



Updated rules on
Controlled Foreign
Companies ^{P1}

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On 26 June 2019, the Minister of Finance issued Regulation No.93/PMK.03/2019 (PMK-93) providing an update on the rules covering the deemed repatriation of profits from Controlled Foreign Companies (CFCs). PMK-93 amends MoF Regulation No.107/PMK.03/2017 (PMK-107) and is effective from the beginning of the 2019 tax year (and so with a retrospective element).

PMK-93 is aimed at providing greater legal certainty and transparency with regard to the taxing of CFCs. PMK-93 is therefore of importance to the growing number of Indonesian groups with offshore business activities.

The key updates in PMK-93 are summarised below.

Income subject to deemed dividends

The definition of a CFC for these purposes was originally set out in PMK-107 and is unchanged by PMK-93. Please refer to our [TaxFlash No.10/2017](#) for commentary on PMK-107.

A key development in PMK-93 is the change to the type of CFC income subject to deemed repatriation. Essentially, the PMK-93 focus is now limited to passive income as follows:

1. Dividends, but except for dividends received from other CFCs (see below for more discussion);
2. Interest income, except where received by a CFC of an Indonesian resident taxpayer (*Wajib Pajak Dalam Negeri/WPDN*) with a banking license. However, this exception does not apply if the interest income is received from a WPDN that is related to that CFC;
3. Income arising from:
 - a. land and/or building rental; and
 - b. other rental income from related parties;
4. Royalties; and
5. Capital gains.

As such, PMK-93 modifies PMK-107 by limiting deemed profits largely to “passive” income rather to the former “commercial profit after tax” approach.

Imposition base of deemed dividends

As with PMK-107, the imposition base of “repatriable” income includes income from an indirectly held CFC. Therefore, if an Indonesian taxpayer has directly and indirectly held CFCs the repatriable income is as follows:

1. the net passive income of the directly held CFC; and
2. the net passive income of the indirectly held CFC multiplied by the effective ownership percentage.

The identification of “repatriable income” however needs to be adjusted for the inter-CFC dividend exception outlined above. This exemption suggests that dividends passed between CFCs do not constitute passive income for repatriation purposes.

Calculation of net income after tax

The repatriable income continues to be calculated on the effective ownership basis. That is the interest in the CFC in question multiplied by the “net income after tax” after the following deductions:

1. expenses to obtain, collect, and maintain the passive income; and
2. any foreign taxes due, paid, or withheld on the income (i.e. foreign underlying taxes continue to be deductible rather than creditable).

Detailed examples for the repatriable income calculation are set out in the attachment to PMK-93.

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