

# ***TaxFlash***



## ***International tax updates***

This TaxFlash summarises the changes in the new OECD Model Tax Convention and commentaries as well as several updates in relation to Indonesia's commitments to international tax agreements.

### ***A. The 2014 Update to the OECD Model Tax Convention***

In July 2014, the Organization for Economic Co-operation and Development (OECD) released the contents of the 2014 update (the 2014 Update) to the OECD Model Tax Convention and related Commentary (the OECD Model). The key updates concern:

- Revised proposals concerning the meaning of "beneficial owner", which are inserted in the commentaries of Articles 10 (Dividends), 11 (Interest) and 12 (Royalties).
- Revised Commentary on Article 26 (Exchange of Information)
- Revised Commentary on Article 13 (Capital Gains)
- The tax-treaty treatment of termination payments under Article 15 (Income from Employment)
- The application of Article 17 (Artistes and Sportsmen)
- Tax treaty issues related to emissions permits and credits under the commentaries for Article 6 (Income from Immovable Property) and Article 8 (Shipping, Inland Waterways Transport and Air Transport)

## **B. The Standard for the Automatic Exchange of Financial Account Information in Tax Matters**

The OECD has unveiled the full version of the draft of the Standard for the Automatic Exchange of Financial Account Information in Tax Matters (EOI Standard). The signing ceremony is expected to take place before the end of this month.

The EOI Standard is a result of the declaration by G20 finance ministers in April 2013 that they wanted automatic exchange of information to be the global standard and their endorsement in February 2014 of the Common Reporting Standard (CRS). This is also a part of work of the Global Forum on Transparency and Exchange of Information for Tax Purposes to address tax evasion, consisting of 120 members, including Indonesia.

The EOI Standard sets out a minimum standard of information to be exchanged. Jurisdictions may choose to exchange information beyond the minimum standard. In order to limit the opportunities for taxpayers to circumvent the model, a reporting standard requires a broad scope across the following dimensions:

- The scope of financial information reported
- The scope of account holders subject to reporting
- The scope of financial institutions required to report.

For a more detailed discussion on this matter, please see:

<http://www.pwc.com/gx/en/tax/newsletters/tax-policy-bulletin/final-oecd-standard-automatic-exchange-tax-information.jhtml>

The EOI Standard will require governments annually to exchange information about financial accounts which is obtained from financial institutions as well as specified insurance companies. Implementation of the EOI Standard will require translating the CRS into domestic law.

In Indonesian taxation law, provisions concerning EOI are covered under Article 32A of the Income Tax Law No.36/2008 and Article 59 of Government Regulation No.74/2011 with reference to General Tax Provisions (*Ketentuan Umum dan Tata Cara Perpajakan/KUP*) Law No. 16/2009. EOI procedure has also been stipulated by the MoF through the issue of Regulation No.60/PMK.03/2014 (PMK-60) which covers three types of EOI: by request, spontaneous, and automatic EOI.

It will be worth paying attention to how the EOI standard interacts with domestic laws, especially with Banking Law on secrecy matters.

## **C. Ratification of Indonesia's Tax Information Exchange Agreements**

Indonesia recently ratified its Tax Information Exchange Agreements (TIEAs) with several jurisdictions through the issue of four Presidential Decrees (PDs) on September 2014. TIEAs are bilateral agreements under which territories agree to co-operate in tax matters through exchange of information. They enable governments to enforce their domestic tax laws by exchanging, on request, information relevant to a tax matter covered by the arrangements. They broadly follow the OECD Model on Exchange of Information on Tax Matters. The implementation of these TIEAs in Indonesia should also take into account the provisions in PMK-60 as it is applicable for international tax agreements in place prior or after the effective date of PMK-60 (i.e. 1 April 2014). The four ratified agreements are as follows:

- PD No.91/2014 dated 3 September 2014, which ratifies the TIEA with Jersey;
- PD No.92/2014 dated 3 September 2014, which ratifies the TIEA with Guernsey;
- PD No.93/2014 dated 3 September 2014, which ratifies the TIEA with the Isle of Man; and
- PD No.95/2014 dated 16 September 2014, which ratifies the TIEA with Bermuda.

These TIEAs are still pending ratification by the partner jurisdictions. They will be effective after the ratification and the exchange of ratification documents has been completed.

Indonesia has also entered into a TIEA with San Marino on 25 September 2013, which was ratified by San Marino on 16 April 2014 but is pending ratification by Indonesia.

## ***D. Indonesia – Papua New Guinea tax treaty comes into force***

The sending of Diplomatic Notes from Papua New Guinea on 5 March 2014 has completed the exchange of ratification documents and marked the entry into force of the Indonesia-Papua New Guinea income-tax treaty. This treaty, which will affect income paid or credited on or after 1 January 2015, was signed on 12 March 2010 and replaces an earlier treaty that was signed on 2 May 2003 but never came into force. The Director General of Tax (DGT) will normally issue a Circular Letter to announce the effective date and entry into force of this tax treaty. The treaty will affect income paid or credited on or after 1 January 2015.

Under the tax treaty, dividends are taxable at a maximum rate of 15%, while interest and royalties are taxable at a maximum rate of 10%. Only beneficial owners of income are acknowledged as the parties entitled to the tax treaty benefits. Otherwise, income that is paid to tax residents of Papua New Guinea will be subject to the normal Article 26 Withholding Tax (WHT) rate of 20%.

The Branch Profit Tax rate is 15%. This rate is not applicable for production-sharing contracts in the oil and gas industry, their supporting bodies or state-owned oil and gas enterprises. Interestingly, this treaty contains an article on Technical Fees which stipulates that service fees arising in Indonesia, including for technical, management and consulting services, are subject to 10% WHT.

Please contact your usual PwC consultants if you have any questions or would like to discuss any of these international tax updates.

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