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Global Tax Alert

# Indonesia releases amendments to controlled foreign corporation rules

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## Executive summary

The Indonesian Minister of Finance released, on 26 June 2019, Regulation No.93/PMK.03/2019 (PMK.03/2019) containing amendments to the 2017 Controlled Foreign Corporation (CFC) rules (the 2017 Regulations). PMK.03/2019 is effective for the 2019 taxable year beginning on or after 1 January 2019.

PMK.03/2019 limits a deemed dividend treatment of CFC income to five types of income that is generally passive in nature; whereas the 2017 Regulations treated a CFC's entire book of income as a deemed dividend.

This change relieves Indonesian taxpayers with actively trading CFCs from a deemed dividend inclusion, which appears to be more consistent with the OECD[1] BEPS[2] Action 3.

## Detailed discussion

### Definition of CFC income

While the definition of direct and indirect CFCs remains the same, Indonesia has narrowed the definition of CFC income that is includible currently as a deemed dividend in an Indonesian shareholder's income tax return. Under PMK.03/2019, the deemed dividend treatment will be limited to the following types of CFC income:

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- Dividend income, other than a dividend received from another CFC
- Interest income, but excluding interest earned by the CFC engaged in the banking sector and the interest from unrelated parties
- Rental income:[3]
  - From land and buildings
  - From assets other than land and/or building leases to related parties
- Royalty income
- Gain on sale or transfer of passive assets

### Calculation of deemed dividends

In computing the deemed dividend, gross income is reduced by expenses[4] and tax payable/paid associated with each type of the CFC income. It also appears that a positive deemed dividend can arise due to the separate net income computation for each specific type of income, even if the overall CFC position is a loss.

## Implications

Indonesian companies with actively trading CFCs should consider whether the change in the deemed dividend treatment will result in a reduced income pick-up from CFCs.

### Endnotes

1. Organisation for Economic Co-operation and Development.
2. Base Erosion and Profit Shifting.
3. Income from rental activities would generally be treated as passive.
4. The regulations do not provide further guidance on whether indirect expenses may be allocated.

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