First bilateral APA completed between Belgian and Indonesian tax authorities

March 27, 2018

In brief

The first bilateral advance pricing agreement (BAPA) between Belgium and Indonesia was signed in January 2018. This is the first BAPA between both countries, and is also one of the very few Competent Authority cases (including Mutual Agreement Procedures) between an EU jurisdiction and the Government of the Indonesian Republic.

The BAPA concerns the arm's-length remuneration for the use and exploitation of intangibles by an Indonesian operational company, and licensed by a Belgian company.

In detail

Context

Over recent years, Indonesia has positioned itself as a key location in the rapidly growing South East Asia region and has attracted substantial amount of foreign direct investment. Its (B)APA program can provide certainty for businesses and help them address inherent risks in managing their global tax arrangements and deploying their transfer pricing policies. After a long-standing domestic tax controversy, applying for a BAPA was viewed as a logical step for this multinational company.

The BAPA process

Since the BAPA was initiated in Indonesia, the BAPA process was subject to the Indonesian regulations. This process can be summarized as follows:

1. Request pre-lodgement meeting with the Indonesian Director General of Tax (DGT)
2. Hold pre-lodgement meeting with DGT
3. File the formal BAPA request
4. Discussion between the Competent Authorities
5. Formalization of the agreement and signature of the BAPA
6. Implementation and evaluation of the BAPA.

The pre-lodgement meeting (Step 2 above) took place earlier in 2015, followed by the lodgement of the formal BAPA application request in December 2015 (Step 3 above), which officially initiated the BAPA process.

Tax authorities scrutinized the merits of the case and investigated the BAPA application in 2016. Between the end of 2016 and January 2018 (15-month-period), three bilateral meetings took place between the Indonesian and the Belgian Competent Authority teams. The BAPA process took 25 months to successfully complete.

Observation: Managing the timeline is key considering that the Indonesian regulations impose strict deadlines to file the APA application.

Lessons learned

There were several challenges the applicant faced, including the acceptance of the BAPA case (Step 1 above), the constant evolution of the business and its effect on the BAPA case, and the management of simultaneous tax audits (e.g., VAT) from various levels of tax authorities.

The first step — being granted the access to the APA program — was the biggest challenge considering the nature of the transactions covered by the BAPA request (i.e., substantiating the arm's-length character of a royalty, deductible in Indonesia for corporate income tax purposes).

Observation: To tackle challenges, strategic considerations, as well as a detailed tactical plan, need to be carefully and jointly developed in both countries. It is important to not underestimate the resources which need to be allocated to the project.

The second challenge was to continuously build the knowledge of all relevant stakeholders. It was critical to understand the dynamics of the case and reflect the changes in the business of the applicant and market dynamics over the period of 25 months.

Communication

The Competent Authorities used the OECD meetings to schedule some of their bilateral meetings.

In parallel, both Competent Authority teams actively communicated via emails and phone calls to move the BAPA application forward.

The takeaway

The relative short period to complete the BAPA process reflects the positive attitude of both countries toward the avoidance of double taxation.

Navigating the complexities of a BAPA requires senior executives' involvement and support, close collaboration between the applicant's team and advisors, and allocating the right resources to the project.

This example shows the willingness of both Indonesia and Belgium to answer the call of BEPS Action 14 for effective dispute resolution processes. It also shows that even with the increasing complexity of the international tax environment, it is possible to reach an agreement between two tax authorities to avoid potential double taxation.

Let’s talk

For a deeper discussion of how this issue might affect your business, please contact:

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