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Indonesia-the Netherlands Implement Tax Treaty Revision

The Governments of Indonesia and the Netherlands amend the protocol of the avoidance of double taxation agreement (DTA) and the prevention of fiscal evasion on income taxes, in which the agreement has been effective since 29 January 2002.

The revision protocol to DTA or the tax treaty of Indonesia-the Netherlands was signed by the representatives of both countries in Jakarta on 30 July 2015, which has become effective in Indonesia since the issuance of Presidential Regulation Number 24/2007 on 6 March 2017. The Presidential Regulation Number 24/2017 stipulates that the purpose of the tax treaty protocol revision is to intensify cooperation in economy, trading, and investment between Indonesia and the Netherlands.

Pursuant to the tax treaty revision, some clauses of the Indonesia-the Netherlands tax treaty that are amended or affirmed are as follows:

1. Tax Rate upon Dividend

In the former tax treaty protocol, the tax rate imposed upon dividend obtained by taxpayers from companies in partner country was 10% at maximum from gross dividend amount.

Meanwhile, in the new tax treaty, both countries agree to divide it into 3 (three) layers of maximum rate, as follows:

- **5%** of the gross dividend if the beneficial owner holds at least 25% of the company's shares (other than partnership);
- **10%** of gross dividend if the beneficial owner utilizes the benefit of pension fund and other income generally exempted from tax pursuant to the prevailing laws; and
- **15%** of gross dividend for other cases.

2. Tax on Interest

Interest arising in one of the countries of tax treaty on a loan made for a period of more than 2 years or in connection with the sale on credit of industrial, commercial, or scientific equipment is subject to tax of 5% at maximum.

3. Information Exchange

In the former tax treaty, the Governments of Indonesia and the Netherlands has actually agreed on information exchange. However, it was limited to data and information regarding taxation. Meanwhile, the information other than taxation with guaranteed confidentiality was excluded from the exchange.

Meanwhile, in the new tax treaty protocol, the exception for the confidentiality of information other than taxation does not apply, even when the information exchanged discloses trade, business, industrial, commercial or professional secret or trade process, and other information.

Moreover, the new agreement affirms that one of the countries may not decline to provide information regarding individual ownership that has been kept confidential by bank, other financial institution, and nominee or person acting in an agency or a fiduciary capacity, related to the beneficial owner.

4. Tax Collection Assistance

In the new tax treaty protocol, there is mutual agreement on tax collection between Indonesia and the Netherlands, in addition to Article 28A, that among others comprises as follows:

- Both countries shall assist each other in collecting all kinds of tax as long as it is not contrary to the tax treaty or other regulations prevailing in each country. The assistance will not be required if the amount of revenue claim is less than EUR1,500.
- This regulation shall only apply to the revenue claim that forms the subject of instrument permitting enforcement in the applicant country, unless otherwise agreed between the authorized parties and is not contested. The tax collection is conducted by related authority in partner country pursuant to the prevailing regulation.
- In regard to the request and approval of the applicant country, the tax authority in partner country may take measures of conservancy to ensure its collection in accordance with the provisions prevailed in the relevant country.

- However, the related authority to whom the tax collection assistance is requested may not apply imprisonment to the tax dodger from the applicant country, unless otherwise agreed by the authorities.
- Dispute arising from the tax collection assistance may not be filed with the court or any other administrative institution in the partner country.
- If the tax levied exceeds the actual tax, an application for refund shall be filed by the taxpayer to the authority of the country of origin, within 3 (three) years after the end of fiscal year.

This general provision of the tax treaty refers to the OECD Taxation Convention model and both countries shall interpret it identically or under similar substance. Particularly, in interpreting the 'beneficial owner' used in agreement based on the definition provided by OECD.

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