

TaxFlash

In This Issue

- New developments in applying tax treaties – relaxation and clarification of rules



New Developments in applying Tax Treaties – Relaxation and Clarification of Rules

On 30 April 2010, the Director General of Taxation (DGT) issued two tax regulations No. PER-24/PJ/2010 and No. PER-25/PJ/2010 which revise the previously released regulations No. PER-61/PJ/2009 and PER-62/PJ/2009 (the subject of our previous Tax Flashes No. 11/2009 and 12/2009) regarding the new rules for claiming tax treaty relief and the prevention of tax treaty abuse respectively.

Our Tax Flash No. 13/2009 explained DGT Circular Letter No. SE-114/PJ/2009 which provides more detailed information about how taxpayers can comply with the above new rules. This Circular addressed some of the taxpayers' concerns in complying with the rules, but particular concerns remained about whether foreign tax authorities would provide a certificate of domicile (CoD) in the form required by the DGT , as well as several unclear phrases and conditions. The recently issued DGT regulations above addressed some of those remaining concerns.

Certificate of Domicile

The DGT will now allow foreign taxpayers to use a CoD form issued by the tax treaty partner countries if the following conditions are met.

- The CoD is written in English;
- The CoD is issued on or after 1 January 2010;
- It is an original CoD or a photocopy authorised by the Tax Service Office in which the withholding tax agent is registered;
- The CoD at least states the name of the foreign taxpayer; and
- The CoD bears a signature of an authorised officer, an authorised representative, or an authorised officer of the tax treaty partner's tax office or an equivalent authorisation according to common practice in the tax treaty partner countries and the name of the official.

Beneficial Ownership

The beneficial ownership requirement is only applied to foreign taxpayers' income if the relevant tax treaty refers to beneficial ownership.

Active Business

The phrase 'active business or activities', which is a requirement for the income recipient claiming the tax treaty benefits, is interpreted according to the foreign taxpayers conditions and can also be interpreted as activities which are actively carried out by the foreign taxpayers as indicated by expenses incurred, efforts that have been expended, or sacrifices that have been made which directly relate to efforts or activities to obtain, collect, and maintain income, including where the foreign taxpayer carries out significant activities to maintain the sustainability of the entity.

Indonesian sourced income is taxable in the recipient's country

The meaning of "income earned in Indonesia is taxable in the recipient's country" is a foreign taxpayer condition according to tax regulations in the foreign taxpayer's country. This test is still met if eventually the recipient does not have any tax payable, for example because the income is subject to a 0% tax rate, or exempted from tax based on specific provisions, or the tax payable is borne by a foreign government, deferred, or not collected.

Not more than 50% of the taxpayer's income is used to satisfy claims by other parties

The phrase "does not use more than 50% (fifty percent) of total income to fulfil its obligations to other parties" is interpreted to mean that not more than 50% of the foreign taxpayer's total income in any forms or any sources, as stated in its financial statement (non consolidation), is used to pay liabilities to other parties, apart from salaries and wages and other expenses normally incurred by the foreign taxpayer in running the business and profit distribution in the form of dividend to shareholders. The exclusion of dividends paid by the foreign taxpayer is a very positive developments and means there is no need for profits to be eventually trapped by the foreign taxpayer to satisfy the new treaty rules.

Your PricewaterhouseCoopers Indonesia contacts

Ali Mardi

ali.mardi@id.pwc.com

Ali Widodo

ali.widodo@id.pwc.com

Anthony J. Anderson

anthony.j.anderson@id.pwc.com

Anton Manik

anton.manik@id.pwc.com

Antonius Sanyojaya

antonius.sanyojaya@id.pwc.com

Ay-Tjhing Phan

ay.tjhing.phan@id.pwc.com

Engeline Siagian

engeline.siagian@id.pwc.com

Hendra Lie

hendra.lie@id.pwc.com

Jim McMillan

jim.f.mcmillan@id.pwc.com

Laksmi Djuwita

laksmi.djuwita@id.pwc.com

Margie Margaret

margie.margaret@id.pwc.com

Nazly Siregar

nazly.siregar@id.pwc.com

Nuryadi Mulyodiwarno

nuryadi.mulyodiwarno@id.pwc.com

Paul Raman

paul.raman@id.pwc.com

Ray Headifen

ray.headifen@id.pwc.com

Suyanti Halim

suyanti.halim@id.pwc.com

Tim Watson

tim.robert.watson@id.pwc.com

www.pwc.com/id

If you would like to be removed from this mailing list, please reply and write UNSUBSCRIBE in the subject line, or send an email to maria.purwaningsih@id.pwc.com.

© 2010 PT Prima Wahana Caraka. All rights reserved.

"PricewaterhouseCoopers" refers to PT Prima Wahana Caraka. As the context requires, "PricewaterhouseCoopers" may also refer to the network of member firms of PricewaterhouseCoopers International Limited, each of which is a separate legal entity. Each member firm is a separate legal entity and KAP Tanudiredja, Wibisana & Rekan does not act as agent of PwCIL or any other member firm nor can it control the exercise of another member firm's professional judgment or bind another member firm or PwCIL in any way.

DISCLAIMER: This publication has been prepared for general guidance on matters of interest only, and does not constitute professional advice. You should not act upon the information contained in this publication without obtaining specific professional advice. No representation or warranty (express or implied) is given as to the accuracy or completeness of the information contained in this publication, and, to the extent permitted by law, KAP Tanudiredja, Wibisana & Rekan, PT Prima Wahana Caraka, or PT PricewaterhouseCoopers FAS, its members, employees and agents do not accept or assume any liability, responsibility or duty of care for any consequences of you or anyone else acting, or refraining to act, in reliance on the information contained in this publication or for any decision based on it.