

December 2018

- DGT Regulation No. 25/PJ/2018

Changes to Certificate of Domicile for Tax Treaty Benefits

DGT Regulation No. 25/PJ/2018

In an effort to simplify and ease the administration of taxpayers, the Director General of Tax (“DGT”) has revised the procedure for applying tax treaty benefits. DGT Regulation No. 25/PJ/2018 (“DGT-25”) was issued on 21 November 2018 and comes into effect 1 January 2019. DGT-25 revokes DGT Regulation No. 10/PJ/2017 (“DGT-10”).

Simplified procedure

DGT-25 revises the certificate of domicile form which is required in order to utilize tax treaty benefits. Highlights of the main changes are:

- Previously there were two forms (DGT-1 for non-banks and DGT-2 for banks and other financial institutions), now there is only one form (“DGT Form”).
- The foreign taxpayer need only submit DGT Form once for the period stated in the form, and it is no longer attached to the tax return.
- The foreign taxpayer no longer has to provide details about the income earned.
- DGT Form is valid for up to 12 months, and it is no longer based on the fiscal year.

Reporting procedures

Under DGT-10, each transaction with a foreign taxpayer required that the DGT Form be attached to the relevant tax return in order to enjoy treaty benefits. If the DGT Form wasn’t attached, the treaty benefit could not be utilized and the tax office would impose withholding tax at 20%, not the reduced tax treaty rate. The procedure has been simplified and under DGT-25 only one DGT Form must be obtained for up to a 12 month period, and it is not required to be attached to the return.

The general procedure is summarized below:

- The form is completed by the foreign taxpayer and certified by the competent authority in the country where the foreign taxpayer resides.
- The Indonesian tax withholder submits the DGT Form to the DGT electronically and receives a receipt. The receipt is then given to the foreign taxpayer.
- The Indonesian withholder is required to prepare a withholding tax slip, even if there is no income tax payable, and submit a copy of the DGT Form receipt with the tax return.
- If the foreign taxpayer engages in transactions with more than one Indonesian withholder, it can provide a copy of the DGT Form receipt to the other/subsequent withholder(s) as evidence the DGT Form has been submitted in order to utilize a tax treaty benefit. In other words, a new DGT Form is not required for each withholder.

Contents of new form

The new DGT Form is divided into seven sections:

Part I	Details regarding the income recipient
Part II	Certification by the competent authority or authorized tax office of the country of residence
Part III	Declaration against treaty abuse by the income recipient which is a banking institution or pension fund
Part IV	Declaration against treaty abuse by an individual income recipient
Part V	Declaration against treaty abuse by a non-individual income recipient
Part VI	Beneficial ownership test for dividend, interest, royalty
Part VII	Declaration of residency status by the income recipient

The sections to be completed are based on the status of the income recipient, as follows:

- Banks and pension funds: Parts I, II and III
- Individuals: Parts I, II, IV and VII
- Corporations/non-individuals: Parts I, II, V, VI and VII

Note that the competent authority or authorized tax office of the income recipient's country of residence completes Part II.

Tax treaty abuse

There must be no tax treaty abuse in order for the foreign taxpayer to take advantage of tax treaty benefits. The criteria for abuse are the same as in DGT-10, with one addition: *there is no transaction arrangement with either the direct or indirect objective of obtaining a benefit under the treaty, such as to reduce the tax cost or result in no tax imposition in either country (double non taxation), which is contrary to the intent and purpose of the tax treaty.*

In order for a foreign taxpayer to show no abuse of a tax treaty, it must demonstrate that it meets the requirements set out in DGT-25. This is shown by answering YES to questions 5-10 and NO to question 11 in Part V of the DGT Form:

Part V	TO BE COMPLETED IF THE INCOME RECIPIENT IS NON INDIVIDUAL		
1. Country of registration/incorporation :			(28)
2. Which country does the place of management or control reside?			(29)
3. Address of Head Office :			(30)
4. Address of branches, offices, or other place of business in Indonesia (if any) :			(31)
5. The entity has relevant economic substance either in the entity's establishment or the execution of its transaction.	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	(32)
6. The entity has the same legal form and economic substance either in the entity's establishment or the execution of its transaction.	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	(33)
7. The entity has its own management to conduct the business and such management has an independent discretion.	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	(34)
8. The entity has sufficient assets to conduct business other than the assets generating income from Indonesia.	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	(35)
9. The entity has sufficient and qualified personnel to conduct the business.	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	(36)
10. The entity has business activity other than receiving dividend, interest, royalty sourced from Indonesia.	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	(37)
11. The purpose of the transaction is to directly or indirectly obtain the benefit under the convention that is contrary to the object and purpose of the DTC	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	(38)

Beneficial owner

If the income earned is a dividend, interest or royalty, the recipient must be the beneficial owner (if required by the relevant tax treaty). The test for beneficial ownership is the same as before. However, there is one difference regarding the requirement that no more than 50% of corporate income shall be used to meet obligations to other parties.

DGT-25 excludes as an obligation to other parties compensation granted (i) to employees that is given fairly and (ii) to other parties on other costs generally spent in running the business. However, dividends paid to shareholders are no longer specifically excluded from the 50% threshold. The reason for the change is unclear. It could be that a dividend, by its nature, is not “compensation” and, therefore, should not be regarded as an “obligation to other parties.” However, because dividends are no longer specifically excluded, the intention is unclear and arguably leaves this open to interpretation.

For a corporation to demonstrate that it is the beneficial owner of the income, it must meet the criteria by answering NO to questions 1 and 5 and YES to questions 2-4 in Part VI of the form:

Part VI	TO BE COMPLETED IF THE INCOME RECIPIENT IS NON INDIVIDUAL AND THE INCOME EARNED IS/ARE DIVIDEND, INTEREST, AND/OR ROYALTY		
1. The entity is acting as an agent, nominee or conduit	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	✓ (39)
2. The entity has controlling rights or disposal rights on the income or the assets or rights that generate the income	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	✓ (40)
3. No more than 50 per cent of the entity's income is used to satisfy claims by other persons.	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	✓ (41)
4. The Entity bear the risk on its own asset, capital, or the liability	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	✓ (42)
5. The entity has contract/s which obliges the entity to transfer the income received to resident of third party	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	✓ (43)

Other

As before, if the competent authority from the tax treaty country is unable to provide the DGT Form, it can provide the standard certificate of residence/domicile form of that country instead, i.e. to replace Part II.

Similar to the rule under DGT-10, the tax treaty can be applied without using DGT Form if the income recipient is a treaty partner government institution, Central Bank or institution named in the treaty, or has been agreed by the Indonesian and treaty partner tax authorities.

Transitional provisions

The new regulation takes effect 1 January 2019. A DGT Form which was obtained under DGT-10 may be used for transactions through 31 December 2018. After that, a new DGT Form meeting the requirements of DGT-25 must be obtained.



For additional information, please contact us:

Sony B. Harsono, Managing Partner
sony.harsono@harsono-strategic.com

Dwi Ary Retnani, Senior Partner
dwiary.retnani@harsono-strategic.com

Julius Hardianto, Senior Partner
julius.hardianto@harsono-strategic.com

Suhartono Maridjan, Senior Partner
suhartono.maridjan@harsono-strategic.com

Susanty Judohartono, Partner
susanty.judohartono@harsono-strategic.com

Budi Harnata, Partner
budi.harnata@harsono-strategic.com

Richard William, Partner
richard.william@harsono-strategic.com

Roedy Andrianto, Director
roedy.andrianto@harsono-strategic.com

Terri Shreve, Technical Advisor
terri.shreve@harsono-strategic.com

Toshihiro Asai, Technical Advisor
toshihiro.asai@harsono-strategic.com

Harsono Strategic Consulting
Sudirman Plaza, Plaza Marein 9th Floor
Jl. Jend. Sudirman Kav. 76-78
Jakarta 12910, Indonesia
ph. +62 21 5793 6777
fax. +62 21 5793 6778
www.harsono-strategic.com