

Tax Treaty

Simplify Use of Tax Treaty Benefits (PER-25/PJ/2018 of 21 November 2018)

On 21 November 2018, the Director General of Taxation (DGT) issued DGT's regulation No PER-25/PJ/2018 to replace PER-10/PJ/2017 regarding Procedure for the Application Of Agreement On The Avoidance of Double Taxation ("DTA/P3B"). The new regulation will be applicable commencing 1 January 2019. DGT-1 Forms which have already been legalized based on PER-10/PJ/2017 can still be used until 31 December 2018. This means that in December 2018 (this month), for January 2019 onward, foreign taxpayers need to obtain a new DGT Form using a new form and new procedure as regulated by PER 25/PJ/2018.

The most important changes are as follows:

A foreign taxpayer who receives or obtains income from Indonesia may obtain the benefits of *P3B* insofar as the income beneficiary is not a domestic tax subject of Indonesia, is an individual person or entity which constitutes a domestic tax subject in a treaty country, and satisfies the beneficial owner requirements, and there is no abuse of *P3B*.

A foreign taxpayer must submit a certificate of domicile (*COD/SKD*) to a tax withholder or collector to obtain the benefits of *DTA*. The period set out in *SKD* is a maximum of 12 months. After receiving *SKD*, a tax withholder or collector must submit the information in *SKD* electronically to the Director General of Taxation (DGT). The submission of the *SKD* only needs to be made once to receive the benefits of *P3B* in accordance with the period set out in the *SKD*. The receipt of this *SKD* submission must be forwarded to the foreign taxpayer. This receipt serves as evidence of the entitlement to enjoy the tax treaty benefits for income received from all Indonesian tax withholders. The Indonesian tax withholder who receives the receipt of the *SKD* submission, must recheck the correctness and validity of the *SKD* to the DGT's website. A copy of the valid receipt of *SKD* must be attached to the PPh 26 tax return.

Upon the PPh 26 tax withholding, the tax withholder must issue an electronic withholding tax slip. If the electronic withholding tax slip is not ready, a hard copy version can be accepted.

Please note that if there is income received by foreign taxpayer, but according to the *P3B* there is no tax to be withheld, the tax withholder is still required to report this transaction in the PPh 26 tax return.

As in the old regulation, the new regulation contains an article regarding *P3B* abuse and Beneficial Ownership as follows:

P3B Abuse is deemed not to happen if Foreign Taxpayer satisfies the following.

1. Economic substance
2. Its legal form is the same as the economic substance
3. Its business activities is managed by own management who have sufficient authority to enter into transactions.
4. Fixed assets and Non-fixed assets, are sufficient and adequate to conduct business activities, other than assets used to generate income from Indonesia
5. There are a number of employees who are capable of conducting business activities of the company
6. There are active business activities other than merely receiving dividend, interest and/or royalty from Indonesia

Beneficial Owner tests include:

1. Individual Foreign taxpayer does not act as agent or nominee
2. The Foreign Corporate taxpayer satisfies the following:
 - a. Not acting as an agent or nominee
 - b. Has control to use or enjoy funds , assets, or rights generating income from Indonesia
 - c. Not more than 50% income of the entity is used to meet the liabilities to another party
 - d. Foreign taxpayer bears risk of assets, capital or other responsibilities
 - e. Has no requirement written or unwritten, to forward part or all income received in Indonesia to another party.

In summary the regulation provides the following:

1. There will be no DGT-1 Form and DGT-2 Form but only DGT Form
2. Tax withholder and/or collector no longer need to fill in the amount of transaction.
3. The tax period to be stated in the DGT Form is a maximum 12 months.

4. Tax withholder and/or collector who receive DGT Form from Foreign Taxpayer should submit the DGT Form electronically to Director General of Taxation (“DGT”) through DGT’s channel. The submission of the DGT Form is **one time only**. After that submission, the Taxpayer will receive a receipt which should be attached to the submitted tax returns (instead of DGT Form).

In the event that there is difference between legal form of a transaction structure/scheme and economic substance, taxation treatment shall be applied in accordance with provisions applicable based on economic substance (substance over form).

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