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TAX ON INBOUND INVESTMENT

Indonesia

LEXOLOGY

Tax on Inbound Investment

Contributing Editor

Graham Samuel-Gibbon

Taylor Wessing

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Contributors

Indonesia

Meta Law

Maser Tedjasukman maser@metalaw.id

ACQUISITIONS (FROM THE BUYER'S PERSPECTIVE)

Tax treatment of different acquisitions

What are the differences in tax treatment between an acquisition of stock in a company and the acquisition of business assets and liabilities?

In Indonesia, tax regulations differ based on whether an acquisition involves shares or assets. Under the Income Tax Law, capital gains tax with regular income tax rate applies to acquisitions of shares in non-public listed companies, while share transactions involving public listed companies are subject to a final income tax of 0.1 per cent on the gross sale value. Asset acquisitions may be liable for value added tax (VAT) as outlined in VAT Law, along with Land and Building Acquisition Duty (BPHTB), if the assets are in the form of plot of land. For example, purchasing a manufacturing facility can result in an 11 per cent VAT and a 5 per cent BPHTB (for the plot of land of such facility) calculated from the transaction value. Although this is the case, if the transactions are conducted through in-kind payment mechanisms, the VAT may not be levied on the transactions provided that both the grantor and the recipient are taxable entrepreneurs.

Law stated - 13 September 2025

Step-up in basis

In what circumstances does a purchaser get a step-up in basis in the business assets of the target company? Can goodwill and other intangibles be depreciated for tax purposes in the event of the purchase of those assets, and the purchase of stock in a company owning those assets?

Indonesia does not formally address step-up in basis in its tax regulations, but certain practices are observed in the market. For instance, asset revaluation allows entities to update fixed assets to market value, affecting both depreciation and income tax calculations. While inheritances are generally exempt from capital gains tax, gifts or inherited assets may be taxed as income unless they meet specific family criteria. In the context of mergers and acquisitions, asset purchases can enable a step-up in basis under article 11 of the Income Tax Law, permitting depreciation on both tangible and intangible assets. However, this benefit is not available for share acquisitions unless they are followed by a merger or restructuring. In specific instances involving mergers, amalgamations, spin-off or acquisitions, taxpayers have the option to utilise book value as the foundation for the calculation. However, this must first be approved by the Directorate General of Taxation.

Law stated - 13 September 2025

Domicile of acquisition company

Is it preferable for an acquisition to be executed by an acquisition company established in or out of your jurisdiction?

The decision regarding whether an acquisition should be made by a company incorporated within Indonesia or outside its jurisdiction depends on several factors, including the type of transaction, the relevant industry and the acquiring party's strategic objectives.

Under Indonesian tax law, choosing between a domestic or foreign acquisition entity involves a variety of tax considerations that can affect the structure and efficiency of the transaction.

A domestic acquisition company established in Indonesia has access to local tax incentives and benefits such as corporate income tax deductions, loss carry-forward provisions (typically for five to 10 years depending on the sector) and eligibility for sector-specific incentives like tax holidays, accelerated depreciation and investment allowances. Domestic entities may also be able to credit input VAT credits on asset acquisitions and, if certain regulatory requirements are met, qualify for tax-neutral treatment during mergers. These features may make domestic entities suitable for transactions involving significant local assets or operations.

Special purpose acquisition company (SPAC) domicile abroad might utilise international tax structuring options, including the use of tax treaties upon the administrative requirements are fully met. However, any future transfer of such SPAC may subject to indirect transfer tax of deemed capital as it has significant ownership in Indonesian companies.

Under Directorate General of Taxes Regulation No. 43, a SPAC incorporated abroad may still be treated as a domestic tax subject in Indonesia if its place of effective management is located in Indonesia or if it is effectively controlled by an Indonesian tax resident. This classification triggers full tax obligations, including corporate income tax on global income, withholding tax on distributions to non-residents and compliance with Indonesian reporting requirements. Such risks are common in joint venture structures where local investors use offshore SPACs for acquisitions or project financing. Therefore, careful assessment of control, governance and substance is essential to avoid unintended tax exposure.

Law stated - 13 September 2025

Company mergers and share exchanges

Are company mergers or share exchanges common forms of acquisition?

Mergers or share exchanges are legally recognised forms of acquisition. However, share acquisitions are significantly more common in practice. This preference is largely due to the relative simplicity and regulatory flexibility of share deals. Acquiring shares, either from existing shareholders or through new issuance, allows investors to gain control of a company without triggering the complex procedures associated with asset transfers or mergers. In regulated sectors such as energy, telecommunications, finance and banking, acquisitions are frequently structured as share deals to eliminate the requirement for re-licensing. Mergers, while permissible under Indonesian Company Law, are less frequently used due to their complexity and cost.

Law stated - 13 September 2025

Tax benefits in issuing stock

Is there a tax benefit to the acquirer in issuing stock as consideration rather than cash?

Generally, there should be no direct tax benefits for the acquirer in issuing new stock as consideration rather than cash as the acquirer typically would record the target in its book at fair market value.

Law stated - 13 September 2025

Transaction taxes

Are documentary taxes payable on the acquisition of stock or business assets and, if so, what are the rates and who is accountable? Are any other transaction taxes payable?

Stamp duty applies to documents, not transactions, at a fixed rate of 10,000 rupiahs per document, as regulated by Stamp Duty Law and the Directorate General of Taxes. It covers legal documents like agreements, deeds and receipts, and is usually paid by the party executing or benefiting from the document, unless stated otherwise. Other taxes may apply to asset acquisitions, such as VAT and BPHTB, with BPHTB set at 5 per cent for new land purchases. Share acquisitions, especially listed shares, are subject to a 0.1 per cent final income tax on gross proceeds under Indonesian Income Tax. Founder shareholders can choose to pay a 0.5 per cent tax on their shares' market value upon listing. These taxes are generally the seller's responsibility.

Law stated - 13 September 2025

Net operating losses, other tax attributes and insolvency proceedings

Are net operating losses, tax credits or other types of deferred tax asset subject to any limitations after a change of control of the target or in any other circumstances? If not, are there techniques for preserving them? Are acquisitions or reorganisations of bankrupt or insolvent companies subject to any special rules or tax regimes?

In Indonesia, Net operating losses (NOLs) are a potential source of Deferred Tax Assets (DTAs), but not all NOLs automatically qualify as DTAs. This recognition is governed by Indonesian Statement of Financial Accounting Standard (PSAK) No. 46 on Income Taxes and Income Tax Law. Deferred tax assets (DTAs) are recognised only when it is probable that future taxable profits will be available to utilise the deductible temporary differences. Additionally, under article 34 of PMK 136, DTAs may need adjustment to comply with GloBE minimum tax rules, allowing recasting of DTAs for GloBE losses.

In the context of insolvency and tax enforcement in Indonesia, the treatment of net operating losses (NOLs) must be distinguished from the legal framework governing tax collection and creditor hierarchy. While article 34 of PMK 136 allows for the adjustment of deferred tax assets (DTAs) to align with GloBE minimum tax rules, particularly in recasting DTAs for GloBE losses, this mechanism does not override the state's preferential claim in insolvency proceedings.

Under articles 21 and 22 of Taxation General Procedures Law, the state holds a preferential right to collect outstanding tax liabilities ahead of other creditors. This right is enforceable even in bankruptcy or liquidation scenarios, where tax debts must be settled before any asset distribution to shareholders or unsecured creditors. Further, the tax authority may initiate forced collection through a
surat paksa
(distress warrant), enabling asset seizure and auction to recover unpaid taxes. These provisions underscore the primacy of tax claims in insolvency and the limited role of NOLs or DTAs in shielding entities from enforcement actions under Indonesian tax law.

Law stated - 13 September 2025

Interest relief

Does an acquisition company get interest relief for borrowings to acquire the target? Are there restrictions on deductibility generally or where the lender is foreign, a related party, or both? In particular, are there capitalisation rules that prevent the pushdown of excessive debt?

Interest expenses incurred on borrowings used to finance acquisitions are generally deductible for corporate income tax purposes, provided the loans are used for legitimate business activities. This principle is governed by article 6(1)(a) of Indonesian Tax Law, which allows for the deduction of expenses directly related to business operations. However, the deductibility of interest is subject to several restrictions, particularly when the lender is a foreign entity or a related party.

Indonesia applies thin capitalisation rules to prevent excessive interest deductions and base erosion. Under PMK 169, the debt-to-equity ratio for interest deductibility is capped at 4:1 for most sectors. Interest paid to related parties must also comply with the arm's-length principle. If the financing arrangement lacks economic substance or is deemed tax-motivated, the tax authority may disallow the deduction. Article 4 (1)(g) clarifies that if a shareholder extends a loan to the company at an interest rate exceeding a reasonable level, such interest can be reclassified as a deemed dividend. This reclassification can trigger withholding tax obligations, particularly under article 23 for domestic recipients or article 26 for foreign recipients.

Further, interest on loans used to acquire assets that generate non-taxable income, such as dividends exempt under article 4(3)(f) of the Income Tax Law, is not deductible. This includes interest on loans used to acquire shares where the resulting tax-free income or final tax income dividends received by domestic taxpayers may be exempt from income tax if reinvested locally for a minimum of three years, as stipulated in HPP Law and PMK 18. However, capital gains from share sales remain taxable, with a final income tax of 0.1 per cent applied to the gross transaction value. This distinction reflects the government's intent to promote long-term investment while maintaining tax revenue from market transactions.

Law stated - 13 September 2025

Protections for acquisitions

What forms of protection are generally sought for stock and business asset acquisitions? How are they documented? How are any payments made following a claim under a warranty or indemnity treated from a tax perspective? Are they subject to withholding taxes or taxable in the hands of the recipient? Is tax indemnity insurance common in your jurisdiction?

Stock and business asset acquisitions are typically protected through warranties, indemnities, and tax covenants, which are documented in Share Purchase Agreements (SPAs), Asset Purchase Agreements (APAs), or standalone deeds. These protections allocate risks and liabilities between parties. Warranties cover representations about the target's condition, while indemnities address specific known risks. Tax covenants protect buyers from pre-closing tax liabilities and are often embedded in the SPA. Payments made under warranties or indemnities are generally treated as purchase price adjustments and are not subject to withholding tax or income tax in the hands of the recipient, provided they are compensatory and not for services.

Further, warranties and indemnities (W&I) insurance is not yet widespread but is gaining traction in cross-border and private equity transactions. It offers coverage for losses arising from breaches of warranties or tax liabilities and facilitates cleaner exits for sellers.

Law stated - 13 September 2025

POST-ACQUISITION PLANNING

Restructuring

What post-acquisition restructuring, if any, is typically carried out and why?

Post-acquisition restructuring is often carried out to optimise the tax position of the newly combined group. From an Indonesian tax perspective, such restructuring may trigger implications under article 4(1) of Income Tax Law, which treats any increase in economic capacity, including debt forgiveness, asset transfers or internal reorganisations, as taxable income. For example, if a subsidiary's debt is waived or assets are transferred at below-market value, the difference may be deemed taxable.

Additionally, VAT may apply if the restructuring involves the transfer of taxable goods or services, unless exempted under specific provisions. Therefore, companies typically restructure to align with transfer pricing principles, ensure transactions remain within the ordinary course of business and avoid unnecessary tax exposures. Proper documentation and compliance with prevailing tax regulations are essential to mitigate risks and support the commercial rationale of the restructuring.

Law stated - 13 September 2025

Spin-offs

Can tax-neutral spin-offs of businesses be executed and, if so, can the net operating losses of the spun-off business be preserved? Is it possible to achieve a spin-off without triggering transfer taxes?

Tax-neutral spin-offs are permitted under PMK 81, which establishes the conditions for using tax book value in the transfer of assets and liabilities during a spin-off, if the transaction qualifies certain requirements as set out under PMK 81. This allows companies to avoid incurring capital gains tax or other transfer taxes, such as VAT or stamp duty, in connection with the spin-off. The treatment of net operating losses (NOLs) in spun-off entities is subject to certain restrictions. NOLs generated from group reorganisations may not be entirely recognised by the tax authority unless it is considered 'more likely than not' that these losses are deductible.

Law stated - 13 September 2025

Migration of residence

Is it possible to migrate the residence of the acquisition company or target company from your jurisdiction without tax consequences?

A person is generally considered a tax resident in Indonesia if they reside or stay in the country for more than 183 days within a 12-month period, or if they demonstrate intent to reside through formal arrangements such as employment or long-term permits. However, the regulatory framework governing the transition or migration of tax residency status remains vague. While article 4 of the Directorate General of Taxes (DGT) Regulation No. 43 clearly defines the criteria for tax residency, it does not comprehensively address the tax consequences for individuals who transition to foreign tax residency while maintaining assets within Indonesia.

A change in tax residency status from domestic to foreign carries significant implications for both Indonesian citizens and foreign nationals. Once classified as non-resident taxpayers under article 2 of the Income Tax Law, individuals are no longer liable for tax on worldwide income but remain subject to Indonesian tax obligations on Indonesian-sourced income. This includes withholding tax on dividends, interest, royalties and income derived from property or services rendered within Indonesia, as stipulated by article 26 of the Income Tax Law. Indonesian citizens must obtain an official statement letter of foreign residency to be recognised as non-residents. Due to various administrative requirements, it is important to assess whether the applicable tax treaty rates provide sufficient incentive for Indonesian citizens to secure the statement letter and subsequently apply for a Tax Residence Certificate. Foreign nationals, on the other hand, are required to present a Tax Residence Certificate from their country of origin to access treaty benefits as outlined in DGT Regulation 25. Non-compliance with these documentation requirements may result in the application of full domestic tax rates for foreign residents.

Based on the preceding analysis, there appears to be a regulatory gap in Indonesia in relation to the migration of tax residency.

Law stated - 13 September 2025

Interest and dividend payments

Are interest and dividend payments made out of your jurisdiction subject to withholding taxes and, if so, at what rates? Are there domestic exemptions from these withholdings or are they treaty-dependent?

Outbound payments are generally subject to a withholding tax rate of 20 per cent, which may be reduced pursuant to applicable tax treaties. For instance, the Indonesia-Hong Kong tax treaty provides for a possibility to have a reduced dividend withholding tax rate of 5 per cent. Since the enactment of the HPP Law, resident taxpayers may be exempt from receiving dividends from offshore if such dividends are reinvested into Indonesia within a specified timeframe.

Law stated - 13 September 2025

Tax-efficient extraction of profits

What other tax-efficient means are adopted for extracting profits from your jurisdiction?

In Indonesia, profits can be extracted through several tax-efficient methods. These include royalties, interests of shareholders loan, management fees and dividends. The repatriation is generally subject to a 20 per cent withholding tax (WHT), which may be reduced under applicable Double Taxation Agreements (DTAs) if the foreign recipient provides a valid Certificate of Domicile (SKD). All these methods must comply with transfer pricing regulations as set out in DGT Regulation 22.

Law stated - 13 September 2025

DISPOSALS (FROM THE SELLER'S PERSPECTIVE)

Disposal methods

How are disposals most commonly carried out – a disposal of the business assets, the stock in the local company or stock in the foreign holding company?

The most frequent types of disposals include the sale of business assets, stock in the local company or stock in the foreign holding company. Asset disposals are often chosen for reasons related to operational transparency. The decision to dispose of shares typically depends on the ownership structure. For instance, selling a subsidiary might not incur VAT but could result in capital gains tax.

In oil and gas farm-out transactions, disposals are commonly structured asset transfers, share sales in the local operating entity, or share sales in a foreign holding company. From the seller's perspective, asset disposals, such as the assignment of participating interests in a production sharing contract, are typical, allowing the seller to retain partial ownership while transferring exploration obligations to the buyer. This structure may trigger income tax under article 4(1) of the Indonesian Income Tax Law and potentially VAT if taxable goods or services are involved. Share sales, whether at the local or foreign level, may offer regulatory and tax efficiencies but require careful consideration of capital gains tax, indirect transfer

rules, and change-of-control implications. The chosen structure depends on commercial goals, tax exposure and regulatory constraints.

Law stated - 13 September 2025

Disposals of stock

Where the disposal is of stock in the local company by a non-resident company, will gains on disposal be exempt from tax? Might a disposal of stock in a foreign holding company trigger taxes in the local company in your jurisdiction? Are there special rules dealing with the disposal of stock in real-property, energy and natural-resource companies?

Unless the relevant tax treaty requires otherwise, transferring shares in an Indonesian company by non-tax resident are subject to a final withholding tax of 5 per cent on gross proceeds. Disposal of shares in a foreign holding company may also be subject to 5 per cent tax on gross proceeds if the foreign entity having special relationship with an Indonesian tax resident or permanent establishment in Indonesia and the foreign holding company resides in the tax haven; this is addressed in article 18(3c) of the Income Tax Law, concerning indirect transfers of Indonesian assets.

For transfer of participating interest in oil and gas (direct or indirect), the final 5 per cent tax of the gross proceeds is applicable if the transfer is done in the exploration period while the final 7 per cent of the gross proceeds tax is imposed if the transfer is done in the exploitation period.

Law stated - 13 September 2025

Mitigating and deferring tax

If a gain is taxable on the disposal either of the shares in the local company or of the business assets by the local company, are there any methods for deferring or mitigating the tax?

Indonesia does not offer a tax-free rollover regime for gains arising from the disposal of shares in a local company or its business assets. However, under applicable Double Taxation Agreements (DTAs), particularly article 13 of most treaties, the right to tax capital gains may be allocated to the seller's country of residence, especially when the shares disposed do not derive their value primarily from immovable property located in Indonesia. This means Indonesia may not impose tax on such gains if the DTA provisions apply. Additionally, indirect sales through second or third-layer entities above the Indonesian company may not trigger Indonesian tax obligations, provided those entities are not located in tax haven jurisdictions and have sufficient economic substance. Conversely, if the structure involves a conduit or special purpose vehicle with no real business activity located in tax haven, Indonesia may assert taxing rights under article 18(3c) of the Income Tax Law.

For listed companies, capital gains from the sale of shares on the Indonesian stock exchange are subject to a final income tax of 0.1 per cent of the gross transaction value, as regulated under article 4(2)(c) of the Income Tax Law. The procedural implementation is governed by KMK 434, which outlines the withholding and reporting obligations for share

transfers. However, this regulation does not explicitly address convertible instruments, such as convertible bonds, warrants or other equity-linked securities. As a result, the conversion of these instruments into shares may fall outside the scope of the 0.1 per cent final tax, creating a regulatory gap that could be exploited for tax avoidance.

Law stated - 13 September 2025

UPDATE AND TRENDS

Key developments of the past year

Are there any emerging trends or hot topics relating to tax on inbound investment?

In 2025, Indonesia is adjusting its tax and fiscal policies to encourage inbound investment in several sectors. Incentives are available for industries including manufacturing, digital economy, renewable energy, logistics and financial services, such as tax holidays for up to 20 years, super deductions for research and development and vocational training and exemptions from import duty and VAT. Investors operating within Special Economic Zones (KEK) or participating in the development of the capital city, IKN Nusantara, may be eligible for these incentives as outlined in Government Regulation No. 78 of 2019 and Minister of Finance Regulation No. 130/PMK.010/2020.

Indonesia is also progressing with digital tax reform via the Core Tax Administration System, which introduces a 16-digit NPWP format, digital integration of tax reporting and simplified withholding tax procedures. The reforms, supported by PER-6/PJ/2025, allow for preliminary refunds for certain entities including special purpose companies and collective investment contracts. In terms of sustainability, OJK Regulation No. 14/POJK.04/2023 establishes a carbon exchange framework for trading carbon units, complementing existing tax incentives for renewable energy projects such as investment allowances, accelerated depreciation and reduced dividend taxes for non-resident investors. These measures reflect Indonesia's policy adjustments aimed at enhancing its investment environment through various fiscal initiatives. Finally, the Directorate General of Taxation will enhance the monitoring of automatic exchange of financial account information. This will be reflected in a new regulation to be issued to adopt the amendment to the Common Reporting Standard by the OECD.

Law stated - 13 September 2025