

Misuse of Double Taxation Agreements - Prevention

Indonesia like most other countries enters into double taxation agreements with other countries. However, these agreements are sometimes misused by those who benefit from them. Consequently, with a view to facilitating the implementation of Article 32A of Law No. 7 of 1983 as amended severally and finally by Law No. 36 of 2008, the Director General of Taxation has issued Regulation No. PER-62/PJ/2009. The express purpose of the regulation is to put into place provisions that will prevent the misuse of double taxation agreements and the avoidance of taxes.

The simple definition of a Double Taxation Avoidance Agreement (*Persetujuan Penghindaran Pajak Berganda/ P3B*) as stated in the regulation is any agreement between Indonesia and any other country within the framework of preventing tax avoidance and evasion.

Generally, the type of actions that are deemed to constitute misuse of the P3B are:

- Transactions that do not have economic substance but are designed with a structure / scheme that is for the purposes of taking advantage of the P3B;
- A transaction with a structure / scheme whose legal form is different from its economic substance for the purposes of taking advantage of the P3B; and
- The income recipient is not the beneficial owner of the economic benefit.





The beneficial owner in this instance does not act as an agent, or a nominee, or a conduit company.

Where the P3B is misused then the tax to be levied or collected is to be based on the prevailing Indonesian tax laws and regulations. Furthermore, misuse also prevents foreign taxpayers from claiming any tax refund. In addition, if a foreign taxpayer is assessed taxes which are not based on the P3B then the foreign taxpayer must ask the relevant tax officer in their country of origin to resolve the issue using the mutual agreement procedure.

This regulation repeals and replaces Director General of Taxation Circular No. SE-17/PJ/2005 and Director General of Taxation Circular No. SE-03/PJ.03/2008.

This circular is current and will come into force on 1 January 2010. 

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❖ Documents

The Director General of Taxation Regulation No. (PRDJ_DJPJ_PER62PJ2009_2009.pdf - 20.Kb)

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