

# 2013, a year of reckoning for past tax affairs

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**T**he director general of taxation's (DGT) authority to issue tax assessments is enshrined side by side in the Tax Administration Law (TAL) with taxpayers' rights to determine, settle and report their own tax liabilities.

A balance is maintained by asserting that reported tax amounts are considered correct unless the DGT can show evidence to the contrary. And a tax assessment can only be issued based on such evidence. That is the essence of the self-assessment system adopted by the Indonesian tax administration.

However, the DGT's authority does not prevail forever. Tax assessments for a particular year or month can only be issued in a specified time period referred to as a statute of limitation (SOL). In the past, the SOL was set for 10 years. Since 2008, it has been reduced to five years.

Each year would normally see the SOL for one particular year expire. For instance, the SOL for 2008 will expire in 2013.

However, 2013 is special because the SOL for 2003 through 2007, pursuant to the transitional provision of the 2007 TAL, will expire simultaneously in the same year.

The year of 2013 is therefore crucial for both the DGT and taxpayers. For the DGT, the challenge is how to deploy its limited number of tax auditors to conduct multiple-year audits as the basis of its very last chance to issue tax assessments for 2003-2007.

Serious pressure may result as it also must complete routine tax audits in 2013 for any tax returns claiming a refund filed in 2012. Missing the deadline will mean automatic approval of the claim without any correction, a situation never desired by the DGT. The tax revenue target, set at Rp 1,000 trillion (US\$103.8 billion) for 2012, may increase pressure on the DGT.

"Playing safe" may boil down to a large number of disputed corrections with taxpayers. Issuance of tax assessments on that basis will inevitably spark a wave of objections and potential litigation. These may

add more pressure on the DGT as the whole process may extend over a couple of years.

For taxpayers, reporting the correct amount of tax is a good start; but it is not enough. When an audit ultimately comes into play and tax auditors challenge a particular aspect of your tax, the decisive factor will be your ability to prove that this has been dealt with properly. This is a question of your company's document filing system.

Unfortunately, with the passage of time, things which were readily explainable at the outset may sometimes become obscured. Personnel who handled the case may be no longer with you.

Computer systems may have completely changed. Hardcopy files may have been moved to a remote warehouse and piled up with many other documents. All these things may hinder your ability to defend your tax stance, especially in a strict time limit.

Ideally, all tax issues raised during an audit should be settled immediately before they are brought

into the tax auditors' list of audit findings. However, disorganized document filing systems and a lack of staff with adequate understanding of past tax affairs complicated by the tendency of tax auditors' to play safe may force you to make unsatisfactory compromises with them: to concede on a large number of disagreements.

Good planning may prevent many of the problems. Start with a task force assigned to past tax affairs. Then, identify all open years of 2003-2007, i.e. the years for which no tax assessments have been issued by the DGT. As a matter of practice, the DGT may not prioritize scrutinizing the years for which tax assessments have been issued. So, you may leave them out.

Next, identify the issues facing each open year and determine the best courses of action you can take during the limited time. Bear in mind that the DGT may start multiple-year audits in early 2013 given the same time pressure facing them. You may still do more if the audit starts later in the year.

Remember that any request for documents or data by tax auditors must be satisfied within a month of the request date. Bear in mind that tax auditors may ignore any documents or data received beyond a month, implying they can deem that you do not have the documents.

Related party transactions may need extra care. Completeness of formal documents such as inter-company contract agreements, invoices, payment evidence, etc. is essential but not enough to underpin your stance on them. You may be required to explain the legitimacy of the transactions and the reasonableness of the considerations.

This is a question about the commercial reality that would have obtained had the deals been concluded between unrelated parties. Well-prepared transfer-pricing documentation should have taken into account this matter.

It is true there is no explicit requirement to maintain transfer-pricing documentation for the financial years 2003-2007. However, if the DGT raises questions on the legitimacy of related party transactions and the reasonableness of considerations, there is no more viable way to answer the question than presenting a well-prepared transfer-pricing documentation.

Hence, the best way to defer your stance on related party transactions is to have transfer-pricing documentation in place for all years under consideration.

Despite all the worries, tax audit at the close of multiple-year SOL is virtually a matter of risk. It may or may not materialize. If there is a tax audit and no tax assessment for 2003-2007 issued in 2013, that's your luck and you can leave those years with great relief.

Nevertheless, it is still better to prepare for the worst-case scenario. And that is the purpose of the above exercise, ignoring it may cost you a substantial portion of your company's wealth.

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