

SUMMARY OF INDONESIAN NEW REGULATIONS FOR IMPLEMENTATION OF DOUBLE TAXATION AGREEMENT (AS OF DECEMBER 15, 2009)

A. Director General of Taxes Regulation Number PER-61/PJ/2009 of November 5, 2009 as revised on December 15th, 2009, and further elucidated by the Circular Letter SE-114/PJ/2009 of December 15th, 2009

1. The Indonesian withholding tax agent shall withhold the liable tax on income derived by a Non Resident Taxpayer in accordance with Law Number 7 of 1983 concerning Income Tax as amended several times lastly by Law Number 36 of 2008:
 - a. Article 26 paragraph (1): subject to tax rate of 20% of gross income on dividend, interest, royalties, fees of services, prizes and awards, pensions and annuities, premium on swap and income from other hedging transactions, and/or income from debt write-off, derived by non resident taxpayer (excluding non resident taxpayer who carries out business or activities through a permanent establishment situated in Indonesia).
 - b. Article 26 paragraph (2): subject to tax rate of 20% of net income of gain on alienation of any assets situated in Indonesia derived by non resident taxpayer).
 - c. Article 26 paragraph (4): subject to tax rate of 20% of income after Indonesian income tax of a permanent establishment situated in Indonesia, except such income after Indonesian income tax is reinvested in Indonesia.
2. The Indonesian withholding tax agent shall withhold the liable tax in accordance with the provisions stipulated in Double Taxation Agreement (DTA), if:
 - a. the income recipient is not Indonesian resident taxpayer,
 - b. the administrative requirements to apply provisions stipulated in DTA is fulfilled,
 - c. the income recipient does not conduct the improper use of DTA as stipulated in regulation concerning prevention of improper use of DTA (PER-62/PJ/2009)
3. For application of the DTA, the non resident taxpayer is required to submit a certificate of domicile (COD) that using the Form-DGT 1 or Form-DGT 2 as attached to the Indonesian withholding tax agent. The forms and instructions are available at our website: www.pajak.go.id.
4. The Form-DGT 2 shall be used especially by:
 - a. a non resident taxpayer who derives income through a Custodian in relation with income arise from transaction of alienation of shares or bonds that traded in or reported to the capital market in Indonesia, other than interest and dividend; or
[Note: The term "Custodian" means a party who renders custodian services of securities and of other assets related to securities, or other services, including receiving dividend, interest and other rights of the customer, settlement and representing the account owner for the benefit of its customers.]
 - b. a bank as non resident taxpayer.
5. The Form-DGT 1 shall be used for any cases other than those mentioned in point 4 above.
6. The administrative requirements as mentioned in point 2.b. is a COD submitted by non resident taxpayer to the Indonesian withholding tax agent that meets the following:
 - a. The form uses the appropriate Form-DGT 1 or Form-DGT 2;
 - b. The form is filled completely and signed by the non resident taxpayer;
 - c. The form certified by the Competent Authority of treaty partner; and
[Note: the meaning of the term "Competent Authority shall be including his authorized representative or the authorized tax office]
 - d. The completed form is submitted to the Indonesian withholding tax agent on or before the time limit of the periodical tax return of the Indonesian withholding tax agent for the tax period concerned.

7. The first page of Form-DGT 1 shall consist of taxpayer declaration and authorization by the Competent Authority and it may be acceptable to be used for more than one transactions if:
 - a. the income is paid by the same Indonesian withholding tax agent; and
 - b. the name and address of the income recipient are not changed.
8. The second page of Form-DGT 1 is not required to be certified by the Competent Authority. However, the non resident taxpayer should sign the declaration at the bottom part of the second page, as well as write down his/her complete name and the signature date.
9. The second page of Form-DGT 1 may be used by the taxpayer to declare all derived income during 1 (one) month (Tax Period) by declaring the total amount of income of each income group and providing list or detail of derived income during the month for each respective income groups on a separate page.
10. The Form-DGT 1 shall be submitted by non resident taxpayer to the Indonesian withholding tax agent on or before the time limit of the Periodical Tax Return of the withholding tax agent for the concerned Tax Period (20 days after the concerned month ended). The failure to meet this requirement would cause the DTA cannot be applied by the Indonesian withholding tax agent.
11. The Form-DGT 1 and the Form-DGT 2 may be used as a basis to apply the provisions stipulated in the DTA starting from the date of COD authorized by the Competent Authority of the treaty partner and it shall be valid for 12 months.
12. In case the income recipient is a bank, regardless the type of income, the Form- DGT 2 shall be used for the DTA application.
13. In case of transfer of bonds, the derived income shall be categorized as interest/discount in accordance with the Government Regulation Number 16 of 2009 concerning Income Tax on Bonds Interest Income and the Government Regulation Number 27 of 2008 concerning Income Tax on the Government Bonds Discount. Therefore, any Non Resident Taxpayer who derives income from the transfer of bonds, except bank, shall use the Form-DGT 1 for the DTA application.
14. The non resident taxpayers who fail to obtain the benefit of the DTA at source may file a refund application to the Director General of Taxes in accordance with paragraph 2 Article 17 of the Law Number 6 of 1983 as amended lastly by Law Number 16 of 2009.
15. The Non Resident Taxpayer is allowed to submit the Certificate of Domicile issued by the Competent Authority that according to the common form and practice in the respective countries to apply the DTA in case the taxpayer is required to pay Indonesian tax not under the Indonesian withholding tax mechanism.
16. This regulation will be effective on January 1, 2010.

B. Director General of Taxes Regulation Number PER-62/PJ/2009 of November 5, 2009 and further elucidated by the Circular Letter SE-114/PJ/2009 of December 15th, 2009

1. The person covered by the DTA is any individual or any body of person who is resident taxpayer of Indonesia and/or her treaty partner.
2. The DTA is not allowed be applied by the Indonesia withholding tax agent if the improper use of DTA is occurred, regardless the income recipient is a person covered by the DTA.
3. The improper use of DTA may be occurred in the following cases:
 - a. a transaction with lack of economic substance and it employs certain structure/scheme with purpose solely to access the benefit of the DTA;
 - b. a transaction with certain structure/scheme which its legal form is different to its economic substance with purpose solely to access the benefit of the DTA; or
 - c. the income recipient is not the real owner who enjoys the economic benefit of income (*beneficial owner*).

4. The real owner of income who enjoys the economic benefit of income (beneficial owner) is the income recipient who acts not as an agent, and not as a nominee; and not a conduit company.
5. The following Individuals or body of persons covered by the DTA shall be deemed not conducting the improper use of DTA:
 - a. an individual who acts not as an agent or nominee;
 - b. any institution whose name mentioned explicitly in the DTA or who has been agreed by both Competent Authorities;
 - c. a non resident taxpayer who derives income through Custodian in relation with income from transaction of alienation of shares or bonds that traded in or reported to the capital market in Indonesia, other than interest and dividend, only if such non resident taxpayer acts not as an agent or a nominee;
 - d. any company whose stocks is listed in the capital market and such stocks is traded regularly;
 - e. any bank; or
 - f. any other company which meets the following requirements:
 - 1) the creation of such company in the jurisdiction of the treaty partner or the arrangement of structure/scheme is not motivated solely by reasons to take advantage of benefit of the DTA; and
 - 2) the company has its own management to conduct the business and such management has an independent discretion; and
 - 3) the company employs sufficient qualified personnel; and
 - 4) the company engages in active conduct of a trade or business; and
 - 5) the earned income that arises in Indonesia is subject to tax in the jurisdiction of the income recipient; and
 - 6) the company does not use more than 50% of its total gross income to satisfy claims by other persons in form of interest, royalties, or other fees.
6. Where the improper use of DTA occurred:
 - a. the Indonesian withholding tax agent is not allowed to apply the DTA and shall withhold the liable tax in accordance with the Law Number 7 of 1983 concerning Income Tax as lastly amended by Law Number 36 of 2008; and
 - b. the non resident taxpayer who conducts the improper use of DTA is not allowed to claim application for tax refund.
7. In case where the legal form of transaction/structure is different to its economic substance, the tax treatment on the economic substance of such transaction/structure shall be applied (substance over form).
8. Where by reason the non resident taxpayer considers that the taxation results in taxation not in accordance with the DTA, he may present his case to the competent authority of which he is a resident, to settle the case through Mutual Agreement Procedure in accordance with the DTA.
9. This regulation will be effective on January 1, 2010.

The Form-DGT 1 and the Form-DGT 2, including their respective instructions are attached.