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TAX UPDATES

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THE USE OF BOOK VALUE IN CORPORATE RESTRUCTURING

One strategy used in order to improve the competitiveness and operational efficiency of a company is by restructuring, which can be done through a merger, consolidation, expansion, or acquisition of a business. However, if the company undergoing a restructuring process does not pay attention to related tax provisions, it may result in a significant tax burden on the taxpayer.

Income Tax Aspects

Tax provisions stipulate that taxpayers must use the market value for the transfer of assets in the context of a merger, consolidation, expansion, or acquisition of a business. However, the taxpayer may use the book value after obtaining approval from the Director General of Taxes (DGT).

To obtain an approval for the use of the book value, the taxpayer must:

a. submit an application to the DGT in no later than 6 months after the effective date, by attaching a statement letter containing the reasons and objectives;
b. meet the business purpose test requirements; and
c. obtain a fiscal statement letter from the DGT.

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RELATED TAX REGULATIONS*:

- The Minister of Finance (MoF) Regulation No.52/PMK.010/2017 as last amended by MoF Regulation No.56/PMK.010/2021
- Law Number 42 Year 2009 (VAT Law) as last amended by Law Number 7 Year 2021 (The Harmonization of Tax Regulation).

**All tax regulations are in Bahasa Indonesia*

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The requirements of the business purpose test are met if:

a. a strong business synergy is created while the capital structure is strengthened; and is not carried out for tax avoidance;
b. the business activities of the taxpayer, who transfers the assets, are still ongoing until the effective date;
c. the business activities of the taxpayer, who transfers the assets, must be continued by the taxpayer who receives the transferred assets for at least 5 years after the effective date;
d. the business activities of the taxpayer, who receives the assets, continue for at least 5 years after the effective date; and
e. the transferred fixed assets are not transferred by the taxpayer, who receives the assets, for at least 2 years after the effective date; unless the transfer is carried out for the purpose of increasing company efficiency.

Assets that may use book value are assets that have been transferred on the effective date and the book value used is the book value on the effective date.

The following are conditions for mergers, consolidations, expansions, or acquisitions of businesses, that may use book value:

A. Business Merger

1. The merger of 2 or more domestic corporate taxpayers whose capital is divided into shares, by transferring all assets and liabilities to one of the corporate taxpayers who has no remaining fiscal loss or has a smaller remaining fiscal loss and dissolving the corporate taxpayer who transfer assets and liabilities; or
2. The merger of a legal entity overseas with a domestic corporate taxpayer, of which capital is divided into shares, by transferring all assets and liabilities of the legal entity abroad to the domestic corporate taxpayer, whose capital is divided into shares and dissolving the legal entity abroad that transferred the assets and liabilities.

B. Business Consolidation

1. The consolidation of 2 or more domestic corporate taxpayers, whose capital is divided into shares, by establishing a new business entity in Indonesia and transferring all assets and liabilities to the new corporate taxpayer and dissolving the consolidated corporate taxpayer; or
2. The consolidation of a legal entity abroad with a domestic corporate taxpayer, whose capital is divided into shares, by establishing a new business entity in Indonesia and by transferring all assets and liabilities to the new business entity; effectively dissolving the consolidated legal entity overseas and the domestic corporate taxpayer.

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C. Business Expansion

1. The separation of the business of 1 domestic corporate taxpayer, whose capital is divided into shares, into 2 or more domestic corporate taxpayers, by establishing a new business entity and transferring part of the assets and liabilities to the new business entity, which is done without liquidating the old business entity. The domestic corporate taxpayer as referred to, is:
   a. A taxpayer who has not gone public and intend to conduct an IPO;
   b. A taxpayer who has gone public, given that all business entities resulting from the business expansion conduct an IPO;
   c. Corporate taxpayers that conduct separation of sharia business units to carry out business separation obligations;
   d. Domestic corporate taxpayers, given that the business entities resulting from the business expansion receive additional capital from foreign investors of at least IDR 500 billion;
   e. Taxpayers of State-Owned Enterprises that receive additional capital participation from the Republic of Indonesia, given that the business expansion is carried out in connection with the formation of a State-Owned Enterprise's holding company.

2. Separation of the business of 1 domestic corporate taxpayer, whose capital is divided into shares, by transferring part of the assets and liabilities to 1 or more domestic corporate taxpayers whose capitals are divided into shares, which is carried out without forming a new business entity and without liquidating the old business entity (applicable to State-Owned Enterprises or the separation of business in connection with the restructuring of State-Owned Enterprises with certain conditions); or

3. The separation of the business of 2 or more domestic corporate taxpayers, whose capitals are divided into shares, by transferring part of the assets and liabilities of the separated business and merging the separated business into 1 business entity without liquidating the old business entity (applicable to State-Owned Enterprises or the separation of business in connection with the restructuring of State-Owned Enterprises with certain conditions).

D. Business Acquisition

1. The acquisition of a Permanent Establishment (PE) that carries out activities in the banking business sector, carried out by transferring all or part of the PE's assets and liabilities to a domestic corporate taxpayer whose capital is divided into shares, and dissolves the PE; or
2. The acquisition of a business from a domestic corporate taxpayer by transferring ownership of the shares it owns in a domestic corporate taxpayer to another domestic corporate taxpayer, which is carried out in connection with the restructuring of a State-Owned Enterprise, with certain conditions.

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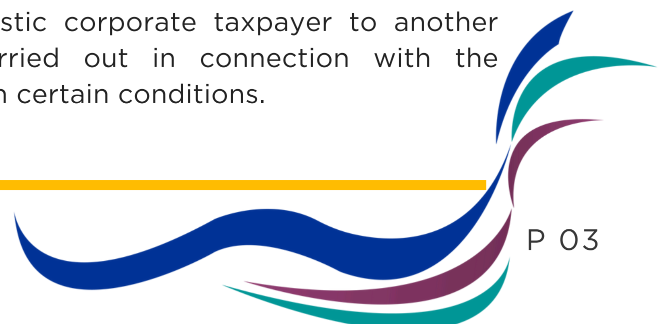

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Apart from these, there are several other provisions, as follows:

- Taxpayers who receive assets using the book value may not compensate for losses/remaining losses from corporate taxpayers, PEs, or legal entities overseas that transfer assets.
- Taxpayers who receive assets in the context of business mergers or consolidations may not charge taxes and/or other levies owed abroad from legal entities overseas that transfer assets.
- Taxpayers who receive the transfer of assets record the acquisition value of the assets according to the book value in the books of the party that transfers the assets. The depreciation or amortization of the assets received is carried out based on the remaining useful life according to the books of the party that transfers the assets.
- The recording of debts and receivables between taxpayers who transfer assets and taxpayers who receive the transfer of assets is carried out by offsetting each other so that no income and costs are recognized for the write-off of receivables.
- The amount of Article 25 Income Tax installments for taxpayers who receive assets is not less than the total of the Article 25 Income Tax installments from all related taxpayers. If there is an increase in business, the amount of Article 25 Income Tax installments is recalculated according to applicable provisions.
- The settlement of Income Tax for the current tax year through payment, withholding and/or collection of Income Tax from domestic corporate taxpayers and PEs that transfer assets before the effective date, can be transferred to the settlement of Income Tax for the current year from the taxpayer who receives the transfer.
- The tax rights and obligations of taxpayers who transfer assets before the effective date are transferred to the taxpayer who receives the transfer of assets.
- If the use of the book value is disapproved or the DGT revokes the decision to approve the use of the book value later, then the value of the transfer of assets is recalculated based on the market value at the time of transfer to calculate the Income Tax payable.

Value Added Tax (VAT) Aspects

Based on Article 1A paragraph (2) letter d of the VAT Law and its explanation, the transfer of Taxable Goods in the context of a merger, consolidation, expansion, spin-off, and acquisition of a business, as long as the party transferring the assets and the party receiving the transfer are Taxable Entrepreneurs, is not included in the definition of the transfer of Taxable Goods and is therefore not subject to VAT.

(RED/T3/ALC)

NEW TAX REGULATIONS

ISSUED ON SEPTEMBER TO OCTOBER 2024

- **Minister of Finance Decision Number 15/KM.10/2024**
  dated September 27, 2024
  Interest Rates as Basis for Calculation of Administrative Sanctions in the form of Interest and Granting of Interest Compensation for the Period of October 1, 2024 to October 31, 2024

- **DGT Announcement Number PENG-27/PJ.09/2024**
  dated September 24, 2024
  The Release of Coretax Simulator

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