

## Indonesia issues new guidance on Mutual Agreement Procedure

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### Executive summary

Indonesia's Ministry of Finance (MOF) has released Regulation Number 49/PMK.03/2019 (PMK-49), providing guidelines for the implementation of the Mutual Agreement Procedure (MAP). PMK-49 is to implement in Indonesia the minimum standards contained in Action 14 of the OECD's<sup>1</sup> BEPS<sup>2</sup> Project. PMK-49 became effective as of 26 April 2019 and provides specific procedures and timelines for the MAP application.

PMK-49 revokes the MOF Regulation Number 240/PMK.03/2014 (PMK-240). While PMK-49 is generally consistent with PMK-240, PMK-49 includes changes as discussed below.

This Alert summarizes key aspects of PMK-49.

### Detailed discussion

#### Specific timelines for the MAP

PMK 49 provides that a taxpayer, the Directorate General of Taxation (DGT) and a treaty partner's competent authority (CA) must follow the specific timelines during the MAP. PMK-49 states that the DGT will conduct negotiations with the CA within 24 months of the initial date of the MAP request.

### Disagreement conditions

The following conditions may result in a MAP disagreement:

- ▶ Negotiation resulting in disagreement
- ▶ Agreement not being reached prior to the DGT's 24-month time limit for the negotiation
- ▶ A tax court decision made before the agreement is reached in negotiations
- ▶ The statute of limitations expiring and negotiations not reaching the agreement
- ▶ Taxpayer enrolling in a tax amnesty program for a period referred to in the MAP request

### Information gathering during the MAP

Under PMK-49, an information request by a foreign CA should be made directly to the DGT, however PMK-49 leaves open the ability for the DGT to gather information from all relevant parties.

PMK-49 grants the DGT the right to cancel a MAP process when the information gathering processes are not followed.

### Revocation of MAP requests

PMK-49 also includes procedure for a taxpayer to request a revocation of the MAP request. The DGT may reject a revocation request in certain circumstances.

### Transition period

All MAP submissions that are already in progress will be followed up by the DGT under PMK-49. It is not entirely clear, however, how the DGT will apply the time limits contained in PMK 49 to these on-going MAP cases.

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## Endnotes

1. Organisation for Economic Co-operation and Development.
2. Base Erosion and Profit Shifting.

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