



*cutting through complexity*

# 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. 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 compliance burden on a taxpayer. As the ITO moves into new phases of development in transfer pricing application, KPMG in Indonesia expects 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. The ITO has publicly stated that it will implement the Base Erosion and Profit Shifting (BEPS) recommendations, but there are no details on how and when.

## Transfer pricing study snapshot

### The purpose of a transfer pricing study

	Applicable	Required to be contemporaneous	Thresholds apply/exist
Legal requirements		●	●
Protection from penalties		●	
Reduce risk of adjustment	●		
Shifts burden of proof	●		

## 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

Effective date of transfer pricing rules is 1984, enabling 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 submitted to the revenue authority on an annual basis (e.g. with the tax return)?

Yes. The taxpayer has to declare whether transfer pricing documentation covering 15 specific items is available.

What types of transfer pricing information must be disclosed?

Details of transactions with related parties including amounts, pricing methodologies and reasons.

What are the consequences of failure to 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

Can documentation be filed in a language other than the local language? If yes, which ones?

Yes, English.

When a transfer pricing study is prepared, should its content follow Chapter V of the Organisation for Economic Co-operation and Development (OECD) Guidelines?

Yes, for all transactions. The Indonesian transfer pricing regulations are largely in line with the OECD Guidelines.

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

Does your country follow the transfer pricing methods outlined in Chapter II of the OECD Guidelines? If exceptions apply, please describe.

Yes.

## Transfer pricing audit and penalties

When the tax authority requests a taxpayer's transfer pricing documentation, are there timing requirements for a taxpayer to submit its documentation? And if so, how many days?

Yes, 30 days.

When the tax authority requests a taxpayer's transfer pricing documentation, are there timing requirements for a taxpayer to submit its documentation? Please explain.

According to the Tax Procedures Law, within 30 days of request. In practice certain questionnaires are issued and the taxpayer is given seven 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, what dispute resolution options are available?

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. The taxpayer can also file for a Mutual Agreement Procedure.

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

Yes. General tax penalties only: two 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 defenses 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, these 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.

Does the tax authority generally focus on the interquartile range in a TNMM analysis?

Yes, always.

Does the tax authority have other preferences in benchmarking? If so, please describe.

According to the regulations, multiple-year averages should be applied. In practice the ITO also uses single-year analyses.

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

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

**Are there limitations on deductibility of management fees beyond the arm's length principle?**

No, they should be properly documented with a focus on the benefit for the taxpayer.

**Are management fees subject to withholding?**

Yes.

**Are there limitations on the deductibility of royalties beyond the arm's length principle?**

No.

**Are royalties subject to withholding?**

Yes.

**Are taxpayers allowed to file tax return numbers that differ from book numbers?**

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 and deferring decision to Tax Court. Adjustments assessed without full analysis or sound basis.

**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?**

To date, no MAPs have been concluded although several negotiations are being conducted.

**When may a taxpayer submit an adjustment to competent authority?**

As soon as the dispute exists.

**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 APA options are available, if any?**

Unilateral, bilateral.

**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.

**Are there any difficulties or limitations on the availability or effectiveness of APAs?**

Not applicable. No APAs have been concluded to date. However, negotiations are taking place.

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