KPMG

Tax News Flash

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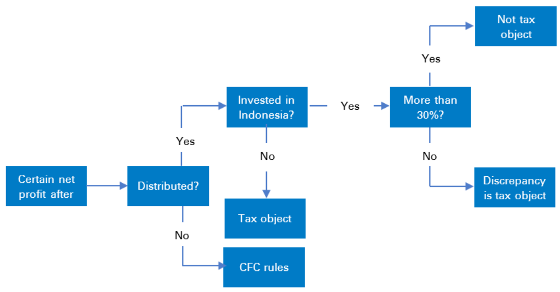
Implementing Guidance for Determining Taxable Deemed Dividend

The Director General of Taxation ("DGT") issued Circular Letter No. 55 year 2021 ("SE-55") on 28 December 2021 as a guideline for the application of Indonesia's Controlled Foreign Country ("CFC") rule. This regulation accommodates the CFC rule provisions (the Ministry of Finance regulation No. 107 year 2017 ("PMK-107") and Ministry of Finance Regulation No. 93 year 2019 ("PMK-93"), taking into account taxation of onshore and offshore dividend to the Omnibus Law. Some hypothetical examples are included as practical references.

When do the CFC rules apply?

The application of the CFC rules is determined based on the following decision-tree (by reference to the elucidation of SE-55).



Remarks:

1. "Certain net profit after tax" (on a worldwide basis) means (i) dividend, except the actual dividend earned by the CFC entity[1] ; (ii) interest, except interest earned by a CFC entity owned by an Indonesian bank corporate taxpayer; (iii) rental income, from land and building and any rental income from related parties; (iv) royalty; and (v) capital gain on sales of assets less the attributable expenses.
2. The determination of the deemed dividend amount for fiscal years 2017 and 2018 (based on PMK-107) refers to the profit after tax figures of the respective year. For fiscal year 2019 onwards (based on PMK-93), it will be based on certain net profit after tax
3. Any loss incurred by the direct/indirect subsidiaries of the CFC entity sitting in the same country can be compensated in determining deemed dividend amount. This only applies for subsidiaries two levels below the Indonesian entity.

   Deemed dividend and actual dividend are converted based on the Bank Indonesia middle rate at the time that the deemed dividend is payable or at the time that the actual dividend is distributed. Gain/loss on foreign exchange is considered between the conversion of the deemed dividend and actual dividend distribution. This means that in the case where the deemed dividend and actual dividend have the same amount but because of foreign exchange there is a loss, then the loss can be accounted as a non-taxable object within five consecutive years. On the other hand, if there is a gain, then it must be reported as taxable dividend in the Indonesian taxpayer's annual income tax return.

   In cases where the deemed dividend that has been reported is higher than the actual paid dividend, the difference can be accounted as a non-taxable object within five consecutive years. However, if the deemed dividend that has been reported is lower than the actual paid dividend, the difference must be reported as a taxable dividend in the Indonesian taxpayer's annual income tax return.
4. Common foreign tax credit ("FTC") rules apply.

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[1] *A CFC entity refers to a non-listed foreign company that has at least for 50 percent of its shares (paid-up capital or paid-up capital with voting rights) owned directly or indirectly by an Indonesian taxpayer (company or individual) or a group of Indonesian taxpayers (companies or individuals).*

Deemed dividend from investment through trust

As a trust is considered as a pass-through entity, the CFC rules apply on the settlor, unless the settlor is deceased or unidentified. In this case, it is the beneficiary who is subject to the CFC rules. The right to claim or account the FTC of the actual paid dividend also follows this principle.

Reporting of deemed dividend, actual paid dividend and allowable FTC in the annual income tax return

In the annual income tax return, the reporting of deemed dividend, actual paid dividend and allowable FTC is done as follows:

a. For corporate taxpayers: Deemed dividend is reported as a positive fiscal adjustment when it is recognized and reversed back as a negative fiscal adjustment when the actual paid dividend is received. The actual paid dividend must also be reported as net foreign income.

b. For individual taxpayers (entrepreneurs and/or whose revenue subject to a different Indonesia tax regime (final and non-final tax) and/or foreign income): Same as point (a).

c. For other individual taxpayers: Deemed dividend and actual paid dividend are reported as net foreign income.

Deemed dividend must be recognized as taxable income by the end of the fourth month of the annual income tax return in the CFC entity's respective country/jurisdiction or the seventh month if there is no annual income tax return obligation in the CFC entity's respective country/jurisdiction. The actual paid dividend must be reported as taxable income (net with the deemed dividend that has been reported) in the fiscal year it is received.

KPMG notes:

The guidance provided by SE-55 is expected to minimize the possibility of interpretational between taxpayers and tax officials. The recognition and reporting of deemed dividend and actual paid dividend are done following the timing difference tax adjustment concept. Preparing a tax reconciliation is therefore recommended for compliance purposes.

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