

TaxFlash



New Protocol amending the Indonesia – Netherlands Tax Treaty

Indonesia and Netherlands have signed a new protocol to the 2002 Indonesia - Netherlands Tax Treaty in Jakarta on 30 July 2015.

This protocol will enter into force on the first day of the second month following the completion of the exchange of ratification documents by both countries. Its provisions will be applicable to amounts paid or credited on or after the first day of the second month following the date the protocol enters into force.

The key changes under the new protocol are as follows:

1. Dividend withholding tax rate

The current withholding tax (WHT) rate is 10% in all cases. Under the new protocol, the WHT rate will be as follows:

- 5% - company (other than partnership) which directly holds at least 25% of the capital
- 10% - pension fund that is recognized and controlled according to the statutory provisions, the income of which is generally exempt from tax in that state according to the statutory provisions
- 15% - in all other cases

2. Interest withholding tax rate

WHT at 5% will be applicable on interest on loans made for a period of two years, or is paid in connection with the sale on credit of any industrial, commercial or scientific equipment, which is currently exempt under the tax treaty.

3. Mode of Application (MoA)

The new protocol confirms that mutual agreement on the MoA of Articles 10 (Dividend), 11 (Interest), and 12 (Royalty) is not required for the application of these Articles. This should resolve the ongoing issues relating to the rejection of tax treaty benefits due to the absence of a MoA, particularly for the exemption of WHT on interest on loans made for a period of two years, or paid in connection with the sale on credit of any industrial, commercial or scientific equipment.

4. Tax sparing

The new Protocol adds two type of income derived by Netherlands' residents that are subject to tax sparing provisions:

- Remuneration derived from employment exercised aboard a ship or aircraft operated in international traffic, which may be taxed in the resident country of the enterprise.
- Interest on loans made for a period of two years or is paid in connection with the sale on credit of any industrial, commercial or scientific equipment

5. Exchange of Information (EoI)

In the current treaty, the scope of the EoI article is limited to taxes covered by the treaty. Under the new protocol, the EoI will encompass taxes of every kind and description, which means it may also cover taxes other than income tax, such as VAT.

In addition, both countries must entertain an information request although one country may have no need for such information for its own tax purposes. They cannot decline an information request solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity, or because it relates to ownership interest in a person.

6. Assistance in tax collection

A new article is inserted regarding assistance in the collection of taxes. This article details the scope and procedure for assistance in tax collection. Information requests may not be made if the revenue's claim is less than EUR 1,500.

7. The use of OECD Commentary

A new section is added in the opening of the new protocol which prescribes that the interpretation of articles that are identical or similar to the OECD Model shall use the OECD Commentary, especially on the term 'beneficial owner'.

Overall, the amendments in this new protocol provide attractive features, such as the 5% withholding tax rate for dividend and interest, which is quite competitive compared to other tax treaties entered by Indonesia. The confirmation on the MoA and the use of OECD Commentary will also be useful in implementing the tax treaty.

The modification of the EoI Article and the addition of the Assistance in Tax Collection Article are also in line with the Convention on Mutual Administrative Assistance in Tax Matters and the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information, of which Indonesia and Netherlands are both signatories.

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