

Tax News Flash

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'New' form DGT-1 for non-resident taxpayers

Recently, the Director General of Tax ("DGT") has issued the new Regulation PER-10/PJ/2017 ("PER-10") that introduces the new certificate of domicile ("CoD") standard for non-resident taxpayers. PER-10 is applicable as of August 1, 2017 and revoked the Regulations PER-61/PJ/2009 as amended by PER-24/PJ/2010 and PER-62/PJ/2009 as amended by PER-25/PJ/2010.

Under PER-10 there are still two types of CoDs, one for banking institutions ("form DGT-2") and one for non-banking institutions ("form DGT-1"). Form DGT-2 remained largely the same, whereas form DGT-1 has been amended more drastically.

The CoD (page 1 of the form) is still valid for 12 months. However, the format (part III of the form) now specifies the validity period. This may create issues for taxpayers in countries of which the tax authorities do not want to specify a specific period (e.g., the UK). A possible solution would be to attach a standard CoD as issued by the local tax authorities, which should still be acceptable under PER-10. An additional note is that PER-10 stipulates clearly that the standard CoD must be in English. This may create issues as some treaty partners issue CoD in local language.

Under the new form DGT-1 various new residency tests are added (under Part VI), and a new set of beneficial ownership tests is introduced (under Part VII), which only has to be filled in in case the non-resident taxpayer receives Indonesian dividends, interest or royalties.

Consistent with earlier regulations, PER-10 also requires taxpayers to prepare and submit withholding tax slips, even in the situation that no tax is payable. These must be reported to the tax office in the period when the tax is (normally) payable.

Under Part VI there are four notable new tests included (some of the other test are only slightly amended):

1. *One of the principal purposes of the arrangements or transactions is to obtain benefit under the convention and contrary to the object and purpose of the DTC.*

This is a so-called principle purpose test as developed under the BEPS initiative and laid down in the Multilateral Instrument ("MLI") (which has been signed by Indonesia). This question has to be answered negatively in order to be able to claim the tax treaty benefits.

2. *There are relevant economic motives or other valid reasons for the establishment of the foreign entity.*

The entity should not be established solely for the purpose of making use of the tax treaty. Other arguments should play a role.

3. *The entity has sufficient assets to conduct business other than the assets generating income from Indonesia.*
4. *The entity has business activity other than receiving dividend, interest, royalty sourced from Indonesia.*

Test 3 and 4 are in the same line. They are targeting single purpose structures (e.g., a Dutch SPV used for financing an Indonesian group). The entity claiming the tax treaty benefits cannot only be active as a financing, licensing or holding company for Indonesian operations. It has to have other functions and activities (e.g., being the central holding and financing company of a group with investments in various countries apart from Indonesia).

Under Part VII, a specific beneficial ownership test is introduced, which has to be met if the recipient receives dividends, interest or royalties. This test is quite straightforward. Like in the old form DGT-1, there still is an anti-base erosion test (i.e., not more than 50% of the recipient entity's income is used to satisfy claims by other persons). However, the requirement that the Indonesian income is subject-to-tax at the level of the recipient company has been removed. In addition, the following four tests have been added:

1. The entity is not acting as an agent, nominee, or conduit;
2. The entity has controlling rights or disposal rights over the income, the assets, or the rights that generate the income;
3. The entity bears the risk on its own assets, capital and/or liabilities; and,
4. The entity has no contracts which obliges the entity to transfer the income received to residents of third countries.

Under PER-10 it is required that certain tax exempt institutions (e.g., central banks or government institutions as mentioned in the respective tax treaties) should submit a CoD confirming their tax exempt status. Under the previous regulation, these institutions did not need to submit a DGT-1, DGT-2 or specific CoD.





KPMG Comments:

The new form DGT-1 seems to incorporate the principle purpose test and a simplified limitation of benefits test ("simplified LOB"), as Indonesia announced to use when signing the MLI. Although PER-10 does not mention anything about this. It would be helpful if the Indonesian authorities would be more specific on this. It should be noted that, because the MLI has not entered into force yet, applying a principle purpose test or a simplified LOB would probably not be in accordance with any of the tax treaties concluded by Indonesia (assuming that such a treaty does not contain a specific anti-abuse provision).

In general it can be said that the tests of Part VI are aimed at the use of SPV structures for investments and financing in Indonesia. Companies have to make sure that the entity they use for investments in Indonesia also has other functions and ideally also has investments in other countries, not only receiving dividend, royalty or interest income sourced from Indonesia.

The beneficial ownership tests of Part VII are quite straightforward. As before clients have to make sure that the treaty claiming entity is not over leveraged, because the 50% base erosion test still applies under the new rules.

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