



Indonesia Transfer Pricing Alert November 2020

Indonesia releases further clarifications on Advance Pricing Agreement (APA) process including special considerations for businesses impacted by COVID-19 pandemic

DIRECTORATE GENERAL OF TAXES (“DGT”) has issued certain clarifications as a follow up to the recently issued regulation on Advance Pricing Agreement (“APA”)¹ (please refer to [Transfer Pricing Alert - April 2020](#) edition). The clarifications are issued in the form of Director General of Taxes Regulation Number PER-17/PJ/2020 concerning the Procedures for the Resolution of Application, Implementation, and Evaluation of Advance Pricing Agreement (“PER-17”). Effective from 17 September 2020, PER-17 revokes and replaces the previous APA regulation, Director General of Taxes Regulation Number PER-69/PJ/2010, which was issued in 2010.

This alert highlights the key points of the follow up clarifications included in PER-17.

PER-17 revokes and replaces the previous APA regulation issued in 2010.

¹ Minister of Finance Regulation Number 22/PMK.03/2020 (“PMK-22”).

Special considerations for businesses negatively impacted by COVID-19 pandemic

PER-17 provides certain additional clarifications for taxpayers whose businesses are negatively impacted by COVID-19 pandemic and willing to apply for an APA. The regulation expects taxpayers to provide an explanation of how and at which level of the Profit & Loss account ("P&L") the pandemic has impacted the business, and in essence, a reconciliation of this impact with the financial projections.

PER-17 requires taxpayers affected by the pandemic to present the P&L projections for the APA covered period, as well as the adjusted projected financials to align with normal conditions. Through prescribed formats, the regulation requires the following to be submitted in such circumstances:

- A side-to-side comparative presentation of the projected financials and adjusted numbers;
- Provide explanations of the adjustments at each level - revenue, cost of goods sold, operating expenses, and other income/expense, where applicable.

The above information would essentially require the taxpayers to isolate the impact of the pandemic from the projected financial results. The regulation, however, does not elaborate on the types of adjustments that will be accepted. While it could typically include common adjustments such as capacity underutilization, working capital, losses due to foreign exchange fluctuations, lockdown and other extraordinary costs; it will be interesting to see if more sophisticated statistical/econometric adjustments are considered.

Further guidance on the APA application eligibility conditions

PMK-22 provides for certain conditions to be fulfilled by taxpayers in order to be eligible for applying for an APA. One of the primary conditions is that the transfer price proposed by the taxpayer should be based on the Arm's Length Principle ("ALP") and the resultant profitability of the taxpayer should not be lower than the profits in the previous 3 (three) fiscal years as reported in the Corporate Income Tax Return ("CITR").

PER-17 has now provided a clarification that the above requirement needs to be checked with reference to the **lowest** profit level amongst the previous 3 (three) fiscal years. In other words, the lowest profits amongst the previous 3 (three) fiscal years is considered as the minimum profitability level below which the APA cannot be applied for.

Further, PER-17 clarifies that for taxpayers whose business are negatively impacted by the pandemic, the above condition would be ascertained with reference to 'adjusted' profit level presented in the financial projections to align with normal conditions. In other words, as long as the lowest 'adjusted' profit level in financial projection during the APA period is higher or equal to the lowest profit level reported in CITR for the previous 3 (three) fiscal years, the condition can be considered as fulfilled.

PER-17 further clarifies that the 'profit level' for the purpose of this eligibility condition shall be the ratio of the operating profit to revenue (operating margin) or operating profit to costs (net cost plus).

Taxpayers would need to quantify and isolate the impact of the pandemic from the projected financial statements.

Lowest profit level amongst the previous 3 (three) years to be the minimum benchmark for APA negotiation.

Other key points

- PER-17 introduces a Discussion Committee that will be formed to determine certain key issues such as scope for the APA negotiations, negotiating positions, cancellation of APA, etc.
- The DGT may conduct an APA evaluation to ensure APA compliance and subsequent review of the APA if there are material changes in the facts and conditions of intercompany transactions from the critical assumptions agreed in APA.
- Based on the evaluation result, if there is an indication that the taxpayer has submitted false information and/or evidence that are not consistent with the actual conditions, and/or has not submitted the information, evidence, or description that can have an impact on the APA agreement, the DGT will issue a written statement to request for clarifications. Failure to provide such clarifications within 15 (fifteen) working days, will result in the revocation of APA agreement by the DGT through the issuance of a decision letter. Such decision letter shall be issued within 15 (fifteen) working days upon the receipt of a written response from the taxpayer or after the deadline for the taxpayer's clarification submission has been exceeded.
- PER-17 allows for withdrawal of the APA application by the taxpayers. In case the withdrawal is related to bilateral APA application, the DGT may provide an opportunity to the taxpayer to request for the initiation of a unilateral APA.

The taxpayers are allowed 10 (ten) working days to request for a unilateral APA negotiation from the date of the written notification from the DGT confirming the termination of bilateral APA process. In such cases, PER-17 provides for a timeline of 6 months for unilateral APA negotiation in case the negotiations were carried out in the bilateral APA process; and a timeline of 12 months in case such negotiations were not initiated in the bilateral APA process.

Our comments

PER-17 provides much needed clarifications on the eligibility criteria for the APA and how those will be applied by the DGT in practice. Added clarifications for the businesses negatively impacted by COVID-19 pandemic would also provide greater certainty to taxpayers in terms of what they could expect in the APA negotiation and the explanations/supporting evidence that may be required as part of such negotiation.

Although not specifically explained in the PER-17, taxpayers with a signed APA agreement are well advised to request for an APA review under the provisions of PMK-22 if there are material changes in the facts and conditions of intercompany transactions caused due to the COVID-19 pandemic from the critical assumptions agreed in APA.

While the pandemic and the related economic disruptions continue to exist, it is important that companies review their transfer pricing results periodically and closely consider their controversy management options, including APA, which now provides the clarifications many businesses were waiting for.

PER-17 provides additional clarifications on the procedural aspects.

The clarifications provide greater certainty to taxpayers in terms of what they could expect in the APA negotiation.

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