

Mutual Agreement Procedure Tackling transfer pricing disputes

As tax audits are on the rise, transfer pricing disputes are getting more and more commonplace. An objection to the Director General of Taxation (DGT) is generally taken to seek resolution, followed by an appeal to the Tax Court if the issue persists. Next, if not satisfied with the appeal verdict, a case review request (CRR) to the Supreme Court becomes the last resort.

Time is a critical factor. Only with great luck, can one get their dispute decided in two to three years of the objection filing date. It takes years for many. So, why not considering the Mutual Agreement Procedure (MAP)? It is available under every tax treaty for taxpayers who seek resolution to the competent authorities to their complaints about inappropriate application of the tax treaty by the tax authorities. Hence, its scope is not limited to just transfer pricing.

Interestingly, a MAP is not an alternative to an objection *cum* appeal and CRR, or the less popular path of a request for incorrect tax assessment letter cancellation or reduction. Instead, it may go alongside each. Government Regulation No. 50/2022 (GR 50) has even extended its life beyond the reading of the Tax Court's appeal verdict if a CRR is submitted to the Supreme Court. Under PMK 49/PMK.03/2019 (PMK 49), hitherto the prevailing regulation on MAP, appeal verdict reading means the end of the ongoing MAP process.

If a MAP results in a mutual agreement (MAP agreement) while a corresponding complaint – in the form of either an objection, an appeal or a CRR - is underway, to lend the MAP agreement to reign, GR 50 requires either an adjustment or a cancellation of the complaint. By an adjustment, the disputed corrections brought to the MAP are taken out of the complaint, leaving it to go on with the rest of the disputed corrections and, ultimately, letting the substance of the MAP agreement be included in the complaint decision. By cancellation, on the other hand, the entire complaint is called off, which applies if the complaint contains only disputed corrections brought to the MAP.

Detailed provisions regarding MAP may follow through a Minister of Finance (MoF) regulation. In the meantime, PMK 49, to the extent not in conflict with GR 50, remains applicable.

If you need further information about this matter, please do not hesitate contact us.

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