



Mutual Agreement Procedure ^{P1}

Mutual Agreement Procedure

The Minister of Finance (MoF) has issued Regulation No.49/PMK.03/2019 (PMK-49) concerning Mutual Agreement Procedure (MAP). PMK-49 is applicable from 26 April 2019 and revokes MoF Regulation No.240/PMK.03/2014 (PMK-240).

In the spirit of adopting the minimum standards included in Action 14 of OECD/G20 BEPS Project to make dispute resolution mechanisms more effective, PMK-49 seeks to provide additional legal certainty on the procedure, timeline, and follow-up actions of MAP. Therefore, several internal exercises are now taken out to simplify the MAP process, such as the preparation of position paper on Indonesia's negotiation points and subsequent review by an internal quality assurance team.

MAP request

Similar to PMK-240, the following parties are eligible to request MAP. Changes to PMK-240 are marked in red.

1. Indonesian taxpayers (*Wajib Pajak Dalam Negeri*);
2. Indonesian citizens with dual residency (*Warga Negara Indonesia*);
3. The Indonesian Director General of Tax (DGT); or
4. Tax Authority of a treaty partner via their Competent Authority (CA).

MAP request	Indonesian taxpayer	Indonesian citizen with dual residency	CA of treaty partner	DGT
Addressee	Head of Tax Service Office where taxpayer is registered	Director of International Tax under the DGT		
Submission deadline	As regulated in the tax treaty or, if not stipulated in the tax treaty, no later than three years from the date of: <ol style="list-style-type: none"> 1. tax assessment letter; 2. proof of payment or income tax withholding/collection; or 3. when there is an incorrect tax treaty application. 		As regulated in the relevant tax treaty	
Attachments	<ol style="list-style-type: none"> 1. Certificate of Domicile or other proof of residency of the treaty partner resident related to the incorrect tax treaty application; 2. list of supporting documents indicating the incorrect tax treaty application or discriminate treatment by treaty partner; 3. statement letter of the applicant on their willingness to provide the supporting documents in a complete and punctual manner. <p><i>Note: a complete set of supporting documents is not required to be submitted at this stage.</i></p>			

Disputes requested for a MAP should be covered in the domestic tax remedy process (i.e. tax objection, tax appeal, or reduction or cancellation of incorrect tax assessment letter).

Process to assess the MAP request

MAP request by Indonesian taxpayers and Indonesian citizens with dual residency

The DGT should examine the submitted MAP request and issue the following notifications within one month of receiving the complete MAP request:

1. If the MAP request is approved:
 - a. a notification to the applicant stating that the MAP request will be acted upon; and
 - b. a MAP request to the CA of a treaty partner.
2. If the MAP request is rejected:
 - a. a rejection letter to the applicant stating the basis for the rejection.

The MAP request is deemed as approved to be acted upon if the DGT fails to issue the above notifications within one month.

However if there is no written response from the CA of a treaty partner within eight months of sending a MAP request, the DGT will notify:

1. the applicant stating that the MAP request cannot be acted upon; and
2. the CA of the treaty partner stating that the MAP request is cancelled.

If the MAP request is rejected or not responded to by the CA of a treaty partner, the applicant may reapply for MAP as long as the submission deadline has not passed. To avoid such delays, it will be important for Indonesian taxpayers to work with their related parties in treaty partner countries to ensure a prompt response from the treaty partner.

Once the MAP request is approved to be acted upon, Indonesian taxpayers and Indonesian citizens with dual residency must submit all the supporting documents that have been listed in the MAP request within two months of the date of approval notification or since the one-month deadline for the DGT to respond to the MAP request has passed. Failure to meet this two-month deadline will lead the DGT to stop the MAP negotiation process, which all relevant parties will be given notice of in writing.

MAP request by CA of a treaty partner

The DGT should examine the submitted MAP request and issue the following within one month of receiving the complete MAP request:

1. If the MAP request is approved:
 - a. a notification to the CA of a treaty partner stating that the MAP request will be acted upon; and
 - b. a notification to the related Indonesian taxpayer.
2. If the MAP request is rejected:
 - a. a rejection letter to the applicant stating the basis for the rejection.

The MAP request is deemed as approved to be acted upon if the DGT fails to issue the notifications within one month.

MAP request by the DGT

The DGT will issue a written MAP request to the CA of a treaty partner and a written notification to related Indonesian taxpayer if the DGT serves as the applicant of the MAP request.

If there is no written response from the CA of a treaty partner within eight months of sending the MAP request, the DGT will notify:

1. the applicant stating that the MAP request cannot be acted upon; and
2. the CA of the treaty partner stating that the MAP request is cancelled.

Of particular note, PMK-49 provides for the DGT to enter into MAP as a follow-up to an Advance Pricing Agreement (APA) that has also been submitted by an Indonesian taxpayer. As such, while this does not specifically allow for the 'roll-back' of an APA, it arguable shows the DGT's intention to seek resolution for past years tax disputes.

MAP negotiation

MAP negotiation between the DGT and CA of a treaty partner should run for a maximum of 24 months from:

1. receiving the MAP request from the CA of a treaty partner; or
2. submitting the MAP request to the CA of a treaty partner, either initiated by an Indonesian taxpayer, an Indonesian citizen with dual residency, or by the DGT itself.

This negotiation period is shorter than the previously stated three years. PMK-49 does not specifically provide for any extension of the deadline.

The DGT has the authorisation to:

1. request additional information, evidence, and/or explanation from the following parties which will be followed up in a discussion with:
 - a. Indonesian taxpayer or Indonesian citizen with dual residency as the applicant;
 - b. a related Indonesian taxpayer if the applicant is the DGT or CA of a treaty partner; and/or
 - c. other relevant parties;
2. visit the business location of an Indonesian taxpayer or Indonesian citizen with dual residency as the applicant, or related Indonesian taxpayer if the applicant is the DGT or CA of a treaty partner;
3. perform tax information exchange with the CA of a treaty partner; and/or
4. perform tax audit for MAP purposes.

On the other hand, the CA of a treaty partner may only request for information, evidence, and/or explanation through:

1. exchange of information requested to the DGT; and/or
2. direct request to the DGT delegations during negotiation.

The DGT can stop the MAP negotiation process if the above protocol is breached, which all relevant parties will be given notice of in writing.

MAP withdrawal

Similar to the provisions in PMK-240, DGT and the CA of a treaty partner can withdraw their MAP requests any time prior to the Mutual Agreement being reached.

Particularly for Indonesian taxpayers and Indonesian citizens with dual residency that initiate the MAP request, withdrawal should be submitted to the DGT within six months of the start of the negotiation. The DGT will examine the withdrawal request and issue the associated notifications within 10 working days upon receiving the withdrawal request.

The DGT will discontinue the MAP negotiation process if the withdrawal request from the applicant is approved, followed by issuing written notifications to all relevant parties.

MAP result

MAP negotiation can result in:

1. Agreement; or
2. Disagreement, in the case that:
 - a. the Mutual Agreement is concluded with a disagreement;
 - b. the negotiation has not reached an agreement up to the end of negotiation period;
 - c. the negotiation has not reached an agreement when the decision on related tax appeal is announced;
 - d. the negotiation has not reached an agreement when the matter in dispute reaches its statute of limitation; or
 - e. the Indonesian taxpayer has participated in a Tax Amnesty programme for the tax period requested for MAP.

The DGT should issue a Decision Letter within one month of the completion on the exchange of written notifications with the CA of a treaty partner, where the MAP result can be implemented by both parties.

Follow-up actions on MAP result

PMK-49 sets additional conditions that require the related Indonesian taxpayer or the DGT to take the following actions subsequent to the MAP result:

1. If Mutual Agreement is reached prior to the issue of Tax Assessment Letter:
 - The related Indonesian taxpayer to submit a Tax Return amendment or voluntary disclosure on Tax Return incorrectness within three months of the issue of the DGT's Decision Letter on the MAP result or by considering the statute of limitation deadline; or
 - If the Indonesian taxpayer fails to do so, the DGT will issue Tax Assessment Letter that takes into account the MAP result.
2. If Mutual Agreement is reached prior to the issue of Decision on Reduction or Cancellation of Incorrect Tax Assessment Letter:
 - The DGT is to issue Decision on Reduction or Cancellation of Incorrect Tax Assessment Letter that takes into account the MAP result.
3. If Mutual Agreement is reached after to the issue of Decision on Reduction or Cancellation of Incorrect Tax Assessment Letter:
 - The DGT is to amend this Decision on an ex-officio basis to take into account the MAP result.

Other provisions

MAP requests based on PMK-240 that are still ongoing and on which no DGT decision has yet been issued on the MAP will now be processed based on PMK-49. For those Indonesian taxpayers in this situation, it is recommended that they engage with the DGT to gain clarity on what, if anything, will material change or be delayed.

Several administrative provisions in PMK-49 will be regulated in a later DGT regulation.

Conclusion

With the introduction of PMK-49 and as a continuation of the DGT's implementation of MAP cases via PMK-240, MAP should continue to be assessed by Indonesian taxpayers as an alternative to resolving relevant tax disputes.

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