

taxBlitz

Tax & Customs Update

Tax Authority Emphasizes Tax Treaty Utilization Rule

The Directorate General of Taxes has laid emphasis on the provision of Double Tax Avoidance Agreement (Tax Treaty) utilization by issuing Director General of Taxes (DGT) Regulation Number PER-10/PJ/2017 on 19 June 2017.

This provision replaces DGT Regulation Number PER-61/PJ/2009 on Procedure of Tax Treaty Implementation, as last amended by PER-24/PJ/2010. This regulation also includes DGT Regulation Number 62/PJ/2009 substance on Prevention of Tax Treaty Misuse that has been amended by DGT Regulation Number PER-25/PJ/2010.

By the issuance of DGT Regulation Number PER-10/PJ/2017, the DGT Regulation Number PER-61/PJ/2009 as last amended by PER-24/PJ/2010 and PER-62/PJ/2009 as last amended by PER-25/PJ/2010 are automatically revoked and deemed invalid as of 1 August 2017.

Beneficial Owner

The new Tax Treaty Regulation covers the addition of foreign tax subject type, namely pension fund. In addition, DGT Regulation Number PER-10/PJ/2017 underlines the provision regarding the actual beneficial owner upon income, which was previously regulated under DGT Regulation Number PER-25/PJ/2010. What it puts forward is that Non-Resident Taxpayers meeting the beneficial owner criteria may not act as agent, nominee, or conduit.

Particularly for Corporate Non-Resident Taxpayer, there are several beneficial owner provisions required and shall be clarified in DGT-1 form, as follows:

1. Having power to utilize or take benefits from fund, assets, or rights generating income from Indonesia;
2. Not exceeding 50% of their corporate income that is used to fulfil obligation to other parties;
3. Bearing risks over assets, capital, or liabilities owned; and
4. Not having obligation, both written and unwritten, to proceed part or all of income derived from Indonesia to other parties.

Certificate of Domicile (COD)

DGT also adds several requirements for Non-Resident Taxpayers regarding COD meeting the administrative requirements, i.e. **Certificate of Residence** as the substitute for COD validation by authorized party. Hence, Non-Resident Taxpayers shall state some information in DGT-1 form at least regarding **name of Non-Resident Taxpayer, date of issuance, and the fiscal year of Certificate of Residence validity.**

Administrative Requirements of Previous COD

- written in English;
- issued on or after 1 January 2010;
- in the form of original or copy document validated by Tax Office where one of the tax withholders/collectors is registered as Taxpayer;
- at least stating information regarding the name of the Taxpayer; and
- attaching signature of the authorized party, its official representative, or tax office staff authorized in the tax treaty partner country or signature equal to signature under the provision in the tax treaty partner country and the name of officer referred to in administrative requirements of the new COD.

Administrative Requirements of New COD

- written in English;
- issued on or after 1 January 2010;
- in the form of original or copy document validated by Tax Office where one of the tax withholders/collectors is registered as Taxpayer;
- at least stating information regarding the name of the Taxpayer, the issuance date, and the fiscal year of the Certificate of Residence validity; and
- attaching signature of the authorized party, its official representative, or tax office staff authorized in the tax treaty partner country or signature equal to signature under the provision in the tax treaty partner country.

Tax Refund

Provision regarding the refund of overpayment/withholding upon tax that should not be payable is also adjusted and relatively more favorable for Non-Resident Taxpayer. If previously the late submission of COD is not considered in the Tax Treaty enactment, starting from 1 August 2017 the COD that is late-reported may still be used in the refund process of over-withheld tax that should not be payable.

Furthermore, Non-Resident taxpayers may also utilize Tax Treaty through Mutual Agreement Procedure (MAP) mechanism, in terms that the tax withholder does not use Tax Treaty or does not submit Periodic Tax Return. In line with that matter, the formats of DGT-1 and DGT-2 forms are also adjusted.

MINISTRY OF FINANCE OF THE REPUBLIC OF INDONESIA
DIRECTORATE GENERAL OF TAXES (FORM DGT-1)

CERTIFICATE OF DOMICILE OF NON RESIDENT FOR INDONESIA WITHHOLDING TAX

Guidance:
This form is to be completed by a person (which includes a body of a person, corporate or non corporate):
- who is a resident of a country which has concluded a Double Taxation Convention (DTC) with Indonesia, and
- who claims relief from Indonesian Income Tax, or respect of the following income earned in Indonesia (dividend, interest, royalties, income from rendering services, and other income) subject to withholding tax in Indonesia.

Do not use this form for:
- a banking institution, or
- a person who claims relief from Indonesian Income Tax in respect of income arising from the transfer of bonds or stocks which traded or registered in Indonesia (such exchange) and earned the income or settled the transaction through a Custodian in Indonesia, other than interest and dividend.

All particulars in this form are to be properly furnished and the form shall be signed as completed. This form must be certified by the Competent Authority or its authorized representative or authorized tax office in the country where the income recipient is a non-resident before submitted to Indonesian withholding agent.

NAME OF THE COUNTRY OF INCOME RECIPIENT _____

Form DGT-1

Part I INCOME RECIPIENT

Tax ID Number _____
Name _____
Full address _____
Contact Number _____

Part II DECLARATION BY THE INCOME RECIPIENT

I, (Full name) declare that I have examined the information provided in this form and to the best of my knowledge, correct, and complete. I further declare that _____ I am _____ the competent taxpayer. (Please check the box accordingly)

Signature of the income recipient or individual authorized to sign for the income recipient _____ Place, date (month/year) _____

Part III CERTIFICATION BY COMPETENT AUTHORITY OR AUTHORIZED TAX OFFICE OF THE COUNTRY OF RESIDENCE

For the purpose of this relief, it is hereby confirmed that the taxpayer mentioned in Part I is a non-resident of _____ for the period _____ or _____ of the fiscal year, the meaning of the Double Taxation Convention in accordance with Double Taxation Convention Indonesia and _____

Official Stamp (if any) _____
Name and Signature of the Competent Authority or its authorized representative or authorized tax office _____
Office address _____

This form is available and may be downloaded at this website: <http://www.pajak.go.id>

Part IV INDONESIA WITHHOLDING AGENT

Tax ID Number _____
Name _____
Full address _____
Contact Number _____ email _____

Part V TO BE COMPLETED IF THE INCOME RECIPIENT IS AN INDIVIDUAL

1. Name of Income Recipient _____
2. Date of birth (mm/dd/yyyy) _____
3. Full address _____
4. One of the principal purposes of the arrangements or transactions is to obtain benefit under the convention and contrary to the intent and purpose of the DTC Yes No
5. Are you acting as an agent or a nominee? Yes No
6. Do you have permanent home in Indonesia? Yes No
7. In what country do you ordinarily reside? _____
8. Have you ever been resident in Indonesia? Yes No
If so, in what period? _____
Please provide the address: _____
9. Do you have any office, or other place of business in Indonesia? Yes No
If so, please provide the address: _____

Part VI TO BE COMPLETED IF THE INCOME RECIPIENT IS NON-INDIVIDUAL

1. Country of registration/incorporation _____
2. Which country does the place of management to conduct business? _____
3. Address of Head Office: _____
4. Address of branches, offices, or other place of business in Indonesia (if any): _____
5. One of the principal purposes of the arrangements or transactions is to obtain benefit under the convention and contrary to the intent and purpose of the DTC Yes No
6. There are relevant economic, business or other valid reasons for the establishment of the foreign entity Yes No
7. The entity has its own management to conduct the business and such management has an independent discretion Yes No
8. The entity has sufficient assets to conduct business other than the assets generating income from Indonesia Yes No
9. The entity has sufficient and qualified personnel to conduct the business Yes No
10. The entity has business activity other than receiving dividend, interest, royalty received from Indonesia Yes No

I declare that I have examined the information provided in this form to the best of my knowledge, correct, and complete.

Signature of the income recipient or individual authorized to sign for the income recipient _____

Part VII TO BE COMPLETED IF THE INCOME EARNED ARE DIVIDEND, INTEREST OR ROYALTY

1. The entity is acting as an agent, nominee or conduit Yes No
2. The entity has controlling rights or disposal rights on the income or the assets or rights that generate the income Yes No
3. No more than 50 per cent of the entity's income is used to satisfy claims by other persons Yes No
4. The entity bears the risk on its own asset, capital, or the liability Yes No
5. The entity has contracts which obliges the entity to transfer the income received to resident of third country Yes No

Part VIII INCOME EARNED FROM INDONESIA IN RESPECT TO WHICH RELIEF IS CLAIMED

1. Dividend, Interest, or Royalties:
a. Type of income _____
b. Amount of income liable to withholding tax under Indonesian Law (ICR) _____
c. Amount of income liable to withholding tax under DTC Amount Percentage _____
2. Income from rendering services (including professionals):
a. Type of income _____
b. Amount of income liable to withholding tax under Indonesian Law (ICR) _____
c. Amount of income liable to withholding tax under DTC Amount Percentage _____
d. Period of engagement (mm/dd/yyyy) _____
3. Other Type of Income:
a. Type of income _____
b. Amount of income liable to withholding tax under Indonesian Law (ICR) _____
c. Amount of income liable to withholding tax under DTC Amount Percentage _____

I declare that I have examined the information provided in this form and to the best of my knowledge and belief it is true, correct, and complete.

Signature of the income recipient or individual authorized to sign for the income recipient _____ Place, date (month/year) _____ Capacity in which acting _____

This form is available and may be downloaded at this website: <http://www.pajak.go.id>

MINISTRY OF FINANCE OF THE REPUBLIC OF INDONESIA
DIRECTORATE GENERAL OF TAXES (FORM DGT-2)

CERTIFICATE OF DOMICILE OF NON RESIDENT FOR INDONESIA WITHHOLDING TAX

Guidance :
This form is to be completed by a person (which includes a body of a person, corporate or non corporate) who is a resident of a country which has concluded Double Taxation Convention (DTC) with Indonesia, who is:
- a banking institution, or
- a pension fund, or
- a person who obtains relief from Indonesia Income Tax in respect of income arising from the transfer of bonds or stocks which traded or registered in Indonesia, stock exchange and earned the income or settled the transaction through a Custodian in Indonesia, other than interest and dividend.

All particulars in the form are to be properly filled-out, and the form shall be signed as completed. This form must be certified by the Competent Authority or his authorized representative or authorized tax office in the country where the income recipient is a tax resident before submitted to Indonesian withholding agent/Custodian.

NAME OF THE COUNTRY OF INCOME RECIPIENT _____ (1)

PART I INCOME RECIPIENT

Tax ID Number _____ (2)
Name _____ (3)
Full address _____ (4)
Contact Number _____ (5) e-mail _____ (6)

PART II DECLARATION BY THE INCOME RECIPIENT

1. I declare that I am a resident of _____ (7) (name of the state of residence) for income tax purposes within the meaning of Double Taxation Convention with Indonesia.
2. In relation with the earned income, I am the company is not acting as an agent or a nominee. (Please check the box accordingly)
3. The beneficial owner is not an Indonesian resident taxpayer and I am the company is not an Indonesian resident taxpayer, and (Please check the box accordingly)
4. I have examined the information stated on this form and to the best knowledge and belief it is true, correct and complete.

_____, (8) _____ (9) _____ (10)
Signature of the income recipient or individual authorized to sign for the income recipient Place, date (mm/dd/yy) Capacity in which acting

PART III CERTIFICATION BY COMPETENT AUTHORITY OR AUTHORIZED TAX OFFICE OF THE COUNTRY OF RESIDENCE

For the purpose of tax relief, it is hereby confirmed that the taxpayer mentioned in Part I is a resident in _____ (11), for the period _____ (12), to _____ (13), of the fiscal year _____ (14) within the meaning of the Double Taxation Convention in accordance with Double Taxation Convention concluded between Indonesia and _____ (15).

Office Stamp of and
Name and Signature of the Competent Authority or his authorized representative or authorized tax office _____ (16) _____ (17)
Capacity/Designation
Office address _____ (18)

This form is available and may be downloaded at this website: <http://www.pajak.go.id>

Form DGT-2

PART IV INCOME EARNED FROM INDONESIA IN RESPECT TO WHICH RELIEF IS CLAIMED

1. Dividend, interest, or Royalties:

a. Type of income _____ (28)
b. Amount of income liable to withholding tax under Indonesian Law : IDR _____ (29)
c. Amount of income liable to withholding tax under DTC
Amount _____ (30) Percentage _____ (31)

2. Income from rendering services (including professional):

a. Type of income _____ (34)
b. Amount of income liable to withholding tax under Indonesian Law : IDR _____ (35)
c. Amount of income liable to withholding tax under DTC
Amount _____ (36) Percentage _____ (37)
d. Period of engagement (mm/dd/yy) _____ (38)
_____ (39) to _____ (40)
_____ (41) to _____ (42)
_____ (43) to _____ (44)
_____ (45) to _____ (46)

3. Other Type of Income

a. Type of income _____ (50)
b. Amount of income liable to withholding tax under Indonesian Law : IDR _____ (51)
c. Amount of income liable to withholding tax under DTC
Amount _____ (52) Percentage _____ (53)

I declare that I have examined the information provided in this form and to the best of my knowledge and belief it is true, correct, and complete. _____ (54)

_____, (55) _____ (56) _____ (57)
Signature of the income recipient or individual authorized to sign for the income recipient Place, date (mm/dd/yy) Capacity in which acting

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Contact:

For further information, please contact the following MUC Consulting Group partners:



Wahyu Nuryanto

Tax Partner

wahyu.nuryanto@mucglobal.com



Karsino

Tax Partner

karsino@mucglobal.com

**MUC Consulting Group, MUC Building, Jl. TB. Simatupang No.15, Tanjung Barat,
Jakarta, Indonesia (1230)**

Tel: +6221 78837111, Fax: +6221 7887666