



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.

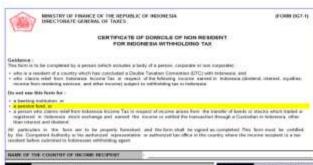
Administrative Requirements of New COD

- 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.



Form DGT-1

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