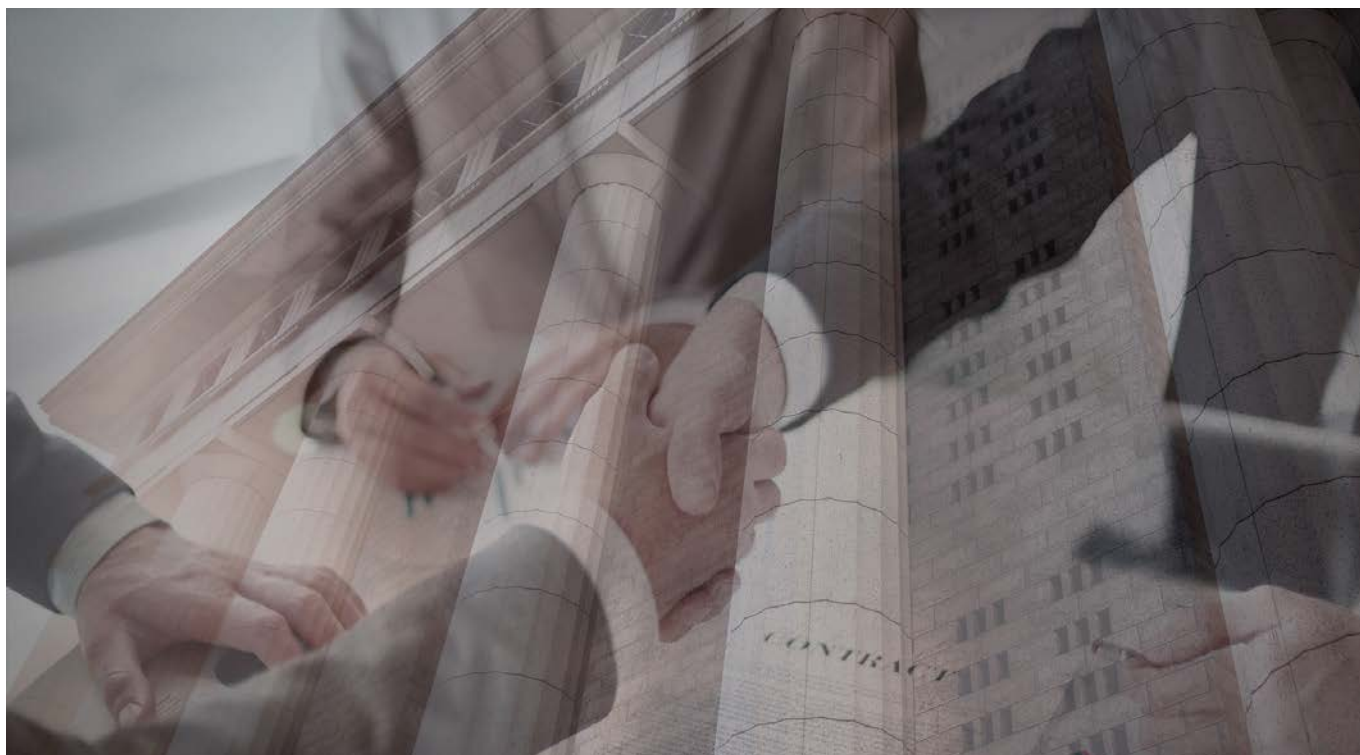


TOWARDS CERTAINTY IN TAX DISPUTE RESOLUTION



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DDTC is a research and knowledge based taxation institution and a center of a number of taxation activities units with high standards that serve as main references in the field of taxation.

Our firm consists of consultation services (DDTC Consulting), a center for review and research (DDTC Fiscal Research), taxation journals (DDTC Working Paper), a training center (DDTC Academy), a provider of tax law documents (DDTC Tax Engine), a library (DDTC Library), and taxation news portal (DDTC News).

ABOUT DDTC Newsletter

Published every two weeks, DDTC Newsletter provides a summary of key tax law changes, both the current modifications and changes in taxation regulations, particularly those pertaining to domestic policies.

Contents

- **New Procedures to Request MAP Implementation**
- **The Government Appoints 14 New Tax Court Judges**
- **List of Tax Withholders Obligated to Use *E-Bupot***

TOWARDS CERTAINTY IN TAX DISPUTE RESOLUTION

New Procedures to Request MAP Implementation

The Ministry of Finance has issued a new regulation on Mutual Agreement Procedure (MAP). This new regulation is contained in the [MoF Regulation \(PMK\) No.49/PMK.03/2019](#) concerning the Implementation Guidelines of Mutual Agreement Procedure. Promulgated and effective as of 26 April 2019, this regulation revokes the previous regulation, namely PMK No.240/PMK/03/2014.

The reason underlying the issuance of this new regulation is that Indonesia, being a G20 member state, needs to adjust to international developments in the field of taxation. Such adjustments pertain to the implementation of the Base Erosion and Profit Shifting (BEPS) project action plan 14 minimum standards in light of more effective prevention and resolution of international tax disputes.

The provisions in PMK No.240/PMK/03/2014 are not fully aligned with the minimum standards of the BEPS project action plan 14. The previous regulation has not been able to provide legal certainty, specifically in terms of procedures, time period, and follow-up on the request for MAP implementation.

Below are some important points in the latest MAP regulation:

1. Requests for MAP Implementation

There is no change regarding the party that may submit a request for MAP implementation. However, in the new regulation, the authority places emphasis on domestic taxpayers. Domestic taxpayers may submit such request to the Director General of Taxes as the Indonesian authorized official.

The application can be submitted in the event of any taxation treatment by the partner tax authority in a Tax Treaty (*Perjanjian Penghindaran Pajak Berganda*/ tax treaty) that is not in accordance with the tax treaty provisions. In addition, the other party who may submit the application is an Indonesian citizen through the Director General of Taxes and tax authorities of the treaty partner.

2. Requirements for the Request for MAP Implementation

In the new regulation, the authority details several requirements that allow several parties to submit requests for MAP implementation. The regulation sets forth different requirements for each party.

Domestic taxpayers can submit requests for MAP to

the Director General of Taxation in the event of any tax treatment by the tax authority of the tax treaty partner that is not in accordance with the provisions of the tax treaty. PMK 49/2019 specifies the forms of tax treatment that are not in accordance with the provisions of the tax treaty, namely:

- the imposition of taxes by the tax authority of the tax treaty partner resulting in the double taxation caused by transfer pricing adjustments (primary adjustments), adjustments related to the existence and/or profit of permanent establishments, and/or correction of other income tax objects.
- the imposition of taxes including the deduction or collection of income tax on tax treaty partner that is not in accordance with the provisions stipulated in the tax treaty.
- the determination of status as a resident by the tax authority of the tax treaty partner.
- tax treatment discrimination by the tax treaty partner.
- interpretation of tax treaty provisions.

The request for MAP implementation submitted by an Indonesian citizen through the Directorate General of Taxes is based on all forms of discriminatory treatment in tax treaty partner that are contrary to the non-discriminative rules stipulated in the tax treaty.

The request for MAP implementation by the Director General of Taxes can be submitted for several important aspects, namely:

- avoiding double taxation as a result of transfer pricing adjustments made by the Director General of Taxes by proposing an adjustment in the amount of taxable income (corresponding adjustment) of the tax treaty partner domestic taxpayer.
- following up on the request for Advance Pricing Agreement/APA submitted by a domestic taxpayer including the application for the tax year prior to the advance pricing agreement period. This is in accordance with the legislative provisions concerning the procedures for the establishment and implementation of Advance Pricing Agreement (APA).
- interpreting the provisions in the tax treaty.

Requests submitted by the Director General of Taxes and the tax authority of the tax treaty partner can be carried out parallel with the domestic taxpayer's request to submit several efforts, namely:

- objection (article 25 of the General Provisions and Tax Procedures Law (*Undang-Undang Ketentuan Umum dan Tata Cara Perpajakan*/UU KUP)).
- appeal request (Article 27 of the UU KUP).

TOWARDS CERTAINTY IN TAX DISPUTE RESOLUTION

- deduction or cancellation of an incorrect notice of tax assessment (Article 36 paragraph (1) point b of the UU KUP).

Should the request for MAP implementation be submitted along with the application for the three efforts, the material submitted for the request for MAP implemented must be included in the disputes material submitted in the application.

3. Not Delaying Obligations

Similar to the previous regulation, requests for MAP implementations do not delay the obligation to pay tax payable and tax collection. This is in accordance with the legislation in the field of taxation.

4. Time Limit

Having received the results of the examination related to the completeness of MAP implementation request, the Director General of Taxes will issue a written notification to the related taxpayer concerning whether the MAP request requirement can be followed-up no later than **1 month** after the receipt of MAP implementation request.

If this time limit is exceeded, the MAP request is deemed to be entitled to a follow-up. Meanwhile, the negotiations during the MAP implementation which used to take years and result in uncertainty for the WP are now limited to **2 years**.

As the process takes place, the Director General of Taxes will also follow up on the results of negotiations by issuing a decree within a maximum period of **2 months** from the receipt or submission of written notification from or to tax treaty partner authorized officials.

5. Administrative Requirements

The administrative requirements for MAP implementation requests are as below:

- written submission in Indonesian;
- expresses discrepancies in the application of tax treaty provisions according to the applicant;
- submitted within the time limit as stipulated in the tax treaty or no later than 3 years if not regulated in the tax treaty, starting from:
 - date of the notice of tax assessment;
 - date of tax receipts, withholding, or collection; or
 - the occurrence date of the tax treatment that is not in accordance with the provisions of the tax treaty.
- signed by the applicant or his representative as referred to in Article 32 paragraph (1) of UU KUP; and
- attached with:
 - a certificate of domicile or other document

containing the identity of the tax treaty partner's domestic taxpayer associated with the request for MAP implementation;

- a list of information and/or evidence or information held by the applicant which shows that the tax treatment by the tax authority of the tax treaty partner is not in accordance with the tax treaty provisions; and
- a statement of the applicant's willingness to submit complete information in a timely manner.

6. Examination of MAP Request

Prior to entering into the follow-up in the form of negotiations on MAP implementation, an examination is performed on the request for MAP implementation. PMK 49/2019 states that such examination is carried out in two aspects, namely the completeness of the requirements for MAP implementation and the suitability of the material with the taxation treatment as the basis for submission.

The Director General of Taxes follows up on the examination results related to requests for MAP implementation submitted by the applicant. The follow-up may take the form of the issuance of a notification letter whether such request can be followed up or rejected no later than a month since the receipt of the request for MAP implementation. If the time limit is exceeded and the Director General of Taxes has not issued a written notification, the request for MAP implementation is considered entitled to a follow-up.

Specifically for direct submissions by the Director General of Taxes, the Director General of Taxes issues a written request for MAP implementation to authorized tax treaty partner officials and a written notification regarding the submission of requests for MAP implementation to the related domestic taxpayer.

If the request does not receive a written response from the tax treaty partner authority within a maximum period of 8 months after its submission, the Director General of Taxes issues a written notification that the request for MAP implementation cannot be followed up or is revoked.

The applicant may re-submit the request for a MAP implementation request that has been rejected or deemed not entitled for a follow-up provided that the time limit – as stipulated in the tax treaty or no later than 3 years if it is not set in the tax treaty – has not been exceeded.

7. MAP Negotiation Process

Negotiations are carried out through direct meetings, telephone calls, video conferences, and/or other

TOWARDS CERTAINTY IN TAX DISPUTE RESOLUTION

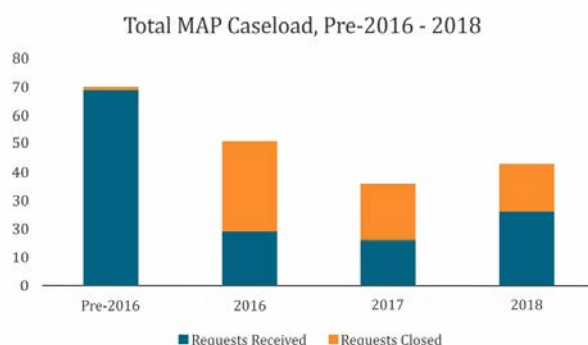
channels agreed upon by the Director General of Taxes and tax treaty partner authorized officials. In addition, the Director General of Taxes establishes a negotiating delegation.

The results of the negotiations are stated in a mutual agreement that may contain agreements or disagreements over the material submitted for the request for MAP implementation. Mutual agreements which contain disagreements may occur in a number of conditions, namely:

- the negotiations result in an agreement to produce a mutual agreement containing disagreement.
- the negotiations do not result in an agreement until the deadline.
- the negotiations are held in conjunction with the appeal process and until the appeal decision is pronounced, the negotiations have not produced an agreement.
- the time limit stipulated in UU KUP for the tax year, a fraction of the tax year, or the tax period covered by the request for MAP implementation has been exceeded and the negotiations have not resulted in an agreement.
- the domestic taxpayer participates in a tax amnesty program as stipulated in the provisions of tax legislation for the tax year, a fraction of the tax year, or the tax period covered in the request for MAP implementation.

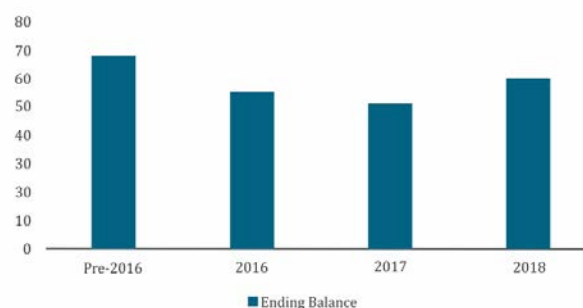
The Director General of Taxes follows up on the results of negotiations by issuing a decree within a maximum period of one month upon the receipt or written notification from or to the tax treaty partner authorities that a mutual agreement can be implemented.

On a side note, the following are statistics on requests for MAP implementation received by the DGT and MAP cases that have been successfully resolved in Indonesia during the period before 2016 until 2018 and the final number of unresolved MAP cases.



Source: Directorate of International Taxes, DGT (www.pajak.go.id/id/apa-map).

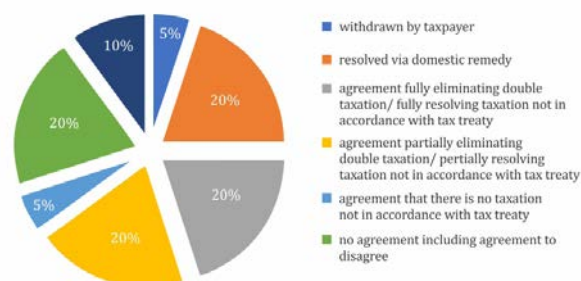
Ending Balance of MAP Caseload, Pre-2016 - 2018



Source: Directorate of International Taxes, DGT (www.pajak.go.id/id/apa-map).

In addition, the OECD has recorded the percentage of MAP negotiations in Indonesia in 2017 based on the results agreed upon by the Indonesian tax authority and the tax authorities of the tax treaty partners.

MAP Outcomes in 2017



Source: OECD (<http://www.oecd.org/tax/dispute/2017-MAP-Statistics-Indonesia.pdf>).

The Government Appoints 14 New Tax Court Judges

The Indonesian President has appointed 14 new tax court judges. This is stated in Republic of Indonesia's Presidential Decree No. 39/P of 2019 concerning the Appointment of Tax Court Judges set on 11 April 2019. This appointment has increased the number of judges in the tax court from 63 to 77 judges.

The addition of the new judges was proposed by the Minister of Finance through Letter Number: SR-19/MK.01/2019 dated January 16, 2019, which has obtained the approval of the Chief Justice of the Supreme Court through Letter Number: 191/KMA/HK.06/12/2018 dated 20 December 2018. The oath ceremony of the tax court judges was held on 25 April 2019 at the auditorium of the BPKP Building in Central Jakarta.

TOWARDS CERTAINTY IN TAX DISPUTE RESOLUTION

List of Tax Withholders Obligated to Use E-Bupot

The Directorate General of Taxes has obliged 1,745 withholder taxpayers of Article 23 and/or Article 26 Income Tax from 18 Tax Offices (*Kantor Pelayanan Pajak/ KPP*) to use electronic withholding slip application or *e-Bupot*.

The *e-Bupot* application is software provided on the DGT's website or certain channels set forth by the Director General of Taxes which can be used to prepare withholding slips, prepare and submit the Periodic Article 23/26 Income Tax Returns in the form of electronic documents.

A number of high-profile corporations are obliged to use the *e-Bupot* application. These companies are contained in the appendix to the Director General of Taxes Decree No. KEP-425/PJ/2019 which was issued last April (KEP-425/2019).

Table I – Number of Withholder Taxpayers Obligated to Use E-Bupot in each Tax Office

| No | Tax Office Name | Number of Withholder Taxpayers |
|--------------------------------|---|--------------------------------|
| 1 | Large Taxpayer Office One | 124 |
| 2 | Large Taxpayer Office Two | 100 |
| 3 | Large Taxpayer Office Three | 100 |
| 4 | Large Taxpayer Office Four | 94 |
| 5 | Foreign Corporate & Individual Tax Office | 94 |
| 6 | Oil and Gas Tax Office | 81 |
| 7 | Office for Publicly Listed Companies | 95 |
| 8 | Foreign Investment Tax Office One | 87 |
| 9 | Foreign Investment Tax Office Two | 88 |
| 10 | Foreign Investment Tax Office Three | 99 |
| 11 | Foreign Investment Tax Office Four | 91 |
| 12 | Foreign Investment Tax Office Five | 109 |
| 13 | Foreign Investment Tax Office Six | 100 |
| 14 | West Jakarta Medium Tax Office | 110 |
| 15 | Central Jakarta Medium Tax Office | 100 |
| 16 | South Jakarta Medium Tax Office | 100 |
| 17 | East Jakarta Medium Tax Office | 107 |
| 18 | North Jakarta Medium Tax Office | 66 |
| Number of Withholder Taxpayers | | 1745 |

The implementation of *e-Bupot* is advantageous for the taxpayers, withholders, and tax authority. For withholder

taxpayers, this policy will result in efficiency because both the withholding slip and the periodic tax return will be published electronically. As for withheld taxpayers, the withholding slip will be included in their prepopulated annual tax returns hence more convenient reporting process.

For the Directorate General of Taxes, in addition to more efficient (electronic) annual tax Return administration, the scheme is able to monitor or ensure that the income withheld through such system shall be reported correctly in the annual tax return of the taxpayers receiving income subject to final withholding tax.

On a side note, [KEP-425/2019](#) is an implementing regulation of the provisions of Article 12 of PER-04/PJ/2017 concerning the Form, Content, Procedure for the Filling and Submission of Periodic Article 23 and/or Article 26 Income Tax Returns and the Forms of Article 23 and/or Article 26 Income Tax Withholding Slip ([PER-04/2017](#)).

As stipulated in [KEP-425/2019](#), in the event that the Article 23/26 Income Tax withholder moves to a different Tax Office from the one where the taxpayer is registered, the provision to prepare the withholding slip and the obligation to submit the Periodic Article 23/26 Income Tax Return based on [PER-04/2017](#) remain valid.

TOWARDS CERTAINTY IN TAX DISPUTE RESOLUTION

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For further information and advice related to taxation, please contact:



David Hamzah Damian, S.Sos., BKP, ADIT
Partner of Tax Compliance & Litigation Services
david@ddtc.co.id



Romi Irawan S.E., M.B.A., LL.M Int. Tax
Partner of Transfer Pricing Services
romi@ddtc.co.id



B. Bawono Kristiaji, S.E., M.S.E., M.Sc. IBT., ADIT
Partner of Tax Research & Training Services
kristiaji@ddtc.co.id



Deborah S.Sos., LL.M Int. Tax., BKP
Senior Manager of Tax Compliance & Litigation Services
deborah@ddtc.co.id



Yusuf Wangko Ngantung, LL.B., LL.M Int. Tax., ADIT
Senior Manager of International Tax / Transfer Pricing Services
yusuf@ddtc.co.id



Herjuno Wahyu Aji, M.Ak., BKP
Senior Manager of Tax Compliance & Litigation Services
herjuno@ddtc.co.id



Ganda Christian Tobing, S.Sos., LL.M Int. Tax
Senior Manager of Tax Compliance & Litigation Services
christian@ddtc.co.id



Anggi P.I. Tambunan, S.Sos., M.H., ADIT, BKP
Manager of Tax Compliance & Litigation Services
anggi@ddtc.co.id



Khisi Amaya Dhora, S.I.A., BKP
Manager of Tax Research & Training Services
khisi@ddtc.co.id

MENARA DDTC

Jl. Raya Boulevard Barat Blok XC 5-6 No. B
Kelapa Gading Barat, Kelapa Gading
Jakarta Utara 14240 - Indonesia

Phone: +6221 2938 2700, Fax: +6221 2938 2699

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