

# Tax News Flash

September 2021



## Ratification of the Renegotiated Double Tax Avoidance Agreement (“DTA”) between the Republic of Indonesia and the United Arab Emirates and between the Republic of Indonesia and the Republic of Singapore

In order to improve our country’s bilateral relations with the United Arab Emirates (“UAE”) and the Republic of Singapore, especially in economic cooperation, as well as to adapt to the latest developments in international tax standards, the Government of Indonesia has recently issued Presidential Regulation No. 34 Year 2021 (“PR-34”) and Presidential Regulation No. 35 Year 2021 (“PR-35”) regarding ratification of the DTAs between Indonesia and the UAE and between Indonesia and Singapore, respectively.

DTAs must be ratified in accordance with the respective procedures in each jurisdiction and the instruments of ratification need to be exchanged as soon as possible.

### UAE – Indonesia DTA

Through the issuance of PR-34, this new DTA shall be effective on the 1 January of the year following ratification. Many aspects of the new treaty remain the same as previously, such as the general dividend and royalty withholding tax (“WHT”) rates of 10 percent and 5 percent, respectively. Nevertheless, the treaty includes several new provisions, including:

1. Exemption of tax on dividends paid to the Government; the terminology of “Government” is also defined further in the Protocol;
2. Increase in WHT rate from 5 percent to 7 percent on income from interest;
3. The right to levy WHT at the rate of 5 percent on compensation of technical services; and
4. The right to levy tax on income from hydrocarbons in the country of source.

In addition, there are amendments to adopt provisions related to the Multilateral Instrument (“MLI”), including:

1. Extension of the definition of Permanent Establishment;
2. Exemption of capital gains on transfer of shares with less than 50 percent of immovable property;
3. Conversion of the exchange of information to the 2017 OECD Model; and
4. Introduction of the “Principle Purpose Test”.

### Singapore – Indonesia DTA

The Government of the Republic of Indonesia has also ratified the renegotiated treaty with Singapore through PR-35, which will become effective as of 1 January 2022. The key changes are summarized as follows:

Clause	Current DTA	Renegotiated DTA
<b>Government exemption</b>	Tax exemption for interest received by government institutions	Tax exemption for interest received by government institutions, including <i>sovereign wealth funds</i> and their subsidiaries
<b>Exemption for government-issued bonds or debentures</b>	Regulated	Removed

Clause	Current DTA	Renegotiated DTA
<b>Royalty</b>	15%	<ul style="list-style-type: none"> <li>• 8% for industrial equipment and experience, trading or scientific</li> <li>• 10% for other royalties</li> </ul>
<b>Branch profit tax</b>	15%	10%
<b>Exceptions for oil and gas production sharing contracts</b>	Singapore taxpayers must be treated equally favorably with taxpayers of other countries ( <i>most favored nation</i> )	Without conditions of <i>most favored nation</i>
<b>Capital gains</b>	Not regulated	<ul style="list-style-type: none"> <li>• Indonesia can tax capital gain on shares disposal if (i) more than 50% of their value is derived directly or indirectly from immovable property, and (ii) the alienator owned at least 50% of the total issued shares.</li> </ul> <p>Not applicable if the company carries on its business in immovable property or the shares are alienated in the framework of a reorganization, merger, scission or similar operation</p> <ul style="list-style-type: none"> <li>• Indonesia can tax the transfer of shares traded on the Indonesian Stock Exchange ("IDX")</li> </ul>
<b>Exchange of Information</b>	Based on the 1977 OECD Model	Based on the 2017 OECD Model
<b>Anti-tax avoidance</b>	Not regulated	Regulated under Article 28, by adopting Article 6 and 7 of the MLI

### KPMG Notes:

The most important new provision in the Singapore DTA is the capital gains provision, as in the current DTA no capital gains provision exists and therefore Indonesia can apply its domestic law without any restrictions.

As mentioned, Indonesia is not allowed to tax the transfer of shares of an immovable-property-rich company if it is carrying on its business in the immovable property. It is not entirely clear what the phrase "carrying on its business in the immovable property" exactly entails. So there is a risk that the Indonesian Tax Office will challenge taxpayers that claim exemption based on this provision.

With regard to the new UAE DTA, it is worth noting that the UAE sovereign wealth funds should be exempt from withholding tax on both dividends (new) and interest (already under the current DTA) received from Indonesian payors.

The agreement shall come into force since 1 January in the year following in ratification by both jurisdictions. Singapore ratified the DTA on 23 July 2021. To date, the UAE has not ratified the new DTA with Indonesia.

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