

# KPMG Kundu

March 2024

## Foreword



This month we turn the blowtorch on IRC's release of the Mutual Agreement Procedure (MAP) Guideline. This release articulates how PNG's double tax treaties with participating countries play out to resolve international tax disputes by taxpayers.

We also drilldown and take a closer look at Modern Slavery and the business categories where workers are most vulnerable to be deprived of their rights including human rights. We identify tools for business and workers to use in reporting slavery practices to authorities.

We discuss the recent visit in March to PNG by OECD and the Intergovernmental Forum (IGF) which was focused primarily on Mining, Metals and Sustainable Development. The deep dive into the mining sector was designed to identify gaps to strengthening government agencies in addressing taxation challenges within the mining extractive sector.

KPMG in PNG has dedicated in-house locally based specialists in all of the following areas: cybersecurity and technology advisory, internal audit/risk, visa migration, corporate finance, management consulting, fraud investigation as well as tax, audit readiness, financial statement preparation, payroll services, and assurance. As such we are well placed to provide a truly multi-disciplined approach to business advisory.

Enjoy the read this month and reach out with any enquiries at [kmcentee@kpmg.com.au](mailto:kmcentee@kpmg.com.au) if you would like to see KPMG cover specific topics in future editions.



---

## Mutual Agreement Procedure Guideline

IRC released its Mutual Agreement Procedure (MAP) Guideline this month. The MAP article in each of PNG's Double Tax Treaties allows for the competent authorities from the governments of the contracting countries to interact with each other to resolve international tax disputes. MAP can help relieve double taxation and resolve treaty-related tax disputes and issues in interpreting or applying a tax treaty.

Once a taxpayer lodges a MAP request, it falls on the Competent Authorities (CA) to negotiate to resolve the MAP request. In PNG's case, the Competent Authority is the Commissioner General of Internal Revenue. He further delegates this authority to the following: 1. Commissioner of Tax; 2. Assistant Commissioner, Legal Service Division; and 3. Assistant Commissioner, Compliance and Risk Management Division. PNG's existing Double Tax Agreements are with: Australia, China, New Zealand, Indonesia, Korea, Singapore, Canada, United Kingdom, Malaysia, and Fiji.

### Who may apply for competent authority assistance

A taxpayer can request for MAP if they believe they are being taxed, or will be taxed, not in accordance with a tax treaty. The taxpayer must approach the competent authority of their country of residence to request relief under a tax treaty. Some treaties are more flexible and allow a taxpayer to present a request

to the competent authority of either contracting country. Taxpayers should refer to the text of the specific MAP article to determine their entitlement to present a request to a particular competent authority.

There are two types of double taxation: juridical double taxation where the same taxpayer is taxed on the same income in two or more jurisdictions and economic double taxation where two separate taxpayers are taxed on the same income, in different jurisdictions.

Typical examples of taxation not in accordance with a tax treaty where one might make a MAP request include, Transfer Pricing, Resident Status, Withholding Tax, Branch Profits, Permanent Establishment, and Characterization or Classification of Income. A MAP request must be made in the Form M1.

### **Time limits for requesting access to MAP**

The time limit for presenting a case for CA assistance depends upon the specific terms of the particular Tax Treaty under which the MAP is invoked. Therefore, the relevant Tax Treaty should be consulted. Where the time limit for presenting a case to invoke MAP is not specified in the relevant Tax Treaty, the PNG CA will follow the time limit specified under the Article 25 (MAP) of the OECD Model Tax Convention on Income and on Capital (i.e. within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the convention).

### **Determining if your case is justified**

The CA will conclude that the taxpayer's case is justified if: (a) The taxpayer has provided a sufficient factual and legal basis for their case; and (b) The taxpayer's MAP request demonstrates that: (i) the actions forming the basis of the request results or will result for them in taxation not in accordance with a tax treaty; and (ii) the risk of such taxation is at least probable, not just possible. The CA will accept that the risk of taxation not in accordance with a treaty is probable if the taxpayer has received written notification from the Internal Revenue Commission (IRC) or the tax administration of a treaty partner country of an actual or proposed action. The notification should include details of what is to be adjusted, the amounts and the basis of calculation. Actions that do not justify a MAP request include an audit or examination of the taxpayer's affairs or those of an associated foreign entity prior to the issue of a statement of audit position or equivalent position paper from another jurisdiction; exchange of information requests about dealings between a taxpayer and an associated foreign entity; discussions between the taxpayer (or an associated foreign entity) and the IRC (or a foreign tax jurisdiction) about the taxpayer's tax affairs; public advice and guidance of a general nature, even if the taxpayer believe it could apply to them and, if applied, may result in taxation not in accordance with the treaty.

IRC will initially decide whether it can reach an appropriate solution unilaterally. If not, then IRC will commence negotiations with the CA of the other jurisdiction.

### **How competent authorities communicate with each other**

CAs usually provide their positions to each other by exchanging position papers. If agreement is not reached after exchanging MAP position papers, the CAs may discuss the matter with each other directly. When a mutual agreement is reached the IRC will notify the taxpayer of the decision and provide an explanation of the result. If the taxpayer accepts the agreement, both tax administrations will be notified and the taxpayer will be provided a letter confirming this agreement. The agreed adjustments will then be processed by the tax administrations to provide the taxpayer the relief for double taxation.

If the taxpayer does not agree with the MAP outcome agreed by the CAs, they can seek tax relief under PNG's domestic objection and appeal rights. In this case, the CAs will finalise their MAP case without implementing the agreement reached.

### **Paying tax during the MAP process and deferral of debt recovery**

A request for CA assistance does not suspend the requirement to pay the tax liability or collection action by the IRC. If collecting tax during the MAP process may result in double taxation, IRC will defer legal action for recovery of those amounts, including any interest charges, until an agreed future date (usually the date that the MAP is concluded), subject to some exceptions. The taxpayer can seek a remission of interest accrued for unpaid tax.

## Timeframes for resolving a MAP case

The IRC has committed to the OECD's recommended average timeframe of two years to resolve MAP cases although IRC states they will try to resolve the taxpayer's case as quickly as possible.

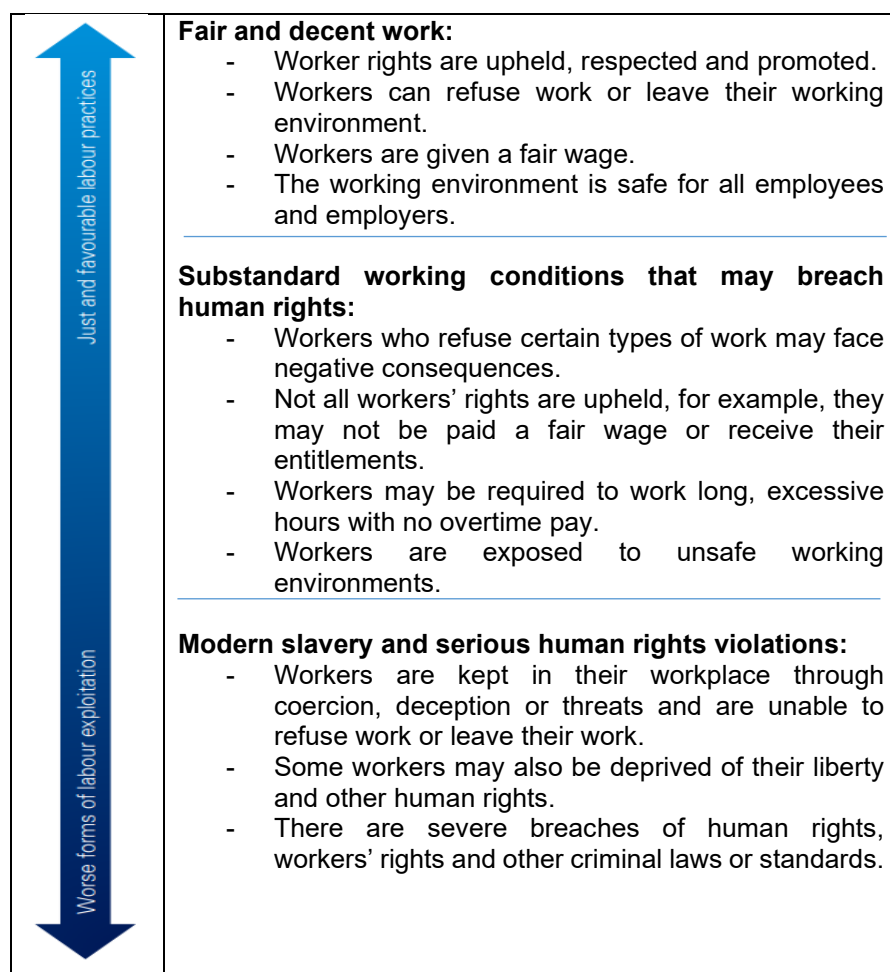
## Modern slavery

### What is modern slavery?

The term 'modern slavery' describes situations where coercion, deception or threats are used to exploit workers or to undermine or deprive them of their freedom. Modern slavery can occur in any workplace. There are many ways people can become trapped in situations of modern slavery, including:

- Human trafficking;
- Slavery;
- Servitude;
- Forced labour;
- Debt bondage;
- Forced marriage;
- Worst forms of child labour; and/or
- Deceptive recruitment for labour or services.

Modern slavery operates on a spectrum (as set out in Figure 1).



The global community of governments, investors and civil society increasingly expect businesses to address and prevent human rights-related harm, including modern slavery. Taking action to address modern slavery is increasingly required by domestic standards as well as international laws, for example, from the Modern Slavery Act 2018 in New South Wales to the proposed European Union Directive on Corporate Sustainability Due Diligence 2022.

Five sectors considered to be high risk for modern slavery include: financial services, mining, construction and property, food, beverage and agriculture, and healthcare.

When the following factors intersect, the potential for workers to experience modern slavery increases - high-risk business models, vulnerable populations, high-risk categories of goods and services and high-risk business geographies. As an example, 18% of modern slavery victims are found in the property and construction industry.

### **Tools for businesses and workers to identify and report modern slavery**

Human rights grievance mechanisms are the systems used to raise, assess, investigate, and respond to human rights concerns and grievances, which may include modern slavery issues. They are channels that allow stakeholders to voice their concerns about a business' activities and access remedies to address the harm or damage they have suffered as a result of those business activities.

It is good practice for businesses to have human rights grievance mechanisms that can be accessed not just by their employees but also by stakeholders across their value chain, including workers in the supply chain.

Human rights grievances may also be referred to as:

- Concerns: where the issue is not clear;
- Feedback: where the issue offers a learning opportunity; or
- Complaints: where the issue has caused harm.

There are many different forms of human rights grievance mechanisms. They can be internal or external to a business and involve varying levels of informality and formality through the process. Informal mechanisms are often used in the early stages of raising a grievance and should be supplemented by more formal grievance mechanisms as the grievance progresses. Examples include, informal channels, formal discussions, worker forums, hotlines, independent third-party providers, worker voice platforms (run by third parties and often used to assess suppliers).

Modern slavery can be an issue hiding in plain sight within businesses and/or their supply chains. It is incumbent on businesses to understand whether modern slavery exists within their own business and that of their suppliers.

---

## **OECD and IGF visit PNG – focus on mining industry**

The OECD together with the Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development (IGF) visited Port Moresby in March under the Framework of the Deep Dive Programme to Address BEPS Issues in the Mining Industry in PNG. The BEPS in mining programme within PNG is aimed at strengthening the ability of the government agencies to address the various tax challenges associated with the extractive sector.

In particular, the weeks activities included:

- A workshop on the OECD/G20 Two Pillar Solution to address the tax challenges arising from the digitalisation of the economy, with a specific focus on the economic and legal impact assessment of Pillar 2 for PNG;
- A high level workshop to design a Mining Model Fiscal Term Sheet that complies with the priorities of the different governmental agencies and the drafting of Standard Operating Audit Manual Procedures; and
- Capacity building activities in the field of transfer pricing, international taxation, risk assessment and audit practices.

The overall aim is to foster stronger tax compliance and certainty with the aim of leading to increased tax revenues. The support from these two missions is ongoing with further missions expected in the future. This comes at a time when IRC has already had a spotlight on the mining sector.

---

## Our social media presence

As usual, you may access our regular multi-disciplined thought leadership pieces, newsletters, and updates on our KPMG PNG LinkedIn page. Also, connect via our webpage [www.kpmg.com.pg](http://www.kpmg.com.pg) and Facebook <https://www.facebook.com/pngkpmg/>.

---

## Contact us

Zanie Theron  
SPP PIC  
[ztheron@kpmg.com.au](mailto:ztheron@kpmg.com.au)

Karen McEntee  
Partner  
[kmcentee@kpmg.com.au](mailto:kmcentee@kpmg.com.au)

Pieter Steyn  
Partner  
[psteyn@kpmg.com.au](mailto:psteyn@kpmg.com.au)

Ces lewago  
Managing Partner  
[ciewago@kpmg.com.au](mailto:ciewago@kpmg.com.au)

Brett McDermott  
Partner  
[bmcdermott@kpmg.com.au](mailto:bmcdermott@kpmg.com.au)

Christian Angelopoulos  
Partner  
[cangelopoulo@kpmg.com.au](mailto:cangelopoulo@kpmg.com.au)

---

©2024 KPMG PNG. KPMG PNG is associated with KPMG Australia, an Australian partnership and a member firm of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved. The KPMG name and logo are trademarks used under license by the independent member firms of the KPMG global organization.