Indonesia Tax Alert February 2020

<u>Updates on Indonesia - Singapore Tax Treaty</u>

After several rounds of negotiation since 2015, the Tax Authorities in Indonesia and Singapore have finalized the new agreement for the elimination of double taxation with respect to tax on income and the prevention of tax evasion and avoidance ("Tax Treaty") on 4 February 2020.

Please note that this Tax Treaty has not been ratified by both countries, therefore **<u>it is not yet effective</u>**. Once it is ratified through a Presidential Regulation, this Tax Treaty will replace the current one that has been effective since 1992.

However, relevant business players may start to analyze and anticipate the impact of the Tax Treaty to their transaction planning.

Some of the key features in the Tax Treaty are summarized into a snapshot below:

Clause	Current Tax Treaty	New Tax Treaty
Branch profit tax	15%	10%
Dividend	10% / 15%	10% / 15%
Exemption for oil and gas production sharing contracts	Clause on dividend in oil and gas production sharing contracts shall prevail as long as dividend recipient in Singapore is not treated less favorably compared to dividend recipient in other Contracting States for similar production sharing contracts (most favored nation)	Deleted
Interest	10%	10%
Source-state exemption for government-issued bonds or debentures	Regulated	Deleted
Government exemption	Provision of the list of government institutions that are exempted from income tax on interest income received	Expansion of the list of government institutions that are exempted from income tax on interest income received
Royalty	15%	8% / 10%
Capital gain	Not regulated	• Gain from the transfer of immovable property situated in the other Contracting State may be taxed in the other Contracting State. • Gain from the transfer of movable property forming part of business property of a PE situated in the other Contracting State may be taxed in the other Contracting State. • Gain from transfer of ships or aircraft operating in international traffic is taxable in the Contracting State. • Gain from transfer of shares in non-public company deriving more than 50% of its value directly or indirectly from immovable property situated in the other Contracting State may be taxed in the other Contracting State. • Gain from sale of shares in Indonesia Stock Exchange may be taxed in Indonesia. • Gain from transfer of property beside the ones mentioned above is taxable only in the Contracting State.

Clause	Current Tax Treaty	New Tax Treaty
Exchange of information	In accordance to OECD Model 1977	In accordance to OECD Model 2017
Employment time test	183 days in a calendar year	183 days in any 12-month period
Anti-tax avoidance rules	Not regulated	Regulated
Requirement for remittance of income into the income recipient country	Regulated	Deleted

In general, below are some of the characteristics of the new Tax Treaty:

a. Some of the maximum applicable tax rates (e.g., branch profits tax, royalty) are now reduced;
b. Implementation of the new OECD Model;
c. Incorporation of the three articles of Multilateral Instruments (MLI) impacting Indonesia-Singapore Tax Treaty that was recently ratified by Indonesia through the Presidential Regulation Number 77 Year 2019 on 12 November 2019 (*Tax Alert January 2020*), namely Article 6 (Purpose of a Covered Tax Agreement), Article 7 (Prevention of Treaty Abuse), and Article 17 (Corresponding Adjustments).

Specifically, the Tax Treaty removes the requirement to remit certain income into the income recipient country to enjoy the Tax Treaty benefits. However, care should be taken in regards to the introduction of the Principal Purpose Test (PPT) in the Tax Treaty, i.e. the Tax Treaty benefit will not be granted if obtaining such benefit is one of the principal purposes of any arrangement or transaction.

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Contact Persons

Questions concerning any of the subjects or issues contained in this newsletter should be directed to your usual contact in our firm, or any of the following Tax Partners:

Melisa Himawan Tax Managing Partner	Business Tax	mehimawan@deloitte.com
Ali Mardi Djohardi	Business Tax	alimardi@deloitte.com
Balim	Transfer Pricing	bbalim@deloitte.com
Cindy Sukiman	Business Tax	csukiman@deloitte.com
Dionisius Damijanto	Business Tax	ddamijanto@deloitte.com
Heru Supriyanto	Business Tax	hsupriyanto@deloitte.com
Irene Atmawijaya	Global Employer Services and Business Process Solutions	iatmawijaya@deloitte.com
John Lauwrenz	Business Tax and Merger & Acquisition	jlauwrenz@deloitte.com
Ratna Lie	Business Tax and Business Process Solutions	ratnalie@deloitte.com
Roy David Kiantiong	Transfer Pricing	rkiantiong@deloitte.com
Roy Sidharta Tedja	Business Tax, Indirect Tax and Business Process Solutions	roytedja@deloitte.com
Shivaji Das	Transfer Pricing	shivdas@deloitte.com
Turmanto	Business Tax and Global Trade Advisory (Customs)	tturmanto@deloitte.com
Yan Hardyana	Business Tax	yhardyana@deloitte.com

Deloitte Touche Solutions
The Plaza Office Tower, 32nd Floor
Jl. M.H. Thamrin Kav 28-30
Jakarta 10350, Indonesia
Tel: +62 21 5081 8000
Fax: +62 21 2992 8303
Email: iddttl@deloitte.com
www.deloitte.com/id