

# **TaxFlash**



## ***New regulation on Mutual Agreement Procedure***

The Government has issued Ministry of Finance Regulation No.240/PMK.03/2014 (PMK-240) regarding the implementation of the Mutual Agreement Procedure (MAP) as mandated under Article 59 of Government Regulation No.74 year 2011 (GR-74).

PMK-240 is effective from 22 December 2014 and applicable for all outstanding and future MAP implementation under tax treaties that are effective prior to, on, or after this date. PMK-240 does not appear to revoke the previous regulation on MAP implementation, i.e. Director General of Tax (DGT) Regulation No.PER-48/PJ/2010 (PER-48), however the content reflects a refinement and changes to the guidelines stipulated in PER-48 for a MAP facility governed under tax treaties. Please refer to our [Tax Flash No. 12/2010](#) for further discussion on PER-48.

### **A. Who can apply for MAP and what is the time frame?**

PMK-240 clarifies that a MAP application can be submitted within the time limit as specified in the relevant tax treaty by:

- a taxpayer through the DGT;
- the DGT; or
- the tax authority of the treaty country or jurisdiction.

For a MAP application initiated by the Indonesian taxpayer, the time limit to lodge an application is the first notification of any action which triggers a tax assessment not in accordance with the relevant tax treaty. As for the application made by the DGT or a tax authority of the treaty country or jurisdiction, PMK-240 states that the starting points for counting the time limit for a MAP application which is stipulated under tax treaties, can be:

- the date of the tax assessment letters;
- the date of the withholding tax slips; or
- other times as stipulated by the DGT.

Previously, GR- 74 changed the provisions in PER-48 and allowed the filing of a MAP application concurrently with a taxpayer's objection and appeal process. PMK-240 confirms this position.

PMK-240 does however place a restriction on the application for MAP. PMK-240 states that an application for MAP cannot be lodged when the Tax Court has declared an end to the court hearing process (i.e. when the Tax Court determines it has sufficient information to make a judgment) regardless of the outcome of the Tax Appeal. It should be noted that existing MAP will cease when the Tax Court announces its decision.

Furthermore, consultation with the treaty partner's tax authority should ideally be concluded within three years of initiating MAP (i.e. from the date where the initial consultation is conducted). If required however, an extension should be agreed by the two competent tax authorities once the three-year consultation period has passed.

Given that the MAP timeline can extend beyond that of the domestic appeals processes, taxpayers are encouraged to assess their options (domestic dispute resolution process and/or MAP) as early as possible, to avoid dispute resolution options being curtailed due to time restrictions.

Despite a taxpayer's ability to enter into various dispute resolution processes, PMK-240 confirms that a MAP application does not delay the taxpayer's obligation to settle any tax payable stated in the Tax Assessment Letter or Tax Objection Decision Letter, or the execution of tax collection. As such, taxpayers will be required to settle the tax assessment in Indonesia to avoid potential penalties.

## **B. Procedural and quality changes**

PMK-240 also provides some procedural changes in relation to the application of MAP and the implementation by the DGT

With regard to applications made by taxpayers, changes include:

- The application must now be submitted directly to the Directorate of Regulation II (the Director II) at the DGT Head Office, instead of through the local tax office as in PER-48.
- The taxpayer must submit the Certificate of Domicile of the relevant foreign taxpayer from the treaty country or jurisdiction.

There are more detailed guidelines in PMK-240 than in the previous regulation in relation to the MAP processing team's scope of work (e.g. holding discussions with the relevant taxpayer and conducting exchange of information with the treaty country or jurisdiction). PMK-240 also provides more transparency on the MAP process by requiring the Director II to send several written notifications to inform the Indonesian taxpayer of the MAP case's progress and status.

From an internal quality perspective, PMK-240 now requires the DGT to form a quality assurance team to assist it in reviewing the draft position papers proposed by the Director II. Detailed provisions on the formation of the MAP processing team and quality assurance team, as well as the drafting of the position papers, will be stipulated further in a separate DGT Regulation.

## **C. MAP and Advanced Pricing Agreements (APA)**

PMK-240 specifically allows for the DGT or the tax authority of the treaty country or jurisdiction to initiate a MAP as a follow-up to a Bilateral APA request.

On 12 January 2015, the Ministry of Finance also issued regulation No.7/PMK.03/2015 regarding the formation and implementation of APA. A further Tax Flash will be issued on this shortly.

## D. Key Takeaways

MAP is an available administrative avenue to resolve any issues arising from the implementation of a tax treaty. Given that a MAP can be initiated concurrently with domestic dispute resolution processes, taxpayers should actively assess the benefits of applying for a MAP to resolve disputes. The changes in the MAP process provided by PMK-240 further highlight the need for taxpayers to consider it as a dispute resolution tool.

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