

February 2021

The Implementation of Advance Pricing Agreement in Indonesia Following The Adoption of Dispute Resolution Guideline

Dealia Tiara Oktaviani

Maria R.U.D Tambunan

Follow this and additional works at: <https://scholarhub.ui.ac.id/jbb>

Recommended Citation

Oktaviani, Dealia Tiara and Tambunan, Maria R.U.D (2021) "The Implementation of Advance Pricing Agreement in Indonesia Following The Adoption of Dispute Resolution Guideline," *BISNIS & BIROKRASI: Jurnal Ilmu Administrasi dan Organisasi*: Vol. 27 : No. 2 , Article 9.

DOI: 10.20476/jbb.v27i2.11756

Available at: <https://scholarhub.ui.ac.id/jbb/vol27/iss2/9>

This Article is brought to you for free and open access by the Faculty of Administrative Science at UI Scholars Hub. It has been accepted for inclusion in *BISNIS & BIROKRASI: Jurnal Ilmu Administrasi dan Organisasi* by an authorized editor of UI Scholars Hub.

The Implementation of Advance Pricing Agreement in Indonesia Following The Adoption of Dispute Resolution Guideline

Dealita Tiara Oktaviani¹, Maria R.U.D Tambunan²

Faculty of Administrative Science, Universitas Indonesia, Indonesia^{1,2}

dealitatiara@gmail.com¹, maria.tambunan@ui.ac.id²

Abstract. Advance Pricing Agreement (APA) is one of the fiscal instruments for minimizing transfer pricing disputes. In Indonesia, the regulation of APA was initially adopted in Income Tax Law year 2000 art 18(3a). Later, the implementation regulation was issued through Directorate General of Taxes Regulation, PER No. 69/PJ/2010. However, during that period the implementation of APA in Indonesia was still on very low progress. In 2015 Directorate General of Taxation (DGT) has not concluded to agree on any APA until the last revision of APA rule through Minister of Finance Regulation No 7/PMK.03/2015. This research utilizes a descriptive qualitative methodology where data is collected through a review of the literature and semi-structured in-depth interviews with key stakeholders. The result of this research shows that the development of APA implementation after the issuance of Minister of Finance Regulation No 7/PMK.03/2015 has increased. Based on statistics of APA in Indonesia after 2016 there was an increase in the APA submissions and the DGT has successfully concluded some APAs. The latest APA implementation in Indonesia has followed the dispute resolution guidelines as proposed by the Organization for Economic Cooperation and Development (OECD) through Base Erosion and Profit Shifting (BEPS) project as proposed in the Action Plan 14. However, there are issues pertaining to the implementation of APA such as transparency and certainty related to the APA process. Responding to these issues the DGT has made several attempts such as, improving human resources and strengthening the regulatory.

Keywords: Advance Pricing Agreement, transfer pricing, dispute resolution, BEPS Action plan

Abstrak. Peran kebijakan perpajakan sangat penting dalam upaya peningkatan produktivitas usaha, khususnya melalui pemberian insentif perpajakan yang sejalan dengan salah satu prinsip dalam kebijakan perpajakan sisi penawaran. Namun, studi untuk mengevaluasi implementasi kebijakan Pajak Pertambahan Nilai (PPN) pada pakan ternak dengan perspektif kebijakan pajak sisi penawaran masih sangat jarang. Penelitian ini bertujuan untuk menganalisis dampak pemberian insentif PPN terhadap pakan ternak terhadap beban pajak yang ditanggung oleh wajib pajak baik dalam menjalankan kewajibannya maupun dalam memperoleh haknya atau biasa disebut dengan biaya perpajakan di Indonesia. Penelitian ini menggunakan pendekatan kualitatif dengan data kualitatif dan kuantitatif. Data dikumpulkan melalui wawancara mendalam dengan sebelas informan terkait, studi pustaka, dan data sekunder. Hasil penelitian menemukan bahwa (1) kebijakan menaikkan biaya perpajakan berupa biaya kepatuhan, biaya uang langsung, biaya waktu dan biaya psikologis untuk industri pakan ternak, (2) kebijakan tersebut berdampak kontraproduktif terhadap upaya tersebut. peningkatan kapasitas produksi pakan ternak nasional seiring dengan cascading effect dan opportunity cost yang timbul dari implementasi kebijakan tersebut; dan (3) kebijakan tersebut memberikan dampak yang berbeda bagi produsen dan importir pakan ternak dalam negeri karena tidak adanya efek cascading. Temuan ini menyoroti bahwa penerapan penyaluran insentif pajak PPN pada bahan input pakan ternak mengganggu arus kas perusahaan dan membatasi kapasitas produksi pelaku usaha karena bertentangan dengan prinsip kebijakan perpajakan sisi penawaran. Studi ini merekomendasikan adanya regulasi ulang dan deregulasi sebagai alternatif untuk mengatasi permasalahan tersebut.

Kata kunci: Pajak Pertambahan Nilai; Kebijakan Pajak; Insentif Pajak; Supply-Side Tax Policy, Cost of Taxation

INTRODUCTION

International trade is highly influenced by economic globalization, a term which refers to economic interdependency or reliance that continues to grow between countries. This interdependency is characterized by the fast-growing of financial transactions and international trade particularly by transnational companies, foreign direct investment, growing global market, and technology distribution (Cazacu, 2017). Economic globalization has opened the way for multinational companies to expand their business globally

by increasing international trade. In an attempt to develop their businesses, multinational companies expand their business to other countries by opening new branches or subsidiaries in other countries. A multinational enterprise runs its business by several means, i.e., opening the branch office, subsidiaries, or other instruments in various types of business (Bilaney, 2017); (Turina, 2018).

The establishment of a branch office or subsidiary in other countries for business expansion can be used to increase profit or avoid tax. The tax avoidance practice is often conducted by transferring the profit

to countries with a lower tax rate using the transfer pricing scheme (Aditya, 2015). The issue of transfer pricing in international trade cannot be avoided since a significant volume of transactions and international trade is conducted by affiliated parties, or in other words the parties within the multinational enterprises themselves (Sindhu, 2014). Transfer pricing is the amount of price for the goods delivery or payment for the service delivery approved by both parties of the financial business transaction within a group business entity (Bilaney, 2017). Consequently, transfer pricing becomes a notorious tax avoidance instrument, that requires considerable action to prevent any loss to the country's revenue (Baker, Asare, & Brickman, 2017). The required actions are complex given the "legal" nature of transfer pricing practice. It is considered an economic and legal tool used by business entities for optimizing their tax burden. A manipulation of transfer price may present significant tax benefits to business entities on the condition that it is implemented within the legal framework (Tkachyk, 2015). Therefore, due to its nature of transaction, transfer pricing is an international tax issue that needs to be addressed within the transactions conducted by multinational companies (Muhammadi & Ahmed, 2016).

Further, transfer pricing policy is generally aimed to maximize enterprise efficiency and prosper the business or enterprise group investment (Pichhadze, 2016). In international trade, the transfer pricing issue cannot be avoided since approximately 60 to 70 percent of the transaction volume in the global trading is conducted by affiliated parties or parties within the multinational enterprise itself (Tran, 2019). Therefore, there is a term of Multinational Transfer Pricing, which refers to an international tax instrument and management used by the multinational enterprises to maximize their profit while minimizing the burden of taxes in the country where they operate the business in one or several subsidiaries or divisions.

Transfer pricing adversely contributes in the economic and trade relations between an MNE and the home country. A favorable tax regime may become a key factor of foreign investment attraction. For MNEs, it allows the businesses to minimize their tax base, whilst for the host countries, it allows them to acquire investments of vital importance. For the home country of the MNEs, however, whose tax system is not considered favorable for-profit generation, they suffer from capital flight. What is more, this capital is exported in an implicit form, which complicates the control and regulation of this process. (Melnychenko, Pugachevska, & Kasianok, 2017)

With regard to transaction made within a group of MNEs, the international standard of OECD has ensured its member to have agreed to a standardized guideline for the determination of transfer price which has been considered as fair for tax purposes, well-known as arm's length (OECD, 2017). The standardized guideline mentioned in OECD Model Tax Convention Article 9, "conditions are made or imposed between the two enterprises in their commercial or

financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, because of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly". As the consequence of this agreement, the member countries have implemented the arm's length range. The arm's length range means "a range of figure that is acceptable for establishing whether the conditions of a controlled transaction are arm's length and that are derived either from applying the same transfer pricing method or multiple comparable data or applying different transfer pricing methods" (OECD, 2017, 23).

Concerning the fulfillment of tax obligation, the tax dispute could be defined as an incident or event as a result of different perceptions, understanding, and implementation of the tax regulation, tax due or payable tax calculation, between the taxpayers, following the inspection results or the written decision of the tax administrator, which result or decision is rejected by the taxpayer and leads to uncertainties (Koo, 2017). In transfer pricing, the tax dispute is generally caused by differing opinions on the use of the transfer pricing method, the amount of fair margin, and the use of reliable comparative data. Besides the potential of dispute, the OECD (2017, 4.2) highlighted "where two or more tax administrations take a different position in determining arm's length condition double taxation may occur either in the hand of different taxpayers (economic double taxation, for associated enterprises) or the income is in the hands of the same juridical entity (juridical double taxation, for permanent establishments).

In an attempt to avoid the tax dispute, related transfer pricing documents should be well prepared. The taxpayer should be able to convince the tax authority that the transfer pricing they used satisfies the Arm's Length Principle and the available documents could support the claim that the taxpayer has utilized the transfer pricing method correctly (Li & Paisey, 2005); (Laguna, 2017). Further, the implementation of a particular system that can provide information and assistance to the taxpayer in fulfilling their tax obligations is the most effective way to reduce the tax dispute (Mulachella, 2018).

Citing the OECD in Transfer Pricing Guidelines the year of 2010 defines APA as,

"an arrangement that determines, in advance of controlled transactions, an appropriate set of criteria (e.g., method, comparable and appropriate adjustments thereto, critical assumptions as to future events) for the determination of the transfer pricing for those transactions over a fixed period"

APA is an agreement to decide the transfer pricing and mitigating transfer pricing risk by entering a mutual trust of taxpayer and tax authority of the transaction between parties with the special relationship by using a method (Ioana, 2017), suitable for a particular period (Leao, 2014). The OECD also

defines APA as an administrative approach to prevent transfer pricing disputes by selecting criteria to use the Arm's Length Principle (ALP) in the transaction at the beginning before the transaction occurred. The Arm's Length Principle is an international transfer pricing standard used by the members of the OECD, multinational enterprises as well as tax authorities for taxation purposes (OECD, 2017). Brem (2005) states that the main objectives of the APA are, (1) To reduce the transfer pricing issue quickly and prospective, (2) To facilitate negotiation according to the principles, practicality, and cooperative, (3) To provide a measurement of the estimation/prediction for the taxpayer, (4) To improve the efficiency of the use of taxpayer's and authority's resources.

According to the parties involved, there are three types of APA, i.e. unilateral APA, Bilateral APA, and Multilateral APA (Leao, 2014): (1) Unilateral APA is an agreement between a taxpayer and one tax authority, (2) Bilateral APA is an agreement between the taxpayer and two tax authorities, (4) Multilateral APA is an agreement between the taxpayer and two or more tax authorities (Patel & Pradhan, 2013).

Muchaella (2018) argued that among the types of APA, unilateral APA is the least recommended and least preferred agreement for the tax authority as it still opens to double taxation potential due to the absence of the tax authority of other related countries during the formulation of the APA. Unlike the unilateral APA, bilateral APA involves two relevant tax authorities during the formulation of APA. In the implementation of the APA, there are several things to be noted for the related taxpayer as well as tax authorities.

Anurag and Ganju (2014) classified the advantage and disadvantages of the APA from the perspective of the tax authority and the taxpayer. From the perspective of the tax authority, the APA enables the tax authority to gain information from the taxpayer voluntarily on things related to the transactions of parties with special relationship conducted by the multinational enterprise. APA also assures the tax authority that the government receives a fair profit from the transaction of the multinational enterprise. Lastly, APA is also able to reduce the compliance cost of the taxpayer for example by evaluating the transfer pricing transaction. From the perspective of the taxpayer, the APA application will ensure the rule of law for the transfer pricing that is used in the transaction by parties with a special relationship (Anurag & Ganju, 2014). APA will also reduce the risk of transfer pricing assessment by the tax authority. APA could also prevent the risk of double taxation and create a conducive working relationship between the taxpayer and the tax authority in the process of selecting the appropriate transfer pricing method. Lastly, APA also provides a rollback mechanism (Leao, 2014).

The disadvantage of the APA from the perspective of the taxpayer includes the poor information confidentiality since the tax authority might provide the information received from the taxpayer in the process

of creating the APA during the tax examination of the previous year before the APA is applicable. Another disadvantage of the APA is the taxpayer will become the object of tax assessment by the tax authority whilst the approval process of APA often requires a very long time. Applying for APA will take a lot of time and there is no guarantee that the APA application will be approved by the tax authority (Perrou, 2018).

Eden & Brynes stated that APAs were not designed as a tax minimization but designed as tax planning tools, used by the taxpayers. Both taxpayers and tax authorities place a high value on the defined outcomes and tax certainty for the related party transactions covered in the agreement. However, APAs are negotiated as one-on-one bargains between an MNE and a tax authority; thus, they can be misused to privilege one MNE relative to domestic firms and other MNEs. Moreover, even APAs that are favorable for both parties may give the appearance of misuse to the public because the agreements are negotiated in a closed and restricted process with little to no information is made to public (Eden & Byrnes, 2018).

On the other hand, OECD (2017, 4.1) stated, "it is possible that taxpayers and tax administration may reach a differing determination of the arm's length condition for the controlled transaction under examination given the complexity of some transfer pricing issues and the difficulties in interpreting and evaluating the circumstances of individual cases".

Government has several options to minimize the transfer pricing dispute, including the arrangement of the Advance Pricing Agreement (APA) (Vohra, 2014), (Storck, Petruzzi, Dxiwinski, & Prasanna, 2018). APA is an agreement between the taxpayer or tax authority of other countries with the tax authority (Wrappe, 2016), for Indonesia case is the Directorate General of Taxes (DGT) on the fair price of the product, which is transferred to the party who has a special relationship with them (Meinarto, 2018). The objective of APA is to reduce the misuse of transfer pricing by the multinational enterprise, lower the cost, time, and effort to reveal the fair price, and avoid the transfer pricing dispute (Herath & Young, 2012).

Indonesia adopted the APA for the first time in Act No. 17 the year of 2000 on Income Tax in Article 18 verse (3a). Following that, the Directorate General of Taxes released Directorate General of Taxes Regulation No. PER 69/PJ/2010 regarding Advance Pricing Agreement and the Ministry of Finance Regulation No 7/PMK.03/2015 regarding The Procedure for Advance Pricing Agreement Formation and Implementation. Despite the release of those regulations, the DGT has not published the concluded APA until 2015, the year before Indonesia committed to adopting Base Erosion and Profit Shifting (BEPS) Action Plan 14.

The underlying principle of this BEPS Action Plan 14 is "introducing coherence in the domestic rules that affect cross-border activities, reinforcing substantive requirements in the existing international standards and improving transparency as well as certainty"

(OECD, 2015, 3). Therefore, as the practical impact of adopting BEPS Action Plan 15, each country has to establish a mechanism to ensure that dispute resolution must be more effective and to ensure that administrative process promotes the prevention and timely resolution of treaty-related disputes (OECD, 2015, 15). Indonesia is one of the G20 members which has committed to implement the BEPS Action Plan into the domestic tax regulation (OECD, 2019).

Research conducted by Kukuh Prasetiogi in 2015 revealed that from the data of the DGT in March 2015, the office only received 7 APA bilateral and 2 multilateral requests that have not yet reached any agreement. Therefore, this research will discuss two issues as follows (i) How is the progress of APA following the issuance of Ministry of Finance Regulation No. 7/PMK.03/2015 and (ii) How is the implementation of APA in Indonesia following the BEPS Action Plan 14. This research contributes to the study of Advance Pricing Agreement implementation in Indonesia, specifically after Indonesia has committed to adopt Dispute Resolution as suggested by OECD. Previously, the study on this issue was quite limited due to this issue is relatively new in Indonesia.

RESEARCH METHOD

This research uses a qualitative approach to analyze the issue at hand through a deep understanding of the problems. The objective is to provide a specific overview on the condition, phenomenon, or social indications (Oun & Bach, 2014). In this study, the context to be studied is the implementation progress of the APA since the issuance of the PMK 7/2015 and the implementation of APA after the BEPS Action Plan 14. According to the timeframe of the research, this research is cross-sectional research since it is conducted in a certain period (Zangirolami-Raimundo, Oliviera, & Leone, 2018).

This research used qualitative data taken from literatures and in-depth interviews. The informants consisted of the tax authority that was in charge of the APA proposal, a tax consultant that assisted taxpayers to submit an APA proposal, the taxpayer who submitted the APA proposal, and an academician that concern about APA issues. The selection criteria of informants were based on their exposure and engagement to the APA issues. The selection of interviewees was made based on expert judgment of respective authority. The interview was conducted with a semi-structured interview method. Before the interview was undertaken, the interviewer has presented the overview of the research and a list of question to be discussed. Each of the informants were asked for a consent to an interview recording and were given liberty to stop the interview when needs be. The six interviews were conducted in accordance with qualitative interview protocol related to informant's anonymity and material confidentiality.

The interviews were transcribed and processed manually due to the small number of the interviewees.

The manual process was performed to classify aspects and constructs to be addressed in this study. The literature used in this research includes books, articles, and electronic publications.

RESULT AND DISCUSSION

APA was adopted in Law No. 17 the year of 2000 on the Income Tax. Article 18 paragraph 3(a) on that Law stated that " The Directorate General of Taxes has an authority to create an agreement with the taxpayers and cooperate with the tax authority in other countries to determine the transfer pricing between parties with a special relationship". Since the inception of the policy to the Income Tax Law was only in 2010, the DGT released the Director-General of Taxes Regulation PER-69/PJ/2010 on the Advance Pricing Agreement (called PER 69/2010) to regulate the implementation of the APA, the application procedures and the required documents that should be prepared. However, the terms described in PER 69/2010 was not comprehensive since it has not covered several issues and required some improvement. Few years after the issuance of the PER 69/2010, the DGT has not yet approved any APA, arguing that the provision governed in PER 69/2010 was not clear and comprehensive that resulted in ambiguity for the taxpayers and reluctance to apply the APA. Quoting the DGT Analyst of APA Proposal on the interview, "When the rule PER 69/2010 was issued, a taxpayer has submitted the APA, however knowing the legal basis of APA during that period was not strong enough and lack of detail, the APA proposal was withdrawn by the taxpayer" (translated from Bahasa Indonesia). Therefore, as an attempt to improve the previous regulation, the Ministry of Finance released the Ministry of Finance Regulation No. 7/PMK.03/2015 on the Guidelines and Implementation of the Advance Pricing Agreement (PMK 7/2015).

The PMK 7/2015 was originally issued to scale up the previous regulation PER 69/2010. The DGT mentioned that one of the main objectives of releasing the PMK 7/2015 was to prevent tax avoidance practices by MNEs. These practices often exploit the disparity and the gap of the tax regulation in the countries

Table 1. The Statistics of Advance Pricing Agreement

Description	Year				
	Pre-2016	2016	2017	2018	2019
Beginning Balance		13	34	35	31
Request Received	13	24	4	10	14
Request Closed	0	3	3	14	13
Ending Balance	13	34	35	31	32

where they operate their business, including Indonesia to avoid the tax payment in Indonesia.

In 2015, the OECD published the BEPS Action Plan, which is a set of actions to tackle global tax issues. One of the actions is the BEPS Action Plan 14, "Making Dispute Resolution Mechanisms More Effective" which is directed to formulate the solutions for any disturbance that prevent a particular country to solve the dispute on the agreement under Mutual Agreement Procedure (MAP), in this case, is in the format of Bilateral APA. After the publication and implementation of the PMK 7/2015, the latest revised regulation following the BEPS guideline, there was an improvement in the application of the APA, indicated by the statistical data table of APA in Indonesia as shown in Table 1.

Based on Table 1, the DGT divides each year applications into four categories. The "Beginning Balance" refers to the carried forward APA application. The "Request Received" refers to the number of APA applications that are received in that year. The "Request Closed" shows successful applicants that reach an agreement in that year. The "Ending Balance" shows the number of applicants that are not yet completed APA application process. The DGT states that there are two types of agreement indicated in the request closed, i.e., agreed to agree and agreed to disagree. Ending Balance also indicates how many applicants are still in the stage of under discussion by the DGT in that year and considered as carry-forward. From the statistical data table, it can be seen that in the year of Pre-2016 or until the year 2015, the DGT only received 13 APA applications and none has been approved by the DGT. Later in 2015, PMK 7/2015 was released as an advanced regulation and completion of the previous APA regulation, the PER 69/2010.

The issuance of PMK 7/2015 has a significant role in the development of APA in Indonesia. According to the statistical data in 2016, a year after the regulation is being applied, the DGT receives almost double the number of applications pre-2016. In 2016, the Directorate General of Taxes was managed to approve 3 APA applications and 24 application has been submitted by the taxpayers. Later in 2017, the number of APA applications declined significantly compared to the previous year with only 4 APA application was submitted and 3 APA applications approved. Then, in 2018, the number of APA applicants increased to 10 applicants and the DGT was able to reach an agreement for 14 APAs. In 2019, 14 APAs were submitted and 13 APAs have been completed. Table 1 shows until 2019, the DGT has agreed to 33 APA applications/requests closed. Among all those requests that have been closed, the DGT stated that only one application did not reach an agreement due to the withdrawal of the application by the taxpayer.

According to the APA statistics in Indonesia, the development of APA can be observed from the issuance of the PMK 7/2015. After this regulation was released, the implementation of APA in Indonesia has been relatively improved, particularly in quantity

and quality as evidenced by some applications and some concluded APAs. Based on the interview with several informants, there are two important things occurred during the development progress of APA in Indonesia. The first one is stronger legal basis compared to the previous regulation, before the issuance of PMK No. 7/2015, the implementation of APA was regulated by PER 69/2010. According to the hierarchy of the tax regulation, the Ministry of Finance Regulation (PMK) has a higher legal hierarchy compared to the Directorate General of Taxes Regulation (PER). Therefore, hierarchically the PMK 7/2015 has a stronger legal basis. Moreover, the PMK 7/2015 is also clearer and more comprehensive in providing the taxpayer with legal security.

APA was first adopted into the domestic regulation in Law No. 17 the year of 2000 on the Income Tax, Article 18 paragraph (3a). Following that, the Directorate General of Taxes released PER 69/2010 as a specific regulation of APA implementation, which was renewed with the issuance of PMK 7/2015. According to the statistical data, until 2015 or within 15 years from the adoption of APA into the domestic regulation, Indonesia still has not approved any APA agreement. After the enactment of PMK 7/2015, in 2016, Indonesia has approved several APA and there was also a significant increase in the number of APA applications.

The BEPS Action Plan 14, 'Making Dispute Resolution Mechanisms More Effective' seems a notable effort to minimize the tax dispute that has currently become more severe. The objective of this Action Plan 14 is to develop solutions and to tackle the transfer pricing obstacles that could help a country to solve the dispute on the agreement under Mutual Agreement Procedure (MAP). To fulfill this objective, the OECD has formulated a set of recommendations that is categorized into two groups, i.e. minimum standard and best practice. The minimum standard consists of steps or minimum actions that should be conducted by a particular country, while best practices cover additional steps that are expected to be conducted in each country (Mulyani, 2016).

The minimum standard in the Action Plan 14 is a formulation of recommendations on the APA implementation, mentioned in point 2.7,

"2.7 Countries with bilateral advance pricing arrangement (APA) programs should provide for the roll-back of APAs in appropriate cases, subject to the applicable time limits (such as statutes of limitation for assessment) where the relevant facts and circumstances in the earlier tax years are the same and subject to the verification of these facts and circumstances on an audit."

The statement above mentions that each country with bilateral APA should prepare a roll-back for particular cases that are appropriate, with an appropriate period where the facts and circumstances in that tax year are the same and can be verified with the tax audit. Moreover, it also states that when the country implements the bilateral APA, it will be possible to

solve the issues of the previous year, which were not covered in the APA in the previous period through the APA with specific attention that the issues are still relevant to be covered in the year of the APA proposal submitted. A roll-back APA that is conducted in the previous years is very important to prevent or solve the potential dispute due to transfer pricing.

Based on the dispute resolution profile of Indonesia obtained from the OECD shows that Indonesia does not have a roll-back policy that is suggested to implement following the minimum standard of the OECD. The PMK 7/2015 does not regulate roll-back for bilateral APA, although Article 20 paragraph (2) implicitly states that there is a possibility that the bilateral APA could implement roll-back. The PMK 7/2015 also does not explain rules and circumstances that should be noticed and satisfied to implement the roll-back. In response to this, the DGT states that to improve the APA implementation in Indonesia, the DGT will include the roll-back provision into current prevailing regulation even though no certain time when to include that additional provision.

The OECD further explained that the APA agreement agreed bilaterally between two tax authorities of the partnered countries should be able to ensure the highest assurance within the two jurisdictions, and also reduces the probability of double taxation, thus preventing the transfer pricing dispute effectively (Burgers & Mosquera, 2017). From best practice Action Plan 14, Indonesia has implemented the bilateral APA in its APA implementation regulation. The DGT also states that all APA that have reached agreements are mostly bilateral. Therefore, it can be stated that Indonesia has implemented the best practice as proposed by OECD.

Best practice 1 as the pillar to the BEPS Action 14 also mentioned that the country that has implemented Mutual Agreement Procedure (MAP) guidance should also provide guidelines for APA. The OECD (2015) mentioned that the increase in globalization has created new challenges for dispute resolution mechanisms within the tax treaty. Meanwhile, the current MAP mechanism focuses on bilateral dispute resolution, phenomena such as the adoption of global and regional business models, as well as the improvement of economy and market integration that emphasizes the need for an effective mechanism for tax dispute resolution in the multi-jurisdictional scale. Countries should formulate and provide comprehensive guidelines for APA following the dynamics of the business. Indonesia already has APA guidelines as the tax dispute resolution mechanism. The guidelines were initially published in PER-69/PJ/2010 on the Advance Pricing Agreement, which later has been improved with the issuance of PMK No. 7/PMK.03/2015 on the Guidelines and implementation of the Advance Pricing Agreement. This has shown that Indonesia has followed and strived on implementing the best practice of the BEPS Action Plan 14.

In the process of applying APA, taxpayers mention that there are still challenges they have to overcome,

such as transparency and certainty. Transparency in the process of applying for APA could be a constraint for the taxpayer. In bilateral APA, the role of the taxpayer in the process of applying for APA is only limited to the submission of the required documents and information. The next step for this process is the negotiation, which is fully conducted by the DGT or the tax authority with the related tax authority of the contracting country in the agreement. The taxpayers mention that the transparency issue has limited them from knowing the timeline of the APA discussion process of their applications and how far the bilateral APA negotiation has taken place. In the bilateral APA, there is a limitation for the participation of the taxpayer during the negotiation process when the tax authority of the partnered country has been included. This has been an issue since it causes uncertainty for the taxpayers. Some practitioners also confirm that in the bilateral APA, information on how far the negotiation process has continued remains questionable. However, the DGT states that the information regarding the application process of the APA can be requested to the DGT following a certain procedure.

Another constraint for the taxpayers is the impact of the first constraint, regarding the certainty cost for the taxpayers. The objective of applying for the APA is to ensure certainty for the taxpayer about the transaction under a special relationship. Therefore, when the taxpayer is at the stage of submitting the APA application, they should be well informed regarding their application status. The taxpayer is often uncertain about how long they have to wait for their APA application to finish. The APA may affect the way they run the business. According to the interview result with the taxpayers and practitioners, the APA application could take up to two months or more to finish. Practitioners assume that this because there is no global recommendation on the length of time to proceed with the APA application. This leads to the tax authority of each country having less intention to finish the APA application sooner. Although there is no global recommendation to the length of time to finish the APA application, the tax authority should process the APA application as soon as possible to assure certainty for the taxpayer.

The constraint in the process of applying for the APA includes could be listed the following. The first constraint is the submission of the documents for the APA application often takes a long time. In the process of applying for the APA, the taxpayer should prepare supporting documents as a requirement for the APA application. The documents submitted by the taxpayer should be relevant to the facts and circumstances of the taxpayer's business. The taxpayer often needs a longer time to prepare these documents due to the large number of documents required. Moreover, the DGT often requests additional documents from the taxpayer due to the insufficient information submitted by the taxpayer.

The second constraint is limited coordination with the tax authority of the partnered country in

the discussion process. In bilateral APA, the parties participated in the discussion process consists of the tax authorities of each country involved in the agreement. Therefore, coordination is required to arrange a meeting to discuss the APA application. Arranging a meeting between two parties located in different countries requires a longer time to select the appropriate time to meet for each party. Moreover, such meeting also requires considerably a lot of preparation such as accommodation and transportation.

To attract the interest of the taxpayer to apply for the APA and improve the implementation of APA in the future, the Directorate General of Taxes through the Directorate of International Tax has conducted several technical actions to improve the APA application in Indonesia.

The third constraint is the availability of human resources in charge of the implementation process of APA, which started from the application stage, negotiation/discussion until the agreement is made. The DGT requires the transfer pricing and negotiation experts that will be able to assure the negotiation will run smoothly. The DGT as the party that processes the unilateral, as well as bilateral APA applications, will have to improve their human resource quality. In response to this, the DGT has sent their staffs from the sub-directorate of international tax whose task is to process APA and MAP, overseas for an internship and workshops by the OECD in other developed countries. The DGT also states that they are also occasionally invited as an expert to attend the educational activities and training in other countries initiated by the OECD.

Lastly, the fourth constrain is an improvement of the regulation, besides developing their human resource quality, the DGT also must put an effort to improve the APA implementation in Indonesia by improving the regulation. In this case, the regulation is improved by adding some rules that have not been clearly explained in PMK 7/2015, for example, the rules on roll-back which has not explicitly mentioned in the regulation, the amount of time required to finish the APA application, and clearer rules on APA evaluation process as well as guidelines for renewal.

CONCLUSION

There has been an improvement in the implementation of APA in Indonesia with the issuance of PMK 7/2015. PMK 7/2015 is one of the important factors that determines the improvement of APA in Indonesia. According to the APA statistics of Indonesia, after 2016 there has been a significant improvement. Before 2016, the DGT has not been able to approve any APA application. However, since 2016 or following the implementation of PMK 7/2015, the DGT was able to approve several APA. The issuance of PMK 7/2015 is an effort to improve the previous regulation PER 69/2010 and provide assurance for the taxpayer. In PMK 7/2015, rules on how to apply for APA is explained in more details, including; (1) Clear

elucidation on parties who are eligible to apply for an APA ; (2) the length of time that should be noted by the taxpayer for each stage of the application process, (3) the explanation on things that should be discussed in each stage of the application process, described in articles in the PMK 7/2015, (3) there is an explanation on the rules for APA renewal, (4) new terms added for documentation.

The APA implementation in Indonesia has followed the recommendation of the BEPS Action Plan 14, Making Dispute Resolution Mechanisms More Effective, by implementing the best practice, which strongly suggests each country implement Bilateral APA as well as a best practice that urges a country to have the APA guidelines. However, Indonesia has not fully implemented the standard recommended by the OECD regarding the availability of the roll-back regulation for countries that implement the Bilateral APA.

The current APA application process becomes clearer because the rules on the APA application stages are described in more detail compared to the previous regulation. Although the APA implementation has improved after the issuance of PMK 7/2015, there are still some constraints during its process, i.e. transparency of the APA application procedure and lack of assurance for the taxpayer due to the absence of a timeline for the completion of bilateral APA. To enhance the current APA, the DGT has tried to improve the human resources capability and the quality of regulation on APA. The clear timeline of APA process, confidentiality of documents should become the highlight of the new improved regulation. All of these efforts must have been undertaken to increase the taxpayer trust on the DGT. Finally, the DGT should also regularly socialize the benefit of APA to the taxpayers, therefore the it can expect the number of APA application will increase in the future.

REFERENCES

- Aditya, K. L. 2015. Analysis of Transfer Pricing as a Tax Avoidance and Proposed Suggestion to Prevent Its Disadvantages. *Yuridika*, pp. 137-150.
- Anurag, & Ganju. 2014. Advance Pricing Agreement. *Asia Pacific Tax Bulletin*, pp. 33-44.
- Baker, J., Asare, K., & Brickman, S. 2017. Transfer Pricing as A Vehicle in Corporate Tax Avoidance. *The Journal of Applied Business Research*, pp. 9-16.
- Burgers, I., & Mosquera, I. 2017. Corporate Taxation and BEPS: A Fair Slice for Developing Countries. *Erasmus Law Review*, 29-47.
- Bilaney, S. K. 2017. Transfer Pricing Litigation Trends and Dispute Resolution Mechanism. *International Transfer Pricing Journal*, pp. 69-76.
- Brem, M. 2005. *Globalization, Multinationals and Tax Base Allocation: Advance Pricing Agreements as Shifts in International Taxation*. Indian Institute of Management.
- Cazacu, A. L. 2017. The Role of Transfer Pricing in Economic Globalization, International.

- International Journal of Business and Social Science*, pp. 131-135.
- Eden, L., & Byrnes, W. 2018. Transfer pricing and state aid: The unintended consequences of advance pricing agreements. *Transnational Corporations*, Vol. 5, pp. 9-36.
- Herath, S., & Young, J. 2012. A Review of Advance Pricing Agreement Recommendations. *International Journal of Critical Accounting*, Vol. 4, No. 3, pp. 336-345.
- Huda, M. K., Nugraheni, N., & Kamaruddin, K. 2017. The Problem of Transfer Pricing in Indonesia Taxation System. *International Journal of Economics and Financial Issues*, Vol. 7, No. 4, pp. 139-143.
- Ioana, I. 2017. Advance Pricing Agreements and Double Taxation - Key Concept in the Context of Transfer Pricing. *Economic Sciences Series*, pp. 565-570.
- Koos, E. 2017. *Tax Dispute Resolution Mechanisms in Developed and Developing Countries: An Analysis of Factors that Affect Dispute Mechanism Design and Functionality*. Retrieved from Available at SSRN: <https://ssrn.com/abstract=2458765>
- Kortebusch, P. 2014. Should Multinational Companies Request an Advance Pricing Agreement (APA) - or Shouldn't They? *Quantitative Research in Taxation. Discussion Paper No. 174*.
- Laguna, F. D. 2017. Abuse and Aggressive Tax Planning: Between OECD and EU Initiatives - The Dividing Line Between Intended and Unintended Double Taxation. *World Tax Journal*, pp. 189-264.
- Leao, M. T. 2014. Advance Pricing Agreements and the Principle of Legality and Equality: The Problems Surrounding Contract in Tax Law. *International Transfer Pricing Journal*, pp. 258-263.
- Li, J., & Paisey, A. 2005. *Perspectives on Trade between Australia, New Zealand and China*. International Transfer Pricing in Asia Pacific.
- Meinarto, D. P. 2018. Evaluasi atas Perlakuan Perpajakan terhadap Transaksi Transfer Pricing pada Perusahaan Multinasional di Indonesia. *Jurnal Magister Manajemen*, pp. 17-30.
- Melnychenko, R., Pugachevska, K., & Kasianok, K. 2017. Tax Control on Transfer Pricing. *Investment Management and Financial Innovation*.
- Muhammadi, A. H., & Ahmed, Z. 2016. Multinational Transfer Pricing of Intangible Assets: Indonesia Tax Auditors' Perspectives. *Asian Review of Accounting*, pp. 313-337.
- Mulachella, Z. 2018. Improving the Effectiveness of the International Advance Pricing Agreement Process. *International Transfer Pricing Journal*, pp. 68-91.
- Mulyani, Y. 2016. BEPS Action 14: Menyelesaikan Sengketa dengan Mutual Agreement Procedure. *Inside Tax aksi Beps: Menangkal Penggerusan Basis Pajak*, pp. 83.
- OECD. 2015. *BEPS Action Plan 14: Making Dispute Resolution Mechanisms More Effective*. Retrieved from <https://www.oecd-ilibrary.org/docserver/978926424163en.pdf?expires=1560168894&id=id&acname=guest&checksum=>
- OECD. 2017. *Transfer Pricing Method. Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2017*.
- Oun, M., & Bach, C. 2014. Qualitative Research Method Summary. *Journal of Multidisciplinary Engineering Science and Technology*, pp. 252-258.
- Patel, V., & Pradhan, Y. 2013. Advance Pricing Agreement Program. *International Transfer Pricing Journal*, pp. 21-25.
- Perrou, K. 2018. The Ombudsman and the Process of Resolution of International Tax Disputes - Protecting the "Invisible Party" to the MAP. *World Tax Journal*, pp. 99-129.
- Pichhadze, A. 2016. The Arm's Length Comparable in Transfer Pricing: A Search for an "Actual" or "Hypothetical" Transaction? *World Tax Journal*, pp. 1-28.
- Sindhu, P. K. 2014. Is the Mutual Agreement Procedure Past Its "Best-Before Date" and Does the Future of Tax Dispute Resolution Lie in Mediation and Arbitration. *Asia Pacific Tax Bulletin*, pp. 590-605.
- Storck, A., Petrucci, R., Dxiwinski, K., & Prasanna, S. 2018. Global Transfer Pricing Conference 2018: Transfer Pricing Development around the World. *International Transfer Pricing Journal*, pp.217-224.
- Tkachyk, F. 2015. Transfer Pricing as Tax advisors' monitoring subjects. *Scientific bulletin of Kherson State University*, pp. 148-151.
- Tran, C. 2019. International Transfer Pricing and the Elusive Arm's Length Standard: A Proposal for Disclosure of Advance Pricing Agreements as a Tool for Taxpayer Equity. *Southwestern Journal of International Law*, pp. 207-230.
- Turina, A. 2018. Back to Grass Roots: The Arm's Length Standard, Comparability and Transparency - Some Perspective from the Emerging World. *World Tax Journal*, pp. 295-348.
- Vohra, A. 2014. Litigation Strategies, Options and Solutions. *Bulletin for International Taxation*, pp.211.
- Wrape, S. 2016. Are You Considering an Advance Pricing Agreement. *Tax Executive*, pp. 37-42.
- Zangirolami-Raimundo, J., Oliviera, J. d., & Leone, C. 2018. Research Methodology Topics: Cross Sectional Studies. *Journal of Human Growth and Development*, pp. 356-360.