



ITR Asia Tax Executives' Forum 2011 South East Asia Panel: Dealing with Developing Tax Systems

❖ QUALITY TAX ADVICE, GLOBALLY

May 12, 2011

Panellists

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Introduction

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Recent Anti-Avoidance Measures & Significant Developments Singapore

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Recent Anti-Avoidance Measures & Significant Developments The Philippines

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- ❖ Recent Anti-Avoidance Measures
 - ❖ Exchange of Information Regulations
- ❖ Significant Developments
 - ❖ New financial statements disclosure requirements
 - ❖ Allocation of costs and expenses for banks and financial institutions
 - ❖ New tax treaty relief application procedures

Recent Anti-Avoidance Measures

- ❖ RA 10021: Exchange of Information Act of 2009
 - ❖ Declaration of Policy
 - ❖ Grants the CIR authority to enquire into bank deposit accounts held by financial institutions of a taxpayer subject to an information request from a foreign tax authority

Exchange of Information Regulations

- ❖ Definitions
 - ❖ Financial Institutions
 - ❖ Foreign Tax Authority (FTA)
- ❖ BIR not prevented from using the information requested by a FTA
- ❖ FTA may be allowed to examine income tax returns of taxpayers in the Philippines
- ❖ Obligations to maintain confidentiality

New Additional FS Disclosure Requirements

- ❖ Disclosure on information on taxes, duties and license fees paid or accrued during the year
- ❖ Effective beginning taxable year 2010
- ❖ Some implications:
 - ❖ Additional administrative burden
 - ❖ Premature or untimely disclosure of assessments and pending cases

Allocation of costs and expenses

- ❖ Rules among the income earnings of banks and financial institutions
- ❖ Prescribed methods:
 - ❖ Specific identification
 - ❖ Allocation based on gross income earnings

New Tax Treaty Relief Procedures

- ❖ Philippine tax treaty network
- ❖ New guidelines for processing of Tax Treaty Relief Applications (TTRA)
 - ❖ Prescribes the documentary requirements
 - ❖ Filing of TTRA should always be made before the transaction
 - ❖ Before the occurrence of the first taxable event
 - ❖ Failure of observe the period shall have the effect of disqualifying the TTRA
- ❖ Is prior TTRA mandatory?





Recent Anti-Avoidance Measures & Significant Developments Indonesia

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Contents

- ❖ Anti-Tax Avoidance Rules
- ❖ New Developments on Transfer Pricing
- ❖ Tax Issues on New IFRS Adoption
- ❖ Key Contact



CFC Rules

- ❖ Direct ownership at least 50%
- ❖ Wherever CFC is situated (no black/white list)
- ❖ No income exemption
- ❖ May cover CFC consolidated income, since CFC net income must be based on foreign accounting standards.

[Minister of Finance Regulation No.256/2008 and Director General of Taxes Regulation PER-59/2010]

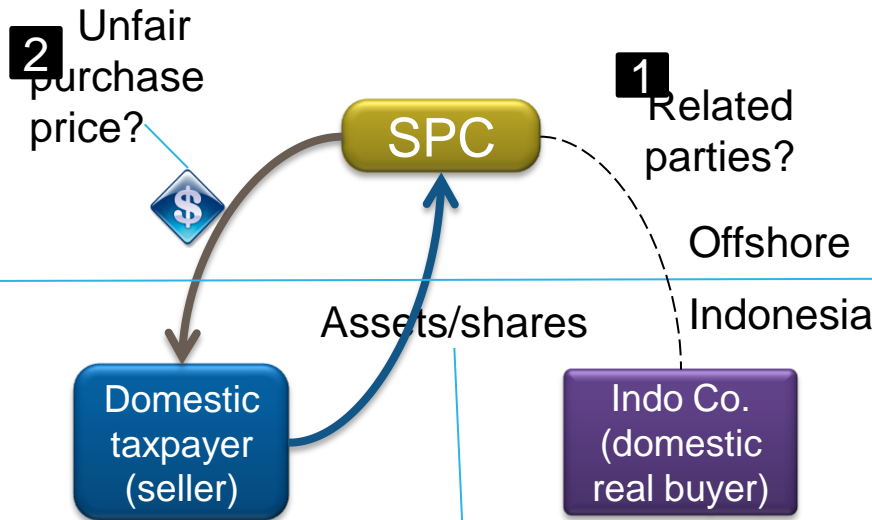


Anti-Stepping

- ❖ Purchase of asset/stocks (related to loan collateral) by domestic taxpayer from domestic taxpayer through foreign SPV will be denied
- ❖ It will be deemed as a direct purchase by the domestic taxpayer

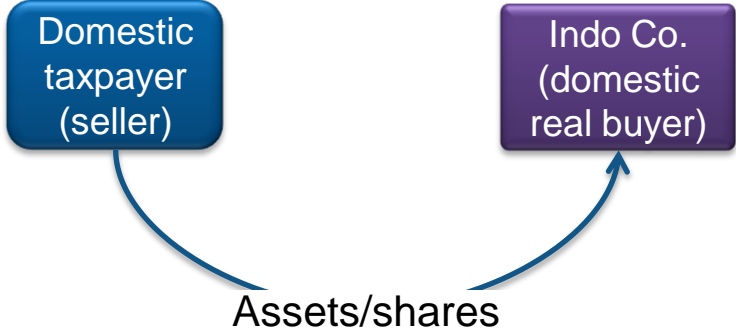
[Minister of Finance Regulation No.140/2010]

Illustration of Anti-Stepping



- 3** Assets/Share?
- (i) Initially acquired by seller from real buyer as loan collateral; or
 - (ii) in form of debt-claims which initially given to real buyer by seller .

If answer of question 1, 2, and 3 are "yes", then...



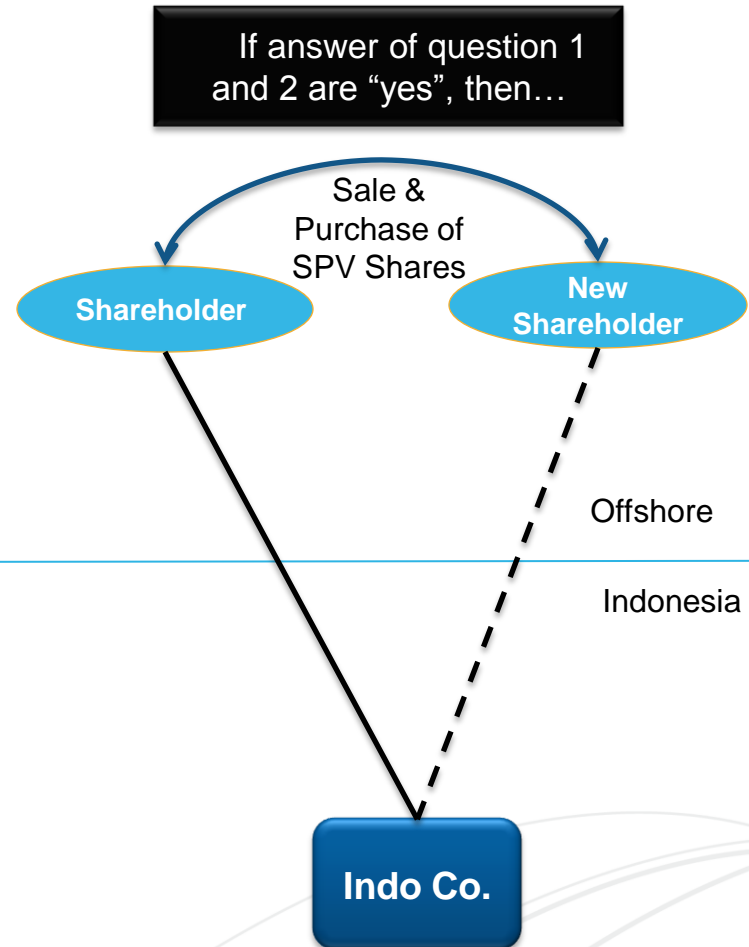
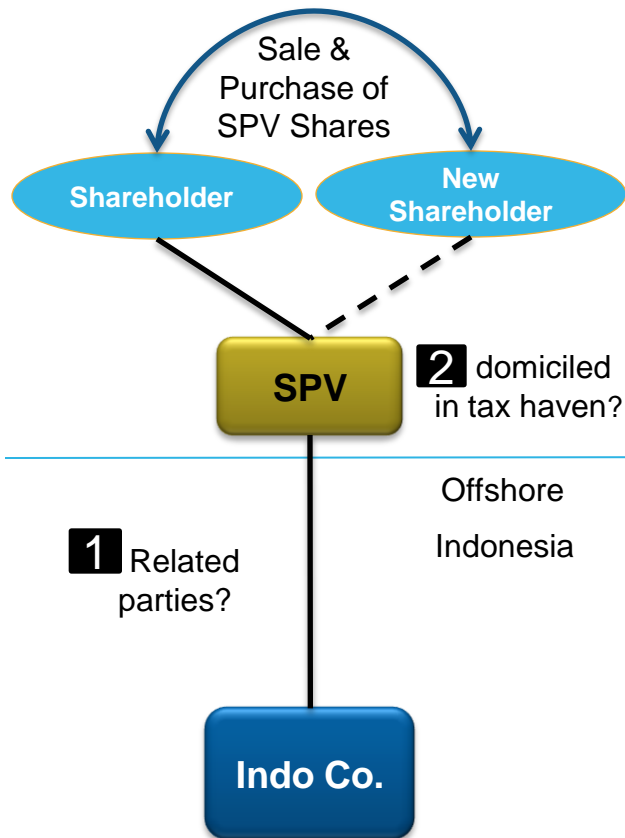
Anti-Stepping 2

- ❖ Sale of stocks of foreign SPV, located in tax haven jurisdiction, which holds shares of Indonesian company or has a permanent establishment (PE) in Indonesia will be reclassified as sale of shares of Indonesian company or sale of PE
- ❖ Tax haven jurisdiction: no tax, low tax (<12.5%), or jurisdiction that applies

[Article 18 para.3c of the Income Tax Law, no implementing regulation]



Illustration of Anti-Stepping 2

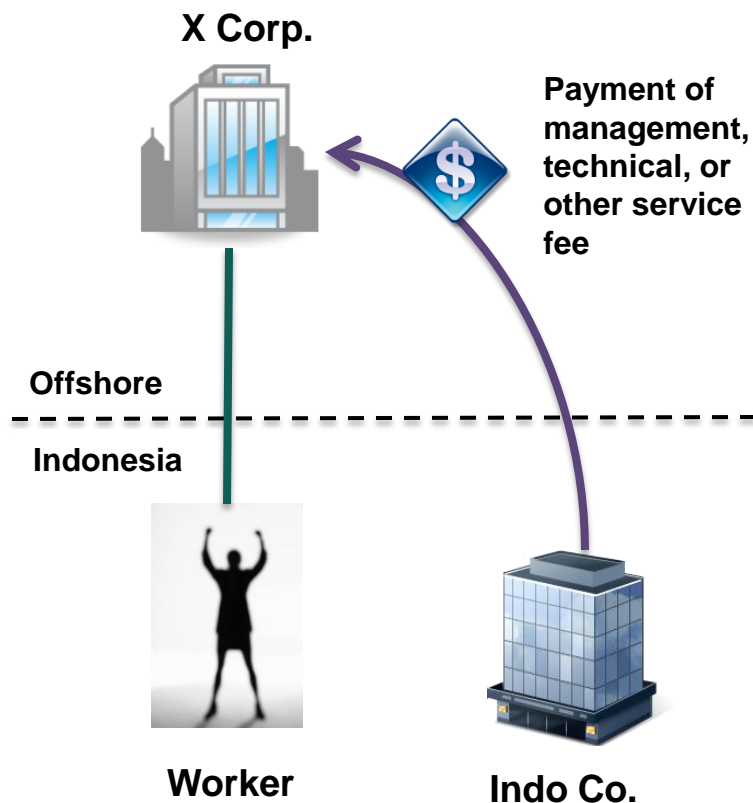


Income Assignment

- ❖ Income tax on an employee's income may be recalculated if an Indonesian employer transfers such employee's income, wholly or partly, to an affiliated foreign company in the form of fees e.g. management fees, technical fees

[Minister of Finance Regulation No.139/2010]

Illustration of Income Assignment



If:

1. X Corp. and Indo Co. are related parties,
2. The worker is employee of X Corp.
3. The worker provides services to Indo Co., and
4. Indo Co. pays fees to X Corp.,

Then:

Such fees shall be attributed as income of the worker and subject to withholding income tax by Indo Co.

New Transfer Pricing Rules

- ❖ Director General of Taxes Regulation
- ❖ To provide a **uniform guidance** for the taxpayer and the tax authority in applying the arm's length principles (ALP)
- ❖ Covers all **domestic** and **cross-border** related parties transactions
- ❖ **Safe harbour:** related parties transaction with amount of IDR 10 million (US\$1,100)

4 Compulsory Steps When Applying ALP

1. Undertake comparability analysis
 - ❖ Prime: **internal comparables**
2. Select the most appropriate TP method
 - ❖ The first choice: **CUP**, other method may be applied on **hierarchy basis**
3. Determine the arm's length price / profit
 - ❖ **Single or range** price / profit may be applied
4. Maintain TP documentation
 - ❖ Minimum documentation is required. Other supporting documents may be provided



New Administrative Procedures for MAP

- ❖ DGT Regulation No.PER-48/PJ/2010
- ❖ Provides administrative procedures for domestic taxpayer to request DGT to initiate MAP
- ❖ May be useful to settle TP cases (corresponding adjustment)

New Administrative Procedures for MAP

- ❖ However, DGT may decline a MAP request if domestic taxpayer files tax objection / appeal, since:
 - ❖ DGT is not authorized to revise the decision on tax objection which may deviate with the result of MAP
 - ❖ DGT is obliged to execute the Tax Court decision
- ❖ It limits the purpose of tax treaty to avoid double taxation



Advance Pricing Agreement: New Procedures

- ❖ Director General of Taxes Regulation
- ❖ Provides an alternative to mitigate TP risks by making an agreement with the DGT
- ❖ 5 stages of APA:
 1. Pre-lodgment meeting: DGT decision should be issued within 3 months.
 2. Submission of formal application
 3. Negotiation: no time limits
 4. Signing the agreement: may be valid for 3 years
 5. Implementation and evaluation
- ❖ Taxpayers are currently on a “wait and see” situation



Functional Currency

- ❖ IFRS requires companies to use **functional currency** (that most faithfully represents the economic results of the entity's operations) in bookkeeping and reporting
- ❖ Indonesian Tax law:
 - ❖ Book-keeping and reporting in **Indonesian Rupiah** is compulsory
 - ❖ Oil and gas, mining, foreign investment companies and permanent establishments are allowed to use the US dollar as accounting currency
- ❖ Effect: **More work** on taxpayers part to maintain **double currency** bookkeeping and reporting



Valuation of assets

- ❖ IFRS requires companies to measure assets value based on fair value which may create gain / loss
- ❖ Indonesian Tax law:
 - ❖ Assets must be recorded at acquisition cost
 - ❖ Taxable income: any additional economic capability in whatever name or form
- ❖ Effect: **More work** on taxpayers part to reconcile the accounting income and taxable income to prevent tax imposition on gain / loss from asset valuation





Impact of Anti-Avoidance Measures on SE Asia

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