



# Tax Alert

Indonesia

Deloitte Tohmatsu Tax Co.

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## New Ministry of Finance Regulation on Advance Pricing Agreement

On 12 January 2015, the Indonesian Ministry of Finance released 07/PMK.03/2015 (PMK 7) which deals with Advance Pricing Agreements (APA).

This regulation will come into force 90 days from its enactment, i.e., 11 April 2015. All the old applications which were filed before PMK 7 and for which a draft APA has not been issued by the DGT will automatically be processed under PMK 7. The salient features of PMK 7 are shown in the table below:

Topic	Details
Requirements for entering into an APA	<ul style="list-style-type: none"> <li>An Indonesian resident taxpayer or an Indonesian Permanent Establishment of a foreign taxpayer is eligible to apply for an APA as long as its operations or business activities have been carried on for at least 3 years</li> <li>An APA may also be initiated by a foreign resident Taxpayer that is a transaction counterparty of an Indonesian resident Taxpayer</li> </ul>
Validity period	<ul style="list-style-type: none"> <li>Unilateral – 3 tax years</li> <li>Bilateral – 4 tax years</li> </ul>
Rollback period	<ul style="list-style-type: none"> <li>No rollbacks are permitted</li> </ul>
Deadlines	<ul style="list-style-type: none"> <li><b>Deadline for filing request for pre-filing – 6 months before the start of the tax year that is to be covered in the APA.</b> This also applies to cases which are initiated by foreign resident taxpayers. The DGT authorities may also inter alia make site visits during the pre-filing phase.</li> </ul>

	<ul style="list-style-type: none"> <li>• <b>Deadline for filing formal request for APA</b> – The invitation letter must be provided by the DGT to the taxpayer no later than 1 month before the start of the tax year that is to be covered in the APA. The taxpayer has to file the formal application in the Indonesian language to Director of Tax Regulations II along with the supporting documents no later than the end of the tax year which proceeds the tax year covered in the APA. If this deadline is exceeded (by not more than one year), the period covered in the APA will be reduced by one year.  The formal request for APA cannot proceed if the delay in submitting the request and supporting documents exceeds one year.</li> <li>• <b>Deadline for APA discussions</b> – Unilateral APAs have a time limit of one year from the date of filing the formal request. An additional extension of one year can be made by the DGT if the circumstance so warrants.  In bilateral APA cases, the time limit is as specified in the provisions of the Mutual Agreement Procedure.</li> </ul>
Effectivity of an APA	<ul style="list-style-type: none"> <li>• A unilateral APA is effective from the tax year in which the draft APA is agreed on.</li> <li>• A bilateral APA is effective in accordance with the mutual agreement.</li> </ul>
Compliance requirements	<ul style="list-style-type: none"> <li>• During the covered period, an Annual Compliance Report shall be submitted no later than 4 months after the end of the tax year.</li> <li>• Failure to submit the same will result in review or cancellation of the APA.</li> </ul>
Confidentiality of information	<ul style="list-style-type: none"> <li>• The information submitted by the taxpayer during the APA is treated as confidential and is prohibited from being disclosed to another party. If the APA request does not result in an agreement between the DGT and the taxpayer, the documents which were submitted by the taxpayer will be returned to the taxpayer. Furthermore, the documents which are submitted by the taxpayer cannot be used by the DGT for conducting an audit, preliminary investigation, or investigation of tax crime.</li> </ul>

Audits for covered transactions in the covered period	<ul style="list-style-type: none"> <li>• Having an APA or filing an application for APA does not prevent the DGT from conducting an audit.</li> <li>• In bilateral APAs, the DGT shall correct any tax assessment notice(s) or objection decision letter(s) based on the prevailing tax regulations for the covered period.</li> </ul>
Renewal of APA	<ul style="list-style-type: none"> <li>• Renewal of an APA can be applied for in the last tax year of the covered period. The request for renewal will be treated as if it is a fresh application.</li> </ul>
Miscellaneous	<ul style="list-style-type: none"> <li>• PMK 7 has made the APA a procedurally robust process – formation of APA discussion team, review of the APA discussion team's recommendations with the quality assurance team.</li> <li>• The APA discussion team can constitute both personnel from within the DGT and/or experts appointed by the DGT.</li> <li>• No discussion on the filing fees is provided in these regulations.</li> <li>• PMK 7 also states that the DGT can issue further provisions concerning formation of discussion team and quality assurance team and the stages of establishment of APA as well as the implementation, evaluation and renewal of APA.</li> <li>• No discussion has been provided on customs and transfer pricing convergence.</li> </ul>

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