

Tax Risk Management in Corporate Mergers: A Normative Assessment of Legal Certainty and Anti-Avoidance Risks in Indonesian Tax Law

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Abstract

Corporate mergers as a strategy for business expansion generate complex tax implications, particularly regarding the transfer of assets and liabilities and changes in corporate organizational structures that may affect the tax base. In Indonesia, although various tax regulations governing merger transactions have been enacted, legal uncertainty persists and creates significant tax risks if such transactions are not carefully structured. These risks may arise in relation to income tax, value-added tax, and land and building acquisition duties, potentially increasing the tax burden and triggering disputes with tax authorities. This study aims to analyze the legal and regulatory framework governing corporate merger taxation in Indonesia, identify potential tax risks embedded in the regulatory structure and transactional practices, and determine effective strategies for mitigating such risks. This research employs a normative juridical method using statutory, conceptual, and comparative approaches. The analysis examines key Indonesian tax regulations, including the Income Tax Law, the Value Added Tax Law, and regulatory provisions governing corporate restructuring, supported by relevant academic literature and legal materials. The findings indicate that tax risks in merger transactions can be mitigated through the strategic use of specific legal instruments within the Indonesian tax framework. In particular, the application of tax-neutral merger provisions, the utilization of restructuring tax facilities, and the implementation of comprehensive tax due diligence prior to the transaction are identified as the most effective mitigation strategies. These mechanisms help ensure regulatory compliance while minimizing potential tax disputes. However, interpretative gaps and enforcement inconsistencies in anti-avoidance provisions continue to generate legal uncertainty, highlighting the need for clearer regulatory guidance to strengthen legal certainty in corporate merger taxation.

Keywords: Merger; Tax; Risk Management; Tax Compliance

INTRODUCTION

Company mergers are a business growth strategy that is becoming increasingly popular in the era of modern economic globalization (Hanifah & Yasin, 2024). This merger phenomenon is not limited to large multinational corporations, but also extends to medium-sized companies seeking to expand market share, improve operational efficiency, or gain competitive advantage through business synergies. In the Indonesian context, merger activity has increased significantly in line with economic growth and market liberalization, as companies seek to strengthen their positions through strategic consolidation. However, despite the promising growth opportunities, merger transactions carry a high degree of complexity, particularly in taxation aspects, which can have a substantial impact on the success of the transaction and the sustainability of the company post-merger (Nissa & Widyarti, 2023).

The taxation aspects of merger transactions possess complex and multidimensional characteristics, encompassing various types of taxes such as Income Tax, Value Added Tax, Land and Building Acquisition Duty, as well as other tax obligations inherent in the corporate restructuring process. (Azis et al., 2022) This complexity has become increasingly significant in Indonesia in recent years, particularly following the post-pandemic wave of corporate restructuring and consolidation, as well as the enactment of the Law on the Harmonization of Tax Regulations (UU Harmonisasi Peraturan Perpajakan/UU HPP). These developments have encouraged companies to pursue mergers as a strategy to strengthen financial resilience and operational efficiency. However, the evolving tax framework has also introduced new layers of regulatory interpretation and compliance requirements that may affect the tax treatment of merger transactions. Differences in tax treatment between qualifying and non-qualifying mergers, for example, may lead to significantly different tax consequences. Although Indonesian tax law provides certain incentives and facilities for qualifying mergers, it simultaneously contains regulatory ambiguities that may expose companies to considerable tax liabilities if transactions are not structured carefully (Fahlevi, 2022).

In this context, tax risk has increasingly emerged as one of the primary obstacles to merger transactions in Indonesia, often surpassing other legal considerations such as corporate governance or contractual arrangements. Tax risks may arise from various sources, including errors in structuring the transaction, inaccurate assessment of tax assets and liabilities, and failure to comply with procedural and administrative requirements imposed by tax authorities. (Ayu et al., 2023) These risks not only create the possibility of unexpected tax liabilities but may also result in administrative sanctions, financial penalties, and prolonged disputes

with tax authorities. In certain cases, poorly identified and inadequately managed tax risks can substantially diminish the economic value of a merger transaction, transforming what was intended to be a strategic corporate consolidation into a significant financial burden for the merged entity. (Sukendri & Mataram, 2022) Consequently, understanding the regulatory framework and developing effective tax risk management strategies have become critical factors in ensuring the legal certainty and financial viability of merger transactions in Indonesia.

Tax risk management in the context of mergers is becoming increasingly crucial given the dynamics of tax regulations which continue to develop and become increasingly stringent (Rozi & Khaddafi, 2024) The Indonesian government, through the Directorate General of Taxes, continues to implement tax reforms and tighten oversight to optimize state revenues, including strict oversight of corporate restructuring transactions that could potentially be used for tax avoidance. The implementation of increasingly sophisticated tax administration systems, the exchange of international tax information, and the application of substance over form and anti-tax avoidance principles require companies to be more careful in designing and implementing merger transactions to avoid future tax issues (Yunira et al., 2023).

An effective tax risk management strategy requires a thorough understanding of various aspects, from identifying potential risks during the due diligence stage, through planning an optimal transaction structure from a tax perspective, to executing the transaction and post-merger integration in compliance with all applicable tax regulations. The tax risk identification process must be comprehensive, encompassing an analysis of the historical tax positions of both merging companies, potential hidden tax liabilities, past tax compliance, and the tax implications of various possible transaction structure scenarios. Failure to do so can be fatal, as unidentified risks cannot be effectively managed (Wahyuningtias et al., 2025).

Tax planning in merger transactions must be carried out carefully and prudently, balancing tax optimization with compliance with applicable tax regulations. Companies need to fully understand the various transaction structure options available, such as mergers through business combinations, stock acquisitions, or asset acquisitions, along with the tax consequences of each alternative. Selecting the right transaction structure can provide significant tax benefits, such as utilizing tax incentives for qualified mergers, optimizing the use of tax losses, or efficiency in taxing asset transfers. However, overly aggressive tax planning that fails to consider economic substance can lead to disputes with tax authorities (Islam et al., 2024).

Documentation and formal compliance are equally important aspects in managing the tax risks of merger transactions. Tax authorities require various documents and formal procedures to be fulfilled in order to utilize certain tax benefits or to demonstrate tax compliance in merger transactions. Complete documentation, such as independent assessment reports, merger agreements, notifications to tax

authorities, and proper accounting records, provides crucial evidence that can protect a company from the risk of future tax audits and disputes. Failure to comply with formal requirements, even if the substance of the transaction is correct, can result in the loss of entitlement to tax benefits or the incurrance of administrative sanctions (Ramadanty, 2025).

The international dimension of merger transactions also adds a layer of complexity to tax risk management, particularly for mergers involving multinational companies or companies with cross-border operations. (Muhtadi & Hernat, 2023) Issues such as transfer pricing, double taxation agreements, cross-border dividend and capital gains taxation, and international anti-tax avoidance rules must be carefully considered. Companies also need to understand the tax implications of the various jurisdictions involved in the transaction and ensure that the transaction structure does not violate increasingly stringent anti-tax avoidance provisions in various countries, including the General Anti-Avoidance Rule and provisions related to beneficial ownership (Puspita et al., 2024).

Post-merger, tax risk management does not end there; it continues through the management of the merged company's tax obligations and ongoing tax compliance monitoring. The merged company needs to ensure smooth tax system integration, including adjustments to Taxpayer Identification Numbers (NPWPs), consolidation of tax reporting obligations, and management of potential tax audits for pre-merger periods. A robust internal control system needs to be established to ensure ongoing tax compliance and prevent the emergence of new tax risks in the future. Monitoring changes in tax regulations and periodically adjusting tax strategies are also essential for long-term tax risk management (Beno et al., 2022).

Considering the complexity and significance of tax risk management in merger transactions, a comprehensive understanding and structured strategy are required to identify, assess, and mitigate the various tax risks that may arise. This study aims to analyze in-depth various aspects of tax risk management in corporate merger transactions, identify applicable best practices, and formulate a comprehensive strategy that can help companies manage tax risks effectively. With a good understanding of tax risk management strategies, companies can execute merger transactions with greater confidence, minimize tax burdens and risks, and maximize the value created from the business combination transaction for all stakeholders (Rahman, 2022).

Corporate merger transactions present complex and multidimensional tax challenges, where errors in tax risk management can result in substantial financial losses and protracted disputes with tax authorities. Merging companies often face the dilemma of identifying various types of hidden tax risks, ranging from unresolved historical tax liabilities, potential denial of tax benefits due to formal non-compliance,

to the risk of tax adjustments resulting from fiscal authority audits. This complexity is further increased by differing interpretations of tax provisions, constantly changing regulatory dynamics, and the increasingly stringent application of the economic substance principle. The key issue that arises is how companies can comprehensively identify all potential tax risks inherent in merger transactions and how to assess the significance and probability of each risk's realization, thus developing appropriate and effective mitigation strategies within the Indonesian tax context.

Once tax risks are identified, the next challenge is designing and implementing an optimal risk management strategy, balancing tax efficiency with tax compliance. Companies need to determine the most advantageous merger transaction structure from a tax perspective, select the appropriate asset valuation method, and ensure compliance with all formal requirements to utilize available tax benefits. A crucial challenge is how to design a comprehensive tax risk management strategy that encompasses the planning, implementation, and post-merger integration stages, as well as how to establish an adequate internal control system to ensure ongoing tax compliance. This study will analyze tax risk management strategies that companies can implement to minimize tax exposure, legally optimize tax burdens, and avoid disputes with tax authorities in the context of merger transactions in Indonesia.

The theoretical and conceptual framework in the study on "Tax Risk Management Strategies in Corporate Merger Transactions" is based on a number of principles, concepts, doctrines, and legal theories that serve as analytical tools in analyzing tax risk issues that arise in the business merger process. The first foundation used is the principle of legal certainty, which emphasizes that every company action in the merger process must be subject to clear and predictable tax provisions. This principle is highly relevant because tax risks often arise when regulatory interpretations are inconsistent or when companies lack clarity regarding the fiscal treatment of merger transaction components. Furthermore, the principle of fairness in taxation requires that the tax burden in corporate transactions not distort or disproportionately affect the parties involved in the merger.

Conceptually, this research utilizes the merger concept as understood in corporate and tax law, including the mechanism for transferring assets, liabilities, and the fiscal implications of the legal entity status resulting from the merger. The concept of risk management is also an integral part of the conceptual framework, particularly in the context of identifying, measuring, mitigating, and monitoring tax risks. From a tax perspective, the concept of tax risk is used, encompassing uncertainty regarding tax obligations resulting from reporting discrepancies, documentation weaknesses, or differing interpretations of tax provisions. These concepts help explain how and why tax risks arise, and how companies can systematically manage them.

From a doctrinal perspective, this study adopts the substance over form doctrine, which prioritizes the economic substance of a transaction over its legal form.

This doctrine is crucial in analyzing merger transactions, as tax authorities often assess whether the transaction structure truly reflects a genuine business purpose or is merely a tax avoidance scheme. Furthermore, the business purpose test is also used, a principle that assesses whether a corporate restructuring has a legitimate commercial purpose. These two doctrines are crucial for assessing whether tax risks may arise from transaction structures deemed not to reflect reasonable economic activity.

The theories used in this study include tax compliance theory, which explains that corporate compliance is influenced by regulatory factors, oversight, and internal motivation to comply with tax provisions. This theory is relevant to understanding the extent to which companies implement tax risk management strategies in mergers as part of broader compliance efforts. Furthermore, signaling theory is used in the context of corporate governance, which suggests that merger decisions and tax risk management strategies reflect signals of management quality and corporate health to stakeholders. On the other hand, agency theory provides an understanding that management and owners may have divergent interests in determining transaction structures and tax risk mitigation strategies, so potential conflicts of interest can influence merger decision-making. Overall, this theoretical and conceptual framework provides a strong analytical basis for assessing how tax law, corporate governance principles, and corporate governance theory interact to influence tax risk in merger transactions. This multidisciplinary approach allows research to comprehensively identify risk sources and assess the effectiveness of tax risk management strategies in providing legal certainty and mitigating potential disputes.

METHODS

This study employs a normative juridical method focusing on the analysis of legal norms and tax regulations governing corporate merger transactions. This approach is chosen because the research examines tax law provisions contained in statutes, government regulations, regulations of the Minister of Finance, and circulars issued by the Directorate General of Taxes related to mergers and tax risk management. Through this method, the study analyzes the substance of tax law norms and their application in corporate merger practices to identify potential tax risks and legal uncertainties. (Rijadi, 2022)

The research applies statutory and conceptual approaches. The statutory approach is used to analyze relevant Indonesian tax regulations, including Law Number 36 of 2008 on Income Tax, the Value Added Tax Law, and other implementing regulations governing corporate restructuring. This approach aims to examine the regulatory structure, hierarchy of norms, and interpretation of tax provisions in the context of mergers. Meanwhile, the conceptual approach is employed to examine legal concepts and tax theories related to tax risk management,

tax planning, and tax principles in corporate restructuring, thereby establishing a solid theoretical framework for the analysis.(Ariawan, 2013)

The sources of data consist of legal materials categorized into primary, secondary, and tertiary legal materials. Primary legal materials include tax laws and regulations, government regulations, Minister of Finance regulations, circulars of the Directorate General of Taxes, and relevant tax court decisions. Secondary legal materials comprise textbooks, scientific journals, academic articles, prior research, and expert opinions on tax law and merger-related tax risks. Tertiary legal materials, such as legal dictionaries and encyclopedias, are used to clarify legal terminology and concepts. All legal materials are collected through systematic library and documentation research.

Data analysis is conducted qualitatively using a descriptive-prescriptive approach. Descriptive analysis is used to explain the applicable tax regulations and identify potential tax risks arising from merger transactions, while prescriptive analysis formulates tax risk management strategies and recommendations. The analysis applies deductive reasoning by relating tax law norms to practical merger scenarios, resulting in structured and applicable conclusions for managing tax risks in corporate merger transactions.

DISCUSSION AND RESULT

Tax Risk Characteristics in Corporate Merger Transactions

From a taxation perspective, a merger constitutes a form of corporate restructuring that fundamentally alters the financial and organizational structure of the entities involved. A merger typically results in significant changes in ownership composition, asset and liability structures, revenue streams, and the allocation of operational expenses. These structural adjustments inevitably produce complex fiscal consequences because the transfer and consolidation of corporate resources may affect the calculation of taxable income, the recognition of capital gains or losses, and the treatment of tax attributes such as carry-forward losses or deferred tax assets. As a result, merger transactions often become a focal point of examination by tax authorities seeking to ensure that the restructuring does not undermine the integrity of the tax base.

In the academic literature on mergers and acquisitions (M&A), such transactions are frequently categorized as high-risk corporate activities due to the magnitude and complexity of financial flows involved. Mergers typically require the transfer or revaluation of substantial corporate assets and liabilities, which may alter the tax base of the participating entities and potentially generate tax advantages that were not originally intended within the regulatory framework. These conditions create opportunities for tax planning strategies that, while legally structured, may raise concerns regarding compliance with the spirit and objectives of fiscal

regulation. (Ramadanty et al., 2025) Consequently, tax authorities often subject merger transactions to heightened scrutiny, particularly when the restructuring results in significant reductions in taxable income or the reallocation of profits across corporate entities.

Modern risk management literature further emphasizes that taxation represents a “material risk” within corporate restructuring processes. The fiscal consequences of a merger may extend well beyond the transaction itself, affecting post-merger integration, financial reporting, and corporate valuation. For instance, unforeseen tax liabilities, reassessments by tax authorities, or disputes over the classification of transferred assets can significantly reduce the expected economic benefits of the merger. Additionally, companies frequently incur substantial compliance costs when aligning tax accounting systems, financial records, and reporting obligations following the consolidation of corporate structures. These post-transaction adjustments can increase integration costs and create uncertainty regarding the long-term financial performance of the merged entity (García-Nieto et al., 2024).

The regulatory landscape governing corporate restructuring has also evolved significantly in recent years due to the growing influence of international tax governance initiatives. In particular, the OECD/G20 Base Erosion and Profit Shifting (BEPS) framework has introduced stricter standards for evaluating corporate restructuring arrangements. Under this framework, tax authorities increasingly assess whether a transaction reflects genuine economic activity or whether it primarily serves as a mechanism for shifting profits or eroding the tax base. The BEPS agenda promotes the principle that taxation should follow economic substance rather than merely legal form, thereby requiring corporations to demonstrate that restructuring transactions, including mergers, are supported by legitimate business purposes and operational realities (OECD, 2024).

This shift toward substance-based tax evaluation has significantly increased the regulatory risks associated with mergers. Transactions that lack a clear economic rationale, or that appear to be structured primarily for tax optimization, may be interpreted as aggressive tax avoidance strategies. In such circumstances, tax authorities may recharacterize the transaction, deny certain tax benefits, or impose administrative sanctions and additional tax liabilities. The growing emphasis on transparency, documentation, and transfer pricing compliance further intensifies the need for corporations to carefully assess the fiscal implications of restructuring activities before executing merger agreements.

Given these complexities, a merger should not be viewed solely as a corporate legal event governed by company law and contractual arrangements. Rather, it must also be understood as a significant fiscal event that carries substantial tax implications

for both the merging entities and the broader regulatory environment. Effective tax risk management therefore becomes an essential component of merger planning. This includes conducting comprehensive tax due diligence, evaluating potential tax exposures, ensuring compliance with domestic and international tax regulations, and establishing transparent documentation that demonstrates the economic purpose of the transaction.

Mapping Sources of Tax Risk in Merger Transactions

The findings of this study indicate that the sources of tax risk in corporate merger transactions can generally be categorized into two primary dimensions: transactional tax risk and historical tax risk. This classification reflects the dual nature of fiscal exposure in merger activities, where risks may arise both from the structure of the transaction itself and from the past tax compliance behavior of the merging entities. Understanding this distinction is essential for designing an effective tax risk management framework capable of identifying and mitigating potential fiscal liabilities throughout the merger process.

Transactional tax risk refers to risks that originate from the design, structure, and implementation of the merger transaction. The process of merging corporate entities involves numerous fiscal considerations that may significantly influence the tax obligations of the resulting entity. Among the most critical elements are the determination of asset transfer values, the recognition and fiscal treatment of goodwill, the recalculation of depreciation bases, and the allocation of revenues and expenses following the consolidation of business operations. Each of these components directly affects the calculation of taxable income and therefore has the potential to alter the fiscal position of the merged company.

In practice, companies often design merger structures with the objective of achieving tax efficiency, particularly by optimizing the timing of income recognition, maximizing deductible expenses, or utilizing favorable tax treatments available within the regulatory framework. A systematic literature review on tax planning in M&A transactions demonstrates that such strategies are common in corporate restructuring, as firms seek to minimize the overall tax burden associated with large-scale financial transactions. However, these optimization strategies also create heightened regulatory scrutiny. When the fiscal structure of a merger appears overly complex or lacks clear economic justification, tax authorities may interpret the arrangement as an attempt to exploit regulatory loopholes or engage in aggressive tax planning practices. (Ramadanty et al., 2025) Consequently, the absence of adequate documentation, transparent valuation methods, and demonstrable business purposes can increase the likelihood of tax audits, reassessments, and potential disputes with fiscal authorities.

In addition to transaction-related risks, merger activities also carry historical tax risks, which originate from the prior tax compliance record of the companies involved. Historical tax risk arises when unresolved tax issues from previous fiscal periods are effectively transferred to the merged entity as part of the corporate consolidation process. These risks may include outstanding tax liabilities, ongoing tax litigation or administrative disputes, aggressive tax planning strategies implemented in earlier tax years, or incomplete documentation supporting historical tax positions. Because merger transactions typically involve the transfer of both assets and liabilities, any hidden fiscal obligations embedded within the target company may become the responsibility of the acquiring or surviving entity after the transaction is completed.

Research on tax risk management indicates that many corporate tax strategies operate within areas of legal interpretation where regulatory guidance may be ambiguous or evolving. While such strategies may initially appear compliant, they often create a higher degree of tax uncertainty because tax authorities retain the discretion to reinterpret legal provisions during audits or enforcement proceedings. As a result, previously accepted tax treatments may later be challenged, potentially leading to additional tax assessments, penalties, or prolonged litigation (Dibah & Limba, 2025). This interpretative nature of tax law significantly amplifies historical tax risks in merger transactions, particularly when companies have adopted aggressive tax avoidance practices in the past.

Empirical studies on mergers and acquisitions further highlight that hidden tax liabilities are among the most frequent causes of increased transaction costs and post-merger financial disputes. In many cases, such liabilities only emerge after tax authorities conduct audits covering fiscal periods prior to the merger. When significant discrepancies are discovered, the merged entity may face unexpected tax assessments, which can undermine the anticipated financial benefits of the transaction. In extreme cases, the discovery of substantial undisclosed tax liabilities may even lead to renegotiation of merger agreements, the imposition of indemnity clauses, or the complete failure of the transaction. (García-Nieto et al., 2024) Given the complexity of these risk sources, effective merger risk management requires a comprehensive analytical approach that integrates both transactional analysis and historical tax evaluation. Transactional analysis focuses on assessing whether the structure of the merger complies with applicable tax regulations and reflects genuine economic substance. This involves reviewing valuation methodologies, transaction documentation, accounting treatments, and the allocation of fiscal attributes within the merged entity. At the same time, historical tax evaluation requires a thorough review of the tax compliance history of the participating companies, including past tax filings, audit outcomes, litigation records, and the sustainability of previously adopted tax positions.

Accordingly, a robust merger governance framework should incorporate both dimensions through systematic tax due diligence procedures. By combining transaction structure analysis with historical tax compliance auditing, corporations can identify potential fiscal exposures at an early stage and implement mitigation strategies before finalizing the merger agreement. This integrated approach helps ensure that the resulting entity does not inherit unexpected tax burdens that could compromise the financial stability and long-term success of the merger transaction.

Income Tax Risks in Asset Transfers within Merger Transactions

One of the most significant tax risks in corporate merger transactions arises from the income tax implications associated with the transfer of assets between the merging entities. In principle, when assets are transferred from one corporate entity to another, the transaction may trigger income tax obligations if it is treated as a taxable event. This typically occurs when the transfer is evaluated based on the difference between the asset's book value and its fair market value, resulting in the recognition of taxable gains. Such gains are generally considered part of the transferring entity's taxable income and therefore become subject to corporate income tax under applicable fiscal regulations. Consequently, the fiscal treatment of asset transfers becomes a critical determinant of the overall tax burden associated with a merger transaction.

In recognition of the economic importance of corporate restructuring, many tax systems provide mechanisms intended to facilitate mergers without imposing immediate tax liabilities that could hinder business consolidation. One such mechanism is the concept of tax-neutral reorganization, which allows qualifying restructuring transactions to be conducted using the book value method rather than the fair market value method. Under this approach, the assets transferred during the merger are recorded at their existing accounting value, thereby preventing the realization of taxable gains that would otherwise arise from market revaluation. The primary objective of this policy is to encourage corporate efficiency and economic consolidation by eliminating fiscal barriers that might discourage companies from engaging in legitimate restructuring activities (Ram, 2025).

In Indonesia, the availability of tax-neutral restructuring is regulated within the broader framework of the national income tax regime and is further elaborated through Minister of Finance Regulation No. 81 of 2024. This regulation provides detailed administrative procedures and substantive requirements for companies seeking approval to apply the book value method in merger, consolidation, or acquisition transactions. The regulation establishes a formal approval mechanism through which corporations must obtain authorization from the Directorate General of Taxes before implementing the tax-neutral treatment. (Karman et al., 2024) Through this regulatory framework, the government aims to balance two competing objectives:

facilitating legitimate corporate restructuring while preventing the misuse of restructuring mechanisms for aggressive tax planning purposes. However, the application of the book value method is not automatically granted to companies undertaking merger transactions. Instead, corporations must submit a formal application to the tax authority and demonstrate that the proposed restructuring satisfies the legal and economic criteria established by fiscal regulations. A central requirement in this evaluation process is the existence of a legitimate business purpose underlying the merger. Tax authorities typically assess whether the transaction is motivated by genuine operational objectives such as improving business efficiency, strengthening financial capacity, or expanding market integration rather than being primarily driven by the intention to obtain tax advantages.

In practice, tax authorities often evaluate several substantive indicators when determining whether a merger qualifies for book value treatment. These indicators may include the continuity of business activities, the continuity of asset ownership and operational structures, and the presence of clear economic objectives supporting the restructuring process. The assessment may also involve a review of corporate documentation, merger agreements, financial statements, and strategic business plans in order to determine whether the restructuring reflects genuine economic substance. Failure to adequately demonstrate these elements may result in the rejection of the application to apply the book value method.

Legal and fiscal risks arise when the Directorate General of Taxes rejects a company's request to apply the book value method. In such circumstances, the merger transaction must be recalculated using the fair market value approach, which requires the transferred assets to be revalued according to their current market prices. This adjustment may create substantial taxable gains if the fair market value of the assets exceeds their book value. The difference between these two values is treated as taxable income, thereby increasing the corporate income tax liability of the transferring entity. The financial implications of such recalculations can be considerable, particularly in large-scale mergers involving substantial asset portfolios such as real estate, intellectual property, or long-term capital investments. The resulting tax burden may significantly alter the financial feasibility of the transaction, potentially reducing the expected economic benefits of the merger (Permana, 2024).

The rejection of book value treatment may also expose companies to additional fiscal risks, including administrative sanctions, penalties, or increased scrutiny during tax audits. Disputes may arise if companies challenge the tax authority's valuation methodology or if disagreements emerge regarding the classification and treatment of transferred assets. From a broader tax governance perspective, this regulatory framework highlights the importance of aligning corporate restructuring strategies with both procedural compliance and substantive economic justification. The

availability of tax-neutral restructuring facilities should not be interpreted as an automatic entitlement but rather as a conditional policy instrument designed to support legitimate business reorganizations. Companies must therefore ensure strict adherence to the administrative procedures established by tax regulations, including timely application submissions, transparent valuation practices, and comprehensive documentation demonstrating the business rationale of the merger.

Income Tax Risks in Asset Transfers and Book Value Facilities in Merger Transactions

In the Income Tax dimension, one of the main risks of mergers lies in the fiscal consequences of the transfer and acquisition of assets, which can trigger tax liabilities on the difference between book value and market value if the transfer is treated as a taxable transaction. To mitigate this risk, many tax systems recognize the concept of tax-neutral reorganization, but it is usually granted with strict conditions to prevent misuse as a means of tax avoidance. In Indonesia, the book value transfer mechanism is a form of restructuring facility aimed at promoting economic efficiency. However, this facility is conditional and requires fulfillment of administrative requirements and approval from the tax authorities as stipulated in PMK 81 of 2024. From a global tax policy perspective, the OECD emphasizes that restructuring that is solely oriented towards tax benefits and lacks economic substance has the potential to become part of the practice of tax base erosion, so countries are strengthening anti-avoidance regimes to check for unfair restructuring. (OECD, 2024) Scientific studies on tax planning strategies in M&A emphasize that the use of tax facilities must be supported by documentation and economic justification, because without them, companies can face the risk of fiscal corrections, facility rejection, and prolonged tax disputes (Ramadanty et al., 2025). Therefore, mitigating income tax risk in mergers involves not only selecting facilities but also ensuring procedural compliance and proving the substance of the transaction.

In addition to income tax risks, mergers can also pose significant Value Added Tax (VAT) risks, particularly if the restructuring involves the transfer of Taxable Goods or the transfer of rights to assets related to business activities. In consumption tax studies, business restructuring often poses a risk of non-compliance due to changes in VAT status, changes in business activities, or changes in tax billing and invoicing systems that lead to input tax credit errors. For example, when the merging companies have different transaction patterns (e.g., one predominantly B2B entity and one predominantly B2C entity), the integration of VAT systems can lead to discrepancies in input-output tax reconciliations and increase the potential for corrections. Studies on tax compliance indicate that changes in organizational structure increase compliance risks because companies face integration risks in the form of different reporting systems and internal controls that are not yet

aligned.(OECD, 2016) On the other hand, studies on tax control frameworks emphasize the importance of internal controls and system integration to ensure tax compliance is maintained after organizational restructuring, as weaknesses in internal controls are a major cause of tax invoice discrepancies and crediting errors. Furthermore, research related to strengthening tax governance shows that companies with structured tax control systems are better able to manage post-merger VAT risks and reduce the risk of sanctions, as they have stronger verification procedures in their tax reporting.(Muthitacharoen, 2021) Therefore, VAT risks in mergers must be managed through system integration and strengthened internal controls to prevent systemic non-compliance after the transaction is completed.

Regarding the tax aspect of the transfer of certain assets, mergers can also create tax risks related to land and building ownership, particularly if the restructuring involves changes in land rights and/or changes in the entity registered as the rights holder. In regional tax practice, the transfer of land and building rights has the potential to give rise to BPHTB (Loan Acquisition) consequences, and differences in interpretation regarding whether a merger results in an “acquisition of rights” often become a risk point. Regional tax law literature explains that taxes on the acquisition of rights are legal-formal in nature, so changes in the status of the rights holder in the document can trigger tax consequences even if the substance is an internal restructuring. Academic studies on mergers and asset transfers also confirm that BPHTB risks cannot always be avoided, as they depend on the form of legal transition that occurs in the transfer document. From a risk management perspective, land/building asset transactions in mergers often require mitigation strategies such as legal audits, asset status clarification, and documentation planning to reduce the potential for disputes. This approach aligns with M&A risk recommendations, which state that large-value fixed assets (real estate, plant, and equipment) require special attention because the risks are not only fiscal, but also legal and administrative (García-Nieto et al., 2024). Furthermore, the principle of prudence in asset restructuring is also emphasized in the modern tax governance framework, which places asset compliance as part of corporate controls to ensure transparency and consistency in reporting. Therefore, the risks of BPHTB (Loan-Based Property Tax) and the transfer of large-value fixed assets in a merger must be managed across disciplines (corporate law, land law, and tax law) to minimize uncertainty about tax obligations.

Merger tax risk management is also closely related to the increasingly robust application of anti-tax avoidance principles and doctrines, particularly substance over form and the strengthening of GAAR in tax administration practices. In modern tax literature, substance over form is a principle stating that the economic substance of a transaction must be the basis for tax assessment, so that a valid legal form can still be

corrected if its economic substance indicates that the primary purpose is tax avoidance. Academic studies on the application of substance over form indicate that this principle is increasingly relevant in self-assessment systems, as it serves as a corrective tool to maintain fiscal fairness when taxpayers structure complex transactions with the aim of aggressively reducing taxes. (Wibowo, 2025) Research on GAAR in Indonesia also shows that strengthening anti-avoidance rules can improve supervisory effectiveness, but also poses challenges to legal certainty because the standards for proving business purpose and substance parameters are often not rigidly defined. In the international context, the OECD emphasizes that cross-border restructuring transactions will be tested through the Principal Purpose Test (PPT) in BEPS Action 6, so companies must be able to demonstrate that the primary purpose of the restructuring is business, not just tax benefits. Therefore, merger tax risk management strategies must include proof of economic substance and business purpose through comprehensive documentation to mitigate the risk of corrections based on GAAR and substance over form.

From a global perspective, merger tax risk management is increasingly influenced by international standards on tax transparency and avoidance prevention, particularly through the BEPS project, which strengthens oversight of restructurings, profit transfers, and ownership structures. The OECD, through BEPS Action 6, emphasizes that restructurings and cross-jurisdictional transactions aimed at obtaining tax treaty benefits without sufficient economic substance can be categorized as treaty abuse, prompting member countries to increase oversight through PPT and restrictions on tax treaty benefits. On the other hand, academic literature on international taxation states that the integration of BEPS across countries increases tax risk for multinational companies, as transactions previously considered legal can be reassessed under new, stricter substance standards. (Devereux & Vella, 2018). Studies on corporate tax governance also confirm that international pressure for transparency requires companies to build stronger tax control structures, including documentation, reporting, and risk assessment of cross-border restructuring (Mulligan & Oats, 2016). Therefore, mergers in multinational companies require a more complex tax risk strategy, as companies must ensure compliance not only with domestic laws but also with international anti-avoidance standards.

Effective merger tax risk management must be scientifically developed through a structured risk management approach, namely identification, assessment, mitigation, and monitoring. At the identification stage, companies need to conduct comprehensive tax due diligence, which not only tests formal compliance but also analyzes aggressive tax positions, potential disputes, risky transaction patterns, and potential violations of economic substance. At the assessment stage, companies must estimate the probability of audits and potential corrections, including scenarios of rejection of book value facilities or GAAR-based corrections. At the mitigation stage,

companies can employ strategies such as restructuring the transaction design, drafting merger agreements with tax indemnity clauses, and establishing economic substance documentation policies. M&A risk literature states that tax mitigation should be included in the enterprise risk management (ERM) framework, as taxes contribute significantly to earnings volatility and corporate reputation risk. Furthermore, research on tax governance shows that companies that consistently implement tax control frameworks and internal tax audits have a lower risk of tax corrections than companies that focus solely on tax-saving strategies.

Post-merger tax risks often arise in the form of integration tax risk, namely the risk of non-compliance caused by differences in reporting systems, differences in compliance culture, and unpreparedness of internal controls in the new entity. In organizational literature, post-merger integration is a critical phase because companies must harmonize accounting systems, tax policies, cost structures, and reporting procedures, and failure to integrate can create inconsistencies that form the basis for fiscal corrections. The OECD emphasizes that sustainable tax compliance requires a tax compliance system that can ensure consistent reporting and good reconciliation, especially when companies undergo structural changes.(OECD, 2016)Research on tax control frameworks also states that successful integration requires strong internal controls, including tax process mapping, document verification standards, and periodic internal audits.(Muthitacharoen, 2021) Therefore, the merger tax risk management strategy should not stop at the transaction stage but should continue with post-merger monitoring, system integration, and strengthening tax governance to minimize the risk of long-term corrections.

Based on the overall results of the discussion above, it can be concluded that merger transactions contain broad inherent tax risks, including income tax risks on the transfer of assets and rejection of book value facilities, VAT risks and tax invoice integration, tax risks on the transfer of certain assets such as land and buildings, risks of corrections based on substance over form and GAAR, and post-transaction compliance integration risks. Therefore, merger tax risk management strategies must be designed comprehensively through: (1) risk-based and scenario-based tax due diligence, (2) transaction design that is aligned with economic substance and business objectives, (3) fulfillment of administrative compliance with restructuring facilities, (4) documentation of evidence of substance and business rationale, and (5) strengthening tax governance and tax control frameworks post-merger. Systematic literature on tax planning in M&A supports that an effective strategy not only pursues tax savings, but also reduces tax risk through certainty and transparency. The international standard BEPS Action 6 also emphasizes that restructuring that does not have economic substance and business objectives can be considered as a tax avoidance practice, so that evidence of substance is a crucial factor.

CONCLUSION

Corporate merger transactions constitute a form of business restructuring that entails complex and significant tax risks, as they involve the transfer of assets, changes in liabilities, and organizational restructuring that may substantially affect the tax base. Such transactions may generate not only immediate tax consequences but also long-term risks, including fiscal corrections, tax disputes, and the inheritance of historical tax liabilities from the merging entities. Therefore, effective tax risk management is essential to ensure legal certainty, regulatory compliance, and the financial sustainability of merger transactions.

This study finds that tax risk management in corporate mergers must be implemented through a structured and comprehensive approach. The process should begin with rigorous tax due diligence to identify both historical and transactional tax risks, followed by the development of transaction structures that are consistent with economic substance and compliant with applicable tax regulations. In addition, transparent documentation, accurate tax reporting, and compliance with administrative requirements are critical to mitigating potential disputes with tax authorities. Contractual mechanisms such as tax indemnity clauses in merger agreements also play an important role in providing legal protection against undisclosed tax liabilities that may arise after the transaction. Following the merger, companies must ensure the effective integration of tax reporting systems and strengthen tax governance within the newly formed entity. This includes harmonizing internal tax controls, standardizing reporting procedures, and conducting periodic compliance monitoring to minimize the risk of post-merger fiscal corrections and ensure sustainable tax compliance.

From a regulatory perspective, this study also highlights the need for improvements in the administrative framework governing merger-related taxation in Indonesia. In particular, the Directorate General of Taxes and the Ministry of Finance should consider strengthening the integration of tax administration systems, including more automated procedures for the consolidation or adjustment of corporate taxpayer identification numbers (NPWP) and related tax records following merger transactions. Such integration would reduce administrative errors, improve regulatory efficiency, and enhance legal certainty for companies undergoing corporate restructuring. By strengthening both corporate tax governance and the regulatory framework for merger taxation, the risks associated with merger transactions can be more effectively managed, thereby supporting a more stable and predictable legal environment for corporate restructuring activities in Indonesia.

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