

APPLICATION OF DTAs – SIGNIFICANT CHANGES

To obtain the benefits from a tax treaty (DTA) between Indonesia and a DTA partner country, certain administrative requirements¹ must be fulfilled. **From 1 August 2017**, these requirements will change significantly and all persons who enter into cross border transactions involving Indonesia and a DTA partner country should be aware of the impact.

The requirements are intended to ensure that the non-resident counterparty is entitled to utilize the terms of the DTA. Specific declarations must be made regarding the economic substance of the recipient of the income and the beneficial ownership of said income.

The full requirements are set out below, along with the **new form** which applies in most cases (DGT-1). A different form (DGT-2) applies in cases where the overseas recipients of income from Indonesia are banks, custodians and pension funds. This advice does not consider these cases.

The most significant changes and matters to be considered carefully are as follows:

- The income recipient² must confirm, **in all circumstances**, that the entity has **substance**, meaning it has its own management and suitably qualified personnel and that it has assets and activity other than passive income from Indonesian sources (see Part VI, questions 7-10). Previously such a declaration was only required in the case of passive income³. This change means that not only must payments for services be to genuine, active, service providers but that pure holding companies selling shares in Indonesian entities will be subject to Indonesian tax
- The requirement to confirm that the income is subject to tax in the other jurisdiction has been removed. This change is especially pertinent in relation to transactions with Hong Kong entities, which can now utilize the DTA for passive income, provided that the other requirements can be satisfied
- A separate section (Part VII) sets out five questions designed to confirm that the recipient is the **beneficial owner** of passive income. The recipient must confirm that the he/she or the entity is not an agent, has control over the income or the income-generating assets, that not more than 50% is used to satisfy claims by others (not including genuine operating expenses) claimed, risk is borne by the recipient and there is no obligation to transfer the income to a resident of a third state

Additional Considerations

Please note that the DTA application may be denied if there is an indication of DTA abuse, such as: the transaction does not carry any economic substance (i.e., structured solely to take advantage of the DTA); the transaction's legal structure differs from its economic substance (again, with the intention of taking advantage of the DTA); or the income recipient is not the beneficial owner of the income.

DGT-1 form must be submitted before the deadline of reporting the Tax Return covering the underlying payment. Page one, which constitutes a 'certificate of domicile'⁴ from the overseas tax authority, need only be submitted on an annual basis. Overseas income recipients should be aware well in advance to allow for this to be obtained from the tax authorities in their jurisdiction. Page two and three include a series of questions the answers to which constitute a self-declaration by the recipient that certain criteria are met, designed to confirm that the recipient has substance and, in the case of passive income, is the true beneficial owner. This must be completed and submitted for each payment made.

¹These requirements are regulated under DGT Regulations No. PER 10/PJ/2017 which replaces DGT Regulations No. PER 61/PJ/2009 and PER 62/PJ/2009 as amended by PER 24/PJ/2010 and PER 25/PJ/2010.

² Unless the recipient is an individual

³ Dividends, interest and royalties

⁴In certain cases, an overseas tax authority may wish to certify using their own format – this should be acceptable as a substitute but please note that practical difficulties in getting such forms accepted may occur.

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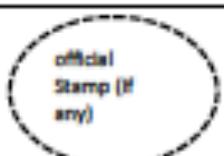
The new regulation sets out alternative remedies in cases where the inability to satisfy these requirements leads to withholding which is not in accordance with the DTA terms. However, in practice these are unlikely to be viable in most cases in terms of cost and time.

All of the reduced rates applicable under a DTA are relevant provided that the non-resident recipient of the income stream seeking to use the DTA does not operate in Indonesia through a permanent establishment (PE). Basically, this means a fixed place of business through which income is earned for the entity.

It is essential that proper consideration is given to the nature and categorization of the income to ensure that the DTA terms are applied correctly. Indonesian entities obliged to withhold on payments overseas will often take a very conservative stance based on past experiences which may or may not have applied the terms correctly, at that time.

Finally, please note that as part of the implementation of BEPS action plans, Indonesia will be revising the terms of DTAs with more than 60 countries.

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	MINISTRY OF FINANCE OF THE REPUBLIC OF INDONESIA DIRECTORATE GENERAL OF TAXES	(FORM DGT-1)
CERTIFICATE OF DOMICILE OF NON RESIDENT FOR INDONESIA WITHHOLDING TAX		
Guidance : This form is to be completed by a person (which includes a body of a person, corporate or non corporate) : <ul style="list-style-type: none"> - who is a resident of a country which has concluded a Double Taxation Convention (DTC) with Indonesia; and - who claims relief from Indonesia Income Tax in respect of the following income earned in Indonesia (dividend, interest, royalties, income from rendering services, and other income) subject to withholding tax in Indonesia. Do not use this form for : <ul style="list-style-type: none"> - a banking institution, or - a pension fund, or - a person who claims relief from Indonesia Income Tax in respect of income arises from the transfer of bonds or stocks which traded or registered in Indonesia stock exchange and earned the income or settled the transaction through a Custodian in Indonesia, other than interest and dividend. All particulars in the form are to be properly furnished, and the form shall be signed as completed. This form must be certified by the Competent Authority or his authorized representative or authorized tax office in the country where the income recipient is a tax resident before submitted to Indonesian withholding agent.		
NAME OF THE COUNTRY OF INCOME RECIPIENT :		_____ (1)
PART I INCOME RECIPIENT		
Tax ID Number	:	_____ (2)
Name	:	_____ (3)
Full Address	:	_____ (4)
Contact Number	:	_____ (5) email : _____ (6)
PART II DECLARATION BY INCOME RECIPIENT		
I, (full name) _____ (7) hereby declare that I have examined the information provided in this form and to the best of my knowledge and belief it is true, correct, and complete. I further declare that <input type="checkbox"/> I am <input type="checkbox"/> this company is not an Indonesian resident taxpayer. (Please check the box accordingly)		
_____ (8)	_____/_____/____/____ (9)	_____ (10)
Signature of the Income recipient or Individual authorized to sign for the Income recipient	Place, date (mm/dd/yy)	Capacity in which acting
PART III CERTIFICATION BY COMPETENT AUTHORITY OR AUTHORIZED TAX OFFICE OF THE COUNTRY OF RESIDENCE		
For the purpose of tax relief, it is hereby confirmed that the taxpayer mentioned in part I is a resident in _____ (11) for periode _____ (12) to _____ (13) of fiscal year _____ (14) within the meaning of the Double Taxation Convention in accordance with Double Taxation Convention concluded between Indonesia and _____ (15)		
		
_____ (16)	_____ (18)	_____/_____/____/____ (17)
Signature of the Income recipient or Individual authorized to sign for the Income recipient	Capacity in which acting	Place, date (mm/dd/yy)
Office address:		_____ (19)
This form is available and may be downloaded at this website: http://www.pajak.go.id		

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PART IV INDONESIA WITHHOLDING AGENT

Tax ID Number : _____ (20)
 Name : _____ (21)
 Full address : _____ (22)
 Contact Number : _____ (23) email : _____ (24)

PART V TO BE COMPLETED IF THE INCOME RECIPIENT IS AN INDIVIDUAL

1. Name of Income Recipient : _____ (25)
 2. Date of birth (mm/dd/yyyy) : _____ / _____ / _____ (26)
 3. Full address : _____ (27)
 4. One of the principal purposes of the arrangements of transactions is to obtain benefit under the convention and contrary to the object and purpose of the DTC. Yes No (28)
 5. Are you acting as an agent or a nominee? Yes No (29)
 6. Do you have permanent home in Indonesia? Yes No (30)
 7. In what country do you ordinarily reside? _____ (31)
 8. Have you ever been resided in Indonesia? Yes No (32)
 If so, in what period? _____ / _____ / _____ to _____ / _____ / _____
 Please provide the address : _____
 9. Do you have any office, or other place of business in Indonesia? Yes No (33)
 If so, please provide the address : _____

PART VI TO BE COMPLETED IF THE INCOME RECIPIENT IS NON INDIVIDUAL

1. Country of registration/incorporation : _____ (34)
 2. Which country does the place of management or control reside? _____ (35)
 3. Address of Head Office : _____ (36)
 4. Address of branches, offices, or other place of business in Indonesia (if any) : _____ (37)
 5. One of the principal purposes of the arrangements or transactions is to obtain benefit under the convention and contrary to the object and purpose of the DTC. Yes No (38)
 6. There are relevant economic motives or other valid reasons for the establishment of the foreign entity Yes No (39)
 7. The entity has its own management to conduct the business and such management has an independent discretion. Yes No (40)
 8. The entity has sufficient assets to conduct business other than the assets generating income from Indonesia. Yes No (41)
 9. The entity has sufficient and qualified personnel to conduct the business. Yes No (42)
 10. The entity has business activity other than receiving dividend, interest, royalty sourced from Indonesia. Yes No (43)

I declare that I have examined the information provided in this form and to the best of my knowledge and belief it is true, correct, and complete.

 Signature of the Income recipient or individual authorized to sign for the Income recipient (44)

____ / ____ / ____
 Place, date (mm/dd/yyyy) (45)

 Capacity in which acting (46)

**INSTRUCTIONS
FOR CERTIFICATE OF DOMICILE OF NON RESIDENT
FOR INDONESIA TAX WITHHOLDING (FORM DGT-1)****Number 1:**

Please fill in the name of the country of income recipient.

Part I Income Recipient:**Number 2:**

resident taxpayer.

Number 3:

Please fill in the income recipient's name

Number 4:

Please fill in the income recipient's address.

Number 5:

Please fill in the income recipient's contact number.

Number 6:

Please fill in the income recipient's contact e-mail.

Part II Declaration by the Income Recipient:**Number 7:**

In case the income recipient is not an individual this form shall be filled by the management of the income recipient. Please fill in the name of person authorized to sign on behalf the income recipient. If the income recipient is an individual, please fill in the name as stated in Number 3.

Number 8:

The Income recipient or his representative (for non individual) shall sign this form.

Number 9:

Please fill in the place and date of signing.

Number 10:

Please fill in the capacity of the claimant or his representative who signs this form.

Part III Certification by Competent Authority or Authorize Tax Office of the Country of Residence:**Number 11:**

Please fill in the name of country where the Income recipients is registered as a resident taxpayer.

Number 12:

Please fill in the starting month of the tax year to be covered.

Number 13:

Please fill in the ending month of tax year to be covered (maximum 12 months from the starting month).

Number 14:

Please fill in the tax year of the income received to be covered.

Number 15:

Please fill in the name of country where the income recipients is registered as a resident taxpayer.

Number 16 and 17:

The Competent Authorities or his authorized representative should certify this for by signing it. The position of the signor should be filled in Number 17.

Number 18:

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Please fill in the place and the date when the form is signed by the Competent Authorities or his authorized representative.

Number 19:

Please fill in the office address of the Competent Authority or authorized representative.

Part IV Indonesia Withholding Agent:**Number 20:**

Please fill in the Indonesia withholding agent's taxpayer identification number.

Number 21:

Please fill in the Indonesia withholding agent's name.

Number 22:

Please fill in the Indonesia withholding agent's address.

Number 23:

Please fill in the Indonesia withholding agent's contact number.

Number 24:

Please fill in the Indonesia withholding agent's e-mail.

Part V To be completed if the Income Recipient is an Individual:**Number 25:**

Please fill in the Income recipient's full name.

Number 26:

Please fill in the Income recipient's date of birth.

Number 27:

Please fill in the Income recipient's address.

Number 28:

Please check the appropriate box in accordance with the claimant's facts and circumstances.

Number 29:

Please check the appropriate box. You are acting as an agent if you act as an intermediary or act for and on behalf of other party in relation with the Income source in Indonesia. You are acting as a nominee if you are the legal owner of income or of assets that the income is generated and you are not the real owner of the Income or assets.

Number 30:

Please check the appropriate box. If your permanent home is in Indonesia, you are considered as Indonesian resident taxpayer according to the Income Tax Law and if you are receive income from Indonesia, the Double Tax Conventions shall not be applied.

Number 31:

Please fill in the name of country where you ordinarily reside.

Number 32:

Please check the appropriate box. In case you have ever been resided in Indonesia, please fill the period of your stay and address where you resided.

Number 33:

Please check the appropriate box. In case you have any offices, or other place of business in Indonesia, please fill in the address of the offices, or other place of business in Indonesia.

Part VI To be Completed If the Income Recipient is non Individual:**Number 34:**

Please fill in the country where the entity is registered or incorporated.

Number 35:

Please fill in the country where the entity is controlled or where its managemet is situated.

Number 36:

Please fill in the address of the entity's Head Office.

Number 37:

Please fill in the address of any branches, offices, or other place of business of the entity situated in Indonesia.

APPLICATION OF DTAs – SIGNIFICANT CHANGES**Number 38-43:**

Please check the appropriate box in accordance with the claimant's facts and circumstances.

Number 44:

The Income recipient or his representative (for non individual) shall sign this form.

Number 45:

Please fill in the place and date of signing.

Number 46:

Please fill in the capacity of the claimant or his representative who signs this form.

Part VII To be completed If the Income earned are dividend, Interest, or Royalty:**Number 47-51:**

Please check the appropriate box in accordance with the claimant's facts and circumstances.

Part VIII for Income Earned from Indonesia in Respect to which relief is claimed:**Number 52:**

Please fill in the type of income (e.g. dividend, interest, or royalties).

Number 53:

Please fill in the amount of Income liable to withholding tax under Indonesian Law (in Indonesian Rupiah)

Number 54:

Please fill in the amount of Income liable to withholding tax under Double Tax Convention between Indonesia and country where the Income recipients is registered as a resident taxpayer.

Number 55:

Please fill in the percentage (tariff) or withholding tax under Double Tax Convention between Indonesia and country where the Income recipients is registered as a resident taxpayer.

Number 56:

Please fill in the type of service rendered.

Number 57:

Please fill in the amount of Income liable to withholding tax under Indonesian Law (in Indonesian Rupiah)

Number 58:

Please fill in the amount of Income liable to withholding tax under Double Tax Convention between Indonesia and country where the income recipients is registered as a resident taxpayer.

Number 59:

Please fill in the percentage (tariff) of withholding tax under Double Tax Convention between Indonesia and country where the income recipients is registered as a resident taxpayer.

Number 60:

In case your income is arising from rendering service, please fill in the period when the service is provided.

Number 61:

Please fill in the type of income.

Number 62:

Please fill in the amount of Income liable to withholding tax under Indonesian Law (in Indonesian Rupiah)

Number 63:

Please fill in the amount of Income liable to withholding tax under Double Tax Convention between Indonesia and country where the Income recipients is registered as a resident taxpayer.

Number 64:

Please fill in the percentage (tariff) of withholding tax under Double Tax Convention between Indonesia and country where the Income recipients is registered as a resident taxpayer.

Number 65:

The Income recipient or his representative (for non individual) shall sign this form.

Number 66:

Please fill in the place and date of signing.

Number 67:

Please fill in the capacity of the claimant or his representative who signs this form.