

Analysis of Implications Related to New Decision on the Procedure of Double Taxation Avoidance Agreement at PT FM International

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***Abstract*— This report discusses an analysis of the difference between the old and the new regulations in the Indonesian Taxation Law on the Procedures of Double Taxation Avoidance Agreement and the administrative implications arising from the enactment of the statute. The results show that PT FM International has fulfilled with its obligation to withhold income tax on the income earned by foreign companies that transact with PT FM International. The foreign companies providing services to PT FM International are from Singapore, Australia, India, and the United Kingdom. A company from Singapore (XYZ Pte. Ltd) can be eligible for the facilities in the tax treaty, but since they have forgotten updating the DGT-1 Form. They negligence creates an administrative impact that could affect PT FM International's cash flow.**

***Keywords*—Double taxation, taxation law, income tax and a tax treat.**

I. INTRODUCTION

Various kinds of interstate commerce are overgrowing due to global inclusiveness in economics, business, and finance. The global expansion has driven by advances in information and communication technology and transportation. The countries of the world become integrated and unlimited. Indonesia is also known to get engaged in global expansion.

Late in 2015, Indonesia entered the era of the ASEAN Economic Community (MEA). It indicates that Indonesia can conduct the expansion and development of business entities abroad. But it also results in a large number of foreign objects and products from abroad entering Indonesia and becoming competitors for domestic entities. There are many overseas business entities from various business lines that open their business in Indonesia, such as Starbucks, McDonald's, KFC, and et cetera [3].

The era of globalization that has such a tight competition today requires such a strong foundation of

several aspects as regulatory aspects [3]. The related and relevant regulations are taxation regulations, especially international taxes, that deal directly with transactions between countries to protect the interests of tax revenue.

With this tax regulation, Indonesia can benefit from obtaining state revenue in the form of taxes from foreign business entities established in Indonesia. The proliferation of policies in taxation follows the continuous growth of the economy. Tax is a growing phenomenon in society. International taxation is inseparable from the Tax treaty [3]. A tax treaty is an agreement between two countries governing taxation rights of two states to minimize the occurrence of double taxation as well as efforts in tax avoidance.

In Indonesia, a tax treaty known as P3B (Double Taxation Avoidance Agreement). The objective of the tax treaty is to facilitate trade and investment between countries by avoiding the imposition of double taxation and providing a reduction in tax rates in the source country in some form of income [3]. To get the facilities of the P3B, the foreign taxpayer must meet the administrative requirements of attaching the Certificate of Domicile (COD) issued by the authorized state authority. Certificate of Domicile (COD) is used to prove that the taxpayer is a tax subject of partner country that has signed P3B with Indonesia. If the taxpayer of that Partner Country cannot prove that they are a foreign taxpayer by providing COD, the tax-deductible shall collect a tax with the rate. Then the foreigners cannot use the tax treaty.

Income Tax Article 26 is a tax imposed or deducted on income deriving from Indonesia received or obtained by Overseas Taxpayers in addition to a permanent establishment in Indonesia [4]. Procedures for the Application of Double Tax Avoidance Agreement shall be stipulated in Regulation of the Director-General of Tax No. PER-24/PJ/2010 and Prevention of Misappropriation of Avoidance of Double Taxation shall regulate in Regulation of the Director-General of Tax Number PER-25/PJ/2010. Then on August 1, 2017, the new regulation of the Ministry

of Finance of the Republic of Indonesia Directorate General of Taxes, PER-10/PJ/2017, revoked the previous law, PER-24/PJ/2010, and PER-25/PJ/2010.

In the previous regulation, the validity period of the COD is one year from the date of signature and authorization by an authorized partner country official. For example, when it signed on March 1, 2017, it will be valid until March 1, 2018. In the new rules, the validity period of COD is not one year since it is signed and ratified. In the new COD format, the period of validity will have to be filled up (e.g., from January 2017 to December 2017).

In the old regulation (PER-24/PJ/2010 and PER-25/PJ/2010) the validity period of the COD is one year from the date of signature and authorization by officials of the authorized partner country. For example, if COD is signed and ratified on March 1, 2017, then the COD will be valid until March 1, 2018. Meanwhile, PER-10/PJ/2017 set foreign taxpayers may fill the period of fiscal validity. It is related to the work performed. The COD is valid for 12 months. For example, COD period reads "January 2018 to December 2018" is valid from January to December 2018.

PT FM International is a service company that helps organizations attract, hire, develop, and retain people within the organization. The services provided are human resource consultation that includes executive recruitment to leadership development programs, talent management consulting, and recruitment. The clients of PT FM International include domestic companies and overseas companies. The change in the regulations issued by the Ministry of Finance of the Directorate General of Taxation has impacted the administration of PT FM International concerning the withholding of income tax on services rendered from foreign companies (Foreign Taxpayers) to PT FM International.

This research aims at discussing the newly issued Director General of Taxes Regulation on the Procedures for Implementation of the Agreement of Avoidance of Double Taxation Number PER-10 / PJ / 2017. It is also providing a comparison of the format and structure more fully related to the provisions in Form DGT-1 of Regulation of Director General Tax on Procedures for Adoption of Agreement on the Avoidance of Old Double Taxation with the new ones. Then, the authors will also discuss the implications resulting from the amended Regulation of the Director-General of Taxes on the Procedures for Application of the Agreement of Avoidance of Double Taxation.

The rate of Income Tax Article 26 is 20%. Its final nature has applied to the gross income earned in return for services and labor. Also, activities carried out by an individual with the status of a Foreign Taxpayer with due observance of the provisions of the Agreement of the Avoidance of Double Taxation (P3B). It is applicable between the state of Indonesia and the partner country where the foreign taxpayers originated [2]. Certificate of Domicile is a statement indicating that a Taxpayer is a resident of the land of a partner country of a tax treaty.

Therefore, the Taxpayer shall be treated as non-resident /non-resident by the State Party in the Agreement [1].

An individual or entity with a Certificate of Domicile who has listed in the Certificate of Domicile shall obtain tax protection under that provided for the P3B between the country of domicile and the other country.

Certificate of Domicile is a form (Form DGT) standardized by the General Director of Tax as Certificate of Domicile for a resident of the country of a partner country of a tax treaty who want to use the facility in a tax treaty. Certificate of Domicile must be submitted simultaneously with reporting Tax Return Income Article 23 and Article 26 before the expiry date of submission of Periodic Tax Return for the tax payable every month on 20th.

II. METHOD

The data on this report has obtained during the observation and active participation of RSM Indonesia (Public Accounting Firm) who has a client named PT FM International. The data collected from interviews with senior consultants and manager of the Tax Division at RSM Indonesia.

III. RESULT AND DISCUSSION

The Regulation of the Director-General of Taxes Number PER-10/PJ/2017 concerning Procedures for the Implementation of Double Tax Avoidance effective from 1 August 2017 revokes and stipulates the old PER-24/PJ/2010 and PER-25/PJ/2010 concerning Nomenclature for Double Taxation. PER-10/PJ/2017 becomes perfect and combines the existing provisions of PER-61/PJ/2009 as amended to PER-24/PJ/2010 and PER-62/PJ/2009 as amended to PER- 25/PJ/2010. So it is no longer necessary to see two different regulations in implementing P3B in Indonesia because they have now incorporated into one rule.

Regulation of the Director-General of Tax No. PER-10/PJ/2017 is primarily to set the conditions that must be fulfilled by Overseas Taxpayers to be able to take advantage of the benefits of a tax treaty. PER-10/ PJ/2017 has significantly changed the template or formatting form of DGT-1 Form or DGT-2 Form compared to the previous rule. Changes to the template have an impact on improving the form filling instructions. A quick overview of template differences by both regulations can explain in table 1.

Table 1. A quick overview of template differences in both rules

| Description | (Old Ruling) PER-24/PJ/2010 and PER-25/PJ/2010 | (New Ruling) PER-10/PJ/2017 |
|-----------------------------------------------------|---------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| Certificate of Domicile (COD) Format and Structure. | This rule does not specify the period of validity in the template of COD. | The new regulations specify the periods of validity in the template of COD. |

In previous regulation, (PER-24/PJ/2010 and PER-25/PJ/2010) the validity period of the COD is one year from the date of signature and authorization by the authorized partner official. Meanwhile, the new regulation (PER-10/PJ/2010) confirms that the COD is valid for a maximum of 12 months according to written the fiscal period in COD. PER-10/PJ/2017 entered into force on August 1, 2017. The template changes of the COD Form DGT-1 from the old rules to the new regulations, there are also differences in how the COD is submitted.

In previous regulations, COD only submitted manually directly and attached simultaneously when reporting SPT PP 23/26 Period while in the new rules. It can be delivered manually or electronically. Previous regulations specify that foreign taxpayers can not enjoy the benefits of P3B when there are errors in the implementation of tax treaty and delays in delivery. Meanwhile, in the new regulations, foreign taxpayers can enjoy the benefits of P3B using the mechanism of tax refund overpayment.

PT FM International is engaged in human resource consulting services, including executive search, recruitment, and talent management consulting. In conducting its business activities, PT FM International usually earns consulting services fee from overseas companies. PT FM International is a party who withholds income tax Article 26 on transactions conducted with foreign parties. As a party who withholds Income Tax Article 26, PT FM International is required to make a tax deduction according to the stipulated provisions.

Transactions with XYZ Pte. Ltd., i.e., executive search services may be taxed in Indonesia if the work is done in Indonesia (source country). Based on the tax treaty between Indonesia and Singapore effective from 1 January 1992 in Article 14.1 concerning Dependent Personal Services, it has mentioned that:

"Subject to the provisions of Articles 15, 17, 18, 19 and 20, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment. It shall be taxable only in that State unless the employee has exercised in the other Contracting State. If the employee has exercised, such remuneration as is derived from that place may tax in that other State."

The period of engagement of the services has provided by XYZ Pte. Ltd is from 1/11/2017 - 31/01/2018. It means that it is under the time test specified in the tax treaty of Article 14.2, i.e., no more than 183 days within 12 months. The transaction should enable XYZ Pte Ltd to use the facilities in P3B that is the imposition of 0% tariff on services provided because the length of work does not exceed the time test. XYZ Pte. Ltd. still uses Form DGT-1 under the terms of the old regulation (PER-24/PJ/2010). XYZ Pte. Ltd. has a COD in the form of a DGT-1 Form following the provisions of previous rule (PER-24/PJ/2010) endorsed. It signed by officials/authorities authorized on September 1, 2016, which means valid for one year until September 1, 2017.

PER-10/PJ/2017 shall enter into force on 1 August 2017. Then XYZ Pte. Ltd. updated the DGT-1 Form following the new rules by writing the period September 2017 to December 2017. However, when the turn of the year is January 2018, XYZ Pte. Ltd. has forgotten to renew the DGT-1 Form. It is visible when it is due to report Periodic Return Income Tax Article 26 January 2018. The form has been invalid because it exceeded the written period of December 31, 2017. Since the company has not yet updated the way, the company cannot complete the administrative requirements to be eligible for facilities in P3B.

PT FM International is already paying Rp 37,816,065 to XYZ Pte. Ltd. as the remuneration. It received since initially, and PT FM International thought that attaching COD of 2017 was acceptable to KPP officers. But it turns out when reporting Periodic Return Income Tax Article 26 January 2018 period rejected. The administrative impacts arising from this are:

- 1) PT FM International's cash flow has been interrupted because the company must keep withholding tax on XYZ Pte Ltd with its own money. The income earned by XYZ Pte Ltd is subject to the Income Tax Article 26 with a rate of 20% from the tax base, i.e., $20\% \times \text{Rp } 37.816.065 = \text{Rp } 7.563.213$.
- 2) PT FM International reports the Periodic Tax Return Income Tax Article 26 January period on February 20 and has not yet paid any tax withheld due on the same day. In accordance with Article 9 of the Law on The General Tax Provisions and Procedures Law clause (2a), deposits made after the due date of tax deposit shall be liable to an administrative sanction in the form of interest of 2% per month calculated from the due date of deposit up to the time of payment and part of the month is fully calculated one month.
- 3) PT FM International made a late report of evidence of withholding income tax article 26 of January because it still fails to fulfill the administrative requirements to implement tax treaty that attaches a Certificate of Domicile using Form DGT-1 from XYZ Pte. Ltd. As a consequence of the late reporting, PT FM International received administrative sanction in the form of a fine of Rp 100,000 for each Periodic Tax Return.

IV. CONCLUSION

The analysis reveals that PT FM International's compliance level in withholding Income Tax Article 26 on the income earned by foreign companies conducting transactions with PT FM International. PT FM International is still compliant with the rules applicable to taxation. The foreign companies providing services to PT FM International are from Singapore, Australia, India, and the UK. The company from Singapore (XYZ Pte. Ltd) is eligible for the facilities in P3B, but they have forgotten renewing the expired DGT-1 Form. Therefore, the income they earn must tax according to Domestic Law, which is 20% of the gross income based on the tariff on Income Tax Article 26.

Companies from Australia, India, and the UK are also reluctant to use COD even though the existence may help them. It can demonstrate that they are genuine citizens (foreigners) who are entitled to receive income from Indonesia for services performed. These companies are reluctant to complete and certify COD issued by the Indonesian authorities as they feel that charging is time-consuming and complicated.

The foreign companies can get a lower tax rate if they can complete the administrative requirements imposed by the Finance Ministry of the Director-General of Taxes. They also can obtain an exemption from taxation in source countries.

These problems can affect the cash flow of PT FM International because there are unnecessarily paid costs of excess tax and penalties. Although taxpayers may apply for a refund of unpaid taxes, the process is time-consuming and inefficient.

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