

Update on Advance Pricing Agreement Implementation ^{P1}

Update on Advance Pricing Agreement Implementation

The Director General of Taxes (DGT) has issued Regulation No.PER-17¹ to provide further guidance in relation to the implementation on Advance Pricing Agreement (APA).

Previously, the general procedure of APA (such as application procedure, application withdrawal and renewal, etc.) were stipulated in the Minister of Finance (MoF) Regulation No.PMK-22².

PER-17 revokes PER-69³ and adds to PMK-22. The key highlights stipulated in PER-17 are as follows:

A. Application procedure

An Indonesian taxpayer may submit an APA application to the DGT through the tax office where the taxpayer is registered, based on:

- a) the initiative of the taxpayer in the form of a Unilateral APA or Bilateral APA; or
- b) the written notification from the DGT regarding the Bilateral APA application filed by an overseas taxpayer through the tax treaty partner.

For point (a) above, the timing of APA application submission shall be based on the provision of PMK-22, i.e. within 12 months to six months before the start of the APA period. Meanwhile, for point (b) above, the Indonesian taxpayer may lodge the APA application any time before the start of the APA period.

Based on PMK-22, the proposed transfer pricing arrangement in the APA application should be based on the arm's length principle. In addition, the proposed arrangement should not result in a situation where the operating profit of the taxpayer is lower than the operating profit already reported in the Corporate Income Tax Return (CITR) for the three fiscal years

¹ DGT Regulation No.PER-17/PJ/2020 (PER-17) dated and effective from 17 September 2020.

² MoF Regulation No.22/PMK.03/2020 (PMK-22) issued on 18 March 2020. Please refer to [TaxFlash No.12/2020](#) for detailed discussion on PMK-22.

³ DGT Regulation No.PER-69/PJ/2010 (PER-69) issued on 31 December 2010.

preceding the APA period. PER-17 now confirms that the operating profit requirement refers to the profit level which is defined as:

- a. a ratio between profit before tax or commercial net income and turnover; or
- b. a ratio between profit before tax or commercial net income and total expenses.

Given the current economic circumstances as a result of the spread of COVID-19, meeting this requirement will be difficult for many businesses. In the event that the APA application is submitted by taxpayer whose business is adversely impacted by COVID-19, the profit level in the financial statement projection shall consist of adjusted profit level to normal condition submitted by taxpayer using the format as attached in PER-17. However, there is no guidance on what adjustments should or can be made.

The DGT shall undertake the APA negotiation with the:

- a. Taxpayer, in case of Unilateral APA; or
- b. Competent Authority of Treaty Partner through Mutual Agreement Procedure (MAP), in case of Bilateral APA.

Furthermore, in particular for point (b) above, PER-17 stipulates that upon a Bilateral APA application, of which APA discussion with Competent Authority of Treaty Partner has been conducted through MAP but Mutual Agreement has not been reached, a renewal request for MAP implementation for the purpose of Bilateral APA discussion may be submitted in accordance with the MAP regulations.

B. APA application withdrawal

A Taxpayer may file a withdrawal of an APA application before the APA negotiation has been completed. In relation to a Bilateral APA, the DGT will issue a written notification regarding the termination of Bilateral APA process and the eligibility for a submission of a request for a Unilateral APA.

The taxpayer may submit a request for Unilateral APA to the DGT within 10 days since the date of receipt of written notification. The DGT shall then conduct an APA discussion with the taxpayer within six months (if Bilateral APA discussion has been conducted) or 12 months (if Bilateral APA discussion has not been conducted).

C. Evaluation of APA implementation

In the context of monitoring a taxpayer's adherence to the APA, the DGT shall evaluate the agreement, which shall encompass:

- a. evaluation on compliance with the implementation of APA; and
- b. evaluation of the appropriateness of criteria in the determination of Transfer Price under the APA agreement as outlined in the decision on effectuation of APA.

Where, based on this evaluation, it is found that the taxpayer did not comply with the APA, the DGT shall take necessary follow-up actions in accordance with the provisions of the applicable tax laws and regulations.

Meanwhile, based on the evaluation result as per point (b) above, the DGT may revisit the APA or cancel the agreement in the APA prior to the end of APA period in accordance with PMK-22.

In addition, if there are indications that the taxpayer had conveyed inaccurate information, evidence or statements that were inaccurate, or did

not convey information or statements that are known or should have been known to the taxpayer, that may have influenced the outcome of the APA, then the DGT will issue a notification to the taxpayer in order to clarify these matters. The taxpayer must submit a written response on this notification. Failure to do so may result in the cancelation of the APA.

APA re-evaluation

The DGT may also re-evaluate the APA if there are material changes to the facts and conditions surrounding the Related Party Transaction(s) covered in the APA with critical assumptions as agreed upon in the APA. The DGT will issue to the taxpayer a written notification on the review result. Meanwhile, the taxpayer may also initiate a request to the DGT to conduct an APA re-evaluation as required.

Should you have any specific questions or would like to discuss further this topic, please do not hesitate to reach out to any of our PwC Indonesia contacts as listed below.

Your PwC Indonesia contacts:

Abdullah Azis
abdullah.azis@pwc.com

Gerardus Mahendra
gerardus.mahendra@pwc.com

Raemon Utama
raemon.utama@pwc.com

Adi Poernomo
adi.poernomo@pwc.com

Hasan Chandra
hasan.chandra@pwc.com

Runi Tusita
runi.tusita@pwc.com

Adi Pratikto
adi.pratikto@pwc.com

Hendra Lie
hendra.lie@pwc.com

Ryuji Sugawara
ryuji.sugawara@pwc.com

Alexander Lukito
alexander.lukito@pwc.com

Hisni Jesica
hisni.jesica@pwc.com

Soeryo Adjie
soeryo.adjie@pwc.com

Ali Widodo
ali.widodo@pwc.com

Hyang Augustiana
hyang.augustiana@pwc.com

Sujadi Lee
sujadi.lee@pwc.com

Amit Sharma
amit.xz.sharma@pwc.com

Kianwei Chong
kianwei.chong@pwc.com

Sutrisno Ali
sutrisno.ali@pwc.com

Andrias Hendrik
andrias.hendrik@pwc.com

Lukman Budiman
lukman.budiman@pwc.com

Suyanti Halim
suyanti.halim@pwc.com

Anton Manik
anton.a.manik@pwc.com

Mardianto
mardianto.mardianto@pwc.com

Tim Watson
tim.robert.watson@pwc.com

Antonius Sanyojaya
antonius.sanyojaya@pwc.com

Margie Margaret
margie.margaret@pwc.com

Tjen She Siung
tjen.she.siung@pwc.com

Ay Tjhing Phan
ay.tjhing.phan@pwc.com

Oki Octabiyanto
oki.octabiyanto@pwc.com

Turino Suyatman
turino.suyatman@pwc.com

Brian Arnold
brian.arnold@pwc.com

Omar Abdulkadir
omar.abdulkadir@pwc.com

Yessy Anggraini
yessy.anggraini@pwc.com

Dexter Pagayonan
dexter.pagayonan@pwc.com

Otto Sumaryoto
otto.sumaryoto@pwc.com

Yuliana Kurniadjaja
yuliana.kurniadjaja@pwc.com

Enna Budiman
enna.budiman@pwc.com

Parluhutan Simbolon
parluhutan.simbolon@pwc.com

Yunita Wahadaniah
yunita.wahadaniah@pwc.com

Gadis Nurhidayah
gadis.nurhidayah@pwc.com

Peter Hohtoulas
peter.hohtoulas@pwc.com

www.pwc.com/id



PwC Indonesia



@PwC_Indonesia

If you would like to be removed from this mailing list, please reply and write UNSUBSCRIBE in the subject line, or send an email to contact.us@id.pwc.com.

DISCLAIMER: This content is for general information purposes only, and should not be used as a substitute for consultation with professional advisors.

© 2020 PT Prima Wahana Caraka. All rights reserved. PwC refers to the Indonesian member firm, and may sometimes refer to the PwC network. Each member firm is a separate legal entity. Please see www.pwc.com/structure for further details.