

Indonesian Advance Pricing Agreements (“APA”)

Following the issuance of MoF Regulation No. PMK-240/2014 regarding the Mutual Agreement Procedures (please see our Tax News Flash March 2015), as part of OECD’s BEPs Action Plan, in January 2015 the Minister of Finance (“MoF”) issued another regulation, Regulation No. PMK-7/2015, effective 12 April 2015, regarding the procedures to establish and execute an APA.

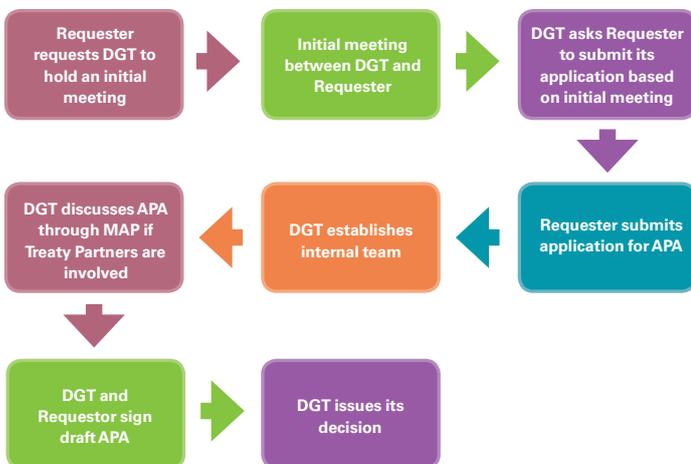


Requestor

Under this regulation, the parties that can request an APA from the Director General of Tax (“DGT”), as the Authorized Competent Authority of Indonesia, are:

- Indonesian entities that have operated for at least 3 years;
- A Permanent Establishment (“PE”) that has operated for at least 3 years in Indonesia, and
- Foreign taxpayers that reside in tax treaty countries (through the respective country’s competent authority).

Application procedures



Coverage

An APA would cover, at least, the:

- related parties involved;
- type of transactions to be covered;
- Transfer Pricing Method;
- comparables;
- validity period (generally a maximum 3 fiscal years, but can be 4 fiscal years, if the APA is concluded with a competent authority of the Tax Treaty Partner);
- critical assumptions that can potentially cause the APA to change, such as new local regulations, force majeure, significant new competitors and new Government policies; and
- Transfer Pricing adjustments.

Initial meeting

The Requester must request in writing the DGT to conduct an initial meeting to discuss the proposed APA. The request for the initial meeting must be submitted no later than 6 months before the proposed APA would become effective in a specified financial year. The request must be based on actual or proposed transactions that have been approved by the Requester’s Board and comply with the prevailing regulations on Transfer Pricing and are not made merely for the purpose to minimize the tax burden.

The Requester must provide a written statement that it will provide all necessary documents and information for this APA, which include:

1. The reasons for applying for an APA;
2. Business activities;
3. Business plan;
4. Organization structures, including business structure and share ownership structure;
5. Information regarding shareholders and any transactions with them;
6. Information regarding other related parties and details of transactions with them;
7. The proposed transactions to be discussed covered in the APA;
8. The proposed TP method and documentation, i.e., the comparable analyses, functional analyses, selected comparables, etc.
9. Description of accounting system, production process and decision-making process; and
10. Description of competitors having similar business activities or products, including the competitors’ characteristics and market share.

In this initial meeting, which can become a series of meetings, the DGT would decide whether it is necessary to have an APA, the scope of the proposed APA, the possibility to enter into this APA with the Tax Treaty partner, to discuss the documents and analyses from Requester, etc.

Application Letter

Following the DGT's decision on the proposed APA as discussed in the initial meeting, the DGT will notify the Requester, at least one month before the start of the next financial year that will be covered in the proposed APA, to submit an application in Indonesian language for an APA signed by an authorized Director or his proxy.

This application must include, among other things, the information required in the initial meeting, together with the proposed Transfer Pricing, detailed information that supports the arm's length principle and critical assumptions analyses.

Submission of this application must be made in the financial year preceding the start of the financial year that would be covered in the proposed APA. If this time frame has lapsed, as long as it is not more than for 1 year, it is still possible to submit the application, but the initial period covered in the proposed APA would be less than one year.

APA discussion with the DGT

The DGT will form a team to discuss thoroughly the application with the Requester, including analyzing and evaluating the proper Transfer Pricing method, critical assumptions, potential double taxation, etc. If there is potential double taxation, the DGT can either propose a MAP to the Treaty Partner or accept the APA proposed by the foreign taxpayer resident in the Treaty Country through the Treaty Partner.

The APA discussion between DGT and the Requester must be completed within one year after the application is accepted. However, under certain circumstances, it can be extended for another year.

DGT decision letter

DGT will issue a decision letter containing the draft APA signed by both the DGT and the Requester. Its date would be the effective year of the APA.

Post-APA compliance

The Requester must submit annual compliance reports within 4 months after the end of each financial year that is covered in the APA. The DGT will evaluate this report and can reconsider or cancel the APA if the Requester did not comply with the APA, submitted incorrect information, did not submit the report, etc.

Renewal of an APA must be done during last financial year covered in the existing APA and the process is similar to submitting a new APA.

Having an APA would not exempt the Requester from general audits, initial findings audits or investigation by the DGT.

KPMG comments:

- An APA is an effective tool to manage tax risks and it is encouraging to see that the DGT is already in APA negotiations with a number of countries.
- Similar to the MAP process, the most critical APA's issues to consider relate to timing and cost obtaining the information needs to be provided.
- Considering the amount information to be provided, it is advisable for taxpayers to plan carefully before applying for APA because of the tight time frame.

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