

TaxFlash



New Certificate of Domicile for foreign tax residents

Indonesia has completely updated its provisions on the Certificate of Domicile (CoD) for foreign and domestic tax residents. For Indonesian tax residents, please refer to our TaxFlash No.07/2017 for comments on the new CoD based on the Director General of Tax (DGT) Regulation No.PER-08/PJ/2017.

In relation to foreign tax residents, the DGT simultaneously issued Regulation No.PER-10/PJ/2017 (PER-10) on 19 June 2017 that includes a new CoD standard. PER-10 will apply starting 1 August 2017 and revokes the following DGT regulations:

1. Regulation No.PER-61/PJ/2009 (PER-61) as amended by Regulation No.PER-24/PJ/2010 (PER-24); and
2. Regulation No.PER-62/PJ/2009 as amended by Regulation No.PER-25/PJ/2010.

Valid CoDs based on these former regulations are still applicable up to the end of their validity period.

PER-10 confirms that a CoD is valid for a maximum of 12 months and the new CoD format now specifies the validity period. There are, however, still two types of CoDs, i.e. DGT-1 and DGT-2, with the same users as under the old regulations (e.g. for banking institutions and non-banking institutions).

In regards to the DGT-1 form, PER-10 modifies the beneficial ownership test set out under PER-61 and PER-24 and adds a new set of general residency tests that must be fulfilled by non-individual taxpayers to be able to enjoy tax treaty benefits.

The general residency tests applicable to all types of income generated from Indonesia are as follows:

1. There are relevant economic motives or other valid reasons for the establishment of the foreign entity (*new*);
2. The entity has its own management to conduct the business and such management has independent discretion (*not new*);
3. The entity has sufficient movable and immovable assets to conduct business other than the assets generating income from Indonesia (*new*);
4. The entity has sufficient and qualified personnel to conduct the business (*partly new*); and
5. The entity has an active business activity other than receiving dividends, interest and/or royalties sourced from Indonesia (*partly new*).

In addition, non-individual taxpayers must fulfil a beneficial ownership test if required under the relevant tax treaty where generating income in the form of dividends, interest, or royalties. The new beneficial ownership test consists of the following:

1. The entity is not acting as an agent, nominee, or conduit (*new*);
2. The entity has controlling rights or disposal rights over the income, the assets, or the rights that generate the income (*new*);
3. No more than 50% of the entity's income is used to satisfy claims by other persons (*not new*);
4. The entity bears the risk on its own assets, capital and/or the liabilities (*new*); and
5. The entity has no contracts which obliges the entity to transfer the income received to residents of third country (*new*).

This new beneficial ownership test does, however, remove the requirement that the earned income be subject to tax in the domicile country.

Specific to the new DGT-2 form is a new section requesting detailed information on the income earned from Indonesia for which tax treaty benefits are claimed. This section is similar to that under the DGT-1 form.

It has also been accepted in the past that certain government agencies of a tax treaty partner (e.g. central banks, or institutions stipulated in the tax treaty) do not need to use the DGT-1 or DGT-2 forms or any other CoD. However, PER-10 now requires these institutions to submit a CoD issued by the relevant country in order to confirm their tax exempt status under the relevant tax treaty.

CoDs must be submitted together with the relevant monthly tax returns when the income tax is due and can be submitted in an electronic format. Where income tax is "over withheld" due to a delay in completing the CoD when the relevant monthly tax return has been submitted, or there is an incorrect application of the tax treaty, PER-10 indicates that taxpayers should refer to the Minister of Finance Regulation No.187/PMK.03/2015 for a refund. PER-10 also confirms that taxpayers have the right to obtain treaty benefits through the Mutual Agreement Procedure in cases such as where a withholder fails to remit the relevant withholding tax.

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