Guidance for Transfer Pricing Mutual Agreement Procedures

In December 2014, the Indonesian Ministry of Finance issued updated guidelines on Mutual Agreement Procedures ("MAP"). The guideline provides detailed requirements involving the application of the MAP. Although most aspects of these guidelines can be considered common practice, there are some details that Indonesian Taxpayers need to be aware of.

KPMG observation:

Throughout the world MAPs have been proven to be a useful mechanism through which the competent authorities can resolve double taxation issues which are caused by transfer pricing adjustments.

Dispute resolution, other than for domestic objections and appeal processes, remains high on the Indonesian government's agenda, reflected in the third regulation that governs MAPs. However, more importantly, the Indonesian Tax Office ("ITO") is actively promoting this option and negotiations with tax treaty-partner countries have commenced.

Taxpayers need to be aware of certain aspects of the updated practical guidelines, such as the time limit and the potential tax audit, before proceeding with a MAP submission.

New time limit restrictions

Originally, the regulations stated that the MAP process would be discontinued if a taxpayer lodged an objection or appeal. The subsequent regulation allowed a dual track process, including domestic litigation, along with the MAP process. However, according to the updated regulations, the MAP process would be terminated if the tax court issues its verdict prior to the completion of the MAP process. Contrary to common tax treaty interpretation, Indonesia has now further restricted the MAP process, since it will now be terminated when the Indonesian tax court deems that it has conducted sufficient hearings.

Tax audit scope

The guidelines state that the ITO can perform a tax audit for the relevant year(s) of a MAP; although it does not specify whether a tax audit would be limited to the issues in the MAP or if it can be expanded. It is worth noting that a tax audit in Indonesia is an exhaustive process which requires extensive detailed data and numerous discussions.

MAP requested by overseas Tax Authority

A MAP requested by the Tax Authority in another jurisdiction requires a concurrent MAP request in Indonesia, as the regulation states that the request can only proceed if the Indonesian entity requests a MAP for the same issue.

Tax settlements

A MAP request does not postpone the obligation to settle a tax payable stated in a tax assessment letter or objection decision. While domestic litigation provides a facility to postpone settlement of tax underpayments under dispute (with a potential penalty if the decision is unfavorable for the taxpayer), the MAP does not provide a similar facility.

Conclusion

Although the updated guidelines do not provide much new clarification, the issuance of the regulation demonstrates that the ITO is focused on MAPs to solve issues with other jurisdictions. This is something that the Indonesian Taxpayer may want to consider when deciding whether to opt for a MAP for dispute resolution.

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