Indonesian Mutual Agreement Procedure ("MAP")

In line with the tax transparency embodied in the "Action Plan: Base Erosion and Profit Shifting" issued by the Organization for Economic Co-operation and Development (OECD), and to implement GR-74/2011, the Minister of Finance has issued regulation No. PMK-240/2014.

A MAP is an agreement between the Indonesian Director General of Taxes ("DGT") and the Competent Authority of another country ("Treaty Country") that has signed a Double Tax Avoidance Agreement ("Tax Treaty") with Indonesia.

A MAP is used to resolve issues arising from provisions in a Tax Treaty; the DGT has an obligation to enter into discussions with the Competent Authorities of a Treaty Country to explore the possibilities to come to a mutual agreement in cases of a tax dispute.

A MAP can only be requested after the Indonesian taxpayer has received a tax assessment notification related to transfer pricing from the Tax Office.

MAP requestors

Subject to any MAP application limitations included in a Tax Treaty, a request for the initiation of a MAP can be made by:

1. Indonesian taxpayers, through the DGT;
2. The DGT itself; or
3. The Competent Authority of a Treaty Country.

A MAP requested by an Indonesian taxpayer

An Indonesian taxpayer may apply to the Director of Tax Regulation II of the DGT, acting as the Competent Authority of Indonesia, for a MAP for any of the following reasons:

1. Transfer Pricing ("TP") adjustments imposed by a Treaty Country's tax authorities on an Indonesian taxpayer that are related to transactions with tax residents in the Treaty Country that resulted in or will result in double taxation;
2. Actions taken by a Treaty Country's tax authorities on a Permanent Establishment ("PE") of an Indonesian taxpayer in the Treaty Country that resulted in or will result in taxation not in accordance with the Tax Treaty;
3. Dual tax residence status; or
4. Taxation of income derived by an Indonesian taxpayer from sources within the jurisdiction of the Treaty Country, including withholding taxes, which is not in accordance with the Tax Treaty.

A MAP requested by the DGT

The DGT may apply for a MAP with a Treaty Country for any of the following reasons:

1. To review an existing MAP because of invalid information or documents submitted by an Indonesian taxpayer and/or by the Treaty Country and/or new information that was not available during a previous MAP process;
2. A request for a Corresponding Adjustment (to make TP adjustments consistent in both jurisdictions to avoid double taxation);
3. A follow up on a request from an Indonesian taxpayer for an Advance Pricing Agreement ("APA");
4. To interpret certain provisions in the Tax Treaty in order to carry out such provisions properly;
5. To follow up on a MAP requested by an Indonesian who is a resident taxpayer in the Treaty Country because of higher taxes to be paid than taxes paid by a Treaty Country citizen (non-discrimination rule under the Tax Treaty), or
6. Any other matters necessary to implement the Tax Treaty provisions.

A MAP requested by the Treaty Country

A Treaty Country may request the DGT to initiate a MAP for any of the following reasons:

1. Tax assessments issued in Indonesia to (i) a PE of a Treaty Country taxpayer or (ii) an Indonesian taxpayer in relation to transactions with a Treaty Country taxpayer which are considered not to be in accordance with the Tax Treaty provisions, including TP adjustments;
2. Tax assessments issued to Indonesian taxpayers in relation to transactions with taxpayers in a Treaty Country which are considered not to be in accordance with Tax Treaty provisions, including TP adjustments
3. A request for a Corresponding Adjustment;
4. Income tax withheld by an Indonesian taxpayer which is considered not to be in accordance with the Tax Treaty provisions;
5. Interpretation of a Tax Treaty provision that may lead to double-taxation and/or tax avoidance issues;
6. Dual tax residence status;
7. A follow up request for APA from its resident taxpayers; or
8. In a case where a Treaty Country citizen, as a resident taxpayer in Indonesia, will pay higher taxes than an Indonesian Citizen (non-discrimination rule under the Tax Treaty).

Cancellation of A MAP

DGT may reject/stop the MAP process if:

1. The requestor, i.e., an Indonesian taxpayer, a foreign PE in Indonesia or Indonesian Citizen does not or cannot provide complete documentation or information requested by the DGT;
2. The required documentation or information needed for MAP consultation cannot be provided;
3. There is a strong indication, based on the DGT's judgment, that the MAP process will not result in an agreement;
4. The requestor withdraws the MAP request;
5. The Indonesian taxpayer, Indonesian Citizen or related Indonesian taxpayer or PE in Indonesia disagrees with the draft MAP agreement, or
6. The Tax Court issues its verdict on the tax dispute before the MAP is agreed.

Other Provisions

1. A MAP cannot be applied by Indonesian taxpayers if the Tax Court has declared that court proceedings on the related tax assessments have been sufficient.
2. A MAP requested by an Indonesian taxpayer, under certain conditions, can be withdrawn by the requestor as long as the MAP agreement has not been concluded.
3. If a MAP is requested by a Treaty Country regarding a TP adjustment, the DGT will review the Tax Treaty provisions regarding a Corresponding Adjustment. Such a MAP request can be processed by the DGT even if the related Indonesian taxpayer is also proposing the same MAP request to the DGT.
4. A MAP requested by a Treaty Country on APA can be processed by the DGT even if the related Indonesian taxpayer is also proposing the same APA to the DGT.
5. A MAP can only be applied for after the date of a transfer pricing tax assessment which is not considered to be in accordance with the Tax Treaty provisions but before the expiration of the Tax Treaty.
6. A MAP request can be submitted by an Indonesian taxpayer regardless of a submission of objection, appeal and/or an application to reduce or cancel incorrect tax assessments.
7. There must be another MAP discussion/consultation with the other Treaty Country within 3 years after the first discussion (which can be in the form of a meeting, electronic communication or other means of correspondence). However, it can be deferred upon agreement between the DGT and the Treaty Country.

KPMG comments:

The most critical MAP issue to consider relates to timing and cost.

Tax Court decisions currently may take less than 2 years to be finalized, but the MAP process period is 3 years and therefore risks cancelation.

Indonesian taxpayers must carefully consider the possibility of having a favorable decision as a result of the MAP or the Tax Court's verdict.

The Indonesian taxpayers will be facing the dilemmatic situation between either the "Appeal" and "MAP" process.

Contact us

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