

## Executive summary

- Maintaining transfer pricing documentation is mandatory starting 2010.
- Adherence to the arm's length principle is required. The OECD TP guidelines may be used to determine the arm's length nature of a controlled transaction where a tax treaty is in force. If not, domestic tax regulations should prevail.
- The 2009 CITR requires detailed disclosures on certain transfer pricing-related issues.
- It is quite important to have transfer pricing documentation before filing the 2009 CITR

## Transfer pricing documentation is required for 2009 CITRs

This year will witness for the first time the implementation of transfer pricing (TP) documentation requirement in Indonesia. Companies engaged in related-party transactions are required to disclose a number of transfer pricing-related issues in their 2009 corporate income tax returns (CITRs). The rule is set out in Reg. 39 issued by the director general of taxes (DGT) in July 2009.

As the 2009 CITR filing deadline is drawing closer, taxpayers engaged in related party transactions need to observe this requirement seriously. TP documentation should ideally be on their hands before filing the 2009 CITR. They must also make sure that it addresses certain areas about which disclosures must be made in the CITR.

### Adherence to the arm's length principle

Like most, if not all, other countries in the world, Indonesia adopts the arm's length principle to deal with related-party (controlled) transactions in its tax legislation. Hence, deals between related parties must be structured and prices for the goods or services must be established in such a way so as to reflect the conditions that would have resulted had the transaction been concluded between unrelated parties.

If the arm's length principle is ignored, the DGT may by law redetermine the income or expenses of the parties to the controlled transactions to calculate their taxable income in accordance with the arm's length principle. In this context, TP documentation may serve as a means for taxpayers to demonstrate before the DGT their adherence to the arm's length principle.

Determining the arm's length nature of a controlled transaction is a complex process involving a thorough understanding of the transaction, collection, analysis and interpretation of a bulk of data, selection of the appropriate transfer pricing method, etc. Indonesia has so far been perceived as a country which does not provide adequate guidance on this matter. Questions have accordingly been raised whether the OECD Transfer Pricing Guidelines can be used for this purpose.

In terms of guidance development, Indonesia has not made any significant progress until now. The 1993 tax regulations (SE-04/PJ.7/1993 and Reg. 01/PJ/1993) continue to be referred to as the only official reference. Nevertheless, in a number of briefings and public seminars including the one organized by *PreciousNine* and *Investor Daily* in early February, the head of the transfer pricing section of the DGT declared the adoption of the OECD TP Guidelines. This would be the case if a tax treaty is in force. If not, SE-04 and Reg. 01 should still prevail.

### Areas for disclosures

Despite the call for TP documentation, there is no specific official guidance addressing the format and content of the documentation. However, the disclosure requirement set out in Reg. 39 could be referred to as a basis to determine what areas to be covered in each TP documentation.

Specifically, Reg. 39 requires taxpayers to state in their CITRs whether their TP documentation contains the following discussions:

- Company's profile
- Description about the controlled transactions in question along with the comparables
- Comparability analysis
- Determination of the arm's length nature of the controlled transactions
- Transactions with tax haven countries' residents, if any, and the determination of the arm's length nature of those transactions

### Availability of TP documentation

Reg. 39 does not require taxpayers to attach their TP documentation to their CITER. Nor does it require them to deliver TP documentation separately to the DGT. However, the regulation implies that TP documentation should be available before filing a CITER. Form 3A/3B of the CITER specifically calls disclosures on certain TP-related areas to be obtained from TP documentation.

A submission of TP documentation to the DGT may not be required until in the event of a tax audit. Nevertheless, postponing the preparation of TP documentation would be too risky for some reasons. First, without TP documentation it would be impossible to fill out Form 3A/3B. Leaving the form blank could render the CITER incomplete and could further lead the DGT to deny the CITER filing.

In a public seminar in early February, the head of the transfer pricing section of the DGT indicated that preparing TP documentation during a tax audit might still be tolerated. However, given the one-month rule applicable for a tax audit, this would need to be prepared in a rush. Missing the deadline could render the TP documentation useless as tax auditors based on the prevailing regulations may ignore any documents delivered to them beyond a month after the request date.

It is therefore of paramount importance to have TP documentation in your hands before filing the 2009 CITER and to ascertain that areas to be disclosed in the CITER be adequately addressed therein. As the documentation cannot be prepared overnight, early preparation is highly advisable.

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