



Indonesia Tax Info

Guidelines on Implementation of Double Taxation Agreements

The Directorate General of Taxation (“DGT”) has issued Regulation No. PER-10/PJ/2017 (“PER-10”) to replace PER-61/PJ/2009 concerning Procedures for Application of Double Taxation Agreement as lastly amended by PER-24/PJ/2010 and PER-62/PJ./2009 concerning Avoidance to Tax Treaty Abuse as lastly amended by PER-25/PJ./2010.

The salient points in PER-10 are summarized as follows:

- In order to enjoy the tax treaty relief, the following general tests must be satisfied (cumulatively):
 1. a relevant economic motive for establishment of the entity;
 2. business activities managed by its own management and the management has sufficient authority to carry out transactions;
 3. fixed and non-fixed assets, sufficient and adequate to carry on business activities in the Tax Treaty Partner State or Partner Jurisdiction other than the assets that generate income from Indonesia;
 4. employees with certain expertise in accordance with the business field that is carried out, in sufficient and adequate numbers; and
 5. activities or other active business other than only receiving income in the form of dividend, interest and/or royalty originating from Indonesia.

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- In addition, if a foreign taxpayer receives income for which the article in the relevant Tax Treaty stipulates a beneficial owner requirement, the following conditions must also be satisfied:
 - a. For an individual foreign taxpayer, does not act as an Agent or Nominee; or
 - b. For a corporate foreign taxpayer, does not act as an Agent or Nominee, or Conduit, which must fulfil the following provisions:
 1. Has control to use or enjoy funds, assets or rights that bring in income from Indonesia;
 2. Not more than 50% of its income is used to fulfil obligations to other parties;
 3. Bears risks of the assets, capital, and/or its liabilities that it owns; and
 4. Does not have an obligation, written or unwritten, to provide part or all of the income received from Indonesia to another party.

Please note the condition that “the earned income is subject to tax in the recipient county” is no longer included in this regulation.

- The DGT-1 Form also requires the foreign taxpayer to indicate whether or not one of the principal purposes of the arrangements or transactions is to obtain benefit under the convention and contrary to the object and purpose of the tax treaty.
- The templates for DGT-1 and DGT-2 Forms have been changed to accommodate the changes in the provisions under PER-10. Please note that the forms now state the validity period which is a maximum of 12 months from the starting period. Further, the original or ‘legalized’ copy of DGT-1 or DGT-2 Form or COD of the foreign taxpayer must be submitted together with the respective monthly withholding tax returns.
- PER-10 provides clarification in relation to request for refund of the excess withholding tax in the event of error in the application of the tax treaty, or due to the late submission of the COD (the process of which is provided in Minister of Finance (“MoF”) regulation number 187/PMK.03/2015). Furthermore, in the event that the foreign taxpayer that receives or generates income from Indonesia did not receive the tax treaty benefit and the tax withholder and/or collector did not submit the monthly tax return for the period when the tax on such income is payable, the foreign taxpayer can still enjoy the tax treaty benefit through the Mutual Agreement Procedure (MAP) mechanism.
- In the event that there is a difference between the legal form of a transaction structure/scheme and its economic substance, the tax treatment will be applied based on the ‘substance over form’ principle.

PER-10 is effective starting from 1 August 2017. A DGT Form or COD that has been validated based on the previous regulations (PER-61 as lastly amended by PER-24) and whose validity is not yet expired can still be used until the end of the validity period of such DGT Form or COD.

Update on Certificates of Domicile (“COD”) for Indonesian Domestic Taxpayers

The DGT has issued regulation number PER-08/PJ/2017 dated 12 May 2017 (“PER-08”) regarding COD for Indonesian Domestic Taxpayers in the framework of Tax Treaty application. PER-08 revokes the previous regulation i.e. DGT regulation number PER-35/PJ/2010.

A COD is used by an Indonesian Domestic Taxpayer to obtain benefits as stated in a tax treaty between the Government of Indonesia and the Government of the Partner Country. PER-08 provides more detailed guidance on the issuance of COD for Indonesian Domestic Taxpayers by the DGT.

Some key changes in PER-08 are as follows:

1. An application for COD can be requested for the Fiscal Year or part of the Fiscal year when the application is submitted or for a prior Fiscal year or part of Fiscal Year, as long as it is within the statute of limitations.
2. PER-08 adds the requirement of submission of the latest Monthly Tax Return of Article 25 Income Tax, or Article 4(2) Income Tax for a Taxpayer subject to final income tax.
3. The COD request form has been changed to accommodate the changes in PER-08. Additional information such as name and tax ID number of offshore counterparty and the validity period requested for the COD must be stated in the new request form. Additional statement letters, with stamp duty, shall be prepared by the Domestic Taxpayer to declare its Indonesian tax residency and/or a separate declaration must be issued if its income is subject to final tax (for a taxpayer with certain gross income).
4. The Tax Office must issue a decision to grant or reject the application within 10 (ten) working days after the properly completed request is received, or the request will be considered granted. If this is the case, the Tax Office must issue the COD within 5 days from the 10-day deadline.

PER-08 is effective from the signing date, i.e. 12 May 2017.

Access to Financial Information for Tax Purposes

The MoF has issued regulation No. 70/PMK.03/2017 ("PMK-70") and its amendment regulation number 73/PMK.03/2017 ("PMK-73") concerning technical guidance on access to financial information for tax purposes. PMK-70 is to implement Government Regulation in lieu of Law (Perppu) No. 1/2017 regarding Automatic Exchange of Financial Account Information (AEoFAI). Please refer to our June 2017 Tax Info Edition.

We highlight some key points below.

Pursuant to PMK-70 and PMK-73, the DGT has the right to gain access to financial information for tax purposes from financial service institutions ("LJK"), Other LJK, and/or Other Entities, either through an automatic reporting mechanism for Reporting Financial Institution ("RFI") or upon request. Certain LJK, Other LJK and Other Entities which meet certain criteria are categorized as "Non-RFI" and are not obliged to submit financial information reports through the automatic mechanism.

The RFI must register with the DGT and must submit the required reports which contain financial account information of individuals or entities which are subject to the reporting requirement. The reports on financial information must contain at least:

- a. identity of the holders of financial accounts, which are held by Indonesian citizen residing in Indonesia, foreign citizens residing in Indonesia, or entities domiciled in Indonesia;
- b. account numbers;
- c. identity of the RFI;
- d. balance or value of financial accounts (refer to the table below); and
- e. income associated with the financial accounts.

The balance or value of the financial accounts subject to the reporting requirement (at least USD250,000 for AEoFAI purposes and applicable to entities only) and for DGT access for tax purposes are as follows:

Financial Service Institutions Obligated to Report	Individuals	Entities
LJK in Banking sector	At least Rp1.000.000.000 or equivalent in foreign currency	No limit
LJK in Insurance sector	No limit, but limited to insurance policies with insured value of at least Rp1.000.000.000 or equivalent in foreign currency	
Other Entities – Cooperatives sector	At least Rp1.000.000.000 or equivalent in foreign currency	
LJK in Capital Market & Other Entities in Commodity Futures Trading sectors	No limit	

LJK shall submit the report to the Financial Services Authority/Otoritas Jasa Keuangan (“OJK”) electronically/online by 1 August every year for AEOFAI purposes or by the 4th month after Calendar Year-end for DGT access for tax purposes.

Other LJK and Other Entities shall submit the report to the DGT through a non-electronic mechanism by 30 April every year for AEOFAI purposes or by the 4th month after Calendar Year-end for DGT access for tax purposes.

The first report for DGT access for tax purposes must be submitted by 2018 for the financial information up to 31 December.

The DGT must maintain the confidentiality of such financial information. Any violation will be subject to penalties.

Contact Persons

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