

EXPLANATION ABOUT THE IMPOSITION OF INCOME TAX-ARTICLE 26 IN ACCORDANCE WITH DOUBLE TAXATION AVOIDANCE AGREEMENT (P3B) BETWEEN INDONESIA AND SINGAPORE

(Letter of Acting Director of Taxation No. S-1082/PJ.341/2006 dated November 20, 2006)

THE DIRECTOR GENERAL OF TAXATION,

In connection with your letter no. xxxx dated November 30, 2000 on Imposition of Income Tax-article 26, we herewith inform the following matters:

1. Your letter basically contains the following matters:

a. The State Secretariat signed contract/agreement on maintenance and procurements of spare parts of presidency air-carrier with foreign companies (KEP Ltd, JAP Ltd and ESEAP Ltd) domiciled in Singapore. The scope of work of the foreign companies in accordance with the contracts are as follows:

- Scope of work of KEP Ltd is procurement of spare part Fokker 28 VVIP in 2002.
- Scope of work of JAP Ltd is the work of repairing and overhaul of components of Fokker 28 WIP, executed in Singapore in 2002.
- Scope of work of ESEAP Ltd is maintenance, repairing and procurement of spare parts of helicopter AS 332 L2 WIP as well as training related to the operation of the aircraft. The work was executed from 2002 to 2004.

b. The Financial Auditing Board audited the realization of budget in 2002 - 2005. In the finding, BPK imposed Income Tax-article 26 as high as 20% of the gross value (contract value) of maintenance and procurement of spare parts of presidency aircraft.

c. You request for clarification related to the imposition of Income Tax-article 26 on the realization of the agreement.

3. Law No. 7/1983 on Income Tax as already amended several times and the latest by Law No. 17/2000 (Income Tax Law) regulates among others:

Article 26 paragraph (1)

On the following income, in whatever name or form,

paid or indebted by government institutions, resident tax subjects, event organizers, permanent establishments or representatives of foreign companies to non-resident taxpayers other than permanent establishments in Indonesia, the payers are obliged to collect tax as high as 20% (twenty percent) of the gross amount of:

- a. dividend;
- b. interest, including premium, discount, premium swap and compensation in connection with guarantee for repaying debts;
- c. royalty, rent and other income in connection with the use of assets;
- d. compensation in connection with service, jobs and activities;
- e. prize and award;
- f. pension and other periodical payment.

Article 32

The government is authorized to sign agreements with other countries in the framework of avoiding double taxation and preventing tax evasion.

3. Double Taxation Avoidance agreement between Indonesia and Singapore regulates, among others:

- Article 5 paragraph 2 (i)

2. The term of permanent establishment likewise encompasses: (i) the furnishing of services, including consultancy services, by an enterprise through an employee or other person (other than an agent of an independent status within the meaning of paragraph 7) where the activities continue within a contracting state for a period or periods aggregating more than 90 days within a twelve-month period.

- Article 7 paragraph (1)

1. The profits of an enterprise of a contracting state shall be taxable only in that state unless the

enterprise carries on business in the other contracting state through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other state but only so much of them as is attributable to that the permanent establishment.

4. Circular of the Director General of Taxation No. SE-03/PJ.101/1996 on Application of Double Taxation Avoidance Agreements regulates as follows:

Point 2.a.

Non-resident taxpayers are obliged to give up original certificate of domicile to parties domiciled in Indonesia, which pay income and convey copy of the domicile certificate to Heads of Tax Service Offices (KPP) where the parties paying income are registered.

Point 2.b.

The original certificate of domicile becomes the basis for parties already paying income to apply Income Tax-article 26 in accordance with what is affirmed in Double Taxation Avoidance Agreement between Indonesia and the residence country of the non-resident taxpayers.

Point 3.c.

Certificate of domicile is issued by competent authorities or legitimate proxies in treaty partner country. Nonetheless, the domicile certificate made by officials in Tax Office where the non-resident taxpayers are registered can be accepted or treated such as certificate of domicile made by competent authorities.

5. Based on the above mentioned matters, we provide the following affirmation:

Procurement or purchase of spare parts of aircraft to supplier abroad is not subjected to Income Tax-article 26.

- a. Compensation for services paid for the companies domiciled in Singapore is related maintenance, repairing and overhaul of aircraft as well as training is not subjected to Income Tax-article 26 as long as the services are provided in Indonesia or executed in Indonesia not exceeding 90 days in a twelve-month period.

- b. In order to obtain benefit of the above mentioned double taxation avoidance agreement, the Singaporean companies as meant in paragraph (1) are obliged to convey certificate of domicile issued by Singaporean competent authorities to the State Secretary as the payer of income.

This is for your information.

Acting Director
Sgd
ROBERT PAKPAHAN

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