

**MINISTER OF FINANCE OF THE REPUBLIC OF
INDONESIA REGULATION
NUMBER 172 OF 2023**

CONCERNING

**THE APPLICATION OF THE ARM'S LENGTH PRINCIPLE TO
UNCONTROLLED TRANSACTIONS INFLUENCED BY A SPECIAL
RELATIONSHIP**

**BY THE GRACE OF ALMIGHTY GOD
THE MINISTER OF FINANCE OF THE REPUBLIC OF INDONESIA,**

Considering

- a. that to provide fairness, legal certainty and convenience in the exercise of rights and fulfilment of obligations in the field of taxation related to uncontrolled transactions influenced by a special relationship, it is necessary to adjust the regulation concerning the application of the arm's length principle in uncontrolled transactions influenced by a special relationship;
- b. that the regulation of the types of compulsory additional documents and/or information to be retained by taxpayers conducting related party transactions and the administration procedures stipulated under the Minister of Finance Regulation Number 213/PMK.03/2016 concerning Types of Compulsory Additional Documents and/or Information to Be Retained by Taxpayers Conducting Related Party Transactions and the Administration Procedures, procedures for the implementation of mutual agreement procedure stipulated under the Minister of

Finance Regulation Number 49/PMK.03/2019 concerning Procedures for the Implementation of the Mutual Agreement Procedure and procedures for the establishment and implementation of advance pricing agreement stipulated under the Minister of Finance Regulation Number 22/PMK.03/2020 concerning Procedures for the Implementation of the Advance Pricing Agreement have yet to accommodate the needs referred to in letter a, thereby, need to be replaced;

- c. that based on the considerations referred to in letter a and letter b as well as to implement the provisions under Article 44E paragraph (2) subparagraph d of Law Number 6 of 1983 concerning General Provisions and Tax Procedures as amended several times, last amended by Law Number 7 of 2021 concerning the Harmonisation of Tax Regulations, the provisions under Article 2 of Law Number 8 of 1983 concerning Value Added Tax on Goods and Services and Sales Tax on Luxury Goods as amended several times, last amended by Law Number 7 of 2021 concerning the Harmonisation of Tax Regulations, Article 11 paragraph (3) of Government Regulation Number 55 of 2022 concerning Adjustments to the Regulation in the Field of Income Taxes and the provisions under Article 37 and Article 47 of Government Regulation Number 55 of 2022 concerning Adjustments to the Regulation in the Field of Income Taxes, it is necessary to stipulate a Minister of Finance Regulation concerning the Application of the Arm's Length Principle to Uncontrolled Transactions Influenced by a Special Relationship;

In View of

1. Article 17 paragraph (3) of the 1945 Constitution of the Republic of Indonesia;
2. Law Number 6 of 1983 concerning General Provisions and Tax Procedures (State Gazette of the Republic of Indonesia of 1983 Number 49, Supplement to the State Gazette of the Republic of Indonesia Number 3262) as amended several times, last amended by Law Number 7 of 2021 concerning the Harmonisation of Tax Regulations (State Gazette of the Republic of Indonesia of 2021 Number 246, Supplement to the State Gazette of the Republic of Indonesia Number 6736);
3. Law Number 7 of 1983 concerning Income Taxes (State Gazette of the Republic of Indonesia of 1983 Number 50, Supplement to the State Gazette of the Republic of Indonesia Number 3263) as amended several times, last amended by Law Number 7 of 2021 concerning the Harmonisation of Tax Regulations (State Gazette of the Republic of Indonesia of 2021 Number 246, Supplement to the State Gazette of the Republic of Indonesia Number 6736);
4. Law Number 8 of 1983 concerning Value Added Tax on Goods and Services and Sales Tax on Luxury Goods (State Gazette of the Republic of Indonesia of 1983 Number 51, Supplement to the State Gazette of the Republic of Indonesia Number 3264) as amended several times, last amended by Law Number 7 of 2021 concerning the Harmonisation of Tax Regulations (State Gazette of the Republic of Indonesia of 2021 Number 246, Supplement to the State Gazette of the Republic of Indonesia Number 6736);
5. Law Number 17 of 2003 concerning State Finances (State Gazette of the Republic of Indonesia of 2003 Number 47, Supplement to the State Gazette of the Republic of Indonesia Number 4286);

6. Law Number 39 of 2008 concerning State Ministries (State Gazette of the Republic of Indonesia of 2008 Number 166, Supplement to the State Gazette of the Republic of Indonesia Number 4916);
7. Government Regulation Number 50 of 2022 concerning Procedures for the Exercise of Tax Rights and Fulfilment of Tax Obligations (State Gazette of the Republic of Indonesia of 2022 Number 226, Supplement to the State Gazette of the Republic of Indonesia Number 6834);
8. Government Regulation Number 55 of 2022 concerning Adjustments to the Regulation in the Field of Income Taxes (State Gazette of the Republic of Indonesia of 2022 Number 231, Supplement to the State Gazette of the Republic of Indonesia Number 6836);
9. Presidential Regulation Number 57 of 2020 concerning the Ministry of Finance (State Gazette of the Republic of Indonesia of 2020 Number 98);
10. Minister of Finance Regulation Number 118/PMK.01/2021 concerning the Organisation and Work Procedures of the Ministry of Finance (Official Gazette of the Republic of Indonesia of 2021 Number 1031) as amended by the Minister of Finance Regulation Number 135 of 2023 concerning the Second Amendment to the Minister of Finance Regulation Number 118/PMK.01/2021 concerning the Organisation and Work Procedures of the Ministry of Finance (Official Gazette of the Republic of Indonesia of 2023 Number 977);

HAS DECIDED:

To stipulate

MINISTER OF FINANCE REGULATION CONCERNING THE APPLICATION OF THE ARM'S LENGTH PRINCIPLE TO UNCONTROLLED TRANSACTIONS INFLUENCED BY A SPECIAL RELATIONSHIP.

CHAPTER I
GENERAL PROVISIONS

Article 1

Referred to herein this Ministerial Regulation:

1. Law concerning Income Taxes is Law Number 7 of 1983 concerning Income Taxes as amended several times, last amended by Law Number 7 of 2021 concerning the Harmonisation of Tax Regulations.
2. Law concerning Value Added Tax on Goods and Services and Sales Tax on Luxury Goods is Law Number 8 of 1983 concerning Value Added Tax on Goods and Services and Sales Tax on Luxury Goods as amended several times, last amended by Law Number 7 of 2021 concerning the Harmonisation of Tax Regulations.
3. Law concerning General Provisions and Tax Procedures is Law Number 6 of 1983 concerning General Provisions and Tax Procedures as amended several times, last amended by Law Number 7 of 2021 concerning the Harmonisation of Tax Regulations.
4. Transfer Price is the price in an uncontrolled transaction influenced by a special relationship.
5. Affiliated Parties are parties that have a special relationship with one another.

6. Controlled Transaction is a transaction conducted by a taxpayer with a Related Party.
7. Uncontrolled Transactions Influenced by a Special Relationship are transactions that include Controlled Transactions and/or transactions conducted between unrelated parties but the Affiliated Parties of one or both the transacting parties determine the counterparty and the price of the transaction.
8. Uncontrolled Transaction is a transaction between unrelated parties and not influenced by a special relationship.
9. Transfer Pricing, hereinafter referred to as Transfer Pricing, is the pricing in Uncontrolled Transactions Influenced by a Special Relationship.
10. Arm's Length Principle Not Influenced by a Special Relationship (ALP), hereinafter referred to as the Arm's Length Principle, is the applicable principle in sound business practices conducted as in Uncontrolled Transactions.
11. Audit is a series of activities to collect and process data, information and/or evidence conducted in an objective and professional manner based on an auditing standard to assess compliance in the fulfilment of tax obligations and/or for other purposes to implement statutory tax provisions.
12. Transfer Pricing Documentation is documents prepared by taxpayers that contain data and/or information to support that the transactions conducted with related parties conform to the Arm's Length Principle.
13. Taxpayer is any individual or entity, comprising a taxpayer, a withholding agent and a collecting agent having tax rights and obligations pursuant to statutory tax provisions.

14. Business Group is a group of tax subjects conducting business that consists of related parties.
15. Tax Treaty is an agreement between the Government of Indonesia and the government of a tax treaty partner to prevent double taxation and tax evasion.
16. Tax Treaty Partner is a country or jurisdiction bound with the Government of Indonesia in a Tax Treaty.
17. Tax Authorities of the Tax Treaty Partner, are the tax authorities of the Tax Treaty Partner authorised to implement the provisions under a Tax Treaty.
18. Mutual Agreement Procedure (MAP), hereinafter referred to as the Mutual Agreement Procedure, is an administrative procedure regulated in a Tax Treaty to resolve issues arising in the application of the Tax Treaty.
19. Competent Authority in connection with the implementation of the Mutual Agreement Procedure, hereinafter referred to as the Competent Authority, is an official in Indonesia or an official in the Tax Treaty Partner authorised to implement the Mutual Agreement Procedure stipulated under the Tax Treaty.
20. Mutual Agreement is the results agreed upon in the application of a Tax Treaty by the Competent Authority of the Government of Indonesia and the Competent Authority of the Tax Treaty Partner government in connection with the implemented MAP.
21. Mutual Agreement Decision Letter is a decision letter issued to follow up on the agreement in the Mutual Agreement.
22. Indonesian Citizen requesting the implementation of the Mutual Agreement Procedure, hereinafter referred to as Indonesian Citizen, is an Indonesian Citizen pursuant to statutory provisions in

the field of citizenship constituting a resident taxpayer of the Tax Treaty Partner.

23. Applicant is a resident Taxpayer or an Indonesian Citizen.
24. Advance Pricing Agreement (APA), hereinafter referred to as the Advance Pricing Agreement, is a written agreement between the Director General of Taxes and a taxpayer or Tax Authorities of a Tax Treaty Partner involving a taxpayer in the jurisdiction referred to in Article 18 paragraph (3a) of the Law concerning Income Taxes to agree on the criteria in Transfer Pricing and/or determine the arm's length price or advance arm's length profit.
25. Advance Pricing Agreement Paper is a document containing an agreement between the Director General of Taxes and a resident Taxpayer concerning the criteria in Transfer Pricing and the Advance Pricing according to the Arm's Length Principle during the APA Period and roll-back.
26. Unilateral Advance Pricing Agreement is the Advance Pricing Agreement between the Director General of Taxes and a resident Taxpayer.
27. Bilateral or Multilateral Advance Pricing Agreement is the Advance Pricing Agreement between the Director General of Taxes and 1 (one) or more Competent Authority of the Tax Treaty Partner implemented based on the application of a resident Taxpayer.
28. Advance Pricing Agreement Period is a tax year covered under the Advance Pricing Agreement according to the application of a resident Taxpayer or according to the Mutual Agreement for a maximum of 5 (five) tax years after the tax year the application for the Advance Pricing Agreement is submitted.

29. Roll-back, hereinafter referred to as Roll-back, is the application of the agreement in the Advance Pricing Agreement for the tax year prior to the Advance Pricing Agreement Period.
30. Taxpayer Portal is a means for Taxpayers to exercise tax rights and fulfil tax obligations electronically on the Directorate General of Taxes website.

CHAPTER II SPECIAL RELATIONSHIPS

Article 2

- (1) A special relationship is the special relationship stipulated under:
 - a. Law concerning Income Taxes; and
 - b. Law concerning Value Added Tax on Goods and Services and Sales Tax on Luxury Goods.
- (2) The special relationship referred to in paragraph (1) is a state of dependence or attachment between one party and another party due to:
 - a. ownership or equity participation;
 - b. control; or
 - c. family relationship by blood or marriage.
- (3) The state of dependence or attachment between one party and another party referred to in paragraph (2) is a state where one or more parties:
 - a. control another party; or
 - b. are not independent,
in conducting business or performing activities.

- (4) The special relationship due to ownership or equity participation referred to in paragraph (2) subparagraph a is deemed to exist if:
- a. a Taxpayer has direct or indirect equity participation of a minimum of 25% (twenty-five percent) in another Taxpayer; or
 - b. the relationship between the Taxpayer with equity participation of a minimum of 25% (twenty-five percent) in two or more Taxpayers.
- (5) The special relationship due to control referred to in paragraph (2) subparagraph b is deemed to exist if:
- a. one party controls another party or one party is controlled by another party, directly and/or indirectly;
 - b. two or more parties are under the control of the same parties, directly and/or indirectly;
 - c. one party controls another party or one party is controlled by another party through management or use of technologies;
 - d. there are the same people who are directly and/or indirectly involved or participating in managerial or operational decision-making on two or more parties;
 - e. parties that are commercially or financially known or claim to be in the same Business Group; or
 - f. one party claims to have a special relationship with another party.

- (6) The special relationship due to family relationship by blood or marriage referred to in paragraph (2) subparagraph c is deemed to exist if there is a family relationship either by blood or by marriage in one degree of direct lineage vertically and/or in one degree of direct lineage horizontally.

CHAPTER III
THE APPLICATION OF THE ARM'S LENGTH PRINCIPLE

Section One
The Arm's Length Principle

Article 3

- (1) Taxpayers must apply the Arm's Length Principle in the exercise of rights and the fulfilment of obligations in the field of taxation related to Uncontrolled Transactions Influenced by a Special Relationship.
- (2) The Arm's Length Principle referred to in paragraph (1) is applied to determine arm's length Transfer Prices.
- (3) The Arm's Length Principle referred to in paragraph (2) is applied by comparing the conditions and price indicators of Uncontrolled Transactions Influenced by a Special Relationship with the same or comparable conditions and price indicators of Uncontrolled Transactions.
- (4) The Transfer Prices referred to in paragraph (2) fulfil the Arm's Length Principle if the value of the Transfer Price indicator is the same as the value of a comparable Uncontrolled Transaction price indicator.

- (5) The price indicator referred to in paragraph (4) may be in the form of transaction price, gross profit or net operating profit based on absolute values or certain ratio values.

Section Two

The Application of the Arm's Length Principle to Uncontrolled Transactions Influenced by a Special Relationship

Paragraph 1

General Guidelines

Article 4

- (1) The Arm's Length Principle referred to in Article 3 paragraph (3) must be applied:
- a. based on actual conditions;
 - b. upon Transfer Pricing and/or when Uncontrolled Transactions Influenced by a Special Relationship occur; and
 - c. according to the stages in the application of the Arm's Length Principle.
- (2) The Arm's Length Principle referred to in paragraph (1) must be applied separately for each type of Uncontrolled Transactions Influenced by a Special Relationship.
- (3) If two or more types of Uncontrolled Transactions Influenced by a Special Relationship are interconnected and interrelated in Transfer Pricing, thereby, the separate application of the Arm's Length Principle referred to in paragraph (2) cannot be performed reliably and accurately, the Arm's Length Principle may be applied

by combining the two or more types of Uncontrolled Transactions Influenced by a Special Relationship.

(4) The stages of the application of the Arm's Length Principle referred to in paragraph (1) subparagraph c include:

- a. identifying Uncontrolled Transactions Influenced by a Special Relationship and Affiliated Parties;
- b. performing industry analysis related to Taxpayers' business, including identifying factors that influence business performance in that industry;
- c. identifying commercial and/or financial relationships between Taxpayers and Affiliated Parties by analysing the conditions of transactions;
- d. performing comparability analysis;
- e. determining the Transfer Pricing method; and
- f. applying the Transfer Pricing method and determining arm's length Transfer Prices.

(5) The Arm's Length Principle for certain Uncontrolled Transactions Influenced by a Special Relationship must be applied using the preliminary stages and stages referred to in paragraph (4).

(6) Certain Uncontrolled Transactions Influenced by a Special Relationship referred to in paragraph (5) include:

- a. service transactions;
- b. transactions related to the use or the right to use intangible assets;
- c. financial transactions related to loans;

- d. other financial transactions;
- e. asset transfer transactions;
- f. business restructuring; and
- g. cost contribution agreement.

Paragraph 2

Identification of Uncontrolled Transactions Influenced by a Special Relationship and Affiliated Parties

Article 5

Identification of Uncontrolled Transactions Influenced by a Special Relationship and Affiliated Parties referred to in Article 4 paragraph (4) subparagraph a is activities to identify:

- a. Uncontrolled Transactions Influenced by a Special Relationship conducted by Taxpayers;
- b. parties involved in Uncontrolled Transactions Influenced by a Special Relationship referred to in letter a; and
- c. the forms of the special relationship referred to in Article 2 paragraph (2).

Paragraph 3

Industry Analysis

Article 6

- (1) The industry analysis referred to in Article 4 paragraph (4) subparagraph b is an analysis to identify factors in the form of:
 - a. the type of products in the form of goods or services;

- b. industry and market characteristics, such as market growth, market segmentation, market cycle, technology, market size, market prospects, supply chain and value chain;
 - c. competitors and level of business competition;
 - d. the level of efficiency and superiority of the Taxpayers' location;
 - e. economic conditions that affect business performance in the industry, such as inflation rates, economic growth, interest rates and exchange rates;
 - f. regulations that affect and/or determine success in the industry; and
 - g. factors other than the factors referred to in subparagraph a to subparagraph f that affect business performance in the industry.
- (2) The results of the industry analysis referred to in paragraph (1) are used in identifying differences between the conditions of the tested Uncontrolled Transactions Influenced by a Special Relationship and the conditions of transactions of potential comparables when the comparability analysis referred to in Article 4 paragraph (4) subparagraph d is conducted.

Paragraph 4

The Analysis of the Conditions of Transactions

Article 7

- (1) Conditions of transactions referred to in Article 4 paragraph (4) subparagraph c are relevant economic characteristics, in the form of:
 - a. contractual provisions;
 - b. functions performed, assets used and risks assumed;
 - c. characteristics of the products being transacted;
 - d. economic conditions; and
 - e. business strategies implemented by the transacting parties.
- (2) The contractual provisions referred to in paragraph (1) subparagraph a are provisions that are implemented and/or apply to the transacting parties according to actual conditions, either written or unwritten.
- (3) The functions referred to in paragraph (1) subparagraph b are the activities and/or responsibilities of the transacting parties in conducting business.
- (4) The assets referred to in paragraph (1) subparagraph b are tangible assets, intangible assets, financial assets and/or non-financial assets that influence value creation, including market access and level of control in Indonesia.
- (5) The risks referred to in paragraph (1) subparagraph b are the impact of the condition of uncertainty in achieving business objectives assumed by transacting parties.
- (6) The product characteristics referred to in paragraph (1) subparagraph c are specific characteristics of the transacted goods or services and significantly affect pricing in the open market.

- (7) The economic conditions referred to in paragraph (1) subparagraph d are the economic conditions of:
 - a. the transacting parties; and
 - b. the market where the parties transact.
- (8) The business strategies referred to in paragraph (1) subparagraph e are strategies implemented by the companies in conducting business in the open market.

Paragraph 5
Comparability Analysis

Article 8

- (1) The comparability analysis referred to in Article 4 paragraph (4) subparagraph d is conducted to determine the comparability between Uncontrolled Transactions and Uncontrolled Transactions Influenced by a Special Relationship in respect of the conditions of transactions referred to in Article 7 paragraph (1).
- (2) Uncontrolled Transactions are the same or comparable to the tested Uncontrolled Transactions Influenced by a Special Relationship referred to in Article 3 paragraph (3) insofar as:
 - a. the conditions of Uncontrolled Transactions are the same or similar to the conditions of the tested Uncontrolled Transactions Influenced by a Special Relationship;
 - b. the conditions of Uncontrolled Transactions are different from the conditions of the tested Uncontrolled Transactions Influenced by a Special Relationship, but the differences in the conditions do not affect pricing; or

c. the conditions of Uncontrolled Transactions are different from the conditions of the tested Uncontrolled Transactions Influenced by a Special Relationship and the differences in the conditions affect pricing, but accurate adjustments may be performed adequately to the Uncontrolled Transactions to eliminate the material impact of the differences in the conditions on pricing.

(3) The comparability analysis referred to in paragraph (1) is conducted through the following stages:

a. understanding the characteristics of Uncontrolled Transactions Influenced by a Special Relationship being tested based on the results of the identification of commercial and/or financial relationships between Taxpayers and Affiliated Parties referred to in Article 4 paragraph (4) subparagraph c and determining the business characteristics of each transacting party;

b. identifying the existence of Uncontrolled Transactions constituting reliable potential comparables;

c. determining the parties whose transfer price indicators are tested if the method used is a profit-based method;

d. identifying the differences in the conditions between the tested Uncontrolled Transactions

Influenced by a Special Relationship and potential comparables;

- e. performing accurate adjustments appropriately to the potential comparables to eliminate the material impact of the differences in conditions referred to in subparagraph d on the transaction price indicators; and
 - f. determining Uncontrolled Transactions constituting the selected comparables.
- (4) The parties whose transfer price indicators are tested referred to in paragraph (3) subparagraph c are the parties in Uncontrolled Transactions Influenced by a Special Relationship which have simpler functions, assets and risks by considering:
- a. the application of the Transfer Pricing method; and
 - b. data availability,
- that are most reliable and usable.
- (5) The comparables referred to in paragraph (3) subparagraph f may be in the form of internal comparables or external comparables.
- (6) The internal comparables referred to in paragraph (5) are transactions between independent parties and:
- a. Taxpayers; or
 - b. Affiliated Parties constituting counterparties.
- (7) The external comparables referred to in paragraph (5) are transactions between independent parties other than internal comparables.

- (8) If internal comparables and external comparables with the same level of comparability and reliability are available, the internal comparables are selected and used as comparables.
- (9) If more than one external comparable is available with the same level of comparability and reliability, external comparables from the same country or jurisdiction as the tested parties are selected and used as comparables.

Paragraph 6
Transfer Pricing Methods

Article 9

- (1) Transfer Pricing Methods in the stages in the application of the Arm's Length Principle referred to in Article 4 paragraph (4) subparagraph e may be in the form of:
 - a. the comparable uncontrolled price method;
 - b. the resale price method;
 - c. the cost-plus method; or
 - d. other methods, such as:
 - 1. the profit split method;
 - 2. the transactional net margin method;
 - 3. the comparable uncontrolled transaction method;
 - 4. methods in the tangible asset and/or intangible asset valuation; or

5. methods in business valuation.

(2) The methods referred to in paragraph (1) are selected based on the accuracy and reliability of the methods, assessed based on:

- a. the conformity of the Transfer Pricing method with the characteristics of the tested Uncontrolled Transactions Influenced by a Special Relationship and the business characteristics of the transacting parties;
- b. the advantages and disadvantages of each method that may be applied;
- c. the availability of Uncontrolled Transactions constituting reliable comparables;
- d. the level of comparability between the Uncontrolled Transactions Influenced by a Special Relationship and Uncontrolled Transactions constituting comparables; and
- e. the accuracy of the adjustments performed if there are differences in the conditions between Uncontrolled Transactions Influenced by a Special Relationship and Uncontrolled Transactions constituting comparables.

(3) The comparable uncontrolled price method referred to in paragraph (1) subparagraph a is appropriate for the characteristics of Uncontrolled Transactions Influenced by a Special Relationship, as follows:

- a. commodity product transactions; and
- b. transactions of goods or services with the same or similar characteristics of goods or services as

the characteristics of goods or services in Uncontrolled Transactions in comparable conditions.

(4) The resale price method referred to in paragraph (1) subparagraph b is appropriate for the characteristics of Uncontrolled Transactions Influenced by a Special Relationship and business characteristics of the transacting parties, as follows:

a. the Uncontrolled Transactions Influenced by a Special Relationship are conducted by involving distributors or resellers that resell goods or services to independent parties or Affiliated Parties at prices that fulfil the Arm's Length Principle; and

b. the distributors or resellers referred to in subparagraph a do not assume significant business risks, do not have unique and valuable contributions to the Uncontrolled Transactions Influenced by a Special Relationship or do not provide significant added value to the transacted goods or services.

(5) The cost-plus method referred to in paragraph (1) subparagraph c is appropriate for the characteristics of Uncontrolled Transactions Influenced by a Special Relationship and business characteristics of the transacting parties, as follows:

a. the Uncontrolled Transactions Influenced by a Special Relationship are conducted by involving manufacturers or service providers that purchase raw materials or other production factors from independent parties or Affiliated

Parties at prices that fulfil the Arm's Length Principle; and

- b. the manufacturers or service providers referred to in subparagraph a do not assume significant business risks and do not have unique and valuable contributions to the Uncontrolled Transactions Influenced by a Special Relationship

(6) The profit split method referred to in paragraph (1) subparagraph d number 1 is appropriate for characteristics of Uncontrolled Transactions Influenced by a Special Relationship and business characteristics of the transacting parties, as follows:

- a. the Uncontrolled Transactions Influenced by a Special Relationship are conducted by parties that have unique and valuable contributions to the Uncontrolled Transactions Influenced by a Special Relationship;
- b. the businesses of the transacting parties are highly integrated, thereby, the contributions of each transacting party cannot be analysed separately; and
- c. the transacting parties share the assumption of economically significant risks or separately assume closely related risks.

(7) The transactional net margin method) referred to in paragraph (1) subparagraph d number 2 may be selected insofar as no comparables at reliable and comparable levels of price and gross profit are available and is appropriate for the characteristics of

Uncontrolled Transactions Influenced by a Special Relationship and business characteristics of the transacting parties, as follows:

- a. the Uncontrolled Transactions Influenced by a Special Relationship are conducted by one of the parties or the parties that do not have any unique and valuable contribution to the Uncontrolled Transactions Influenced by a Special Relationship;
- b. the businesses of the transacting parties are non-highly integrated; and
- c. the transacting parties do not share the assumptions of economically significant risks or do not separately assume closely related risks.

(8) The comparable uncontrolled transaction method referred to in paragraph (1) subparagraph d number 3 is appropriate for characteristics of Uncontrolled Transactions Influenced by a Special Relationship that are commercially valued on a certain basis, in the form of interest rates, discounts, fees, commissions and royalty percentages on sales or operating profits.

(9) Methods in tangible asset and/or intangible asset valuation) referred to in paragraph (1) subparagraph d number 4 are appropriate for characteristics of Uncontrolled Transactions Influenced by a Special Relationship in the form of:

- a. transfer transactions of tangible assets and/or intangible assets;
- b. lease transactions of tangible assets;
- c. transactions in connection with the use or right to use intangible assets;
- d. transfer transactions of financial assets;

- e. transfer transactions of rights in connection with the exploitation of mining areas and/or other similar rights; and
- f. transfer transactions of rights in connection with the cultivation of plantation, forestry and/or other similar rights.

(10) Methods in business valuation referred to in paragraph (1) subparagraph d number 5 are appropriate for characteristics of Uncontrolled Transactions Influenced by a Special Relationship in the form of:

- a. transactions in connection with business restructuring, including the transfer of functions, assets and/or risks between Affiliated Parties;
- b. transfer transactions of assets other than cash to companies, partnerships and other entities in lieu of shares or equity participation (inbreng); and
- c. transfer transactions of assets other than cash to shareholders, partners or members of companies, partnerships or other entities.

(11) The unique and valuable contributions referred to in paragraph (6) subparagraph a are contributions that:

- a. are more significant than the contributions by independent parties under comparable conditions; and
- b. constitute the main source of actual or potential economic benefits in the business.

(12) If the methods referred to in paragraph (1) subparagraph a or paragraph (1) subparagraph d number 3 and other methods may

be used and have equivalent reliability, the methods referred to in paragraph (1) subparagraph a or paragraph (1) subparagraph d number 3 shall take precedence over other methods.

- (13) If the methods referred to in paragraph (1) subparagraph b, paragraph (1) subparagraph c, paragraph (1) subparagraph d number 1 and paragraph (1) subparagraph d number 2 may be used and have equivalent reliability, the methods referred to in paragraph (1) subparagraph b or paragraph (1) subparagraph c shall take precedence over the methods referred to in paragraph (1) subparagraph d number 1 and paragraph (1) subparagraph d number 2.

Paragraph 7

The Application of Transfer Pricing Methods and Arm's Length Transfer Pricing

Article 10

- (1) The comparable uncontrolled price method referred to in Article 9 paragraph (1) subparagraph a is conducted by comparing prices between the tested Uncontrolled Transactions Influenced by a Special Relationship and Uncontrolled Transactions.
- (2) The resale price method referred to in Article 9 paragraph (1) subparagraph b is conducted by subtracting the arm's length gross profit of the distributor or reseller from the resale price.
- (3) The cost-plus method referred to in Article 9 paragraph (1) subparagraph c is conducted by adding the arm's length gross profit of the manufacturer or service provider to the cost of goods or services sold.

- (4) The profit split method referred to in Article 9 paragraph (1) subparagraph d number 1 is conducted by splitting the relevant combined profit of the transaction based on the functions, assets, risks and/or contributions of the parties in Uncontrolled Transactions Influenced by a Special Relationship.
- (5) The transactional net margin method referred to in Article 9 paragraph (1) subparagraph d number 2 is conducted by comparing the level of net operating profit of the tested parties with the level of net operating profit of the comparables.
- (6) The comparable uncontrolled transaction method referred to in Article 9 paragraph (1) subparagraph d number 3 is conducted by comparing the price or profit of a transaction on a certain basis between Uncontrolled Transactions Influenced by a Special Relationship and Uncontrolled Transactions.
- (7) Methods in tangible asset and/or intangible asset valuation) referred to in Article 9 paragraph (1) subparagraph d number 4 are conducted pursuant to statutory provisions stipulating valuation procedures for taxation purposes.
- (8) Methods in business valuation referred to in Article 9 paragraph (1) subparagraph d number 5 are conducted pursuant to statutory provisions stipulating valuation procedures for taxation purposes.

Article 11

- (1) The combined profit referred to in Article 10 paragraph (4) may be split at the level of gross profit or net operating profit.
- (2) The level of the split combined profit referred to in paragraph (1) is determined by the level of integration of functions, use of assets and/or sharing of economically significant business risks of the

transacting parties in Uncontrolled Transactions Influenced by a Special Relationship.

- (3) The combined profit referred to in paragraph (1) may be split using:
 - a. contribution analysis; or
 - b. residual analysis.
- (4) The contribution analysis referred to in paragraph (3) subparagraph a is conducted by dividing the combined profit referred to in paragraph (2) based on splitting factors.
- (5) The residual analysis referred to in paragraph (3) subparagraph b is conducted by splitting the combined profit referred to in paragraph (1) into:
 - a. the profit from the contribution of each transacting party whose comparables may be reliably obtained in Uncontrolled Transactions; and
 - b. the residual combined profit after deducted by the profit referred to in subparagraph a, which may be positive or negative.
- (6) The residual combined profit referred to in paragraph (5) subparagraph b is split based on splitting factors.
- (7) The splitting factors referred to in paragraph (4) and paragraph (6) may be in the form of:
 - a. the percentage of profit sharing by parties in comparable Uncontrolled Transactions; or
 - b. the relative value or percentage contribution of the transacting parties in Uncontrolled Transactions Influenced by a Special

Relationship if the data referred to in subparagraph a is not available.

- (8) The splitting factors referred to in paragraph (7) must fulfil the following criteria:
- a. free from Uncontrolled Transactions Influenced by a Special Relationship;
 - b. verifiable; and
 - c. supported by comparable data or internal data of the transacting parties and/or other relevant data.

Article 12

- (1) The price indicator value of Uncontrolled Transactions referred to in Article 3 paragraph (4) may be in the form of:
 - a. arm's length point; or
 - b. arm's length range.
- (2) The price indicator value of Uncontrolled Transactions referred to in paragraph (1) is established based on single-year comparable data.
- (3) The price indicator value of Uncontrolled Transactions referred to in paragraph (1) may be established based on multi-year comparable data insofar as it may increase comparability.
- (4) The single-year or multiple-year comparable data referred to in paragraph (2) and paragraph (3) is data that is available and closest to the time of Transfer Pricing and/or the occurrence of Uncontrolled Transactions Influenced by a Special Relationship.

- (5) The arm's length point referred to in paragraph (1) subparagraph a is a price indicator point established from one or more comparables with the same price indicator value.
- (6) The arm's length range referred to in paragraph (1) subparagraph b is a price indicator range established from two or more comparables with different price indicator values, in the form of:
 - a. the minimum value up to the maximum value (full range) if established by two comparables;
or
 - b. the values of quartile one to quartile three (interquartile range)) if established by three or more comparables.
- (7) If Transfer Prices do not fulfil the Arm's Length Principle referred to in Article 3 paragraph (4), Transfer Pricing is determined as in the pricing in Uncontrolled Transactions using:
 - a. arm's length point;
 - b. the most appropriate point in the arm's length range according to the comparability; or
 - c. the median in the arm's length range if the most appropriate point referred to in subparagraph b cannot be determined.

Paragraph 8

Preliminary Stages

Article 13

- (1) Preliminary stages for the service transactions referred to in Article 4 paragraph (6) subparagraph a include evidencing that the services:

- a. have actually been supplied by the service provider and acquired by the service recipient;
- b. are required by the service recipient;
- c. provide economic benefits to the service recipient;
- d. do not constitute shareholder activities;
- e. do not constitute activities that provide benefits to a party solely because the party is part of a Business Group (passive association);
- f. are not the duplication of activities that have been carried out by the Taxpayers themselves;
- g. do not constitute services that provide incidental benefits; and
- h. in the case of on-call services, do not constitute services that may be acquired immediately from an independent party without a prior on-call contract.

(2) The costs related to service transactions that do not fulfil the evidencing that the services do not constitute shareholder activities referred to in paragraph (1) subparagraph d, are in the form of:

- a. service costs related to the administration of the parent entity, such as costs related to the parent entity's shareholder meetings, service costs related to the issuance of the parent entity's shares, service costs related to the listing of the parent entity's shares on the stock exchange and service costs related to the parent entity's management;

- b. service costs related to the parent entity's reporting obligations, including financial statement preparation service costs, audit report preparation service costs and parent entity consolidated financial statement preparation service costs;
 - c. service costs related to the acquisition of funds or capital used for the takeover of ownership by the parent entity;
 - d. service costs related to the parent entity's compliance with applicable statutory provisions;
 - e. service costs related to the protection of the parent entity's capital ownership in subsidiary companies; and
 - f. service costs related to the overall governance of the Business Group.
- (3) Preliminary stages for transactions related to the use or the right to use intangible assets referred to in Article 4 paragraph (6) subparagraph b include the evidencing of:
- a. the existence of intangible assets;
 - b. the types of intangible assets;
 - c. the value of intangible assets;
 - d. the parties that legally own intangible assets;
 - e. parties that economically own intangible assets;
 - f. the use or the right to use intangible assets;
 - g. the parties that contribute and develop, improve, maintain, protect and exploit the intangible assets; and

- h. the economic benefits obtained by the parties that use the intangible assets.
- (4) Preliminary stages for financial transactions related to loans referred to in Article 4 paragraph (6) subparagraph c include the evidencing that the loans:
- a. are according to the substance and actual circumstances;
 - b. are required by the borrower;
 - c. are used to obtain, collect and maintain income pursuant to statutory provisions in the field of income taxes;
 - d. fulfil the characteristics of loans, at least in the form of:
 - 1. the creditor economically and legally recognises the loan;
 - 2. the loan maturity date;
 - 3. there is an obligation to settle the principal amount of the loan;
 - 4. there is payment according to the payment schedule that has been determined both for the principal amount of the loan and yield;
 - 5. when the loan is obtained, the borrower is able to:

- a) obtain a loan from an independent creditor; and
 - b) settle the principal amount of the loan and loan yield as an independent debtor;
- 6. based on a loan agreement prepared pursuant to applicable statutory provisions;
- 7. there are legal consequences if the borrower fails to return the principal amount of the loan and/or yield; and
- 8. there is the right to collect for the lender as in independent creditors; and
- e. provide economic benefits to the recipient of the loan.

(5) Preliminary stages for other financial transactions referred to in Article 4 paragraph (6) subparagraph d include the evidencing of:

- a. the conformity of other financial transactions with substance and the actual conditions;
- b. other types of financial transactions;
- c. economic and legal recognition by the parties conducting other financial transactions;

- d. motives, goals and economic rationale for other financial transactions; and
 - e. expected benefits from other financial transactions.
- (6) Preliminary stages for asset transfer transactions referred to in Article 4 paragraph (6) subparagraph e include the evidencing of:
- a. motives, goals and economic rationale for other financial transactions;
 - b. the conformity of the transfer of assets with the substance and the actual conditions;
 - c. expected benefits from the transfer of assets; and
 - d. the transfer of these assets is the best option among various other options available.
- (7) Preliminary stages for business restructuring referred to in Article 4 paragraph (6) subparagraph f include the evidencing of:
- a. motives, goals and economic rationale for business restructuring;
 - b. the conformity of business restructuring with the substance and the actual conditions;
 - c. expected benefits from business restructuring; and
 - d. business restructuring is the best option among various other options available.
- (8) Preliminary stages for the cost contribution agreement referred to in Article 4 paragraph (6) subparagraph g include the evidencing that the cost contribution agreement:

- a. is entered into as per the agreement between independent parties;
 - b. is required by the parties entering into the agreement; and
 - c. provides economic benefits to the parties entering into the agreement.
- (9) Preliminary stages include the evidencing of the benefits referred to in paragraph (1) subparagraph c, paragraph (3) subparagraph h, paragraph (4) subparagraph e, paragraph (5) subparagraph e, paragraph (6) subparagraph c, paragraph (7) subparagraph c, paragraph (8) subparagraph c in the form of the increase of sales, reduction of costs, protection of the commercial positions or the fulfilment the needs of other commercial activities, including activities to obtain, collect and maintain income.

Article 14

If a Taxpayer cannot prove certain Uncontrolled Transactions Influenced by a Special Relationship based on the preliminary stages referred to in Article 13, the Uncontrolled Transactions Influenced by a Special Relationship do not fulfil the Arm's Length Principle referred to in Article 3 paragraph (3).

Section Three

The Application of the Arm's Length Principle to Uncontrolled Transactions Influenced by a Special Relationship for Resident Taxpayers that Fulfil the Provisions As Permanent Establishments

Article 15

- (1) If resident Taxpayers conducting Uncontrolled Transactions Influenced by a Special Relationship fulfil the provisions as permanent establishments as stipulated under statutory provisions on the determination of permanent establishments, the resident Taxpayers are also determined to be permanent establishments.
- (2) The permanent establishments referred to in paragraph (1) must submit all data and/or information related to the transactions conducted by Affiliated Parties overseas which are related to the business or activities of the permanent establishments.
- (3) All data and/or information related to transactions conducted by Affiliated Parties overseas referred to in paragraph (2) shall be submitted pursuant to statutory tax provisions.
- (4) Data and/or information referred to in paragraph (2) shall be used in determining the transaction value of the permanent establishments referred to in paragraph (1).
- (5) If the permanent establishments do not fulfil the provisions referred to in paragraph (2), the transaction value is determined by applying the Arm's Length Principle.
- (6) The tax rights and obligations that have been fulfilled by resident Taxpayers shall be taken into account in the fulfilment of the tax rights and obligations of the permanent establishments referred to in paragraph (1).
- (7) The tax obligations of permanent establishments referred to in paragraph (1) shall be fulfilled pursuant to statutory tax provisions.

CHAPTER IV
DOCUMENTATION OF THE APPLICATION OF THE ARM'S LENGTH
PRINCIPLE

Article 16

- (1) The Taxpayers referred to in Article 3 paragraph (1) must maintain and retain documents containing data and/or information to support that the transactions conducted with related parties conform to the Arm's Length Principle.
- (2) Documents containing data and/or information to support that the transactions conducted with related parties conform to the Arm's Length Principle referred to in paragraph (1) shall be Transfer Pricing Documentation which consists of:
 - a. master file;
 - b. local file; and/or
 - c. country-by-country report.
- (3) Taxpayers conducting Controlled Transactions with:
 - a. the value of gross turnover in the preceding tax year within one tax year exceeding IDR50,000,000,000.00 (fifty billion rupiah);
 - b. the value of Controlled Transactions in the preceding tax year in one tax year:
 1. exceeding IDR20,000,000,000.00 (twenty billion rupiah) for tangible goods transactions; or
 2. exceeding IDR5,000,000,000.00 (five billion rupiah) for each supply of services, payment of interest,

utilisation of intangible goods or other Controlled Transactions; or

- c. Affiliated Parties located in countries or jurisdictions with income tax rates lower than the income tax rates referred to in provisions of statutory provisions in the field of income taxes, are required to prepare and retain Transfer Pricing Documentation referred to in paragraph (2) subparagraph a and subparagraph b as a part of the obligation to retain other documents referred to in statutory tax provisions.
- (4) A resident Taxpayer constituting the parent entity of a Business Group with a consolidated gross turnover of a minimum of IDR11,000,000,000,000.00 (eleven trillion rupiah) in the tax year before the reported tax year must maintain and retain Transfer Pricing Documentation as referred to in paragraph (2) subparagraph a, subparagraph b and subparagraph c as part of the obligation to retain other documents referred to in statutory tax provisions.
- (5) If a resident Taxpayer constituting a constituent entity and the parent entity of a Business Group is a non-tax resident, the resident Taxpayer must submit the country-by-country report referred to in paragraph (2) subparagraph c, insofar as the country or jurisdiction where the parent entity is domiciled:
- a. does not require the submission of the country-by-country report;
 - b. does not enter into an agreement with the Government of Indonesia concerning the exchange of tax information; or

- c. enters into an agreement with the Government of Indonesia concerning the exchange of tax information, but country-by-country report cannot be obtained by the Government of Indonesia from that country or jurisdiction.
- (6) The thresholds of the value of gross turnover and the value of Controlled Transactions referred to in paragraph (3) are calculated annually if the tax year in which the gross turnover is accrued and/or Controlled Transactions are conducted covers a period of less than 12 (twelve) months.
- (7) If a Taxpayer has Controlled Transactions but is not required to maintain and retain Transfer Pricing Documentation pursuant to the provisions referred to in paragraph (3), paragraph (4) or paragraph (5), the Taxpayer remains required to fulfil the provisions referred to in Article 3.
- (8) If the Taxpayer has received permission from the Minister of Finance to maintain bookkeeping using a foreign language and a currency other than rupiah, the threshold of the value of money in rupiah referred to in paragraph (3) and paragraph (4) is equivalent to the value of the currency other than rupiah based on the exchange rate determined by the Minister of Finance for the calculation of taxes at the end of the tax year.
- (9) The gross turnover referred to in paragraph (3), paragraph (4) and paragraph (6) is income received and/or accrued from business and from outside business after deducted by sales returns and deductions as well as cash discounts, before deducted by the costs to obtain, collect and maintain income.
- (10) Examples of the determination of Taxpayers required to maintain and retain Transfer Pricing Documentation referred to in paragraph

(3), paragraph (4) and paragraph (6) are listed in Appendix letter A which constitutes an integral part of this Ministerial Regulation.

Article 17

- (1) Transfer Pricing Documentation referred to in Article 16 paragraph (2) subparagraph a and subparagraph b, must be maintained based on data and information available when the Controlled Transactions are conducted.
- (2) Transfer Pricing Documentation referred to in Article 16 paragraph (2) subparagraph c must be maintained based on data and information available up to the end of the tax year.

Article 18

- (1) Transfer Pricing Documentation referred to in Article 16 paragraph (2) subparagraph a and subparagraph b must be available no later than 4 (four) months after the end of the tax year.
- (2) Transfer Pricing Documentation referred to in Article 16 paragraph (2) subparagraph c must be available no later than 12 (twelve) months after the end of the tax year.
- (3) Transfer Pricing Documentation referred to in paragraph (1) must be attached with a statement letter concerning the availability of Transfer Pricing Documentation, signed by the party providing Transfer Pricing Documentation.

Article 19

- (1) Transfer Pricing Documentation referred to in Article 16 paragraph (2) subparagraph a and subparagraph b must be summarised.

- (2) The summary referred to in paragraph (1) must be submitted as an attachment to the annual corporate income tax return for the tax year concerned.
- (3) Transfer Pricing Documentation referred to in Article 16 paragraph (2) subparagraph c must be submitted as an attachment to the annual corporate income tax return for the following tax year.
- (4) The summary referred to in paragraph (1) shall be prepared using the sample format listed in Appendix letter B which constitutes an integral part of this Ministerial Regulation.

Article 20

- (1) A resident Taxpayer constituting the parent entity referred to in Article 16 paragraph (4) is an entity that:
 - a. directly or indirectly owns one or more other members in the Business Group;
 - b. is required to prepare consolidated financial statements based on financial accounting standards applicable in Indonesia and/or pursuant to binding statutory provisions on stock exchange issuers in Indonesia; and
 - c. is not directly or indirectly owned by another constituent entity in the Business Group or owned directly or indirectly by another constituent entity, but the other constituent entity is not required to consolidate the financial statements of the said parent entity.
- (2) The Taxpayers referred to in paragraph (1) are not permitted to appoint other constituent entities to replace them in fulfilling the

obligation to submit a country-by-country report, either in Indonesia or in other countries or jurisdictions.

Article 21

- (1) The constituent entity referred to in 16 paragraph (5) is:
 - a. any separate business entity that is a member of a multinational Business Group and included in the parent entity's consolidated financial statements for financial reporting purposes;
 - b. any business entity that is a member of a multinational Business Group not included in the consolidated financial statements solely due to considerations of business size or materiality; and/or
 - c. any permanent establishment of the business entity referred to in subparagraph a or subparagraph b insofar as such a permanent establishment has separate financial statements for financial reporting purposes, implementation of statutory provisions, tax reporting or company management control purposes.
- (2) If the parent entity of a Business Group which constitutes a non-tax resident has appointed another constituent entity overseas as a substitute for the parent entity, the resident Taxpayers referred to in Article 16 paragraph (5) are not required to submit the country-by-country report insofar as they fulfil the following provisions:
 - a. the resident Taxpayers notify of the other constituent entity appointed as the substitute for

the parent entity to the Director General of Taxes; and

b. the country or jurisdiction where the other constituent entity appointed as the substitute for the parent entity is domiciled:

1. requires the submission of the country-by-country report; and

2. does not have a qualifying competent authority agreement as well as the country-by-country report that may be obtained by the Government of Indonesia from the said tax treaty partner.

(3) The constituent entity appointed as a substitute for the parent entity referred to in paragraph (2) is the only constituent entity appointed to replace the parent entity in submitting the country-by-country report to the tax authorities in the country or jurisdiction where the appointed Business Group member is domiciled.

(4) If more than one resident Taxpayer constitutes a constituent entity as referred to in Article 16 paragraph (5), the parent entity which constitutes a non-tax resident may appoint one of the constituent entities constituting the resident Taxpayers to the submit country-by-country report to the Directorate General Tax.

Article 22

- (1) The parent entity constituting a non-tax resident referred to in Article 16 paragraph (5) is an entity that:
- a. directly or indirectly owns one or more other members in a multinational Business Group;
 - b. is required to prepare consolidated financial statements based on financial accounting standards or provisions applicable in the country or jurisdiction where the parent entity is domiciled;
 - c. is not directly or indirectly owned by another constituent entity in a multinational Business Group or is directly or indirectly owned by another constituent entity, but the other constituent entity is not required to consolidate the financial statements of the said parent entity; and
 - d. has consolidated gross turnover in the tax year before the reported tax year of a minimum of:
 1. equivalent to €750,000,000.00 (seven hundred and fifty million euros) based on the parent entity's functional currency exchange rate if the country or jurisdiction where the parent entity is domiciled does not require the submission of the

country-by-country report;
or

2. amounting to the consolidated gross turnover threshold constituting the basis for the determination of the obligation to submit the country-by-country report as stipulated in the country or jurisdiction where the parent entity is domiciled.

- (2) The country or jurisdiction where the parent entity is domiciled and which does not enter into an agreement with the Government of Indonesia concerning the exchange of tax information referred to in Article 16 paragraph (5) subparagraph b is the country or jurisdiction where the parent entity is domiciled which enters into an international agreement stipulating the exchange of tax information with the Government of Indonesia but does not have a qualified competent authority agreement.
- (3) The condition where the country-by-country report cannot be obtained referred to in Article 16 paragraph (5) subparagraph c is caused by the inability to obtain the country-by-country report through the automatic exchange of information due to
 - a. a delay in the automatic exchange of the country-by-country report due to matters other than those stipulated in the qualifying competent authority agreement; or

- b. repeated failure to exchange country-by-country reports automatically with the tax treaty partner.
- (4) In the event of the condition referred to in paragraph (3), the Taxpayers referred to in Article 16 paragraph (5) must submit the country-by-country report within 3 (three) months after the announcement of the list of tax treaty partners whose country-by-country report cannot be obtained.
 - (5) If the country-by-country report is not submitted within the period of 3 (three) months referred to in paragraph (4), the Director General of Taxes through the competent authority in charge of information exchange is authorised to request the Taxpayers referred to in Article 16 paragraph (5) to submit the country-by-country report.

Article 23

- (1) Resident Taxpayers constituting members of a Business Group or that have Controlled Transactions included in the country-by-country report must notify the Directorate General of Taxes through the Taxpayer Portal.
- (2) If the Taxpayers referred to in paragraph (1) are required to submit the country-by-country report referred to in Article 16 paragraph (4) and paragraph (5), the said Taxpayers must submit the country-by-country report simultaneously with the notification to the Directorate General of Taxes through the Taxpayer Portal.
- (3) The country-by-country report referred to in paragraph (2) submitted by the Taxpayers referred to in Article 16 paragraph (4) is attached with the country-by-country report working paper.

- (4) The notification referred to in paragraph (1) and the country-by-country report referred to in paragraph (2) must be submitted to the Directorate General of Taxes within a maximum period of 12 (twelve) months after the end of the tax year.
- (5) For the submission of the notification referred to in paragraph (1) and the submission of the country-by-country report referred to in paragraph (2), a receipt shall be given.
- (6) The receipt of the submission of the country-by-country report referred to in paragraph (5) may be used as a substitute for the country-by-country report, which must be attached to the annual corporate income tax return as stipulated under Article 19 paragraph (3).
- (7) In the event of errors in the submission of the country-by-country report, the Director General of Taxes shall notify the Taxpayer concerning the errors in the submission of the country-by-country report.
- (8) For the notification referred to in paragraph (7) or voluntarily, Taxpayers may submit rectifications of the country-by-country report by resubmitting the rectified country-by-country report.

Article 24

- (1) The notification referred to in Article 23 paragraph (1) contains a statement concerning:
 - a. the identification of the resident Taxpayer constituting the parent entity;
 - b. the identification of the resident Taxpayer not constituting the parent entity; and

- c. the statement of the obligation to submit the country-by-country report.
- (2) The notification referred to in paragraph (1) shall be prepared as per the sample format listed in Appendix letter C which constitutes an integral part of this Ministerial Regulation.

Article 25

- (1) The country-by-report submitted by:
- a. the Taxpayers referred to in Article 16 paragraph (4) shall be maintained based on data and information available up to the end of the tax year of the Taxpayers; or
 - b. the Resident Taxpayers referred to in Article 16 paragraph (5) shall be maintained based on data and information available up to the end of the tax year of the parent entity which constitutes a non-tax resident.
- (2) The country-by-country report referred to in paragraph (1) subparagraph a must be maintained through the establishment of a country-by-country report working paper in softcopy with an extensible markup language (xml) extension.

Article 26

- (1) The Director General of Taxes exchanges country-by-country reports automatically with tax treaty partners with a qualifying competent authority agreement.

- (2) The exchange of country-by-country reports referred to in paragraph (1) is implemented by the competent authority in charge of information exchange.

Article 27

In the context of the exercise of the implementation of the obligation to submit country-by-country reports referred to in Article 16 paragraph (5), the Director General of Taxes announces the list of tax treaty partners that have:

- a. international agreements stipulating the exchange of tax information;
- b. a qualifying competent authority agreement; and
- c. a qualifying competent authority agreement but the country-by-country report cannot be obtained as referred to in Article 22 paragraph (3),

on the official website of the Directorate General of Taxes at the end of each year or whenever there is a change in the list of tax treaty partners referred to in subparagraph a, subparagraph b and subparagraph c.

Article 28

Taxpayers that do not fulfil the obligations referred to in Article 16, Article 17, Article 19 and Article 23 are subject to penalties pursuant to statutory tax provisions.

Article 29

- (1) The master file referred to in Article 16 paragraph (2) subparagraph a must at least contain the following information on the Business Group:

- a. ownership structure and chart as well as the country or jurisdiction of each member;
 - b. business conducted;
 - c. intangible assets owned;
 - d. financial activities and financing; and
 - e. the parent entity's consolidated financial statements and tax information related to Controlled Transactions.
- (2) Details and/or explanation of the information in the master file referred to in paragraph (1) shall at least contain the information listed in Appendix letter D which constitutes an integral part of this Ministerial Regulation.

Article 30

- (1) The local file referred to in Article 16 paragraph (2) subparagraph b must at least contain the following information on the Taxpayer:
- a. identity and business conducted;
 - b. the information on Controlled Transactions and Uncontrolled Transactions conducted;
 - c. the application of the Arm's Length Principle pursuant to the provisions referred to in Article 4 paragraph (1);
 - d. financial information; and
 - e. non-financial events/occurrences/facts that affect pricing or profit levels.
- (2) The details and/or explanation of the information in the local file referred to in paragraph (1) must at least contain the information

listed in Appendix letter E which constitutes an integral part of this Ministerial Regulation.

- (3) If a Taxpayer has more than one business with different business characteristics, the local file referred to in paragraph (1) must be presented in a segmented manner according to the characteristics of the businesses.

Article 31

- (1) The country-by-country report referred to in Article 16 paragraph (2) subparagraph c must at least contain the following information:
 - a. the allocation of income, taxes paid and business activities per country or jurisdiction of all members of the Business Group either domestically and overseas, which includes the names of the countries or jurisdictions, gross income, profit (loss) before tax, income tax that has been withheld, collected or self-paid, income tax payable, capital, accumulated retained earnings, number of permanent employees and tangible assets other than cash and cash equivalents; and
 - b. the list of Business Group members and main businesses per country or jurisdiction.
- (2) The country-by-country report containing the information referred to in paragraph (1) subparagraph a shall be prepared using the sample format listed in Appendix letter F which constitutes an integral part of this Ministerial Regulation.
- (3) The country-by-country report containing the information referred to in paragraph (1) subparagraph b shall be prepared using the

sample format listed in Appendix letter G which constitutes an integral part of this Ministerial Regulation.

- (4) The information referred to in paragraph (1) is used only in the context of assessing the risk of tax avoidance.
- (5) Before preparing the country-by-country report referred to in paragraph (1), Taxpayers must prepare a country-by-country report working paper.
- (6) The country-by-country report working paper referred to in paragraph (5) shall be prepared using the sample format listed in Appendix letter H which constitutes an integral part of this Ministerial Regulation.

Article 32

- (1) Transfer Pricing Documentation referred to in Article 16 paragraph (2) subparagraph a and subparagraph b must be prepared by Taxpayers in Indonesian.
- (2) Taxpayers may prepare Transfer Pricing Documentation in a foreign language after obtaining permission from the Minister of Finance to maintain bookkeeping in a foreign language and currency other than rupiah.
- (3) If the Taxpayers have obtained the permission of the Minister of Finance referred to in paragraph (2), Transfer Pricing Documentation shall be prepared according to the foreign language stated in the permit for the maintenance of bookkeeping and attached with the translation in Indonesian.

Article 33

Transfer Pricing Documentation referred to in Article 16 paragraph (2) subparagraph c is received and specifically managed by the Director General of Taxes.

Article 34

- (1) The Director General of Taxes is authorised to request Transfer Pricing Documentation referred to in Article 16 paragraph (2) subparagraph a and subparagraph b.
- (2) Taxpayers must submit Transfer Pricing Documentation no later than 1 (one) month after the request referred to in paragraph (1) is submitted in the context of supervision of compliance and Audits.
- (3) Taxpayers submit Transfer Pricing Documentation in connection with the request referred to in paragraph (1) within the period stipulated under statutory tax provisions other than in the context of supervision of compliance and Audits.

Article 35

Taxpayers that do not fulfil the obligations referred to in Article 34 paragraph (2) are subject to penalties pursuant to statutory tax provisions.

CHAPTER V

ASSESSMENT OF COMPLIANCE IN THE APPLICATION OF THE ARM'S LENGTH PRINCIPLE

Article 36

- (1) The Director General of Taxes is authorised to re-determine the amount of income and/or deductible expenses to calculate the

amount of taxable income through the assessment of compliance in the application of the Arm's Length Principle.

- (2) The assessment of compliance in the application of the Arm's Length Principle referred to in paragraph (1) includes the assessment of:
 - a. the fulfilment of provisions for the maintenance of Transfer Pricing Documentation referred to in Article 19, Article 29, Article 30, Article 34 paragraph (2) and Article 34 paragraph (3); and
 - b. the application of the Arm's Length Principle referred to in Article 3.
- (3) For Taxpayers that fulfil the provisions referred to in paragraph (2) subparagraph a, the application of the Arm's Length Principle referred to in paragraph (2) subparagraph b is assessed by tracing the correctness of Transfer Pricing Documentation compared to the Taxpayers' actual conditions.
- (4) For Taxpayers that do not fulfil the provisions referred to in paragraph (2) subparagraph a, the application of the Arm's Length Principle referred to in paragraph (2) subparagraph b is assessed by tracing the Taxpayers' actual conditions.
- (5) If based on the assessment the application of the Arm's Length Principle referred to in paragraph (1) it is known that:
 - a. the Taxpayers do not apply the Arm's Length Principle referred to in Article 3 paragraph (3);
 - b. the Arm's Length Principle applied by the Taxpayers does not fulfil the provisions referred to in Article 4 paragraph (1);
 - c. the Taxpayers cannot prove certain Uncontrolled Transactions Influenced by a

- Special Relationship based on the preliminary stages referred to in Article 14; or
- d. the Transfer Prices determined by the Taxpayers do not fulfil the Arm's Length Principle referred to in Article 3 paragraph (4), the Director General of Taxes re-determines the amount of income and/or deductible expenses to calculate the amount of taxable income referred to in paragraph (1).
- (6) The amount of income and/or deductible expenses referred to in paragraph (5) shall be re-determined by:
- a. determining Transfer Prices according to the Arm's Length Principle referred to in Article 3 to calculate the amount of taxable income; and
 - b. considering the stages in the application of the Arm's Length Principle by the Taxpayers that have fulfilled the provisions referred to in Article 3.

Article 37

- (1) If when:
- a. the Director General of Taxes re-determines the amount of income and/or deductible expenses to calculate the amount of taxable income referred to in Article 36 paragraph (5); or
 - b. the Taxpayers implement the provisions referred to in Article 3 paragraph (1),
- a discrepancy is found between the value of Uncontrolled Transactions Influenced by a Special Relationship which does not

comply with the Arm's Length Principle and the value of Uncontrolled Transactions Influenced by a Special Relationship which does not comply with the Arm's Length Principle, this discrepancy constitutes an indirect distribution of profits to Affiliated Parties treated as dividends.

- (2) The indirect distribution of profits to Affiliated Parties treated as dividends referred to in paragraph (1) is subject to income taxes pursuant to statutory tax provisions.
- (3) The indirect distribution of profits to Affiliated Parties treated as dividends referred to in paragraph (1) is subject to income tax payable to income tax when:
 - a. the said income is paid;
 - b. the payment of the said income is accrued; or
 - c. the maturity date for payment of income, depending on whichever event occurs first.
- (4) The provisions referred to in paragraph (1) do not apply if:
 - a. there is an increase and/or refund of cash or cash equivalent in the amount of the discrepancy referred to in paragraph (1); and/or
 - b. the Taxpayers approve Transfer Pricing by the Director General of Taxes referred to in Article 36 paragraph (6).
- (5) The increase and/or refund of cash or cash equivalents in the amount of the discrepancy referred to in paragraph (4) subparagraph a shall be conducted before the issuance of the notice of tax assessment.

Article 38

- (1) The provisions referred to in Article 37 paragraph (2) apply to:
 - a. transactions in the form of cross-border transactions and domestic transactions; and
 - b. all forms of the special relationship.
- (2) The imposition of income taxes on the indirect distribution of profits to Affiliated Parties treated as dividends referred to in Article 37 paragraph (2), may obtain Tax Treaty benefits pursuant to statutory provisions stipulating the application of the Tax Treaty.

Article 39

- (1) The Director General of Taxes is authorised to adjust the selling price or consideration influenced by the special relationship as a basis for calculating value added tax payable.
- (2) The adjustments to the selling price or consideration influenced by the special relationship referred to in paragraph (1) are calculated based on the arm's length market price when taxable goods or taxable services are supplied if the selling price or consideration is lower than the fair market price.
- (3) The selling price or consideration influenced by the special relationship referred to in paragraph (1) may also be adjusted in the event of Transfer Pricing by the Director General of Taxes referred to in Article 36 paragraph (6) which may be allocated to each supply transaction of taxable goods and/or taxable services.
- (4) Adjustments to selling price or consideration influenced by the special relationship referred to in paragraph (2) and paragraph (3) to taxable persons for VAT purposes selling or providing services do not result in input VAT adjustments for taxable persons for VAT purposes purchasing taxable goods or receiving taxable services.

- (5) The taxable persons for VAT purposes purchasing taxable goods or receiving taxable services referred to in paragraph (4) remain able to credit the value added tax listed in the tax invoices issued by taxable persons for VAT purposes supplying taxable goods and/or providing services taxable insofar as the provisions on input VAT crediting pursuant to statutory provisions in the field of value added tax are fulfilled.

CHAPTER VI CORRESPONDING ADJUSTMENTS

Article 40

- (1) In the event of:
- a. Transfer Pricing referred to in Article 36 paragraph (6) by the Director General of Taxes through Audits; or
 - b. corrections to Transfer Pricing by the Tax Authorities of the Tax Treaty Partner on non-tax residents,
- resulting in double taxation, resident Taxpayers constituting counterparties may perform corresponding adjustments.
- (2) The corresponding adjustments referred to in paragraph (1) are adjustments to the Transfer Pricing materials in the calculation of the taxable income of resident Taxpayers constituting counterparties of:
- a. the resident Taxpayers subject to Transfer Pricing by the Director General of Taxes are referred to in paragraph (1) subparagraph a; or

- b. the non-tax residents subject to Transfer Pricing corrections by the Tax Authorities of the Tax Treaty Partner.
- (3) The corresponding adjustments referred to in paragraph (2) subparagraph a may be performed if resident Taxpayers subject to Transfer Pricing by the Director General of Taxes referred to in Article 36 paragraph (6):
- a. approve Transfer Pricing by the Director General of Taxes; and
 - b. do not file legal remedies related to notices of tax assessment,
- for the Transfer Pricing materials by the Director General of Taxes related to the Taxpayers referred to in paragraph (2) subparagraph a.
- (4) The corresponding adjustments referred to in paragraph (3) are performed by:
- a. the rectification of the annual tax return by taking into account Transfer Pricing by the Director General of Taxes insofar as the resident Taxpayers referred to in paragraph (1) have not been subject to Audits and the provisions referred to in paragraph (3) are fulfilled;
 - b. the issuance of the notice of tax assessment taking into account Transfer Pricing by the Director General of Taxes insofar as the resident Taxpayers referred to in paragraph (1) are subject to Audits and the provisions referred to in paragraph (3) are fulfilled; or

- c. the rectification of the notice of tax assessment taking into account Transfer Pricing by the Director General of Taxes insofar as for the resident Taxpayers referred to in paragraph (1), a notice of tax assessment has been issued and no legal remedies have been filed against the materials of the corresponding adjustments and the provisions referred to in paragraph (3) are fulfilled.
- (5) The rectification of the annual tax return, issuance of the notice of tax assessments and rectification of the notice of tax assessments referred to in paragraph (4) are performed pursuant to statutory provisions in the field of general provisions and tax procedures.
 - (6) The annual tax return referred to in paragraph (4) subparagraph a is rectified attached with written notification by the Taxpayers to the Director General of Taxes through the Tax Office where the Taxpayers are registered concerning the information on Transfer Pricing referred to in paragraph (1) subparagraph a.
 - (7) The corresponding adjustments through the issuance of a notice of tax assessment referred to in paragraph (4) subparagraph b shall be performed if:
 - a. the Taxpayers have fulfilled the provisions referred to in paragraph (6); or
 - b. the Taxpayers referred to in paragraph (2) subparagraph a disclose the incorrectness in the completion of tax returns according to the information on Transfer Pricing by the Director General of Taxes.

- (8) The corresponding adjustments through the rectification of the notice of tax assessments referred to in paragraph (4) subparagraph c are performed ex officio by the Director General of Taxes.
- (9) The corresponding adjustments referred to in paragraph (4) subparagraph c is preceded by written notification by resident Taxpayers constituting counterparties to the Director General of Taxes through the Tax Office where the Taxpayers are registered concerning the information on Transfer Pricing referred to in paragraph (1) subparagraph a.
- (10) The written notification referred to in paragraph (6) and paragraph (9) as well as the disclosure of the incorrectness in the completion of tax returns referred to in paragraph (7) may be submitted:
- a. directly;
 - b. by post, a forwarder or courier service company with proof of postage; or
 - c. electronically.
- (11) The written notification and the disclosure of the incorrectness in the completion of tax returns referred to in paragraph (10) subparagraph c shall be submitted electronically if the system is already available.
- (12) Procedures for the submission of the written notification and the disclosure of the incorrectness in the completion of tax returns referred to in paragraph (10) subparagraph c are implemented pursuant to the Ministerial Regulation stipulating procedures for the exercise of tax rights and the fulfilment of tax obligations as well as the electronic issuance, signing and submission of decisions or tax assessments.

- (13) The corresponding adjustments referred to in paragraph (2) subparagraph b are performed through the Mutual Agreement Procedure.

CHAPTER VII MUTUAL AGREEMENT PROCEDURE

Section One

The Submission of Requests for Implementation of the Mutual Agreement Procedure

Article 41

- (1) The Director General of Taxes is authorised to implement the Mutual Agreement Procedure to prevent or resolve issues arising in the application of a Tax Treaty.
- (2) The Director General of Taxes may delegate the authority referred to in paragraph (1) in the form of delegation to officials within the Directorate General of Taxes.
- (3) The Mutual Agreement Procedure referred to in paragraph (1) may be implemented based on the request from:
- a. resident Taxpayers;
 - b. Indonesian citizens;
 - c. the Director General of Taxes; or
 - d. Tax Authorities of the Tax Treaty Partner through the Competent Authority of the Tax Treaty Partner pursuant to the provisions in the Tax Treaty.
- (4) The resident Taxpayers referred to in paragraph (3) subparagraph a may request the implementation of the Mutual Agreement

Procedure to the Director General of Taxes as the Indonesian Competent Authority in the context of the corresponding adjustments referred to in Article 40 paragraph (13).

(5) In addition to the corresponding adjustments referred to in paragraph (4), the resident Taxpayers referred to in paragraph (3) subparagraph may also request the implementation of the Mutual Agreement Procedure to the Director General of Taxes in the event of tax treatment by the Tax Authorities of the Tax Treaty Partner which does not comply with the provisions of the Tax Treaty.

(6) The tax treatment by the Tax Authorities of the Tax Treaty Partner which does not comply with the provisions of the Tax Treaty referred to in paragraph (5) consists of:

a. the imposition of taxes by the Tax Authorities of the Tax Treaty Partner which results in double taxation due to:

1. Transfer Pricing corrections;
2. corrections related to the existence and/or profits of permanent establishments; and/or
3. corrections of other income tax objects;

b. the imposition of taxes, including the withholding or collection of income taxes in the Tax Treaty Partner which does not comply with the provisions stipulated in the Tax Treaty;

c. the determination of the status as tax residents by the Tax Authorities of the Tax Treaty Partner;

- d. the discrimination in tax treatment in the Tax Treaty Partner; and/or
 - e. interpretation of Tax Treaty provisions.
- (7) The request for the implementation of the Mutual Agreement Procedure referred to in paragraph (3) subparagraph b is submitted for all forms of discriminatory treatment in the Tax Treaty Partner which contradict the provisions on non-discrimination stipulated under the Tax Treaty.
- (8) The request for the implementation of the Mutual Agreement Procedure by the Director General of Taxes referred to in paragraph (3) subparagraph c may be submitted in the context of:
- a. following up on the proposed requests for the implementation of the Mutual Agreement Procedure by resident Taxpayers; and/or
 - b. following up on the application for the Bilateral or Multilateral Advance Pricing Agreement submitted by resident Taxpayers according to the procedures for the implementation of the Advance Pricing Agreement.
- (9) The proposed request for the implementation of the Mutual Agreement Procedure referred to in paragraph (8) subparagraph a may be submitted if according to resident Taxpayers, tax treatment by the Director General of Taxes that does not comply with the provisions of the Tax Treaty occurs.
- (10) The tax treatment by the Director General of Taxes that does not comply with the provisions of the Tax Treaty according to the resident Taxpayers referred to in paragraph (9) consists of:
- a. double taxation caused by Transfer Pricing referred to in Article 36 paragraph (6); and/or

- b. differences in the interpretation of the provisions of the Tax Treaty.

(11) The request for the implementation of the Mutual Agreement Procedure referred to in paragraph (3) subparagraph a, subparagraph c and subparagraph d may be submitted simultaneously with the resident Taxpayers' application to submit:

- a. the application for lawsuits stipulated under Article 23 of the Law concerning General Provisions and Tax Procedures;
- b. the application for objections stipulated under Article 25 of the Law concerning General Provisions and Tax Procedures;
- c. the application for appeals stipulated under Article 27 of the Law concerning General Provisions and Tax Procedures;
- d. the application for the reduction or cancellation of incorrect notices of tax assessment stipulated under Article 36 paragraph (1) subparagraph b of the Law concerning General Provisions and Tax Procedures; or
- e. the application for civil review stipulated under Article 77 paragraph (3) of the Law concerning the Tax Court.

(12) The request for the implementation of the Mutual Agreement Procedure referred to in paragraph (3) does not delay:

- a. the obligation to pay tax payable;
- b. the implementation of tax collection; and
- c. tax refunds,

pursuant to statutory tax provisions.

Article 42

- (1) The request for the implementation of the Mutual Agreement Procedure submitted by the Applicant must fulfil the following requirements:
- a. submitted in writing in the Indonesian language;
 - b. stating the non-conformity of the application of provisions of the Tax Treaty according to the Applicant;
 - c. submitted within the time limit stipulated under the Tax Treaty or no later than 3 (three) years if not stipulated under the Tax Treaty, starting from:
 1. the date of the notice of tax assessment;
 2. the date of proof of payment, income tax withholding or collection receipt; or
 3. when the tax treatment that does not comply with the provisions of the Tax Treaty occurs;
 - d. signed by the Applicant or the Taxpayers' representatives as referred to in Article 32 paragraph (1) of the Law concerning General Provisions and Tax Procedures; and

e. attached with:

1. the certificate of domicile or other documents containing the identity of the resident taxpayers of the Tax Treaty Partner related to the request for the implementation of the Mutual Agreement Procedure referred to in Article 41 paragraph (6) subparagraph a and subparagraph b;
2. the list of information and/or evidence or information held by the Applicant which shows that tax treatment by the Tax Authorities of the Tax Treaty Partner or discriminatory treatment in the Tax Treaty Partner does not comply with the provisions of the Tax Treaty referred to in Article 41 paragraph (6) and Article 41 paragraph (7); and/or

3. a statement letter stating the Applicant's willingness to submit information and/or evidence or information referred to in number 2 completely and on time.

(2) The proposed request for the implementation of the Mutual Agreement Procedure referred to in Article 41 paragraph (8) subparagraph a must fulfil the following requirements:

- a. submitted in writing in the Indonesian language;
- b. stating the tax treatment by the Director General of Taxes that does not comply with the provisions of the Tax Treaty according to the resident Taxpayers;
- c. submitted within the time limit stipulated under the Tax Treaty or no later than 3 (three) years if not stipulated under the Tax Treaty, starting from the time the tax treatment which does not comply with the provisions of the Tax Treaty occurs;
- d. signed by resident Taxpayers or Taxpayers' representatives as referred to in Article 32 paragraph (1) of the Law concerning General Provisions and Tax Procedures; and
- e. attached with evidence showing the tax treatment by the Director General of Taxes that does not comply with the provisions of the Tax Treaty.

- (3) The request for the implementation of the Mutual Agreement Procedure referred to in Article 41 paragraph (3) subparagraph d is submitted within the time limit stipulated under the Tax Treaty.
- (4) The request for the implementation of the Mutual Agreement Procedure referred to in paragraph (1), the request for the implementation of the Mutual Agreement Procedure referred to in Article 41 paragraph (3) subparagraph d and the proposed request for the implementation of the Mutual Agreement Procedure referred to in Article 41 paragraph (8) subparagraph a is submitted to the Director General of Taxes through:
- a. the Tax Office where the resident Taxpayers are registered if the request for the implementation of the Mutual Agreement Procedure referred to in paragraph (1) is submitted by resident Taxpayers; or
 - b. the Directorate of International Taxation in the event of:
 1. the request for the implementation of the Mutual Agreement Procedure referred to in paragraph (1) by Indonesian citizens;
 2. the request for the implementation of the Mutual Agreement Procedure referred to in Article 41 paragraph (3) subparagraph d by the

Competent Authority of the Tax Treaty Partner; or the proposed request for the implementation of the Mutual Agreement Procedure referred to in Article 41 paragraph (8) subparagraph a by resident Taxpayers.

3.

- (5) The request for the implementation of the Mutual Agreement Procedure referred to in Article 41 paragraph (3) subparagraph a, subparagraph b and subparagraph d as well as the proposed request for the implementation of the Mutual Agreement Procedure referred to in Article 41 paragraph (8) subparagraph a may be submitted:
 - a. directly; or
 - b. by post, a forwarder or courier service company with proof of postage.
- (6) The request for the implementation of the Mutual Agreement Procedure referred to in Article 41 paragraph (3) subparagraph b and subparagraph d as well as the proposed request for the implementation of the Mutual Agreement Procedure referred to in Article 41 paragraph (8) subparagraph a may also be submitted through electronic mail.
- (7) The request for the implementation of the Mutual Agreement Procedure referred to in Article 41 paragraph (3) subparagraph a may also be submitted electronically.

- (8) The request for the implementation of the Mutual Agreement Procedure electronically referred to in paragraph (7) is submitted electronically if the system is available.
- (9) Procedures for the submission of the request for the implementation of the Mutual Agreement Procedure referred to in paragraph (7) are implemented pursuant to the Ministerial Regulation stipulating procedures for the exercise of tax rights and the fulfilment of tax obligations as well as the electronic issuance, signing and submission of decisions or tax assessments.
- (10) The request letter for the implementation of the Mutual Agreement Procedure referred to in paragraph (1) shall be prepared using the sample format listed in:
 - a. Appendix letter I.1., for resident Taxpayer Applicants; or
 - b. Appendix letter I.2., for Indonesian Citizen Applicants, which constitute an integral part of this Ministerial Regulation.
- (11) The statement letter referred to in paragraph (1) subparagraph e number 3 shall be prepared using the sample format listed in Appendix letter I.3. which constitutes an integral part of this Ministerial Regulation.

Section Two

The Handling of the Request for the Implementation of the Mutual Agreement Procedure

Article 43

- (1) The Director General of Taxes verifies:

- a. the request for the implementation of the Mutual Agreement Procedure referred to in Article 41 paragraph (3) subparagraph a, subparagraph b and subparagraph d; and
 - b. the proposed request for the implementation of the Mutual Agreement Procedure referred to in Article 41 paragraph (8) subparagraph a.
- (2) The request for the implementation of the Mutual Agreement Procedure referred to in paragraph (1) subparagraph a is verified in respect of:
- a. the completeness of the fulfilment of the requirements for the request for the implementation of the Mutual Agreement Procedure pursuant to the provisions referred to in Article 42 paragraph (1) or paragraph (3); and
 - b. the conformity between the materials for which the request for the implementation of the Mutual Agreement Procedure is submitted and the tax treatment for which the request for the implementation of the Mutual Agreement Procedure referred to in Article 41 paragraph (3),
- to determine whether the request for the implementation of the Mutual Agreement Procedure may be followed up or not.
- (3) The proposed request for the implementation of the Mutual Agreement Procedure referred to in paragraph (1) subparagraph b is verified in respect of:
- a. the completeness of the fulfilment of the requirements for the submission of the

proposed request for the implementation of the Mutual Agreement Procedure referred to in Article 42 paragraph (2); and

- b. the conformity between the materials for which the proposed request for the implementation of the Mutual Agreement Procedure is submitted and the tax treatment for which the proposed request for the implementation of the Mutual Agreement Procedure referred to in Article 41 paragraph (9) may be submitted,

to determine whether the proposal may be followed up into the request for the implementation of the Mutual Agreement Procedure by Director General of Taxes to the Competent Authority of the Tax Treaty Partner or not.

- (4) The Director General of Taxes follows up on the results of the verification referred to in paragraph (1) subparagraph a in connection with the request for the implementation of the Mutual Agreement Procedure submitted by the Applicant by issuing:

- a. written notification to the Applicant that the request for the implementation of the Mutual Agreement Procedure may be followed up and the request for the implementation of the Mutual Agreement Procedure in writing to the Competent Authority of the Tax Treaty Partner if the request for the implementation of the Mutual Agreement Procedure fulfils the requirements and conformity of the materials; or
- b. the rejection letter of the request for the implementation of the Mutual Agreement

Procedure to the Applicant listing the matters constituting the basis for the rejection if the request for the implementation of the Mutual Agreement Procedure does not fulfil the requirements and/or does not fulfil the conformity of the materials,

within a maximum period of 1 (one) month from the date the request for the implementation of the Mutual Agreement Procedure is received.

(5) The Director General of Taxes follows up on the results of the verification referred to in paragraph (1) subparagraph a in connection with the request for the implementation of the Mutual Agreement Procedure submitted by the Competent Authority of the Tax Treaty Partner by issuing:

- a. written notification to the Competent Authority of the Tax Treaty Partner and resident Taxpayers related to the request for the implementation of the Mutual Agreement Procedure that the request for the implementation of the Mutual Agreement Procedure may be followed up if the request for the implementation of the Mutual Agreement Procedure fulfils the requirements and conformity of the materials; or
- b. the rejection letter of the request for the implementation of the Mutual Agreement Procedure to the Competent Authority of the Tax Treaty Partner listing the matters constituting the basis for the rejection if the

request for the implementation of the Mutual Agreement Procedure does not fulfil the requirements and/or conformity of the materials,

within a maximum period of 1 (one) month from the date the request for the implementation of the Mutual Agreement Procedure is received.

- (6) The Director General of Taxes follows up on the results of the verification referred to in paragraph (1) subparagraph b by issuing:
 - a. written notification to the resident Taxpayers that the proposed request for the implementation of the Mutual Agreement Procedure may be followed up and the written request for the implementation of the Mutual Agreement Procedure to the Competent Authority of the Tax Treaty Partner if the proposed request for the implementation of the Mutual Agreement Procedure fulfils the requirements and the conformity of the materials; or
 - b. the rejection letter of the proposed request for the implementation of the Mutual Agreement Procedure to the resident Taxpayers listing the matters constituting the basis for the rejection if the proposed request for the implementation of the Mutual Agreement Procedure does not fulfil the requirements and/or does not fulfil the conformity of the materials,

within a maximum period of 1 (one) month from the date the proposed request for the implementation of the Mutual Agreement Procedure is received.

- (7) If the time limit referred to in paragraph (4), paragraph (5) and paragraph (6) has elapsed and the Director General of Taxes has not issued written notification, the request for the implementation of the Mutual Agreement Procedure or the proposed request for the implementation of the Mutual Agreement Procedure is deemed feasible to be followed up and the Director General of Taxes issues written notification letter no later than 1 (one) month after the time limit referred to in paragraph (4), paragraph (5) and paragraph (6) has elapsed.
- (8) If the request for the implementation of the Mutual Agreement Procedure to the Competent Authority of the Tax Treaty Partner referred to in paragraph (4) subparagraph a and paragraph (6) subparagraph a does not receive a written response from the Competent Authority of the Tax Treaty Partner within a maximum time limit of 8 (eight) months after the request for the implementation of the Mutual Agreement Procedure is submitted, the Director General of Taxes issues written notification to:
 - a. the Applicant or resident Taxpayers related to the request for the implementation of the Mutual Agreement Procedure referred to in Article 41 paragraph (3) subparagraph c and subparagraph d that the request for the implementation of the Mutual Agreement Procedure cannot be followed up; and

- b. the Competent Authority of the Tax Treaty Partner that the request for the implementation of the Mutual Agreement Procedure is revoked.
- (9) For the rejected request for the implementation of the Mutual Agreement Procedure referred to in paragraph (4) subparagraph b, the proposed request for the implementation of the Mutual Agreement Procedure that are rejected referred to in paragraph (6) subparagraph b and the request for the implementation of the Mutual Agreement Procedure that cannot be followed up referred to in paragraph (8) subparagraph a, the Applicant may re-submit the request for the implementation of the Mutual Agreement Procedure or resident Taxpayers may re-submit the proposed request for the implementation of the Mutual Agreement Procedure insofar as the time limit referred to in Article 42 paragraph (1) subparagraph c or Article 42 paragraph (2) subparagraph c has not elapsed.

Article 44

- (1) If the request for the implementation of the Mutual Agreement Procedure submitted by the Applicant may be followed up as referred to in Article 43 paragraph (4) subparagraph a, the Applicant must submit information and/or evidence or details listed in the list information and/or evidence or details held by the Applicant referred to in Article 42 paragraph (1) subparagraph e number 2 to the Director General of Taxes through the Directorate of International Taxation.
- (2) The submission of the information and/or evidence or details referred to in paragraph (1) may be in the form of hardcopy and/or softcopy.

- (3) The Applicant must submit the information and/or evidence or details referred to in paragraph (1) no later than 2 (two) months after:
- a. the date of the written notification that the request for the implementation of the Mutual Agreement Procedure may be followed up referred to in Article 43 paragraph (4) subparagraph a is issued; or
 - b. the time limit of 1 (one) month elapses, thereby, the request for the implementation of the Mutual Agreement Procedure submitted by the Applicant is deemed feasible to be followed up referred to in Article 43 paragraph (7).
- (4) The information and/or evidence or details referred to in paragraph (1) may be submitted:
- a. directly;
 - b. by post, a forwarder or courier service company with proof of postage; or
 - c. through electronic mail.

Article 45

- (1) In the context of the implementation of the Mutual Agreement Procedure, the Director General of Taxes conducts negotiations with the Competent Authority of the Tax Treaty Partner.
- (2) The negotiations referred to in paragraph (1) are correspondence, material assessments and meetings of the Competent Authority to resolve issues arising in the application of the Tax Treaty.

- (3) The negotiations referred to in paragraph (1) are conducted within a maximum period of 24 (twenty-four) months from:
 - a. the receipt of the written request for the implementation of the Mutual Agreement Procedure from the Competent Authority of the Tax Treaty Partner referred to in Article 41 paragraph (3) subparagraph d; or
 - b. the submission of the written request for the implementation of the Mutual Agreement Procedure to the Competent Authority of the Tax Treaty Partner referred to in Article 43 paragraph (4) subparagraph a and Article 43 paragraph (6) subparagraph a.
- (4) The negotiation period referred to in paragraph (3) may be extended 1 (one) time for a maximum of 24 (twenty-four) months for each request for the implementation of the Mutual Agreement Procedure.
- (5) The negotiation period referred to in paragraph (4) may be extended before the negotiation period ends if an initial agreement has been entered into as contained in the minutes of meeting or other documents concerning:
 - a. the existence of transactions, selection of transaction analysis approaches, selection of the tested parties, selection of the Transfer Pricing method and selection of price indicators for the request for the implementation of the Mutual Agreement Procedure in connection with Transfer Pricing corrections or in

- connection with the Bilateral or Multilateral Advance Pricing Agreement; or
- b. interpretation of the provisions of the Tax Treaty, for the request for the implementation of the Mutual Agreement Procedure other than that referred to in subparagraph a.
- (6) The extension of the negotiation period referred to in paragraph (4) is outlined in the minutes of meeting or other documents within a period of 6 (six) months before the end of the negotiation period referred to in paragraph (3).

Article 46

- (1) In the context of the material assessment referred to in Article 45 paragraph (2), the Director General of Taxes is authorised to:
- a. request information and/or evidence or details other than those referred to in Article 42 paragraph (1) subparagraph e number 2 or Article 42 paragraph (2) subparagraph e to:
1. the Applicant;
 2. resident Taxpayers related to the request for the implementation of the Mutual Agreement Procedure referred to in Article 41 paragraph (3) subparagraph c and subparagraph d; and/or
 3. other related parties;

- b. conduct discussions with the Applicant, resident Taxpayers related to the request for the implementation of the Mutual Agreement Procedure referred to in Article 41 paragraph (3) subparagraph c and subparagraph d and/or other related parties;
 - c. inspect the place of business of the Applicant and/or resident Taxpayers related to the request for the implementation of the Mutual Agreement Procedure referred to in Article 41 paragraph (3) subparagraph c and subparagraph d;
 - d. exchange tax information in the context of the Mutual Agreement Procedure to Tax Authorities of the Tax Treaty Partner; and/or
 - e. conduct Audits for other purposes and/or valuation in the context of the Mutual Agreement Procedure to obtain information and/or evidence or details required in the context of completing the Mutual Agreement Procedure.
- (2) The Applicant and resident Taxpayers related to the request for the implementation of the Mutual Agreement Procedure referred to in Article 41 paragraph (3) subparagraph c and subparagraph d must:
- a. provide the information and/or evidence or details referred to in paragraph (1) subparagraph a;
 - b. attend the discussions referred to in paragraph (1) subparagraph b; and

- c. allow the inspection of the place of business referred to in paragraph (1) subparagraph c.
- (3) The Competent Authority of the Tax Treaty Partner may request information and/or evidence or details from the parties referred to in paragraph (1) subparagraph a.
- (4) The information and/or evidence or details by the Competent Authority of the Tax Treaty Partner referred to in paragraph (3) may only be requested through:
 - a. procedures for the exchange of information based on the request to the Director General of Taxes stipulated under the Tax Treaty or international agreement stipulating the exchange of tax information; and/or
 - b. the direct request during the meeting process of the Competent Authority referred to in Article 45 paragraph (2).

Article 47

- (1) The meetings of the Competent Authority referred to in Article 45 paragraph (2) are conducted through:
 - a. in-person meetings;
 - b. telephone connection;
 - c. video conferencing; and/or
 - d. other channels agreed upon by the Director General of Taxes and the Competent Authority of the Tax Treaty Partner.

- (2) The meetings of the Competent Authority referred to in paragraph (1) are outlined in the minutes of meeting or other equivalent documents.

Article 48

- (1) In the context of the negotiations referred to in Article 45 paragraph (1), the Director General of Taxes formulates a negotiating position.
- (2) The negotiating position referred to in paragraph (1) contains a written explanation of the opinion of the Indonesian Competent Authority in connection with the matters for which the request for the implementation of the Mutual Agreement Procedure is submitted.
- (3) If the negotiations referred to in Article 45 paragraph (1) have not resulted in a the Mutual Agreement until the appeal decision or civil review decision is pronounced, the Director General of Taxes:
 - a. continue the negotiations if the dispute materials decided in the appeal decision or civil review decision do not constitute the dispute materials for which the request for the implementation of the Mutual Agreement Procedure is submitted;
 - b. use the appeal decision as the negotiating position or terminate the negotiations if:
 1. against the appeal decision, no application for civil review is submitted; and

2. the dispute materials in the appeal decision constitute dispute materials for which the request for the implementation of the Mutual Agreement Procedure is submitted; or
- c. use civil review decisions as a negotiating position or terminate the negotiations if the dispute materials in the civil review decision constitute dispute materials for which the request for the implementation of the Mutual Agreement Procedure is requested.

Article 49

- (1) The results of the negotiations referred to in Article 45 paragraph (1) are outlined in a the Mutual Agreement which may contain agreements or disagreements that have been agreed upon in respect of the materials for which the implementation of the Mutual Agreement Procedure is requested.
- (2) The Director General of Taxes issues a written notification concerning the results of the negotiations containing the agreement referred to in paragraph (1) to the Applicant or resident Taxpayers related to the request for the implementation of the Mutual Agreement Procedure referred to in Article 41 paragraph (3) subparagraph c and subparagraph d no later than 14 (fourteen) calendar days after the date of the Mutual Agreement.

- (3) The written notification referred to in paragraph (2) may be attached with:
- a. the request to submit a statement letter of not applying for dispute resolution outside the Mutual Agreement Procedure; or
 - b. the request to submit a statement letter of revocation or adjustment attached with written approval from the Tax Court or Supreme Court concerning the revocation or adjustment of the dispute if for the dispute materials for which the Mutual Agreement Procedure is requested, an application referred to in Article 41 paragraph (11) is also submitted.
- (4) The statement letter of not applying for dispute resolution outside the Mutual Agreement Procedure referred to in paragraph (3) subparagraph a must be submitted by the Applicant or resident Taxpayers related to the request for the implementation of the Mutual Agreement Procedure referred to in Article 41 paragraph (3) subparagraph c and subparagraph d to Director General of Taxes no later than 14 (fourteen) calendar days after the date of the written notification referred to in paragraph (2).
- (5) The statement letter of revocation or adjustment attached with written approval from the Tax Court or Supreme Court concerning the revocation or adjustment of the dispute referred to in paragraph (3) subparagraph b must be submitted by the Applicant or resident Taxpayers related to the request for the implementation of the Mutual Agreement Procedure referred to in Article 41 paragraph (3) subparagraph c and subparagraph d to Director General of

Taxes no later than 8 (eight) months after the date of the written notification referred to in paragraph (2).

- (6) The Director General of Taxes submits written notification to the Competent Authority of the Tax Treaty Partner that the Mutual Agreement can or cannot be implemented after the issuance of a written notification concerning the results of negotiations containing the agreement referred to in paragraph (2).
- (7) If the Director General of Taxes submits a request as referred to in paragraph (3), the written notification to the Competent Authority of the Tax Treaty Partner that the Mutual Agreement can be implemented as referred to in paragraph (6) is submitted after the Applicant or resident Taxpayers related to the request for the implementation of the Mutual Agreement Procedure referred to in Article 41 paragraph (3) subparagraph c and subparagraph d fulfils the provisions referred to in paragraph (4) or paragraph (5).
- (8) If the Applicant or resident Taxpayers referred to in paragraph (7) do not fulfil provisions referred to in paragraph (4) or paragraph (5), the Director General of Taxes submits written notification to the Competent Authority of the Tax Treaty Partner that the Mutual Agreement cannot be implemented as referred to in paragraph (6).
- (9) In the event of negotiation results containing disagreement referred to in paragraph (1), the Director General of Taxes issues:
 - a. written notification of the negotiation results containing the disagreement to the Applicant or resident Taxpayers related to the request for the implementation of the Mutual Agreement Procedure referred to in Article 41 paragraph (3) subparagraph c and subparagraph d; and

- b. written notification to the Competent Authority of the Tax Treaty Partner, no later than 14 (fourteen) calendar days after the date of the Mutual Agreement.

(10) The statement letter of not applying for dispute resolution outside the Mutual Agreement Procedure and statement letter of revocation or adjustment referred to in paragraph (3) shall be prepared using the sample format listed in:

- a. Appendix letter J.1., for the statement letter of not applying for dispute resolution outside the Mutual Agreement Procedure; or
- b. Appendix letter J.2., for the statement letter of revocation or adjustment, which constitute an integral part of this Ministerial Regulation.

Article 50

- (1) The Director General of Taxes issues the Mutual Agreement Decision Letter within a maximum period of 1 (one) month from:
 - a. the date of the written notification from the Competent Authority of the Tax Treaty Partner that the Mutual Agreement may be implemented is received; and
 - b. the date of the written notification to the Competent Authority of the Tax Treaty Partner that the Mutual Agreement may be implemented is submitted.
- (2) In the event of negotiation results containing an agreement as referred to in Article 49 paragraph (1) in connection with the application for the Bilateral or Multilateral Advance Pricing

Agreement, Director General of Taxes follows up on the Mutual Agreement by issuing a decision letter on the enactment of the Advance Pricing Agreement according to the procedures for the implementation of the Advance Pricing Agreement.

(3) The Mutual Agreement Decision Letter referred to in paragraph (1) shall be prepared using the sample format listed in:

- a. Appendix letter J.3., for the Mutual Agreement in connection with double taxation; or
- b. Appendix letter J.4., for the Mutual Agreement other than that in connection with double taxation, which constitute an integral part of this Ministerial Regulation.

(4) The Mutual Agreement Decision Letter referred to in paragraph (1) is submitted to:

- a. the Applicant;
- b. resident Taxpayers related to the request for the implementation of the Mutual Agreement Procedure referred to in Article 41 paragraph (3) subparagraph c and subparagraph d; and/or
- c. work units within the Directorate General of Taxes authorised to follow up.

Article 51

(1) The Director General of Taxes may terminate the negotiations referred to in Article 45 paragraph (1) if:

- a. the Applicant does not submit information and/or evidence or details within the time limit referred to in Article 44 paragraph (3);

- b. the Competent Authority of the Tax Treaty Partner requests information and/or evidence or details not in accordance with the provisions referred to in Article 46 paragraph (4);
- c. the negotiations do not result in an agreement until the time limit referred to in Article 45 paragraph (3) or paragraph (4) expires;
- d. the expiration of assessments stipulated under the Law concerning General Provisions and Tax Procedures has elapsed for tax years, fractions of a tax year or taxable periods covered in the request for the implementation of the Mutual Agreement Procedure and the negotiations have not resulted in agreement;
- e. the resident Taxpayers participate in the tax amnesty program stipulated under statutory tax provisions for tax years, fractions of a tax year or taxable periods covered in the request for the implementation of the Mutual Agreement Procedure;
- f. an appeal decision or civil review decision has been issued if the decided dispute materials are materials for which the Mutual Agreement Procedure is applied;
- g. the Competent Authority of the Tax Treaty Partner does not agree on the negotiating position of the Director General of Taxes referred to in Article 48 paragraph (3) subparagraph b or subparagraph c; or

- h. a lawsuit decision has been issued to cancel the notice of tax assessment related to the Mutual Agreement Procedure.
- (2) The Director General of Taxes submits written notification concerning the termination of negotiations referred to in paragraph (1) to:
 - a. the Applicant;
 - b. resident Taxpayers related to the request for the implementation of the Mutual Agreement Procedure referred to in Article 41 paragraph (3) subparagraph c and subparagraph d; and/or
 - c. the Competent Authority of the Tax Treaty Partner.

Section Three

The Revocation of the Request for the Implementation of the Mutual Agreement Procedure

Article 52

- (1) For the request for the implementation of the Mutual Agreement Procedure referred to in Article 41 paragraph (3), the application for revocation may be submitted by:
 - a. resident Taxpayers;
 - b. Indonesian Citizens;
 - c. the Director General of Taxes; or
 - d. Tax Authorities of the Tax Treaty Partner through the Competent Authority of the Tax Treaty Partner pursuant to the provisions under the Tax Treaty.

- (2) The Director General of Taxes may revoke the request for the implementation of the Mutual Agreement Procedure referred to in paragraph (1) subparagraph c in the context of:
 - a. following up on the application for the revocation of the proposed request for the implementation of the Mutual Agreement Procedure by resident Taxpayers; and/or
 - b. following up on the revocation of the application for the Bilateral or Multilateral Advance Pricing Agreement submitted by resident Taxpayers according to the procedures for the implementation of the Advance Pricing Agreement.
- (3) The application for the revocation of the request for the implementation of the Mutual Agreement Procedure referred to in paragraph (1) subparagraph a, subparagraph b and subparagraph d as well as the application for the revocation of the proposed request for the implementation of the Mutual Agreement Procedure by resident Taxpayers referred to in paragraph (2) subparagraph a are submitted to the Director General of Taxes through the Director of International Taxation.
- (4) The application for the revocation of the request for the implementation of the Mutual Agreement Procedure referred to in paragraph (1) subparagraph a and subparagraph b as well as the application for the revocation of the proposed request for the implementation of the Mutual Agreement Procedure by resident Taxpayers referred to in paragraph (2) subparagraph a must fulfil the following requirements:
 - a. submitted in writing in the Indonesian language;

- b. submitted within a maximum time limit of 6 (six) months from the start of the negotiations referred to in Article 45 paragraph (3);
 - c. including underlying reasons for the revocation;
 - d. signed by the Applicant, resident Taxpayers or Taxpayers' representatives as referred to in Article 32 paragraph (1) of the Law concerning General Provisions and Tax Procedures.
- (5) For the application for the revocation of the request for the implementation of the Mutual Agreement Procedure referred to in paragraph (1) subparagraph a and subparagraph b as well as the application for the revocation of the proposed request for the implementation of the Mutual Agreement Procedure by resident Taxpayers referred to in paragraph (2) subparagraph a, the Director General of Taxes verifies the fulfilment of the requirements referred to in paragraph (4).
- (6) Based on the verification of the application for the revocation of the request for the implementation of the Mutual Agreement Procedure referred to in paragraph (5), the Director General of Taxes issues written notification to:
- a. the Applicant that the application for revocation is approved or disapproved; and
 - b. the Competent Authority of the Tax Treaty Partner that the request for the implementation of the Mutual Agreement Procedure is revoked if the application for revocation is approved and submitted after the start of the negotiations,
- no later than 21 (twenty-one) calendar days after the date the application for revocation is received by Director General of Taxes.

(7) Based on the verification of the application for the revocation of the proposed request for the implementation of the Mutual Agreement Procedure by resident Taxpayers referred to in paragraph (5), the Director General of Taxes issues written notification to:

- a. resident Taxpayers that the application for the revocation of the proposed request for the implementation of the Mutual Agreement Procedure is approved or not approved; and
- b. the Competent Authority of the Tax Treaty Partner that the request for the implementation of the Mutual Agreement Procedure by the Director General of Taxes is revoked if the application for the revocation of the proposed request for the implementation of the Mutual Agreement Procedure is approved and submitted after the start of the negotiations,

no later than 21 (twenty-one) calendar days after the date the application for the revocation of the proposed request for the implementation of the Mutual Agreement Procedure is received by the Director General of Taxes.

(8) If the time limit referred to in paragraph (6) or paragraph (7) has elapsed and the Director General of Taxes has not issued written notification, the application for the revocation of the request for the implementation of the Mutual Agreement Procedure referred to in paragraph (1) subparagraph a and subparagraph b as well as the application for the revocation of the proposed request for the implementation of the Mutual Agreement Procedure by resident Taxpayers referred to in paragraph (2) subparagraph a is deemed approved and the Director General of Taxes issues the written

notice no later than 14 (fourteen) calendar days after the time limit referred to in paragraph (6) or paragraph (7) has elapsed.

- (9) The application for the revocation of the request for the implementation of the Mutual Agreement Procedure referred to in paragraph (1) subparagraph a and subparagraph b as well as the application for the revocation of the proposed request for the implementation of the Mutual Agreement Procedure referred to in paragraph (2) subparagraph a may be submitted:
 - a. directly;
 - b. by post or forwarder services with proof of postage; or
 - c. through electronic mail.
- (10) The application for the revocation of the request for the implementation of the Mutual Agreement Procedure referred to in paragraph (1) subparagraph a may also be submitted electronically.
- (11) The application for revocation referred to in paragraph (10) may be submitted electronically if the system is available.
- (12) Procedures for the submission of the application for revocation referred to in paragraph (10) are implemented pursuant to the Ministerial Regulation stipulating procedures for the exercise of tax rights and the fulfilment of tax obligations as well as the electronic issuance, signing and submission of decisions or tax assessments.
- (13) The application letter for the revocation of the request for the implementation of the Mutual Agreement Procedure referred to in paragraph (1) subparagraph a shall be prepared using the sample format listed in Appendix letter K.1. which constitutes an integral part of this Ministerial Regulation.

- (14) The application letter for the revocation of the request for the implementation of the Mutual Agreement Procedure referred to in paragraph (1) subparagraph b shall be prepared using the sample format listed in Appendix letter K.2. which constitutes an integral part of this Ministerial Regulation.
- (15) The application letter for the revocation of the proposed request for the implementation of the Mutual Agreement Procedure by resident Taxpayers referred to in paragraph (2) subparagraph a shall be prepared using the sample format listed in Appendix letter K.3., which constitutes an integral part of this Ministerial Regulation.
- (16) The application for the revocation of the request for the implementation of the Mutual Agreement Procedure referred to in paragraph (1) subparagraph d may be submitted insofar as the application is submitted before the Mutual Agreement is obtained.
- (17) For the application for the revocation of the request for the implementation of the Mutual Agreement Procedure submitted by the Competent Authority of the Tax Treaty Partner referred to in paragraph (1) subparagraph d, Director General of Taxes verifies the fulfilment of the provisions referred to in paragraph (16) and issues written notification to:
- a. the Competent Authority of the Tax Treaty Partner that the application for revocation is approved or disapproved; and
 - b. resident Taxpayers related to the request for the implementation of the Mutual Agreement Procedure by the Competent Authority of the Tax Treaty Partner that the negotiations are

terminated if the application for revocation is approved.

Section Four
Follow-up to the Mutual Agreement

Article 53

- (1) The Mutual Agreement Decision Letter referred to in Article 50 paragraph (1) constitutes the basis for tax refunds or the basis for tax collection pursuant to Article 27C paragraph (6) of the Law concerning General Provisions and Tax Procedures.
- (2) If the Mutual Agreement Decision Letter is issued before the notice of tax assessment is issued, resident Taxpayers related to the request for the implementation of the Mutual Agreement Procedure must re-assess the amount of tax payable based on the Mutual the Agreement Decision Letter by filing the rectification of tax returns or disclosure of the incorrectness in the completion of tax returns within the time limit stipulated under statutory tax provisions.
- (3) If resident Taxpayers related to the implementation of the Mutual Agreement Procedure do not perform:
 - a. rectification of tax returns; or
 - b. disclosure of the incorrectness in the completion of tax returns,within a time limit of 3 (three) months from the issuance of the Mutual Agreement Decision Letter or with due regard to the expiration of assessments stipulated under the Law concerning General Provisions and Tax Procedures, the Director General of Taxes issues a notice of tax assessment by taking into account the Mutual Agreement Decision Letter.

(4) If the Mutual Agreement Decision Letter is issued after the notice of tax assessment is issued and against the notice of tax assessment:

- a. no objection is filed referred to in Article 41 paragraph (11) subparagraph b;
- b. no application for the reduction or cancellation of incorrect notices of tax assessment referred to in Article 41 paragraph (11) subparagraph d is submitted;
- c. an objection or application for the reduction or cancellation of incorrect notices of tax assessment is filed but is not considered;
- d. an objection or application for the reduction or cancellation of incorrect notices of tax assessment is filed but is revoked; or
- e. an objection is filed but it has been adjusted based on the materials agreed in the Mutual Agreement,

the Director General of Taxes issues a the Mutual Agreement Decision Letter by re-calculating the amount of tax payable in the notice of tax assessment.

(5) If the Mutual Agreement Decision Letter is issued after the reduction of tax assessment decision letter or the cancellation of tax assessment decision letter is issued, the Director General of Taxes issues the Mutual Agreement Decision Letter by re-calculating the amount of tax payable in the reduction of tax assessment decision letter or the cancellation of tax assessment decision letter.

(6) If the Mutual Agreement Decision Letter is issued after a lawsuit decision with a ruling of cancellation is issued against:

- a. the reduction of tax assessment decision letter;
- b. the cancellation of tax assessment decision letter; or
- c. the objection decision letter whose issuance does not comply with the procedures or methods stipulated under statutory tax provisions,

the Director General of Taxes issues the Mutual Agreement Decision Letter by re-calculating the amount of tax payable in the notice of tax assessment.

(7) If the Mutual Agreement Decision Letter is issued after the objection decision letter is issued and against the objection decision letter:

- a. no appeal is filed;
- b. an appeal is filed but is revoked and the Tax Court has granted written approval of the revocation;
- c. an appeal is filed but has been adjusted based on the materials agreed upon in the Mutual Agreement and the Tax Court has granted written approval of the adjustments; or
- d. an appeal is filed but a Tax Court decision is issued with a ruling of non acceptable,

the Director General of Taxes issues the Mutual Agreement Decision Letter by re-calculating the amount of tax payable in the objection decision letter.

- (8) In the event of other dispute materials that are not covered in the Mutual Agreement Decision Letter, but have a connection with the dispute materials covered in the Mutual Agreement Decision Letter, the Director General of Taxes issues the objection decision letter or the reduction or cancellation of incorrect notice of tax assessment decision letter by considering the Mutual Agreement Decision Letter.
- (9) If the Mutual Agreement Decision Letter is issued when the Taxpayers file an appeal against dispute materials not included in the Mutual Agreement Decision Letter, the Director General of Taxes issues the Mutual Agreement Decision Letter by re-calculating the amount of tax payable in the objection decision letter.
- (10) If the Mutual Agreement Decision Letter is issued after the appeal or civil review decision that covers dispute materials other than those covered in the Mutual Agreement Decision Letter is issued, the Director General of Taxes issues the Mutual Agreement Decision Letter by re-calculating the amount of tax payable in the implementation letter of appeal decision or the implementation letter of civil review decision.
- (11) If the Mutual Agreement Decision Letter:
- a. is issued before the notice of tax assessment;
and
 - b. results in the over-withholding and/or over-withholding of income tax payable,
- resident taxpayers of the Tax Treaty Partner may apply for refunds of tax overpayment which should not be otherwise payable pursuant to statutory tax provisions.

Article 54

If for Taxpayers, the Mutual Agreement Decision Letter referred to in Article 50 paragraph (1) is issued after the issuance of the objection decision, appeal decision and/or civil review decision, the basis for the imposition of administrative penalties in the notice of tax collection referred to in statutory provisions stipulating procedures for the issuance of notices of tax assessment and notices of tax collection also takes into account the amount of taxes in the Mutual Agreement Decision Letter.

CHAPTER VIII ADVANCE PRICING AGREEMENT

Section One

Procedures for the Submission of the Application for the Advance Pricing Agreement

Article 55

- (1) The Director General of Taxes is authorised to enter into the Advance Pricing Agreement with Taxpayers or the Competent Authority of the Tax Treaty Partner to determine arm's length Transfer Prices according to the Arm's Length Principle referred to in Article 3 paragraph (2), which is valid for a certain period based on the application for the Advance Pricing Agreement submitted by resident Taxpayers.
- (2) The Director General of Taxes may delegate the authority referred to in paragraph (1) in the form of delegation to officials within the Directorate General of Taxes.

- (3) The resident Taxpayers referred to in paragraph (1) may apply for the Advance Pricing Agreement for Controlled Transactions based on:
- a. the Taxpayers' initiative, in the form of the application for the Unilateral Advance Pricing Agreement or the Bilateral or Multilateral Advance Pricing Agreement; or
 - b. the written notification from the Director General of Taxes in connection with the application for the Bilateral or Multilateral Advance Pricing Agreement submitted by non-tax residents to the Competent Authority of the Tax Treaty Partner.
- (4) The Advance Pricing Agreement referred to in paragraph (1) may cover all or part of the Controlled Transactions during the Advance Pricing Agreement Period and Roll-back if the Taxpayers request Roll-back in the application for the Advance Pricing Agreement.
- (5) The Controlled Transactions referred to in paragraph (3) may be in the form of Controlled Transactions between Taxpayers and other resident Taxpayers and/or non-tax residents.
- (6) The Roll-back referred to in paragraph (4) shall apply insofar as for the tax year:
- a. the facts and conditions of Controlled Transactions do not differ materially from the facts and conditions of Controlled Transactions agreed upon in the Advance Pricing Agreement;
 - b. the assessments have not expired;

- c. the notice of corporate income tax assessment has not been issued; and
 - d. no preliminary investigations, tax crime investigations, tax crime prosecutions, tax crime proceedings are conducted or not serving sentences for tax crimes.
- (7) The Advance Pricing Agreement referred to in paragraph (1) is in the form of the agreement of:
- a. the criteria in Transfer Pricing; and
 - b. advance Transfer Pricing,
- for the Advance Pricing Agreement Period and Roll-back if the Taxpayers request Roll-back in the application for the Advance Pricing Agreement.
- (8) The criteria referred to in paragraph (7) subparagraph a shall at least contain:
- a. the identity of Affiliated Parties covered in the Advance Pricing Agreement;
 - b. Controlled Transactions covered in the Advance Pricing Agreement;
 - c. the Transfer Pricing method used;
 - d. the method application of the agreed upon Transfer Pricing method; and
 - e. critical assumptions that affect Transfer Pricing.
- (9) The critical assumptions referred to in paragraph (8) subparagraph e at least contain:
- a. written and unwritten contractual provisions in connection with Controlled Transactions;

- b. the functions performed by each transacting party, assets used and risks assumed to occur and borne by the parties;
 - c. the characteristics of the transactions and characteristics of the parties conducting Controlled Transactions; and
 - d. economic conditions that affect Transfer Pricing.
- (10) the Advance Transfer Pricing referred to in paragraph (7) subparagraph b is conducted by applying the Arm's Length Principle according to the conditions that have occurred and are expected to occur during the Advance Pricing Agreement Period.

Article 56

- (1) The resident Taxpayers referred to in Article 55 paragraph (3) may apply for the Advance Pricing Agreement insofar as they:
- a. have fulfilled the obligation to file the annual corporate income tax returns pursuant to statutory tax provisions for 3 (three) consecutive tax years before the tax year the application for the Advance Pricing Agreement is submitted;
 - b. have been required and have fulfilled the obligation to maintain and retain Transfer Pricing Documentation in the form of master file and local file referred to in Article 16 paragraph (2) subparagraph a and subparagraph b for 3 (three) consecutive tax years before the tax

year the application for the Advance Pricing Agreement is submitted;

- c. are not subject to preliminary investigations, tax crime investigations, tax crime prosecutions, tax crime proceedings or serving sentences for tax crime;
- d. the Controlled Transactions proposed to be covered in the application for the Advance Pricing Agreement referred to in Article 55 paragraph (3) are Controlled Transactions that have been filed by the Taxpayers in the annual corporate income tax return referred to in subparagraph a; and
- e. the proposed Transfer Pricing in the application for the Advance Pricing Agreement shall be prepared based on the Arm's Length Principle and does not result in Taxpayers' operating profit being lower than the operating profit that has been filed in the annual corporate income tax return referred to in subparagraph a.

(2) Resident Taxpayers applying for the Advance Pricing Agreement referred to in paragraph (1) must apply to the Director General of Taxes through the Tax Office where the Taxpayers are registered.

(3) The submission of the application for the Advance Pricing Agreement referred to in paragraph (1) must fulfil the following requirements:

- a. submitted in writing in the Indonesian language by completing the application form for the Advance Pricing Agreement using the sample

format listed in Appendix letter L which constitutes an integral part of this Ministerial Regulation;

b. signed by the management whose names are listed in:

1. the deed of establishment;
or

2. the deed of amendments in the event of changes in management;

c. submitted:

1. in a period of 12 (twelve) months up to 6 (six) months before the start of the Advance Pricing Agreement Period in the event of the application referred to in Article 55 paragraph (3) subparagraph a; or

2. before the start of the Advance Pricing Agreement Period in the event of the application referred to in Article 55 paragraph (3) subparagraph b; and

d. attached with:

1. the statement letter that Taxpayers are willing to complete all documents required in the Advance Pricing Agreement process; and
 2. the statement letter that Taxpayers are willing to implement the agreement listed in the Advance Pricing Agreement.
- (4) The provisions on the proposed Transfer Pricing in the application for the Advance Pricing Agreement not resulting in the Taxpayers' operating profit being lower referred to in paragraph (1) subparagraph e are fulfilled insofar as the lowest level of profit in projected financial statements during the Advance Pricing Agreement Period is greater or equal to the lowest level of profit in the annual corporate income tax return for 3 (three) tax years before the tax year in which the application for the Advance Pricing Agreement is submitted.
- (5) The profit level referred to in paragraph (4) is the gross profit margin ratio or the pre-tax profit margin ratio.
- (6) If the application for the Advance Pricing Agreement is submitted by Taxpayers whose business is negatively affected by a national disaster determined by the Central Government, the profit level in the projected financial statements referred to in paragraph (4) is the profit level resulting from the adjustments to normal conditions.

- (7) The projected financial statements referred to in paragraph (6) shall be prepared using the sample format listed in Appendix letter M which constitutes an integral part of this Ministerial Regulation.
- (8) The application for the Advance Pricing Agreement referred to in paragraph (3) may be submitted:
 - a. directly; or
 - b. electronically.
- (9) The application for the Advance Pricing Agreement referred to in paragraph (8) subparagraph b may be submitted electronically if the system is available.
- (10) Procedures for the electronic submission of the application for the Advance Pricing Agreement referred to in paragraph (8) subparagraph b are implemented pursuant to the Ministerial Regulation stipulating procedures for the exercise of tax rights and the fulfilment of tax obligations as well as the electronic issuance, signing and submission of decisions or tax assessments.
- (11) The Director General of Taxes issues the proof of receipt for the submission of the application for the Advance Pricing Agreement referred to in paragraph (2).
- (12) The date listed in the proof of receipt referred to in paragraph (11) is the date of receipt of the application for the Advance Pricing Agreement.

Article 57

- (1) For the application for the Advance Pricing Agreement referred to in Article 56 paragraph (2), the Director General of Taxes verifies:
 - a. the completeness of the fulfilment of the requirements for the submission of the

application for the Advance Pricing Agreement pursuant to the provisions referred to in Article 56 paragraph (3); and

b. the fulfilment of the provisions on the Taxpayers that may apply for the Advance Pricing Agreement referred to in Article 56 paragraph (1).

(2) The Director General of Taxes follows up on the results of the verification referred to in paragraph (1) by issuing written notification of whether the application for the Advance Pricing Agreement can or cannot be followed up to:

a. the Taxpayers; and/or

b. the Competent Authority of the Tax Treaty Partner in the event of the application for the Bilateral or Multilateral Advance Pricing Agreement,

within a maximum period of 1 (one) month after the date of receipt referred to in Article 56 paragraph (12).

(3) If the period referred to in paragraph (2) has elapsed and Director General of Taxes has not issued written notification, the application for the Advance Pricing Agreement submitted by the Taxpayers is deemed feasible to be followed up and Director General of Taxes issues the written notice no later than 1 (one) months after the time limit referred to in paragraph (2) has elapsed.

(4) If the notification of the application for the Bilateral or Multilateral Advance Pricing Agreement to the Competent Authority of the Tax Treaty Partner does not receive written response in a period of 8 (eight) months from the date of the written notification referred to in paragraph (2), the Director General of Taxes issues written

notification of the termination of the Advance Pricing Agreement process to:

- a. the Taxpayers applying for the Advance Pricing Agreement; and
- b. the Competent Authority of the Tax Treaty Partner.

(5) If the application for the Advance Pricing Agreement cannot be followed up as referred to in paragraph (2) and the application for the Advance Pricing Agreement whose process is terminated as referred to in paragraph (4), the Taxpayers may re-apply for the Advance Pricing Agreement insofar as the provisions referred to in Article 56 paragraph (1) and paragraph (3) are fulfilled.

Article 58

- (1) For the application for the Advance Pricing Agreement that may be followed up referred to in Article 57 paragraph (2) or is deemed feasible to be followed up referred to in Article 57 paragraph (3), the Taxpayers must submit the complete application for the Advance Pricing Agreement directly to the Director General of Taxes through the Director of International Taxation in the form of hardcopy and/or softcopy.
- (2) The complete application for the Advance Pricing Agreement referred to in paragraph (1) is submitted no later than 2 (two) months after the date of the notification that the application for the Advance Pricing Agreement may be followed up referred to in Article 57 paragraph (2) or paragraph (3).
- (3) The complete application for the Advance Pricing Agreement referred to in paragraph (1) is at least in the form of:

- a. financial statements that have been audited by a public accountant for the last 3 (three) tax years before the tax year the application for the Advance Pricing Agreement is submitted;
 - b. Transfer Pricing Documentation for the last 3 (three) tax years before the tax year the application for the Advance Pricing Agreement is submitted; and
 - c. documents containing a detailed explanation of the application of the Arm's Length Principle for each Controlled Transaction proposed to be covered in the Advance Pricing Agreement in the Indonesian language.
- (4) The detailed explanation referred to in paragraph (3) subparagraph c at least contains the information listed in Appendix letter N which constitutes an integral part of this Ministerial Regulation.
- (5) The Director General of Taxes issues the proof of receipt for the submission of the complete directly application for the Advance Pricing Agreement referred to in paragraph (1).
- (6) The date listed in the proof of receipt the complete application for the Advance Pricing Agreement referred to in paragraph (5) is the date of receipt of the complete application for the Advance Pricing Agreement.
- (7) If the complete application for the Advance Pricing Agreement referred to in paragraph (3) is not submitted by the Taxpayers in the period referred to in paragraph (2), the Director General of Taxes issues written notification of the termination of the Advance Pricing Agreement process to:
- a. the Taxpayers; and

- b. the Competent Authority of the Tax Treaty Partner in the event of the application for the Bilateral or Multilateral Advance Pricing Agreement.
- (8) In the event of the application for the Advance Pricing Agreement whose process is terminated referred to in paragraph (7), Taxpayers may re-apply for the Advance Pricing Agreement insofar as the provisions referred to in Article 56 paragraph (1) and paragraph (3) are fulfilled.

Section Two

Procedures for the Resolution of the Application for the Advance Pricing Agreement

Paragraph 1

The Material Assessment of the Application for the Advance Pricing Agreement

Article 59

- (1) For the application for the Advance Pricing Agreement that has fulfilled the completeness referred to in Article 58 paragraph (3), the Director General of Taxes conducts material assessment.
- (2) In the material assessment referred to in paragraph (1), the Director General of Taxes is authorised to:
 - a. conduct discussion with the Taxpayers in connection with the application for the Taxpayers' the Advance Pricing Agreement;
 - b. inspect the place of business of the Taxpayers and/or Affiliated Parties;

- c. interview the Taxpayers' management and/or employees;
 - d. request additional data and/or information in the form of evidence, either in the form of documents or details, from the Taxpayers;
 - e. request data and/or information in the form of evidence, either in the form of documents or details, from Affiliated Parties or other related parties;
 - f. request an exchange of information;
 - g. request information and/or evidence or details from Financial Services Institutions, Other Financial Services Institutions and/or other entities; and/or
 - h. request valuation.
- (3) If necessary for the material assessment referred to in paragraph (1), the Director General of Taxes may conduct Audits for other purposes pursuant to statutory tax provisions.
- (4) Audits for other purposes referred to in paragraph (3) may be conducted if the Taxpayers:
- a. have never been subject to Audits in connection with Transfer Pricing for the Controlled Transactions proposed to be covered in the Advance Pricing Agreement referred to in Article 55 paragraph (3) up to 3 (three) tax years before the tax year the application for the Advance Pricing Agreement is submitted; and/or

- b. request Roll-back in the application for the Advance Pricing Agreement.
- (5) The material assessment referred to in paragraph (1) is conducted by applying the Arm's Length Principle.
- (6) In the material assessment referred to in paragraph (1), the resident Taxpayers referred to in Article 55 paragraph (3) must:
- a. attend the discussions referred to in paragraph (2) subparagraph a;
 - b. allow the inspection of the place of business referred to in paragraph (2) subparagraph b;
 - c. allow the Director General of Taxes to interview the Taxpayers' management and/or employees referred to in paragraph (2) subparagraph c; and
 - d. provide additional data and/or information in the form of evidence, either in the form of documents or details referred to in paragraph (2) subparagraph d.
- (7) The Taxpayers' documents used during the material assessment process referred to in paragraph (1) cannot be used by the Director General of Taxes as a basis to conduct Audits, preliminary investigations or tax crime investigations.

Paragraph 2
the Advance Pricing Agreement Negotiations

Article 60

- (1) The Director General of Taxes conducts the Advance Pricing Agreement negotiations with:

- a. the Taxpayers in the event of the Unilateral Advance Pricing Agreement; or
 - b. the Competent Authority of the Tax Treaty Partner in the event of the Bilateral or Multilateral Advance Pricing Agreement.
- (2) The Unilateral Advance Pricing Agreement negotiations referred to in paragraph (1) subparagraph a must:
 - a. start no later than 6 (six) months after the Taxpayers submit the complete application for the Advance Pricing Agreement in the period referred to in Article 58 paragraph (2); and
 - b. be completed in a period of 12 (twelve) months from the start of the Advance Pricing Agreement negotiations referred to in subparagraph a.
- (3) The Bilateral or Multilateral Advance Pricing Agreement negotiations referred to in paragraph (1) subparagraph b are completed in the period pursuant to the provisions on the Mutual Agreement Procedure referred to in Article 45 paragraph (3) and paragraph (4).
- (4) If during the Advance Pricing Agreement negotiations referred to in paragraph (1), it is discovered that the Taxpayers are subject to preliminary investigations, tax crime investigations, tax crime prosecutions, tax crime proceedings or serving sentences for tax crimes, the Director General of Taxes terminates the Advance Pricing Agreement process and issues written notification of the termination of the Advance Pricing Agreement process to:
 - a. the Taxpayers; and

- b. the Competent Authority of the Tax Treaty Partner in the event of the application for the Bilateral or Multilateral Advance Pricing Agreement.

Article 61

- (1) The results of the Advance Pricing Agreement negotiations referred to in Article 60 paragraph (1) may contain agreement or disagreement on the criteria in Transfer Pricing and advance Transfer Pricing referred to in Article 55 paragraph (7).
- (2) In the Advance Pricing Agreement negotiations referred to in Article 60 paragraph (1), the Director General of Taxes may not agree to the Advance Pricing Agreement if:
 - a. the Controlled Transactions are not based on economic motives;
 - b. the economic substance of Controlled Transactions differs from their formal form;
 - c. the Controlled Transactions are conducted with one aim of minimising the tax burden;
 - d. the information and/or evidence or details submitted by Taxpayers are incorrect or do not correspond to the actual conditions;
 - e. the information and/or evidence or details in connection with the implementation of authority referred to in Article 59 paragraph (2) subparagraph d cannot be obtained by the Director General of Taxes in a period of 21 (twenty-one) calendar days after the date of the written request; and/or

- f. for the tax year in the Advance Pricing Agreement Period or Roll-back, the notice of corporate income tax assessment has been issued.
- (3) The results of the Advance Pricing Agreement negotiations are deemed to contain a disagreement as referred to in paragraph (1) if:
 - a. the Advance Pricing Agreement negotiations do not result in an agreement until the expiration of the Advance Pricing Agreement negotiation period referred to in Article 60 paragraph (2) or paragraph (3); or
 - b. the Director General of Taxes receives written notification from the Competent Authority of the Tax Treaty Partner that the Advance Pricing Agreement negotiations cannot be conducted.
- (4) If the Advance Pricing Agreement negotiations result in a disagreement as referred to in paragraph (1), the Director General of Taxes terminates the Advance Pricing Agreement process and issues written notification to Taxpayers.
- (5) The results of the Advance Pricing Agreement negotiations containing an agreement referred to in paragraph (1) are outlined in:
 - a. the Advance Pricing Agreement Paper in the event of the Unilateral Advance Pricing Agreement; or
 - b. the Mutual Agreement according to the Mutual Agreement Procedure in the event of the

Bilateral or Multilateral Advance Pricing Agreement.

- (6) The Advance Pricing Agreement Paper referred to in paragraph (5) subparagraph a shall be prepared using the sample format listed in Appendix letter O which constitutes an integral part of this Ministerial Regulation.
- (7) Based on the Advance Pricing Agreement Paper referred to in paragraph (5) subparagraph a, the Director General of Taxes issues a decision letter on the enactment of the Advance Pricing Agreement within a maximum period of 1 (one) month from the Advance Pricing Agreement Paper is signed.
- (8) Based on the Mutual Agreement referred to in paragraph (5) subparagraph b, the Director General of Taxes issues a decision letter on the enactment of the Advance Pricing Agreement within a maximum period of 1 (one) month from:
 - a. the date of the written notification from the Competent Authority of the Tax Treaty Partner that the Mutual Agreement may be implemented is received; and
 - b. the date of the written notification to the Competent Authority of the Tax Treaty Partner that the Mutual Agreement may be implemented is submitted.
- (9) The decision letter on the enactment of the Advance Pricing Agreement referred to in paragraph (7) and paragraph (8) shall be prepared using the sample format listed in Appendix letter P and Q which constitute an integral part of this Ministerial Regulation.

(10) The decision letter on the enactment of the Advance Pricing Agreement referred to in paragraph (7) and paragraph (8) is submitted to:

- a. the Taxpayers applying for the Advance Pricing Agreement; and
- b. work units within the Directorate General of Taxes authorised to follow up.

Article 62

(1) If:

- a. the Bilateral or Multilateral Advance Pricing Agreement negotiations result in a disagreement as referred to in Article 61 paragraph (1); or
- b. the Bilateral or Multilateral Advance Pricing Agreement process is terminated because the Competent Authority of the Tax Treaty Partner does not submit the written response referred to in Article 57 paragraph (4),

the Taxpayers may apply for the Unilateral Advance Pricing Agreement with due regard to the provisions referred to in Article 56 paragraph (3) subparagraph a and subparagraph b, to the Director General of Taxes through the Tax Office where the Taxpayers are registered no later than 14 (fourteen) calendar days after the date of the written notification referred to in Article 61 paragraph (4) or Article 57 paragraph (4).

(2) For the submitted application for the Unilateral Advance Pricing Agreement referred to in paragraph (1), the Director General of

Taxes conducts negotiations with the Taxpayers within a maximum period of:

- a. 6 (six) months from the application is received if the application is submitted because the Bilateral or Multilateral Advance Pricing Agreement results in a disagreement as referred to in paragraph (1) subparagraph a; or
 - b. 12 (twelve) months from the application is received if the application is submitted because the Bilateral or Multilateral Advance Pricing Agreement process is terminated as referred to in paragraph (1) subparagraph b.
- (3) If until the time limit referred to in paragraph (2), no agreement has been reached, the results of the Unilateral Advance Pricing Agreement negotiations are deemed to be in the form of a disagreement as referred to in Article 61 paragraph (1).

Section Three

Procedures for the Revocation of the Application for the Advance Pricing Agreement

Article 63

- (1) For the application for the Advance Pricing Agreement referred to in Article 55 paragraph (3), the application for the revocation of the application for the Advance Pricing Agreement may be submitted by the Taxpayers.
- (2) The revocation of the application for the Advance Pricing Agreement referred to in paragraph (1) must fulfil the following requirements:

- a. submitted in writing in the Indonesian language by including the underlying reasons for the revocation;
 - b. submitted before an agreement is obtained; and
 - c. signed by the management whose names are listed in the deed of establishment or deed of amendment in the event of changes in management.
- (3) The revocation of the application for the Advance Pricing Agreement referred to in paragraph (1) is submitted by Taxpayers to the Director General of Taxes through the Director of International Taxation.
- (4) The revocation of the application for the Advance Pricing Agreement referred to in paragraph (3) shall be prepared using the sample format listed in Appendix letter R which constitutes an integral part of this Ministerial Regulation.
- (5) The application for revocation submitted by the Applicant referred to in paragraph (1) may be submitted:
- a. directly; or
 - b. electronically.
- (6) The application for revocation referred to in paragraph (5) subparagraph b may be submitted electronically if the system is available.
- (7) Procedures for the submission of the application for revocation referred to in paragraph (5) subparagraph b are implemented pursuant to the Ministerial Regulation stipulating procedures for the exercise of tax rights and the fulfilment of tax obligations as well as

the electronic issuance, signing and submission of decisions or tax assessments.

- (8) The Director General of Taxes issues proof of receipt for the submission of the revocation of the application for the Advance Pricing Agreement referred to in paragraph (3).

Article 64

- (1) For the revocation of the application for the Advance Pricing Agreement submitted referred to in Article 63 paragraph (1), the Director General of Taxes verifies the fulfilment of the requirements for the revocation of the application for the Advance Pricing Agreement referred to in Article 63 paragraph (2).
- (2) The Director General of Taxes follows up on the results of the verification referred to in paragraph (1) by issuing written notification of whether the revocation of the application for the Advance Pricing Agreement is approved or not approved to:
 - a. the Taxpayers; and
 - b. the Competent Authority of the Tax Treaty Partner if the Bilateral or Multilateral Advance Pricing Agreement,within a maximum period of 14 (fourteen) calendar days after the date the revocation of the application for the Advance Pricing Agreement referred to in Article 63 paragraph (8) is received.
- (3) If the period referred to in paragraph (2) has elapsed and the Director General of Taxes has not issued written notification, the revocation of the application for the Advance Pricing Agreement is deemed approved and the Director General of Taxes issues the written notice no later than 14 (fourteen) calendar days after the time limit referred to in paragraph (2) has elapsed.

- (4) If based on the verification of the fulfilment of the requirements referred to in paragraph (1) the revocation of the application for the Advance Pricing Agreement does not fulfil the requirements, the revocation of the application for the Advance Pricing Agreement is not approved and the application for the Advance Pricing Agreement shall be continued.
- (5) If the revocation of the application for the Advance Pricing Agreement referred to in Article 63 paragraph (1) is submitted after the Advance Pricing Agreement negotiations start, the Taxpayers may not re-apply for the Advance Pricing Agreement for the tax year covered in the revoked application for the Advance Pricing Agreement.

Article 65

- (1) If:
 - a. the revocation referred to in Article 64 paragraph (5) is performed against the application for the Bilateral or Multilateral Advance Pricing Agreement; and
 - b. the revocation referred to in subparagraph a fulfils the criteria referred to in Article 63 paragraph (2),the Taxpayers may apply for the Unilateral Advance Pricing Agreement with due regard to the provisions referred to in Article 56 paragraph (3) subparagraph a and subparagraph b to the Director General of Taxes through the Tax Office where the Taxpayers are registered no later than 14 (fourteen) calendar days after the date of the written notification referred to in Article 64 paragraph (2) or paragraph (3).

- (2) For the application for the Unilateral Advance Pricing Agreement referred to in paragraph (1), the Director General of Taxes implements the Advance Pricing Agreement negotiations with the Taxpayers in a period of:
- a. 6 (six) months if the Bilateral or Multilateral Advance Pricing Agreement negotiations have been conducted; or
 - b. 12 (twelve) months if the Bilateral or Multilateral Advance Pricing Agreement negotiations have not been conducted,
- from the date the application for the Unilateral Advance Pricing Agreement referred to in paragraph (1) is received.
- (3) The application for the Unilateral Advance Pricing Agreement referred to in paragraph (1) shall be prepared using the sample format of the submission of the application for the Advance Pricing Agreement referred to in Article 56 paragraph (3).
- (4) If until the period referred to in paragraph (2), no agreement has been reached, the results of the Unilateral Advance Pricing Agreement negotiations are deemed to be in the form of a disagreement as referred to in Article 61 paragraph (1).
- (5) The written notification submitted by the Competent Authority of the Tax Treaty Partner concerning the revocation of the application for the Bilateral or Multilateral Advance Pricing Agreement is deemed written notification from the Competent Authority of the Tax Treaty Partner that the Advance Pricing Agreement negotiations cannot be conducted as referred to in Article 61 paragraph (3) subparagraph b.

Section Four

Procedures for the Implementation of the Advance Pricing Agreement

Article 66

- (1) Taxpayers must implement the Advance Pricing Agreement contained in the decision letter on the enactment of the Advance Pricing Agreement referred to in Article 61 paragraph (7) or paragraph (8) pursuant to statutory tax provisions.
- (2) The agreement in the Advance Pricing Agreement referred to in paragraph (1) must be implemented in the Taxpayers' Transfer pricing policies and the implementation must be outlined in Transfer Pricing Documentation for the Advance Pricing Agreement Period.
- (3) If for the Advance Pricing Agreement Period and/or Roll-back:
 - a. the annual corporate income tax return has been filed;
 - b. the Director General of Taxes has not conducted Audits; and
 - c. there is an underpayment of income tax payable calculated based on the agreement in the Advance Pricing Agreement,

the Taxpayers must rectify the annual corporate income tax return according to the Advance Pricing Agreement contained in the decision letter on the enactment of the Advance Pricing Agreement no later than 1 (one) month after the decision on the enactment of the Advance Pricing Agreement is issued.
- (4) If for the Advance Pricing Agreement Period and/or Roll-back, the annual corporate income tax return referred to in paragraph (3) subparagraph a is subject to Audits, the Director General of Taxes

issues a notice of tax assessment by taking into account the Advance Pricing Agreement contained in the decision letter on the enactment of the Advance Pricing Agreement.

(5) If for the tax year in the Advance Pricing Agreement Period, a notice of tax assessment has been issued, the Director General of Taxes rectifies the notice of tax assessment ex officio pursuant to the provisions referred to in the Law concerning General Provisions and Tax Procedures by taking into account the Advance Pricing Agreement contained in the decision letter on the enactment of the Advance Pricing Agreement.

(6) In the event of administrative penalties arising due to:

- a. the rectification of the annual corporate income tax return referred to in paragraph (3);
- b. the issuance of the notice of tax assessment referred to in paragraph (4); or
- c. the rectification of the notice of tax assessment referred to in paragraph (5),

the Director General of Taxes nullifies the administrative penalties pursuant to the provisions referred to in the Law concerning General Provisions and Tax Procedures.

Article 67

(1) The agreement in the Advance Pricing Agreement referred to in Article 66 paragraph (2) does not prevent the Director General of Taxes from conducting Audits, preliminary investigations or tax crime investigations pursuant to statutory tax provisions.

(2) If Taxpayers implement the agreement in the Advance Pricing Agreement and are subject to Audits, preliminary investigations or

tax crime investigations referred to in paragraph (1), the Director General of Taxes cannot correct the Transfer Pricing transactions covered in the Advance Pricing Agreement.

(3) The provisions referred to in paragraph (2) shall not apply if the Taxpayers:

- a. file the annual corporate income tax return whose Transfer Pricing does not conform to the agreement in the Advance Pricing Agreement;
- b. do not file the rectification of the annual corporate income tax return until the time limit referred to in Article 66 paragraph (3);
- c. file the rectification of the annual corporate income tax return whose Transfer Pricing does not conform to the agreement in the Advance Pricing Agreement; or
- d. do not file the annual corporate income tax return for the tax year in the Advance Pricing Agreement Period.

Section Five

Procedures for the Evaluation of the Advance Pricing Agreement

Paragraph 1

The Director General of Taxes' Authority to Evaluate the Advance Pricing Agreement

Article 68

(1) Director General of Taxes is authorised to supervise the implementation of the Advance Pricing Agreement by Taxpayers.

- (2) The implementation of the Advance Pricing Agreement referred to in paragraph (1) is supervised through the evaluation of:
- a. compliance in the implementation of the agreement in the Advance Pricing Agreement; and
 - b. the conformity of the criteria in Transfer Pricing in the agreement in the Advance Pricing Agreement.
- (3) In the context of the evaluation referred to in paragraph (2), the Director General of Taxes is authorised to:
- a. conduct discussions with the Taxpayers in connection with the implementation of the agreement in the Advance Pricing Agreement;
 - b. request the Taxpayers to provide necessary information and/or evidence or details;
 - c. inspect the place of business of the Taxpayers and/or Affiliated Parties Taxpayers;
 - d. interview the Taxpayers' management and/or employees; and/or
 - e. request information and/or evidence or details from Affiliated Parties or other related parties.
- (4) In the evaluation referred to in paragraph (2), Taxpayers must:
- a. attend the discussions referred to in paragraph (3) subparagraph a;
 - b. provide the information and/or evidence or details referred to in paragraph (3) subparagraph b;

- c. allow the inspection of the place of business referred to in paragraph (3) subparagraph c; and/or
 - d. allow the Director General of Taxes to interview the Taxpayers' management and/or employees referred to in paragraph (3) subparagraph d.
- (5) If based on the results of the evaluation of compliance in the implementation of the agreement in the Advance Pricing Agreement referred to in paragraph (2) subparagraph a, it is discovered that the Taxpayers do not implement the Advance Pricing Agreement contained in the decision letter on the enactment of the Advance Pricing Agreement, Director General of Taxes shall follow up pursuant to the applicable statutory tax provisions.
- (6) The follow-up by the Director General of Taxes referred to in paragraph (5) is conducted by implementing the Advance Pricing Agreement contained in the decision letter on the enactment of the Advance Pricing Agreement.
- (7) Based on the results of the evaluation referred to in paragraph (2) subparagraph b, the Director General of Taxes is authorised to perform:
 - a. civil review of the Advance Pricing Agreement, insofar as there are material changes to the facts and conditions of Controlled Transactions covered in the Advance Pricing Agreement with the critical assumptions agreed upon in the Advance Pricing Agreement; or

- b. cancellation of the Advance Pricing Agreement contained in decision letter on the enactment of the Advance Pricing Agreement, before the Advance Pricing Agreement Period expires.

Paragraph 2

Civil Review of the Advance Pricing Agreement

Article 69

- (1) The civil review of the Advance Pricing Agreement is conducted based on:
 - a. the results of the evaluation of the agreement in the Advance Pricing Agreement referred to in Article 68 paragraph (7); or
 - b. the application for civil review of the Advance Pricing Agreement submitted by the Taxpayers.
- (2) Based on the results of the evaluation of the agreement in the Advance Pricing Agreement referred to in paragraph (1) subparagraph a, Director General of Taxes issues written notification to the Taxpayers.
- (3) The written notification to Taxpayers referred to in paragraph (2) contains:
 - a. material changes to the facts and conditions of Controlled Transactions covered in the Advance Pricing Agreement with the critical assumptions agreed upon in the Advance Pricing Agreement; and

- b. the implementation of the Advance Pricing Agreement negotiations in the context of the civil review of the Advance Pricing Agreement.
- (4) The written notification referred to in paragraph (2) is submitted before the tax year in which the civil review of the Advance Pricing Agreement will be conducted ends.
- (5) The application for the civil review of the Advance Pricing Agreement referred to in paragraph (1) subparagraph b must be submitted to the Director General of Taxes through the Director of International Taxation by completing the application form for the civil review of the Advance Pricing Agreement.
- (6) The application form for the civil review of the Advance Pricing Agreement referred to in paragraph (5) shall be prepared using the sample format listed in Appendix letter S which constitutes an integral part of this Ministerial Regulation.
- (7) The application for the civil review of the Advance Pricing Agreement referred to in paragraph (5) may be submitted:
 - a. directly; or
 - b. electronically.
- (8) The application for the civil review of the Advance Pricing Agreement referred to in paragraph (7) subparagraph b may be submitted electronically if the system is available.
- (9) Procedures for the submission of the application for civil review of the Advance Pricing Agreement referred to in paragraph (7) subparagraph b are implemented pursuant to the Ministerial Regulation stipulating procedures for the exercise of tax rights and the fulfilment of tax obligations as well as the electronic issuance, signing and submission of decisions or tax assessments.

- (10) The Director General of Taxes issues proof of receipt for the submission of the application for the civil review of the Advance Pricing Agreement referred to in paragraph (7).
- (11) The date listed in the proof of receipt referred to in paragraph (10) is the date of receipt of the application for the civil review of the Advance Pricing Agreement.
- (12) The provisions on the verification, submission of the complete application, material assessment and negotiations of the application for the Advance Pricing Agreement referred to in Article 57 to Article 60 shall apply mutatis mutandis to the application for the civil review of the Advance Pricing Agreement referred to in paragraph (5).
- (13) The results of the negotiations of the civil review of the Advance Pricing Agreement are outlined in the amendment to the Advance Pricing Agreement Paper or the Mutual Agreement.
- (14) For the amendment to the Advance Pricing Agreement Paper or the amendment to the Mutual Agreement referred to in paragraph (13), Director General of Taxes issues a decision on the amendment to the Advance Pricing Agreement by including the tax year in the Advance Pricing Agreement Period subject to the civil review.
- (15) The decision on the amendment to the Advance Pricing Agreement referred to in paragraph (14) shall be prepared using the sample format listed in Appendix letter T and U which constitute an integral part of this Ministerial Regulation.

Paragraph 3

The Cancellation of the Advance Pricing Agreement

Article 70

- (1) If based on the results of the evaluation referred to in Article 68 paragraph (7), there are indications that the Taxpayers:
 - a. submit information and/or evidence or details that are incorrect or do not correspond to the actual conditions; and/or
 - b. do not submit information and/or evidence or details that:
 1. are known or should be known by the Taxpayers; and
 2. may affect the results of the agreement in the Advance Pricing Agreement,

the Director General of Taxes sends written notification to Taxpayers to clarify the non-conformity of the information and/or evidence or details submitted during the Advance Pricing Agreement process.
- (2) The Taxpayers must submit a written response to the Director General of Taxes through the Director of International Taxation for the written notification referred to in paragraph (1) in a period of 21 (twenty-one) calendar days after the date of the written notification.
- (3) The Director General of Taxes verifies the Taxpayers' written responses submitted in the period referred to in paragraph (2).
- (4) The Director General of Taxes cancels the Advance Pricing Agreement contained in the decision letter on the enactment of the Advance Pricing Agreement referred to in Article 61 paragraph (7) or paragraph (8) if the Taxpayers:

- a. are proven to fulfil the provisions referred to in paragraph (1), based on the verification referred to in paragraph (3); or
 - b. do not submit a written response or submit a written response but the period referred to in paragraph (2) has elapsed.
- (5) In the context of the cancellation of the Advance Pricing Agreement referred to in paragraph (4), the Director General of Taxes issues:
 - a. the decision letter on the cancellation of the Advance Pricing Agreement to Taxpayers prepared using the sample format listed in Appendix letter V which constitutes an integral part of this Ministerial Regulation; and
 - b. the notification of the cancellation of the Advance Pricing Agreement to the Competent Authority of the Tax Treaty Partner in the event of the Bilateral or Multilateral Advance Pricing Agreement.
- (6) The Director General of Taxes issues the decision letter of the cancellation of the Advance Pricing Agreement referred to in paragraph (5) subparagraph a to Taxpayers in a period of 21 (twenty-one) calendar days after:
 - a. the written response from the Taxpayers is received in the event of cancellation of the agreement in the Advance Pricing Agreement based on the results of the verification referred to in paragraph (3); or
 - b. the period referred to in paragraph (2) has elapsed.

- (7) If the Director General of Taxes cancels the Advance Pricing Agreement as referred to in paragraph (4):
- a. the Taxpayers cannot re-apply for the Advance Pricing Agreement for the Advance Pricing Agreement Period and/or Roll-back covered in the canceled the Advance Pricing Agreement; and
 - b. the Director General of Taxes may conduct Audits, preliminary investigations and/or crime investigations pursuant to statutory tax provisions.

Section Six

Procedures for the Renewal of the Advance Pricing Agreement

Article 71

- (1) Taxpayers may apply for the renewal of the Advance Pricing Agreement to Director General of Taxes through the Tax Office where the Taxpayers are registered.
- (2) The application for the renewal of the Advance Pricing Agreement referred to in paragraph (1) must be submitted in a period of 12 (twelve) months up to 6 (six) months before the Advance Pricing Agreement Period for which renewal is applied starts.
- (3) The application form for the renewal of the Advance Pricing Agreement referred to in paragraph (1) shall be prepared using the sample format listed in Appendix letter W which constitutes an integral part of this Ministerial Regulation.
- (4) The application for the renewal of the Advance Pricing Agreement referred to in paragraph (1) may be submitted:

- a. directly; or
 - b. electronically.
- (5) The application for the renewal of the Advance Pricing Agreement referred to in paragraph (4) subparagraph b may be submitted electronically if the system is available.
 - (6) Procedures for the submission of the application for the renewal of the Advance Pricing Agreement referred to in paragraph (4) subparagraph b are implemented pursuant to the Ministerial Regulation stipulating procedures for the exercise of tax rights and the fulfilment of tax obligations as well as the electronic issuance, signing and submission of decisions or tax assessments.
 - (7) The Director General of Taxes issues the proof of receipt for the submission of the application for the renewal of the Advance Pricing Agreement referred to in paragraph (1).
 - (8) The date listed in the proof of receipt referred to in paragraph (7) is the date of receipt of the application for the renewal of the Advance Pricing Agreement.
 - (9) For the application for the renewal of the Advance Pricing Agreement referred to in paragraph (1) Taxpayers must submit the completeness referred to in Article 58 paragraph (1) and paragraph (2).
 - (10) The provisions on the submission of the complete application for the material assessment and the negotiations for the application for the Advance Pricing Agreement referred to in Article 58 to Article 60 shall apply mutatis mutandis to the application for the renewal of the Advance Pricing Agreement referred to in paragraph (1).

- (11) The renewal of the Advance Pricing Agreement referred to in paragraph (1) may only be granted 1 (one) time for 1 (one) the Advance Pricing Agreement Period.

CHAPTER IX
THE SUBMISSION OF DECISION LETTER DOCUMENTS

Article 72

- (1) The decision letter documents in the context of the completion of the Mutual Agreement Procedure and the Advance Pricing Agreement may be submitted:
- a. directly;
 - b. by post, a forwarder or courier service company with proof of postage; or
 - c. electronically.
- (2) The decision letter documents referred to in paragraph (1) subparagraph c may be submitted electronically if the system is available.
- (3) Procedures for the submission of the decision letter documents referred to in paragraph (1) subparagraph c are implemented pursuant to the Ministerial Regulation stipulating procedures for the exercise of tax rights and the fulfilment of tax obligations as well as the electronic issuance, signing and submission of decisions or tax assessments.

CHAPTER X
TRANSITIONAL PROVISIONS

Article 73

When this Ministerial Regulation comes into force:

1. the request for the implementation of the Mutual Agreement Procedure implemented pursuant to the Minister of Finance Regulation Number 49/PMK.03/2019 concerning Procedures for the Implementation of the Mutual Agreement Procedure (Official Gazette of the Republic of Indonesia of 2019 Number 468) and no the Mutual Agreement Decision Letter has been issued, shall be followed up pursuant to this Ministerial Regulation;
2. the application for the Advance Pricing Agreement implemented pursuant to the Minister of Finance Regulation Number 22/PMK.03/2020 concerning Procedures for the Implementation of the Advance Pricing Agreement (Official Gazette of the Republic of Indonesia of 2020 Number 262) and the decision letter of the enactment of the Advance Pricing Agreement, the decision letter of the amendment to the Advance Pricing Agreement or the decision letter of the cancellation of the agreement in the Advance Pricing Agreement, shall be followed up pursuant to this Ministerial Regulation; and
3. the obligation to maintain, retain and file Transfer Pricing Documentation for the 2024 tax year and onwards shall be exercised pursuant to this Ministerial Regulation.

CHAPTER XI CLOSING PROVISIONS

Article 74

When this Ministerial Regulation comes into force, the provisions under:

1. Minister of Finance Regulation Number 213/PMK.03/2016 concerning Types of Compulsory

Additional Documents and/or Information to Be Retained by Taxpayers Conducting Related Party Transactions and the Administration Procedures (Official Gazette of the Republic of Indonesia of 2016 Number 2120);

2. Minister of Finance Regulation Number 49/PMK.03/2019 concerning Procedures for the Implementation of the Mutual Agreement Procedure (Official Gazette of the Republic of Indonesia of 2019 Number 468); and
3. Minister of Finance Regulation Number 22/PMK.03/2020 tentang Procedures for the Establishment and Implementation of the Advance Pricing Agreement (Official Gazette of the Republic of Indonesia of 2020 Number 262),

are revoked and declared invalid.

Article 75

This Ministerial Regulation comes into force on the date of promulgation.

For public cognisance, this Ministerial Regulation shall be promulgated by placement in the Official Gazette of the Republic of Indonesia.

Stipulated in Jakarta

on 29 December 2023

MINISTER OF FINANCE OF THE REPUBLIC OF INDONESIA,

signed

SRI MULYANI INDRAWATI

Promulgated in Jakarta

on 29 December 2023

DIRECTOR GENERAL OF LEGISLATION OF THE MINISTRY OF
LAW AND HUMAN RIGHTS OF THE REPUBLIC OF INDONESIA,

signed

ASEP N. MULYANA

OFFICIAL GAZETTE OF THE REPUBLIC OF INDONESIA OF 2023

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