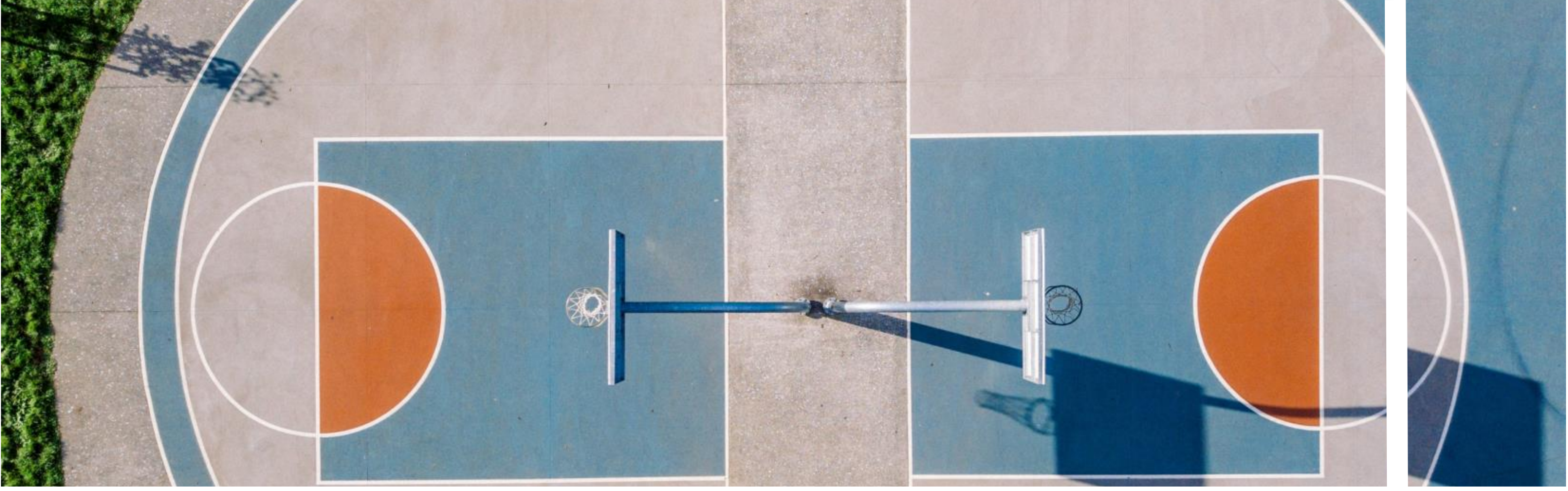


TaxFlash

Tax Indonesia / February 2022 / No. 06

CFC Rules: additional guidelines

On 28 December 2021, the Director General of Tax (DGT) issued SE-55[1] as an internal guideline to implement Minister of Finance (MoF) Regulations[2] on Controlled Foreign Companies (CFC).

SE-55 provides comprehensive guidelines including various examples. In this TaxFlash, we will only highlight several issues with additional guidance to the provisions set out in the MoF Regulations.

Tax treatment for CFC losses

In principle, in calculating the tax base, overseas losses cannot be offset against other domestic income. In determining the basis for the imposition of deemed dividends in relation to CFC losses, the following shall apply:

- The CFC losses from different countries/jurisdictions cannot be offset against CFC income from another country.
- The CFC losses can be netted off with CFC income from CFCs within the same country/jurisdiction. However, if the total Net Profit After Tax from all CFCs in the same jurisdiction resulted in a loss position, then the loss cannot be offset against domestic income or CFC income from other countries.

[1] DGT Circular Letter No.55/PJ/2021 (SE-55) dated on 28 December 2021

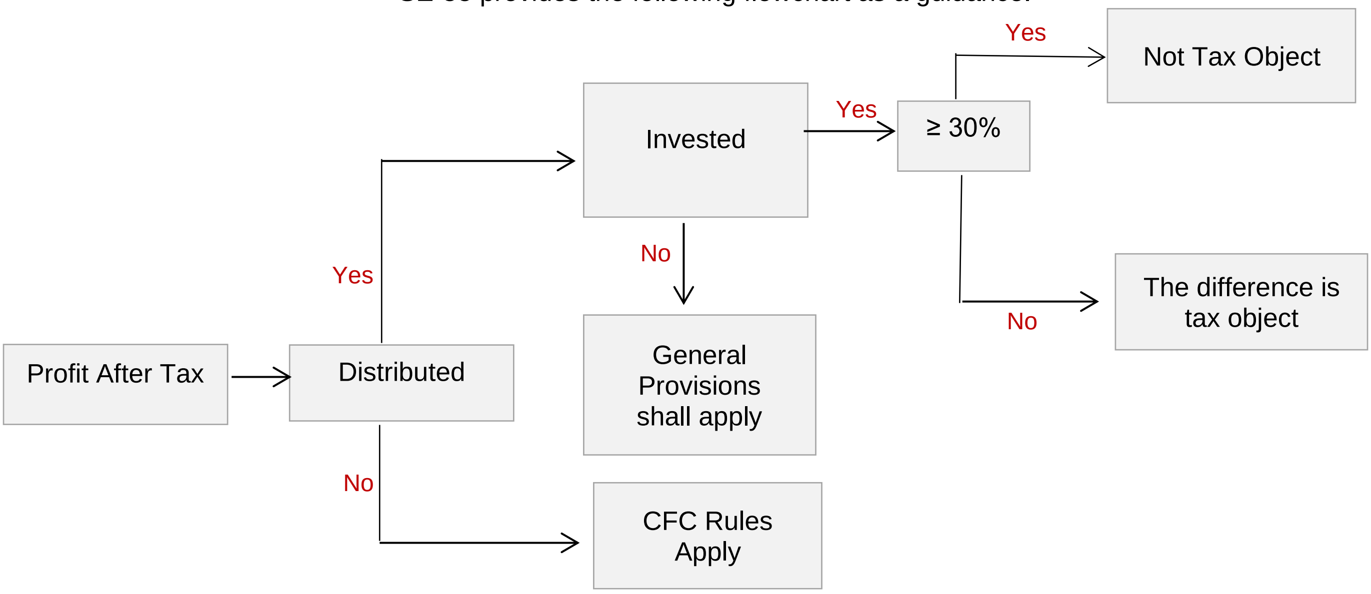
[2] MoF Regulation No.107/PMK.03/2017 (PMK-107) dated and effective from 27 July 2017 as lastly amended by MoF Regulation No.93/PMK.03/2019 (PMK-93) dated on 26 June 2019 and effective from Fiscal Year 2019. Please refer to TaxFlash No.10/2017 and TaxFlash No.10/2019 for discussion on this PMK respectively.

Interaction of the CFC Rules with the dividend exemption rules under the Omnibus Law

With the enactment of the offshore dividend exemption rules under the Omnibus Law, the provisions of the CFC Rules remain valid as long as:

- The CFC does not distribute dividends to domestic taxpayers; and/or
- The domestic taxpayer does not invest the paid dividends distributed by the CFC as required under the Omnibus Law.

SE-55 provides the following flowchart as a guidance.



Deemed dividend on trust

PMK-93 stipulates that the ownership through trust or similar arrangements is deemed as a “pass-through” and will be considered as ownership by the investor(s) in the trust or similar entity.

SE-55 affirms that in principle, those who recognize and report the deemed dividend as well as claim the Foreign Tax Credit (FTC) on the paid dividends are the settlors. However, if the settlor has passed away or cannot be identified, then the beneficiary of the trust can recognize and report the deemed dividend as well as claim the foreign tax credit.

Foreign Exchange rate to be used in applying CFC Rules

SE-55 provides guidance and examples which reaffirms that:

- Conversion of the amount of deemed dividends and paid dividends are using the BI middle rate or the daily spot rate of foreign exchange on the international market if the BI middle rate is not available.
- The exchange rate used for the dividend amount is the one applicable at the time of the deemed dividend recognition or when the dividends are received.
- The exchange rate used for the FTC is the exchange rate determined by the MoF at the time the foreign income tax is payable, paid or withheld. If the domestic taxpayer is conducting United States Dollar (USD) bookkeeping, any FTC in a currency other than USD must be converted into USD
- The netting off of deemed dividend with the paid dividend follows examples given in the MoF Regulations. No separate calculation is necessary to calculate gain or loss from the difference of exchange rates used at the time the dividend is deemed and distributed.

Reporting the deemed dividend, dividend paid and foreign tax credit in Annual Income Tax Return (AITR)

This SE-55 explains how to report the deemed dividend, paid dividend and FTC in AITR Forms 1770 S, 1770 and 1771, which can be highlighted as follows:

- For Form 1770 S, both deemed dividend and paid dividend is reported under the Overseas Net Income column.
- For Forms 1770 and 1771, the deemed dividend is added as a positive fiscal adjustment when it is recognised and reversed as a negative fiscal adjustment when the actual dividend is paid. The paid dividend will be reported under the Overseas Commercial Net Income column.

For various scenario of the amount of deemed dividend and paid dividend, please refer to the examples given in SE-55.

Should you have any specific questions or would like to discuss further this topic, please do not hesitate to reach out to any of our PwC Indonesia contacts as listed below.

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