



Singapore Business Tax developments

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Singapore and Indonesia sign an updated tax treaty

On 4 February 2020, Singapore and Indonesia signed an updated tax treaty (DTA). The updated DTA will replace the existing Singapore-Indonesia DTA, which has been in effect since 1992, upon ratification by both countries.

Amongst other changes, this updated DTA lowers the withholding tax rates for royalties and branch profits, and provides for tax exemption in the source State for certain capital gains—which was not available under the existing Singapore-Indonesia DTA. It also incorporates internationally-agreed standards to counter treaty abuse.

Key features of the updated Singapore-Indonesia DTA

Articles

Observations

Article 5—
Permanent
Establishment
(PE)

No major changes have been made to Article 5—Permanent Establishment (PE). The PE Article under the updated tax treaty also did not incorporate any recommendations made under Base erosion and profit shifting (BEPS) Action 7 (*Preventing the Artificial Avoidance of PE Status*).

Article 10—
Dividends and

There will be no changes to the withholding tax rates for dividends and interest in the updated DTA as compared to the

Article 11—
Interest

existing DTA.

However, we note the following:

Article 10—Dividends: The withholding tax rate on branch profits have been reduced from 15% under the protocol of the existing Singapore-Indonesia DTA to 10%.

Article 11—Interest: One of the changes is the removal of the allocation of sole taxing rights to the residence state for interest paid in respect of “a bond, debenture or other similar obligation of the government of the first-mentioned state or a political subdivision or local authority thereof” in the updated DTA.

Article 12—
Royalties

The withholding tax rate for royalties will be reduced from 15% to 8% or 10%, depending on the type of royalties under the updated Singapore-Indonesia DTA.

The withholding tax rates on royalties and rents for the use of movable properties made to non-residents under the domestic tax laws in Singapore and Indonesia as well under the existing and updated Singapore-Indonesia DTA are summarised as follows:

Singapore's domestic withholding tax rates	Indonesia's domestic withholding tax rates	Existing Singapore- Indonesia DTA reduced withholding tax rate	Updated Singapore- Indonesia DTA reduced withholding tax rate
10% ¹ /15% ²	10% ¹ /15% ²	15% ^{3 4}	8% ³ /10% ⁴

¹ Payments for royalty or other lump sum payments for the use of movable properties or payment for the right to use of or the right to use scientific, technical, industrial or commercial knowledge or information

² Rent or other payments for the use of moveable properties

³ Payments for the use of, or the right to use, industrial, commercial or scientific equipment or for information concerning industrial, commercial or scientific experience

⁴ Payments for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films, or films or tapes used for radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process

Article 13—
Capital gains

A capital gains article has been included in the updated Singapore-Indonesia DTA to allocate the taxing rights between both countries. Tax exemption may be available for certain capital gains

derived from the Source state.

Article 26— Exchange of Information	The Exchange of Information Article has been amended in the updated Singapore-Indonesia DTA to be in line with the internationally agreed standard on exchange of information upon request.
Article 28— Entitlement to benefits	<p>The updated Singapore-Indonesia DTA includes the Principal Purpose Test (PPT) provision as a means to counter treaty abuse.</p> <p>Broadly, the PPT provision allows either country to deny treaty benefits if it is reasonable to conclude that one of the main purpose was to obtain benefits of the DTA in an improper and abusive manner.</p>

Deloitte Singapore's view

The updated DTA between Singapore and Indonesia has been widely anticipated given the commitment by both countries late last year. This is in view that the existing DTA was signed almost 30 years ago. Although there have been improvements to the existing DTA, notably the inclusion of the capital gains article, we note that the reduced withholding tax rates for certain payments are not “best-in-class” as compared to other countries. For example, the withholding tax rates on dividends and royalties in the updated DTA are higher in comparison to the Hong Kong-Indonesia DTA as shown below:

Articles	Updated Singapore-Indonesia DTA	Hong Kong-Indonesia DTA
Article 10— Dividends	10%/15% ⁵	5%/10%
Article 12— Royalties	8%/10%	5%

⁵ The reduced withholding tax rates of 10%/15% remains unchanged from the existing tax treaty.

The reduced withholding tax rates could have matched that of Indonesia's DTA with Hong Kong given the close economic relationship between Singapore and Indonesia and it was, therefore, a little disappointing that was not the case.

The inclusion of the capital gains article in the updated DTA is also a welcome move for investors, or potential investors, in both countries as it will provide certainty on the allocation of taxing rights among both countries upon ratification of the updated DTA. However, unlike the majority of Singapore's other DTAs where, subject to certain exceptions notably for land-rich shares, the taxing rights on gains from the disposal of shares are allocated to the country of residence of the seller, there are shared taxing rights on gains from the disposal of shares in the updated DTA. Under the updated DTA, gains from the disposal of shares in a company which is a resident of Indonesia and traded on the Indonesia Stock Exchange may be taxed in Indonesia.

Singapore has been Indonesia's top foreign investor for the past six years, with both countries among each other's top few trading partners. With the updated DTA

benefitting businesses in both countries, we expect that this is likely to further strengthen Singapore's position as the top foreign investor in Indonesia.

Contacts

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