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taxBlitz
Tax & Customs Update

Updated Regulation, CFC Rules Only Targets Passive Income

The government limits the basis of stipulation of dividend acquisition (deemed dividend) for Resident Taxpayers who are non-listed overseas company-controller shareholders. If previously the provision, known as Controlled Foreign Company (CFC) Rules spots all types of income, both active income and passive income, starting from fiscal year 2019, it only focuses on the passive income.

This policy is stipulated in Minister of Finance (MoF) Regulation Number 93/PMK.03/2019, amending the previous regulation MoF Regulation Number 107/PMK.03/2017, on the Stipulation of Acquisition Time of Dividend and Its Calculation Basis by Resident Taxpayers upon Capital Investment in Overseas Business Enterprise other than Business Enterprise Selling its Stock in Stock Exchange.

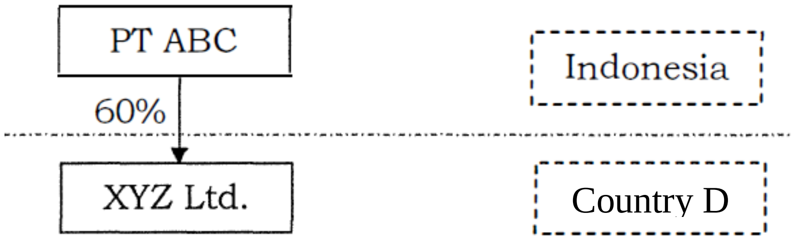
Through MoF Regulation Number 93/PMK.03/2019, the government changes the terminology of "profit after tax", which has been the basis of deemed dividend, into "net amount after tax." Such change is followed by explanation in detail about certain type of income of non-stock exchange Overseas Business Enterprise (Overseas Enterprise) controlled by Resident Taxpayers. The types of passive income becoming the target of CFC Rules include dividend, interest, rent, royalty, and gain on sales or transfer of asset received by non-stock exchange Overseas Enterprise.

Meanwhile, the income of Overseas Enterprise of rent that can be the basis of deemed dividend is related to the use of land or building and rent that is received on the transaction with the party affiliated with controlled Overseas Enterprise.

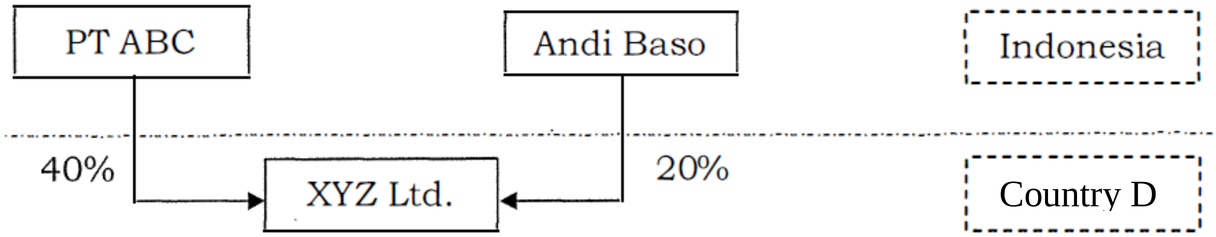
However, for the dividend received from controlled non-stock exchange Overseas Enterprise and the interest from non-stock exchange Overseas Enterprise owned by a Resident Taxpayer with banking business permit, they are excluded from the deemed dividend provision.

Direct Controller

As stated in the previous regulation, Resident Taxpayers will be considered direct controller when they have at least 50% shares of paid-up capital in non-stock exchange Overseas Enterprise, both single-share ownership and jointly with other Resident Taxpayers. The value of paid-up share equals the value of share issued by non-stock exchange Overseas Enterprise or the value of share having voting rights.



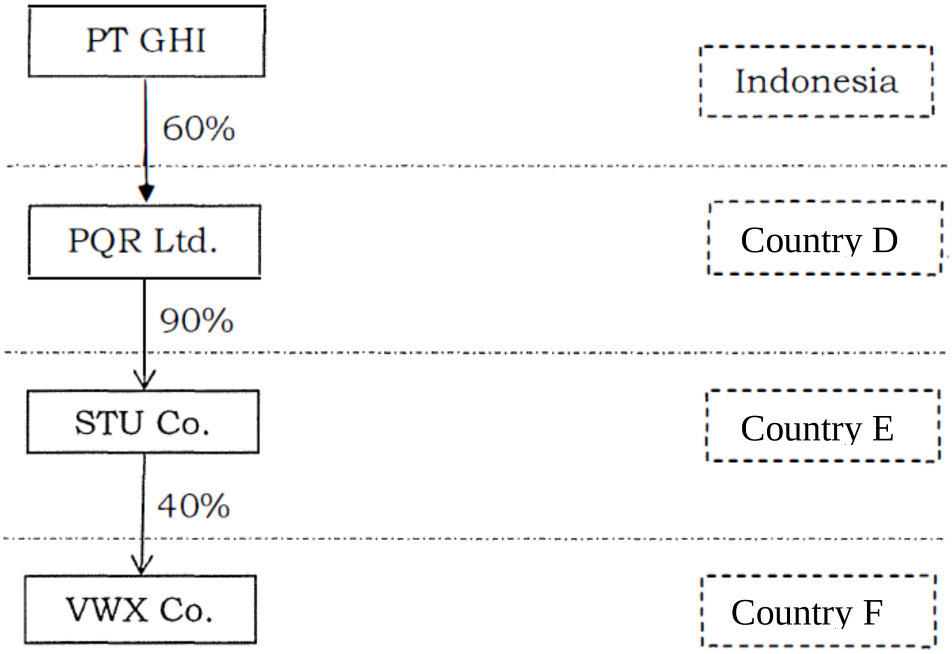
The limit of 50% share ownership or more also prevails if the share is owned collectively by more than one Resident Taxpayer. Therefore, even if each Resident Taxpayer owns share less than 50%, if it is combined and meeting the minimum limit of 50% capital investment in non-stock exchange Overseas Enterprise, it is still considered direct controller.



Indirect Controller

Furthermore, a Resident Taxpayer is deemed an indirect controller when at the next level of capital investment, non-stock exchange Overseas Enterprise whose 50% shares or more is owned, owns 50% shares or more in another non-stock exchange Overseas Enterprise.

This condition also prevails collectively when a group of Resident Taxpayers own 50% shares or more in non-stock exchange Overseas Enterprise, and the non-stock exchange Overseas Enterprise collectively owns 50% shares or more in another non-listed foreign entity.



Even when the term of "profit before tax" shifts to "net amount before tax", such change does not affect the ending value of calculation basis of dividend stipulation.

By the change, the formula of deemed dividend calculation will be as follows:

Deemed Dividend = % Capital Investment of Taxpayer x Net Amount after Overseas Enterprise's Tax

However, if the control is performed through some layers of share ownership, the formula of deemed dividend calculation is as follows:

Deemed Dividend = (% Capital Investment of Taxpayer x Net Amount after Overseas Enterprise A's Tax) + (% Capital Investment of Overseas Enterprise A x Net Amount after Overseas Enterprise B's Tax) + etc…

The period of deemed dividend stipulation does not change, which is conducted at the end of the fourth month since the submission due date of Annual Income Tax Return (ITR) of non-stock exchange Overseas Enterprise in the jurisdiction where it operates. However, if the jurisdiction where the non-stock exchange Overseas Enterprise is located does not oblige the submission of ITR, the Indonesian government may still determine the deemed dividend at the end of the seventh month and it shall be reported in ITR. Therefore, deemed dividend stipulation depends on the policy of ITR submission in each country where the non-stock exchange Overseas Enterprise operates.

Tax Credit Requirements

The new CFC Rules still restrict the requirements of tax credit recognition on the dividend received by Resident Taxpayers from non-listed overseas company. Resident Taxpayer may also credit the income tax already paid or withheld on the received dividend of non-stock exchange Overseas Enterprise in the tax year when the income tax is paid or withheld. Tax crediting may be conducted to:

1. The dividend that is received not exceeding the deemed dividend that may be calculated;
2. The dividend that is received exceeding the deemed dividend that may be calculated; and
3. The dividend that is received from 2 (two) or more countries/jurisdictions.

Tax crediting is conducted by considering the Double Tax Avoidance Agreement (Tax Treaty) as well as calculating the multiplication between income tax payable on taxable income and the ratio between the dividend received and the deemed dividend. Furthermore, upon the received dividend of non-stock exchange Overseas Enterprise of more than one country, the tax crediting is conducted based on each country/jurisdiction.

The Taxpayers crediting income tax on the dividend is obliged to report it to Directorate General of Taxes (DGT). This report must be completed with:

a. Financial report;
b. Copy of ITR, in terms of an existence of obligation to submit Annual ITR;
c. Calculation or details of profit after tax in the last five years; and
d. The income tax payment slip or income tax withholding slip on the received dividend of non-stock exchange Overseas Enterprise with direct control.

MoF Regulation Number 93/PMK.03/2019, which is the revision of MoF Regulation Number 107/PMK.03/2017, is the extended implementation of Base Erosion and Profit Shifting (BEPS) Action 3 recommended by Organization for Economic Co-operation & Development (OECD), namely Strengthening the CFC Rules.

Contact:

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

Wahyu Nuryanto
Partner
wahyu.nuryanto@mucglobal.com

Meydawati
Partner
meyda@mucglobal.com

MUC Consulting Group, MUC Building, Jl. TB. Simatupang No.15, Tanjung Barat, Jakarta, Indonesia (12530)
Phone: +6221 78837111, Fax: +6221 78837666