



Indonesia Tax Alert May 2019

Indonesia releases revised guidance on Mutual Agreement Procedure to align with Action 14 of OECD BEPS project

The Minister of Finance of the Republic of Indonesia ("MoF") has recently issued Regulation No. 49/PMK.03/2019 concerning "*The Implementation Guidelines of Mutual Agreement Procedure*" ("PMK-49"). These guidelines are an updated version of the Mutual Agreement Procedure ("MAP") framework in Indonesia issued with a view to meet the minimum standards set out in Action 14 of the Organisation for Economic Co-operation and Development's (OECD) Base Erosion and Profit Shifting (BEPS) project on "*Making Dispute Resolution Mechanisms More Effective*" ("Action 14").¹

Effective from 26 April 2019, PMK-49 replaces the previous MAP regulation, *i.e.* MoF Regulation No. 240/PMK.03/2014 ("previous MAP regulation")², which was issued before the final BEPS reports were delivered in 2015.

The MAP framework is included in Article 25 of the OECD Model Tax Convention and has been adopted by Indonesia in its tax treaties. The MAP provision in the tax treaty requires countries to endeavour to resolve disputes related to the interpretation and application of tax treaties, by way of mutual consultation and agreement. In order to strengthen the effectiveness of the MAP process, Action 14 lays down certain measures, which are grouped as "minimum standards" and "best practices". Adoption of and compliance with these minimum standards by the members of the Inclusive Framework³ is subject to periodical peer review and monitoring process. As part of the G20 and member of the Inclusive Framework, Indonesia is committed to implement the Action 14 minimum standards and to have its compliance with the minimum standards reviewed and monitored by way of peer review.

¹ OECD (2015), *Making Dispute Resolution Mechanisms More Effective, Action 14 - 2015 Final Report*, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris. <http://dx.doi.org/10.1787/9789264241633-en>

² See Deloitte Indonesia Tax Alert, [January 2015 Edition](#)

³ The OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (BEPS) brings together over 125 countries and jurisdictions to collaborate on the implementation of the BEPS Package.

PMK-49 broadly aligns Indonesia's position with the recommendations under Action 14. PMK-49 is issued as part of the Directorate General of Taxes' ("DGT") Key Reform Agenda of 2019 and is expected to provide more certainty in MAP process, especially in terms of procedures, timeline, and follow-up actions of the MAP application.

This alert highlights the key points from the revised MAP guidelines.

Formal requirements for filing a MAP application by the Indonesian Applicant⁴

PMK-49 sets out clearer guidance on the formal requirements to be complied with while the Indonesian Applicant files an application for MAP. The newly introduced requirements / clarifications include, for instance:

- a) A deadline of 3 (three) years for submitting the MAP application if the prevailing tax treaty does not specify the deadline. The timelines refers to the date of the tax assessment letter or the date of the payment receipt, withholding income tax slip or from the occurrence of the tax treatment inconsistent with the tax treaty;⁵
- b) Prescribed format for MAP application and requirement to submit additional documentation such as a statement letter regarding the Taxpayer's willingness to provide the required information in a prescribed format⁶, certificate of domicile or other document containing the Taxpayer's identity⁷;
- c) Guidelines on the mode of submission of the MAP application, *i.e.* directly, by post with proof of delivery, using carrier companies or courier services with proof of delivery; or certain channels prescribed by the DGT.⁸

The regulation also lays down other administrative requirements in relation to the MAP applications.

Prescribed timelines for the follow-up actions and the overall MAP process

PMK-49 sets out clear timelines for the follow-up actions to be taken by the DGT and the Taxpayer in relation to the MAP application.

- a) DGT would actively review and validate the fulfillment of the requirements and congruency of the materials for the MAP application filed by the Indonesian Applicant and / or Authorized Official⁹ of treaty-partner country and issue a written statement to accept or reject the application within a maximum period of 1 (one) month from receiving the MAP request.¹⁰ Failing this prescribed time limit, the MAP application would be considered as approved for negotiation¹¹;
- b) Following the date of issuance of the written statement by the DGT, the Indonesian Applicant would be provided a maximum period of 2 (two) months to submit the information and/or evidence or explanation (in hardcopies and electronic forms) that shows the inconsistency of the tax treatment imposed by the Tax Authority of the Tax Treaty Partner Country with the provisions of Tax Treaty¹²¹³;

⁴ Indonesian Taxpayer/Indonesian citizen who applies the MAP locally

⁵ PMK-49, Article 3 (1)(c)

⁶ PMK-49, Attachment A.1, A.2, A.3.

⁷ PMK-49, Article 3 (1)(e)

⁸ PMK-49, Article 3 (4)

⁹ Officials of Indonesia or officials of Treaty Partner Country authorized to implement MAP as stipulated in the Double Taxation Avoidance Agreement as per Article 1 (6) of PMK-49 (*i.e.* Competent Authority)

¹⁰ PMK-49, Article 4 (2), (3)

¹¹ PMK-49, Article 4 (4)

¹² PMK-49, Article 3 (1) (e) (2)

¹³ PMK-49, Article 6 (1) (a) (1)

- c) In the case the requested MAP is considered to be approved for negotiation (due to the absence of written statement from the DGT on acceptance of MAP application), the Indonesian Applicant should submit all the necessary information¹⁴ within a maximum period of 2 (two) months after the prescribed time limit for issuing MAP proceeding confirmation is exceeded.¹⁵ The negotiation may be discontinued by the DGT if the Indonesian Applicant fails to submit the relevant documents within the time limit;
- d) The regulation stipulates that the MAP would be revoked by the DGT if there is no written statement from the Treaty Partner Country on the acceptance of MAP proceedings within a maximum period of 8 (eight) months from the initiation of the MAP request by DGT.¹⁶ However, the application may be re-submitted by the Indonesian Applicant¹⁷;
- e) As one of the key points, the regulation provides a time limit of 24 months for the Authorized Officials to conclude the negotiations (against 3 years under the previous MAP regulation) from the receipt/submission of the written MAP request from the Authorized Official of Tax Treaty Partner.¹⁸ Unlike the previous MAP regulation¹⁹, PMK-49 does not provide for any extension to this timeline and is explicit in saying that the MAP will result in "disagreement" if an agreement is not reached within the 24 months period²⁰;
- f) Once the negotiations have been concluded, the regulation requires DGT to issue a "decision letter" within 1 (one) month from receipt and submission of the written statement from and to the Authorized Official of Treaty Partner Country in which the Mutual Agreement is implemented.²¹

Revocation of the MAP application

Similar to the previous MAP regulation, PMK-49 includes certain provisions and prescribed process for revocation of the MAP application.²² However, the notable difference in this regulation is the provision which states that revocation of the MAP application by the Indonesian Applicant could only be done within the time limit of first 6 (six) months. The DGT will issue a written statement confirming the approval or rejection of revocation request within 10 (ten) days from receiving the revocation request.

Relationship with domestic dispute process

PMK-49 reaffirms the position that the Taxpayers could pursue MAP in parallel with the domestic dispute resolution process. However, in such cases, the regulation stipulates that the matter of which the MAP application is lodged should be included in the matter of dispute for which the domestic dispute resolution is filed.²³

PMK-49 further reiterates that, in a case where the tax court issues an appeal decision before the MAP negotiations are concluded, the MAP process will be deemed to result in a disagreement and the process will accordingly be terminated.²⁴

However, in case the Mutual Agreement is concluded before the tax court issues an appeal decision, the Taxpayer has to withdraw the appeal and upon receiving the Tax Court's written approval on the withdrawal of appeal, the DGT would issue the revised Objection Decision.²⁵

¹⁴ PMK-49, Article 3 (1) (e) (2)

¹⁵ PMK-49, Article 6 (1) (a) (2)

¹⁶ PMK-49, Article 4 (6)

¹⁷ PMK-49, Article 4 (7)

¹⁸ PMK-49, Article 5 (1)

¹⁹ PMK-240, Article 25 (6)

²⁰ PMK-49, Article 5 (5) (b)

²¹ PMK-49, Article 5 (6)

²² PMK-49, Article 8

²³ PMK-49, Article 2 (7)

²⁴ PMK-49, Article 5 (5) (c)

²⁵ PMK-49, Article 9 (6); consistent with Tax Court Law, Law No. 14 of 2012, Article 39 (2)

Result of the negotiation: agreement or disagreement

The Mutual Agreement would outline the result of negotiation specifying whether it resulted in an *agreement* or a *disagreement*.²⁶ Other than the case as discussed above where the tax court issues an appeal decision before the negotiations are concluded and the obvious situation where the negotiation may not result in an agreement between the two tax authorities who are party to the MAP, the following situations may also result in a disagreement:²⁷

- a) negotiation fails to reach an agreement within the time limit of 24 months;
- b) the determination due date as stipulated in KUP Law for tax year/period covered in MAP application is exceeded, and the negotiation has not resulted in an agreement; or
- c) domestic Taxpayer participates in a tax amnesty program for the tax year/period covered in the request for MAP implementation.

Effective date and applicability to the on-going MAP process

PMK-49 comes into effect from the date of issuance, *i.e.* 26 April 2019 and revokes the previous MAP regulation. Thus, all on-going MAP cases would henceforth be followed up under PMK-49.²⁸

Web portal to provide Advance Pricing Agreement (APA) / MAP related statistics

Although not discussed in PMK-49, the DGT, in line with the measures suggested under Action 14, has launched a [web portal](#) to provide a clear and comprehensive guidance regarding APA and MAP framework in Indonesia. This web portal provides additional and more practical guidance on the application, process, and status of the APA and MAP in Indonesia. This web portal is also intended to be the official website where the APA and MAP statistics would be published on a regular basis.

Our comments

The revised guidance through PMK-49 demonstrates the DGT's effort to align the Indonesian MAP framework with Action 14 recommendations and other international best practices. The regulation indeed provides more clarity, transparency and time-bound framework to ensure that the double taxation related disputes are resolved effectively.

As an overarching comment, the improvised and strengthened MAP framework does provide for an effective dispute resolution alternative to multinational groups in addition to the domestic appeal process, which deserves deeper evaluation when taxpayers frame their dispute resolution strategies.

²⁶ PMK-49, Article 5 (4)

²⁷ PMK-49, Article 5 (5)

²⁸ PMK-49, Article 10

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