

Amended Transfer Pricing guidelines issued

Transfer pricing continues to be a hot topic in Indonesia, as it is around the world. The Indonesian transfer pricing guidelines issued in October 2010 ([click here](#)) have already been amended and now align more with the 2010 OECD Guidelines. In addition, the documentation requirements for domestic transactions now only apply in specific circumstances and the de minimis limit has been substantially increased. Finally, some additional guidance is now provided for several matters that were either not previously addressed or where only very limited guidance was provided. Below is an overview of the main amendments.

KPMG Observation

In TaxNewsFlash-Transfer Pricing 2010-11 we noted the increased scrutiny of transfer pricing by the Indonesian Tax Office (ITO). This continues but going forward KPMG believes there are welcoming signs regarding the alignment to international standards and the provision of additional guidance can only be helpful for taxpayers. On a cautionary note, the guidance given to tax auditors and the practical application by the ITO have yet to show signs of similar changes in approach and the removal of documentation requirements in certain cases does not necessarily remove the possibility that transfer pricing arrangements will be challenged.

Selection of transfer pricing methodology

In line with the OECD Guidelines, the Indonesian transfer pricing guidelines have now abandoned the specific hierarchical approach to selection of transfer pricing methods and adopted the most appropriate method approach. Also, the Transactional Net Margin Method (TNMM) is no longer stated as the method of last resort. However, in selecting a 'most appropriate method' the reasons for rejection of the other methods should still be documented and the amendments include guidance on the factors to be considered. The criteria to determine the most appropriate method are similar to those stated in the 2010 OECD Guidelines.

Another welcome change is that it now seems possible to aggregate certain complex interrelated transactions when applying the TNMM method. Previously this was not covered as the TNMM was only mentioned as the method of last resort but guidance to tax auditors suggests aggregation is not permitted. However, no definitions

or examples have been provided of the terms 'complex' and 'interrelated' and as yet no changes to the guidelines to, or practices of, tax auditors have been seen and hence disputes with the tax authorities on aggregation of transactions may still arise.

Domestic transactions

Previously, all transactions with related parties, whether overseas or domestic, were covered by the regulations. This has now been amended and only domestic transactions between taxpayers who are subject to a different tax rate are covered. Examples mentioned include taxpayers who are subject to a different tax system (final tax), transactions that are subject to Luxury Goods Sales Tax and transactions with contractors in the oil and gas sector. It is unclear whether transactions with domestic related parties in a loss situation or with compensable losses as well



as transactions in other sectors (for example, mining) are covered.

Minimum threshold for transactions

Previously, transactions which did not exceed IDR 10 million (approximately USD 1,100) were exempted from the transfer pricing documentation requirements. This minimum threshold has now been substantially increased. If total transactions with a related party do not exceed IDR 10 billion (approximately USD 1.1 million), no documentation is required. However, there is no indication that such transactions will not be subject to further scrutiny by the ITO and therefore a commercial decision must be made regarding the extent to which documentation should be prepared to cover these. Similarly, where the total value of a number of transactions between two parties exceeds this limit, documentary requirements would appear to apply to all transactions but the extent to which the less material transactions are covered is a commercial decision.

Various other amendments

The amendments also include clarification on the preference of internal over external comparables but specifically state that incidental or occasional internal comparables

can only be used if the related-party transaction is itself incidental.

Additional guidance is provided on the economic conditions to be considered when determining comparability including the competitive position of buyers and sellers, consumer purchasing power and consideration of production costs, hinting at the possibility of more focus on local comparables.

A welcome addition is the provision that if no written contractual arrangement exists, the contractual arrangement may be determined based on the actual activities of the related parties. Also, additional guidance has been provided for royalties and services, including a specific note that service transactions occurring merely because of group ownership are deemed not to be at arm's length. This is further clarified as referring to shareholder costs which should not be charged out. Finally limited guidance on cost contribution arrangements, in line with the OECD Guidelines, has been included, although there is still no mention of the treatment of so-called "pass through costs"



KPMG Observation

The changes to these regulations seem to suggest some move towards consideration of the burden documentation requirements can impose on taxpayers and take into account some of the realities of conducting business. In some cases the burden of preparing transfer pricing documentation may be somewhat reduced. However, experience has shown that transfer pricing theory and practices in the field may differ and hence we would suggest that any significant related-party transactions should still be documented thoroughly, in accordance with the specific local requirements.

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