

Mutual Agreement Procedure Is Affirmed

The government makes a revision to the provision related to the stages of Mutual Agreement Procedure (MAP) practice by issuing Minister of Finance (MoF) Regulation Number 49/PMK.03/2019. Such rule replaces the previous regulation, which is stated in MoF Regulation Number 240/PMK.03/2014 on steps of mutual agreement procedure performance.

MAP is a measure to settle any dispute arising in terms of the implementation of Double Tax Avoidance Agreement (DTAA) or frequently referred to as tax treaty. As we know that the tax treaty is closely linked to the activity of Resident Taxpayers who are abroad or in contracting state.

The change is made in order to re-adjust the existing MAP mechanism with the minimum standard stipulated in action plan of Base Erosion Profit Shifting (BEPS) Number 14, which was issued by Organization for Economic Co-operation and Development (OECD) and G20. In addition, the prevailing MAP system is considered not providing legal certainty, especially in terms of procedures, period, and follow-up of mutual agreement practice.

The following are several differences between the previous MAP provision and the new one. Firstly, it is about the party who may make a request for MAP implementation. The government adds the terminology of Indonesian citizen as the party who is allowed to submit MAP request so, the parties that can put in application are as follows:

1. Taxpayers;
2. Indonesian Citizens via Director General of Taxes (DGT);
3. DGT; and
4. Authority of Treaty Country.

Meanwhile, Indonesians as referred to in this regulation are Indonesian residents who become Resident Taxpayers of Treaty Country. Formerly, it was not stated yet.

In the update of the guideline, the government also changes the base of MAP application in detail. The differences can be seen in the table below:

MoF Regulation 49 Year 2019	MoF Regulation 240 Year 2014
MAP can be submitted upon: a. Double tax imposition by contracting state that is caused by: <ul style="list-style-type: none">• Correction to transfer pricing• Correction in terms of the existence of profit of Permanent Establishment (PE)• Correction to other income tax objects b. Tax imposition of contracting state, which is not in accordance with the provision of Tax Treaty c. Status stipulation as Resident Taxpayer made by contracting states; d. Discrimination on tax treatment made by contracting state e. Interpretation of Tax Treaty provision	MAP can be submitted upon: a. Double tax imposition by contracting state caused by transfer pricing practice b. Action of contracting state's tax authority causing tax imposition not in line with Tax Treaty, regarding the revenue of PE in contracting state, which is owned by Resident Taxpayer of Indonesia c. Dual residence matter d. Tax imposition on income of Indonesia's Resident Taxpayer in contracting state not in accordance with Tax Treaty.

Affirmation of Period

One of shifts that is most obvious from the new MAP regulation is the affirmation of the period limiting each process in MAP application. First, the regulated deadline is connected to the expiry of request submission. The maximum limit for such submission is three years since the issuance of tax assessment notice, the date of payment slip, the income tax withholding or collection, and since the tax treatment that is considered inappropriate is performed. If it has passed the deadline, such request will not be accepted.

On the other hand, the process of MAP application is adjusted to the party submitting it. For instance, if MAP is applied by Taxpayer and treaty country to DGT, they should attach a number of required documents.

Several requirements above are among others certificate of domicile, evidence showing the tax treaty violation of contracting state, and statement letter showing the willingness to convey complete information.

MAP application can be directly filed, via postal service, expedition service, or certain channel determined by DGT. The application is filed pursuant to the determined format in the appendix of this policy.

Upon such request, DGT will conduct review to determine whether it can be followed up or not. The notification of review result will be given to the Taxpayer or treaty country of MAP applicant within one month at the latest since the application is received.

Even though the request is rejected, the Taxpayer applying such request or contracting state can file again, as long as it has not exceeded the expiration date.

However, if the application is accepted, DGT will follow it up by conducting discussion with the authorized officials of treaty country. The negotiation is conducted within 24 months or two years at the latest since the request is received.

The discussion stage can be performed, through direct negotiation, telephone connection, video conference, or other channel, by the delegation formed by DGT. The result of this discussion will be the mutual agreement containing whether both parties agree or not on the material of filed request.

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