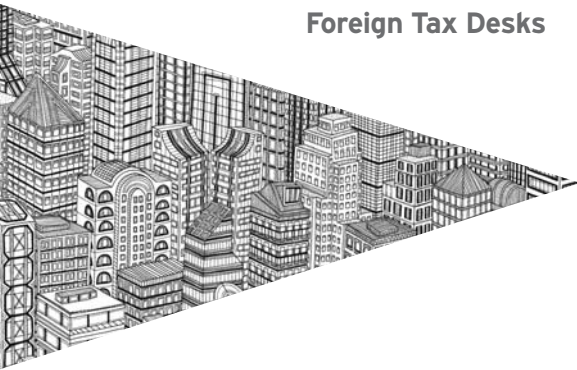


International Tax Alert

News and views from
Foreign Tax Desks



Indonesia amends transfer pricing regulations

Executive summary

On 11 November 2011, Indonesia's Director of Taxation amended its transfer pricing regulations that were issued 6 September 2010. Amendments include, but are not limited to a documentation waiver for taxpayers with limited transaction volumes with a specific counter-party, adoption of the most appropriate method approach and inclusion of cost contribution arrangements. This Alert provides a summary of the regulations and a brief discussion of the amendments. The amendments are effective on 11 November 2011 but retroactively apply to transactions occurring on or after 1 January 2011.

Summary of the current transfer pricing regulations

The current regulations cover the following transactions:

- ▶ Sale, transfer, purchase or acquisition of tangible and intangible property
- ▶ Rent, royalty, or fee payment for use of tangible and intangible assets
- ▶ Services
- ▶ Cost allocation
- ▶ Financial instrument transactions

Five methods are placed in the following hierarchical order:

- ▶ Comparable Uncontrolled Price (CUP)
- ▶ Resale price method
- ▶ Cost plus method
- ▶ Profit split method
- ▶ Transaction net margin method (TNMM)

Get the world to go!

You can access corporate income tax rates of over 60 countries for multiple years using your mobile device:

- ▶ Type into your web browser:
www.ey.mobi/ITS/rates

A comparability analysis places internal comparability over external comparability and requires an adjustment for significant differences between comparable and tested transactions. Factors to be taken into consideration when testing comparability include: characteristics of goods and services, functions, terms and conditions of agreements, economic circumstances and business strategy.

A functional analysis should consider organizational structure, a tested party's main function, types of assets employed and assumption of risks.

An arm's length pricing based on an economic analysis may be described in the form of a single price or an arm's length range.

With respect to services, they must be actually performed and the services must provide economic or commercial benefit to the recipient. If services consist of different elements, an arm's length determination is required for each type of service.

Consideration for an intangible property transfer is based on actual use of intangible property, economic or commercial benefit, geographical matters, exclusiveness, and whether a licensee is permitted to participate in intellectual property developments.

The following items are required to be stated in documentation:

- ▶ Description of a tested party
- ▶ Pricing and/or cost allocation policies
- ▶ Results of comparable and functional analyses, economic conditions, provisions of terms and conditions of an agreement, and business strategy
- ▶ Selected comparable transactions
- ▶ Selection of a transfer pricing method

Amendments to the regulations are:

- ▶ Adoption of the most appropriate method test - a taxpayer is now eligible to choose a method that is

most appropriate to its transfer pricing based on the nature of transaction, availability of data, etc., i.e., no hierarchy of methods is required.

- ▶ Use of a TNMM is limited to transactions where one of the parties provides a "special contribution" or the transactions that are complex and interconnected with each other.
- ▶ Exemption from the documentation requirement for a taxpayer with an aggregate transaction volume of 10 Billion Indonesian Rupiah (approximately US\$1.1 million) per each transaction counterparty; however, it is not clear if such taxpayer is also exempt from a transfer pricing adjustment.
- ▶ The term "intangible asset" includes market and trade intangibles.
- ▶ A cost contribution arrangement is recognized.

For additional information with respect to this Alert, please contact the following:

Ernst & Young, Asia Pacific Business Group, New York

- ▶ Jeff Hongo +1 212 773 6143 jeff.hongo@ey.com
- ▶ Kaz Parsch +1 212 773 7201 kazuyo.parsch@ey.com

Purwantono, Suherman, Surja Consult, Jakarta

- ▶ Carlo Navarro +62 21 5289 5029 carlo.navarro@id.ey.com
- ▶ Peter Ng +62 21 5289 5228 peter.ng@id.ey.com

Foreign Tax Desks of Ernst & Young LLP in the United States

- ▶ Argentina
- ▶ Australia
- ▶ Austria
- ▶ Belgium
- ▶ Brazil
- ▶ Canada
- ▶ China
- ▶ Czech Republic
- ▶ Denmark
- ▶ Finland
- ▶ France
- ▶ Germany
- ▶ Hong Kong
- ▶ Hungary
- ▶ Iceland
- ▶ India
- ▶ Ireland
- ▶ Israel
- ▶ Italy
- ▶ Japan
- ▶ Luxembourg
- ▶ Mexico
- ▶ Netherlands
- ▶ Norway
- ▶ Pan-Africa
- ▶ Poland
- ▶ Russia
- ▶ Singapore
- ▶ Spain
- ▶ Sweden
- ▶ Switzerland
- ▶ Taiwan
- ▶ United Kingdom
- ▶ Asia Pacific Business Group
- ▶ Central European Business Group
- ▶ Eastern European Business Group
- ▶ EMEIA Financial Services
- ▶ Latin American Business Center

Ernst & Young

Assurance | Tax | Transactions | Advisory

About Ernst & Young

Ernst & Young is a global leader in assurance, tax, transaction and advisory services.

Worldwide, our 152,000 people are united by our shared values and an unwavering commitment to quality. We make a difference by helping our people, our clients and our wider communities achieve their potential.

Ernst & Young refers to the global organization of member firms of Ernst & Young Global Limited, each of which is a separate legal entity.

Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. For more information about our organization, please visit www.ey.com. Ernst & Young LLP is a member firm of Ernst & Young Global Limited, serving clients in the US. Purwantono, Suherman, Surja Consult is a member firm serving clients in Indonesia.

International Tax Services

About Ernst & Young's International Tax Services practices

Our dedicated international tax professionals assist our clients with their cross-border tax structuring, planning, reporting and risk management. We work with you to build proactive and truly integrated global tax strategies that address the tax risks of today's businesses and achieve sustainable growth. It's how Ernst & Young makes a difference.

www.ey.com

© 2011 EYGM Limited
All Rights Reserved.

EYG no. CM2613

This publication contains information in summary form and is therefore intended for general guidance only. It is not intended to be a substitute for detailed research or the exercise of professional judgment. Neither EYGM Limited nor any other member of the global Ernst & Young organization can accept any responsibility for loss occasioned to any person acting or refraining from action as a result of any material in this publication. On any specific matter, reference should be made to the appropriate advisor.