



Indonesia Tax Info May 2021

Issuance of new regulation on procedures to apply for a tax-neutral merger, consolidation, expansion, or acquisition of business

On 18 February 2021, the Director General of Tax (DGT) issued Regulation Number PER-03/PJ/2021 (PER-03) updating the procedures to request approval from the DGT for various forms of business reorganization to be broadly regarded as tax-neutral. PER-03 applies with immediate effect as from the date of issuance.

Background

Generally, the transfer of assets in connection with a merger, consolidation, expansion, or acquisition of business should be conducted at market value, in which may result in a taxable gain. However, with the approval from the DGT, the assets may be transferred at their tax book value, resulting in a tax-neutral outcome.

In 2017, the Minister of Finance (MoF) issued Regulation Number 52/PMK.03/2017 (later amended by MoF Regulation Number 205/PMK.010/2018) (PMK-52)) to regulate the subject matter above (please refer to [Tax Info June 2017](#) and [Tax Info](#)

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[January 2019](#)). DGT Regulation Number PER-28/PJ/2008 (PER-28) regarding the procedures to obtain approval from the DGT had not been updated until the DGT issued PER-03, which then revoked PER-28.

Key features of PER-03

Under PER-03, the procedures to apply for the tax-neutral treatment are updated to align with the changes introduced by PMK-52. Some of the salient points in PER-03 are:

- The application procedures for the following situations are now regulated:
 - Expansion (*pemekaran*) of a sharia business division/unit;
 - Expansion of a resident corporate taxpayer where the new entity resulting from the expansion receives an additional capital injection from foreign investors with a minimum value of IDR 500 billion;
 - Expansion of a state-owned enterprise which receives a capital injection from the government; and
 - Business acquisition in the form of certain mergers of a bank which is a permanent establishment (PE) with a resident corporate taxpayer;
- The forms and list of supporting documents required for applications are updated to cater to each situation and the application may be submitted online;
- An application for a tax-neutral merger, consolidation, or acquisition of business must be made by the taxpayer which receives the assets; meanwhile, an application for a tax-neutral expansion must be made by the taxpayer which transfers the assets;
- In the case of the expansion of a resident corporate taxpayer where the new entity resulting from the expansion receives an additional capital injection from foreign investors with minimum value of IDR 500 billion, the capital injection must be in the form of cash and recorded in the company's books and bank account; and
- Where approval has been granted to transfer fixed assets at tax book value, the assets must be retained for a minimum of two years after the effective date of the transaction. The assets may be transferred within the two-year period only where the purpose of the transfer is to improve the efficiency of the company, for example where:
 - The fixed assets are severely damaged and no longer usable;
 - The fixed assets have been owned or used for longer than their useful life;
 - The locations of the assets are merged;
 - The transaction has resulted in multiple similar assets, hence one or more of the assets is no longer required; or
 - The fixed asset is replaced with similar assets which:
 - Have a larger productive capacity; or
 - Are in a more strategic location if the fixed assets are in the form of land and/or buildings.

The DGT may revoke the approval letter under the following conditions:

- The taxpayer does not meet the business purpose test;
- In the case of an initial private offering (IPO), the taxpayer does not register the IPO with the Financial Services Authority (*Otoritas Jasa Keuangan*) or the registration has not entered into effect by the required date;
- For a business acquisition in the form of a qualifying merger by the PE of a bank with a resident corporate taxpayer, the PE has not been liquidated by the required deadline; or
- The assets to which the tax-neutral facility is granted are not transferred in accordance with the required procedures.

PER-03 updates the procedures to apply for tax neutral treatment to align with the changes introduced by PMK-52.

In the event that the approval letter is revoked, the DGT will perform a tax audit to calculate the taxable gain using the market values for the relevant assets which generally will be subject to tax at the appropriate corporate income tax rate for the fiscal year in which the merger, consolidation, expansion, or acquisition of business occurred.

Applications to the DGT for tax-neutral treatment that are ongoing as at 18 February 2021 will be processed in accordance with the provisions in PER-28, subject to an additional requirement for a tax clearance letter (*Surat Keterangan Fiskal*).

Synthesized texts of certain tax treaties as modified by the MLI

Indonesia deposited its instrument of ratification for the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI) with the Organization for Economic Co-operation and Development (OECD) on 28 April 2020. Subsequently, on 26 November 2020, Indonesia deposited notification of the completion of its internal procedures for the entry into effect of the MLI's provisions on 22 of its treaties that are modified by the MLI (referred to as "covered tax agreements" or CTAs).

On 18 February 2021, the DGT issued Circular Letters 05/PJ/2021 to 25/PJ/2021, providing synthesized texts of 21 of the CTAs. The synthesized texts are intended to assist the readers in understanding the impact of the implementation of MLI on the relevant tax treaties.

The circular letters also confirm the date when the MLI becomes effective for Indonesia, namely:

- 1 January 2021 for withholding taxes; and
- 1 January 2022 for other taxes.

The circular letters cover Indonesia's treaties with the following jurisdictions:

Circular letter	Treaty partner
SE-05/PJ/2021	Australia
SE-06/PJ/2021	Japan
SE-07/PJ/2021	Canada
SE-08/PJ/2021	Finland
SE-09/PJ/2021	Belgium
SE-10/PJ/2021	Denmark
SE-11/PJ/2021	France
SE-12/PJ/2021	United Kingdom
SE-13/PJ/2021	Russia
SE-14/PJ/2021	Poland
SE-15/PJ/2021	Portugal
SE-16/PJ/2021	Netherlands

The synthesized texts attached in the circular letters are intended to assist the readers in understanding the impact of the implementation of MLI on the relevant tax treaties.

Circular letter	Treaty partner
SE-17/PJ/2021	India
SE-18/PJ/2021	United Arab Emirates
SE-19/PJ/2021	Qatar
SE-20/PJ/2021	New Zealand
SE-21/PJ/2021	Singapore
SE-22/PJ/2021	Luxembourg
SE-23/PJ/2021	Slovakia
SE-24/PJ/2021	Korea
SE-25/PJ/2021	Serbia

With the issuance of these synthesized texts, hopefully the readers can understand more easily the impact of the implementation of MLI on the relevant tax treaties.

Customs Focus

Export and import activity leniency for reputable exporter and importer

On 1 April 2021, the Ministry of Trade (MoT) issued Regulation Number 17 Year 2021 (MoT-17) which main objective is to facilitate and expedite reputable exporters and importers in obtaining license permits. MoT-17 is an implementing regulation mandated under Article 17(4) of Government Regulation Number 29 Year 2021. The salient points of MoT-17 are as follows:

MoT-17 main objective is to facilitate and expedite reputable exporters and importers in obtaining license permits.

Reputable exporters

The MoT, through the Directorate General of Foreign Trade (DGFT), has set out the following criteria to qualify as a reputable exporter:

1. The exporter has fulfilled the obligation to report the realization of all Export Approvals that have been made for each commodity in the last one year, in accordance with the provisions of applicable regulations;
2. In the last two years, the exporter has obtained the "valid" status (in the confirmation of its taxpayer status from the MoF);
3. In the last two years, the exported goods must correspond to the exporter's business sector;
4. In the last two years, the exporter has never been subjected to administrative sanctions in the form of permit revocation in the export sector in the last two years;
5. Currently, the exporter is not being subjected to administrative sanctions in the form of warning letters, postponement of permits, or suspension of permits for violation against the provisions of regulations in the export sector; and
6. The exporter has never been subjected to criminal sanctions in the trade sector.

Exporters who have obtained the status as Authorized Economic Operators (AEO) or Major Customs Partners (*Mitra Utama Kepabeanan*/MITA) from the Directorate General of Customs and Excise (DGCE), or have received the Primaniyarta Award from the MoT starting from 2018, can be classified as reputable exporters.

Examples of Export Approvals that can be given to reputable exporters are as follows:

No.	Export approval
1.	Export approval of Black Glutinous Rice
2.	Export approval of Medium Rice
3.	Export approval of Organic Rice
4.	Export approval of Premium Rice
5.	Export approval of Animals and Animals Products
6.	Export approval of Natural Plants and Wild Animals
7.	Export approval of Other Fuels

Reputable importers

The MoT, through the DGFT, has set out similar criteria as above for reputable importer, except that instead of realization of all export approvals in bullet point a), it should be realization of import approvals. In addition, the importer must hold a Producer License (API-P). Importers who hold the status as AEO or MITA from the DGCE can be determined as reputable importers.

Examples of Import Approvals that can be given to the reputable importers are as follows:

No.	Import approval
1.	Import Approval of Iron or Steel, Alloy Steel and its derivative (Exclusive for API-P Importer)
2.	Import Approval of Plastic Raw Materials
3.	Import Approval of Petroleum and Natural Gas
4.	Import Approval of Non-Pharmaceutical Precursor
5.	Import Approval of Complementary Products for Electronic and Telematic Industry
6.	Import Approval of Horticultural Product for Industrial Raw Materials
7.	Import Approval of Used Capital Goods for Direct-User Group A with a maximum of 20 (twenty) years of age HS 84, 85, 90

Suspension and revocation of reputable exporters and importers

1. The suspension of reputable exporters/importers may be imposed based on the following evaluations:
 - a. They do not meet the requirements as reputable exporters/ importers; and/or
 - b. They are currently under an investigation for an alleged criminal activity in the trade sector.
2. The reputable status of an exporter/importer can be reactivated if:
 - a. Investigators have issued an order to terminate the investigation for the alleged criminal activity in the trade and/or customs sector; and
 - b. They are found not guilty or acquitted from all lawsuits based on a court decision.

Revocation of reputable exporters/importers status can be imposed in the event where they:

1. Fail to meet the requirements to reactivate the status no later than 30 days from the date of suspension;
2. Misuse the business permit in export and import sector;
3. Are found guilty based on a court decision; and
4. Have been suspended three times within three years.

Exporters/importers whose reputable status has been revoked by the authority may apply for reinstatement of their reputable status after two years since the revocation date.

In order to avail to this facility, exporters and importers should monitor and review the export and/or import declaration that has been submitted and/or will be submitted. This will help to identify and mitigate the risk against any findings which can affect the exporters and importers in obtaining and/or maintaining a reputable status. Please reach out to our team who will be pleased to assist you in obtaining and/or maintaining a reputable exporter and/or importer status.

MoT-17 shall come into force on 30 May 2021.

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