

New Protocol to the Indonesia – The Netherlands Tax Treaty (“The Protocol”)

On 30 July 2015 Indonesia and The Netherlands signed a new Protocol to their Tax Treaty. The changes will take effect 31 days after the formal approvals of The Protocol by both Governments.

The most notable changes, revisions and additions to the Tax Treaty made by The Protocol are:

1. Dividend withholding tax rate revisions

Under the current Tax Treaty, a 10% withholding tax is applied to dividends paid or payable by an Indonesian tax resident taxpayer to a shareholder tax resident in The Netherlands.

Under The Protocol, the withholding tax rates are as follows:

- 5% withholding tax, if the shareholder owns at least 25% of the capital of the dividend paying company;
- 10% withholding tax, if paid to pension funds; and
- 15% withholding tax, for all other cases

KPMG Observation

These changes provide opportunities to revise tax and cash flow planning.

2. Interest withholding tax rate revisions

Under the current Tax Treaty, a 10% withholding tax rate is applied to interest paid by an Indonesian resident to a tax resident of The Netherlands or a 0% rate if the lender is the Government of The Netherlands, if the interest paid relates to a loan made for more than 2 years or the interest paid relates to the sale on credit of industrial, commercial or scientific equipment.

Under The Protocol the withholding tax rate increases to 5% of interest paid on a loan made for more than 2 years or is paid in connection with the sale on credit of industrial, commercial or scientific equipment.

KPMG Observation

These changes may require revisions to business models and cash flow planning.



3. Mode of application

The Protocol states that no mutual agreement is required between the Competent Authorities on the mode of application of the dividend, interest and royalty articles of the Tax Treaty.

KPMG Observation

The clarification that no mutual agreement is required should help to resolve issues where absence of an agreed mode of application is used to withhold the benefits of the Tax Treaty.

4. The use of OECD Commentary

Subject to reservations, observations or positions made by the Competent Authorities, the provisions of the Tax Treaty are identical, or in substance similar, to the provisions of the OECD Model Tax Convention on Income and on Capital, in accordance with the OECD Commentary, at the time The Protocol is approved and any subsequent clarifying modifications to the Commentary.

The Protocol specifically mentions that the two Competent Authorities will interpret the term ‘beneficial owner’ used in the Tax Treaty in accordance with the interpretation thereof as published by the OECD at the time the Protocol is approved and any subsequent clarifying modifications of such OECD interpretation.

KPMG Observation

In our view the clarification that the Tax Treaty should be interpreted in the accordance with OECD Model Tax Convention on Income and on Capital and the OECD Commentary thereon is a welcome feature of The Protocol. Even though Indonesia is not an OECD member, OECD interpretation should provide additional guidance on the correct application of the Tax Treaty provisions.

5. Exchange of information expansion

Article 28 on the exchange of information is replaced in its entirety. The changes broaden the application of exchange of information to include information which is 'foreseeable relevant' and may be needed for taxes not covered by the Tax Treaty.

The Protocol further requires Competent Authorities to use their information gathering measures to obtain the requested information, even though the Competent Authority may not need such information for its own tax purposes.

A Competent Authority is not permitted to decline supplying information because the information is held by a bank, another financial institution, a nominee or a person acting in an agency or fiduciary capacity or because it relates to an ownership interest in a person.

KPMG Observation

This revised Article will substantially increase the Competent Authorities' ability to obtain information previously not available to them.

6. New assistance in the collection of taxes

The Protocol introduces a new Article in the Tax Treaty which obligates the Competent Authorities to lend assistance to each other in the collection of revenue claims of more than EUR 1,500.

The term "revenue claim" includes taxes of every kind imposed by the Competent Authorities, including interest, administrative penalties and cost of collection related to such amount.

KPMG Observation

This new Article will substantially increase the Competent Authorities' ability to collect long outstanding unpaid amounts.

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