

INDONESIA

ADVANCE PRICING AGREEMENT IN INDONESIA – WHAT'S NEW?

The Minister of Finance issued Regulation No. 7/PMK.03/2015 ("PMK 7/2015") on 12 January 2015 regarding the procedure and implementation of an Advance Pricing Agreement ("APA"). PMK 7/2015 will be effective from 90 days of the enactment date or as of 12 April 2015 and applicable for all outstanding and prospective APA applications.

This regulation does not cancel the previous APA regulation – i.e. Director General of Taxation ("DGT") Regulation No PER-69/PJ/2010 ("PER-69"). Instead, it provides clearer guidance on the APA process and confirms that roll-back is no longer possible for open years in relation to the same/similar transactions.

Qualified parties

- An Indonesian resident taxpayer or a non-resident taxpayer that has a Permanent Establishment ("PE") in Indonesia which has been operating or conducting business activities in Indonesia for at least three years prior to entering the APA process; or
- A taxpayer of a treaty country through their competent/tax authority.

APA validity period

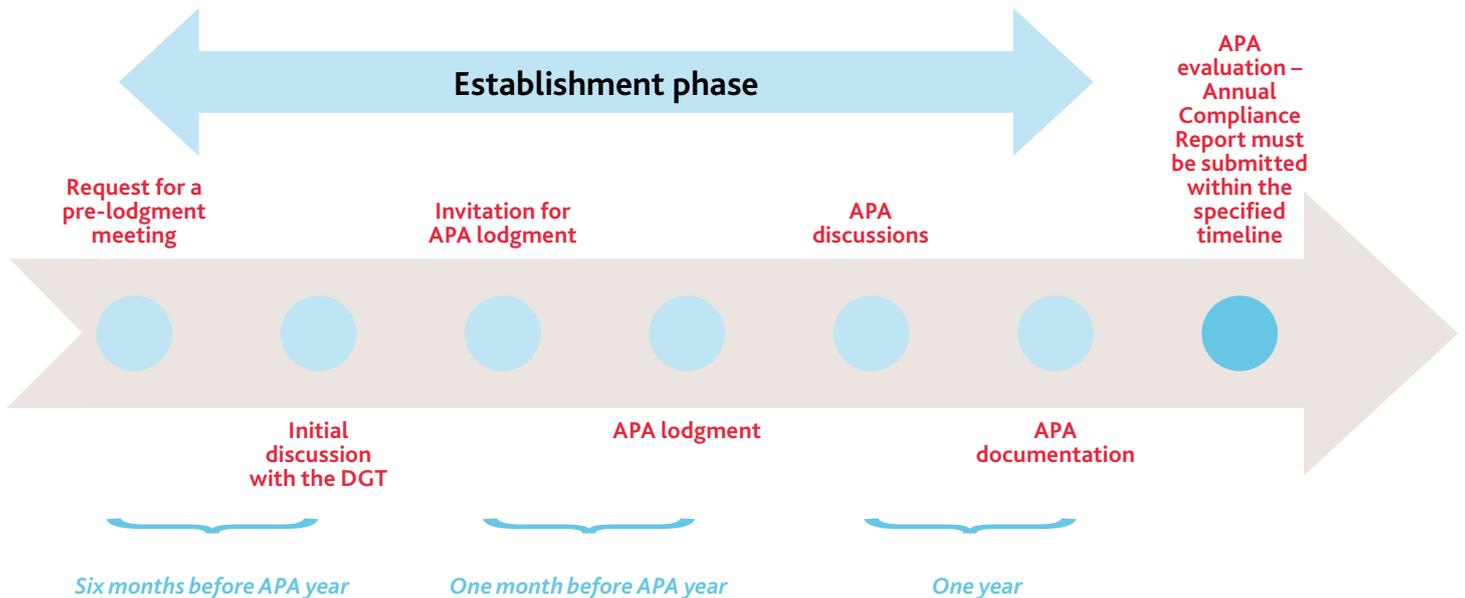
- A unilateral APA (i.e. an APA between an Indonesian resident taxpayer or an Indonesian PE and the DGT) will be valid for a maximum of three years.
- A bilateral APA (i.e. an APA between the applicants and the DGT and the competent/tax authority of a treaty country) will be valid for a maximum of four years.

Phases of APA process

The APA process (applicable to Unilateral and Bilateral APAs) is broadly divided into the following phases:

- **Establishment phase**
 - Preliminary discussions (includes pre-lodgement meetings)
 - Invitation to file an APA application
 - Filing of an APA application
 - Discussions on an APA
 - Completion of the APA document.
- **Implementation phase**
 - Evaluation of the APA through an Annual Compliance Report
 - APA renewal for subsequent years.

The following diagram provides the milestones of the APA process and the estimated timeline of each milestone:



Steps	Timing	Notes
Establishment phase		
Preliminary discussions	At least six months prior to the beginning of the tax year covered in the APA.	<p>The purpose is for the DGT and the applicant to discuss the following:</p> <ul style="list-style-type: none"> – The merits of an APA and whether it should be a Unilateral or a Bilateral APA – Taxpayer's business operations, related-party transactions and the proposed transfer pricing methodology – Transfer Pricing documentation and supporting information to enable the DGT to evaluate the application – Coverage years of the APA. <p>PMK 7/2015 specifically prohibits the DGT from conducting an audit based on the information gathered during the APA process. All data must also be returned to the applicant even when the APA process falls through. Despite this, PMK 7/2015 does not rule out the rights of the DGT to initiate an audit within its normal authority under the tax laws.</p> <p>Complementing PER-69, PMK 7/2015 adds the following provisions:</p> <ul style="list-style-type: none"> – The APA must be based on a real transaction and/or planned transaction based on the taxpayer's management decision, – The APA must be in line with the prevailing transfer pricing guidelines and regulations, and – The APA is applied not with a sole intention of minimising tax costs. <p>Discussions before filing an APA application can be conducted more than once. Upon its discretion, the DGT may also visit the applicant's business premises to gather the necessary information to consider the APA application.</p>
Invitation to file an APA application	See opposite.	<p>Under PMK 7/2015, the DGT now has an obligation to confirm whether or not an applicant can continue the APA process. This stage was not covered under PER-69. The product of this stage is as follows:</p> <ul style="list-style-type: none"> – If the DGT agrees for the applicant to continue the process, it will issue an invitation letter no later than one month prior to the tax year to be covered in the APA. – If the DGT does not agree to proceed further, it will issue a notification letter no later than one month before the end of the tax year when the pre-lodgement meeting request was filed. <p>With a timescale of only one month, applicants need to be well prepared – especially those that are granted to progress further.</p>
APA application	1 month before APA year.	<p>The documents required for this stage generally remain the same as in the previous regulation. As a minimum, the documents must include the following information:</p> <ul style="list-style-type: none"> – The outcome of the preliminary discussions; – The proposed Transfer Pricing method, including supporting documents and detailed explanation on conditions of the chosen method; – Explanation of how the chosen Transfer Pricing method satisfies the arm's length principle; – Detailed explanation of the critical assumptions; and – Other information or analyses that would support the arm's length nature of the application. <p>Given the efforts required to prepare the above, an applicant should ideally include most if not all transactions in its APA application.</p> <p>Another important aspect to consider is timing. If a <i>complete</i> APA application is not filed before the start of the intended APA period, the years to be covered will be reduced by one year. For Bilateral APAs, the validity period of the APA can be discussed between the competent authorities. If an APA application is not submitted within the first year of the intended APA period, the application process will not continue to the next stage.</p>

Steps	Timing	Notes
APA discussion	Within one year of the APA application.	<p>If the applicant proceeds to the discussion stage, the DGT will form an APA discussion team. The topics that will be discussed include the following:</p> <ul style="list-style-type: none"> – Scope of the transactions and years to be covered; – Comparability analysis, selection and determination of comparable data; – Selection of the Transfer Pricing method; – Conditions and factors affecting the critical assumptions in determining the Transfer Pricing method; and – Explanation on whether or not double taxation exists. <p>If the APA is a bilateral APA, the discussions will take place with the applicant and also between the Competent Authorities.</p> <p>In a case where a unilateral APA may lead to a potential double taxation, the DGT can request a Mutual Agreement Procedure ("MAP") with the competent/tax authority of the treaty partner country or agree to an APA application filed by a tax resident of a treaty partner country through its competent/tax authority.</p> <p>The APA discussion team will then submit a recommendation to the DGT and it will be discussed with a DGT quality assurance team. In some cases, the DGT may extend the one-year timeframe. For Bilateral APAs, the discussions will follow the procedure and timeframe under the MAP proceedings.</p> <p>This phase can lead to the following results:</p> <ul style="list-style-type: none"> – If an agreement is reached, the APA application will continue with the drafting of an APA document. – If there is no agreement, the APA application is deemed cancelled. – Agreement with the competent/tax authority for Bilateral APA. – If there is a disagreement with the competent/tax authority of a treaty country, then the APA discussion will continue as a Unilateral APA (i.e. discussions will take place with the Indonesian tax resident or with the Indonesian PE) or the discussion process will not continue.
APA document		<p>The APA document will cover the following:</p> <ul style="list-style-type: none"> – Transactions to be covered – Covered years – Agreed Transfer Pricing method – Application and the critical assumptions.
Implementation Phase		<p>The APA is implemented starting from the tax year when the APA is agreed. For Bilateral APAs, the implementation is in accordance with the Mutual Agreement.</p>
APA evaluation	<ul style="list-style-type: none"> – <i>For Unilateral APAs:</i> Annual Compliance Report shall be submitted within four months of the end of a relevant tax year. – <i>For Bilateral APAs:</i> the Annual Compliance report must be submitted within four months after the month of the signing of the APA document. 	<p>The annual compliance report will include:</p> <ul style="list-style-type: none"> – Compliance with the Transfer Pricing method as described in the APA – A detailed explanation concerning the accuracy and consistency of the TP method application – A detailed explanation of the accuracy of factors affecting the critical assumptions in determining the Transfer Pricing method. <p>In the event that there are factors affecting the critical assumptions, the taxpayer must notify the DGT, or the APA may be reconsidered or cancelled. The taxpayer may request reconsideration or a cancellation of the APA within 30 days from the occurrence of these factors. Some examples of factors that can change the critical assumptions include changes in the business operations of the taxpayer, law/regulation or government policies, market forces caused by new competition that have a significant effect on sales or market share, and exchange rates.</p>
APA renewal for subsequent years	APA last year.	<p>Renewal of APA for subsequent years is now possible under PMK 7/2015; this was not provided in PER-69. Renewal applications will be processed similarly to a new APA application under the establishment stage. Assuming there are no significant changes in the conditions from the previous APA, the renewal process should be less intensive than a first-time application.</p>

Closing remarks

PMK 7/2015 does not discuss further the application of a unilateral APA as a result of disagreement in a bilateral APA. In this regard, it is not clear if an approved unilateral APA can be used as a basis to resolve future transfer pricing disputes relating to the transactions as covered in the APA in a MAP proceeding.

While APA in Indonesia is still at an early stage, APAs have been recognised as an effective tool to manage the transfer pricing position of taxpayers outside Indonesia, as they provide certainty for the covered transactions. With the intensive global efforts to promote Base Erosion and Profit Shifting ("BEPS") initiatives, there have been discussions on the possible issue of regulations in the near future that resonate with the BEPS action points. Many local and international parties view Indonesia to have taken some positive steps to provide more clarity to its taxpayers and future investors in the taxation aspect of doing business in the country.

Your BDO contacts in Indonesia:

IRWAN KUSUMANTO
ikusumanto@bdo.co.id

MICHELLE MIANOVA
mmianova@bdo.co.id

JULIA WATI
jjuliawati@bdo.co.id

