Indonesia Tax Info June 2021

Regulation on tax-neutral business reorganization further amended

On 3 June 2021, the Minister of Finance (MoF) issued Regulation Number 56/PMK.010/2021 (PMK-56) amending MoF Regulations Number 52/PMK.010/2017 and 205/PMK.010/2018 regarding the tax-neutral merger, consolidation, expansion, or acquisition of business (please refer to *Tax Info June 2017*, *Tax Info January 2019*, and *Tax Info May 2021*).

PMK-56 was issued to simplify the process of restructuring of state-owned enterprises and to encourage companies to carry out an initial public offering (IPO).

In this issue:

PMK-56 adds the following types of business expansion (*pemekaran*) that may apply for approval to be treated as broadly tax-neutral to the Directorate General of Taxation (DGT) :

- A spin-off in which a company transfers part of its assets and liabilities to one or more companies, without establishing a new company and without liquidating the existing company; and
- A spin-off of two or more companies by transferring part of their assets and liabilities and combining the business transferred into one company without liquidating the existing companies.

Companies that are eligible for the tax-neutral expansion mentioned above are:

- State-owned enterprises receiving a capital injection from the government, provided that the expansion is performed for the purpose of establishing a state-owned holding company; and
- Taxpayers carrying out an expansion as the result of a restructuring of a state-owned enterprise where:
  - The restructuring is carried out since the beginning of 2021;
  - The assets are transferred other than through a sale and purchase transaction or a barter arrangement; and
  - The approvals for the restructuring and asset transfer have been granted by the relevant ministry.

PMK-56 was issued to simplify the process of restructuring of state-owned enterprises and to encourage companies to carry out an IPO.

PMK-56 also adds that a business acquisition of a corporate taxpayer via a share transfer may enjoy tax-neutral treatment if it is carried out for the purpose of the restructuring of a state-owned enterprise and the following conditions are met:

- The shares of the company being acquired account for more than 50% of the paid-up-capital or the acquiring company has authority (directly or indirectly) over the operational activities and/or policies of the company being acquired;
- Where the company being acquired is a listed company, the business acquisition process must follow capital market regulations;
- The restructuring is carried out since the beginning of 2021;
- The assets are transferred other than through a sale and purchase transaction or a barter arrangement;
- The approvals for the restructuring and asset transfer have been granted by the relevant ministry; and
- The application for the acquisition to be treated as a tax-neutral transaction is made by the taxpayer transferring the assets.

In addition, for a tax-neutral business expansion via an IPO, PMK-56 extends the deadline from one year to two years for the taxpayer to register the IPO with the Financial Services Authority (*Otoritas Jasa Keuangan*) and the registration has to come into effect by the deadline.

PMK-56 comes into effect as from 4 June 2021.

Guidance for verification of Certificate of Domicile during tax audits or disputes issued

A non-Indonesian tax resident wishing to access tax treaty benefits must provide a Certificate of Domicile (CoD) in a prescribed format, known as DGT Form (please refer to *Tax Info November 2018*). Tax officers have adopted different approaches to verify CoDs during tax audit or tax dispute procedures.

A CoD without a clear information on the validity period may become invalid.

To provide a unified approach to verifying CoDs during tax audits, tax objections, or procedures to reduce or cancel tax assessments, the DGT issued Circular Letter Number SE-35/PJ/2021 on 31 May 2021. In principle, the guidance covers the verification of the formal and material requirements of CoDs by tax officers during these processes, which includes the following:

- All formal and material requirements of the CoD must be met;
- The CoD may be validated via e-signature by the competent authority of the foreign income recipient's jurisdiction in accordance with the common practice of that jurisdiction;
- A CoD provided during the process of tax audit, tax objection, or reduction or cancelation of tax assessment can be accepted for consideration, provided that it satisfies the formal requirements; and
- In the event the validity period is not clearly mentioned in the CoD, the non-Indonesian tax resident may provide an additional explanation of the validity period from the competent authority of the foreign income recipient's jurisdiction. If no additional explanation is given in the CoD, the form will be deemed not to meet the formal requirements; hence, the CoD becomes invalid and the tax treaty benefits cannot be accessed.

Taxpayers wishing to access tax treaty benefits should ensure that all requirements for a CoD are met.

Amended tax treaties with Singapore and United Arab Emirates ratified

During May 2021, the Indonesian president ratified Indonesia's amended double tax treaties with Singapore and the United Arab Emirates (UAE) via the issuance of Presidential Regulations Number 35 and 34 of 2021, respectively. The treaty with Singapore was signed on 4 February 2020 (please refer to *Tax Alert February 2020*) and the treaty with the UAE was signed on 24 July 2019.

The maximum withholding tax (WHT) rates on dividends, interest, royalties, and branch profits (BPT) (imposed on total after-tax profits), together with the permanent establishment (PE) "time test" provided in each of the treaties are summarized below:

Treaty partner jurisdiction	Dividend WHT rate	Interest WHT rate	Royalty WHT rate	BPT rate	PE time test
Singapore	10%/15%	10%	8%/10%	10%	90 days/183 days/ three months/six months*)
UAE	10%	7%	5%	5%	Six months

**) The following time limit applies:*

- *90 days applies to the furnishing of services;*
- *183 days applies to a building site or construction, installation or assembly project;*
- *Three months applies to an assembly or installation project performed by a person other than the main contractor; and*
- *Six months applies to supervisory activities in connection with a construction, installation or assembly project.*

The treaties will enter into force when both respective governments have notified each other in writing that the formal requirements of their domestic ratification procedures have been completed. The provisions of the treaties in respect of taxes withheld at source will apply to income derived on or after 1 January of the year following that in which the relevant treaty enters into force.

Reclarification of extension of deadlines for certain tax administrative procedures during the COVID-19 pandemic

On 27 June 2021, the DGT issued an Official Memorandum Number ND-262/PJ/2021 (ND-262) to provide guidance related to the operating procedures within the DGT and to reclarify the extension of deadlines for certain tax administrative services during the COVID-19 pandemic.

ND-262 confirms that as stipulated under the DGT's Circular Letter Number SE-32/PJ/2020, the COVID-19 pandemic is regarded as a "force majeure" for tax purpose and the period of this force majeure is to follow Presidential Decision Number 12 of 2020 (KEPPRES-12) issued on 13 April 2020. The force majeure period will end when KEPPRES-12 is revoked. Therefore, regulations related to the provision of extension of deadlines for tax administrative procedures listed below are still valid until KEPPRES-12 is revoked:

- Law Number 2 of 2020;
- MoF Regulation Number 29/PMK.03/2020;
- DGT's Circular Letter Numbers 22/PJ/2020, 26/PJ/2020, 32/PJ/2020; and
- DGT's Decision Letter Number KEP-178/PJ/2020.

Please refer to *Tax Alert April 2020 – 1st edition*, *2nd edition*, and *3rd edition* for more detail information.

Customs Focus

The entry and release of goods in Free Trade Zones and Free Ports

To further regulate the entry and release of goods in Free Trade Zones and Free Ports (FTZs), MoF has issued Regulation Number 34 of 2021 (PMK-34), which revoked MoF Regulation Number 84 of 2019. Under PMK-34, the provisions regarding procedures for the entry and release of goods traffic in FTZs have been reinforced, i.e., the transporter must declare additional required documents and shall meet several conditions to undergo the clearance process.

PMK-34 also contain introduction of Voluntary Declaration and Payment procedure to support the Entrepreneur's activity within the FTZs. Voluntary Declaration is a mechanism to declare additional costs after importation, in the case where the costs that was declared in Import Customs Declaration (PIB) was yet to be determinable at the time of declaration. If the actual costs is then determined, the Entrepreneurs shall settle the underpayment by utilizing Voluntary Payment Procedure.

Under PMK-34, the provisions regarding the entry and release of goods in FTZs have been reinforced, as well as introduction of Voluntary Declaration and Payment procedures.

The salient points of PMK-34 are as follows:

1. Transporter and their obligations

A transporter who has been connected with National Logistic Ecosystem (NLE) are able to enter and release goods in FTZs. The categories of transporter are:

a. Transportation operator or its proxy;
b. Contractual Transporter (Non-Vessel Operator Common Carrier); and/or
c. Postal operator.

In PMK-34, the transportation operator and/or its proxy is required to submit a Notification of Transportation Means Arrival Plan (RKSP) at the designated port to the Customs Officials. The provision is also applied for air transportation lines.

2. Unloading, stockpiling, and loading of goods

Transporter operator is able to perform unloading goods in other places besides FTZs after obtaining a permit from the designated Head of Customs Officials, under the following conditions:

a. The goods require special treatment, therefore the goods are unable to be unloaded in the customs area;
b. Transit goods;
c. There are technical issues in the customs area, therefore the goods are unable to be unloaded in the customs area; and
d. There is congestion declared in writing by the appointed port manager.

Transporter operator is able to obtain an exemption on performing stockpiling activities in other places that are *treated the same* as the Temporary Stockpiling Area (TPS) after obtaining a permit from the Head of Customs Officials in the designated port, with the condition as follows:

a. Unable to be stockpiled due the goods require special treatment;
b. Unable to be stockpiled due to technical issues;
c. There is congestion stated by TPS entrepreneur;
d. TPS is not available during loading and unloading; and

e. Stockpiling activity will be performed by an entrepreneur in the FTZs that have been determined to have customs special treatment.

Loading goods that are to be released from FTZs must be performed in the Customs Area or under certain circumstances may be loaded in other places with a permit from the Head of Customs Office.

The activities as mentioned in the first and second paragraph above may be performed by transporter operator, contractual transporter and/or postal operator by submitting an application to the Customs Office in the form of electronic data through Computer Service System (SKP). To ensure continuous monitoring, the approval shall be granted periodically, with the 30 days validity for each approval.

3. The purpose of the entry of goods into FTZs

Transporter operator are able to conduct activities of entry of goods into FTZs with the purpose of:

a. Sales;
b. Direct use;
c. Stockpiling (logistic);
d. Processing;
e. Project work; and
f. Subcontract work.

4. Customs value determination procedure upon the entry/release of goods in FTZs

PMK-34 adds a new provision where the examination of tariff and customs value on the customs declaration will not be performed by the customs authority upon the entry/release of goods, when such entry/ release is peformed by:

a. Certified Authorized Economic Operator (AEO) entrepreneur;
b. Entrepreneur who holds Major Customs Partners (*Mitra Utama Kepabeanan/*MITA) status;
c. Low-risk Producer;
d. Entrepreneur who has obtained facility from Investment Coordinating Board (*Badan Koordinasi Penanaman Modal*/BKPM);
e. An entrepreneur who has obtained facility Import Facility for Export (*Kemudahan Impor Tujuan Ekspor*/KITE) Exemption;
f. Entrepreneur who have obtained exemption facility from Directorate General of Customs and Excise; and
g. Government agencies who conduct the importation directly.

The determination of customs value for the calculation of Import Duty and Income Tax Article 22 upon the release of goods from FTZs are as follows:

a. For goods and/or raw materials from outside of customs area that is not processed in FTZs, the value shall be determined based on the customs value of the goods at the time entered into the FTZs;
b. The customs value of the finished goods produced in the FTZs are determined as follows:
    (i) In case the finished goods are using conversion method to process the raw material, the customs value shall be based on customs value at the time the entry of goods from outside of customs area when the goods is released into FTZs;

(ii) Based on the Selling price of the finished goods when the goods is released into Other Places in Customs Area (*Tempat Lain Dalam Daerah Pabean*/TLDDP);

c. The treatment of goods besides points a. and b., such as:
   (i) Waste and/or scrap from production, which value shall be determined by the conversion against the value at the time entered into the FTZs ; or
   (ii) Destroyed capital goods for which their main functions were disabled but nevertheless still carry certain economic value, shall be based on the selling price at the time releasing the goods from FTZs to TLDDP.

PMK-34 adds that, where the entrepreneur is unable to determine which values should be included as a component of customs values when declaring customs declaration, the entrepreneur may utilize Voluntary Declaration and Voluntary Payment.

5. Returnable Package

PMK-34 allows the entry and/or release of re-use package (returnable package) from FTZs, provided it meet the following criteria:
a. Not disposable;
b. Have not changed significantly;
c. The goods must be in the same form upon entering the FTZs and when releasing from the FTZs; and
d. Have a clear purpose of usage.

6. Sanction

Under PMK-34, when the goods entered the FTZs from outside of customs area without permit from the Zone Management Agency (*Badan Pengusahaan Kawasan*) the following sanctions apply:
a. The goods shall be re-released;
b. The goods shall be granted; or
c. The goods shall be destroyed.

Further sanction for the entrepreneur who has entered the goods without fulfilling the mentioned requirements are:
a. Business license suspension from the Zone Management Agency; and
b. The entrepreneur's customs access in FTZs will be blocked.

As highligthed above, PMK-34 contains a number of new procedures of entry and release of goods in the zones which has been designated as FTZs. As such, entrepreneurs who wish to conduct their activity within these zones needs to understand and comply with the prevailing customs regulation, for which our team will be pleased to assist and provide guidance to the entrepreneurs in fulfilling the customs provision in FTZs.

PMK-34 came into force on 30 May 2021.

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