

THE PREVENTION OF ABUSE OF DOUBLE TAXATION AVOIDANCE AGREEMENT

(Regulation of the Director General of Taxation No. PER-62/PJ/2009 dated November 5, 2009)

THE DIRECTOR GENERAL OF TAXATION,

ON THE PREVENTION OF ABUSE OF DOUBLE TAXATION
AVOIDANCE AGREEMENTS.

Considering :

- a. that pursuant to Article 32A of Law No. 7/1983 on Income Tax as has been several times amended the latest by Law No. 36/2008, the Government of Indonesia has the authority to make agreements with the governments of other countries on avoidance of double taxation and prevention of tax evasion;
- b. that agreements between the Government of Indonesia and the governments of other countries on avoidance of double taxation govern the scope of and parties entitled to benefit from the agreements;
- c. that guidance is needed to give legal certainty in the application of double taxation avoidance agreements in an effort to prevent the abuse of double taxation avoidance agreements;

In view of :

Law No.7/1983 (*BN No. 4009 pages 1A-3A and so on*) on Income Tax (Statute Book of 1983 No. 50, Supplement to Statute Book No. 3263) as has been several times amended the latest by Law No. 36/2008 (*BN No. 7723 pages 2A-15A and so on*) (Statute Book of 2008 No. 133, Supplement to Statute Book No. 4893);

D E C I D E S :

To stipulate :

REGULATION OF THE DIRECTOR GENERAL OF TAXATION

Article 1

Referred to in this Regulation of the Director General of Taxation as :

- (1) Double Taxation Avoidance Agreement, hereinafter referred to as P3B, is an agreement between the Government of Indonesia and the government of other country to avoid double taxation and prevent tax evasion.
- (2) Resident tax subject, hereinafter referred to as SPDN, is a resident tax subject as referred to in Law No. 7/1983 on Income Tax as has been several times amended the latest by Law No. 36/2008.
- (3) Non resident taxpayer, hereinafter referred to as WPLN, is a non-resident taxpayer as referred to in Law No. 7/1983 on Income Tax as has been several times amended the latest by Law No. 36/2008, either individual or corporate body receiving and/or earning income originating from Indonesia or receiving and/or earning income originating from Indonesia through a permanent establishment in Indonesia.
- (4) Tax withholder/collector is a government body, SPDN, activity organizer, permanent establishment or representative of other foreign company obliged to withhold or collect taxes on income received or earned by WPLN according to the rule.

- (5) Agent is an individual or corporate body acting as a broker and conducting activities for and/or on behalf of other party.
- (6) Nominee is an individual or body as the legal owner of property and/or income in the interest of or based on the mandate of the real owner and/or the party enjoying the benefit of income.

Article 2

- (1) The individual or body covered in P3B is an individual or body constituting SPDN and/or resident tax subject of P3B partner country.
- (2) P3B is not applied in case of P3B abuse although the income recipient accords with provisions in paragraph (1).

Article 3

The P3B abuse as referred to in Article 2 paragraph (2) may occur in case :

- a. transactions that have no economic substance are made using a structure/scheme in such a way merely to obtain the benefit of P3B;
- b. transactions whose structure/scheme of legal form is different from their economic substance in such a way merely to obtain the benefit of P3B; or
- c. income recipient is not the real owner of the economic benefit of income (beneficial owner).

Article 4

- (1) Referred to as the real owner of the economic benefit of income as referred to in Article 3 letter c is the income recipient that:

- a. acts not as an agent;
- b. acts not as a nominee;
- c. is not a conduit company.

- (2) The individual or body covered in P3B as referred to in Article 2 paragraph (1) that is not considered as abusing P3B as referred to in Article 3:

- a. individual that acts not as an agent or nominee;
- b. institution whose name is firmly stated in P3B or that which has been agreed upon by the authorized official in Indonesia and the P3B partner country;
- c. WPLN that receives or earns income through a custodian in connection with income from the transfer of shares or bonds traded or reported at the Indonesian capital market, other than interest and dividends, in case WPLN acts not as an agent or nominee;
- d. company whose shares are listed at the capital market and traded regularly;
- e. bank; or
- f. company that meets requirements:
 - 1) the company is set up in the P3B partner country or the regulation of transaction structure/scheme is not merely directed towards benefiting from P3B; and
 - 2) the business activity is run by the management itself that has adequate authority to make transactions; and
 - 3) the company has employees; and
 - 4) the company has active activity or business; and
 - 5) income originating from Indonesia is owed to tax in the recipient country; and

6) the company does not use more than 50% (fifty percent) of its total income to meet its obligation to other parties in the form of interest, royalties, or other benefit.

- (3) The conduit company as referred to in paragraph (1) letter c is a company that receives benefit from P3B in connection with income arising in other country, while the economic benefit of the income is owned by people in other country that will not obtain the right to take advantage of P3B if the income is received directly.
- (4) The custodian as referred to in paragraph (2) letter c is the custodian of stocks and other assets related to stocks as well as other services, including receiving dividends, interest and other rights, settling stock transactions and representing account holders as its customer.
- (5) The capital market as referred to in paragraph (2) letter c is the capital market set up according to the regulation in the country where the capital market is found.

Article 5

- (1) In case of P3B abuse as referred to in Article 3:
- the tax withholder/collector is not allowed to apply provisions in P3B and must withhold or collect tax due according to Law No.7/1983 on Income Tax as has been several times amended the latest by Law No. 36/2008; and
 - WPLN abusing P3B is not allowed to apply for a refund on overpaid tax that is not actually due.
- (2) In case of difference between the legal format of a structure/scheme and its economic substance, tax treatment is applied according to the regulation based on the substance over form.

Article 6

If WPLN is subject to tax not based on provisions in P3B, the WPLN may ask the authorized official in his/her country to settle the issue based on the mutual agreement procedure according to P3B.

Article 7

When this Regulation of the Director General of Taxation begins to take effect :

- Circular of the Director General of Taxation No. SE-17/PJ./2005 dated June 1, 2005 on Guidance for the Treatment of income tax to Article 11 on interest in the double taxation avoidance agreement between Indonesia and the Netherlands,
- Circular of the Director General of Taxation No. SE-03/PJ.03/2008 dated August 22, 2008 on the status of beneficial owner as referred to in the double taxation avoidance agreements between Indonesia and partner countries;

shall be declared null and void.

Article 8

This Regulation of the Director General of Taxation shall come into force as from January 1, 2010.

Stipulated in Jakarta

on November 5, 2009

THE DIRECTOR GENERAL OF TAXATION,

sgd.

MOCHAMAD TJIPTARDJO

NIP 060044911

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