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New Procedures for the Application of Double Taxation Agreements

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Tax Alert

News from EY Indonesia Tax Services

On 30 December 2025, the Minister of Finance (MoF) issued Regulation No. 112 Year 2025 (PMK-112) in relation to procedures for the application of Double Taxation Agreements (DTA or Tax Treaty). PMK-112 is the implementing regulation of Article 50(2) of Government Regulation No. 55 Year 2022 and is effective on 31 December 2025.

PMK-112 contains major changes, which impact non-residents with Indonesian sourced income and Indonesian resident taxpayers with foreign sourced income. Key takeaways include:

- Administrative changes must be implemented immediately, including use of the new Form DGT.
- The requirements of the Beneficial Owner tests appear to be applied to all claims by non-residents for treaty relief on Indonesian sourced income, despite the treaty typically only imposes 'beneficial owner' criteria on dividends, interest and royalties.
- Potential to interpret the 'main purpose' or 'principal purpose test' for treaty abuse more broadly, to deny treaty benefits in a variety of situations. This includes potential for specific anti-treaty abuse tests, such as those stipulated in the Multilateral Instrument (MLI) but not stipulated in the provisions of a DTA, to be applied as part of the principal purpose test to deny treaty benefits.
- An expanded obligation on Indonesian withholders to review books and records in relation to the transaction, noting that in the past, they were only required to review the contents of the Form DGT.
- A Form DGT submitted during tax audit, tax objection, and a reduction or cancellation of notice of tax assessment may still be considered to apply for treaty benefits.
- Potentially expanded the Permanent Establishment (PE) concept in Indonesia.

Key aspects of PMK-112:

1. Income Tax Imposition Guidelines

PMK-112 provide guidelines on how income tax is imposed on Indonesia resident and non-resident taxpayers:

a) Income tax is imposed on: (i) Indonesian resident taxpayers who receive or earn income sourced from outside Indonesia; and (ii) non-resident taxpayers who receive or earn income sourced from Indonesia.

b) Income tax is imposed based on the Income Tax Law.

c) DTAs may alter tax imposition for eligible taxpayers.

d) Non-resident taxpayers must meet specific criteria to benefit from DTAs, including residency and no tax treaty abuse.

The Director General of Taxation (DGT) has the authority to:

a) issue a Resident Taxpayer Certificate of Tax Domicile (CoD);

b) examine, approve or reject an application for a Special Form (see further below);

in relation to implementing DTA for jurisdictions where Indonesian resident taxpayers have sources of income. This authority can be delegated to the head of the tax office where the resident taxpayer is registered.

2. CoD Application Procedures for Indonesian Resident Taxpayers

An Indonesian resident taxpayer may apply the provision in an applicable DTA for income received or earned from outside Indonesia. In this case, the resident taxpayers may apply for a CoD for:

a) the current fiscal year or part of the fiscal year; or

b) fiscal year or part of the fiscal year prior to the current fiscal year.

A CoD can be applied for by an Indonesia resident taxpayer if it:

a) is an Indonesian resident taxpayer subject to the Income Tax Law in the fiscal year or part of the fiscal year for which the application is submitted.

b) has a taxpayer's identification number (NPWP); and

c) has submitted an Annual Income Tax Return for:

   (i) the last fiscal year or part of the fiscal year if the application for the issuance of CoD is made for the current fiscal year; or

   (ii) the prior fiscal year or part of the fiscal year if the application for issuance of CoD is made for the fiscal year or part of the fiscal year prior to the current fiscal year.

The request for application of a CoD by a resident taxpayer shall be submitted to the DGT electronically through:

a) the taxpayer portal; or

b) the DGT contact center.

A CoD must be applied for only one DTA Partner Country where the foreign income is sourced, for one non-resident counterparty, and for one fiscal year or part of a fiscal year. Application for a CoD must state the name of the non-resident counterparty, its tax identity number and/or address, including email address, and the type of income sourced from the non-resident counterparty. Based on the application to obtain CoD and the fulfillment of the requirements, the DGT shall issue a resident taxpayer's CoD via the Coretax administration system. The CoD is valid until 31 December of the year in which CoD is issued.

3. Special Form Approval Process

A Special Form is a document issued by the tax authority of a DTA Partner Country to request confirmation of an Indonesian resident taxpayer's tax residency status (i.e., akin to Indonesia's Form DGT). Resident taxpayers who have obtained their CoDs can apply for Special Form approval process to the DGT.

a) The approval of the Special Form shall be applied through the head of the tax office where the Indonesian resident taxpayer is registered.

b) The application must meet certain requirements: (i) it must be written in English; and (ii) filled out by the resident taxpayer with the required information.

c) The head office where the resident taxpayer is registered, on behalf of the DGT, must approve or reject the application within ten calendar days.

4. New Form DGT - CoD for Non-resident Taxpayers

A non-resident taxpayer is entitled to the benefits of the DTA provided that the non-resident taxpayer:

a) is not an Indonesian resident tax subject;

b) Is a resident of a DTA Partner Country for tax purposes; and

c) does not abuse the DTA.

If a non-resident taxpayer meets the above requirements, the Indonesian tax withholder or collector shall withhold or collect tax on the income received or obtained by the non-resident taxpayer in accordance with the provisions of the DTA.

To obtain the benefits of the DTA, the non-resident taxpayers must submit their Form DGT to the Indonesian tax withholders or collectors in relation to the withholding or collecting of income tax in accordance with the provisions of the DTA. Form DGT is a prescribed document containing information and statements of the non-resident taxpayers and approved by the Competent Authority of the DTA Partner Country for the purpose of applying the DTA provisions. There is a new format for Form DGT under PMK-112.

The non-resident taxpayer must provide the following statement in the Form DGT, to confirm the non-resident:

a) is not a resident of Indonesia;

b) is a resident of the DTA Partner Country for tax purposes; and

c) does not abuse the DTA, namely that the non-resident taxpayer:

   (i) has economic substance in the establishment of entities or the execution of transactions;

   (ii) has a legal form that is consistent with the economic substance in the establishment of entities or the execution of transactions;

   (iii) has business activities managed by its own independent management and such management has sufficient authority to carry out transactions;

   (iv) has fixed and non-fixed assets that are sufficient and adequate to carry out business activities in the DTA Partner Country, other than assets that generate income from Indonesia;

   (v) has sufficient and adequate number of employees with specific expertise and skills in line with the business which the company operates;

   (vi) has active business activities other than merely receiving income in the form of dividends, interest, and/or royalties sourced from Indonesia;

   (vii) conduct transactions that do not have the primary purpose, either directly or indirectly, of obtaining the benefits of the DTA; and

   (viii) is the actual beneficiary of the income (beneficial owner).

The Form DGT must meet the following requirements:

a) shall be filled out correctly, completely, and clearly;

b) signed or marked with a mark equivalent to a signature by the non-resident taxpayer in accordance with the applicable regulations in the DTA Partner Country;

c) approved by being signed or marked with a mark equivalent to a signature by the competent authority in accordance with the applicable regulations in the DTA Partner Country. This approval can be replaced by the non-resident taxpayer's CoD provided that the CoD meets certain requirements such as:

   (i) it must be made in the English language,

   (ii) it must state the name of the non-resident taxpayer and the date of its issuance,

   (iii) it must be signed or marked with a mark equivalent to a signature by the competent authority in accordance with the applicable regulations in the DTA Partner Country, and

   (iv) its validity is limited to the period stated in the CoD, or if not stated then it is valid only for the month it is issued (noting previously these could be valid for a period of12 months in some circumstances);

d) used for the period specified in the Form DGT (i.e., the period stated in the Form DGT is a maximum period of 12 months); and

e) using the specific format as stated in the Appendix of PMK-112 (New Form DGT).

The New Form DGT replaces the previous version introduced under DGT Regulation No. PER-25/PJ/2018. A key change is the consolidation of questions related to the beneficial ownership test from Part VI of the old form into Part V of the new form. Consequently, non-resident taxpayers are now required to complete the beneficial ownership questions regardless of the nature of their transaction.

5. Verification and Compliance for Tax Withholders

Tax withholders or collectors who received Form DGT from non-resident taxpayers shall verify that the Form DGT complies with the requirements in item 4 above. The verification shall be carried out on Form DGT based on the books, records and/or documents that form the basis for the withholding or collection of income tax.

Based on the results of the verification process, provided all of the requirements have been fulfilled, the tax withholder or collector shall:

a) submit the information in Form DGT and upload Form DGT electronically via the taxpayer portal;

b) collect the receipt for Form DGT submission via the taxpayer portal;

c) submit the receipt of Form DGT submission to the non-resident taxpayers; and

d) withhold or collect income tax in accordance with the provisions of the DTA.

Non-resident taxpayers who have received the receipt for their Form DGT submission are not required to resubmit Form DGT for subsequent tax withholding or collections, in accordance with the period stated in the submitted Form DGT. They can share the Form DGT receipt to other tax withholders or collectors in Indonesia for the purpose of applying the DTA provision.

6. Exemptions and Special Cases

The following Income recipients are exempted from the requirements to submit Form DGT:

a) the government of a DTA Partner Country;

b) the local government of a DTA Partner Country;

c) a state agency of a DTA Partner Country;

d) the central bank of a DTA Partner Country; or

e) other institutions whose names are expressly mentioned in the DTA, or which have been agreed upon between the Government of Indonesia and the government of the DTA Partner Country in accordance with the provisions of the DTA.

However, they are still required to provide the CoD or a certificate from the competent authority of their respective country to the tax withholder or collector in Indonesia. The CoD for non-resident taxpayers or the certificate from the competent authority may be used for the fiscal year stated in the CoD or the certificate.

7. Prevention of DTA Abuse

The DGT has the authority to assess compliance with tax obligations for the purpose of preventing DTA abuse. The DGT's authority is governed by the provisions of the DTA and the Income Tax Law.

The DGT may assess the prevention of DTA abuse in the following aspects, if these conditions are required under the relevant DTA:

a) the party that actually receives the benefits from the income (beneficial owner);
b) the minimum percentage and period of share ownership for the application of lower income tax withholding or collection rates on dividends;
c) the period of fulfillment of the threshold percentage of immovable assets against total assets to determine the right to tax profits on the transfer of shares or rights in entities;
d) preventing avoidance of permanent establishment determination;
e) limitation on benefits of DTA; and/or
f) principal purpose test or main purpose test.

The DGT is authorized to determine the tax payable in accordance with the provisions of the Income Tax Law if the above compliance tests are not met.

PMK-112 provides guidance on how to assess the prevention of DTA abuse provisions. These tests should arguably only apply to the extent they are found in the relevant treaty wording (including where incorporated by the MLI). In the examples given in PMK-112, the specific anti-abuse rules are only applied if they are found in the relevant treaty. Even where the particular anti-abuse rules are not found in a treaty, they might influence interpretation of the principal purpose test (PPT), noting that the PPT is found in almost all treaties. These tests are as follows:

- **Beneficial Ownership Criteria**

  Beneficial ownership is defined for non-resident taxpayers to ensure that they meet specific requirements. Under PMK-112, a beneficial owner is defined as a non-resident taxpayer who meets the following requirements:

  a) an individual who does not act as: (i) an agent; or (ii) nominee; or
  b) an entity that does not act as: (i) an agent; (ii) a nominee; or (iii) a conduit company. In addition, non-resident corporate taxpayers must meet the following requirements to obtain the benefits of the DTA:
     (i) it controls the use or enjoys the funds, assets, or rights that generate income from Indonesia;
     (ii) it does not use more than 50% of its income in any name and form and from any source according to its non-consolidated financial statements to fulfill obligations to other parties, except for the payment of compensation to: (a) employees, which are normally provided in the context of the employment relationship; and (b) other parties for expenses necessarily incurred by the non-resident taxpayer in conducting its business;
     (iii) it assumes the risks on its own assets, capital, or liabilities; and
     (iv) it has no obligation, whether written or unwritten, to pass on part or all of the income received from Indonesia to other parties.

  Example 1 in PMK-112 deals with a scenario where a non-resident taxpayer receives interest income from Indonesia, which it uses to pay dividends shortly thereafter. Treaty relief is denied on the basis that the conduct of the non-resident suggests an unwritten obligation to pass on the interest income as dividend, therefore, failing the beneficial owner requirements.

- **Withholding Tax Rate on Dividends**

  In some DTAs, the applicable withholding tax rate on dividends depends on the share ownership percentage, and the period of share ownership.

  a) Lower withholding tax rate applies if the non-resident corporate taxpayer is the beneficial owner of the dividend and owns at least a certain percentage of shares for at least 365 days.
  b) If these requirements are not met, a higher withholding tax rate applies.

  Example 6 in PMK-112 deals with a situation where there are no such requirements in the DTA wording, but the general principal purpose test in the DTA is applied instead to deny treaty benefits, where there were blatant changes in the share ownership percentages immediately before and after the payment of dividend just to benefit from the lower withholding tax rate on dividend under the DTA.

- **Taxation on Share Transfers**

  Indonesia's taxing rights on capital gains from the transfer of shares or rights in entities are determined by the following conditions:

  a) if immovable assets exceed a certain percentage of total assets stipulated in the DTA; and
  b) the percentage must be met for the entire period of 365 days prior to such transfer.

  If the above requirements are not met, the right to tax the capital gain from the transfer of shares or rights in the entity lies with the DTA Partner Country.

- **Prevention of Permanent Establishment (PE) Avoidance**

  A PE exists if:

  a) there is a place of business in Indonesia that is permanent in nature and used by the non-resident taxpayer to conduct business or carry out activities;
  b) construction, installation, or assembly projects in Indonesia which exceed the time periods stipulated in the DTA;
  c) there is an individual or entity acting not as an independent agent in Indonesia who: (i) commonly agrees to contracts on behalf of the non-resident taxpayer; or (ii) does not enter into contracts but habitually makes shipments on behalf of the non-resident taxpayer, as stipulated in the DTA;
  d) there is an agent or employee of an insurance company that is not established and does not have a place of business in Indonesia who receives insurance premiums or bear risks in Indonesia; and/or
  e) it does not only carry out preparatory or auxiliary activities in Indonesia.

  PMK-122 outlines measures in place to prevent the avoidance of PEs:

  a) The duration of construction, installation or assembly projects performed by the non-resident taxpayer and its **closely related persons** for a period of more than 30 calendar days at the same location are combined to assess permanent establishment status of the non-resident taxpayer.
  b) The activity of a non-independent agent representing the non-resident taxpayer in contract negotiations may trigger a PE for the non-resident taxpayer even though the agent does not conclude contracts if the agent has a primary role in negotiating the important terms of the contract which may then be concluded without any material modification by the non-resident taxpayer.
  c) Scrutiny on the activities of non-resident taxpayers and their **closely related persons'** to ensure their actual conduct meets the requirements for exceptions (i.e. whether the activities are merely auxiliary and preparatory in nature).

  Closely related person is defined as an individual or an entity that is reliant on or has a relationship with the non-resident taxpayer based on control or majority ownership of more than 50%, whether direct or indirect.

  It remains to be seen how DGT officials will apply these tests in situations where the relevant DTAs have, or have not, been modified by the MLI provisions expanding PE definitions.

- **Limitations on Benefits of DTA**

  Limitations on benefits ensure that only qualifying entities receive benefits from the DTA.

  The criteria for income recipients who are entitled to the benefits of the DTA as stipulated in the DTA may include:

  a) an individual who is a resident of a DTA Partner Country;
  b) entities where more than 50% of the shares are owned by individuals who are residents of the DTA Partner Country;
  c) more than 50% of the income of the entity that is a resident of a DTA Partner Country is not used to fulfill obligations to parties other than those specified in the DTA; or
  d) more than 50% of the shares of the income recipient are regularly traded on a stock exchange expressly stipulated in the DTA.

- **Principal Purpose or Main Purpose Test Implementation**

  The principal purpose test prevents abuse of the DTA by analyzing transaction motives.

  a) Benefits are denied if the main purpose of a transaction is to obtain DTA benefits.
  b) Various factors are considered, including the economic substance of transactions.

  There is significant scope for the DGT to interpret this test broadly, to limit treaty benefits to non-residents. This needs to be carefully considered in any cross-border transactions.

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