



Renegotiated Indonesia –  
UAE Tax Treaty comes  
into force <sup>P1</sup>

## Renegotiated Indonesia – UAE Tax Treaty comes into force

On 1 April 2021, the United Arab Emirates (UAE) Government sent Diplomatic Notes to the Indonesian Government confirming the ratification of the renegotiated Tax Treaty between Indonesia and UAE. The Indonesian Government subsequently ratified this treaty through the issue of PR-34<sup>1</sup> on 4 May 2021 (please refer to [TaxFlash No.11/2021](#) for discussion on this). The sending of Diplomatic Notes from Indonesia to the UAE on 19 August 2021 completed the exchange of ratification documents and marked the entry into force of this new tax treaty. The Director General of Taxes (DGT) subsequently issued SE-57<sup>2</sup> to announce that the tax treaty had entered into force and had application to income received or obtained on or after 1 January 2022.

SE-57 provides that the renegotiated tax treaty replaced the 1995 Tax Treaty including applicable modification under the Multilateral Instrument (MLI) provisions.

The withholding tax (WHT) rates for Dividends, Royalties, and Branch Profits Tax remain the same (i.e. 10%, 5%, and 5% respectively).

There are however several important changes as set out below.

### 1. Dividends

The new treaty adds a paragraph which stipulates that dividends paid to a government of the other contracting state shall be exempt from tax.

### 2. Interest

The previous WHT rate was 5%. Under the new treaty the WHT rate is increased to 7%.

### 3. Fees for Technical Service – *new article*

A new Article 12A governs the taxation of technical service fees and provides that such fees are subject to a 5% WHT.

<sup>1</sup> Presidential Regulation No.34 Year 2021 (PR-34) dated 4 May 2021

<sup>2</sup> DGT Circular Letter No.SE-57/PJ/2021 (SE-57) dated 31 December 2021

This follows Article 12A of the UN Model treaty. The definition of a technical service covers services of a managerial, technical or consultancy nature, with exceptions for certain payments. This article shall not apply however if the fee is effectively connected to a Permanent Establishment (PE) or a fixed base of an independent personal service. There is no time test requirement to apply this provision.

#### 4. Capital Gains

A new paragraph provides an additional exception to the capital gains tax protection in relation to shares or interests in entities deriving their value principally from immovable property. Under this provision a source country may tax gains from alienation of shares of a company or comparable interests if, within a 365-day period prior to the sale, the company derives a minimum of 50% of its value directly or indirectly from immovable property in the source country. This is except if the shares are traded on a stock exchange. This new paragraph is in line with Article 9 of the MLI provisions.

#### 5. Permanent Establishment

The PE article is updated to reflect the adoption of some of the MLI provisions related to the existence of a PE as follows:

- The expansion of the requirements for activities of a “preparatory or auxiliary nature” to be deemed as not creating a PE (which follows Article 13 of the MLI).
- The strengthening of the anti PE avoidance through commissionaire arrangements which now includes that “habitually” playing a principal role which leads to the conclusion of contracts without material modification may lead an agent to be deemed as a PE (which follows Article 13 of the MLI).
- The addition of the definition of a person “closely related to an enterprise” (which follows Article 15 of the MLI)

#### 6. Income from Hydrocarbons – *new article*

This provision stipulates that the new tax treaty shall not affect the implementation of the domestic laws and contracts with governments relating to income arising from the exploitation of hydrocarbons.

#### 7. Anti tax avoidance provisions adopted from MLI – *new article*

The new treaty has adopted Article 6 of the MLI by including the preamble dealing with the purpose of a covered tax agreement as prescribed in the MLI.

The new treaty has also introduced Article 29 regarding the Principle Purpose Test concept. This means that the Principal Purpose Test as prescribed in Article 7 of the MLI regarding the prevention of treaty abuse is formally included.

#### 8. Exchange of Information (Eol)

The Eol provisions under the new treaty follows the Eol article in the 2017 OECD Model Tax Convention. The scope is extended to all taxes meaning the treaty covers taxes such as Value Added Tax.

In addition, the respective jurisdictions are required to consider information requests served by either Contracting Party even where the information provides no tax benefit to the information provider. A Contracting State cannot ignore a request for information simply because the information is held by a bank, financial institution, nominee or person acting in an agency or a fiduciary capacity etc.

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