



Tax Newsletter

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Notification of the Application of Multilateral
Convention for Double Tax Avoidance Agreement
(DTA)

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Notification of the Application of Multilateral Convention for Double Tax Avoidance Agreement (DTA)

The Directorate General of Taxation has issued new circular letters concerning the notification of the application of multilateral convention for double tax agreements (DTA) as follows:

- SE-3/PJ/2023 – for DTA between The Government of The Republic of Indonesia with The Government of The People’s Republic of China (“SE-3”). SE-3 effectively applied on:
 - a. in respect of taxes withheld or collected in the source country for payments to or credited by foreign tax subjects, if the tax-generating event occurs on or after 1 January 2023; and
 - b. in respect of other taxes imposed in the fiscal year starting on or after 1 January 2024 in Indonesia and 10 June 2023 in China.
- SE-4/PJ/2023 – for DTA between The Government of The Republic of Indonesia with The Government of The Kingdom of Thailand (“SE-4”). SE-4 effectively applied on:
 - a. in respect of taxes withheld or collected in the source country for payments to or credited by foreign tax subjects, if the tax-generating event occurs on or after January 1, 2023; and
 - b. in respect of other taxes imposed in the fiscal year starting on or after 1 January 2024 in Indonesia and 10 June 2023 in Thailand.
- SE-5/PJ/2023 – for DTA between The Government of The Republic of Indonesia with The Government of The Republic of Seychelles (“SE-5”). SE-5 effectively applied on:
 - a. In respect of taxes withheld or collected in the source country for payments to or credited by foreign tax subjects, if the tax-generating event occurs on or after January 1, 2023; and
 - b. In respect of other taxes imposed in the fiscal year starting on or after 1 January 2024 in Indonesia and 10 June 2023 in Seychelles.
- SE-6/PJ/2023 – for DTA between The Government of The Republic of Indonesia with The Kingdom of Spain (“SE-6”). SE-6 effectively applied on:
 - a. in respect of taxes withheld or collected in the source country for payments to or credited by foreign tax subjects, if the tax-generating event occurs on or after January 1, 2023; and
 - b. in respect of other taxes imposed in the fiscal year starting on or after 1 January 2024 in Indonesia and 10 June 2023 in Spain.

The circular letters above informing the main provisions in the multilateral convention applied for each DTA or tax treaty as follows:

SE-3

- a. Article 4 paragraph (1) and paragraph (3) letter (e) of the Convention shall replace Article 4 paragraph (3) of Indonesia-China tax treaty – Dual tax residency issue for corporate tax subject would be resolved by mutual agreement taking into account the place of effective

management, place of establishment, and other relevant factors and in the absence of the aforementioned mutual agreement, the corporate tax subject would not be entitled to obtain the Indonesia-China tax treaty benefit.

- b. Article 6 paragraph (1) of the Convention shall replace the preamble of Indonesia-China tax treaty to confirm that the purposes of entering into DTA shall be to eliminate double taxation without creating space for tax exemption or tax deduction through tax evasion or avoidance.
- c. Article 7 paragraph (1) of the Convention shall apply to Indonesia-China tax treaty so that tax treaty benefits shall not be given if it can be concluded, with due observance of all related facts and circumstances, that one of the main purposes of transaction conducted is to obtain the tax treaty benefits.
- d. Article 9 paragraph (1) letter (b) of the Convention shall apply to Article 13 paragraph (4) of Indonesia-China tax treaty so that Article 13 paragraph (4) of the Indonesia-China tax treaty also applies to transfer of shares or equivalent rights such as rights in a partnership or deposit with management (trust).
- e. Article 11 paragraph (1) of the Convention shall apply to Article 1 of Indonesia-China tax treaty so that the Indonesia-China tax treaty does not limit the taxation rights of each country on its own residents except for the benefits of tax treaty in connection with Article 9 paragraph (2) (as amended by Article 17 paragraph (1) of the Convention), Article 18 paragraph (2), Article 19, Article 20, Article 21, Article 23, Article 24, Article 25 and Article 27 of Indonesia-China tax treaty.
- f. Article 16 paragraph (2) of the second sentence of the Convention shall apply to Article 25 paragraph 2 of Indonesia-China tax treaty so that mutual agreement achieved shall be implemented regardless of the time limit according to domestic laws and regulations.
- g. Article 17 paragraph (1) of the Convention shall replace Article 9 paragraph (2) of Indonesia-China tax treaty so that in the event that there is adjustment of company's profits in a Treaty Partner Country to Indonesia-China tax treaty, other Treaty Partner Country must conduct further adjustment of profits of parties having special relation with the company.

SE-4

- a. Article 6 paragraph (1) of the Convention shall replace the preamble of Indonesia-Thailand tax treaty to confirm that the purposes of entering into DTA shall be to eliminate double taxation without creating space for tax exemption or tax deduction through tax evasion or avoidance.
- b. Article 7 paragraph (1) of the Convention shall apply to Indonesia-Thailand tax treaty so that tax treaty benefits shall not be given if it can be concluded, with due observance of all related facts and circumstances, that one of the main purposes of transaction conducted is to obtain the tax treaty benefits.
- c. Article 12:
 - o paragraph (1) of the Convention shall replace Article 5 paragraph (5) letter a) of Indonesia-Thailand tax treaty so that the definition of permanent establishment as agent in Article 5 paragraph (5) letter a) of P3B of Indonesia-Thailand shall become individual or entity acting in a Treaty Partner Country on behalf of a company and, in conducting it, he/it used to agree on contract, or used to play the main role that leads

to agreement on contracts that are routinely agreed upon without material modification by the company, and these contracts are: on behalf of the company; or

- a) for the transfer of ownership of, or for granting of rights to use assets owned by that company or in which the company has rights to use; or
- b) for the provision of services by that company.

- paragraph 2 of the Convention shall replace Article 5 paragraph 7 of Indonesia-Thailand tax treaty so that individual or entity acting fully or almost fully on behalf of one or more company closely related to him/it shall not be deemed as an independent agent

d. Article 13:

- paragraph (2) of the Convention (Option A) shall apply to Article 5 paragraph (4) of Indonesia-Thailand tax treaty so that the definition of permanent establishment in Indonesia-Thailand tax treaty shall not include:
 - a) activities specifically listed in Article 5 paragraph (4) of Indonesia-Thailand tax treaty;
 - b) maintenance of permanent place of business merely for the purpose of operating, for the company, any activity that is not explained in subparagraph a);
 - c) maintenance of permanent place of business merely for combination of activities mentioned in sub-paragraphs a) and b), insofar as the activities or, in the event of sub-paragraph c), the whole activities of the permanent place of business, are preparatory or supporting in nature.
- paragraph (4) of the Convention shall apply to Article 5 paragraph (4) of Indonesia-Thailand tax treaty so that Article 5 paragraph (4) of Indonesia-Thailand tax treaty shall not apply to permanent place of business that is used or maintained by a company if the same company or closely related company runs business activities in the same place or in other place in the same Treaty Partner Country and:
 - a) that place or other place is permanent establishment for company or closely related company; or
 - b) the whole activities of the result of combination of activities conducted by both companies in the same place, or by the same company or closely related companies in two places, are not preparatory or supporting in nature, insofar as business activity run by the two companies in the same place, or by the same company or closely related companies in two places, is complement function constituting inseparable part of business activity.

e. Article 14 paragraph (1) of the Convention shall apply to Article 5 paragraph (3) letter (a) of Indonesia-Thailand tax treaty so that for the purpose of determining the time period of a construction permanent establishment according to Article 5 paragraph (3) letter (a) of Indonesia-Thailand tax treaty (except in terms of exploration or exploitation of natural resources):

- a) if the company of Treaty Partner Country carries on activities in the other Contracting State in a place which is a building, construction project, installation project, or other certain project and these activities are carried out beyond 30 days but not yet beyond the time period of the construction permanent establishment in Article 5 paragraph (3) letter (a) of Indonesia-Thailand tax treaty; and

- b) if the related activities are carried out in that other Contracting State in a building, construction project, or installation, or other same places over different time periods, each surpassing 30 days by one or more companies closely related to the company first mentioned,

these different time periods are added to the overall time period as long as the first-mentioned company carries out activities in that building, construction projects, or installations, or other places.

- f. Article 15 paragraph (1) of the Convention shall apply to Article 12 paragraph (2), Article 13 paragraph (4), and Article 14 paragraph (1) of the Convention so that the understanding of individual or entity closely related to a company shall be individual or entity which:
 - 1) based on all relevant facts and circumstances, one of which has control over the other party or both are under the control of the same individual or entity; or
 - 2) one of them has whether directly or indirectly more than 50% of right on other party (or, in the event of company, more than 50% of voting right and value of company shares or right on company equity) or if other individual or entity has whether directly or indirectly more than 50% of rights (or, in the event of company, more than 50% of voting right and value of company shares or right on company equity) on the individual or entity.
- g. Article 16 paragraph (1) of the second sentence of the Convention shall replace Article 25 Paragraph (1) of Indonesia-Thailand tax treaty so that application for mutual agreement must be filed within three years as of tax imposition that is not in accordance with Indonesia-Thailand tax treaty.
- h. Article 17 paragraph (1) of the Convention shall apply to Indonesia-Thailand tax treaty so that in the event that there is adjustment of company's profits in a Treaty Partner Country to Indonesia-Thailand tax treaty, other Treaty Partner Country must conduct further adjustment of profits of parties having special relation with the company.

SE-5

- a. Article 6 paragraph (1) of the Convention shall replace the preamble of Indonesia-Seychelles tax treaty to confirm that the purposes of entering into DTA shall be to eliminate double taxation without creating space for tax exemption or tax deduction through tax evasion or avoidance.
- b. Article 7 paragraph (1) of the Convention shall apply to Indonesia- Seychelles tax treaty so that tax treaty benefits shall not be given if it can be concluded, with due observance of all related facts and circumstances, that one of the main purposes of transaction conducted is to obtain the tax treaty benefits.
- c. Article 16
 - o paragraph 1 of the second sentence of the Convention shall replace Article 25 paragraph 1 of Indonesia-Seychelles tax treaty so that application for mutual agreement must be filed within three years as of tax imposition that is not in accordance with Indonesia-Seychelles tax treaty;
 - o paragraph 2 of the second sentence of the Convention shall apply to Article 25 paragraph 2 of Indonesia-Seychelles tax treaty so that mutual agreement achieved

shall be implemented regardless of the time limit according to domestic laws and regulations.

SE-6

- a. Article 6 paragraph (1) of the Convention shall replace the preamble of Indonesia-Spain tax treaty to confirm that the purposes of entering into DTA shall be to eliminate double taxation without creating space for tax exemption or tax deduction through tax evasion or avoidance.
- b. Article 7 paragraph (1) of the Convention shall apply to Indonesia-Spain tax treaty so that tax treaty benefits shall not be given if it can be concluded, with due observance of all related facts and circumstances, that one of the main purposes of transaction conducted is to obtain the tax treaty benefits.
- c. Article 8 paragraph (1) of the Convention shall apply to Article 10 paragraph (2) letter (a) of Indonesia-Spain tax treaty so that the rate of 10% for dividend shall only be given if provisions on the limitation of ownership of 25% are met throughout the period of 365 days until the day of payment of dividend;
- d. Article 9 paragraph (4) of the Convention shall apply to Indonesia-Spain tax treaty so that profits obtained by resident of a Treaty Partner Country to Indonesia-Spain tax treaty from the transfer of shares or equivalent rights, such as rights in partnership or deposit with management (trust), may be taxed in other Treaty Partner Country only if at any time within a period of 365 days before the transfer of the shares or equivalent rights obtains more than 50% of their value whether directly or indirectly from immovable assets existing in the other Treaty Partner Country.
- e. Article 12:
 - o paragraph (1) of the Convention shall replace Article 5 paragraph (5) letter (a) of Indonesia-Spain tax treaty so that the definition of permanent establishment as agent in Article 5 paragraph (5) letter (a) of Indonesia-Spain tax treaty shall become individual or entity acting in a Treaty Partner Country on behalf of a company and, in conducting it, he/it used to agree on contract, or used to play the main role that leads to agreement on contracts that are routinely agreed upon without material modification by the company, and these contracts are:
 - a) on behalf of the company; or
 - b) for the transfer of ownership of, or for granting of rights to use assets owned by that company or in which the company has rights to use; or
 - c) for the provision of services by that company.
 - o paragraph 2 of the Convention shall replace Article 5 paragraph 7 of Indonesia-Spain tax treaty so that individual or entity acting fully or almost fully on behalf of one or more company closely related to him/it shall not be deemed as an independent agent.
- f. Article 13:

- o paragraph (2) of the Convention (Option A) shall apply to Article 5 paragraph (4) of Indonesia-Spain tax treaty so that the definition of permanent establishment in Indonesia-Spain tax treaty shall not include:

- a) activities specifically listed in Article 5 paragraph (4) Indonesia-Spain tax treaty;
- b) maintenance of permanent place of business merely for the purpose of operating, for the company, any activity that is not explained in subparagraph a);
- c) maintenance of permanent place of business merely for combination of activities mentioned in sub-paragraphs a) and b),

insofar as the activities or, in the event of sub-paragraph c), the whole activities of the permanent place of business, are preparatory or supporting in nature.

- o paragraph (4) of the Convention shall apply to Article 5 paragraph (4) of Indonesia-Spain tax treaty so that Article 5 paragraph (4) of Indonesia-Spain tax treaty shall not apply to permanent place of business that is used or maintained by a company if the same company or closely related company runs business activities in the same place or in other place in the same Treaty Partner Country and:

- a) that place or other place is permanent establishment for company or closely related company; or
- b) the whole activities of the result of combination of activities conducted by both companies in the same place, or by the same company or closely related companies in two places, are not preparatory or supporting in nature, insofar as business activity run by the two companies in the same place, or by the same company or closely related companies in two places, is complement function constituting inseparable part of business activity.

- g. Article 15 paragraph (1) of the Convention shall apply to Article 12 paragraph (2) and Article 13 paragraph (4) of the Convention so that the understanding of individual or entity closely related to a company shall be individual or entity which:

- 1) based on all relevant facts and circumstances, one of which has control over the other party or both are under the control of the same individual or entity; or
- 2) one of them has whether directly or indirectly more than 50% of right on other party (or, in the event of company, more than 50% of voting right and value of company shares or right on company equity) or if other individual or entity has whether directly or indirectly more than 50% of rights (or, in the event of company, more than 50% of voting right and value of company shares or right on company equity) on the individual or entity.

h. Article 16

- o paragraph 1 of the second sentence of the Convention shall replace Article 26 paragraph 1 of Indonesia-Spain tax treaty so that application for mutual agreement must be filed within three years as of tax imposition that is not in accordance with Indonesia-Spain tax treaty;
- o paragraph 2 of the second sentence of the Convention shall apply to Article 26 paragraph 2 of Indonesia-Spain tax treaty so that mutual agreement achieved shall be implemented regardless of the time limit according to domestic laws and regulations.

- i. Article 17 paragraph (1) of the Convention shall apply to Indonesia-Spain tax treaty so that in the event that there is adjustment of company's profits in a Treaty Partner Country to Indonesia-Spain tax treaty, other Treaty Partner Country must conduct further adjustment of profits of parties having special relation with the company.

The content of this newsletter is for the purpose of general guidance on matters of interest and is not meant as advice. The implementation and impact of laws/regulations can vary widely based on the specific facts involved. Readers are advised to consult their tax advisors before making any business decisions.

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