

# New Mutual Agreement Procedure Guidance



## Summary

The Ministry of Finance has released Regulation Number 49/PMK.03/2019 (“PMK 49”) regarding Guidelines for the Implementation of Mutual Agreement Procedures (“MAP”). PMK 49 has been released by the Ministry of Finance to implement the minimum standards contained in Action 14 of the Organisation for Economic Co-operation and Development’s (“OECD”) Base Erosion and Profit Shifting Package in Indonesia.

Prior to the issuance of PMK 49, the implementation of MAP in Indonesia was regulated under the Minister of Finance Regulation Number 240/PMK.03/2014 (“PMK 240”), which was revoked by PMK 49.

While there remains a large degree of consistency for taxpayers between PMK 240 and PMK 49, there are some key issues to be noted in the new regulation. These include:

► **There are specific timelines for the MAP process contained in the regulation**

PMK 49 provides specific timelines for a taxpayer, the Directorate General of Taxation (DGT) and the authorized official of the DTAA<sup>1</sup> partner (overseas Competent Authority – “CA”) to follow during various stages of the MAP process. For example, PMK 49 states that the DGT will conduct negotiations with the overseas CA within a time limit of 24 months of the date of the initiation of the MAP process.

► **PMK 49 describes the conditions that may bring about disagreement between the DGT and the overseas CA**

The conditions stated in PMK 49 that can bring disagreement between the DGT and the treaty partner during the MAP process and result in a mutual agreement which contains disagreement, include:

- a. Negotiation resulting in disagreement;
- b. Agreement not being reached prior to the DGT’s 24-month time limit for negotiation;
- c. A Tax Court decision being declared before agreement is reached in negotiations;
- d. The statute of limitations expiring and negotiations not reaching agreement;
- e. Taxpayer enrolling in tax amnesty program for fiscal year, part of fiscal year, or fiscal period referred in the request of MAP implementation.

► **The information flows with regards to information gathering during the MAP process have changed**

PMK 49 provides specific guidance for how information should be requested during the MAP process by both the DGT as well as the overseas CA. There appears to be some asymmetry with regards to the information gathering process as all requests for Indonesian information by the overseas CA should now go to the DGT while the regulation leaves open the ability to the DGT to gather information from all relevant parties.

PMK 49 states that the DGT may cancel a MAP process where the stated information gathering processes are not followed.

► **Revocation of MAP requests**

PMK 49 also regulates the revocation of request for MAP. Of note to Taxpayers is the ability of the DGT to reject a request for revocation in certain circumstances.

The date of effect for PMK 49 is 26 April 2019. All MAP submissions that were already in progress will be followed up by the DGT under this new regulation rather than the existing provisions of PMK 240. It is not entirely clear, at this stage, how the DGT will apply the time limits contained in PMK 49 to these on-going MAP cases.

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<sup>1</sup> Double Taxation Avoidance Agreement

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