

Type: REGULATION (PER)
By: DIRECTOR GENERAL OF TAXATION (DIRJENPJK)
Number: PER-62/PJ./2009
Date: NOVEMBER 5, 2009 (JAKARTA)
Title: PREVENTION OF THE MISUSE OF AGREEMENT ON DOUBLE
TAXATION AVOIDANCE

THE DIRECTOR GENERAL OF TAXATION,

Considering:

- a. whereas based on Article 32A of Law Number 7 Year 1983 regarding Income Tax as amended several times most recently by Law Number 36 Year 2008, the government is authorized to establish agreement with the government of other countries in the context of avoidance of double taxation and prevention of tax evasion;
- b. whereas the Agreement on Double Taxation Avoidance between the Government of Indonesia and other countries has stipulated the scope and parties entitled to obtain the benefits of such agreement;
- c. whereas it is necessary to have guidelines in order to provide legal certainty in the application of Agreement on Double Taxation Avoidance in the context of preventing the misuse of Agreement on Double Taxation Avoidance;

In view of: Law Number 7 Year 1983 regarding Income Tax (State Gazette of the Republic of Indonesia Year 1983 Number 50, Supplement to State Gazette of the Republic of Indonesia Number 3263) as amended several times most recently by Law Number 36 Year 2008 (State Gazette of the Republic of Indonesia Year 2008 Number 133, Supplement to State Gazette of the Republic of Indonesia Number 4893);

HAS DECIDED:

To stipulate: REGULATION OF THE DIRECTOR GENERAL OF TAXATION
REGARDING PREVENTION OF THE MISUSE OF AGREEMENT
ON DOUBLE TAXATION AVOIDANCE

Article 1

Referred to herein as:

- (1) Agreement on Double Taxation Avoidance hereinafter referred to as P3B shall be an agreement between the Government of Indonesia and the government of

other countries in the context of avoidance of double taxation and prevention of tax evasion.

- (2) Resident Tax Subject hereinafter referred to as SPDN shall be resident tax subject as intended in Law Number 7 Year 1983 regarding Income Tax as amended several times most recently by Law Number 36 Year 2008.
- (3) Non-Resident Taxpayer hereinafter referred to as WPLN shall be non-resident Tax Subject as intended in Law Number 7 Year 1983 regarding Income Tax as amended several times most recently by Law Number 36 Year 2008, both individual as well as entity, who/which receives and/or earns income originating from Indonesia or receives and/or earns income originating from Indonesia through a permanent establishment in Indonesia.
- (4) Tax Withholder/Collector shall be government agency, SPDN, event organizer, permanent establishment, or other representative of foreign company required to conduct the withholding or collection of tax on income received or earned by WPLN in accordance with the prevailing provisions.
- (5) Agent shall be an individual or entity acting as broker and taking actions for and/or on behalf of another party.
- (6) Nominee shall be an individual or entity that is a legal owner of an asset and/or income for the interest of or based on the mandate of a party that is the actual owner of such asset and/or a party that is actually enjoying the benefit of such income.

Article 2

- (1) Individual or entity covered in P3B shall be individual or entity constituting SPDN and/or resident tax subject of P3B partner country.
- (2) P3B shall not be applied in the event of misuse of P3B, even though the income recipient is already in accordance with the provisions as intended in paragraph (1).

Article 3

Misuse of P3B as intended in Article 2 paragraph (2) may occur in the following event:

- a. transaction with no economic substance conducted by using a structure/scheme in such a way merely to benefit from P3B;
- b. transaction with a structure/scheme the legal form of which is different from its economic substance in such a way merely to benefit from P3B; or
- c. income recipient is not the actual owner of economic benefits of such income (*beneficial owner*).

Article 4

- (1) Referred to as the beneficial owner as intended in Article 3 sub-article c shall be income recipient that:

- a. is acting not as an Agent;
 - b. is acting not as a Nominee; and
 - c. is not a Conduit Company.
- (2) Individual or entity covered in P3B as intended in Article 2 paragraph (1) not considered as committing misuse of P3B as intended in Article 3 shall be:
- a. Individual acting not as Agent or Nominee;
 - b. Agency the name of which is expressly indicated in P3B or which has been agreed upon by the relevant authority in Indonesia and in P3B partner country;
 - c. WPLN receiving or earning income through Custodian with respect to income from transactions on assignment of shares or bonds traded or reported in the capital market in Indonesia, other than interests and dividends, in the event that WPLN is acting not as Agent or Nominee;
 - d. company whose shares are registered in the Capital Market and traded regularly;
 - e. a bank; or
 - f. company meeting the following requirements:
 - 1) the establishment of company in P3B partner country or the arrangement of transaction structure/scheme is not merely for the purpose of benefiting from P3B; and
 - 2) business activities are organized by a management having adequate authority to run transactions; and
 - 3) the company has employees; and
 - 4) it has active activities or business; and
 - 5) the income originating from Indonesia is subject to tax payable in the country of recipient; and
 - 6) does not use more than 50% (fifty percent) of its total income to meet its obligations to other parties in the form of, among others: interests, royalty, or other compensations.
- (3) Conduit company as intended in paragraph (1) sub-paragraph c shall be a company benefiting from a P3B with respect to income arising in another country, whereas the economic benefits of such income are owned by people in another country who will not be entitled to make use of the P3B if such income is received directly.
- (4) The Custodian as intended in paragraph (2) sub-paragraph c shall be the party providing the custodian service for securities and other assets related to securities as well as other services, including receiving dividends, interests, and

other rights, settling securities transactions, and representing account holders who constitute their clients.

- (5) The capital market as intended in paragraph (2) sub-paragraph c shall be the capital market the establishment of which is based on the provisions applicable in the country where the capital market is located.

Article 5

- (1) In the event of misuse of P3B as intended in Article 3:
 - a. Tax Withholder/Collector shall not be allowed to apply the provisions stipulated in P3B and must withhold or collect tax payable in accordance with the provisions set forth in Law Number 7 Year 1983 regarding Income Tax as amended several times most recently by Law Number 36 Year 2008; and
 - b. WPLN committing the misuse of P3B cannot apply for the restitution of overpaid tax that should not have been payable.
- (2) In the event of difference between the legal form of a structure/scheme and the economic substance thereof, taxation treatment shall be applied in accordance with the prevailing provisions based on the economic substance (*substance over form*).

Article 6

In the event that WPLN is imposed with tax not based on the provisions set forth in P3B, WPLN may ask the relevant authority in his country to perform settlement through mutual agreement procedure in accordance with the provisions stipulated in P3B.

Article 7

As this Regulation of the Director General of Taxation comes into effect:

1. Circular Letter of the Director General of Taxation Number SE-17/PJ./2005 dated June 1, 2005 regarding Guidelines for Income Tax Treatment on Article 11 regarding Interests on Agreement on Double Taxation Avoidance (P3B) between Indonesia and the Netherlands;
2. Circular Letter of the Director General of Taxation Number SE-03/PJ.03/2008 dated August 22, 2008 regarding the Stipulation of Beneficial Owner Status as Intended in Agreement on Double Taxation Avoidance between Indonesia and Partner Countries;

shall be revoked and declared null and void.

Article 8

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

Stipulated in Jakarta

On November 5, 2009

THE DIRECTOR GENERAL OF TAXATION,

Signed

MOCHAMAD TJIPTARDJO

Civil Service Reg. No. (NIP) 060044911

Note

Excerpt: LOOSE LEAF REGULATION OF THE DIRECTOR GENERAL OF
TAXATION YEAR 2009