



## Indonesia Tax Info

### Updated Guidelines on Implementation of Double Taxation Agreements

The Directorate General of Taxation ("DGT") has issued Regulation number PER-25/PJ/2018 ("PER-25") which revokes PER-10/PJ/2017 ("PER-10") concerning Procedures for Application of Double Taxation Agreements.

The key changes as provided in PER-25 are summarized as follows:

- The template of the DGT Form has changed. Previously, there were two DGT Forms, one for Banking Institution and Pension Fund non-resident Taxpayers (Form DGT-2), and one for other non-resident taxpayers (Form DGT-1). Now there is only one form, whereby the Banking Institution and Pension Fund non-resident Taxpayers are only required to fill in the first page.
- The Indonesian Tax Withholder and/or Collector that has transactions with a non-resident taxpayer shall submit the information in the new DGT Form through the DGT electronic gateway only one time for the period stated in the DGT Form. The Indonesian Tax Withholder and/or Collector will then receive an electronic tax acknowledgement receipt.

#### In this issue:

1. [Updated Guidelines on Implementation of Double Taxation Agreements](#)
2. [Procedure for Spontaneous Exchange of Information in the Context of Implementation of International Treaties](#)

- The effective period specified in the DGT Form shall be a maximum of 12 (twelve) months as stipulated in PER-25, which remains the same with PER-10. However, the new DGT Form now accommodates crossing of calendar years (e.g., February 2019 to January 2020). However, the tax authority of the tax treaty partner will have discretion in determining such period.
- In addition, if a non-resident 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 non-resident taxpayer, does not act as an Agent or Nominee; or
  - B. For a corporate non-resident taxpayer, shall fulfil these requirements:
    1. Does not act as an Agent or Nominee, or Conduit.
    2. Has control to use or enjoy funds, assets or rights that generate income from Indonesia;
    3. Not more than 50% of its corporate income is used to fulfil obligations to other parties;
    4. Bears risks of its assets, capital, and/or liabilities; and
    5. Does not have an obligation to provide part or all of the income sourced from Indonesia to another party.
- PER-25 has added a condition related to point 3 above: Corporate Income means all the non-resident taxpayer's income from any sources, according to the non-resident taxpayer's non-consolidated financial statement. Not included as the obligation to other entities in point 3 are (i) remuneration for employees in the form of an employment relationship; (ii) expenditures to other parties of other expense which is commonly incurred by the non-resident taxpayer to perform its business. However, PER-25 has removed the sharing of profit in the form of dividend to shareholder as an exception from obligation to other entities in point 3.
- PER-25 provides clarification in relation to request for refund of the excess withholding tax in the event of (i) incorrect application of tax treaty, (ii) late completion of administrative requirement, or (iii) Mutual agreement. The refund request procedure is regulated under Minister of Finance Regulation number 187/PMK.03/2015.

In relation to the misuse of Tax Treaty, 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-25 is effective from 01 January 2019. A DGT Form or COD that has been validated based on the previous regulation PER-10/PJ/2017 and whose validity has not yet expired can still be used until 31 December 2018.

### **Procedure for Spontaneous Exchange of Information in the Context of Implementation of International Treaties**

The DGT has issued Regulation number PER-24/PJ/2018 ("PER-24"). PER-24 is to implement Article 13 of Minister of Finance Regulation number 39/PMK.03/2017 concerning procedures for the exchange of information in the context of implementation of international treaties.

Spontaneous Exchange of Information includes exchange of information from and/or to a Treaty Partner Country or Treaty Partner Jurisdiction, for the following types of taxes:

- a. Income Tax for the exchange of information based on a Tax Treaty;
- b. Income Tax and Value Added Tax for the exchange of information based on an agreement to exchange information for taxation purposes;
- c. Income Tax, Value Added Tax, Sales Tax on Luxury Goods, and Land and Building Tax (especially for Plantation, Forestry, and Mining) for the exchange of information based on an International Convention.

The proposed information to be exchanged must fulfil the following criteria:

- a. Significant potential tax loss;
- b. Underreported payment;
- c. Tax deduction or tax exemption;
- d. Uncommon business activity;
- e. Tax deduction due to non-actual transfer of profits.

The proposed exchange of information with the Treaty Partner Country or Treaty Partner Jurisdiction shall be conducted by the Directorate of International Taxation based on a suggestion of a Head of Division in the DGT which is provided in writing and contains the following information:

- a. Name and Tax Identification Number of the taxpayer from the Treaty Partner Country or Treaty Partner Jurisdiction;
- b. Identification of the Indonesian Taxpayer, which consists of name, Tax Identification Number, and address of the Indonesian Taxpayer;
- c. Tax Period;
- d. Information on relationship between the Indonesian Taxpayer and the Taxpayer in the Treaty Partner Country or Treaty Partner Jurisdiction;
- e. Detailed information related to the tax information and the benefit of the tax information;
- f. Source of the information.

PER-24 is effective from the signing date, i.e. 31 October 2018.

# Contact Persons

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