

TaxFlash



Exchange of Information

Exchange of Information (EOI) between countries can be carried out to assist each country in identifying any tax avoidance or tax evasion scheme, as well as to expedite cross-border tax dispute resolution. EOI should be carried out based on provisions stipulated in international tax agreements, such as:

- a) Double Taxation Agreement (DTA/tax treaty);
- b) Tax Information Exchange Agreement (TIEA); and
- c) Convention on Mutual Administrative Assistance in Tax Matters (Convention).

In Indonesian taxation law, provisions concerning EOI have been regulated in Article 32A of the Income Tax Law No.36/2008 and Article 59 of Government Regulation No.74/2011 with reference to General Tax Provisions (*Ketentuan Umum dan Tata Cara Perpajakan/KUP*) Law No. 16/2009.

On 1 April 2014, the Minister of Finance (MoF) issued Regulation No.60/PMK.03/2014 (PMK-60) which further regulates the EOI procedure. PMK-60 has been effective since 1 April 2014 and is applicable for the above international tax agreements in place prior or after the effective date of PMK-60.

The Competent Authority (CA) to manage EOI in Indonesia is the Director of Tax Regulation II (Director II) under the Director General of Tax (DGT).

PMK-60 stipulates that EOI can be carried out through several channels, which may be initiated by a relevant unit under the authority of the Directorate General of Tax or “Unit” (domestic request) or initiated by a country/jurisdiction partner (foreign request).

A. EOI by request

EOI by request can be triggered by a suspicion of tax avoidance or tax treaty shopping on cross-border transactions. Suspicion of an Indonesian resident taxpayer involved in this case may arise during the process of verification, tax audit, tax investigation, domestic dispute resolution and/or Mutual Agreement Procedure (MAP) by a Unit. The domestic dispute resolution process includes applying for a tax objection, a tax appeal, a judicial review and requesting a reduction or cancellation of a tax assessment letter.

In principle, EOI cannot take place if the requested information:

- is speculative and has no clear relationship with the reason to request (“fishing expedition”);
- is based on weak suspicion;
- would reveal business secrecy or expertise; and/or
- is related to a country’s national secrecy, public policies, sovereignty, national security or interest.

In regard to foreign requests, PMK-60 requires reciprocity whereby the country partner must also provide the information requested by Indonesia under similar circumstances. The Indonesian CA will also reject the request if the gathering of information requires administrative actions that contradict prevailing regulations.

B. Spontaneous EOI

A Unit can provide information spontaneously to a country partner without an EOI request from the CA of that relevant country as a follow up action from a tax audit, preliminary tax audit or tax investigation, which may lead to the following results:

- there is an indication of significant tax loss in the country partner;
- there were payments to a country partner suspected not reported there;
- there was a tax incentive available in Indonesia enjoyed by the foreign taxpayer that can increase its tax obligation in its home country; and/or
- there were transactions between the domestic and foreign taxpayers structured to minimise tax due in Indonesia and/or the country partner.

C. Automatic EOI

The type of information provided through an automatic EOI is the information maintained periodically by a Unit, such as: changes in a taxpayer’s place of domicile, dividend, interest, royalty, capital gain, salary and remuneration.

PMK-60 also sets out other procedures in relation to EOI, as follows:

Tax Examination Abroad

Either of the CAs in Indonesia and country partner may request a tax examination abroad in each other country if the information that has been obtained through EOI is not sufficient, if additional information is needed, or to speed up the information gathering.

Tax examination abroad is regarded as a joint tax audit which, under Indonesia’s KUP Law, falls under the provisions of “tax audit for other purposes”.

Simultaneous Tax Examinations

The DGT, along with one or more country partners, may conduct simultaneous tax examinations based on a mutual agreement, if the following conditions are incurred:

- a) there are some tax issues between Indonesia’s resident taxpayer(s) with non-resident taxpayer(s);
- b) there is a joint interest between the DGT with one or more non-resident tax authorities in relation to point a) above;
- c) there is a suspicion that the cross-border transaction is made for tax avoidance or tax evasion; and
- d) the DGT and one or more non-resident tax authorities are of the view that written EOI based on point a) above is insufficient, ineffective and inefficient.

Third party data provision

In relation to EOI with a country partner, the DGT can request supporting information from other resident taxpayers or other third parties having information relevant to the disputed taxpayer. These other resident taxpayers or parties must respond to the information request otherwise they will be subject to criminal act sanction based on Article 41A of the KUP Law.

The DGT will send a written request if the third party is bound by secrecy obligations, or the MoF will send a written request to the Governor of Bank Indonesia (Central Bank) if the data requested is restricted banking information.

Information secrecy

Each piece of information exchanged must be treated as confidential in accordance with Article 34 of the KUP Law, including for the “tax examination abroad” conducted in Indonesia.

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