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GLOBAL TRANSFER PRICING SERVICES

Global Transfer Pricing Review

Indonesia

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TAX



Indonesia



KPMG observation

Indonesian transfer pricing has seen a flurry of activity since 2009 with the introduction of a number of transfer pricing-related regulations and a concurrent drive by the Indonesian Tax Office (ITO) to enforce them.

It is increasingly important for Indonesian taxpayers to ensure that they keep abreast of the developments to allow for both offensive and defensive strategies to avoid potentially significant adjustments and the prospect of difficult and costly dispute resolution. While they can provide no guarantee, experience shows that robust documentation and a sound understanding of transfer pricing policies can mitigate the impact of what may be seen as an aggressive approach by the ITO against even the most straightforward related party arrangements.

In many cases, documentation which may be seen as compliant in other jurisdictions is not accepted by the ITO and can increase the burden on the taxpayer. As the ITO moves into new phases of development in transfer pricing application, we expect to see an increase in trained resources and an accompanying increase in sophistication in approach and scope.

Mutual agreement procedures (MAPs) and Advance Pricing Agreements (APAs) are now possible in practice.

Basic information

Tax authority name

DIRECTORATE GENERAL OF TAXATION/
INDONESIAN TAX OFFICE (ITO).

Citation for transfer pricing rules

Article 18 of the Income Tax Law.
Regulation PER43/2010 as amended by
PER32/2011.

Effective date of transfer pricing rules
1984 – ability of tax authority to adjust
related party transactions. 2009 marks
the introduction of current regulations.

What is the relationship threshold for transfer pricing rules to apply between parties?

Ownership of 25 percent, under
common control, and family relationship.

What is the statute of limitations on assessment of transfer pricing adjustments?

Five years from tax year-end filing
date, phased in by 2013 from previous
10 years.

Transfer pricing disclosure overview

Are disclosures related to transfer
pricing required to be prepared or
submitted to the revenue authority
on an annual basis (e.g. with the tax
return)?

Yes.

What types of transfer pricing information must be disclosed?

Details of transactions with related
parties including amounts, pricing
methodologies and reasons, together
with declarations by way of 15 yes/no
questions regarding the existence of
transfer pricing documentation.

What are the consequences of failure to prepare or submit disclosures?

It is likely that lack of disclosure will lead
to increased attention by the ITO with
the ultimate outcome being the need to
submit documentation.

Transfer pricing study overview

Is preparation of a transfer pricing
study required – i.e. can the
taxpayer be penalized for mere
failure to prepare a study?

No.

Other than complying with a
requirement per the previous
question, describe the benefits, if
any, of preparing and maintaining a
transfer pricing study?

There is no specific penalty for failure
to provide a study. However, in
practice the absence of Indonesian or
Organisation for Economic Co-operation

and Development (OECD) compliant documentation has resulted in transfer pricing adjustments upon tax audit. Such documentation is recommended to fulfil compliance disclosure requirements and to shift the burden of proof in tax audit situations.

To satisfy the requirement and/or obtain the benefits, are there any requirements on when the transfer pricing study must be prepared and submitted?

Declarations that certain documentation is available are necessary contemporaneously with the tax return. In addition, specific regulations (PER43/2010 amended by PER32/2011) covering transfer pricing guidance and documentation requirements state that there is a need to submit documentation, although no date is yet specified. In a tax audit situation, documentation must be submitted within 30 days of request.

When a transfer pricing study is prepared, should its content follow Chapter V of the OECD Guidelines?

Yes.

Does the tax authority require an advisor/tax practitioner to have specific designation in order to prepare or submit a transfer pricing study?

No.

Transfer pricing methods

Are transfer pricing methods outlined in Chapter II of the OECD Guidelines acceptable?

Yes.

Is there a priority among the acceptable methods?

The interpretation of the arm's length principle is in alignment with the OECD Guidelines.

If there is no priority of methods, is there a "best method" rule?

Yes. Transaction methods are stated within the law (profit methods appear in the Elucidation) and the original transfer pricing regulation (PER43/2010) clearly favored a hierarchical approach. However, the amendment to the regulation (PER 32/2011) now takes a 'most appropriate' method approach.

Transfer pricing audit and penalties

When the tax authority requests a taxpayer's transfer pricing documentation, how long does the taxpayer have to submit its documentation?

According to the Tax Procedures Law, within 30 days of request. In practice certain questionnaires are issued and the taxpayer is given 7 days to complete them. However, practical experience has shown that in many cases these deadlines are flexible.

If an adjustment is proposed by the tax authority, are dispute resolution options available to the taxpayer outside of competent authority?

The taxpayer is able to object to a transfer pricing assessment and further appeal an unfavorable decision in the same way as with any tax assessment.

If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions?

Yes. General tax penalties only: 2 percent per month on late payment of resulting tax, 50 percent surcharge if an objection to an assessment is lost. Surcharge increases to 100 percent if the amount is appealed and the appeal is lost.

To what extent are transfer pricing penalties enforced?

Always.

What defences are available with respect to penalties?

Penalties will be imposed on late payment of taxes following an adjustment. The defenses against penalties are therefore the same as those against adjustments – robust documentation and a good working knowledge of how it relates to the taxpayer's situation.

What trends are being observed currently?

The ITO still focuses on services and licensing transactions and more often than not denies deductibility. For other transactions, it is moving away from applying the comparable uncontrolled price (CUP) method and starting to

question economic/benchmarking analyses or performing its own benchmarking analyses.

Special considerations

Are secret comparables used by tax authorities?

Yes. However should not be admissible to Tax Court.

Is there a preference, or requirement, by the tax authorities for local comparables in a benchmarking set?

Yes, but there is a recognition that choices are limited and in practice pan-Asian sets may be accepted.

Do tax authorities have requirements or preferences regarding databases for comparables?

The ITO uses Osiris and Oriana but has publicly stated that any database may be used. In practice they also perform internet searches in an attempt to apply CUPs.

What level of interaction do tax authorities have with customs authorities?

None. There has been some discussion, but no action.

Are management fees deductible?

Yes, if properly documented.

Are management fees subject to withholding?

Yes, but subject to treaty relief.

Are year-end transfer pricing adjustments permitted?

Yes, as there are no regulations forbidding their application. In practice, downward adjustments will most certainly be questioned.

Other unique attributes?

Focus on evidence of price-setting mechanism even where benchmarking tests show prices are at arm's length. Denial of certain related party transactions at tax audit stage – deferring decision to Tax Court. Adjustments assessed without full analysis or sound basis.

Other recent developments

Initial discussions are being held regarding a number of MAP and APA applications. As of the date of publication, several applications have been submitted, although none have been concluded to date.

At the date of publication it is also understood that revisions to transfer pricing regulations have been drafted and are awaiting approval.

Tax treaty/double tax resolution

What is the extent of the double tax treaty network?

Extensive.

If extensive, is the competent authority effective in obtaining double tax relief?

No experience yet, although we understand that several negotiations are being conducted.

When may a taxpayer submit an adjustment to competent authority?

No formal rules exist in this area.

May a taxpayer go to competent authority before paying tax?

Yes. Taxpayers may object to assessments and this defers the payment date, subject to sanctions on any losses at objection or later appeal. In the meantime, the issue may be raised to competent authority.

Advance pricing agreements

What advance pricing agreement (APA) options are available, if any?

Implementing regulation covering unilateral and bilateral APAs introduced 31 December 2010.

Is there a filing fee for APAs?

No.

Does the tax authority publish APA data either in the form of an annual report or through the disclosure of data in public forums?

Not applicable yet, but unlikely to be the case when APAs are concluded.

Please provide some information on how successful the APA programme is and whether there are any known difficulties?

Not applicable.

Language

In which language or languages can documentation be filed?

Tax return disclosure is in Indonesian. Documentation currently accepted in English, although it is expected that Indonesian language documentation will be required soon. Indonesian translation may be required in dispute cases.

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