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Overview

PB Taxand, Taxand Indonesia

PB Taxand is a tax advisory firm based in Jakarta and Surabaya, which offers a full range of tax services that focus on multinational as well as local companies.

PB Taxand's team is equipped to assist in every aspect of transfer pricing services, ranging from (1) compliance and reporting; to (2) analysis, planning and strategy; and (3) disputes and controversy:

- Under compliance and reporting, we cover the preparation of transfer pricing country-by-country reports, master file and local file documentation.
- With analysis, planning and strategy, we cover business restructuring, the set-up of a TP strategy, and the preparation of a pricing policy.
- With disputes and controversy, we cover assistance in transfer pricing audits; objections; appeals; judicial reviews; Mutual Agreements Procedures; arbitration; and the prevention or resolution of tax disputes, by concluding unilateral, bilateral or multilateral APAs.

General: Transfer Pricing Framework

The rule of the arm's-length principle is stipulated under article 18 paragraph 3 and 4 of the Corporate Income Tax Law No 36 Year 2008 ("CIT") and article 32, 33, 35, 36 and 37 of Government Regulation No 55 Year 2022, while the general documentation requirements are regulated under Article 10 of Government Regulation No 74 year 2011 ("PP 74") and Minister of Finance Regulation No 213/ PMK.03/2016 ("PMK 213").

The Indonesian Tax Office "ITO" provides detailed regulations regarding advance pricing agreements under Minister of Finance Regulation No 22/PMK.03/2020 ("PMK 22"). In PMK 22, the Indonesian Tax Office also provides detailed regulations regarding the application of the arm's-length principle and the definition of a special relationship. Meanwhile, the regulation details concerning mutual agreement procedures is under Minister of Finance Regulation No 49/PMK.03/2019 ("PMK 49").

The Indonesian transfer pricing rules and arm's length principle are generally in line with the OECD Guidelines.

Accepted Transfer Pricing Methodologies

The OECD Guidelines are not formally incorporated in the Indonesian legislation, however, in practice, the ITO adopts the OECD TP Guidelines when drafting TP regulations in Indonesia. The ITO also acknowledges the OECD TP Guidelines as an internationally accepted guide in providing explanations and clarifications on the (application of the) arm's length principle.

In line with the OECD Guidelines, the ITO must begin transfer pricing examinations by analyzing the approach of the Taxpayers, including the methodology selection. The taxpayer, however, must be able to substantiate the reason for the selected method, which is deemed appropriate in view of the relevant facts and circumstances.

The ITO also adopts the five (5) methodologies prescribed by the OECD TP Guidelines:

- Comparable Uncontrolled Price method ("CUP")
- Cost Plus Method
- Resale Price Method
- Profit Split Method
- Transactional Net Margin Method ("TNNM")

Aside from the five methods stated above, the ITO also regulates the following methodologies for use:

- Comparable Uncontrolled Transaction Method
- Tangible Asset and Intangible Asset Valuation
- Business Valuation

The CUP method is generally the preferred method by the ITO, but due to comparable uncontrolled transactions being difficult to find, in practice, the TNMM method is the most used transfer pricing method. The taxpayer is allowed to apply any other method if it can be proved that the degree of comparability of the selected method is higher in comparison to other methods.

Transfer Pricing Documentation Requirements

Article 10 of PP 74 requires taxpayers to document and substantiate all intercompany transactions to support its arm's length nature. As no threshold applies to this obligation, this also applies to small and medium-sized companies. The provision requires Indonesian taxpayers to document the transactions conducted with related parties, which includes both cross-border and domestic transactions.

With regards to the obligation of preparing Transfer Pricing Documentation, under PMK 213, MNEs and domestic companies are obligated to prepare country-by-country reports, master files and local files, if the criteria to prepare Transfer Pricing Documentation are met.

In the regulation, it is stated that although the taxpayer does not meet the criteria to prepare Transfer Pricing Documentation, the tax office may conduct transfer pricing audits and the tax auditor may issue tax adjustments on transfer pricing matters.

Local Jurisdiction Benchmarks

Comparable selection depends on the applied TP method. Under PMK 22, a local comparable is the preferred comparable over an overseas comparable. However, in practice, it is difficult to find a local comparable in an international database. Therefore, due to the lack of a local comparable, the ITO would accept an overseas comparable to apply the arm's length principle in Indonesia. The Taxpayers only use a local comparable if they use an internal comparable.

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Advance Pricing Agreement ("APA") Overview

Under PMK 22, the Taxpayer may submit a Unilateral APA or Bilateral APA application to the ITO for its related party transactions. APA can be applied to domestic related party transactions in Indonesia. An APA can cover five forward years as well as open historical years under a rollback. Open historical years can only be covered by an APA roll-back where they meet specific criteria, such as a tax audit that has not been concluded for that past year or such year is not subject to the criminal investigation.

Below are the requirements to apply for an APA.
A taxpayer must:

a) have fulfilled the obligation to submit its Annual CITR for three fiscal years prior to the fiscal year for which the APA is being applied;

b) have been obligated and has fulfilled the obligation to prepare and maintain Transfer Pricing Documentation in the form of master file and local file for three fiscal years prior to the fiscal year for which the APA is being applied;

c) not be subject to a criminal investigation or taxation criminal proceedings;

d) only include related party transactions that have already been reported by the Taxpayer in the Corporate Income Tax Return; and

e) apply the Arm's Length Principle to the related party transactions AND the application of the arm's length principle would not result in a situation where operating profit of Taxpayer is lower than operating profit already reported in the Corporate Income Tax Return.

The implementation of the APA must be documented in the taxpayer's transfer pricing documentation on an annual basis

Transfer Pricing Audits

There are no specific Transfer Pricing audits in Indonesia. TP audits are usually a part of a general tax audit or a specific audit for Income Tax or Value Added Tax. However, the ITO is currently very aggressive in analyzing intercompany transactions, especially with related parties overseas.

In practice, the ITO is focused on the following transfer pricing issues:

- Company in a loss position or with a very thin profit
- The conducting of special transactions, use of intangible, intragroup services, and intragroup loans

Transfer Pricing Penalties

Under the elucidation of article 18 paragraph 3, the ITO will apply a secondary adjustment on every tax adjustment based on transfer pricing matters during the tax audit. There will only be a single treatment on the secondary adjustment as a deemed dividend, no matter the transaction and the counterparty.

Local Hot Topics and Recent Updates

Indonesia is a capital import country; therefore, there are many special transactions conducted by overseas head offices and/or regional hubs to their Indonesian subsidiaries. Therefore, the use of intangible transactions, intercompany service transactions and intercompany loan transactions are often scrutinized by the ITO.

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Documentation threshold

Master File and Local File	Criteria to Prepare Master File and Local File
The Taxpayer has related party transactions with:	The Taxpayer has related party transactions with: a. a gross revenue in the previous fiscal year of more than IDR 50 billion, or b. a related party transaction amount in the previous fiscal year of: - more than IDR 20 billion for tangible goods transactions; or - more than IDR 5 billion for each provision of service, payment of interest, use of intangible goods, or other related party transactions, or c. The related party is domiciled in a country or jurisdiction with a tax rate lower than the prevailing tax rate in Indonesia (the current tax rate in Indonesia is 22%).
CbCR	Criteria to Prepare Country-by-Country Report a. Consolidated group turnover of at least IDR 11 trillion, or b. A Taxpayer who is a member of a Business Group, with a parent entity that is a Foreign Taxpayer, is required to file a Country-by-Country Report if the country or jurisdiction where the parent entity is domiciled: - does not require the filing of Country-by-Country Report, or - does not have any exchange of tax information agreement with Indonesia, or - has an exchange of tax information agreement, but the Indonesian Government does not receive the Country-by-Country Report from the related country/jurisdiction.

Submission deadline

Master file	Should be available in the taxpayer's administration within four months after the end of the fiscal year.
Local file	Should be available in the taxpayer's administration within four months after the end of the fiscal year.
CbCR report	Submission is within 12 months after the end of the fiscal year.
CBCR notification	Submission is within 12 months after the end of the fiscal year.

Penalty Provisions

Documentation – late filing provision	ITO may reject TP Documentation, and ITO may prepare benchmarking and ITO may consider the Taxpayer to not have filed the Corporate Income Tax Return
Tax return disclosure – late/ incomplete/no filing	Administrative sanction of IDR 1 million. The Tax Auditor may conduct a full tax audit and request detailed supporting documents for every transaction.
CbCR – late/ incomplete/no filing	ITO may consider the Taxpayer to not have filed the Corporate Income Tax Return.

CONTACT

Permana Adi Saputra
PB Taxand
permana@pbtaxand.com
+62 21 835 6363

Elviana Rianto
PB Taxand
elviana.r@pbtaxand.com
+62 21 835 6363