

New Indonesian Advanced Pricing Agreement regulation

Indonesia's Ministry of Finance (MoF) has released regulation number 22/PMK.03/2020 (PMK-22), *Guidelines for the Establishment and Implementation of Advanced Pricing Agreements*. PMK-22 repeals the prior regulation on advanced pricing agreements (APA) issued by the MoF, regulation number 7/PMK.03/2015. The stated intent of PMK-22 is to align Indonesia's APA framework with the OECD/ G20 Base Erosion and Profit Shifting project, to provide greater legal certainty as well as to make the APA program more effective.

This tax alert summarizes some of the key points for taxpayers to note in PMK-22.

Detailed discussion

Coverage period has been extended and roll-backs are available

An APA can now cover five forward years as well as open historical years under a roll-back. Open historical years can only be covered by an APA roll-back where they meet specific criteria, such as a tax audit has not been concluded for that past year or that year is not subject to the criminal investigation.

Criteria for application

Additional criteria have been added to a taxpayer's eligibility for the APA program. Two notable criteria in PMK-22 for a taxpayer's APA application to be accepted are: (i) the proposed outcome of the APA must not result in a lower operating profit for the Indonesian Taxpayer than reported in its prior corporate income tax returns; and (ii) that the taxpayer must have prepared transfer pricing documentation (a master file and local file) for the three years prior to the APA application.

APA application process

The pre-filing process burden has eased significantly for taxpayers under this new regulation. To pre-file for an APA, a taxpayer must only submit a (data-heavy) form which is attached as an appendix to the regulation. The more detailed APA application requirements are now at the formal submission stage rather than at the pre-filing stage as they were previously.

Timing of process has become stricter

While the timing for the submission of the APA pre-filing remains the same as the prior regulation, there are strict timelines introduced in PMK-22 for data submission, competent authority responsiveness and completion of the APA negotiations for unilateral APAs. These timelines will require taxpayers to be very actively involved in the APA process but are also beneficial for taxpayers in providing more certainty with regard to the APA process.

Audits

Taxpayers should be aware that PMK-22 contains specific provisions regarding the audit of taxpayer's entering the APA program. In particular, the application for an APA has the ability to trigger an audit of the taxpayer where the taxpayer's related party transactions have not been audited in the three prior years or a roll-back request is submitted. It is likely that this audit will be an all taxes audit of the taxpayer.

Core technical guidance

PMK-22 provides specific guidance on the technical interpretation of certain areas of the arm's length principle by the Directorate General of Taxation ("DGT"). Some areas that Taxpayers should pay attention to are the broader interpretation of related parties, guidance on the use of ranges and comparables, the discussion of business restructurings, and guidance on the arm's length nature of intercompany loan arrangements.

Audit of APA outcomes

If the Taxpayer has agreed to an APA, they can still be audited for the fiscal year covered under the APA. However, PMK-22 states that if a tax audit is commenced, the DGT may not make a correction to the transfer pricing of a transaction covered under the APA as long as the taxpayer has implemented the APA agreement. This change is a welcome addition to address an open area under the prior regulation.

Annual compliance reports

The regulation does not prescribe a specific format for a taxpayer with an agreed APA to complete their annual compliance report. However, it is clear in this regulation that the implementation of the APA must be documented in the taxpayer's transfer pricing documentation on an annual basis. It is important to note that an APA outcome agreed must also be reflected in a taxpayer's transfer pricing policies.

Renewals

The process for a taxpayer to renew an existing APA is simplified in this new regulation with the renewal process initiated by the submission of a form requesting a renewal. This form is attached as an appendix to the regulation. If the renewal request is submitted, it will trigger a more limited examination process for the Taxpayer than a new APA application. The regulation allows only the one-time renewal of the APA for the agreed APA period using this process.

Transition of agreed APAs or APA applications to the new regulation

Effectively, all ongoing APA processes, whether in the application or agreed APA stage, will be transitioned to be processed using the guidance outlined in this new regulation.

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