ORDER OF THE MINISTER OF FINANCE OF MONGOLIA

December 27, 2019 № 293 Ulaanbaatar city

Approval of Procedures

Based on Provision 17.3 of Article 17 of the General Taxation Law of Mongolia, it is ORDERED to:

One. Approve the "Mutual Agreement Procedure on Taxation" as per Annex.

Two. Oblige the Fiscal Policy and Planning Department (J.Ganbat) of the Ministry of Finance, and the General Department of Taxation (B.Zayabal) to ensure and oversee the implementation of this Procedure.

Three. Invalidate Order # 260 issued by the Minister of Finance in 2013 in connection with the issuance of this Order.

MINISTER CH. KHURELBAATAR

Annex to Order 293 of the Minister of Finance issued on December 27. 2019

PROCEDURE FOR MUTUAL AGREEMENT ON TAXATION

One. General provisions

1.1 The purpose of this Procedure is to ensure implementation of Article 17 of the General Taxation Law and the Mutual Agreement Procedure of the "Agreement on Avoidance of Double Taxation and Prevention of Tax Avoidance" concluded by Mongolia with foreign countries (hereinafter referred to as "Double Taxation Agreement"), and agree with the competent authority of the other country to eliminate the double taxation if tax is imposed in a manner inconsistent with a double taxation agreement or it is certain that such tax will be imposed in the future.

1.2 This Procedure shall apply to a taxpayer and a competent authority, who will make a request when tax is imposed in a manner inconsistent with a double taxation agreement or conditions are created leading to such taxation in the future.

1.3 A competent authority shall mean the Cabinet member in charge of finance and budget matters of Mongolia as well as the representative of the Competent authority which was authorized by the same Cabinet Member, under the provisions of the Double Taxation Agreement.

1.4 A taxpayer shall be as defined in Provision 6.1.20 Article 6 of the General Taxation Law.

1.5 No actions to restrict, amend or modify any relations, rights, and obligations reflected in the Double Taxation Agreement will be made.

1.6 If the mutual agreement matters are not regulated by this Procedure and do not conflict with relevant legal documents, the interpretation of the Model Tax Convention on Income and Capital issued by the United Nations and the Organization for Economic Cooperation and Development may be applied to the mutual agreement matters.

1.7 If it is considered that the mutually agreeing activities are fully or partially dependent on the measures taken by Mongolia, the competent authority shall decide to make adjustments or the competent authorities of the parties shall carry out mutual agreement activities and make the appropriate adjustments.

Two. Submitting requests to the competent authority

2.1 A taxpayer shall submit a request in writing to a competent authority in accordance with the "Mutual Agreement Procedure" based on the following grounds:

2.1.1 if the other Contracting State has imposed a double tax on transactions held between the taxpayer and its related party in that Contracting State due to transfer pricing adjustments;

2.1.2 if the taxpayer is double-taxed by the other Contracting State not in accordance with the Double Taxation Agreement by being considered that the taxpayer has a permanent establishment and earned income sourced in that Contracting State;

2.1.3 if the taxable income of a taxpayer's permanent establishment located in the other Contracting State is double taxed due to an adjustment to the taxable income made by the Contracting State;

2.1.4 if the taxpayer considers the income earned in the other Contracting State is improperly taxed in that Contracting State;

2.1.5 with a purpose to determine the country where the taxpayer is subject to taxation if the taxpayer is a resident of Mongolia, but who is also a resident of the other Contracting State by the domestic law of that State;

2.1.6 if a taxpayer-individual considers the income earned from employment or service provided in the other Contracting State is improperly taxed in that Contracting State;

2.1.7 any other disputes arising in connection with the application of the Mutual Agreement Procedure of the Double Taxation Agreement;

2.2 The initiation of a mutual agreement action shall not serve as a ground for non-payment or deferral of payment of taxes payable to Mongolia.

2.3 A taxpayer's request shall apply only to taxes imposed in a manner inconsistent with the agreement or to the conditions, which will lead to such taxation in the future and shall not include fines and penalties imposed by the tax administration.

Three. Preliminary Meeting

3.1. A taxpayer may have a preliminary meeting with a representative appointed by the Competent authority in order to seek advice on the issue before submitting his/her/its request.

3.2. The taxpayer shall deliver its proposal to conduct the preliminary meeting in an official letter including descriptions about the disputed matter raised during the implementation of the Agreement.

3.3. The representative appointed by the Competent Authority shall organize the meeting within ten (10) working days after the receipt of the proposal for the meeting specified in Provision 3.2 of this Procedure.

3.4. During the meeting, advice will be provided to the taxpayer on whether the request is reasonable, whether the conditions for the formal request are in place, and whether all relevant documents and materials are compliant with the requirements.

Four. Timing for making a request and materials to submit

4.1 Unless otherwise provided in the Double Taxation Agreement, a request shall be made within 3 years from the date of knowing that the tax was imposed in a manner inconsistent with the Double Taxation Agreement or conditions for such taxation in the future is created

4.2 A taxpayer shall submit his/her/its request to a representative appointed by the state administrative body in charge of tax matters of the Competent Authority.

4.3 The time of knowing that the tax was imposed in a manner inconsistent with a Double Taxation Agreement shall be counted from the date of receiving and reviewing the decision made by the relevant tax administration proving the occurrence of the circumstances specified in Provision 3 of this Procedure.

4.4 The taxpayer shall deliver the following documents to the competent authority when submits his/her/its request in accordance with this Procedure:

4.4.1 Request for assistance from a competent authority prepared in accordance with the Form approved by the State administrative body in charge of tax matters;

4.4.2 The request should cover the followings:

4.4.2.1 transactions, measures, or other circumstances that are relevant to the subject matter;

4.4.2.2 nationality, name, address, and applicable TIN of the persons related to the matter;

4.4.2.3 any actions, decisions, documents, and their progress made by the relevant tax authority or the tax administration of the other Contracting State in connection with the issue;

4.4.2.4 type of income and calculation of tax in MNT and relevant country's national currency;

4.4.3 certified copy of the document issued by the respective tax authority or the tax authority of the other Contracting State with respect to the request and their official translation;

4.4.4 a letter of attorney to represent the taxpayer if the request is made through a representative;

4.4.5 if the issue of the request is related to the transfer pricing adjustment, the documentation of the transfer pricing, and documents and other relevant information related to the adjustments made by the tax administrations;

4.4.6 a certified copy of the request and relevant documents submitted to the competent authority of the other Contracting State, and its response, etc., together with an official translation;

4.4.7 certified copy and official translation of a decision if the competent authority of the other Contracting State has made a decision on the issue related to this Mutual Agreement Procedure.

4.5 In case of making changes to the form and other relevant documents specified in 4.4.1 of this Procedure after the request was submitted, the taxpayer shall immediately notify the competent authority.

4.6 If the competent authority requests additional clarifications and materials, the taxpayer shall deliver them within 30 days.

Five. Refusal to accept the request

5.1 The competent authority shall refuse to accept a taxpayer's request in the following circumstances:

5.1.1. if the taxpayer is a person who is not entitled to enjoy the favorable terms of the Double Taxation Agreement or receive the assistance specified in the request;

5.1.2. if the issue is not regulated by a Double Taxation Agreement;

5.1.3. a taxpayer has previously made a request to a competent authority on a similar issue and had not accepted the decision made on that issue

5.1.4. the taxpayer has not agreed to make the decision by mutual agreement procedure of the competent authority without his/her/its participation;

5.1.5. additional clarifications and materials requested from the competent authority on the issues related to the request have not been submitted within the period specified in 4.6 of this Procedure;

5.1.6. the period specified in 4.1 of this Procedure has expired;

5.2. If the tax administration refuses to consider a request submitted by a taxpayer, it shall notify its explanation in written form to the taxpayer within 30 days.

Six. Actions to be taken by the competent authority

6.1 The accuracy of the information provided in the taxpayer's request and relevant documents and materials will be reviewed by a person appointed by the Competent Authority.

6.2 If necessary, interviewswith the taxpayer can be organized.

6.3 Shall take measures to ensure confidentiality of the information obtained during the acceptance and consideration of the taxpayer's request within the framework of the double taxation agreement and relevant legislation in using and maintaining this information.

6.4 If it is recognized by reviewing the taxpayer's request that the taxation mentioned in the request is partially or wholly dependent on the measures taken from Mongolia, the request shall be resolved within 60 days by making adjustments at a reasonable amount or providing some credits and exemptions.

6.5 If a taxpayer has filed a complaint to the Dispute Resolution Council, court, or law enforcement agency on the issues related to the request, or this is being reviewed by these persons, the mutual agreement procedure shall not be initiated until the dispute is finally resolved by the Dispute Settlement Council or the court.

6.6 If it is considered that the interests of Mongolia and the tax administration have been affected, it may initiate the mutual agreement procedure with the competent authority of the other Contracting State.

6.7 The competent authority and its representative shall notify the taxpayer in case it initiates the mutual agreement procedure, and shall notify the competent authority of the other Contracting State within 30 days after receiving the last document.

6.8 The competent authority shall seek to reach an agreement with the competent authority of the other Contracting State within 24 months after the initiation of the mutual agreement procedure

Seven. Cooperation of the competent authorities

7.1. A competent authority shall solve the issues connected to the taxes imposed in a manner inconsistent with the agreement or to the conditions which will lead to such taxation in the future, or any difficulties or questionable things in application and interpretation of the Agreement with a competent authority of other Contracting State by following the mutual agreement procedure.

7.2. The competent authority shall follow the below principles when implementing mutual agreement procedure with the other Contracting State.

7.2.1. choose the most effective and efficient form of communication such as official letter, fax, e-mail, telephone, e-meeting, and face-to-face meeting;

7.2.2 promptly exchange additional information and inquiries on difficult and questionable issues;

7.2.3 consider and resolve in accordance with the agenda and the work plan;

7.2.4. notes are made and documented.

7.3 The competent authority may send its report with its position and following information based on its review of the taxpayer's request and related documents to the competent authority of the other Contracting State:

7.3.1.Taxpayer's name, address, taxpayer identification number, and type of business;

7.3.2. Related party's name, taxpayer identification number, and type of business;

7.3.3. Grounds for determining that they are related parties;

7.3.4. Contact information of the employee in charge of the issues related to the request;

7.3.5. A brief introduction of the issues related to the request, grounds for adjustment, amount of adjustment, and tax year;

7.3.6. Explanations of articles or provisions of relevant domestic legislation and the double taxation agreement, and issues and adjustments;

7.3.7. Calculation of attached information and documents used;

7.3.8. In case of transfer pricing adjustment, the comparable transaction, the party to be tested, the comparability analysis, the grounds for choosing the method of the adjustment, the amount, and explanation of the adjustment.

7.4 The competent authority shall follow Provision 7.2 of this Procedure within the framework of the Double Taxation Agreement and related legislation of Mongolia on mutual agreement procedure initiated by the competent authority of the other Contracting State.

Eight. Obligations and participation of taxpayers

8.1 A taxpayer shall not personally participate in the process of the mutual agreement other than providing information and clarifications.

8.2 Double taxation arising as a result of an adjustment or transfer pricing adjustment made in the other Contracting State shall be resolved only through submitting a request to a competent authority.

8.3 Relevant documents shall be compiled accurately and delivered to the competent authority promptly on every occasion.

Nine. Confirmation of a taxpayer before making a decision

9.1 The competent authority shall deliver a notification to the taxpayer in writing of its agreement with the competent authority of the Contracting State if it is clear that it will solve the requested issue.

9.2 If the taxpayer accepts the notification and delivers his/her/its written response within 30 days from the delivery date of the notification, the competent authority shall finalize the mutual agreement with the competent authority of the other Contracting State.

9.3 If the taxpayer does not accept the notification, his/her/its written response shall be delivered to the competent authority within thirty (30) calendar days from the delivery date of the notification.

Ten. Resolution of the mutual agreement

10.1 According to Provision 6 of this Procedure, the competent authority shall notify the State administrative body in charge of tax matters within ten (10) working days from the date of final confirmation of the decision or result of the mutual agreement.

10.2. The competent authority shall notify the state administrative body in charge of tax matters in writing within 10 working days after the final confirmation of decisions made or results produced as a result of the implementation of the mutual agreement procedure with the competent authority of the other Contracting State.

10.3 The state administrative body in charge of tax matters shall notify the taxpayer and his / her /its respective tax administration in writing within 5 working days after receiving the decision or results of the mutual agreement specified in Articles 10.1 and 10.2 of this Procedure.

10.4 If the competent authority fails to reach an agreement within the period specified in 6 and 7 of this Procedure, they may refer to arbitration in accordance with the relevant provisions of the double taxation agreement.

10.5 After receiving the decision specified in 10.3 of this Procedure, the tax authority shall make adjustments in accordance with the relevant decision and notify the competent authority if the amount of payable tax of the taxpayer has changed as a result of the request made in accordance with the mutual agreement procedure.

10.6 The competent authority shall terminate the mutual agreement process under the following conditions:

10.6.1 if the taxpayer has not responded within the period set forth in 9.2 of this Procedure;

10.6.2 if the taxpayer delivered the response specified in 9.3 of this Procedure;

10.6.3 Mutual agreement has not achieved any result;

10.7 The competent authority shall notify the taxpayer in writing on the closure of the request according to Provision 10.6 of this Procedure.

10.8 The competent authorities shall notify the results of the mutual agreement to the competent authority of other Contracting State and send an official letter confirming the closure of the mutual agreement.