

Update on Mutual Agreement Procedure implementation <sup>P1</sup>

## Update on Mutual Agreement Procedure implementation

The Director General of Taxation (DGT) has issued Regulation No.PER-16/PJ/2020 (PER-16) to provide further guidance in relation to the renewal of a Mutual Agreement Procedure (MAP) implementation request.

Previously, the general procedures of MAP (such as MAP request, MAP negotiation, MAP withdrawal, etc.) were stipulated in Minister of Finance Regulation No.49/PMK.03/2019 (PMK-49). Please refer to our [TaxFlash No. 08/2019](#) for the discussion on PMK-49.

PER-16 is effective from 11 August 2020 and adds to PMK-49. The key highlights stipulated in PER-16 are as follows:

### MAP renewal/time extension

PER-16 stipulates that MAP request for which a MAP discussion has been held but has not resulted in a Mutual Agreement within a two year timeline (as per PMK-49), a renewal of request for MAP implementation may be submitted to the DGT through the Director of International Tax.

The renewal of MAP implementation request (which essentially is a time extension request) can be conducted as long as it fulfils the following requirements:

- a. The MAP process has reached an initial agreement set out in the minutes of meeting, which regards to:
  - 1) For MAP process related to a correction on transfer pricing, or bilateral advance pricing agreement:
    - a) existence of the transaction;
    - b) selection of analysis for the transaction;
    - c) selection of the tested party;
    - d) selection of transfer pricing method; and
    - e) selection of profit level indicator, if the agreed transfer pricing method is Transactional Net Margin Method (TNMM); and/or
  - 2) For other MAP process – the interpretation of Tax Treaty provisions;

- b. The renewal of MAP implementation request is submitted in writing by the Competent Authority (CA) of the Tax Treaty Partner;
- c. The renewal of MAP implementation to be submitted after reaching the initial agreement as per point (a) and to be submitted at the latest six months prior to the end of MAP negotiation period; and
- d. maximum one filing for every MAP request.

After examining the MAP renewal request, the DGT will issue a written notification to the CA of the treaty partner and to the relevant Indonesian taxpayer whether or not the MAP renewal request is approved. If approved, MAP negotiation period can be extended for a maximum of 24 months from the submission of the MAP renewal request.

### **Transitional and other provisions**

PER-16 reiterates that MAP implementation request can be filed by the DGT upon recommendation from the Indonesian taxpayer in the case of a transfer pricing correction applied by the DGT. This gives more flexibility in resolving a double taxation issue rather than just relying on the resident taxpayer of the tax treaty partner and the tax treaty partner in initiating the MAP request.

PER-16 also clarifies that in the event that the MAP negotiation has exceeded the prescribed timeline (i.e. 24 months) and the MAP negotiation has not resulted in a Mutual Agreement, the DGT will issue a written notification regarding the termination of the MAP negotiation process to the CA of the treaty partner and to the relevant Indonesian taxpayer.

MAP implementation requests submitted prior to the enactment of PMK-49 (i.e. 26 April 2019) can also be renewed if the above requirements are met and the renewal request is submitted until 25 April 2021. Hence, for MAP requests that are about to expire but have not been discussed to date, the Indonesian taxpayer and the corresponding counter party in the tax treaty partner's jurisdiction, are encouraged to proactively follow up with their respective tax authorities to assess compliance with PER-16 prior to lapse of the 24-month term or 25 April 2021, whichever is earlier. Nevertheless, we understand that the DGT is committed in doing its own follow up of the discussions for ongoing MAP requests.

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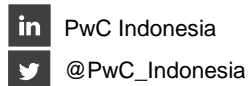
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