

# Tax News Flash

February 2024

## New regulations for Transfer Pricing documentation, Mutual Agreement Procedures and Advance Pricing Agreements

New regulations for Transfer Pricing (“TP”) documentation, Mutual Agreement Procedures (“MAP”) and Advance Pricing Agreements (“APA”) have been issued.

Starting with the TP documentation for tax year 2024, Indonesian taxpayers are facing new requirements as the Indonesian Ministry of Finance has issued new regulations in “Ministry of Finance Regulation PMK 172 Year 2023” (“PMK 172”). This new regulation also includes minor changes to the MAP and APA regulations.

Below is a non-comprehensive overview of the most important new provisions in PMK 172.



### Formal requirements for TP Documentation

- » The regulations for TP documentation will apply to the TP documentation for tax year 2024 and beyond.
- » The Local File and Master File must be submitted within one month if requested from the tax authority for compliance monitoring or when there is a tax audit.
- » There is more emphasis on the formal aspects of TP documentation, such as date of availability and content requirements. Violations of these formal aspects can render the documents invalid.
- » Guidance on the application of secondary adjustments is included, including a confirmation that the tax treaty rate should be applied to the constructive dividend, provided conditions are met.
- » A local procedure to provide relief from domestic double taxation was introduced. To comply a taxpayer must agree on the tax audit findings and not enter into a tax objection procedure.
- » PMK 172 revokes some of the older regulations such as PMK 213 which regulated the master file, local file and country-by-country reporting concepts.



### New guidance on the contents of the TP Documentation

- » The term 'special relationship' denotes an expanded state of dependence or attachment between parties, including through managerial functions, technological utilization, and financial interdependencies.
- » The taxpayer should analyze each individual transaction unless two or more transactions are interconnected and mutually influential. If this is impossible, then an aggregation of transactions would be permissible.
- » An industry analysis must be included in all TP documentation. The items that need to be covered in this analysis are included in the new regulation.
- » Special attention is required for specific related-party transactions such as services, intangible property, loans, asset transfer, business restructuring, cost contribution arrangements and other financing transactions. The compliance with the arm's length principle should also be documented for other transactions, including sales and purchases.
- » New transfer pricing methods are confirmed: the Comparable Uncontrolled Transaction Method, Tangible or Intangible Asset Valuation and Business Valuations.
- » More guidance is available on the arm's-length range.



### Guidance for MAPs and APAs

- » The new MAP regulations contain the ability to extend the period for negotiations between the competent authorities from 24 months to 48 months.
- » More administrative guidance for the APA process is provided, such as the ability to file the request electronically.
- » Multilateral APA requests can be considered.

## KPMG notes:

PMK 172 is comprehensive and covers a plethora of regulations previously issued by various regulating bodies. Most existing regulations have not been changed significantly, but the most eye-catching new item is probably the introduction of a long-overdue mechanism to resolve domestic double taxation on domestic related-party transactions. On the other hand, some new regulations (such as the definition of a related party) may not fully align with OECD practices and hence may give rise to additional disputes. Also, no safe harbors (for example: for routine services or distribution functions) are on the table yet. Finally, multilateral APAs are now a possibility.

The above only provides an outline of the new regulations. Please contact your KPMG advisor if you require any further information on these or any other topics covered by the new regulations.

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