

## Operational Tax News

### Indonesia – Tax Treaties Regulations

12 September 2017

The Indonesian Directorate General of Taxation (DGT) has issued two sets of regulations related to tax treaty benefits: No. PER-10/PJ/2017 (“PER-10”) for a non-resident to obtain benefits under Indonesia’s tax treaties and PER-08/PJ/2017 (“PER-08”) for Indonesian resident taxpayers to obtain a certificate of domicile (COD) to apply for treaty benefits.

#### **1. The Double Taxation Agreements for Foreign Taxpayers (PER-10)**

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):
  - a. a relevant economic motive for establishment of the entity;
  - b. business activities managed by its own management and the management has sufficient authority to carry out transactions;
  - c. 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;
  - d. employees with certain expertise in accordance with the business field that is carried out, in sufficient and adequate numbers; and
  - e. activities or other active business other than only receiving income in the form of dividend, interest and/or royalty originating from Indonesia.

- 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 percent 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 modified to accommodate the changes in the provisions under PER-10. Please note that the forms now state the validity period that 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 or 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.

## 2. Update on Certificate of Domicile (“COD”) for Indonesian Domestic Taxpayers (PER-08)

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.

# Your contacts

**Eric Centi**

Partner

Deloitte Solutions

Tel. +352 45145 2162

[ecenti@deloitte.lu](mailto:ecenti@deloitte.lu)

**Nenad Ilic, CFA**

Director

Tax - Global Financial Services Industry

Tel. +352 45145 2046

[neilic@deloitte.lu](mailto:neilic@deloitte.lu)

**David Sourrouille**

Senior Manager

Deloitte Solutions

Tel. +352 27331 5206

[dsourrouille@deloittesolutions.lu](mailto:dsourrouille@deloittesolutions.lu)

**Ingila Rachel Bokungu**

Manager

Deloitte Solutions

Tel. +352 27331 5243

[ibokungu@deloittesolutions.lu](mailto:ibokungu@deloittesolutions.lu)

Deloitte Luxembourg

560, rue de Neudorf

L-2220 Luxembourg

Tel: +352 451 451

Fax: +352 451 452 401

[www.deloitte.lu](http://www.deloitte.lu)

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