

- a. an acquisition (previously described as a merger) of a banking PE which transfers its A&L to an Indonesian company (*Wajib Pajak Dalam Negeri/WPDN*) whose capital is divided into shares (*Perseroan Terbatas/PT*) and the PE is discontinued; or
- b. the transfer of a WPDN from one WPDN to another WPDN as part of an SOE restructuring with the following requirements:
  - i. the ownership of the WPDN must:
    - be held to a minimum of 50% of fully paid shares with voting rights; or
    - have a controlling capability, either directly or indirectly, over the management of the subsidiary;
  - ii. if the acquired company is a PT company, follow the prevailing capital market law and regulations;
  - iii. the restructuring is carried out by the beginning of FY21;
  - iv. the transfer is not carried out by selling or exchanging assets; and
  - v. the restructuring and transfer of assets are approved by the Minister of SOEs.

Tax book value applications for business acquisitions per point (a) must be made by the receiving entity whilst per point (b) must be made by the transferring entity.

### **Ratification of renegotiated UAE and Singapore tax treaties – pending exchange of notification**

The President recently issued PR-34<sup>2</sup> and PR-35<sup>3</sup> regarding ratification of the Indonesia-United Arab Emirates (UAE) tax treaty and the Indonesia-Singapore tax treaty, respectively.

These tax treaties have not entered into force. Singapore and UAE need to first ratify the tax treaties. Afterwards, both countries must exchange the notification of ratification documents. The tax treaties will enter into force once the exchange is done. The tax treaties will then apply from 1 January of the year following entry into force.

#### **Indonesia – UAE tax treaty**

On 24 July 2019, Indonesia and UAE signed a renegotiated tax treaty. On 5 May 2021, Indonesia ratified the tax treaty through PR-34. There are several new articles in the treaty including:

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<sup>2</sup> Presidential Regulation No.34 Year 2021 (PR-34) dated and effective from 5 May 2021

<sup>3</sup> Presidential Regulation No.35 Year 2021 (PR-35) dated and effective from 11 May 2021

- a) an entitlement to levy withholding tax at the rate of 5% on fees for “Technical Services”;
- b) an entitlement to levy tax on income from hydrocarbons in the country of source; and
- c) an increase of the permitted withholding tax rate on interest from 5% to 7%.

There are also amendments to adopt provisions connected to the Multilateral Instrument including:

- a) an extension of the definition of a PE;
- b) the introduction of “Principle Purpose Test”; and
- c) an alternation on the rights on taxing of Capital Gains.

### Indonesia – Singapore tax treaty

On 4 February 2020, Indonesia and Singapore signed a renegotiated tax treaty. On 11 May 2021, Indonesia ratified the tax treaty through the issuance of PR-35. Please refer to [TaxFlash No.02/2020](#) for the details of the tax treaty changes.

## Recording and Bookkeeping for certain taxpayers

Under the General Taxation Provisions and Procedures (*Ketentuan Umum dan Tata Cara Perpajakan/KUP*) Law, individuals who carry out business or freelance activities must maintain “Bookkeeping”. However, certain individual taxpayers need only to conduct “Recording” (*pencatatan*).

### Recording

GR-9<sup>4</sup> expands the individual taxpayers eligible for “Recording” to those:

- a. that carry out business or freelance activities with gross annual turnover of less than IDR4.8 billion and who are allowed to use a deemed method to calculate net income and taxes (“deemed method taxpayer”);
- b. that do not carry out business or freelance activities, e.g. employees; or
- c. that meet certain criteria (“certain criteria taxpayer”). – *new*

With regard to (c) above, PMK-54<sup>5</sup> describes individuals who:

- a) carry on business or freelance activities; and
- b) have all gross turnover subject to final tax or non-tax object and is less than IDR4.8 billion in a year.

All taxpayers under (a) to (c) above must still record gross income not from business/freelance activities which is still subject to normal tax (and deductible expenses), as well as gross income subject to final tax or non-tax object. Taxpayers under point (a) must also conduct Recording on the gross turnover from business/freelance activities that is subject to normal tax.

The criteria of taxpayer newly added in GR-9 can start Recording from FY21.

### Cash-based Bookkeeping

PMK-54 also provides criteria for taxpayers who can apply “cash” instead of “accruals” Bookkeeping from Fiscal Year 2022 (FY22). These are taxpayers who:

<sup>4</sup> Government Regulation No.9 Year 2021 (GR-9) dated and effective from 2 February 2021

<sup>5</sup> MoF Regulation No.54/PMK.03/2021 (PMK-54) dated and effective from 2 June 2021

- a. are commercially eligible to conduct bookkeeping under accounting standards for small and micro businesses; and
- b. individuals who fall under the deemed method, certain criteria taxpayers that choose to conduct Bookkeeping, or corporate taxpayers having gross annual turnover of less than IDR4.8 billion.

Taxpayers can switch from a cash to an accrual basis and *vice versa* on a once-only basis on the change from cash basis to an accrual basis. Individuals that maintain Bookkeeping from FY22 cannot maintain Recording and/or use deemed method basis in future years.

### **Notifications**

Only deemed method taxpayers are required to submit notifications to use the deemed method and conduct Recording. Taxpayers wishing to use cash-based Bookkeeping must submit an annual notification. The timeline and procedures are provided in PMK-54.

### **Electronic signature for tax matters**

The MoF has issued PMK-63<sup>6</sup> to regulate eSigning rules for taxpayers and the Directorate General of Taxation (DGT).

PMK-63 outlines two categories of eSign:

- a. Certified eSign

This eSign uses an Electronic Certificate (EC) issued by Providers registered with the Ministry of Communication and Information Technology (*Kementerian Komunikasi dan Informatika/Kominfo*) and appointed as EC Providers by the MoF.

- b. Non-certified eSign

This eSign uses an Authorisation Code issued by the DGT.

Taxpayers can use either eSign for taxation rights and obligations relevant to the DGT. Each eSign will be applicable to specific electronic documents that will be further governed by the DGT. To obtain an eSign, taxpayers need to submit applications through the channel prescribed in PMK-63 or through manual submission to the DGT.

An electronic document completed with an eSign can be submitted through the DGT website, the contact center, or other website/applications integrated into the DGT system. The DGT will then issue an electronic receipt upon the complete submission of the document. The electronic document completed with a valid eSign has the same legal power as a hardcopy document completed with a manual sign.

In regard to the issue of electronic tax decisions, tax assessments, tax collection notices, etc., the DGT will apprise the relevant taxpayer through the DGT website, by direct email to the taxpayer, or other website/applications integrated into the DGT system.

The current electronic tax identifiers issued by the DGT (i.e. EC, EFIN, and Verification Code) are valid up to 31 December 2022. Detailed procedures on the application of eSign will be regulated via DGT Regulation.

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<sup>6</sup> MoF Regulation No.63/PMK.03/2021 (PMK-63) dated and effective from 8 June 2021

## Your PwC Indonesia Contacts:

**Abdullah Azis**  
[abdullah.azis@pwc.com](mailto:abdullah.azis@pwc.com)

**Gerardus Mahendra**  
[gerardus.mahendra@pwc.com](mailto:gerardus.mahendra@pwc.com)

**Raemon Utama**  
[raemon.utama@pwc.com](mailto:raemon.utama@pwc.com)

**Adi Poernomo**  
[adi.poernomo@pwc.com](mailto:adi.poernomo@pwc.com)

**Hasan Chandra**  
[hasan.chandra@pwc.com](mailto:hasan.chandra@pwc.com)

**Runi Tusita**  
[runi.tusita@pwc.com](mailto:runi.tusita@pwc.com)

**Adi Pratikto**  
[adi.pratikto@pwc.com](mailto:adi.pratikto@pwc.com)

**Hendra Lie**  
[hendra.lie@pwc.com](mailto:hendra.lie@pwc.com)

**Ryuji Sugawara**  
[ryuji.sugawara@pwc.com](mailto:ryuji.sugawara@pwc.com)

**Alexander Lukito**  
[alexander.lukito@pwc.com](mailto:alexander.lukito@pwc.com)

**Hisni Jesica**  
[hisni.jesica@pwc.com](mailto:hisni.jesica@pwc.com)

**Soeryo Adjie**  
[soeryo.adjie@pwc.com](mailto:soeryo.adjie@pwc.com)

**Ali Widodo**  
[ali.widodo@pwc.com](mailto:ali.widodo@pwc.com)

**Hyang Augustiana**  
[hyang.augustiana@pwc.com](mailto:hyang.augustiana@pwc.com)

**Sujadi Lee**  
[sujadi.lee@pwc.com](mailto:sujadi.lee@pwc.com)

**Amit Sharma**  
[amit.xz.sharma@pwc.com](mailto:amit.xz.sharma@pwc.com)

**Kianwei Chong**  
[kianwei.chong@pwc.com](mailto:kianwei.chong@pwc.com)

**Susetiyo Putranto**  
[susetiyo.putranto@pwc.com](mailto:susetiyo.putranto@pwc.com)

**Andrias Hendrik**  
[andrias.hendrik@pwc.com](mailto:andrias.hendrik@pwc.com)

**Lukman Budiman**  
[lukman.budiman@pwc.com](mailto:lukman.budiman@pwc.com)

**Sutrisno Ali**  
[sutrisno.ali@pwc.com](mailto:sutrisno.ali@pwc.com)

**Anton Manik**  
[anton.a.manik@pwc.com](mailto:anton.a.manik@pwc.com)

**Mardianto**  
[mardianto.mardianto@pwc.com](mailto:mardianto.mardianto@pwc.com)

**Suyanti Halim**  
[suyanti.halim@pwc.com](mailto:suyanti.halim@pwc.com)

**Antonius Sanyojaya**  
[antonius.sanyojaya@pwc.com](mailto:antonius.sanyojaya@pwc.com)

**Margie Margaret**  
[margie.margaret@pwc.com](mailto:margie.margaret@pwc.com)

**Tim Watson**  
[tim.robert.watson@pwc.com](mailto:tim.robert.watson@pwc.com)

**Ay Tjhing Phan**  
[ay.tjhing.phan@pwc.com](mailto:ay.tjhing.phan@pwc.com)

**Oki Octabiyanto**  
[oki.octabiyanto@pwc.com](mailto:oki.octabiyanto@pwc.com)

**Tjen She Siung**  
[tjen.she.siung@pwc.com](mailto:tjen.she.siung@pwc.com)

**Brian Arnold**  
[brian.arnold@pwc.com](mailto:brian.arnold@pwc.com)

**Omar Abdulkadir**  
[omar.abdulkadir@pwc.com](mailto:omar.abdulkadir@pwc.com)

**Turino Suyatman**  
[turino.suyatman@pwc.com](mailto:turino.suyatman@pwc.com)

**Dexter Pagayonan**  
[dexter.pagayonan@pwc.com](mailto:dexter.pagayonan@pwc.com)

**Otto Sumaryoto**  
[otto.sumaryoto@pwc.com](mailto:otto.sumaryoto@pwc.com)

**Yessy Anggraini**  
[yessy.anggraini@pwc.com](mailto:yessy.anggraini@pwc.com)

**Enna Budiman**  
[enna.budiman@pwc.com](mailto:enna.budiman@pwc.com)

**Parluhutan Simbolon**  
[parluhutan.simbolon@pwc.com](mailto:parluhutan.simbolon@pwc.com)

**Yuliana Kurniadjaja**  
[yuliana.kurniadjaja@pwc.com](mailto:yuliana.kurniadjaja@pwc.com)

**Gadis Nurhidayah**  
[gadis.nurhidayah@pwc.com](mailto:gadis.nurhidayah@pwc.com)

**Peter Hohtoulas**  
[peter.hohtoulas@pwc.com](mailto:peter.hohtoulas@pwc.com)

**Yunita Wahadaniah**  
[yunita.wahadaniah@pwc.com](mailto:yunita.wahadaniah@pwc.com)

[www.pwc.com/id](http://www.pwc.com/id)



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