



APA & MAP  
Country Guide 2019 – Indonesia

CONNECTING THE DOTS OF INTERNATIONAL TAX CONTROVERSY



# Indonesia

## APA Program

KEY FEATURES	
<b>Competent authority</b>	The Director General of Taxation
<b>Relevant provisions</b>	Article 18(3a) of the Income Tax Law; Government Regulation 74 of 2011; Ministry of Finance Regulation 7 of 2015; and Director General of Taxation Regulation PER-69 of 2010.
<b>Types of APAs available</b>	Unilateral, bilateral, and multilateral APAs are available.
<b>Acceptance criteria</b>	The applicant must have been operating in Indonesia for at least a three-year period prior to applying for the APA.
<b>Key timing requests, deadlines</b>	Requests for a preliminary meeting must be submitted at least six months prior to the start of the tax year that is intended to be covered by the APA; and the formal request for an APA and its supporting documentation must be received by the Director General of Taxation by the end of the financial year preceding the start of the year that would be covered by the proposed APA.

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<b>APA term limits</b>	There is a three-year maximum term for unilateral APAs and four-year maximum term for bilateral and multilateral APAs.
<b>Filing fee</b>	There is no filing fee.
<b>Rollback availability</b>	A unilateral APA will be effective since the year of the APA signed; and bilateral and multilateral APAs will be effective based on mutual agreement with the Director General of Taxation.
<b>Collateral issues</b>	<p>The Director General of Taxation may re-evaluate or terminate APA if any of the following apply:</p> <ul style="list-style-type: none"><li>• the Taxpayer does not comply with the APA;</li><li>• the Taxpayer conveyed wrong data or information;</li><li>• the Taxpayer does not submit annual compliance report;</li><li>• the Taxpayer does not prepare annual compliance report in accordance with the prevailing regulation;</li><li>• there are changes in the factors affecting the critical assumptions;</li><li>• the Taxpayer fails to submit the notification should there are factors affecting the critical assumptions;</li><li>• the Taxpayer submits an application to re-evaluate or terminate the APA;</li><li>• It is found that there are mistakes in the APA; and</li><li>• there are indications that the Taxpayer engaged or is engaging in tax fraud.</li></ul>

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**PRE-FILING REQUIREMENTS**

**Overview**

Taxpayers must request a pre-filing meeting with the Director General of Taxation to discuss:

- the factors that make it a necessity to implement the APA;
- the scope of APA proposed by the Taxpayer;
- the proposed TP method;
- any other existing APAs involving foreign CA(s);
- the Taxpayer's documentation and analysis;
- a time frame for the formation of the APA; and
- any other matters relating to the formation and implementation of the APA.

Upon request of the pre-filing meeting the Taxpayer must disclose:

- a description of the Taxpayer's reasons applying for APA;
- a full overview of the Taxpayer's business plan and its business activities;
- the Taxpayer's corporate structure, including group, ownership and organizational structures;
- the shareholders of the Taxpayer and the nature of their related-party transactions;
- other related parties and the nature of their related-party transactions;
- the transactions covered under the proposed APA;
- the TP method and relevant documentation;
- changes of the business conditions that may materially affect the appropriateness of Taxpayer's TP method;

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<b>(cont.)</b>	<ul style="list-style-type: none"><li>• accounting system, production process and decision making process;</li><li>• a list of competitors including information in relation to the competitors' characteristics and market share;</li><li>• a copy of the Taxpayer's articles of association; and</li><li>• a copy of the Taxpayer's corporate income tax return and financial statements for the last three years.</li></ul>
<b>Anonymous pre-filing availability</b>	Anonymous pre-filing is not available.

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## APPLICATION REQUIREMENTS

### Content of application

A formal APA request form (**Form APA-2**) must be addressed to the DGT and consist of:

- name of Taxpayer, tax identification number, and address;
- identity of related parties; and
- the scope of transaction and fiscal year covered by proposed APA.

This should be accompanied by:

- a detailed summary of the preliminary meeting;
- the TP method proposed by the Taxpayer and documentation that supporting the selection of this method;
- the conditions that are used as the basis for determination of the TP method;
- explanation and documentation that the proposed TP method is consistent with the arm's length principle; and
- critical assumptions, taking into account:
  - amendments to tax laws and regulations;
  - changes in tariff and import duties;
  - amendment to industry regulations;
  - force majeure events;
  - new competitors who have significant impact on market price structure;
  - new government regulations that have significant impact on the Taxpayer's business activities;
  - economic conditions that have significant impact on sales volume, production units or market share;

(cont.)	<ul style="list-style-type: none"> <li>• changes of Taxpayer's business activities such as company restructuring; and</li> <li>• significant changes in relevant foreign exchanges rates.</li> </ul>
Language	The documentation must be submitted in Indonesian.
SME provisions	No specific guidance

### OTHER PROCEDURAL CONSIDERATIONS

General	While the Director General of Taxation generally follows a standard pre-filing, application and monitoring process, the key timing requests and deadlines, as well as the level of participation in negotiations the Taxpayer is expected to have after formally submitting the APA request should be noted.
Monitoring & compliance	<p>Taxpayers must submit an <b>Annual Compliance Report</b> to the head of the applicable local tax service office within four months after the end of the tax year. The Annual Compliance Report must contain:</p> <ul style="list-style-type: none"> <li>• detailed information in relation to the Taxpayer's compliance in applying the TP method to the transaction(s) covered in the APA;</li> <li>• an explanation of the accuracy and consistency on the implementation of the TP method; and</li> <li>• an explanation of the accuracy of the critical assumptions used in the implementation of the TP method.</li> </ul>
Renewal procedure	The renewal procedures are the same as for the initial APA. Application for renewal can be made in the last tax year of the APA's validity period.

## MAP Program

### KEY FEATURES

<b>Competent authority</b>	The Director General of Taxation
<b>Relevant provisions</b>	Ministry of Finance Regulation PMK 240 of December 22, 2014; and Director General of Taxation Regulation PER-48
<b>Acceptance criteria</b>	<p>A MAP request must be within the scope of a DTT of which Indonesia is signatory, and can only cover the following:</p> <ul style="list-style-type: none"> <li>• transfer pricing issues;</li> <li>• PE issues;</li> <li>• dual residence issues; or</li> </ul> <p>income from a DTT partner country and withholding tax issues.</p>
<b>Key timing requests, deadlines</b>	<p>Most of Indonesia's DTT permit Taxpayers to present a case to the Director General of Taxation within three years from the first notification to the Taxpayer of the actions giving rise to taxation not in accordance with the DTT. However, time limits may vary, and the relevant DTT should be consulted for the applicable time limit.</p>

## APPLICATION REQUIREMENTS

**Content of application**

Taxpayer's filing a MAP request are required to submit the following:

- name, tax identification number, address, and type of business of Indonesian tax resident who applies the request;
- name, tax identification number, address and type of business of taxpayer who is domiciled in the DTT partner country and as related party to the applicant Taxpayer;
- name, tax identification number, address and type of business of taxpayer who is domiciled in the DTT partner country that withholds tax from on income received or earned of Indonesian tax resident who requests the MAP;
- actions that have been conducted by the tax resident of the treaty partner or tax authorities of the treaty partner, which are deemed not in line with DTT rules;
- explanation of whether or not the Indonesian taxpayer applies a revision request, objection or appeal to the domestic tax court;
- the tax year(s) to which request relates;
- information in relation to the transaction(s) subject of the request, that have been corrected by the tax authorities of the relevant foreign country, including the substance of the transaction, the amount of the correction, and the key arguments made underpinning the correction;
- the Taxpayer's opinions in relation to the correction that has been conducted by the tax authorities of relevant foreign country;

	<ul style="list-style-type: none"> <li>• contact details of the relevant official(s) from the relevant foreign country for MAP negotiations; and</li> <li>• the provision(s) of the DTT that have not been correctly applied in the opinion of the Taxpayer.</li> </ul>
<b>Language</b>	The documentation must be submitted in Indonesian.

**OTHER PROCEDURAL CONSIDERATIONS**

<b>Interaction with domestic proceedings</b>	Taxpayers may pursue Indonesian domestic legal proceedings separately from MAP; however, Indonesian legal proceedings may be suspended until the MAP has been finalized.
<b>Arbitration</b>	No specific guidance.

**STATISTICS**

<b>APA</b>	Statistics on APAs and MAP are not publicly available.
<b>MAP</b>	Indonesia had a total of 55 active MAP applications as of December 31, 2017. The average time needed to close MAP cases is 42 months for transfer pricing cases, and 51 months for other cases.

## Double Taxation Treaty Network

The following treaties include MAP provisions which are the basis for bilateral and multilateral APA negotiations:

Algeria	Finland	Luxembourg	Romania	Thailand
Armenia <sup>(IV)</sup>	France	Malaysia	Russia	Tunisia
Australia	Germany	Mexico <sup>(I)</sup>	Saudi Arabia	Turkey
Austria	Hong Kong <sup>(IV)</sup>	Mongolia	Seychelles	Ukraine
Bangladesh	Hungary	Morocco <sup>(IV)</sup>	Singapore	United Arab
Belgium	India <sup>(IV)</sup>	Netherlands	Slovak	Emirates
Bermuda	Iran	New Zealand	Republic	United
Brunei	Italy	Norway	South Africa	Kingdom
Bulgaria	Japan	Pakistan	Spain	United States
Canada	Jersey	Papua New	Sri Lanka	Uzbekistan
China	Jordan	Guinea <sup>(IV)</sup>	Sudan	Venezuela
Croatia	Korea	Philippines	Suriname <sup>(IV)</sup>	Vietnam
Czech Republic	(Republic of)	Poland	Sweden	Zimbabwe
Denmark	Kuwait	Portugal	Switzerland	
Egypt	Laos <sup>(IV)</sup>	Qatar	Syria	

### NOTES

- I denotes treaties with MAP arbitration provisions.
- II denotes treaties with the USSR that remain applicable until a separate tax treaty is concluded.
- III denotes treaties between the countries' representative office in Taipei and the Taipei Economic and Cultural Office in the relevant country.
- IV denotes treaties that became effective within the last five years.
- V denotes treaties that are awaiting ratification.
- VI denotes MAP provisions identical to para 3, art 25 of the OECD Model Convention with respect to Taxes on Income and on Capital.
- VII arbitration is to be conducted under the statutes of the ECJ.
- VIII arbitration is to be conducted under the statutes of the ICJ.

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