

Implementing regulation for the mutual agreement procedure (MAP)



Executive Summary

Indonesia's Director General of Tax (DGT) has released regulation number PER-16/PJ/2020 (PER-16), *The Administration of Mutual Agreement Procedure Implementation Requests and the Settlement of Mutual Agreement*. PER-16 is the implementing regulation of the Ministry of Finance regulation on the mutual agreement procedure (MAP) released in 2019, regulation number 49/PMK.03/2019 (PMK-49). The enactment date of PMK-16 is 11 August 2020.

This tax alert summarises the key aspects of PER-16.



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Detailed discussion

Request for MAP implementation relating to corrections made by the DGT

PER-16 allows taxpayers to file a request for MAP implementation to the DGT where the taxpayer believes that there is tax treatment from the Directorate General of Tax that is not in accordance with the provisions in the applicable Double Taxation Avoidance Agreement (DTA). This provides further clarity from PMK-49 which largely focused on the situation where there was tax treatment by the tax authority of a DTA Partner which did not comply with provisions in the applicable DTA.

Taxpayer's should note that that when submitting their request for MAP implementation to the DGT relating to a correction made by the DGT, the taxpayer must also submit 'evidence showing the tax treatment from the DGT that is not in accordance with the provisions of the DTA'¹. There is no guidance provided in PMK-16 on what comprises 'evidence' for the purposes of this submission.

Implementing guidance on a time extension for MAP negotiations

PMK-49 introduced a 24 month time limit for the DGT to undertake MAP negotiations from the date that the written MAP request was communicated between the DGT and the other tax authority involved in the MAP negotiations. If this 24 month time limit is exceeded, the MAP negotiations will automatically result in disagreement. PER-16 allows an extension of this 24 month time limit where certain conditions have been met.

Requests for MAP submitted after the enactment of PMK-49 on 26 April 2019

An extension request for a MAP which commenced after the enactment date of PMK-49 can be made if the following requirements are met:

- a. There must be a preliminary agreement between the two tax authorities on the issues being considered in the MAP and this preliminary agreement must be documented in the relevant minutes of meeting. If the MAP relates to transfer pricing, this preliminary agreement must include preliminary agreement with regards to:
 - i. the existence of the transaction(s)
 - ii. the selection of approach to analyse the transaction(s)
 - iii. the selection of tested party
 - iv. the selection of transfer pricing method
 - v. the selection of profit level indicator, if the agreed transfer pricing method is Transactional Net Margin Method
- b. The extension request must be submitted to the DGT by other tax authority involved in the MAP negotiations
- c. The extension request must be submitted: (i) after there is a preliminary agreement documented in the relevant minutes of meeting; and (ii) at least 6 months prior to the end of the 24 month time period for MAP negotiations as outlined in PMK-49
- d. The extension request must only be submitted once

The decision on whether an extension request will be approved by the DGT will be made by a review committee within the DGT. If the extension request is approved, the DGT will extend MAP negotiations for 24 months from the date that the MAP extension request was submitted.

¹ PER-16, Article 3(1)(e)

Requests for MAP submitted prior to the enactment of PMK-49 on 26 April 2019

Recognising the challenges presented by ongoing MAP cases, PMK-16 allows a loosening of the above requirements for a MAP extension request where the MAP was submitted prior to the enactment of PMK-49. In this situation, an extension request can be submitted if the following requirements are met:

- a. items (a), (c) and (d), as outlined above are met,
- b. The extension request must be submitted after a preliminary agreement occurs and is documented in the relevant minutes of meeting. The preliminary agreement must be made and documented in the relevant minutes of meeting prior to 25 April 2021.

The steps for the DGT to process an extension request will be the same as that explained above for extension requests for MAPs submitted after the enactment of PMK-49.



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