

TaxFlash



Ratification of Indonesia's commitment to the Convention on Mutual Administrative Assistance in Tax Matters

Background

The Convention on Mutual Administrative Assistance in Tax Matters (the Convention) was developed jointly by the Council of Europe and by the Organisation for Economic Co-operation and Development (OECD) in 1988. The Convention was revised in 2010 primarily to align its goal with the internationally agreed standard on transparency and exchange of information (EOI) and to open it up to States which are not members of the Council of Europe or the OECD. Therefore, Article 28 of the amended Convention welcomes applications from any State which is not a member of the Council of Europe or the OECD to be invited to sign and ratify the Convention.

Currently, 84 countries have signed the convention. They represent a wide range of countries including all members of the G20, and almost all OECD countries and major financial centres.

Scope of the Convention

The uniform application and interpretation of its provisions enables the Convention to facilitate more effective operation of national tax laws, while respecting the fundamental rights of taxpayers by providing the following forms of administrative co-operation between States:

- a. EOI, including simultaneous tax examinations and participation in tax examination abroad;
- b. assistance in recovery of foreign tax claims, including measures of conservancy; and
- c. service of documents.

Should obligations under the Convention conflict with existing bilateral agreements (i.e. Double Taxation Agreements/DTAs and Tax Information Exchange Agreements/TIEAs), the later will prevail.

Indonesia's participation

Indonesia signed the Convention on 3 November 2011 and ratified it by the issue of Presidential Regulation No.159/2014 (Reg-159) on 17 October 2014. The Convention will enter into force for Indonesia on the first day of the month following the expiration of a period of three months after the date of deposit of the instrument of ratification with one of the Depositaries (i.e. the Secretary-General of the OECD or the Secretary-General of the Council of Europe). The Convention then shall effect administrative assistance related to taxable periods beginning on or after 1 January of the year following the one in which the Convention entered into force.

As part of the procedure to become a Party to the Convention, Reg-159 declares Indonesia's reservation based on Article 30 of the Convention, as follows:

1. The rights not to provide the below types of assistance:
 - a) any form of assistance in relation to taxes of other Parties; and
 - b) assistance in the service of documentsfor the following taxes:
 - i. taxes on income, profits, capital gains or net wealth which are imposed on behalf of political subdivisions or local authorities of a Party
 - ii. compulsory social security contributions payable to the general government or to social security institutions established under public law, and
 - iii. taxes in other categories, except customs duties, imposed on behalf of a Party, namely:
 - estate, inheritance or gift taxes,
 - specific taxes on goods and services such as excise taxes,
 - taxes on the use or ownership of motor vehicles,
 - taxes on the use or ownership of movable property other than motor vehicles,
 - any other taxes;
 - iv. taxes in categories referred to in sub-paragraph (iii) that are imposed on behalf of political subdivisions or local authorities of a Party.
2. The right not to provide assistance in recovery of any tax claim, or in recovery of an administrative fine on all taxes.

Reg-159 also confirms that the Convention shall apply to all taxes imposed under Indonesian tax laws, as follows:

- Income Tax (including capital gains and net wealth)
- Land and Building Tax on plantation, forestry, and mining sectors
- Value Added Tax and Luxury-goods Sales Tax

Domestic EOI regulation

At a national level, the EOI implementation procedure, tax examination abroad and simultaneous tax examinations have been regulated in the MoF Regulation No.60/PMK.03/2014 (PMK-60) which has been effective since 1 April 2014 and is applicable for the following international tax agreements which were in place prior to or after that effective date: a) DTA/tax treaty; b) TIEA; and c) the Convention.

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