Insight

Reasons Why Mutual Agreement Procedure (MAP) is A Good Choice for Dispute Resolution

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As businesses expand across borders, international taxation disputes are becoming more common. These disputes often involve complex issues that require specialized expertise in international taxation, especially tax treaties. One method of resolving such disputes, other than a rather traditional and prolonged mechanism like objection and appeal, is the Mutual Agreement Procedure (MAP). This insight discusses briefly what MAP is, its legal basis, developments in Indonesia, and why it is a good choice for dispute resolution.

What is Mutual Agreement Procedure?

The Mutual Agreement Procedure (MAP) is a dispute resolution mechanism that is available to taxpayers under almost all tax treaties. As mentioned above, it is an alternative to domestic dispute resolution processes, such as objection and appeal to the tax court. MAP is a negotiation-based process between the Competent Authorities of the countries involved in the dispute in an international tax-related case. Rather than the taxpayers representing and actively defending themselves in front of the judiciary panel, they present their cases to the relevant Competent Authority, provide documents and data as requested, and let the Competent Authority bring the case to the negotiation table with its partner in the relevant state to aim for a mutually acceptable solution that optimally avoids double taxation.

Legal Basis and Developments in Indonesia

MAP is based on Article 25 of the OECD Model Tax Convention on Income and Capital as well as the United Nations Model. Indonesia, like most other countries, has adopted these model tax conventions in its tax treaties, making MAP an available option for resolving disputes regarding their implementation. To ensure the applicability of MAP, Indonesia has integrated the process into its laws, as can be observed in the Government Regulation Number 74 of 2011. Further, to establish a more proficient and efficient protocol for executing MAP, Indonesia enacted the Minister of Finance Regulation Number 240 of 2014, which was later improved by the Minister of Finance Regulation Number 49 of 2019, so that the procedure is more in line with international best practices.

The enhancement of the regulatory framework is concomitant with a corresponding augmentation in the governmental unit tasked with administering this process. In early 2016, the Minister of Finance created an exclusive and committed unit to manage MAP. This specialized team comprises a substantial cohort of international tax analysts, many of whom have received their education from renowned foreign universities specializing in international tax studies. This demonstrates Indonesia's dedication to continuously improving and refining its MAP system with the goal of maximizing its effectiveness in resolving international tax-related disputes and minimizing double taxation.

In addition to that, the quality of the MAP process is openly evaluated by a peer review mechanism mandated by the Final Report of Base Erosion and Profit Shifting (BEPS) Action 14. According to the official review report, Indonesia was found to have fulfilled most of the elements required by Action 14 Minimum Standard during the Stage 1 review. Where there were gaps in compliance, Indonesia has taken steps towards rectifying them. In Stage 2, while several new concerns emerged, Indonesia effectively addressed a significant number of previously identified shortcomings (OECD, 2019; OECD, 2021). Of course, there are some gaps and flaws found here and there in the report, but the commitment shown by Indonesia in addressing these shortcomings and working towards improving its MAP system is commendable.

Why MAP is A Good Choice of Dispute Resolution?

Nowadays, MAP is a favorable choice of dispute resolution as it provides a clear mechanism for resolving international tax-related disputes in cases where the taxpayer faces double taxation or at risk of thereof. There are some compelling reasons why MAP is a good choice of dispute resolution, as among others, discussed below:

1. MAP is handled by Experts

   An obvious advantage of MAP is the fact that it processed by dedicated unit in the Directorate of International Taxation of the DGT. This is particularly important as it ensures that the facts of the case are evaluated by officials who have sufficient expertise in international tax field to engage in a positive and productive discussion with the Competent Authority of the other country.

2. Win-Win Solution is Feasible

   Unlike domestic dispute resolution processes that mostly result in a win or lose outcome for the taxpayer, MAP aims to reach a mutually acceptable solution that, as musch as possible, avoids double taxation. Due to its nature as negotiation and mediation between Competent Authorities, the result is more likely to be a win-win solution, which is particularly important for transfer pricing case that is not an exact science.

3. Parallel with Domestic Dispute Channel

The newest MAP regulation update in the Harmonization of Tax Regulation Laws number 7 of 2021 juncto the Government Regulation Number 55 of 2022 has resolved pending issues regarding parallel process between domestic dispute resolution and MAP. Under that regulations, the right of taxpayer to choose one or both channels are protected as much as constitutionally possible. Thus, taxpayer is provided with freedom to pursue one or both avenues simultaneously, potentially leading to a quicker and more favorable resolution of the dispute.

4. Possibility of Corresponding Adjustment

For a transfer pricing case, the very obvious advante of MAP is the possibility to provide corresponding adjustment which is almost impossible under domestic dispute avenue. So suppose there is a company (PT A) that has an intra group service transaction with its affiliate (AA Ltd.) but later the cost of the transaction is adjusted by the tax authority from 100 to 60 due to transfer pricing analysis, PT A or AA Ltd. may ask the Competent Authorities to evaluate the adjustment and agreed on a specific amount which applies consistently in both states. Hence, there is mathematical balance between cost and revenue in both states which avoid the economic double taxation., MAP also facilitates corresponding adjustment in resolving transfer pricing cases, which encourages the avoidance of double taxation.

5. Confidentiality

One of the advantages of utilizing MAP is confidentiality. The process occurs in private between the taxpayer and the Competent Authorities of the involved nations, unlike the usual objection and appeal process that takes place in a public court. This guarantees that the specifics of the case are kept confidential, which is especially important for companies that place a high value on their reputation and wish to keep sensitive information undisclosed to the general public.

To sum up, MAP is an effective substitute for resolving international tax issues, particularly those involving transfer pricing. The regulatory structure and procedure, particularly in Indonesia, have been enhanced to better promote mutually agreeable resolution and an optimal avoidance of double taxation. Even while there is still room for improvement, it is abundantly obvious from the advantages that using alternative dispute resolution methods is oftentimes preferable.

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