

THE ASSOCIATION OF GLOBAL CUSTODIANS

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VIA MAIL AND FACSIMILE

Mr. Suryo Utomo (Director General of Taxation)
Directorate General of Taxation
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Jakarta 12190
Indonesia
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Re: Request for clarification on Regulation Number PER-25/PJ/2018
(Revising the anti-tax treaty abuse rules)

Dear Mr. Utomo,

I am pleased to transmit to you on behalf of the members of the Association of Global Custodians ("AGC" or "Association")¹ the attached comments prepared by an AGC working group to express certain concerns and make some suggestions concerning tax treaty withholding tax relief procedures under Regulation Number PER-25/PJ/2018 (Revising the anti-tax treaty abuse rules).

Please do not hesitate to contact the undersigned if you have any questions concerning the Association's comments.

¹ The Association is an informal group of 12 member banks that provide securities safekeeping and asset servicing functions to cross-border institutional investors worldwide, including investment funds. In providing global custody services, AGC members routinely seek appropriate withholding tax relief on behalf of custody clients by processing millions of such claims in the aggregate each year, affecting substantial amounts of cross-border portfolio investment flows in and out of countries worldwide.

Sincerely yours on behalf of the Association,

A handwritten signature in black ink that reads "Mary C. Bennett". The signature is written in a cursive style with a long horizontal flourish extending to the right.

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COMMENTS OF THE ASSOCIATION OF GLOBAL CUSTODIANS ON REGULATION NUMBER PER-25/PJ/2018

We wish to request clarification with respect to Regulation Number PER-25/PJ/2018 (“PER-25”). We understand that PER-25 revoked previous regulations applying to tax treaty relief procedures and prevention of tax treaty misuse. PER-25 introduces a single form (“DGT Form”) for eligible non-residents to complete, thereby simplifying the procedure for treaty relief, which is a welcome change. The amended procedures present some challenges for investors wishing to claim tax treaty relief, including the validity period of a Certificate of Residence.

We respectfully request that the DGT consider providing improved or clarified guidance with respect to the following matters, discussed below:

- Validity period of a Certificate of Residence
- Tax Reclaim procedure
- Online platform requirements
- Electronic signatures
- Responsible party to upload the DGT Form on the DGT website (E-SKD)

Discussion

Validity period of a Certificate of Residence (COR)

As part of the PER-25 regulation, the DGT requires a Certificate of Residence (COR) to state the fiscal year or period in which the claimant is resident in their home tax jurisdiction for the application of relief at source. Alternatively, part II of the DGT Form may be completed by the competent authority of the investor’s country of residence. Prior to the introduction of PER-25 and the now revoked PER-10/PJ/2017, CORs without a stated validity period were permitted for use in the application of treaty relief at source.

A number of jurisdictions (for example, the United Kingdom and Luxembourg) are unable to certify tax residency for a future period or even state a validity period. This therefore precludes a number of investors from being able to avail themselves of the relief at source procedure. In these cases, due to the cumbersome reclaim process and requirement of a local tax guarantor to facilitate reclamation, many eligible investors are foregoing due entitlements altogether.

Some Tax Authorities do not issue CORs until the early part of the calendar year for which they are intended to be valid. For instance, the U.S. Internal Revenue Service (IRS) generally does not issue CORs (Form 6166 with reference to the U.S. residency certificate) until the end of March or April in the year for which U.S. residents request a COR. Consequently, investors are highly likely to miss treaty entitlements at source in the first quarter of each year.

Suggested solutions for consideration

1. Acceptance of a COR with a validity period of 12 months from the date of issuance by the investor's Tax Authorities. This was permissible under prior regulations and ensures accessibility to relief at source for the majority of investors. In the unlikely event a claimant's characteristics (such as entity type) change, Global Custodians broadly operate on the principle of it being incumbent on their client to inform them within 30 days of a change in circumstances. The AGC notes that the new Form DGT itself has a validity period of 12 months from the date of issuance, and it would make sense for the two documents to be accorded the same validity period in order to avoid gaps in relief due to one document expiring before the other.
2. Introduction of a grace period to allow a prior year COR to be valid for a further three months into the following calendar year in order to protect entitled relief at source claims. By way of example, the Italian Tax Authorities have provisions stated in domestic law allowing for this flexibility, which ensures treaty entitled investors' ability to claim relief at source in the opening quarter of the calendar year utilising the prior year COR. As previously stated in our letter of September 25, 2017, there are other Tax Authorities that support this approach.

Tax Reclaim procedure

As explained above, due to the specific requirements implemented under PER-25 with respect to the issuance of CORs, we foresee a higher number of non-resident claimants who are unable to benefit from relief at source. Furthermore, non-resident claimants such as pension funds and not-for-profit organizations are unable to claim double tax relief for foreign withholding tax in their domestic tax returns, so where relief at source is missed, a proven and operable reclaim procedure is important for such investors. However, we understand many non-resident claimants are unsuccessful in utilizing the existing reclaim procedure for a number of reasons, thus meaning there are no other options for relieving withholding tax inappropriately suffered.

We would respectfully like to share the following observations with our clients' experiences in their attempts to file tax reclaims with the DGT:

1. Filing a withholding tax reclaim requires the co-operation and engagement of the Indonesian issuing company.
2. In many instances, non-resident clients are unable to proceed with filing a reclaim because issuing companies are unwilling to co-operate with non-residents who have legitimate tax reclaims in the following scenarios:

- a. Divergence in the documentation requirements understood by the issuer versus DGT requirements.
 - b. Unwillingness by issuers to re-file their reporting with the DGT which facilitates the ability for non-residents to file the reclaim.
3. It is generally also necessary for a local tax advisor to be the intermediary in consultation with the issuing company at considerable expense to the non-resident.
 4. Where local sub-custodian banks are the withholding agent (which is generally the case for Indonesian Government Bonds) non-resident claimants have been able in some instances to receive a “quick refund”.
 5. It is also understood from AGC members that the limited clients who have been able to comply with the extensive and burdensome reclaim requirements have resulted in no successful recoveries to date.
 6. The current regulation is silent on the timeline for of the tax reclaim procedure.

Suggested solutions for consideration

1. Centralize and enable Indonesian custodians to file reclaims directly with the DGT rather than Indonesian issuers.
2. Consider the formal introduction of a “quick refund” procedure, to permit the withholding agents to amend their reporting and payments of withholding tax within a set timeframe, thus allowing investors to provide necessary tax documentation after the income payment date, but without the need to file a reclaim.
3. Align the tax documentation requirements so relief at source and reclaim procedures are consistent for documentation purposes.
4. Establish a timeline for the tax reclaim procedure and, particularly, an exact timeframe for the processing of a filed tax reclaim request.

Online platform requirements

We respectfully request that the information for entry into the online platform be aligned with the DGT Form template. We note some key differences in Annex 1 attached.

We respectfully suggest that the physical DGT Form be aligned with the online platform requirements to ensure there is consistency in approach, which will result in efficiencies for all participants involved in this process.

Electronic signatures

Many Tax Authorities are streamlining operations and implementing efficiencies in the issuance of CORs. This means that in some instances the use of electronic signatures and/or electronically issued CORs is the new policy approach for Tax Authorities.

Currently the DGT does not accept electronic signatures or electronically issued CORs, and the AGC respectfully recommends that the DGT consider accepting these, which appears to align with your implementation of the online portal.

Responsible party to upload the DGT Form on the DGT website (E-SKD)

In the regulation (PER-25), it states that the tax withholder is the responsible party to withhold tax and to upload the original tax documents to DGT's web portal (E-SKD). However, as the custodian bank is not always acting as a withholding tax agent for all capital market transactions, the application of this regulation has caused various challenges.

In practice, the custodian bank as the first party that receives the original DGT Form from the offshore party (who makes the investment in the capital market in Indonesia) uploads the DGT Form to E-SKD (although they are not acting as withholding tax agent).

The challenges that exist if only withholding agents can upload the DGT Form include:

- The original DGT Form may be lost during delivery to a third party acting as the withholding tax agent, and the offshore party would not be able to enjoy the treaty rate on their transactions. This could trigger complaints from offshore parties.
- There is no guarantee that the third party acting as the withholding tax agent would agree to the process and upload DGT Form documents on behalf of the offshore party.
- There is no control on the processing time where parties are reliant on a third party acting as withholding tax agent to upload the tax documents and provide the DGT's receipt number. Delays in informing subsequent tax withholders of the DGT's receipt number would cause possible failures in applying tax treaty rates.

We suggest that the DGT agree to clarify that uploading the DGT Form in E-SKD is to be done by the custodian bank. This should be stated clearly in the

implementation regulation, and the E-SKD should be modified to add the custodian bank role for uploading the DGT Form.

Annex 1

Online Platform Requirements	Issue
Name of authorized signatory of the investor	Physical DGT Form requests a signature (Part III or Part VII) but not the name in print.
Name of authorized official of the Tax Authorities (treaty partner)	A signature will be provided by the treaty partner, but not necessarily the name of the official.
<p>Sovereign entities/central banks/financial institutions expressly named in the double taxation treaty with Indonesia who may only need a COR or statement letter for interest income also need to provide the following:</p> <ol style="list-style-type: none"> 1) Name of authorized signatory 2) Email address of the authorized signatory 3) Contact number of the authorized signatory 4) Taxpayer identification number 5) Name of the authorized officer at Tax Authorities 	<p>Many sovereign/central banks are routinely not issued a taxpayer identification number.</p> <p>As noted above many Tax Authorities may provide a signature but not necessarily the name of the signatory.</p>