

January 2018

- DGT Regulation No. 25/PJ/2017
- DGT regulation No. 31/PJ/2017
- MOF Regulation No. 184/PMK.01/2017



Implementing Regulation on Debt to Equity Ratio

DGT Regulation No. 25/PJ/2017

In 2015, through PMK 169/PMK.010/2015, the Minister of Finance ("MoF") established a debt to equity ratio ("DER") of 4:1 for a limited liability company. The Director General of Tax ("DGT") has now issued Regulation No. 25/PJ/2017 ("DGT-25") to provide further guidance on the application of DER for calculating income tax.

If the DER is higher than 4:1, the maximum interest expense and related financing costs that are deductible should be calculated as if the DER was 4:1. Financing costs include all costs of funds relating to:

- Loan interest
- Discount and premium related to the loan
- Arrangement for borrowing
- Financing cost in a finance lease
- Guarantee fee related to loan repayment
- Foreign exchange derived from the above financing costs

A loan can be from a third party or a related party. If the loan is from a related party, in addition to fulfilling the DER, the interest rate is subject to the arms-length principle. The excess interest expense is regarded as a dividend for the recipient, which is subject to tax at the time the financing cost is due or paid.

Where interest expense is capitalized as part of the acquisition cost of an asset, any portion which exceeds the DER cannot be depreciated.

A loan that cannot be formally verified or substantiated, or a loan used to generate non-taxable income or income that is subject to final tax, cannot be included in the DER calculation.

A trade payable that is subject to interest is treated as debt, while an interest-free shareholder or related party loan can be treated as equity for calculating the DER.

The amount of debt and equity to calculate the DER is based on the average balance for the relevant fiscal year. DGT-25 provides illustrations of how to calculate the DER.

Beginning with the 2017 tax year, standard forms for calculation of DER and a summary of offshore loans must be reported together with the annual corporate income tax return. These reports/forms are:

1. DER calculation: This provides the calculation of DER and interest expenses that are deductible and non-deductible. The corporate income tax return will be considered as incomplete if this form is not submitted.
2. Offshore loans: A taxpayer that has a private offshore loan must submit a report. Failure to submit this form will result in the corporate income tax return being considered as incomplete and the interest expense will not be treated as deductible.

On 29 November 2017, the DGT issued Regulation No. 26/PJ/2017 stating that, effective 1 December 2017, the name, address, and identity card number (NIK) or passport number (for foreigners) must be included in an e-VAT invoice (“e-faktur”) which is issued to an individual who has no tax identification number (NPWP). In such a case, the NPWP must be noted as 00.000.000.0-000.000. The short timing imposed under this regulation created significant difficulties for taxpayers. As a result, the DGT issued Regulation No. 31/2017 which **postpones this requirement to 1 April 2018**.

If the minimum requirements set out in article 13.5 of the VAT law are not met or the NIK/passport number is not provided, the e-faktur cannot be printed/issued.

Beginning in June 2018, the requirements to become a legal representative in the Tax Court will change slightly. To represent another party in the Tax Court, in addition to the existing requirements, the regulation requires more detailed information concerning the representative’s educational background. Specifically, the individual must have:

- a Bachelor’s Degree or Diploma IV from an accredited university in the field of fiscal administration, accounting, tax or customs and excise; OR
- a Bachelor’s Degree or Diploma IV from an accredited university in a field other than the above, with additional evidence of one of the following:
 - Diploma III in tax or customs and excise
 - Brevet from an institution or agency which provides tax brevet
 - Certificate of customs and excise expertise from a relevant institution
 - Documents indicating experience working in a government agency in the technical field of tax or customs and excise

This regulation revokes MoF Regulation No. 61/PMK.01/2012. However, if an individual has a license which was issued under that earlier regulation, the license will remain valid until it expires.

Changes to Procedures and Reporting of e-VAT Invoice

DGT Regulation No. 31/PJ/2017

Requirements to Become a Legal Representative in Tax Court

MoF Regulation No. 184/PMK.01/2017



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