

Enforcement Date

1 January 2019

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- Income Tax on Dividends Acquired through Foreign Controlled Companies Modernized
- New Methods for Exchanges of Tax-Related Information
- Monitoring and Supervision Mechanism for the Post-Tax-Amnesty Supervision of Taxpayers
- New Regulation on Corporate Income-Tax Deductions
- New Regulation on Preferential Income-Tax Treatment for Foreigners and Indonesians under International Agreements

Govt. Clarifies Procedures for the Implementation of Avoidance of Double-Taxation Agreements

Regulation 25/2018 makes a slimmer procedure for taxpayers to enjoy benefits from P3B, which involves the following steps: 1) Submission of SKD WPLN; 2) Examination by tax withholder and/or collectors; 3) Drawing up of a tax-withholding and/or collection slip; and 4) Reporting process.

For a simplified administrative procedures and preventing the abuse of Avoidance of Double-Taxation Agreements (*Persetujuan Penghindaran Pajak Berganda* – “**P3B**”), the Director-General of Tax (“**Director-General**”) has issued Regulation No. [PER-25/PJ/2018](#) on Procedures for the Implementation of Avoidance of Double-Taxation Agreements (“**Regulation 25/2018**”).

Regulation 25/2018 sets out various technical procedures relating to the implementation of P3B which specifically address the following matters:

1. Benefit requirements from P3B;
2. Tax withholding and/or collection obligation;
3. Certificates of domicile (*Surat Keterangan Domisili* – “**SKD**”) for foreign taxpayers (*Wajib Pajak Luar Negeri* – “**WPLN**”);
4. Procedures for withholding and/or collecting taxes;

5. Refunds of overpaid withholding/collection taxes; and
6. Transitional provisions.

The same matters were addressed under Regulation of the Director-General No. PER-10/PJ/2017 ("Regulation 10/2017"), which now has been replaced by Regulation 25/2018.¹

Benefit Requirements from P3B

In principle, benefits under P3B may be enjoyed by WPLN who receive incomes from Indonesia, provided that the following requirements are met:²

Requirements	Remarks
Income recipients are not domestic tax subjects	-
Income recipients are individuals or corporations which are domestic tax subjects originating from P3B partnering countries	-
WPLN do not abuse P3B	<p>No abuse of P3B is considered to have occurred if:³</p> <ol style="list-style-type: none"> 1. WPLN: <ol style="list-style-type: none"> a. Have economic substance in relation to the establishment of entities or to the performance of transactions; b. Have legal forms which are in conformity with the economic substance; c. Engage in business operations managed by an independent management which has the authority to perform the relevant transactions; d. Possess adequate fixed and non-fixed assets in order to operate activities in P3B partnering countries; and e. Possess adequate numbers of skilled human resources; and f. Engage in substantial business activities, not only receiving dividends, interest and/or royalties. 2. There are no direct/indirect regulations relating to the relevant transactions which address the enjoyment of benefits through the implementation of P3B, including: <ol style="list-style-type: none"> a. Tax deduction; and/or b. Non-imposition of tax in any countries (double non-taxation).

¹ Art. 13 (2), Regulation 25/2018.

² Art. 2, Regulation 25/2018.

³ Art. 5, Regulation 25/2018.

<p>Income recipients are classified as beneficial owners (if requested under P3B)</p>	<p>WPLN may be considered as beneficial owners if they meet the following prerequisites:⁴</p> <ol style="list-style-type: none"> 1. Individual WPLN must not act as agents or nominees; or 2. Corporate WPLN are required to meet the following criteria that they must: <ol style="list-style-type: none"> a. Not be acting as agents, nominees or conduits; b. Exercise control over any expenses or benefits relating to funds, assets or rights generating income in Indonesia; c. Not use more than 50% of the relevant corporation's income in order to settle the obligations of other parties, unless the amount in question is used for the benefit of employees or for reasonable business costs; d. Bear the risks associated with any assets, capital or obligations that they are in possession of; and e. Must not be burdened by any written or oral obligations regarding the forwarding of part or all of their income generated in Indonesia to any other parties. <p>Previously, under Regulation 10/2017, payments of dividends to shareholders were excluded from the mandated 50% use of corporations' income.⁵</p>
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Tax Withholding and/or Collection Obligation

If WPLN enjoy the benefits of P3B, then any matured taxes relating to incomes which are received by WPLN must be deducted and/or collected by tax withholders and/or collectors in accordance with Law [No. 7 of 1983](#) on Income Tax, as amended several times, most recently through the issuance of Law [No. 36 of 2008](#) ("**Income-Tax Law**").⁶

However, in cases where specific provisions are set out under the relevant P3B, tax withholding and/or collection must be undertaken in accordance with said P3B, provided that the WPLN in question submit SKD WPLN which contain information on the fulfillment of the aforementioned requirements.⁷

However, it should be highlighted that under Regulation 10/2017, any discrepancies that exist between provisions set out under the Income-Tax Law and the relevant P3B may also lead to the tax withholding and/or collection ultimately being performed based on P3B.⁸

⁴ Art. 6, Regulation 25/2018.

⁵ Art. 10 (3c), Regulation 10/2017.

⁶ Art. 3 (1), Regulation 25/2018.

⁷ Art. 3 (2), Regulation 25/2018.

⁸ Art. 2 (2a), Regulation 10/2017.

SKD WPLN

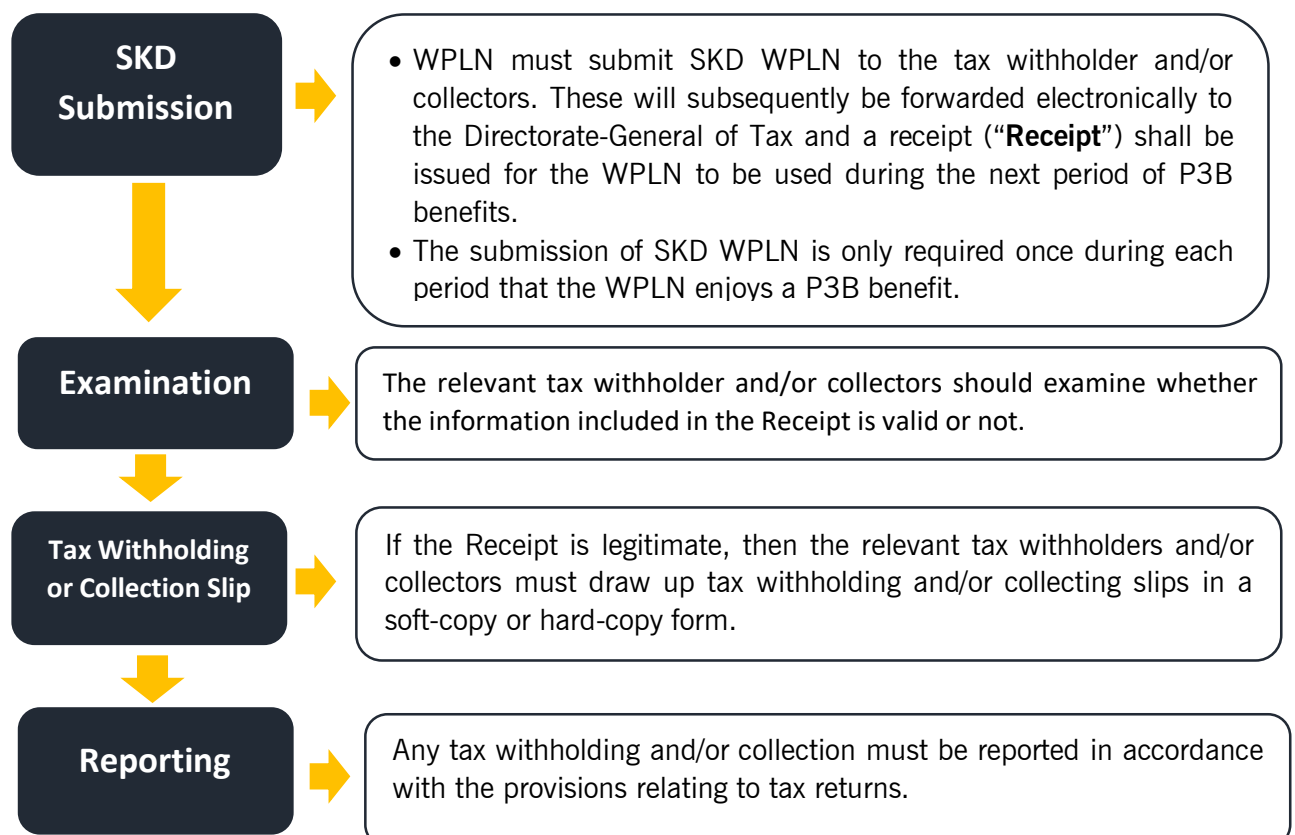
SKD WPLN are required to be submitted when applying any P3B provisions and must meet the following prerequisites:⁹

1. WPLN must use and duly fill in a DGT Form;
2. Be validated by the relevant WPLN (using signature or mark) and by an authorized official (substitutable with Certificate of Residence);
3. Contain a statement from the WPLN outlining the fact that no existing P3B abuse exists and that the WPLN is the beneficial owner (if necessary); and
4. Be used within 12 months

Previously, two types of SKD WPLN were available, the one which fulfilled administrative requirements or certain other requirements.¹⁰

Procedures for Withholding and/or Collecting Taxes

The procedures for withholding and/or collecting taxes if there are specific provisions under P3B are set out in the following flowchart:¹¹



⁹ Art. 4 (1), (3) and (7), Regulation 25/2018.

¹⁰ Arts. 6-8, Regulation 10/2017.

¹¹ Arts. 7-9, Regulation 25/2018.

Refunds of Overpaid Withholding and/or Collection Taxes

WPLN now may request refunds of overpaid deductions/collections of tax in case these three conditions occur (previously, only two conditions applied):¹²

1. Error in the implementation of P3B;
2. Delay in fulfilling the requirements for the implementation of P3B after the withholding and/or collection of tax; and
3. Mutual agreement.

Transitional Provisions

All SKD which have already been approved based on Regulation 10/2017 will remain valid for use until 31 December 2018.¹³

Regulation 25/2018 comes into force on 1 January 2019.^{PG}

¹² Compare Art. 10 (1), Regulation 25/2018 with Art. 5 (1), Regulation 10/2017.

¹³ Art. 13 (1), Regulation 25/2018

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