

October 2020

Tax Alert

Implementing regulation for Advance Pricing Agreements

Executive Summary

Indonesia's Director General of Tax (DGT) has released regulation number PER-17/PJ/2020 (PER-17) dated on 17 September 2020, *The Procedures of the Completion of Application, Implementation, and Evaluation of Advance Pricing Agreements*. PER-17 is the implementing regulation of the Ministry of Finance regulation on the Advance Pricing Agreement (APA) released in March 2020, regulation number 22/PMK.03/2019 (PMK-22). Upon the issuance of PER-17, the former DGT regulation PER-69/PJ/2010 on APA is revoked and declared void.

This tax alerts summarizes the key aspects of PER-17.



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i. **Deadline of a bilateral advanced pricing agreement ("Bilateral APA") application requested by a foreign taxpayer to a tax treaty partner**

There are two methods for an Indonesian Taxpayer to commence the Bilateral APA process, being:

- a. An application directly to the DGT; or
- b. An application to the tax treaty party who then notifies the DGT of the application formally in writing.

PER-17 specifically states that where a Bilateral APA is initiated through the tax treaty partner then the written notification from the tax treaty partner should be received by the DGT before the commencement of the Bilateral APA period.

This is different to the deadline as stated in PMK-22 for the submission of the APA application by the Indonesian Taxpayer to the DGT, which is required to be submitted in a period within 12 (twelve) months and up to 6 (six) months prior to the commencement of the Bilateral APA Period.

ii. **Projected operating profit during the APA period**

PER-17 further explains the criteria outlined in PMK-22 that the proposed transfer pricing in the APA application should not result in lower profits in Taxpayer's projected financial statement during the APA Period.

PER-17 states that the profit level in the financial statements projection within an APA Period should not be below the lowest profit level in Indonesian Taxpayer's Annual Corporate Income Tax Return for 3 (three) taxable years prior to the year in which the APA application is submitted. The definition of profit level is defined as the ratio between profit before tax/net commercial income and gross revenue or the ratio between profit before tax/net commercial income and total cost.

iii. **Projected operating profit - Taxpayers affected by the COVID-19 pandemic**

In the event that Taxpayer's business is negatively impacted by COVID-19 pandemic, PER-17 provides template format (in Appendix A) which Taxpayer can use to provide information on financial statement projection, from revenue to profit level, that are affected by COVID-19 and the financial projection that are adjusted to a normal condition. This adjusted financial projection will then be evaluated by the DGT when considering whether the Bilateral APA application meets the projected operating profit requirements.

Appendix B of PER-17 provides the format which Taxpayer can use to describe and explain the detail adjustment made in Appendix A.

iv. **Renewal of a request for MAP implementation**

PER-17 makes it clear that the timing for the DGT to process a Bilateral APA, and any extensions to timing, follows the timing for the mutual agreement procedure (MAP) process as outlined in the recently released DGT regulation number PER-16/PJ/2020 (PER-16), *The Administration of Mutual Agreement Procedure Implementation Requests and the Settlement of Mutual Agreement*. Please see our recent tax alert for details of the timing.

v. **The possibility of unilateral advanced pricing agreement negotiation post withdrawal of Bilateral APA application**

PER-17 explains that if Taxpayer withdraws from a Bilateral APA application, there is the possibility to enter into unilateral advanced pricing agreement ("Unilateral APA") negotiations. The Taxpayer may submit an application for a Unilateral APA to the DGT through Director of International Taxation within ten (10) working days after receiving the written notification from Director of International Taxation regarding the termination of Bilateral APA process. Upon the receipt of the application for Unilateral APA negotiation as stated above, the DGT will conduct APA negotiations within the following timelines:

- a. 6 (six) months, if the Bilateral APA negotiation has been conducted; and
- b. 12 (twelve) months, if the Bilateral APA negotiation has not yet been conducted.

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