

TaxFlash

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An update on the implementation of the Indonesian Tax Treaty ^{P1}

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On 31 December 2025, the Minister of Finance (MoF) issued PMK-112¹ to update the procedures for implementing the Indonesian Tax Treaty.

PMK-112 incorporates provisions previously stipulated in Director General of Taxes (DGT) Regulation No. PER-25² on Procedures for Implementing the Tax Treaty by Foreign Taxpayers (*Wajib Pajak Luar Negeri/WPLN*) and PER-28³ on Procedures for Implementing the Tax Treaty by Domestic Taxpayers (*Wajib Pajak Dalam Negeri/WPDN*). Please refer to [TaxFlash No. 13/2018](#) for a discussion on PER-25 and [TaxFlash No. 01/2019](#) for a discussion on PER-28.

The key changes under PMK-112 are as follows:

Procedures for implementing Tax Treaty by WPDN

Most provisions in PMK-112 remain the same as PER-28. PMK-112 updates the following provisions:

- The Certificate of Domicile (CoD) format for WPDN no longer requires the name of the transaction counterparty or its Taxpayer Identification Number.
- The timeline for legalising or issuing a rejection letter for the Special Form (*Formulir Khusus*, i.e. a form issued by the tax authority of a Tax Treaty Partner requesting confirmation of the status of an Indonesian WPDN) has changed from five working days to ten calendar days after receiving a complete application.

1. MoF Regulation No. 112 Year 2025 (PMK-112) dated and effective from 31 December 2025
2. DGT Regulation No. PER-25/PJ/2018 (PER-25) dated on 21 November 2018 and effective from 1 January 2019
3. DGT Regulation No. PER-28/PJ/2018 (PER-28) dated on 14 December 2018 and effective from 1 February 2019

Procedures for implementing the Tax Treaty by WPLN

1. Administrative procedures

Most provisions in PMK-112 remain the same as PER-25 with the following updates:

- a) If the CoD of WPLN does not state a validity period, it will be valid for the month in which it is issued.
- b) Tax withholders/collectors who first receive the DGT Form must now check the completeness of the DGT Form as well as the entitlement of the WPLN to enjoy Tax Treaty benefits, i.e. the WPLN is not an Indonesian tax subject, is a tax resident of the Tax Treaty partner, and does not conduct Tax Treaty abuse. If these requirements are not met, income tax must be withheld/collected according to the Income Tax Law.
- c) The DGT Form has been modified by eliminating Part VI, i.e. the Beneficial Owner (BO) tests, which was previously completed only by recipients of dividends, interest, and royalties, and incorporating it into Part V, which must now be completed by all entities receiving income from Indonesia, i.e. not limited to dividend, interest, and royalty income. However, the instruction in PER-25 that the questions under BO tests must be answered in a prescribed manner to enjoy Tax Treaty benefits is no longer included in PMK-112.
- d) PMK-112 confirms that WPLN can still enjoy Tax Treaty benefits even if a DGT Form is only submitted during tax audit, tax objection, or during the processing of a request for reduction/cancellation of tax assessment letters, provided the WPLN is entitled to enjoy such benefits.

2. Prevention of Tax Treaty abuse

A WPLN can enjoy Tax Treaty benefits as long as they do not abuse the treaty. PMK-112 defines Tax Treaty abuse as any effort by WPLN to reduce, avoid, or postpone income tax payments contrary to the treaty's intent and purpose. This regulation further defines the intent and purpose of the treaty as eliminating double taxation without creating opportunities for non-taxation or tax reduction through avoidance or evasion, including misuse by taxpayers in third countries. The latter definition is adopted from Article 6 of the Organisation for Economic Co-operation and Development (OECD)'s Multilateral Instrument (MLI) to prevent treaty abuse and in the preamble of the current OECD Model.

To prevent abuse, the DGT can test tax compliance based on Tax Treaty provisions or domestic anti-abuse rules in the Income Tax Law in the absence of such rules in the Tax Treaty provisions. If compliance tests show that requirements are not met, the DGT will determine the tax payable under the Income Tax Law.

PMK-112 incorporates some anti-abuse rules from the MLI. The body of PMK-112 does not explicitly limit the application of these anti-abuse rules only to cases where they are adopted in the relevant Tax Treaty. However, examples in the Appendix imply that the anti-abuse rules apply when adopted in the relevant Tax Treaty.

Domestic anti-abuse rules provided under PMK-112 include:

a) BO tests

PMK-112 sets out BO tests to identify whether the income recipient is the party who truly enjoys the income. The tests stipulated in PMK-112 remain the same as in PER-25.

b) Requirements to apply lower withholding tax rates on dividends

PMK-112 stipulates that if a Tax Treaty provides two withholding tax rates on dividends based on shareholding percentage, the lower rate can be applied if the corporate WPLN is the BO of the dividend income and meets the following requirements:

- Holds a certain percentage of shares; and
- A minimum holding period is 365 calendar days, including the dividend payment date.

This provision is adopted from Article 8 of the MLI and Article 10 of the current OECD Model.

If the corporate WPLN does not meet these conditions, the higher withholding tax rate under the Tax Treaty applies, provided the taxpayer is the BO of the income.

c) Requirements to determine taxing rights on capital gains on the transfer of shares of entities with significant immovable properties

PMK-112 stipulates that Indonesia has taxing rights on gains from the transfer of shares or rights in an entity if:

- The value of immovable property compared to the total assets of the entity whose shares or rights are transferred exceeds the threshold percentage specified in the applicable Tax Treaty; and
- This threshold is met at any time during the 365 calendar days prior to the share or rights transfer

If these conditions are not met, taxing rights on gains from the transfer belongs to the Other Contracting State under the Tax Treaty.

This provision is adopted from Article 9 of the MLI and Article 13 of the current OECD Model.

d) Artificial avoidance of Permanent Establishment (PE) status

PMK-112 adopts similar provisions as those stipulated under PMK-35⁴ regarding PE and from the MLI.

PMK-112 stipulates that a WPLN is deemed to have a PE in Indonesia if:

- They have a permanent place of business in Indonesia used for operations;
- They carry out construction, installation, or assembly projects exceeding the time test set in the Tax Treaty;



- They use a dependent agent in Indonesia who regularly concludes contracts or, although not regularly concluding contracts, regularly makes deliveries on behalf of the WPLN;
- They have insurance agents/employees receiving premiums or covering risks in Indonesia; and/or
- Their activities go beyond mere preparatory or auxiliary functions

PMK-112 provides the following anti-abuse rules to combat artificial avoidance of PE status through:

- Commissionaire arrangement** – adopted from Article 12 of the MLI
Under this rule, a PE is deemed to exist if a dependent agent plays a principal role in concluding contracts that are typically finalised without material changes by the WPLN.
- Specific activity exemptions** – adopted from Article 13 of the MLI
A WPLN may avoid PE by limiting activities to preparatory or auxiliary functions. This anti-avoidance rule ensures that such activities conducted by a WPLN or its closely related person in Indonesia are genuinely preparatory or auxiliary and not essential business operations.
- Splitting of contracts** – adopted from Article 14 of the MLI
Under this rule, the time test calculation for the WPLN is conducted by adding the presence of the WPLN and its closely related persons if each presence exceeds 30 days and all projects are carried out at the same site.

In addition, PMK-112 defines “closely related persons” as entities or individuals with control or ownership (more than 50%) or under common control. This is also adopted from Article 15 of the MLI for the implementation of the rules related to specific activity exemptions and splitting of contract.

If a WPLN misuses the Tax Treaty to avoid PE status, the DGT may issue a Tax Identification Number (*Nomor Pokok Wajib Pajak*) ex officio for the deemed PE under the Indonesian tax law.

e) **Limitation on Benefits**

This anti-abuse rule stipulates that eligibility to receive treaty benefits is determined based on criteria set out in the relevant Tax Treaty provisions, which may include:

- Individuals who are residents of the Tax Treaty partner;
- Entities where more than 50% of shares are owned by individuals who are residents of the Tax Treaty partner;
- Entities where more than 50% of their income is not used to fulfil obligations to parties other than those specified in the Tax Treaty; or
- Entities whose more than 50% of their shares are regularly traded on a stock exchange explicitly mentioned in the Tax Treaty

f) The Principal Purpose Test (PPT)

The PPT ensures that treaty benefits are not granted if the main purpose—or one of the main purposes—of a transaction or arrangement (includes agreements, memorandum of understandings, schemes, transactions, or series of transactions) is to obtain those benefits, either directly or indirectly. This provision is adopted from Article 7 of the MLI and Article 29 of the current OECD Model.

The PPT applies when other anti-abuse provisions cannot be applied and/or there are indications that Tax Treaty benefits have been obtained through arrangements aimed at securing such benefits.

Under PMK-112, the PPT is implemented by analysing:

- Transaction structure and underlying contracts;
- Legal form vs. economic substance;
- Timing and duration;
- Parties involved, their relationships, and their rights and obligations in the transactions;
- Tax Treaty benefits and other benefits arising from the transaction; and
- Other relevant facts and circumstances



Your PwC Indonesia contacts

Abdullah Azis abdullah.azis@pwc.com	Gerardus Mahendra gerardus.mahendra@pwc.com	Raemon Utama raemon.utama@pwc.com
Adi Poernomo adi.poernomo-c@pwc.com	Hasan Chandra hasan.chandra@pwc.com	Raka Putra raka.putra@pwc.com
Adi Pratikto adi.pratikto@pwc.com	Hendra Lie hendra.lie@pwc.com	Riyadi riyadi.riyadi-c@pwc.com
Adrian Hanif adrian.hanif@pwc.com	Hisni Jesica hisni.j.jesica@pwc.com	Runi Tusita runi.tusita@pwc.com
Alexander Lukito alexander.lukito@pwc.com	Hyang Augustiana hyang.augustiana@pwc.com	Ryuji Sugawara ryuji.sugawara@pwc.com
Aman Santosa aman.santosa-c@pwc.com	Irene Satyanagara irene.satyanagara@pwc.com	Sukma Alam sukma.alam-c@pwc.com
Andrias Hendrik andrias.hendrik@pwc.com	Kianwei Chong kianwei.chong@pwc.com	Surendro Supriyadi surendro.supriyadi-c@pwc.com
Angeline angeline.angeline@pwc.com	Lukman Budiman lukman.budiman@pwc.com	Susetiyo Putranto susetiyo.putranto@pwc.com
Angga Wardhani angga.w.wardhani@pwc.com	Made Natawidnyana made.natawidnyana@pwc.com	Sutrisno Ali sutrisno.ali-c@pwc.com
Anton Manik anton.a.manik@pwc.com	Margie Margaret margie.margaret@pwc.com	Suyanti Halim suyanti.halim@pwc.com
Antonius Sanyojaya antonius.sanyojaya@pwc.com	Marlina Kamal marlina.kamal@pwc.com	Tjen She Siung tjen.she.siung@pwc.com
Avinash Rao a.rao@pwc.com	Nicholas Sugito nicholas.sugito@pwc.com	Turino Suyatman turino.suyatman@pwc.com
Ay Tjhing Phan av.tjhing.phan@pwc.com	Nikolas Handradjid nikolas.handradjid@pwc.com	William Christopher william.christopher@pwc.com
Brian Arnold brian.arnold@pwc.com	Novie Mulyono novie.mulyono@pwc.com	Yessy Anggraini yessy.anggraini@pwc.com
Dexter Pagayonan dexter.pagayonan@pwc.com	Oki Octabiyanto oki.octabiyanto@pwc.com	Yuliana Kurniadjaja yuliana.kurniadjaja@pwc.com
Enna Budiman enna.budiman@pwc.com	Omar Abdulkadir omar.abdulkadir@pwc.com	Yunita Wahadaniah yunita.wahadaniah@pwc.com
Esa Perdana esa.perdana@pwc.com	Otto Sumaryoto otto.sumaryoto@pwc.com	
Gadis Nurhidayah gadis.nurhidayah@pwc.com	Peter Hohtoulas peter.hohtoulas@pwc.com	

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