



INTERNATIONAL TAX DISPUTE RESOLUTION THROUGH MUTUAL AGREEMENT PROCEDURE IN INDONESIA: PAST, PRESENT, AND FUTURE

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Abstract

Mutual Agreement Procedure (MAP) is widely recognized as an international tax dispute resolution mechanism to resolve double taxation among jurisdictions, generally governed under Article 25 of double taxation agreements. To strengthen the effectiveness and efficiency of MAP, the Organisation for Economic Co-operation and Development (OECD) released the BEPS Action 14 report. To adapt to international best practices and peer-review recommendations, Indonesia, under the Directorate General of Taxes (DGT) Ministry of Finance of Indonesia, enacted several changes to its MAP domestic rules. This study aims to provide an analysis of developments of MAP regulations in Indonesia and to analyze its implementation to relieve double taxation and to adapt to both international best practices and international examinations through peer review in the Forum on Tax Administrations (FTA) on MAP. The author uses a doctrinal-empirical method with a historical approach with data set from 2016 to 2022. The findings indicate that Indonesia has had positive developments in its legal framework and practices in successfully concluding many MAP cases within the recommended time frame of 24 months. To enhance MAP in the future, DGT needs to deliver detailed guidance on multilateral MAP, to provide a secure transparent digitalized administration system to both treaty partners and taxpayers, and to be aware of MAP arbitration with the recent development of global consensus under Two-Pillar Solution.

Keywords: BEPS Action 14, International taxation, Mutual agreement procedure, Tax dispute resolution, Transfer pricing.

INTRODUCTION

The globalized and digitalized world increased cross-border transactions from approximately USD 4000 billion in 2016 to around USD 6000 billion in 2022, according to McKinsey (2018). With the growing number of international trade and business, the risk of double taxation exists as a result of the international transaction where two jurisdictions tax the same profit or income, and consequently discourages trade and investment. International taxation issues such as transfer pricing, dual residencies, the existence of permanent establishments, and other cases related to the treaty urge the need for a special mechanism to fix these issues. In this case, a bilateral tax treaty is the prominent alternative that is designed to eliminate double taxation.

An analysis of 105 foreign direct investment (FDI) host jurisdictions and 30 FDI source jurisdictions from 1978 to 2004 shows that double tax treaties strongly impact FDI and are paramount as countries' instruments to attract foreign investors (Barthel et al., 2010). Some local empirical studies also indicate that tax treaty has a positive effect on foreign direct investment inflows in Indonesia, especially in the long term (Cahyono, 2022; Chandrasari, 2021; Satrio, & Lestari, 2018). However, the treaty's effectiveness in generating economic growth depends on the domestic tax legislation of each jurisdiction (Baker, 2014), especially in developing countries (Lang & Owens, 2014). Therefore, strengthening the effectiveness of tax treaties and aligning the application in each jurisdiction through domestic rule is essential.

The first study in the global dispute on tax treaties for the past 100 years of international tax regime Baistrocchi (2017) indicates that the five most disputed tax cases include income characterization cases, transfer pricing disagreements, disputes on source country tax jurisdiction, and non-discrimination matters with 116 patterns. Therefore, eliminating double taxation and double non-taxation has been the focus of tax administrations across the globe. In 2015, the OECD, together with the G-20, succeeded in publishing a package of Base Erosion and Profit Shifting (BEPS) Action from 1 to 15 which aims to suppress the potential for



aggressive tax avoidance. Of the 15 action steps, four action steps fall into the minimum standard category, namely: BEPS Action 5 regarding "counter harmful tax practices more effectively, taking into account transparency and substance"; BEPS Action 6 regarding "prevent treaty abuse"; BEPS Action 13 regarding "re-examine transfer pricing documentation; and BEPS Action 14 regarding "make dispute resolution mechanisms more effective". Over 145 jurisdictions involved in the Inclusive Framework (IF) on BEPS of the G20/OECD members participate in the work of 15 BEPS Actions. It is expected to create a harmonized international taxation to support the business and trade environment.

As one of the IF BEPS members, Indonesia adopted BEPS Action 14, one of four minimum standards, to resolve tax disputes on cross-border transactions. To date, Indonesia has 72 tax treaties and ratifies MAP applications under bilateral tax treaties into domestic rules to resolve international tax disputes. Before 2016, the year of joining the BEPS IF, 19 transfer pricing cases and 43 other related cases were handled under the MAP mechanism with an average time of more than three years and two years, respectively (OECD, 2023a). BEPS Action 14 and peer-review under FTA MAP Forum monitor the work of MAP to ensure its effectiveness and effectivity.

This study examines the features of the legal instrument of Mutual Agreement Procedure (MAP) in Indonesia to adhere to best practices in international taxation and its implementation. The sections start with the narrative of the tax treaty, MAP and BEPS Action 14, followed by discussions on the legal framework and implementation of MAP in Indonesia. At the end of the study, the author suggests the utilization of multilateral MAP, warns of the threat of MAP arbitration, and recommends the enhancement of digital administration.

LITERATURE REVIEW

The Risk of Double Taxation In Cross-Border Transaction

Smith (1776) initially introduced fundamental principles of taxation in his "The Wealth of Nations" book, which stated that a fair taxation system should be built based on four main canons: equality, certainty, convenience, and efficiency. Tax must be equal and specific to the taxpayers, tax should be collected conveniently, and the cost of tax collection should be as minimal as possible. In this case, tax certainty has also been part of the rule of law.

The practice of state sovereignty through unilateral measures in taxation, either full or partial tax liability, resulted in double taxation. International taxation adopts a single tax principle, where cross-border income should be taxed fully, neither double taxation nor double non-taxation. Although this theory developed in the 1990s, it has been introduced since the 1920s by the League of Nations in the Model Convention of Tax Treaties (Avi-Yonah, 2022).

There are two types of double taxation: juridical and economic double taxation. Juridical double taxation arises where the same profit or income of the same legal entity (domicile, residence, or citizenship) is subject to tax simultaneously by two different jurisdictions, for example, cases on the conflict of dual residence or attribution profit adjustment related to a permanent establishment. Economic double taxation arises when two countries tax the same profit or income in the hands of two different legal entities, for instance, a transfer pricing adjustment between two associated enterprises situated in two jurisdictions. The absence of a universal forum to resolve tax disputes on cross-border transactions creates effects such as double taxation, as the domestic tax system interacts with other jurisdictions. This double taxation can be eliminated through tax treaties that allocate jurisdictions' taxing rights.

Tax Treaties to Eliminate Double Taxation

Article 2 of the Vienna Convention on the Law of Treaties states "A *treaty is an international agreement concluded between States and governed by international law*". In



principle, a tax treaty does not impose any tax but generally allocates the taxing rights between resident jurisdiction and source jurisdiction. Hence, tax treaties are considered as a special rule.

OECD and G20 play significant roles in transforming the current international tax regime, from the adoption of the original works of the League of Nations in the 1920s to the work of BEPS Action 1-15 in the 2010s (Jogarajan, 2020). In 2012, OECD proposed to the G20 a comprehensive package of 15 measures to work on Base Erosion and Profit Shifting (BEPS) to limit the risk of tax avoidance and to stop facilitating double non-taxation. These 15 BEPS packages aim to transform existing rules of international taxation, such as transfer pricing, treaty shopping, the definition of permanent establishment, and others, by improving the transparency of multinational companies.

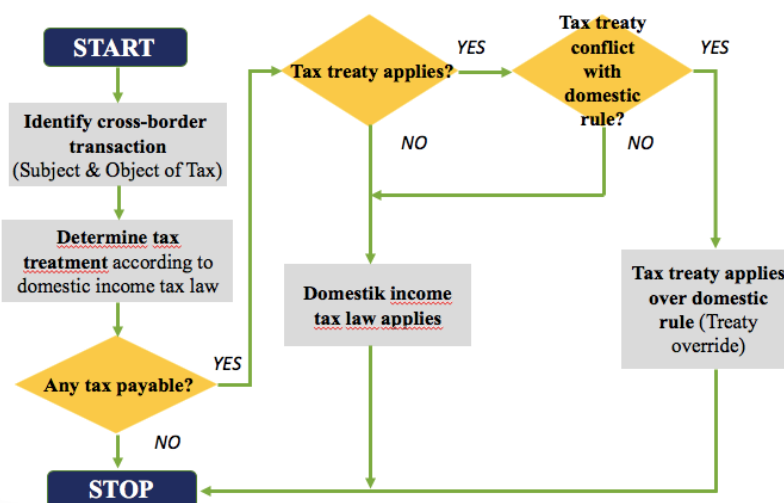
To provide international legal order, the Organisation for Economic Co-operation and Development (OECD) and the United Nations (UN) have been international organizations that significantly impact on international taxation and provide recommendations and guidance to jurisdictions. The two prominent models are the OECD Model Tax Convention on Income and Capital (OECD Model) and the UN Model Double Taxation Convention between Developed and Developing Countries (UN Model) with the arrangement of MAP under Article 25, respectively.

The Interplay Between Tax Treaties and Domestic Law

The substantial principle on how a treaty works is arranged within the Vienna Convention on the Law of Treaties (United Nations, 1969). Its Article 26 emphasizes that “Every treaty in force is binding upon the parties to it and must be performed by them in good faith”, known as *Pacta Sunt Servanda*, meaning that the contracting parties must perform treaty obligations. In the implementation, the treaty would be binding without a parliamentary law process. To be implemented in one jurisdiction, a tax treaty will be implemented in domestic law through ratification to get consent from parliament (Becker et al., 2022). When domestic law overrules the tax treaty, known as treaty override, the relationship between international law and national law should be analyzed and coordinated, especially for distributive rules under tax treaties (Pietro, 2015).

As a general rule of interpretation, Vienna Convention outlines framework in Article 31. Treaty is interpreted under Articles 31 to 33 of the (VCLT) Commentaries: “a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose”.

Figure 1. The Interplay of Tax Treaty and Domestic Law



Source: Processed by the Author (2024)



According to its legal position, *lex specialis derogate legi generali*, treaties take precedence over domestic law. Interpretation according to domestic law is allowed for terms not defined in the tax treaty unless the context otherwise requires. To be coherent with treaties, the state has to ratify the law to its domestic regulation. The incoherence of taxation between domestic regulation and international rules for cross-border transactions resulted in international tax disputes. This interaction between tax treaty and domestic rule, as well as treaty elimination may result in disputes and requires jurisdiction to resolve cross-border disputes via a special mechanism.

Mutual Agreement Procedure Under Tax Treaties

Mutual Agreement Procedure (MAP) is a mechanism under tax treaties, generally ruled under Article 25, to resolve the cases arising from the application of the treaties where the competent authorities between contracting states will consult each other to agree on settling the case, such as transfer pricing, treaty interpretation, etc. MAP can be initiated by either the taxpayer or the tax authority. The competent authority, as the representative of the Contracting State under a tax treaty, will consult each other and conclude the case in the agreement to be implemented in their territory.

The distributive provisions of income tax treaties, such as allocating taxing rights between the contracting states and source states, are related to the source of income and agreed-upon proportion of tax. For example, the relief on double taxation will be allocated through a foreign tax credit or tax exemption, depending on the State's tax system, under Article 23 of the OECD Model. However, unilateral relief may result in partial double taxation. For instance, transfer pricing cases related to associated enterprises under Article 9 of the OECD Model Tax Convention result in corresponding adjustments, under Article 9 paragraph (2).

Article 25, paragraphs (1) to (3) of the 2017 OECD Model Tax Convention, outlines MAP:

- “1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of either Contracting State. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.*
- 2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Convention. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.*
- 3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. They may also consult together for the elimination of double taxation in cases not provided for in the Convention.”*

The object of MAP is the taxation not in accordance with the treaty (Article 25 paragraph (1)). The first sentence of Article 25, paragraph (1) ensures taxpayers have the right to submit a MAP request, while the second sentence is the timeline for submitting a MAP request. The first sentence of Article 25 paragraph (2) mandates Competent Authorities to endeavour dispute resolution through mutual agreement, while its second sentence obliges the implementation of MAP agreements. Article 25, paragraph (3) highlights items to resolve under MAP such as obstacles or doubts on treaty interpretation or application and cases not provided for in the Convention, to eliminate double taxation.



The treaty provides the mechanism for taxpayers or states to resolve tax disputes through mutual agreement procedure, irrespective of domestic law. This treaty override principle is equivalent to be implemented. The deadline for MAP requests is generally three years from the date of the ‘first notification’ of the action of disputed matter. However, the competent authority is not obliged to reach an agreement, since the paragraph (3) only states that they shall ‘endeavor’. This has been the drawback of MAP in terms of providing tax certainty. Therefore, the OECD (2015) recommends improving MAP implementation in BEPS Action 14.

BEPS Action 14 To Enhance International Tax Dispute Resolution

In 2015, the OECD released 15 bundles of BEPS Actions, where BEPS Action 14 deals with MAP in making dispute resolution mechanisms more effective. The objectives of BEPS Action 14 are to strengthen the effectiveness and efficiency of the MAP process, to minimize the risks of uncertainty, and to ensure that treaty obligations on MAP are wholly implemented in good faith and the cases are resolved promptly. A strategic plan formulated by FTA MAP Forum in 2014 is by providing a sufficient number of competent MAP personnel, maintaining a state of independence from internal tax administrations that are in charge of collecting tax revenue, building mutual trust and cooperation, showing good faith in implementing MAP agreement and ensuring MAP access to taxpayers (Hughes & Palacheck, 2017).

MAP plays a significant role in addressing double taxation and taxation not in accordance with the treaties. However, transfer pricing is the most frequent case found in MAP. The case can be submitted for MAP application when dissimilar views are involved in implementing treaty provisions. The minimum standard of BEPS Action 14 is translated into the terms of reference for peer review into four critical features of efficient and effective MAP process: (i) preventing disputes; (ii) availability and access to MAP; (iii) resolution of MAP cases; and (iv) implementation of MAP agreements. The details are described in Table 1.

Table 1. Terms of Reference of Minimum Standard under BEPS Action 14

| Preventing disputes | Availability and access to MAP | Resolution for MAP cases | Implementation of MAP agreement |
|---|---|--|---|
| <ul style="list-style-type: none"> • interpretation or application of tax treaty • roll-back BAPA | <ul style="list-style-type: none"> • request within a period of no less than 3 years • bilateral consultation or notification process • MAP in transfer pricing cases • anti-abuse provision • administrative or statutory dispute settlement/ resolution process • should not limit access to MAP – insufficient information • elimination of double taxation in cases not provided in tax treaty • publish clear rules, guidelines and procedures • MAP profiles • clarify MAP guidance | <ul style="list-style-type: none"> • a view to the avoidance of taxation • 24 month average timeframe • adequate resources – MAP function • MAP staff – authority to resolve cases • performance indicator • transparency on MAP arbitration | <ul style="list-style-type: none"> • implement any agreement reached • implemented on a timely basis • notwithstanding any time limits in their domestic law |

source: OECD (2015)

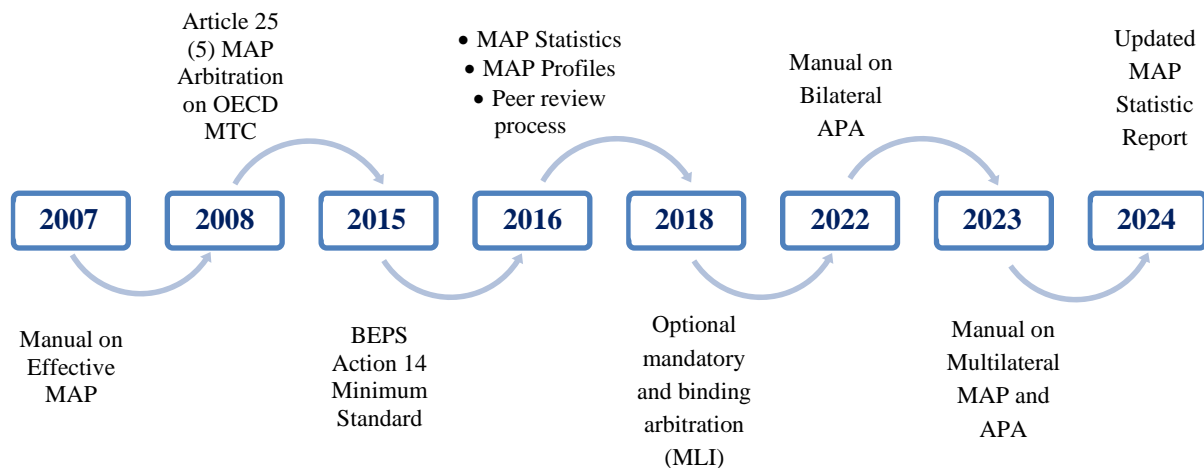
MAP could not guarantee the full relief of double taxation since the treaty provisions merely require the Competent Authority to ‘endeavour’ the resolution during MAP negotiation



(Lang, 2021). This has been the main flaw in achieving an effective dispute resolution. The MAP outcomes are unilateral relief granted, resolved via domestic remedy, agreement fully eliminating double taxation/fully resolving taxation not in accordance with the tax treaty, agreement partially eliminating double taxation/partially resolving taxation not in accordance with the tax treaty, agreement that there is no taxation not in accordance with the tax treaty, no agreement including agreement to disagree, and any other outcome.

According to BEPS Action 15, countries participate in the Multilateral Instrument (MLI) to modify bilateral tax treaties to expedite the treaty negotiation in adopting MAP under tax treaties (OECD, 2016). The timeline of OECD works on MAP can be found in Figure 2.

Figure 2. Timeline of OECD Efforts in Making MAP More Effective



Source: Processed by the Author (2024)

METHODS

This qualitative study employs doctrinal and empirical legal research methodology with a historical approach focusing on Indonesia as the research object. The doctrinal legal method is used to discover and analyze the development of legal rules within the sources of law, in this case, the development of MAP regulations in Indonesia. It is essential to assess the fitness of domestic regulation with revolutionary of international taxation system (Douma, 2014). At the same time, empirical legal research is employed to investigate the relationship between the legal system and the conduct of implementation (Webley, 2010). This study will evaluate the legal system's impacts on the conduct of MAP implementation in Indonesia.

The writer analyzes the legal rules from primary sources, such as tax treaties, domestic regulations, and international conventions. The writer also uses literature studies and reports from the OECD and the UN as a secondary source. As a research focus, this study mainly concerns tax dispute settlement, and therefore advance pricing agreement (APA) as dispute prevention is out of the scope to be discussed.

RESULTS AND DISCUSSION

MAP Legal Framework under Indonesia's Domestic Regulation

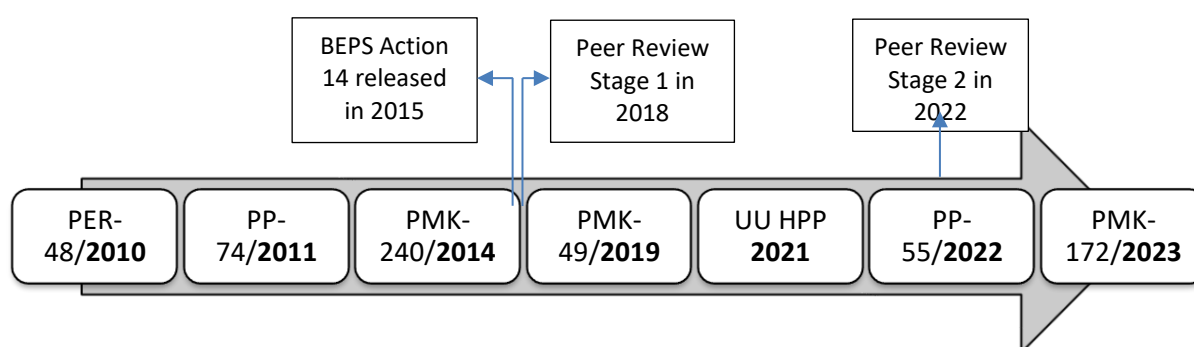
DGT's regulation number 48/PJ/2010 (PER-48/2010) outlines the first detailed guidance on the Procedure for Implementing Mutual Agreement Procedure based on Double Tax Agreement. On 29 December 2011, Government Regulation Number 74 Year 2011 (PP-74/2011) authorized DGT to conduct MAP. It outlines the subject and deadline of MAP requests according to the relevant tax treaties. Article 57 paragraph (3) has stated that MAP submission can be parallel with domestic remedies, *inter alia*, objection, appeal, and request on reduction or cancellation of tax assessment letter. However, in paragraph (7), it is stated that if



the implementation of the MAP is carried out simultaneously with the appeal process and until the tax court decision is pronounced the implementation of the MAP has not resulted in a mutual agreement, the DGT will terminate the MAP process. This has been the restriction in

To provide implementation rule as a mandate of PP-74/2011, on 22 December 2014 the Minister of Finance stipulated PMK-240/PMK.03/2014 (PMK-240/2014) regarding Mutual Agreement Procedure. To adopt minimum requirements under BEPS Action 14 and FTA MAP peer review suggestions, the Minister of Finance revised the previous PMK-240/2014 with PMK-49/PMK.03/2019 (PMK-49/2019). Recently, Indonesia has provided a complete set of MAP in its domestic legislation under Article 27C of Harmonization of Tax Regulation No.7 Year 2021 (HTR 2021), Articles 55 to 58 of Government Regulation Number 55 Year 2022 (PP-55/2022) and PMK-172/PMK.03/2023 (PMK-172/2023) which revises PMK-49/2019. The complete timeline of the MAP legal framework in Indonesia is as illustrated in Figure 3.

Figure 3. Indonesia's Mutual Agreement Procedure in the Past and Present



Source: Processed by the Author (2024)

Amendments on Indonesia Domestic Rules Related to MAP

Presenting the latest MAP guidance clearly and comprehensively is essential in making the MAP process more efficient (Markham, 2023). The Indonesian government has committed to providing legal certainty in settling MAP cases. After the release of BEPS Action 14 in 2016, Indonesia revised its implementation rule on MAP with PMK-49/2019. The summary of the revision is outlined in Table 2.

Table 2. Comparison on MAP Regulation Under PMK-240/2014 and PMK-49/2019

| | PMK-240/2014 | PMK-49/2019 |
|--------------------------------------|--|---|
| Authority in handling MAP | Directorate of Taxation Regulation II | Directorate of International Taxation |
| Time period of MAP submission | In accordance with the provisions under the DTAs | 1) if the submission period is clearly regulated under the DTAs, then the MAP submission period is in accordance with the provisions of the DTAs; or 2) if the submission period is not clearly regulated under the DTAs, MAP application is submitted no later than 3 (three) years from: the date of the tax assessment letter; date of proof of payment, withholding or collection of income tax; or when tax treatment not in accordance with DTA provisions are occurred. |
| Subject of MAP | Requests for the implementation of MAP submitted by Indonesian domestic taxpayers, by Indonesian | 1) if the MAP applicant is an Indonesian domestic taxpayer, the request for implementation of the MAP is submitted |



| | | |
|------------------------------------|--|--|
| | Citizens, or by Competent Authority of treaty partners | <p>to the DGT through the Tax Office where the Taxpayer is registered;</p> <p>2) if the MAP Applicant is an Indonesian citizen, the request for implementation of the MAP is submitted to the DGT through the Director of International Taxation;</p> <p>3) if the MAP request is submitted by the Competent Authority of treaty partners, the request for implementation of the MAP is submitted to the DGT through the Director of International Taxation.</p> |
| MAP submission mechanism | no rules that clearly state that Indonesian domestic taxpayers cannot submit a MAP application to the Competent Authority of treaty partner and vice versa. | <p>1) Domestic Taxpayers can submit a request for the implementation of MAP to the Director General of Taxes as an Indonesian Competent Authority in the event that tax treatment by the Competent Authority of treaty partner does not comply with the provisions of the tax treaty;</p> <p>2) Requests for MAP implementation can also be submitted by:</p> <p>a. Indonesian citizens to the DGT regarding discrimination in tax treatment at Competent Authority of treaty partner;</p> <p>b. DGT on his own initiative to the Competent Authority of treaty partner;</p> <p>or</p> <p>c. Competent Authority of treaty partner to the DGT</p> |
| MAP submission requirements | <ul style="list-style-type: none"> • submitted in writing in Indonesian; • signed by the Applicant or his authorized representative; and • If it is signed by the Power of Attorney, the special power of attorney letter must be attached. | <p>1) submitted in writing in Indonesian;</p> <p>2) stating the non-compliance with the application of treaty provisions according to the applicant;</p> <p>3) submitted within the time period as regulated in the tax treaty or no later than 3 (three) years if not regulated in the tax treaty, starting from:</p> <p>a. date of tax assessment letter;</p> <p>b. date of proof of payment, withholding or collection of income tax; or</p> <p>c. when tax treatment occurs that is not in accordance with treaty provisions.</p> <p>4) signed by the applicant or by the Power of Attorney;</p> <p>5) attached with:</p> <p>a. Treaty Partner taxpayer domicile certificate related to the request for MAP implementation;</p> <p>b. a list of information and/or evidence or information held by the applicant which shows that the tax treatment by</p> |



| | | |
|--|--|--|
| | | <p>the Competent Authority of treaty partner is not in accordance with the provisions of the tax treaty; and</p> <p>c. a statement letter stating the applicant's willingness to submit information completely and in a timely manner.</p> <p>6) delivered to:</p> <p>a) Head of the Tax Office where the domestic Taxpayer is registered; or</p> <p>b) Director of International Taxation in the event that the request for MAP implementation is submitted by an Indonesian citizen or Competent Authority of the treaty partner.</p> |
| Prelodgement process | Taxpayer is required to submit prelodgement documents. After verification from DGT that MAP request is accepted, taxpayer has to resubmit the same documents | No prelodgement process to provide efficiency in administration |
| Actions of no response from CA Partners | not clearly regulates the actions that must be taken by the DGT if the Competent Authority of treaty partner does not respond to the letter requesting MAP implementation submitted by the DGT | <p>If the request for implementation of MAP to the Competent Authority of treaty partner does not receive a written response from the Competent Authority of treaty partner within 8 (eight) months of submission, the Director General of Taxes issues a written notification to:</p> <p>1) the applicant or domestic Taxpayer related to the request for MAP implementation that the request for MAP implementation cannot be followed up; And</p> <p>2) Competent Authority of treaty partner that the request for MAP implementation is withdrawn.</p> |
| Time period of MAP process | the implementation of the MAP shall be carried out no later than 3 (three) years from the time the first consultation was carried out | <p>The DGT carries out negotiations with the Competent Authority of treaty partner within a period of 24 (twenty four) months starting from:</p> <p>1) receipt of a written request for implementation of the MAP from the Competent Authority of treaty partner;</p> <p>or</p> <p>2) submit the request for implementation of the MAP in writing to the Competent Authority of treaty partner.</p> <p>Thus, there is no option to extend the negotiation period.</p> |
| MAP results | not describe what the results of the negotiations as outlined in the concluded Mutual Agreement will be. | 1 (one) month after both CAs conclude the agreement, the mutual agreement decision letter shall be issued by DGT to the Indonesian taxpayer or citizen. |



Source: Processed by the Author (2024)

To provide clear guidance on MAP, DGT promulgated Regulation of the Director General of Taxes Number 16/PJ/2020 (PER-16/2020) issued on 11 August 2020 as an implementation rule under PMK-49/2019. Under PER-16/2020, taxpayers are given the right to submit a proposal requesting the implementation of MAP if, according to the taxpayer, there is tax treatment by the Director General of Taxes that is not in accordance with tax treaty provisions. This is in line with Indonesia's commitment to provide broader access for MAP submissions to Taxpayers in accordance with the provisions in Article 25 paragraph (1) of Indonesia's tax treaty with partner countries. Second, the DGT and the competent authority of the treaty partner can agree on renewing the request for MAP implementation and resuming MAP negotiations if the negotiation process has shown significant progress. This is proof of the seriousness of the DGT in seeking to reach an agreement on international tax disputes in accordance with the provisions of Article 25, paragraph (2) of the treaty. Finally, to improve the quality of governance for handling international tax disputes, the DGT formed a MAP Discussion Committee. Furthermore, Circular Letter Number 49 (SE-49/PJ/2020) was released by DGT to provide detailed workflow and form templates of documents to submit MAP.

The issue on PER-16/2020 lies in the provision that allows renewal of the request for MAP application for another 24 months. Two main points that should be highlighted are the legal position in *lex superior derogate legi inferiori*, where regulations that have a lower level in the hierarchy of statutory regulations must not conflict with those higher. According to the sequence of statutory regulations under Law Number 12 of 2011, the Ministry of Finance Regulation (PMK) is superior to the Director General of Taxes Regulation (PER). The legal force of the laws applies in accordance with their hierarchy, and lower laws must not conflict with higher laws. It is debatable whether the time extension of 24 months under PER-16/2020 conflicts with PMK-49/2019 since PMK-49/2019 regulates the time frame of 24 months, whereas PMK-16/2020 allows extended time to be 48 months in total, or whether PER-16/2020 provides further detail of PMK-49/2019 as guidance for the implementation.

International Assessment On MAP Implementation by Indonesia Government MAP Peer Review of Indonesia – Stage 1

After the release of BEPS Action 14 in 2015, the Forum on Tax Administration (FTA) on MAP was held to improve implementation of MAP among jurisdictions through peer review. A peer review process is conducted to assess and monitor jurisdictions' efforts to achieve effective MAP implementation and tax certainty in accordance with BEPS Action 14 standards (Markham, 2022).

In 2019, the OECD published its report on MAP peer review stage 1. The review period is from 1 January 2016 to 31 December 2018. Indonesia has been assessed, and all of Indonesia's tax treaties contain a provision relating to MAP and generally follow paragraphs 1 to 3 of Article 25 of the (OECD, 2021). However, for MAP implementation, it is reported that 75% of its tax treaties are without time limits in domestic law as required under Article 25 paragraph 2 nor time limits for transfer pricing adjustments in accordance with Article 9 paragraph (1) and Article 7 paragraph (2). It is also concluded that more than 40% of its tax treaties do not set a timeline to file a MAP request in accordance with Article 25 paragraph (1). Out of 121 peers, 8 eight peers of 95% of MAP cases with Indonesia provided input that Indonesia has built good cooperation (OECD, 2019).

Aside from the need to modify tax treaties to align with the minimum standard of BEPS Action 14, some of the suggestions for Indonesia on the FTA MAP Peer Review Report Stage 1 are described as follows:

1. Publication of provisions, guidelines or procedures for implementing MAP by the DGT that the general public can access;



2. Publication of the Indonesian MAP profile and MAP statistics to the general public;
3. Providing sufficient authority in making decisions for DGT employees tasked with handling MAP Requests;
4. Assessment indicators for the performance of employees handling MAP should not be based on the number of Inspector corrections that can be maintained; and
5. The existence of a rollback clause (reverse application).
6. Ensure that Taxpayers can access MAP as long as they meet the requirements, including:
 - a. it is possible to submit MAP requests by foreign taxpayers directly to the DGT or submit MAP requests by Indonesian domestic taxpayers directly to the competent authority of the tax treaty; or
 - b. if this is not possible, then Indonesia is willing to provide notification or consult with the tax treaty Partner Authorized Official regarding Indonesia's position in not adopting the clause in number 6 letter a.

Indonesia's Efforts To Align With BEPS Action 14 and FTA MAP Peer Review

To fully comply with all four main minimum standards of BEPS Action 14, Indonesia has to amend a significant number of tax treaties, either through multilateral instrument (MLI) or renegotiate bilateral tax treaty. The Finance Minister signed MLI on 7 June 2017, and one of its agreements is Indonesia's commitment to implement recommendations on BEPS Action 14. Indonesia made notifications of Article 25 paragraph (1) to 12 jurisdictions¹ in listed agreements according to Article 16 paragraph (6)(b)(i) of the Convention that MAP case must be presented shorter than three years from the first notification of the action resulting in taxation not in accordance with the tax treaties, and to 19 jurisdictions² at least three years from the first notification.

Through Multilateral Instruments, some tax treaties have been modified and enter into effect in 2022, such as the bilateral tax treaty with Hungary, Croatia, Malaysia, Egypt, and Pakistan, and in 2023 such as a bilateral tax treaty with Seychelles, Spain, Thailand, and China (People's Republic of). According to OECD (2023b), Indonesia' tax treaty network has 39 treaties that in line with the Action 14 minimum standard following MLI impact, and 31 treaties are ongoing to make them in line with the Action 14 minimum standard, while two remaining are not in line with Action 14 minimum standard. With the MLI entering into effect, to date, there are 72 tax treaties with MAP provisions. The complete list is outlined in Table 3.

Table 3. Mutual Agreement Provisions in Indonesia Double Taxation Agreements

| No | Treaty Jurisdictions | DTAs | No | Treaty Jurisdictions | DTAs |
|----|----------------------|------------|----|----------------------------|------------|
| 1 | Algeria | Article 25 | 37 | Papua New Guinea | Article 26 |
| 2 | Armenia | Article 26 | 38 | People's Republic of China | Article 25 |
| 3 | Australia | Article 25 | 39 | Philippines | Article 25 |
| 4 | Austria | Article 26 | 40 | Poland | Article 24 |
| 5 | Bangladesh | Article 25 | 41 | Portuguese Republic | Article 25 |
| 6 | Belarus | Article 25 | 42 | Qatar | Article 25 |
| 7 | Belgium | Article 24 | 43 | Republic of Croatia | Article 24 |
| 8 | Brunei | Article 26 | 44 | Republic of Korea | Article 25 |
| 9 | Bulgaria | Article 24 | 45 | Republic of Serbia | Article 25 |
| 10 | Cambodia | Article 26 | 46 | Republic of Suriname | Article 25 |
| 11 | Canada | Article 24 | 47 | Romania | Article 26 |
| 12 | Czech Republic | Article 24 | 48 | Russia | Article 23 |

¹ Canada, Luxembourg, New Zealand, Philippines, Seychelles, Switzerland, Thailand, United Arab Emirates, Italy, Poland, Qatar, and South Africa

² Australia, Brunei Darussalam, China (People's Republic of), France, Hong Kong (China), India, Japa, Lao PDR, Malaysia, Netherlands, Singapore, South Korea, United States of America, Vietnam, Belgium, Croatia, Finland, Norway, Slovakia



| | | | | | |
|----|---------------------------------------|------------|----|--------------------------|------------|
| 13 | Democratic People's Republic of Korea | Article 25 | 49 | Saudi Arabia | Article 25 |
| 14 | Denmark | Article 25 | 50 | Seychelles | Article 25 |
| 15 | Egypt | Article 25 | 51 | Singapore | Article 25 |
| 16 | Finlandia | Article 24 | 52 | Slovak | Article 25 |
| 17 | France | Article 26 | 53 | South Africa | Article 24 |
| 18 | Germany | Article 25 | 54 | Spain | Article 26 |
| 19 | Hongkong | Article 24 | 55 | Sri Lanka | Article 25 |
| 20 | Hungary | Article 25 | 56 | Sudan | Article 25 |
| 21 | India | Article 25 | 57 | Sweden | Article 25 |
| 22 | Iran | Article 24 | 58 | Switzerland | Article 23 |
| 23 | Italy | Article 25 | 59 | Syria | Article 25 |
| 24 | Japan | Article 25 | 60 | Taipei | Article 24 |
| 25 | Jordan | Article 25 | 61 | Tajikistan | Article 25 |
| 26 | Kuwait | Article 26 | 62 | Thailand | Article 25 |
| 27 | Laos | Article 25 | 63 | Tunisia | Article 24 |
| 28 | Luxembourg | Article 25 | 64 | Turkey | Article 24 |
| 29 | Malaysia | Article 24 | 65 | Ukraine | Article 25 |
| 30 | Mexico | Article 25 | 66 | United Arab Emirates | Article 25 |
| 31 | Mongolia | Article 25 | 67 | United Kingdom | Article 24 |
| 32 | Morocco | Article 25 | 68 | United States of America | Article 25 |
| 33 | Netherlands | Article 27 | 69 | Uzbekistan | Article 25 |
| 34 | New Zealand | Article 24 | 70 | Venezuela | Article 25 |
| 35 | Norway | Article 26 | 71 | Vietnam | Article 25 |
| 36 | Pakistan | Article 26 | | | |

Source: Processed by the Author (2024)

Indonesia is in a position to adhere to all minimum standards in BEPS Action 14, except for 2 (two) things, namely: (i) Indonesia does not adopt a mechanism for resolving tax disputes through arbitration; and (2) Indonesia does not adopt the facility for submitting MAP by foreign taxpayers directly to the DGT. Due to this condition, according to BEPS Action 14, Indonesia will submit notifications or consult with a treaty partner to confirm Indonesia's position.

In 2015, a particular unit in handling MAP and APA was established under the Directorate of International Taxation, replacing the Directorate of Tax Regulations II, under Minister of Finance Regulation Number 234/PMK.01/2015 on Organization and Work Procedures in the Ministry of Finance. In 2023, there are 38 persons working on MAP cases in the Directorate of International Taxation of DGT, including 1 Director, 1 Deputy Director, 4 Heads of Divisions, and 32 persons (OECD, 2023b). According to www.pajak.go.id/id/apa-map, the division is divided into 4 sections: Section 1 handles disputes between Indonesia and Australia, New Zealand, Asia countries (excluding Japan, South Korea, China, Hong Kong, Macau, and Taiwan, and other jurisdictions within Pacific Region), Section 2 for Japan and jurisdictions within American region, Section 3 for South Korea, China, Hong Kong, Macau, and Taiwan, and Section 4 for jurisdictions within Europe and African regions. Indonesia MAP Profile and Statistics are published on DGT's website at <https://www.pajak.go.id/id/apa-map>

Decision of Finance Minister Number 188/KMK.01/2013 on Appointment of Officials In The Ministry of Finance to Act as Competent Tax Authorities In The Context of Forming and Renegotiating Indonesian Tax Agreements With Other Countries appointed Head of Fiscal Policy Agency and Head of Center for State Revenue Policy to act as Competent Authority in the forming and renegotiating the tax treaties for with treaty partners, and Director General of Taxes and Director of Tax Regulation II to act as Competent Authority in the negotiation of Mutual Agreement Procedure and Exchange of Information. As of reorganization of DGT, the revised rule is governed under Decision of Finance Minister Number 208/KMK.010/2019 to replace Director of Tax Regulation II with Director of International Taxation.



Prevailing Domestic Regulations on MAP in Indonesia The Revised Income Tax Law Under Harmonization of Tax Regulations in 2021 (HTR 2021)

Under PP-74/2011, taxpayers can submit MAP, but the MAP process will be terminated if there was a Tax Court or Supreme Court decision, even if the dispute material has been decided in the Appeal Decision or Judicial Review Decision is not material submitted a joint approval procedure. This has been the case and has resulted in a lengthy dispute process that has resulted in taxpayer losses due to the failure to eliminate double taxation. This is reflected in the treaty partners' expression of dissatisfaction during Peer Review Stage 2 of Indonesia (OECD, 2021). Also, at that time, the mutual agreement decision letter issued by DGT was not the basis for a tax refund.

To provide legal certainty and restore the flaws in implementation, in 2021, Article 27C of Harmonization of Tax Law (HTR 2021) in Income Tax Law cluster specifically sets out three significant changes on MAP:

1. Applicants may request MAP in parallel with domestic remedies such as the application for lawsuits, the application for objections, the application for appeals, and the application for reduction or cancellation of incorrect tax assessment;
2. If the implementation of agreements of MAP has not yet resulted in agreement and the decision Appeal or Judicial Review Decision has been pronounced, the DGT can proceed with the MAP negotiation;
3. The agreement under MAP is the basis for return tax or the basis for tax collection.

Article 32A of UU HPP 2021 also legitimates the formation and implementation of bilateral and multilateral agreements with treaty partners, such as those aimed at avoiding of double taxation and preventing tax evasion, preventing BEPS, exchanging tax information, providing tax collection assistance, and facilitating other international tax cooperation.

Government Regulation Number 50 Year 2022 (PP-55/2022)

Articles 57 to 58 under PP-55/2022 provide specific rules on the interaction of domestic remedies with the MAP process as an international remedy:

1. if MAP is concluded before the issuance of the objection decision letter, and the mutual agreement contains an agreement to the disputed material, then DGT follows up the mutual agreement by issuing a mutual agreement decision letter after the acceptance of adjustments or withdrawal of objections from the taxpayer;
2. if the MAP is concluded before the decision of tax assessment reduction or cancellation of tax is issued, and the mutual agreement contains an agreement to disputed material, the DGT follows up the mutual agreement by issuing a mutual agreement decision letter after the receipt of withdrawal of the reduction request or cancellation of the tax assessment letter from the taxpayer;
3. if MAP is concluded before the Tax Court decision is pronounced, and the mutual agreement contains an agreement to disputed material, the DGT follows up on the agreement by issuing a mutual agreement decision letter after the receipt of notification of adjustment or revocation appeal from the taxpayer to the Tax Court;
4. if MAP is concluded before the Judicial Review decision is published, and the mutual agreement contains the disputed material, the DGT follows up on the agreement by issuing a mutual agreement decision letter after the receipt of notification of adjustment or revocation request for consideration from the taxpayer to the Supreme Court;
5. if the taxpayer files a lawsuit against the tax assessment reduction letter, tax assessment cancellation letter, or issuance of a tax assessment letter or letter objection decision that is not in accordance with the procedures as set out in laws and regulations in the field of taxation, related to the MAP, the DGT following up on the agreement in MAP by issuing a



mutual agreement decision letter after the receipt notification of the withdrawal of the lawsuit from the taxpayer to the Tax Court.

Article 58 governs that in the case of a mutual agreement decision letter resulting in overpayment of tax, the excess of payment is returned to the taxpayer, provided that the taxpayer has debt tax. The excess of tax payment is referred to directly calculated to pay off tax debts first formerly. The excess of tax payments as a result of a mutual agreement decision is not subjected to interest.

Minister of Finance Regulation Number 172 Year 2023 PMK-172/2023

To shed light on the new rules under UU HPP, PMK-172/2023 provides further details on MAP implementation. There are three new features as modification of the old PMK-49/2019, *inter alia*: (i) MAP application can be submitted in parallel with domestic remedies, such as objection, appeal, lawsuit, and reduction or cancellation of tax assessment letter; (ii) mutual agreement decision letter issued by DGT is acknowledged as a basis for tax refund or tax collection; and (iii) administrative sanctions in the tax bill will consider the amount of tax in the mutual agreement decision letter of DGT. At that time, a mutual agreement decision letter issued by DGT was not the basis for a tax refund. To accommodate the tax refunds based on the Director General's Decree regarding the follow-up to the joint agreement.

PMK-172/2023 also reiterates PP-52/2021 that multilateral MAP is eligible to be applied in Indonesia. However, to date, no specific guidance on implementing multilateral MAP exists. Substantial revision on provisions under PMK-172/2023 that revised PMK-49/2019 on MAP:

1. A decision letter on mutual agreement is the basis for either tax refund or tax collection;
2. Detailed guidance on the implementation of MAP, including a greater certainty on the higher authority of regulation to extend MAP discussion to 24 months (it was previously enacted under PER-16/2020, which the rule is not binding to the taxpayers); and
3. The DGT must issue a written notification to the applicant within one month indicating whether or not the application may proceed. Otherwise, the application is deemed approved to proceed, and the DGT must issue a notification of approval to the taxpayer.

MAP Statistics During 2016 to 2022

OECD published MAP statistics on its website, www.oecd.org, each year per jurisdiction to provide transparency and complete information on the conduct of MAP across the globe. The statistics from the OECD website show that prior to 2016, the inventory case of MAP in Indonesia was 62 cases, consisting of 19 transfer pricing cases and 43 other cases. Complete information on Indonesia's MAP statistics can be seen in Figure 4.

Figure 4. Indonesia: MAP Statistics From 2016 to 2022





Source: Processed by the author based on OECD MAP Statistics

<https://www.oecd.org/content/dam/oecd/en/topics/policy-issue-focus/map-statistics/map-statistics-indonesia.pdf>
<https://www1.compareyourcountry.org/map-statistics>

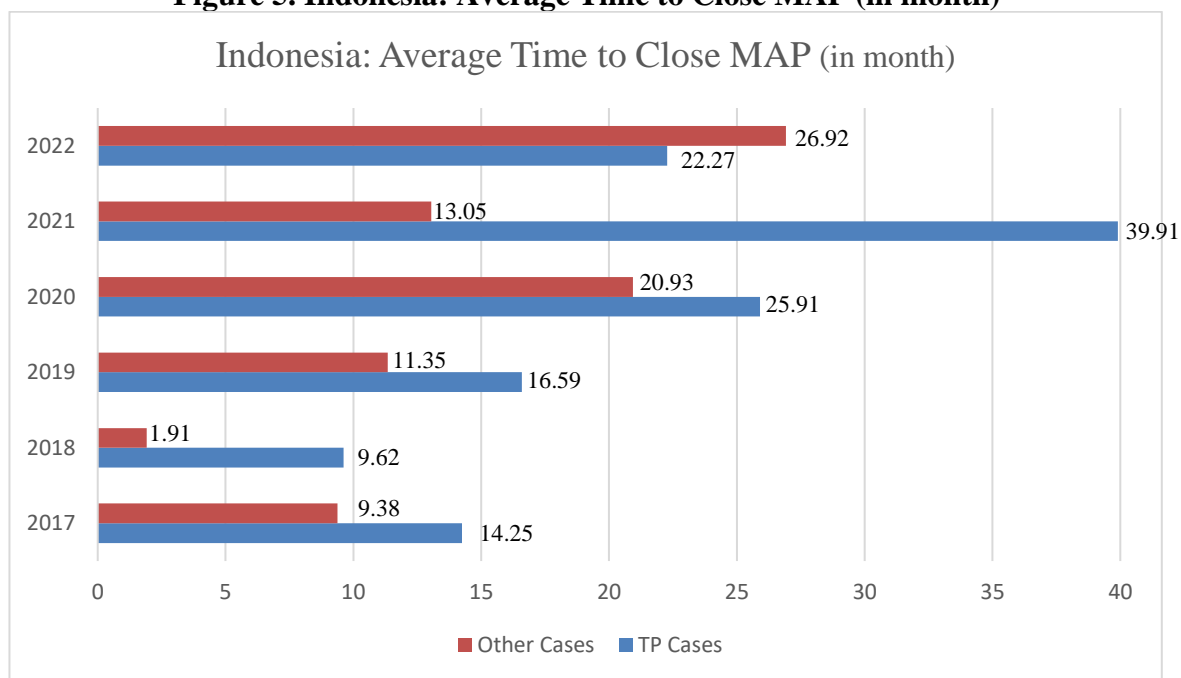
During the period of 2016 to 2022, the accepted MAP request submission fluctuated from 19 cases in 2016 to 16 cases in 2017 and reached its highest request in 2018 with 26 cases, while declining to 15 cases and 12 cases in 2019 and 2020, respectively. Amid the Covid-19 pandemic, the MAP request arose to 20 cases but was reduced to 13 cases in 2022.

With the start inventory, DGT successfully concluded 32 MAP cases in 2016, but declined from 2017 to 2019 with 16 cases. During the covid-19 pandemic, the concluded MAP cases rose to 24 cases both in 2020 and 2021 but dropped to merely 10 concluded cases in 2022. One of various factors includes the amendment of PMK-49/2019, which requires the MAP process to be completed within 24 months, which results in expediting the case settlement.

Average Time To Conclude MAP

In general, MAP cases can be categorized into 2 (two), namely transfer pricing cases and other cases. Cases initiated before 1 January 2016 can be resolved on average in 42 months for transfer pricing cases and 51 months for other cases. Meanwhile, cases started on January 1 2016, can be resolved on average in 14 months for transfer pricing cases and nine months for other cases. The details can be found in Figure 5.

Figure 5. Indonesia: Average Time to Close MAP (in month)



Source: Processed by the author based on OECD MAP Statistics

<https://www.oecd.org/content/dam/oecd/en/topics/policy-issue-focus/map-statistics/map-statistics-indonesia.pdf>
<https://www1.compareyourcountry.org/map-statistics>

Figure 5 shows that it takes more time to conclude transfer pricing cases than other cases, such as disputes on treaty interpretation or the treaty application, except in 2022, where other cases need longer to conclude than transfer pricing cases. It is also worthwhile to note that Indonesia's government's average time of 24 months as recommended by OECD BEPS Action 14, except for transfer pricing cases in 2020 and 2021 and other cases in 2022.

From 2016 to 2019, the average time for concluding cases was 24 months, per OECD recommendation. However, due to the Covid-19 pandemic, the average time to conclude MAP cases dropped, for transfer pricing cases from 16.59 months in 2019 to 25.91 months in 2020



and 39.91 months in 2021, while for other cases, the average time to conclude in 2020 is 20.93% and 13.05 months in 2021.

MAP Outcome

Of the cases that were successfully resolved, the forms of MAP outcome include: (i) tax disputes resolved through a domestic dispute resolution mechanism (resolved via domestic remedy); (ii) reaching a joint agreement which results in the complete elimination of double taxation (agreement completely eliminating double taxation/resolving not in accordance with tax treaty); (iii) reaching a mutual agreement which results in the partial elimination of taxation (agreement partially eliminating double taxation/resolving not in accordance with tax treaty); and (iv) failure to reach mutual agreement or what is commonly called "agreement to disagree" or any other outcome.

Among 144 cases concluded from 2016 to 2022, precisely half (50%) of the outcome resulted in no agreement or any other outcome. Meanwhile, merely 20.83% of the cases successfully agreed with the full elimination of double taxation. The year 2018 has the highest rate of agreement resulting in fully elimination of double taxation, with 63% (12 out of 19 cases) concluded and fully eliminated double taxation, while the highest percentage of no agreement thus resulted in double taxation occurring in the year of 2020 and 2021, with 57% and 54% respectively. The statistics of MAP outcomes from 2016 to 2022 are described in Table 4.

Table 4. Indonesia: MAP Outcome in 2016-2022

| | 2022 | 2021 | 2020 | 2019 | 2018 | 2017 | 2016 | Total |
|--|------|------|------|------|------|------|------|--------|
| Withdrawn by taxpayer | 10% | 8% | 9% | 14% | 11% | 5% | 0% | 6.94% |
| Unilateral relief granted | 0% | 4% | 0% | 0% | 5% | 0% | 3% | 2.08% |
| Resolved via domestic remedy | 0% | 0% | 9% | 14% | 5% | 20% | 6% | 7.64% |
| Agreement fully eliminating double taxation | 50% | 13% | 1% | 21% | 63% | 20% | 6% | 20.83% |
| Agreement partially eliminating double tax | 0% | 17% | 17% | 21% | 0% | 20% | 3% | 11.11% |
| Agreement that there is no taxation not in accordance with tax treaty | 0% | 0% | 4% | 0% | 0% | 5% | 0% | 1.39% |
| No agreement including agreement to disagree | 40% | 54% | 57% | 29% | 16% | 20% | 0% | 28.47% |
| Any other outcome | 0% | 4% | 4% | 7% | 0% | 10% | 81% | 21.53% |

Source: Processed by the author based on OECD MAP Statistics

<https://www.oecd.org/content/dam/oecd/en/topics/policy-issue-focus/map-statistics/map-statistics-indonesia.pdf>

A study conducted by Ilham & Widiastuti (2022) reports that Indonesia's obstacles in MAP settlement include domestic rules, human resources, national budget, and information and technology. Under BEPS Action 14, as an implementation of the '*Pacta Sunt Servanda*' principle, MAP must be implemented based on good faith, to eliminate double taxation as the initial aim of the tax treaty. With the prevailing regulations under PP-55/2022 and PMK-173/2023, it is expected to be no limitation on domestic regulation and that the effectiveness of MAP will be achieved.

Outlook of MAP In Indonesia

Multilateral MAP

In disputed transactions involving multiple jurisdictions, multilateral MAP would provide greater tax certainty to taxpayers and tax administrations. However, OECD (2022) underscores some challenges that may arise in multilateral MAP, such as confidentiality issues in exchanging information and the likeliness to achieve agreement. OECD (2023c) provided a manual for handling multilateral MAP and APA cases to provide guidance on the procedure



and practical examples. The manual does not modify but complements the aspiration for jurisdictions to apply best practices and implement the appropriate approach by considering each jurisdiction's circumstances.

Although Indonesia has promulgated the legal basis of multilateral MAP in PMK-172/2023, it needs to provide an implementation rule as guidance to create greater certainty in settling the dispute. The guidance may outline the procedure on request and discussion in the multilateral stage, the form and implementation of agreements, and the role of taxpayers.

MAP Arbitration

An empirical study of 30 years of evidence shows that MAP performance is insufficient to achieve its main objective since the wording of Article 25, paragraphs 1 to 3 merely 'endeavour to resolve' and insufficient to guarantee the effectiveness of dispute resolution (Altman, 2005). The binding MAP arbitration under Article 25 paragraph (5) may enhance the MAP's effectiveness and provide certainty on dispute resolution where MAP fails to conclude an agreement, after two years of process according to the OECD Model and after three years of process according to the UN Model. However, it is optional that the one who brings the case may opt to continue the case to the arbitration or opt to terminate it.

The recent heated debate on international tax dispute resolution lies on the mandatory MAP arbitration proposed under optional provisions (Part VI) of the MLI. Among 103 countries, 22 countries³ adopt final offer arbitration and 9 countries⁴ adopt independent opinion arbitration, while the rest opt to reject arbitration in their tax treaties. Most recently, tax certainty under the Two-Pillar Solution introduced mandatory and binding arbitration (OECD, 2020). However, most developing countries resist adopting MAP arbitration in their tax treaties, mainly due to sovereignty issues (Brauner, 2020). Another argument is the lack of experience and confidence with arbitration, and the higher cost and potential tax losses (Markham, 2019).

Indonesia does not adopt MAP arbitration in its bilateral treaty, except the Indonesia and Mexico Double Tax Agreement, although there is no case between the two countries in practice. Indonesia's government also expressed its reservation on MAP arbitration in the signatory of MLI in 2018. With the dynamic change of the international taxation landscape and the growing of multilateral corporation in global consensus on the digital economy, MAP arbitration will be an alternative for countries, including Indonesia.

Digitalization in Administration

Digitalizing the MAP process and streamlining the process with domestic regulations will ultimately enhance dispute resolution (Li, J. Bao, N, J. Hu, S. Hu, W. Zerbino, 2020). While improving its dispute resolution mechanism, it is also important for the Indonesian government to modernize its domestic and international justice system by increasing data protection due to confidentiality and prudently providing transparency. This can include electronic submission (digitalization), adopting technologies such as artificial intelligence and cloud-based storage to utilize the process of MAP (Dimitropoulou et al., 2018). Currently, DGT is developing a Core Tax Administration System (CTAS) to digitalize tax administration that integrate data. The system is envisaged to be implemented in 2025 with the focus to simplify the internal administration through an application system. This momentum can be utilized by

³ Australia, Austria, Barbados, Belgium, Canada, Curacao, Spain, Fiji, Finland, France, Germany, Ireland, Mauritius, Italy, Lesotho, Liechtenstein, Luxembourg, New Zealand, The Netherlands, United Kingdom, Singapore, Switzerland (<https://www.oecd.org/content/dam/oecd/en/topics/policy-sub-issues/beps-mlt/beps-mlt-signatories-and-parties.pdf>)

⁴ Andorra, Slovenia, Greece, Hungary, Japan, Malta, Papua-New Guinea, Portugal, Sweden (<https://www.oecd.org/content/dam/oecd/en/topics/policy-sub-issues/beps-mlt/beps-mlt-signatories-and-parties.pdf>)



integrating the system with the external stakeholders, such as Tax Court, Supreme Court, and counterpart jurisdictions.

The online dispute resolution (ODR) developed by the Latvia government can be considered in the ongoing work of Indonesia's tax reform under CTAS. Latvia has a holistic system that covers dispute resolution in the full range, such as a strong database, authentication procedures, electronic signatures and court information systems (OECD, 2024). In this case, DGT can cooperate with the Tax Court Secretariat by merging its application with the e-Tax Court.

CONCLUSIONS

Conclusions

As the role of MAP is increasingly important, this study established that Indonesia has shown its strong commitment and notable efforts to settle international tax dispute by providing a solid legal foundation and concluding the MAP cases within the recommended time-frame of minimum standard under OECD BEPS Action 14. The signed MLI to modify bilateral tax treaties and the amendment of domestic regulations has widened the open access to MAP application. However, the increasing availability of MAP access is expected to align with the outcome of MAP relieving double taxation. In fact, MAP has yet to result in optimal outcomes for cross-border tax cases in Indonesia. To overcome this challenge and to adapt to the rapid development of the international taxation landscape, the Indonesia government needs to take several actions. This study suggests the need for detailed guidance on multilateral MAP, consideration of the likelihood of MAP arbitration adoption under tax treaties, and the digitalization of administration to enhance a better MAP in the future.

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