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Mutual agreement procedure on double taxation agreements

Mongolia has entered into Double-Taxation Agreement (further referred as DTA) with 26 countries. Its Mutual Agreement Procedure (further referred as the Procedure) was approved in 2013, latter renewed in 2019 in accordance with Article 17.3 of General law on Taxation, for the following purposes:

1. To implement the procedure;
2. To agree mutually with a competent authority of the contracting party on eliminating double taxation in case that the taxation is not in accordance with the agreement or when such action is possible to result.

Following changes were made in the newly approved procedure.

1. Fine or undue losses imposed by taxation office shall be excluded in the procedure;
2. If the taxation indicated in the taxpayer's request is result of measures undertaken by Mongolia, either partially or wholly, the settlement period shall be 60 days (Article 6.4 of the Procedure);
3. The taxpayer shall submit its pre-meeting request in written form and the dispute over the course of implementation of the DTA shall be clarified in the request;
4. Pre-meeting shall be established in 10 days upon the receipt of the taxpayer's request;
5. Unless the term of submitting request is determined in the DTA, it shall be within 3 years since the first day that the taxpayer finds out about the circumstance that the taxation is not in accordance with the agreement or when such action is possible to result;
6. The taxpayer shall deliver any additional information and documents which are required by the competent authority within 30 days (it has not been regulated by the previous procedure);
7. In the event that the taxpayer has filed a claim related to the request to the tax dispute resolution council, the court or any other law enforcement agency, or that the claim is under review, Mutual Agreement Proceeding shall not be commenced until such claim is settled;
8. In the event that the competent authority is available to reach an agreement with the contracting state authority about the request, it shall be notified to the taxpayer in written form;
9. The taxpayer shall submit her/his acceptance or refusal in writing within 30 days upon the receipt of the notification. The competent authority shall conclude the mutual agreement procedure with the contracting state authority upon the acceptance of the taxpayer.

Aside from the changes above, general information about the procedure is provided below.

TAXPAYER or COMPETENT AUTHORITY may request in case that the taxation is not in accordance with the agreement or when such action is possible to result.

GROUND TO SUBMIT A REQUEST

1. If the contracting state has imposed additional tax on services and transactions made by taxpayer with relevant party in the country due to transfer pricing adjustment;

2. If the contracting state has imposed tax on income from it inconsistently with the DTA regarding the taxpayer as representative office; determination of a permanent establishment not in accordance with the convention;
3. If double tax has been imposed additional tax on taxable income of the representative office of the taxpayer due to an adjustment by the contracting state;
4. If the contracting state has withheld tax not in accordance with the DTA;
5. To determine residency of Taxpayer who is a resident of Mongolia but has been deemed to be a resident of the contracting state and to pay tax under the law of that country;
6. If the contracting state has imposed additional tax on incomes from services or works done by individual taxpayer not in accordance with the DTA;
7. Other cases of taxation not in accordance with the convention.

COMPETENT AUTHORITY TO RECEIVE THE REQUEST:

The taxpayer shall submit their request to the Minister of the Finance or its authorized representatives. The authorized representatives are:

1. Head of the Budget Policy Planning Department of the Ministry of Finance;
2. Head of the Income branch of the Budget Policy Planning Department of the Ministry of Finance;
3. Head of the General Department of Taxation;
4. Head of the Tax Administration and Cooperation department.

REQUIRED DOCUMENTS

- ▶ Application form requesting assistance from the competent authority of General Department of Taxation and following information should be indicated:
 - Information about Services, arrangements, or other situations related to the matter;
 - Country of residence, name, address, and taxpayer identification number of the persons related to the matter;
 - Information about the actions, decisions, documents and its process taken by the taxation office of the contracting state;
 - Types of income, and tax amount in MNT or in currency of the contracting state.
- ▶ Certified copy of the documents issued by the tax department of respondent or the contracting state, with its official translation;
- ▶ Authorization, if submitting request on behalf of the taxpayer;
- ▶ Transfer pricing documentation, documents related to the adjustment made by the tax department, and other relative information in case of the matter is related to transfer pricing adjustment;
- ▶ Certified copy of a request, related documents or a response from a competent authority of the contracting state with its official translation;
- ▶ Certified copy of a resolution related to the mutual agreement process issued by the competent authority of the contracting state with its official translation.

Any changes to the information above shall be informed immediately to the competent authority.

TERMS OF SUSPENSION OF THE REQUEST

1. The taxpayer is not entitled to enjoy the favorable term of the DTA and to receive the assistance provided in the request;
2. The matter in the request is not regulated by the DTA;
3. The taxpayer has previously requested to the competent authority on a same matter and did not acknowledge the decision;
4. The taxpayer refused the mutual agreement process between the competent authorities to be without presence of the taxpayer.
5. The taxpayer has not provided the additional information and documents required by the competent authority within the period specified in this procedure;
6. Term of making request is overdue.

PRE-MEETING

The taxpayer may consult with the authorized person appointed by the competent authority about the matter prior to a submission of request. He/she shall submit their written proposal in which the dispute over the course of implementation of the DTA is defined. You may consult whether the request is reasonable, whether the formalities for submitting the official request are met, and whether the documentation complies with requirements.

Note:

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