Tax News Flash

September 2019

Deemed Profit Repatriation Rules Clarified for Controlled Foreign Companies (CFCs)

The Minister of Finance (MoF) issued Regulation No.93/PMK.03/2019 (PMK-93) which amended MoF Regulation No.107/PMK.03/2017 (PMK-107) to provide greater clarity regarding taxation of CFCs. It is applicable starting in fiscal year 2019 (i.e., retroactively).

PMK-93 is also relevant to Indonesian groups with foreign business activities.

Importantly, it did not modify the definition of a CFC as set out in PMK-107. Please refer to our Tax News Flash August 2017 for commentary on PMK-107.

The key clarifications in PMK-93 are summarized below:

Types of Taxable Income

PMK-93 modifies PMK-107 by restricting deemed profits largely to "passive" income, in contrast to the former "commercial profit after tax" approach.

PMK-93 considers the following income as being passive:

1. Dividends, except dividends received from other CFCs;
2. Interest income, except interest received from a Resident Taxpayer with a banking license, unless that Resident Taxpayer is related to that CFC;
3. Rental income from:
    - land and/or buildings; and
    - Other rent received from related parties;
4. Royalties; and
5. Profits from the sale or transfer of assets (capital gains).

Taxable Base of Deemed Dividends

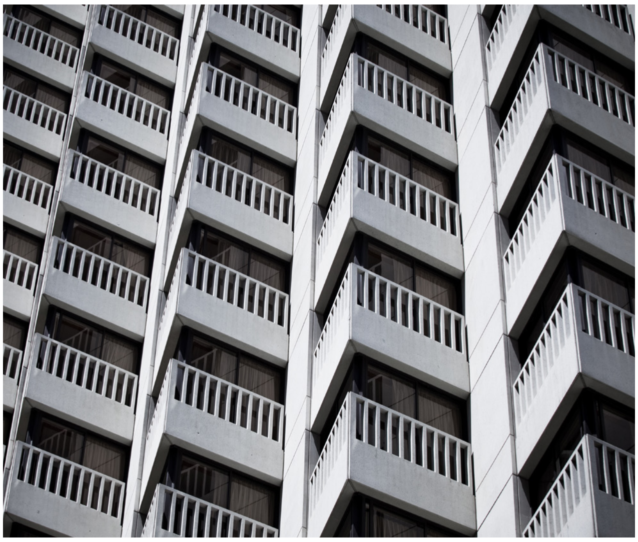
Consistent with PMK-107, the taxable base of "repatriable income" is dependent on the nature of the Resident Taxpayer's control of the CFC. The repatriable income is calculated proportionally to the Resident Taxpayer's effective ownership of the CFC:

- If the Resident Taxpayer has direct control of the CFC:
    - » The taxable base is the net amount after tax on passive income as defined above.
- If the Resident Taxpayer has indirect control in the CFC:
    - » The taxable base is the net amount after tax on passive income as defined above multiplied by the effective ownership percentage.

Calculation of Taxable Income

Repatriable income is the "net income after tax", i.e., the passive income as defined above, after the following deductions:

1. Expenses to obtain, collect and maintain the passive income; and
2. Any foreign taxes due, paid or withheld on the income, multiplied by the effective ownership percentage of the relevant CFC.



KPMG Comment:

With the issuance of PMK-93, the MoF has provided welcomed legal certainty regarding the types of passive income relevant to CFCs.

However, there are several other concerns yet to be clarified with regards to CFCs, as articulated in our Tax News Flash August 2017.

We are hopeful that the Indonesian Tax Authority will consider these other concerns and issue further clarifications in a timely manner.

Note that the dividend exemption indicates that dividends distributed between CFCs do not constitute passive income for repatriation purposes and "repatriable income" needs to be adjusted accordingly for any inter-CFC dividends.

Also note that foreign taxes continue to be only deductible rather than creditable.

Contact us

KPMG Advisory Indonesia
Tax Services
33rd Floor, Wisma GKBI
28, Jl. Jend. Sudirman
Jakarta 10210, Indonesia
T: +62 (0) 21 570 4888
F: +62 (0) 21 570 5888

Abraham Pierre
Partner In Charge, Tax Services
Abraham.Pierre@kpmg.co.id

Aaron Brunier
Aaron.Brunier@kpmg.co.id

Andy Tanu Utomo
Andy.Utomo@kpmg.co.id

Anita Priyanti
Anita.Priyanti@kpmg.co.id

Adeline Harriman
Adeline.Harriman@kpmg.co.id

Bambang Budiman
Bambang.Budiman@kpmg.co.id

Diana Ria Hutagaol
Diana.Hutagaol@kpmg.co.id

Eko Prajanto
Eko.Prajanto@kpmg.co.id

Esther Kwok
Esther.Kwok@kpmg.co.id

Hamdanus Lukman
Hamdanus.Lukman@kpmg.co.id

Irwan Setiawan
Irwan.Setiawan@kpmg.co.id

Iwan Hoo
Iwan.Hoo@kpmg.co.id

Jacob Zwaan
Jacob.Zwaan@kpmg.co.id

Julya Permata Tjen
Tjen.Permata@kpmg.co.id

Natalia Yamin
Natalia.Yamin@kpmg.co.id

Sontang Ruli Siregar
Sontang.Siregar@kpmg.co.id

Sutedjo
Sutedjo@kpmg.co.id

Tonggo Aritonang
Tonggo.Aritonang@kpmg.co.id

Yoshiyuki Misao
Yoshiyuki.Misao@kpmg.co.id

kpmg.com/id