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DDTC INDONESIAN TRANSFER PRICING MANUAL

Darussalam, Danny Septriadi and Atika Ritmelina Marhani

2024

As of 2019, DDTC Academy has been widely recognised by the Chartered Institute of Taxation (CIOT), United Kingdom, as the **first and sole institution in Indonesia** to offer ADIT Paper 3.03 - Transfer Pricing Option exam preparation.

DDTC has been awarded the Indonesia Transfer Pricing Firm of the Year at the Asia-Pacific Tax Awards 2021 by ITR, UK.

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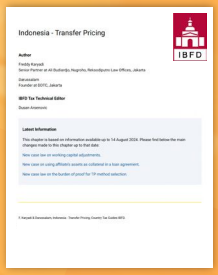

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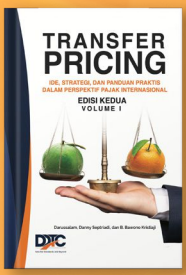

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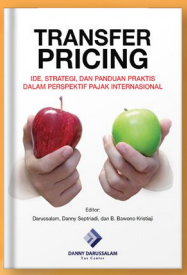

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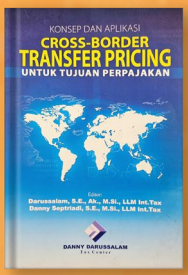

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Darussalam, Danny Septriadi and Atika Ritmelina M.

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Menara DDTC
Jl. Raya Boulevard Barat Blok XC 5-6 No B, Kelapa Gading Barat
Kelapa Gading, Jakarta Utara, DKI Jakarta, 14240 - Indonesia
Telp. : +62 21 2938 2700
Fax : +62 21 2938 2699
Website : http://www.ddtc.co.id

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Darussalam, Danny Septriadi and Atika Ritmelina M.

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FOREWORD

The authors offer God Almighty praise and gratitude for His enduring grace and favour, the *DDTC Indonesian Transfer Pricing Manual* book is now published. This book constitutes an integral part of the formerly published *DDTC Indonesian Tax Manual 2024*, with a focus on practical guidelines concerning transfer pricing.

The *DDTC Indonesian Transfer Pricing Manual* book is the embodiment of the spirit of the recognition of DDTC as an *Indonesia Transfer Pricing Top Tier Firm* from the International Tax Review (ITR), London, in 2019, 2020, 2021, 2022, 2023, 2024 and 2025 respectively. In addition, DDTC was also named *Indonesia Transfer Pricing Firm of the Year* at the Asia-Pasific Tax Awards 2021.

The *DDTC Indonesian Transfer Pricing Manual* book also embodies DDTC's solid contribution to eliminating information asymmetry in light of transfer pricing in Indonesia. This book encompasses the latest updates of Indonesian transfer pricing provisions as of **October 2024**.

The *DDTC Indonesian Transfer Pricing Manual* book addresses a broad range of transfer-pricing-related aspects, ranging from the history of regulatory developments in Indonesia, the application of the arm's length principle, documentation, to transfer pricing audits and adjustments. On a related note, this book specifically reviews procedures and provisions on the advance pricing agreement and mutual agreement procedure as solutions to resolve transfer pricing issues.

We as the editorial team as well as the authors wish to thank everyone in support of the publication of this book. Our wholehearted thanks go to our beloved family members for their prayers and moral support in the process of compiling this book.

The *DDTC Indonesian Transfer Pricing Manual* book is expected to serve as a reference for those aspiring to delve into Indonesian transfer pricing provisions. We assuredly look forward to constructive suggestions and criticism from readers for the improvement of this book in the foreseeable future.

Jakarta, November 2024

Darussalam, Danny Septriadi and Atika Ritmelina Marhani

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CHAPTER 1

HISTORY OF TRANSFER PRICING REGULATIONS IN INDONESIA

1.1. Transfer pricing regime stems from domestic law. Thus, every country requires more detailed information on the formulation of domestic regulations in implementing transfer pricing provisions. Indonesia is one of the first countries in Asia to apply transfer-pricing-related provisions. Indonesian transfer pricing provisions, in general, have adopted the Arm's Length Principle (ALP or *Prinsip Kewajaran dan Kelaziman Usaha*/PKKU in Indonesian) outlined in the Organisation for Economic Cooperation and Development *Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations* (OECD Guidelines) and United Nations *Practical Manual on Transfer Pricing for Developing Countries* (UN TP Manual) insofar as the recommendations do not contradict with Indonesian tax law.

1.2. Under Indonesian statutory tax provisions, transfer pricing provisions have been stipulated since the enactment of Law Number 7 of 1983 concerning Income Tax (Law No. 7/1983). This law stipulates provisions on the definition of a special relationship.[1]

1.3. Pursuant to Law No. 7/1983, Indonesia's domestic provisions do not explicitly cite the ALP as a reference for tax authorities in exercising their authority to re-determine the amount of income and/or deductible expenses to calculate the amount of taxable income for a

[1] The special relationship concept adopts the concept of associated enterprises under Art. 9 of the OECD *Model Tax Convention on Income and on Capital* (OECD Model) and/or United Nations *Model Double Taxation Convention Between Developed and Developing Countries* (UN Model).

taxpayer related to other taxpayers. However, the tax authorities must refer to income and/or expenses incurred if no special relationship exists between the parties.

1.4. In addition, the provisions on the authority of tax authorities to perform transfer pricing adjustments (re-determination of the taxpayer's transfer price) are intended to prevent tax evasion. However, the terminology of tax evasion, guidelines and methods for taxpayers and tax authorities to implement these provisions are not further elucidated under the law.

1.5. In 1993, the Director General of Taxes issued the Director General of Taxes Decree Number KEP-01/PJ.7/1993 concerning Guidelines for Tax Audits of Related Taxpayers and the Director General of Taxes Circular Letter Number SE-04/PJ.7/1993 concerning Instructions for the Handling of Transfer Pricing Cases. However, these provisions do not provide clear guidelines for taxpayers in applying the ALP in their related party transactions or measures to avoid potential transfer pricing adjustments. In addition, these provisions do not take into account the international consensus that deems comparability analysis as well as comparability factors the 'heart' of the application of the ALP.

1.6. Law No. 7/1983 was amended in 1994, i.e., with the issuance of Law Number 10 of 1994 concerning the Second Amendment to Law Number 7 of 1983 concerning Income Tax (Law No. 10/1994). This law explicitly states that the authority of the tax authorities to perform adjustments must refer to the ALP. Further, the reference to the ALP under this law uses an approach of comparable data on profit allocation based on the function or participation of related taxpayers and indications as well as other data.

1.7. In 2000, with the issuance of Law Number 17 of 2000 concerning the Third Amendment to Law Number 7 of 1983 concerning Income Tax (Law No. 17/2000), transfer pricing provisions were modified by adding provisions on the Advance Pricing Agreement

(APA). Until 2000, the amendment to the law did not provide guidelines for taxpayers in applying the ALP to their related party transactions.

1.8. In 2007, through Government Regulation Number 80 of 2007 (Gov. Reg. No. 80/2007), taxpayers were given an additional burden to document the application of the ALP to their related party transactions, despite the fact that the steps to apply the ALP had not been issued. These provisions constitute part of the obligation to retain other documents in bookkeeping or recording that must be maintaned by taxpayers. This government regulation was amended by Government Regulation Number 74 of 2011.

1.9. Transfer pricing provisions were subsequently amended in line with the issuance of Law Number 36 of 2008 concerning the Fourth Amendment to Law Number 7 of 1983 concerning Income Tax (Law No. 36/2008). The law specifically stipulates the method used in applying the ALP to related party transactions.

1.10. Further, in 2009, taxpayers are required to disclose related parties, related party transactions conducted, information on comparability analysis and arm's length pricing in the annual corporate income tax return. Unfortunately, this obligation is not balanced with guidelines for comparability analysis and arm's length pricing.

1.11. In 2010, the Director General of Taxes released the Director General of Taxes Letter Number S-153/PJ.04/2010 concerning Guidelines for Audits of Whether Controlled Transactions are At Arm's Length. In this Director General of Taxes letter, although the main title is about guidelines for audits of whether controlled transactions are at arm's length, the Appendix of S-153/PJ.04/2010 also contains the definition and application of the ALP, including comparability analysis and selection of transfer pricing methods in detail.

1.12. In the same year, the Director General of Taxes finally issued guidelines for taxpayers and tax authorities in the application of the ALP to related party transactions through the Director General of Taxes Regulation Number PER-43/PJ/2010 (PER-43/2010). These provisions

were subsequently amended through the Director General of Taxes Regulation Number PER-32/PJ/2011 (PER-32/2011). On another note, under PER-32/2011, Art. 12 concerning the Transactional Net Margin Method (TNMM) as "the last resort method" is deleted.

1.13. Further, in 2013, the Director General of Taxes issued the Director General of Taxes Regulation Number PER-22/PJ/2013 concerning Guidelines for Audits of Related Taxpayers (PER-22/2013). The regulation provides guidelines related to the stages in a transfer pricing audit, methods used in the audit and application of the ALP to specific related party transactions, such as intragroup services, intangibles and interest payments. In other words, a more detailed explanation of methods to practically assess the ALP is readily accessible. PER-22/2013 amends the formerly issued Director General of Taxes Decree Number KEP-01/PJ.7/1993.

1.14. In the same year, the Director General of Taxes also issued the Director General of Taxes Circular Letter Number SE-50/PJ/2013 (SE-50/2013) which provides technical instructions for transfer pricing audits. This circular letter amends the formerly issued Director General of Taxes Circular Letter Number SE-04/PJ.7/1993. Technical instructions under SE-50/2013 provide convenience and uniformity for tax auditors in auditing related taxpayers to ensure quality audits.

1.15. In its development, in response to Action 13 of the OECD/G20 Base Erosion and Profit Shifting Project (hereinafter referred to as the BEPS Project), the government issued the Minister of Finance Regulation Number 213/PMK.03/2016 which stipulates Types of Compulsory Additional Documents and/or Information to Be Retained by Taxpayers Conducting Transactions with Related Parties and the Administration Procedure (MoF Reg. 213/2016). Pursuant to MoF Reg. 213/2016, transfer pricing documentation includes local file, master file and Country-by-Country Report (CbCR). Procedures for the management of CbCRs are further stipulated through the Director General of Taxes Regulation Number PER-29/PJ/2017 (PER-29/2017).

1.16. Then, in 2019, the Indonesian government accommodated global attention to efforts to resolve double taxation disputes, including transfer pricing, by releasing the Minister of Finance Regulation Number 49/PMK.03/2019 concerning Procedures for the Implementation of Mutual Agreement Procedures (MoF Reg. 49/2019). This minister of finance regulation replaced the formerly issued Minister of Finance Regulation Number 240/PMK.03/2014 (MoF Reg. 240/2014) which stipulates procedures for the implementation of the Mutual Agreement Procedure (MAP).

1.17. MoF Reg. 240/2014 does not contain the minimum standards in the resolution of double taxation disputes mandated in Action 14 of the BEPS Project. Therefore, the release of MoF Reg. 49/2019 accommodates global attention to this issue. The MoF Reg. 240/2014 does not fully provide legal certainty either, mainly in respect of the procedures, period and follow-up of the request for the implementation of MAP.

1.18. A year later, in 2020, the Minister of Finance issued the Minister of Finance Regulation Number 22/PMK.03/2020 concerning Procedures for the Implementation of Advance Pricing Agreement (MoF Reg. 22/2020) which repealed the former minister of finance regulation concerning APA, i.e., Minister of Finance Regulation Number 7/PMK.03/2015. Moreover, MoF Reg. 22/2020 also contains the application of the ALP. Procedures for the settlement of the application, implementation and evaluation of APA are further stipulated through the Director General of Taxes Regulation Number PER-17/PJ/2020 (PER-17/2020).

1.19. In 2021, the government issued Law Number 7 of 2021 concerning the Harmonisation of Tax Regulations (HPP Law), which strengthens anti-domestic tax avoidance provisions, among others, through transfer pricing instruments. The provisions under the HPP Law were subsequently derived through Government Regulation Number 55 of 2022 (Gov. Reg. No. 55/2022).

1.20. Please note that pursuant to Law No. 7/1983 and the latest amendment, i.e., the HPP Law, transfer pricing provisions are intended to **prevent tax avoidance**. Indonesia has established Specific Anti-Avoidance Rule (SAAR) to prevent tax avoidance that may occur due to transactions between related taxpayers since 1983. However, in terms of the writing, there are differences between Law No. 7/1983 and its amendment in Law No. 10/1994.

1.21. Under Law No. 7/1983, the transfer pricing provisions are intended to prevent tax evasion. However, pursuant to Law No. 10/1994, the transfer pricing provisions are intended to prevent tax avoidance. This is evident that in the past, the terms tax evasion and tax avoidance did not have a clear definition to distinguish between the two, thereby, they were interpreted the same at that time, namely intended to prevent tax avoidance.

1.22. The elucidation of Art. 18 paragraph (3) of the ITL as amended by the HPP Law states that the Directorate General of Taxes (DGT) has the authority to re-determine income, deductible expenses and the debt-to-equity ratio for related taxpayers based on the ALP. This authority is intended to prevent tax avoidance stemming from special relationships. However, the DGT should only exercise this authority when there is evidence of such avoidance.

1.23. Following the issuance of the HPP Law, the government released the Minister of Finance Regulation Number 172 of 2023 concerning the Application of the Arm's Length Principle to Transactions Influenced by a Special Relationship (MoF Reg. 172/2023). Through MoF Reg. 172/2023, the government has consolidated the regulations concerning transfer pricing documentation (MoF Reg. 213/2016), APA (MoF Reg. 22/2020) and MAP (MoF Reg. 49/2019) into one minister of finance regulation, i.e., MoF Reg. 172/2023.

1.24. In addition to consolidating the three regulations, the government also emphasises several specific provisions, such as the criteria of transactions influenced by special relationships, secondary

adjustment, corresponding adjustment, Value Added Tax (VAT) provisions in the context of transfer pricing, preliminary stages and so forth. The issuance of MoF Reg. 172/2023 also provides more specific guidelines for conducting comprehensive transfer pricing analysis.

1.25. Based on the above explanation, in summary, although Indonesia is one of the Asian countries that has long included transfer pricing provisions in its tax laws, guidelines for the implementation were not published until more than two decades after the issuance of Law No. 7/1983. The guidelines for the implementation of the ALP, under PER-43/2010 as amended by PER-32/2011 and PER-22/2013 in conjunction with SE-50/2013, predominantly adopt the guidelines and recommendations provided by the OECD Guidelines 2010, in a more concise format. However, in the implementation of MoF Reg. 172/2023, Indonesian transfer-pricing-related provisions have adopted global tax developments through the BEPS Project and OECD Guidelines 2022.

CHAPTER 2
THE ARM'S LENGTH PRINCIPLE

2.1. Under Indonesian transfer pricing provisions, the concept of special relationship includes both *de jure* control and *de facto* control. A special relationship is the special relationship stipulated under Art. 18 paragraph (4) of the Income Tax Law (ITL) and Art. 2 paragraph (2) of the Value Added Tax on Goods and Services and Sales Tax on Luxury Goods Law (VAT Law). Further, the definition of a special relationship is described in further detail in the MoF Reg. 172/2023.

2.2. **Transactions between parties influenced by a special relationship must apply the Arm's Length Principle** (ALP or *Prinsip Kewajaran dan Kelaziman Usaha*/PKKU in Indonesian).[1] The ALP is a principle that applies to sound business practices as well as uncontrolled transactions.[2] It is applied to determine the arm's length transfer price. In its implementation, the ALP is applied by comparing the conditions and price indicators of transactions that are influenced by a special relationship with the conditions and price indicators of the same or comparable uncontrolled transaction.

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1 Please note that since the release of MoF Reg. 22/2020 as amended by MoF Reg. 172/2023 and Gov. Reg. No. 55/2022, the obligation to apply ALP applies to taxpayers conducting transactions influenced by a special relationship. This implies that the application of the ALP is not only limited to controlled transactions but also to transactions conducted between independent parties but affiliates of one or both parties to the transaction are involved in determining the counterparty and transaction price. See paragraph 2.8 in this section.

2 **An uncontrolled transaction** is a transaction made between parties that do not have a special relationship and are not influenced by a special relationship.

A. Definition of Special Relationship

2.3. Pursuant to Art. 2 paragraph (2) of MoF Reg. 172/2023, a special relationship is a condition of dependence or attachment between one party and another party due to **ownership** or **capital participation**, **control** or **family relationship** by blood or marriage. The condition of dependence or attachment between one party and another party is a condition where one or more parties (i) control the other party or (ii) are not independent in conducting business or performing activities.

2.4. The special relationship due to ownership or capital participation is deemed to exist in the event of the following.

(i) A taxpayer has direct or indirect capital participation of a minimum of 25% in another taxpayer; or

(ii) The relationship between the taxpayers with capital participation of a minimum of 25% in two or more taxpayers or the aforementioned relationship between two or more taxpayers.

2.5. The special relationship due to control is deemed to exist in the event of the following.

(i) One party controls another party or one party is controlled by another party, directly and/or indirectly;

(ii) Two or more parties are under the control of the same party, directly and/or indirectly;

(iii) One party controls another party or one party is controlled by another party through management or use of technologies (although there is no ownership relationship);

(iv) There are the same individuals who are directly and/or indirectly involved or participating in managerial or operational decision making for two or more parties;

(v) Parties that are commercially or financially known or claim to be in the same business group; or

(vi) One party claims to be related to another party.

2.6. Lastly, the special relationship due to a family relationship by blood or marriage is deemed to exist if there is a family relationship, either by blood or by marriage, in a vertical and/or horizontal lineage of one degree.

2.7. Please note that parties that have a special relationship with one another are referred to as affiliates. A transaction conducted by a taxpayer with an affiliate is referred to as a **controlled transaction**.

2.8. The concept of *de facto* control is evident in the fact that Indonesia also categorises a transaction conducted between unrelated parties wherein the affiliates of one or both parties are involved **as a transaction influenced by a special relationship**.[3] Art. 1 number (7) of MoF Reg. 172/2023 states that transactions influenced by a special relationship include:

(i) controlled transactions; and/or

(ii) transactions conducted between unrelated parties but the affiliates of one or both the parties to the transactions determine the counterparty and the price of the transaction.

2.9. With the interpretation of *de facto* control, a special relationship may be established if one party controls the other party in (i) making decisions or (ii) how to conduct business and activities without the existence of a formal agreement. This implies that an uncontrolled transaction may be deemed as a transaction influenced by a special relationship and bound by the obligation to apply the ALP.

2.10. The determination of special relationships and whether controlled transactions are at arm's length for taxpayers conducting business in the oil and gas mining sector, general mining and other mining as stipulated under Art. 33A paragraph (4) of the ITL is based on the provisions under the profit sharing contract, work contract (*kontrak karya* in Indonesian) or mining concession cooperation agreement that

[3] The term transaction influenced by a special relationship is not a new term in MoF Reg. 172/2023. This term has existed since the entry of force of MoF Reg. 22/2020 and Gov. Reg. No. 55/2022.

is still valid until the expiration of the contract or cooperation agreement in concerned. In the event that the profit sharing contract, work contract or mining concession cooperation agreement does not stipulate the foregoing, the determination of special relationships and whether the taxpayer's controlled transactions are at arm's length are determined pursuant to Art. 18 paragraph (4) and Art. 18 paragraph (3) of the ITL.

B. The Arm's Length Principle

2.11. Taxpayers' transactions influenced by a special relationship must apply the Arm's Length Principle (ALP or *Prinsip Kewajaran dan Kelaziman Usaha*/PKKU in Indonesian). The ALP is applied to determine the arm's length transfer price.[4,5] In its application, the ALP is implemented by comparing the conditions and price indicators of transactions that are influenced by a special relationship to the conditions and price indicators of the same or comparable uncontrolled transaction.

2.12. In other words, this principle stipulates that if the **conditions** in a transaction conducted between related parties **are the same or comparable** to the **conditions** in a transaction conducted between non-related parties constituting the comparable, **the price or profit** in the transaction conducted between related parties **must be equal to or within the range** of the price or profit in the transaction conducted between non-related parties constituting the comparable.

2.13. Please note that the ALP is applied based on actual conditions, at the time the transfer prices are determined and/or the time a

4 A transfer price fulfils the ALP in the event that the value of the transfer price indicator is equal to the value of a comparable uncontrolled transaction price indicator. The price indicator may be in the form of a transaction price, gross profit or net operating profit based on a certain absolute value or a ratio value.

5 The arm's length price or arm's length profit is the price or profit that occurs in a transaction conducted between non-related parties under comparable conditions, or the price or profit set as the price or profit that fulfils the ALP.

transaction influenced by a special relationship occurs and according to the stages of the application of the ALP. The ALP must be applied separately for each type of transaction influenced by a special relationship.

2.14. However, if two or more transactions influenced by a special relationship are interrelated and affect each other in determining transfer prices resulting in the infeasibility to apply the ALP separately, reliably and accurately. Therefore, in such circumstances, the ALP may be applied by aggregating two or more transactions influenced by the special relationship. The following is an example of the application of aggregate testing.

(i) Transactions arising from long-term contracts for the supply of commodities or services;

(ii) Use of the intangible property inherent in the product;

(iii) Pricing of closely related products;

(iv) The company implements a pricing strategy that focuses on a portfolio approach by minimising profits for certain products to maximise profits on other related products, such as the pricing of printers and cartridges.

C. Stages of the Application of the Arm's Length Principle

2.15. The stages of the application of the ALP include several steps. *First*, identifying transactions influenced by a special relationship and affiliates. *Second*, performing industry analysis related to taxpayers' business, including identifying factors that influence business performance in that industry.

2.16. *Third*, identifying commercial and/or financial relationships between taxpayers and affiliates by analysing the conditions of transactions. *Fourth*, performing a comparability analysis. *Fifth*, determining the transfer pricing method. *Sixth*, applying the transfer pricing method and determining arm's length transfer prices.

2.17. In the event that there are transactions influenced by a certain special relationship (hereinafter referred to as specific transactions), the ALP must be applied to such transactions in the preliminary stages and the stages described above. Transactions influenced by a special relationship included in the specific transaction category are:

(i) service transactions;

(ii) transactions related to the use or right to use intangible assets;

(iii) financial transactions related to loans;

(iv) other financial transactions;

(v) asset transfer transactions;

(vi) business restructuring; and

(vii) Cost Contribution Arrangement (CCA).

2.18. Some of the specific transactions above are transactions that receive special attention because they may be used as tools for aggressive tax planning and thus constitute one of the indications of a mode of taxpayer non-compliance. If a taxpayer conducts a specific transaction with a related counterparty, pursuant to SE-15/2018 and SE-50/2013, the taxpayer is included as a target for tax audit with an indication of transfer pricing risk. Further discussion can be seen in Chapter 5.

C.1 Identification of Transactions

2.19. In the first stage, taxpayers identify transactions that are influenced by a special relationship and affiliates. In this stage, the taxpayer conducts activities to identify:

(i) transactions influenced by a special relationship conducted by a taxpayer;

(ii) parties involved in transactions influenced by a special relationship referred to in number (i); and

(iii) the forms of the relationships, i.e., special relationships due to ownership or capital participation, control or family relationship by blood or marriage.

C.2 Industry Analysis

2.20. In the second stage, taxpayers conduct an industry analysis. In this analysis, taxpayers identify the following factors.

(i) The type of products in the form of goods or services;

(ii) Industry and market characteristics, such as market growth, market segmentation, market cycle, technology, market size, market prospects, supply chain and value chain;

(iii) Competitors and level of business competition;

(iv) The level of efficiency and superiority of the taxpayer's location;

(v) Economic circumstances that affect business performance in the industry, such as inflation rates, economic growth, interest rates and exchange rates;

(vi) Regulations that affect and/or determine success in the industry; and

(vii) Factors other than the factors referred to in number (i) to number (vi) that affect business performance in the industry.

2.21. The results of the industry analysis are used in identifying differences between the conditions of the tested transactions influenced by the special relationship and the conditions of transactions of potential comparables when the comparability analysis is conducted. To obtain the above-mentioned information, taxpayers may use external sources of information, including industry research reports, annual financial statements of major players in the taxpayer's industry that are available to the public, data from Statistics Indonesia (*Badan Pusat Statistik*/BPS in Indonesian) and other information media available on the internet or databases.

C.3 Identifying the Commercial and/or Financial Relationships

2.22. In the third stage, taxpayers identify the commercial and/or financial relationships between the taxpayers and the affiliates by analysing the conditions of the transaction. The conditions of such a transaction are the following relevant economic characteristics.

(i) Contractual terms

Contractual terms are provisions that are implemented and/or apply to the parties to the transaction according to the actual conditions, either written or unwritten. In assessing and analysing the terms in the contract/agreement, an analysis must be conducted on the level of responsibility, risks and benefits shared between related parties to be compared to the provisions in the contract/agreement entered into by unrelated parties, which include written and unwritten provisions. Pursuant to PER-32/2011, in the event that there is no written document, the contractual relationship between the parties may be determined from the roles/behaviour of the parties or the economic principles, which generally stipulate the relationship between the parties;

(ii) Functions performed, assets used and risks assumed

The functions refer to the activities and/or responsibilities of the parties to the transaction in carrying out business activities. Examples of the main functions carried out by a company include design, processing, assembly, research, development, services, purchasing, distribution, marketing, promotion, transportation, finance and management.

Further, the assets are tangible assets (such as land, buildings or equipment), intangible assets, financial assets and/or non-financial assets that influence value creation, including market access and level of control in Indonesia. Further, the characteristics of the assets, such as useful life, market price and location may also be considered in the analysis.

In addition, the risks are the impact of the condition of uncertainty in achieving business objectives assumed by the parties to the transaction, such as market risk, risk of investment loss and financial risk.

The following are several sources of information that may be used in the functional analysis.

a. Functions can be broadly identified using the taxpayer's organisational chart. Data/information related to the position of the company being assessed in the business group and the supply chain management of the business group can also be considered;
b. List of all employees, job descriptions and authorities of employees involved in economically relevant functions;
c. Audited financial statements;
d. Segmented financial statements (either segmented based on functions or independence of transactions);
e. Global pricing policy document;
f. Intangible asset licensing contracts to identify parties that own intangible assets and identify royalty payments/income to/from related parties.

In performing functional analysis, it is important to identify the taxpayer's contribution to the establishment, development, protection or maintenance of the intangible asset (known as the Development, Enhancement, Maintenance, Protection and Exploitation/DEMPE function). Matters to be considered in identifying the taxpayer's contributions include as follows.[6]

a. There are Research and Development (R&D) expenses or marketing expenses;
b. There is a function related to R&D carried out by the taxpayer;
c. There is a marketing function carried out by the taxpayer;

[6] Contributions by a taxpayer in respect of product success should receive remunerations beyond the performed routine functions. Therefore, the arm's length range of the taxpayer's financial performance should be above the average of similar companies that do not have any contribution to intangible asset.

d. There are R&D risks and/or marketing risks assumed by the taxpayer;
e. There are employees with special qualifications who are employed in the marketing, manufacturing or R&D functions or other functions that determine the success of the taxpayer's products. The employees may be identified through various aspects, such as the employees' experience, educational background, income, performance appraisal and scope of work;
f. The existence of distribution channels and customer lists.

The analysis of the functions performed, assets used and risks assumed (FAR) by each party must be conducted thoroughly, starting from the discovery of ideas to invent products to after-sales service and the derivation of money from sales. After conducting a functional analysis, the conclusion concerning the characteristics of the taxpayer's business may be in the form of toll manufacturing, contract manufacturing, fully-fledged manufacturing, fully-fledged distributor, limited risk distributor, commissionaire, commission agent, service provider or others.[7]

A taxpayer's business characteristics must be determined based on the results of the functional analysis and not only based on the taxpayer's legal form. This is because the taxpayer's legal form may not be the same as the taxpayer's economic substance. For example, based on the deed of incorporation, documents of the Indonesian Investment Coordinating Board (*Badan Koordinasi Penanaman Modal*/BKPM in Indonesian) and company profile, PT. ABC is referred to as a manufacturing company. However, from the results of the functional analysis, it is known that PT. ABC is a manufacturing company with limited functions, thereby, PT.

[7] In practice, as per business developments, a taxpayer's business characteristics may be different from the above-mentioned characteristics. In this case, the taxpayer may determine the business characteristics according to the functional analysis. The remunerations are based on the functions performed, assets used and risks assumed according to the on-field facts and conditions.

ABC's economic substance is manufacturing with limited functions or commonly referred to as contract manufacturing.

Data on the functions, assets and risks of the parties involved in a transaction must be reliable data and this is reflected by the costs borne by each party to the transaction. The validity of supporting data to test the reliability of information on the FAR of the parties involved in the functional analysis transaction must be confirmed accurately and thoroughly because **it will constitute the basis for determining the share of remunerations** or yield from the transaction for the parties to the transaction;

(iii) Characteristics of the products being transacted

Product characteristics are specific characteristics of the transacted goods or services and significantly affect pricing in the open market. Pursuant to PER-43/2010, in assessing and analysing the characteristics of tangible goods, the following must be considered:

a. the physical characteristics of the goods;
b. the quality of the goods;
c. the durability of the goods;
d. the availability level of the goods; and
e. the quantity of goods offered.

Further, in assessing and analysing the characteristics of intangible property, the following must be considered:

a. the type of the transaction;
b. the types of the supplied intangible property;
c. the period and level of protection provided; and
d. the potential benefits that may be obtained from the use of the intangible property.

Moreover, in assessing and analysing the characteristics of services, the following must be considered:

a. the characteristics and types of the services; and
b. the scope of the provision of the services;

(iv) Economic circumstances

The economic circumstances are the economic conditions of the parties to the transaction and the market where the parties transact. The analysis of economic circumstances is necessary to obtain the comparability level in the market in which the parties to the transaction operate.

Pursuant to PER-32/2011, economic circumstances that must be identified to determine the market comparability level include:

a. geographical conditions;
b. market size;
c. the level of competition in the market and the competitive position between sellers and buyers;
d. the availability of substitute goods or services;
e. the level of demand and supply in the market, both as a whole and regionally;
f. the consumers' purchasing power;
g. the characteristics and scope of government regulation in the market;
h. production costs, including land costs, labour expenses and capital; transportation expenses; and market levels;
i. the date and time of the transactions;
j. and so forth; and

(v) Business strategies implemented by the parties to the transaction

Business strategies are strategies implemented by the companies in conducting business in the open market. The assessment and analysis of business strategies must be conducted, among others, by identifying innovations and development of new products, the level of goods/service diversification, level of market penetration and other business policies, which occur in related parties and unrelated parties.

2.23. Indonesian transfer pricing provisions have adopted updates of the OECD *Guidelines* 2017 renewed in 2022. This is evident from the

provisions on the analysis of the conditions of transactions that place contractual provisions as the first relevant economic characteristic.

2.24. The importance of accurate delineation of contractual provisions also constitutes a mandate of Action 8-10 of the BEPS Project. However, if any deviation is found between what is stated in a contract and the actual condition, the application of the ALP continues to prioritise substance over form as a principle in the Income Tax Law in Indonesia.

C.4 Comparability Analysis

2.25. Comparability analysis is an analysis conducted by a taxpayer (or the Directorate General of Taxes (DGT) in the context of tax audits) on the conditions in transactions conducted between the taxpayer and related parties referred to in Subchapter C.3 to be compared with conditions in transactions conducted between non-related parties (uncontrolled transactions) and identification of differences in conditions in the two types of transactions.

2.26. The terms and conditions of transactions between the taxpayer and related parties are the materials to be compared with the terms and conditions of non-related party transactions or to be compared with the terms and conditions of transactions in their business sectors.

2.27. Uncontrolled transactions are the **same** or **comparable** to the tested transactions influenced by a special relationship insofar as:

(i) the conditions of uncontrolled transactions are the **same** or **similar** to the conditions of the tested transactions influenced by a special relationship;

(ii) the conditions of uncontrolled transactions are **different** from the conditions of the tested transactions influenced by a special relationship, **but the differences in the conditions do not affect pricing**; or

(iii) the conditions of uncontrolled transactions are **different** from the conditions of the tested transactions influenced by a special

relationship **and the differences in the conditions affect pricing, but reasonably accurate adjustments may be performed** adequately to the uncontrolled transactions to eliminate the material impact of the differences in the conditions on pricing.

2.28. In summary, based on the definition of S-153/PJ.04/2010, **comparability** refers to a situation in which the conditions of related party transactions do not have a material difference in the determination of transaction results, compared to the conditions of uncontrolled transactions that will be determined as the comparables or if there is a material difference, the difference may be adjusted (eliminated).

2.29. Further, the comparability analysis is performed through the following stages.

(i) Understanding the characteristics of the tested transactions that are influenced by a special relationship based on the results of the identification of commercial and/or financial relationships between taxpayers and affiliates and determining the business characteristics of each party to the transaction;

(ii) Identifying the existence of uncontrolled transactions that constitute potential reliable comparables;

(iii) Determining the party whose price indicator is tested if the method used is a profit-based method according to the use of the transfer pricing method;

(iv) Identifying differences in conditions between the tested transactions influenced by a special relationship and potential comparables;

(v) Performing reasonably accurate adjustments to potential comparables to eliminate the material impact of differences in conditions on price indicators of the transactions; and

(vi) Determining the uncontrolled transactions constituting the selected comparables.

2.30. Specifically, pursuant to PER-43/2010, in conducting the comparability analysis for transactions on the utilisation and transfer of intangible assets, the following matters must be considered.

(i) geographical limitations in the utilisation of the right to intangible assets;

(ii) the exclusivity of the transferred right; and

(iii) the existence of the right of the party acquiring the intangible assets to participate in the development of the assets concerned.

2.31. If there are differences in conditions between transactions influenced by a special relationship and uncontrolled transactions that materially affect the price of goods/services or gross/net profit, comparability may be increased (hereinafter referred to as comparability adjustments). The objective of the comparability adjustments is to eliminate the material effect. The comparability may be increased by, among others, as follows.

(i) Searching Criteria and Manual Selection

To produce reliable comparables, data searches in commercial databases must apply the right searching strategies/searching criteria, including:

a. industry code that complies with the tested party;
b. region;
c. availability of data;
d. financial statement indicators.

After searching data through certain searching strategies, data on one or more companies that will be used as comparables will be obtained. However, the data obtained from commercial databases only constitutes potential comparables. For the selected potential comparables, manual review/manual screening is mandatory, thereby, it may be decided whether the potential comparables are used (reliable) or rejected.

Manual selection is carried out by studying the profile of each company constituting a potential comparable, browsing its

website, searching for information related to these potential comparables in print or online media or other methods. The manual selection may be carried out quantitatively and qualitatively.

The criteria for rejecting potential comparables include the following.

a. There is information that the potential comparables perform different functions than the taxpayer being tested (for example, the tested party is a manufacturer, whereas the potential comparables are distributors).
b. There is information that the potential comparables are companies engaged in industries that are extremely different from the tested party's industry.
c. There is other information that results in these potential comparables being unreliable to be used as comparables.

(ii) Use of Multiple Year Data

To determine whether transactions influenced by a special relationship is at arm's length, the year-to-year comparison may be distorted due to material differences in economic circumstances or market conditions as well as other conditions of the company.

The testing of whether a transaction is at arm's length requires an examination of multiple year data on transactions influenced by a special relationship or uncontrolled transactions. As such, differences arising due to several factors, such as the product cycle or business cycle may be addressed and will result in more reliable comparability.

In other words, multiple-year data analysis may improve the process of selecting potential comparables, for example by identifying comparables that have significant differences from the tested party. In some cases, this will lead to the rejection of the potential comparable or the detection of an anomaly of the potential comparable. Please note that the use of multiple-year data in the comparability analysis does not imply that the

determination of the arm's length price or profit uses the average performance of the multiple-year data.

(iii) Comparability Adjustments

Comparability adjustments are performed if there are differences in circumstances that materially affect the conditions (price or profit) between transactions influenced by a special relationship and uncontrolled transactions. Comparability adjustments may be in the form of adjustments to differences in contractual terms (delivery and payment terms) and so forth. If reasonably accurate adjustments cannot be performed, the testing of the ALP on transaction influenced by a special relationship should be conducted using another transfer pricing method that is most appropriate for the facts and conditions.

(iv) Transaction by Transaction (Segregate) or Aggregated Transaction Approach

In certain conditions, the testing of aggregate transactions influenced by a special relationship is more appropriate to apply. This is due to closely linked or continuous transactions influenced by a special relationship. See an example of the application of aggregate testing in paragraph 2.14 of Subchapter B. The Arm's Length Principle.

2.32. Please note that the accuracy and reliability of the results of the comparability analysis will affect the quality and reliability of the search and determination of comparable uncontrolled transactions.

C.4.1 Tested Party

2.33. The determination of the tested party only if the transfer pricing method used is **the resale price method, cost-plus method** or **transactional net margin method**. In applying these methods, the taxpayer must first determine the tested party. See Subchapter C.5 Selecting the Transfer Pricing Method in this chapter and Chapter 3 Transfer Pricing Methods for further discussion of transfer pricing methods.

2.34. The party whose transfer price indicator is tested is the party in transactions influenced by a special relationship which has less complex functions, assets and risks by considering (i) the application of the transfer pricing method and (ii) the availability of the most reliable and usable data. Thus, pursuant to SE-50/2013, the following are matters to be taken into account in the selection of the tested party.

(i) The tested party is generally a party with less complex functions, for example, a party that does not have unique/valuable intangible property;

(ii) If the tested party is overseas, the reliability of the information related to the tested party must be ensured, for example by requesting data/information on financial statements or other data that may be requested by the DGT. This is because the data/information may be requested by the DGT by performing an exchange of information with the competent authority in the country concerned;

(iii) In the event that the DGT cannot confirm the reliability and adequacy of information from the overseas tested affiliate, the DGT (tax auditors) may choose taxpayers or other affiliates as the tested party.

C.4.2 Internal Comparables and External Comparables

2.35. Comparables may be in the form of internal comparables or external comparables. Internal comparables are transactions between:

(i) independent parties and taxpayers; or

(ii) independent parties and affiliates constituting counterparties.

2.36. Several matters that need to be ensured in identifying reliable internal comparables include the following.

(i) Ensuring that the internal comparables are not transactions performed solely to justify that the transactions influenced by a special relationship are at arm's length;

(ii) Ensuring that the internal comparable is an uncontrolled transaction performed in normal business activities;

(iii) Ensuring comparability between transactions influenced by a special relationship and internal comparables considering five comparability factors (see paragraph 2.22).

2.37. Further, external comparables are uncontrolled transactions other than internal comparables. In other words, external comparable data is the data on the arm's length price or arm's length profit in comparable transactions conducted by other taxpayers with non-related parties.

2.38. External comparables that may be used whether the transactions influenced by a special relationship are at arm's length may be in the form of:

(i) the market price of commodity products or the prices of similar goods/services traded by independent parties, for example, gold metal, silver metal, Crude Palm Oil (CPO), coal and other commodity products;

(ii) London Interbank Offered Rate (LIBOR)[8], Singapore Interbank Offered Rate (SIBOR), Jakarta Interbank Offered Rate (JIBOR) and others;

[8] The interest rate offered by LIBOR is calculated by the British Bankers' Association (BBA) based on the average daily interest rate. However, since a controversy in 2012 that reduced the reliability of LIBOR as a global reference related to financial transactions, LIBOR has been discontinued. Since then, various authorities and stakeholders at the global level and various other key institutions have developed a reference that has been referred to as the Alternative Risk-Free Rate (ARR). The transition from LIBOR to ARR will pose significant obstacles to financial transactions, including controlled transactions, specifically, loan agreements that use floating interest rates with LIBOR's benchmark interest rate. It is not impossible that taxpayers need to amend ongoing intragroup financial agreements to adapt to this situation. Issues related to the challenges in facing the LIBOR transition for Indonesia are further discussed in Romi Irawan and Muhammad Putrawal Utama, "Death of Libor and Impact on TP: Indonesian Perspective," *International Tax Review*, Internet, can be accessed via

(iii) commercial databases.

2.39. To obtain reliable external comparables, it is necessary to ensure the comparability between transactions influenced by a special relationship and external comparables by considering five comparability factors (see paragraph 2.22).

2.40. In the event that the taxpayer does not conduct transactions with independent parties (there is no internal comparable), which implies that the potential comparable to be selected is an external comparable, the comparability analysis is only conducted on transactions influenced by a special relationship (one-side analysis) by examining the parties involved in the transactions influenced by a special relationship, as the basis for concluding (i) the characteristics and economic substance of the parties involved in the transactions influenced by a special relationship and (ii) determining the search criteria for the potential external comparables.

2.41. In the event that internal comparables and external comparables with the same level of comparability and reliability are available, the internal comparables are selected and used as comparables.[9] However, in the event that the use of an internal comparable leads to unreliable results of the application of the transfer pricing method, external comparables may be used even though it is known that there are internal comparables.

2.42. Further, in the event that more than one external comparable is available with the same level of comparability and reliability, external

https://www.internationaltaxreview.com/article/2a6abhsoozg3247t8xn9c/death-of-libor-and-impact-on-tp-indonesian-perspective.

9 Pursuant to S-153/PJ.04/2010, the background to the policy of preference for the use of internal comparables include (i) the reliability of data to conduct a comparability analysis, thereby, the determination of differences in conditions is more reliable because all data details for the two transactions being compared are in the taxpayer's bookkeeping resulting in the absence of obstacles in conducting verification, including technical accounting problems due to differences in accounting standards and (ii) the availability and accuracy of data to eliminate differences in conditions concluded from the results of the comparability analysis.

comparables from the same country or jurisdiction as the tested parties are selected and used as comparables. Moreover, pursuant to PER-32/2011, in the event that the available internal comparable data is incidental, the internal comparable data may only be used in an incidental transaction between the taxpayer and related parties.

C.5 Selecting the Transfer Pricing Method

2.43. Further, the fifth stage, i.e., the selection of the transfer pricing method. The following are transfer pricing methods that may be used in the stages of the application of the ALP.

(i) The comparable uncontrolled price method;

(ii) The resale price method;

(iii) The cost-plus method; or

(iv) Other methods, such as:

a. the profit split method;
b. the transactional net margin method;
c. the comparable uncontrolled transaction method;
d. the tangible asset and/or intangible asset valuation method; or
e. the business valuation method.

2.44. The above-mentioned methods are selected based on the accuracy and reliability of each method, assessed based on the following aspects.

(i) The appropriateness of the transfer pricing method with the characteristics of the tested transactions influenced by a special relationship and the business characteristics of the parties to the transaction;

(ii) The advantages and disadvantages of each method that may be applied;

(iii) The availability of uncontrolled transactions constituting reliable comparables;

(iv) The level of comparability between the transactions influenced by a special relationship and uncontrolled transactions constituting comparables; and

(v) The accuracy of the adjustments performed if there are differences in the conditions between transactions influenced by a special relationship and uncontrolled transactions constituting comparables.

2.45. Lastly, in the sixth stage of the application of the ALP, the taxpayers apply the transfer pricing method and determine the arm's length transfer prices. A more detailed discussion of the sixth stage can be seen in Chapter 3 Transfer Pricing Methods.

2.46. In the implementation stage of the ALP, the taxpayer is required to document the steps, reviews and results of the reviews in conducting comparability analysis and determining comparables, use of internal comparable data and/or external comparable data as well as retain books of accounts, the basis for the records or documents pursuant to applicable provisions. Further discussion on transfer pricing documentation can be seen in Chapter 4.

D. Preliminary Stages

2.47. Pursuant to Art. 4 paragraph (5) of MoF Reg. 172/2023, the ALP for specific transactions must be applied using preliminary stages. Details of the types of specific transactions listed in the article have been mentioned in paragraph 2.17. Further, the following are the preliminary stages for each type of specific transaction.

2.48. ***First*, service transactions**. PER-22/2013 and PER-32/2011 state that intragroup service transactions need a benefit test. Pursuant to both regulations, the service benefit test consists of two main steps, namely.

(i) Are the services actually rendered and do they provide economic or commercial benefits; and

(ii) Is the value of the services consistent with the ALP.

2.49. Pursuant to PER-43/2010, in the event that a transaction of services is conducted jointly between a taxpayer and a related party and the transaction of services supplied to each party cannot be identified, the costs of the services must be allocated based on the benefits received by each party. The criteria used to allocate the costs of the services are deemed adequate in the event that measurable and reliable criteria are applied based on:

(i) the characteristics of the services, the conditions when the services are supplied and the obtained benefits; or

(ii) other criteria related to transactions not conducted by unrelated parties.

2.50. Moreover, the transfer pricing analysis of intragroup service transactions in Indonesia also emphasises the benefit test which includes a detailed description of the benefits of the services and a historical overview of the company's performance since using the services.

2.51. The preliminary stage for a service transaction includes evidencing that the services:

(i) have actually been supplied by the service provider and received by the service recipient;

(ii) are required by the service recipient;

(iii) provide economic benefits to the service recipient;

(iv) do not constitute shareholder activities;

(v) do not constitute activities that provide benefits to a party solely because the party is part of a business group (passive association);

(vi) are not the duplication of activities that have been carried out by the taxpayers themselves;

(vii) do not constitute services that provide incidental benefits; and

(viii) in the case of on-call services, do not constitute services that may be received immediately from an independent party without a prior on-call contract.

2.52. The expenses related to service transactions that do not fulfil the evidencing that the services do not constitute shareholder activities referred to in number (iv) of paragraph 2.51, in the form of:

(i) service expenses related to the administration of the parent entity, such as expenses related to the parent entity's shareholder meetings, service expenses related to the issuance of the parent entity's shares, service expenses related to the listing of the parent entity's shares on the stock exchange and service expenses related to the parent entity's management;

(ii) service expenses related to the parent entity's reporting obligations, including financial statement preparation service expenses, audit report preparation service expenses and parent entity consolidated financial statement preparation service expenses;

(iii) service expenses related to the acquisition of funds or capital used for the acquisition of ownership by the parent entity;

(iv) service expenses related to the parent entity's compliance with applicable statutory provisions;

(v) service expenses related to the protection of the parent entity's capital ownership in subsidiary companies; and

(vi) service expenses related to the overall governance of the business group.

2.53. ***Second*, transactions related to the use or right to use intangible assets.**[10] The preliminary stage for transactions related to the use or right to use intangible assets includes proof of:

[10] Intangible assets are assets that generally have a long useful life and have no physical form and have a use in the company's operations and not intended for resale, such as patents, copyrights or trademarks.

(i) the existence of intangible assets, i.e., the transaction of utilisation or transfer of intangible assets actually occurs;

(ii) types of intangible assets, i.e., intangible assets in connection with trade intangibles[11] and/or marketing intangibles[12];

(iii) the value of intangible assets

a. the value of the transfer of intangible assets between related parties is the same as the value of the transfer of intangible assets conducted between unrelated parties with comparable conditions; or

b. the utilisation transaction of intangible assets between related parties has the same value as the utilisation transaction of intangible assets conducted between unrelated parties with comparable conditions;

(iv) the parties that legally own intangible assets;

(v) parties that economically own intangible assets;

(vi) the use or the right to use intangible assets;

(vii) the parties that contribute and develop, enhance, maintain, protect and exploit (DEMPE) the intangible assets; and

(viii) the economic (or commercial) benefits obtained by the parties that use intangible assets.

2.54. Similar to other types of transactions, the analysis related to intangible asset transactions must consider all existing relevant facts and circumstances and the pricing must reflect the options that are realistically available from the relevant members of the business group. The aspect that needs to be taken into account is that in evidencing the value and benefits created from the use or right to use intangible assets, it is necessary to view from **the perspectives of the licensor and the**

11 Trade intangibles generally occur through risky and expensive research and development activities, thereby, the owner/developer seeks to compensate for such expenses through the sale of goods, licensing agreements or service contracts.

12 Marketing intangibles include, among others, trademarks or trade names that contribute to enhance the marketing of goods and services, customer lists and distribution channels.

licensee. This is because one of transfer pricing issues is the issue of existence and benefit testing. The entire process and analysis conducted in a transaction must be well documented.

2.55. The following are matters that need to be considered in identifying the use or existence of intangible assets.

(i) The company obtains a higher level of profitability than the average of a similar industry.

(ii) The existence of intangible assets is not determined by whether or not the intangible assets are recorded in the balance sheet. For example: Expenses in respect of research, development and marketing of a product are frequently not capitalised but are charged to expense as incurred. This causes the expenses to not appear on the balance sheet as an asset.

(iii) The existence of intangible assets is not determined by whether or not there is legal protection either. For example: Intangible assets related to the production process in the form of patents are usually registered, whereas know-how is usually not registered because the company that owns the know-how believes that the information must be kept confidential.

2.56. The following are the types of intangible assets and the steps to identify its existence.

(i) Manufacturing intangibles

Manufacturing intangibles are generally created through risky and costly R&D, thereby, the developer seeks compensation for expenses related to these activities and seeks profit through the sale of goods, licensing agreements or service contracts. Intangible asset developers may carry out R&D on their own behalf, on behalf of one or more business group members:

a. based on a service contract, in their own name and one or more business group members;

b. based on an agreement whereby the members involved in the joint activity will become the economic owners of the manufacturing intangibles.

Further, the following are steps to identify the existence of manufacturing intangibles.

a. Examining contracts, such as licensing contracts or sales contracts of intangible assets;
b. Reviewing the functional analysis table related to the manufacturing function and used intangible asset;
c. Checking the company's organisation chart in respect of the manufacturing function, key personnel and the job description of the key personnel;
d. Conducting site visits and interviews with factory managers and manufacturing engineers to ensure whether know-hows or patents are used in the factory and the economic benefits of these know-hows or patents;
e. Identifying the existence of unique production equipment or modifications to the existing production equipment that improve quality or reduce production costs;
f. Identifying changes in plant design that reduce production costs;
g. Acquiring the list of patents and interviewing employees in the R&D department (or key persons related to patents) to sort out used and unused patents and sort out patents that have value and those that have no value;
h. Interviewing employees in the R&D department to determine the company's market power generated by each patent;
i. Please note that in the event of tax audits, if necessary, tax auditors may seek a professional opinion regarding the value of the patent for the taxpayer.

(ii) Marketing intangibles

Marketing intangibles include but are not limited to, trademarks or trade names that contribute to enhance the marketing of goods and services, customer lists, distribution channels, unique names, symbols or images with important promotional value for the products concerned.

The value of marketing intangibles depends on several factors, including the reputation and credibility of the brand or trade name, the level of quality control and ongoing research, the distribution and availability of marketed goods and services, the success of promotional expenses and so forth.

The following are steps to be undertaken to identify the existence of marketing intangibles.

a. Examining licensing-related contracts;
b. Reviewing the functional analysis table in respect of the marketing function and used intangible asset;
c. Checking the company's organisational chart in respect of the marketing function, key personnel and the job description of the key personnel;
d. Interviewing marketing/sales personnel to identify reasons for the product's success in the market;
e. Identifying the existence of a series of activities that render value to transactions. For example: Strategic planning in the marketing field, advertising activities that result in a long-term impact on a product and so forth;
f. Identifying the existence of successful distribution channels that render it easier for consumers to buy these products and/or services;
g. Please note that in the event of tax audits, if necessary, tax auditors may seek a professional opinion regarding the reasons for the taxpayer's product's success in the market.

2.57. ***Third*, financial transactions related to loans**.[13] The preliminary stages for financial transactions related to loans include the evidencing that the loans:

(i) are according to the substance and actual circumstances;

[13] Intra-group loans are loans given by one party in a business group to another member. In intra-group loan transactions, the compensation given may generally be in the form of an interest rate or guarantee fee in the event that the loan is guaranteed by a group company charged to the borrower.

(ii) are required by the borrower;

(iii) are used to derive, collect and maintain income pursuant to statutory provisions in the field of income tax;

(iv) fulfil the characteristics of loans, at the minimum in the form of:

a. the creditor (or lender) economically and legally recognises the loan;

b. there is a loan maturity date;

c. there is an obligation to settle the principal amount of the loan;

d. there is payment according to the payment schedule that has been determined both for the principal amount of the loan and yield;

e. when the loan is obtained, the borrower is able to:

- obtain a loan from an independent creditor; and
- settle the principal amount of the loan and loan yield as an independent debtor;

f. based on a loan agreement prepared pursuant to applicable statutory provisions;

g. there are legal consequences if the borrower fails to return the principal amount of the loan and/or yield; and

h. there is the right to collect for the lender as in independent creditors; and

(v) provide economic benefits to the borrower.

2.58. ***Fourth*, other financial transactions**. The preliminary stages for other financial transactions include evidencing:

(i) the appropriateness of other financial transactions with the substance and the actual conditions;

(ii) other types of financial transactions;

(iii) economic and legal recognition by the parties conducting other financial transactions;

(iv) motives, objectives and the economic rationale for other financial transactions; and

(v) expected benefits from other financial transactions.

2.59. ***Fifth*, asset transfer transactions**. The preliminary stages for asset transfer transactions include evidencing:

(i) motives, objectives and the economic rationale for asset transfer transactions;

(ii) the appropriateness of the transfer of assets with the substance and the actual conditions;

(iii) expected benefits from the transfer of assets; and

(iv) the transfer of the assets is the best option among various other options realistically available.

2.60. ***Sixth*, business restructuring**. The preliminary stages for business restructuring include evidencing:

(i) motives, objectives and the economic rationale for the business restructuring;

(ii) the appropriateness of the business restructuring with the substance and the actual conditions;

(iii) expected benefits from the business restructuring; and

(iv) the business restructuring is the best option among various other options realistically available.

2.61. ***Seventh*, Cost Contribution Arrangement (CCA)**. The provisions related to CCA are stated in Art. 17A of PER-32/2011, i.e., the CCA is an agreement entered into by related parties to share the risks of developing, producing or acquiring assets, services or rights, and to determine the functions and roles of the parties in the agreement of the assets, services or rights. The parties in the CCA are entitled to the benefits of the CCA implementation as effective owners.

2.62. PER-32/2011 elucidates that in the event of a CCA scheme, the cost contribution between the related parties must be the same compared to the cost contribution in the arrangement entered into between unrelated parties. A preliminary stage is required for CCA

participants to prove that CCA activities have indeed occurred and are deemed to have fulfilled the ALP.

2.63. The preliminary stage for CCA includes evidencing that the CCA:

(i) is entered into as per the agreement between independent parties;

(ii) is required by the parties entering into the agreement; and

(iii) provides economic benefits to the parties entering into the agreement.

2.64. In general, in the preliminary stages, taxpayers conducting the above-mentioned specific transactions must first prove the benefits in the form of an increase in sales, reduction of expenses, protection of the commercial positions or the fulfilment of the needs of other commercial activities, including activities to derive, collect and maintain income. If the taxpayers cannot prove the benefits of specific transactions based on the preliminary stages, the transactions are considered not to fulfil the ALP. In addition, the taxpayers' transactions may be subject to a re-assessment and adjustments by the DGT.

E. The Application of the ALP to Resident Taxpayers that Fulfil the Provisions as Permanent Establishments

2.65. If a resident taxpayer conducting transactions influenced by a special relationship fulfils the provisions as Permanent Establishment (PE or *Bentuk Usaha Tetap*/BUT in Indonesian) as stipulated under statutory provisions on the determination of PE, the resident taxpayer is also determined to be PE.

2.66. The PE must submit all data and/or information related to the transactions conducted by affiliates overseas that are related to the business or activities of the PE.

2.67. All data and/or information related to transactions conducted by affiliates overseas shall be submitted pursuant to statutory

provisions in the field of taxation. The data and/or information is subsequently used to determine the transaction value of the PE.

2.68. In the event that the PE does not fulfil the above provisions, the transaction value is determined by applying the ALP. The tax rights and obligations that have been fulfilled by the resident taxpayer are taken into account in the fulfilment of the tax rights and obligations of the PE. The tax obligations of the PE are fulfilled pursuant to statutory provisions in the field of taxation.

CHAPTER 3
TRANSFER PRICING METHODS

A. Overview

3.1. Selecting the most appropriate transfer pricing method is one of the stages of the implementation of the Arm's Length Principle (ALP or *Prinsip Kewajaran dan Kelaziman Usaha*/PKKU in Indonesian).[1] In selecting the most appropriate method, taxpayers are required to select based on the accuracy and reliability of each method, among others assessed based on the **appropriateness of the transfer pricing method** with **the characteristics of the tested transactions** influenced by a special relationship and **the business characteristics** of the parties to the transaction.[2]

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1 Under Indonesian provisions, before selecting **the most appropriate transfer pricing method**, through S-153/PJ.04/2010 and PER-43/2010, the transfer pricing method is selected using a **hierarchical** method, namely selecting the transfer pricing method starting from the Comparable Uncontrolled Price (CUP) method to the profit split method or the transactional net margin method. This implies that if the steps to select the method have been conducted and the CUP method cannot be applied, there is an option to use the method based on gross profit. In this case, it is not allowed to select the method immediately based on the net operating profit. Thus, there is a hierarchy in the selection of the transfer price indicator, starting from the price, next, the gross profit and finally, net operating profit. However, since the release of PER-32/2011, the use of the hierarchy method has changed to the selection of the most appropriate transfer pricing method.

2 Please note that the appropriateness of the transfer pricing method with the characteristics of the tested transactions influenced by a special relationship and the business characteristics of the parties to the transaction is not the sole assessment in selecting the most appropriate transfer pricing method. Selecting the most appropriate transfer pricing method requires also taking into account to the application of each method as explained in Subchapter B.

3.2. In this regard, the appropriateness of the characteristics of each method with the characteristics of the tested transactions influenced by a special relationship and the business characteristics of the parties to the transaction will be reviewed. *First*, the **Comparable Uncontrolled Price (CUP) method**. The CUP method is appropriate for the characteristics of transactions influenced by a special relationship as follows:

(i) commodity product transactions; and

(ii) transactions of goods or services with the same or similar characteristics of goods or services as the characteristics of goods or services in uncontrolled transactions in comparable conditions.

3.3. In principle, the CUP method is appropriate for the characteristics of the conditions of transactions conducted between related parties and non-related parties that are identical or have a high level of comparability or may be accurately adjusted to eliminate the effect of differences in conditions that arise.

3.4. *Second*, the **Resale Price Method (RPM)**. The RPM is appropriate for the characteristics of transactions influenced by a special relationship and business characteristics of the parties to the transaction, as follows:

(i) the transactions influenced by a special relationship are conducted by involving distributors or resellers that resell goods or services to independent parties or affiliates at prices that fulfil the ALP;[3] and

The Application of Transfer Pricing Methods and the Determination of the Arm's Length Transfer Price in this chapter.

[3] Please note that the appropriateness of the RPM selection also requires taking into account several matters described in paragraphs 3.14 and 3.15 in this chapter. One of the main matters is related to the consistency of accounting standards. When testing transactions influenced by a special relationship using the RPM, the taxpayer needs to ensure the comparability of the cost bases.

(ii) the distributors or resellers do not assume significant business risks, do not have unique and valuable contributions to the transactions influenced by a special relationship or do not provide significant added value to the transacted goods or services.

3.5. *Third*, the **Cost Plus Method (CPM)**. The CPM is appropriate for the characteristics of transactions influenced by a special relationship and business characteristics of the parties to the transaction, as follows:

(i) the transactions influenced by a special relationship are conducted by involving manufacturers or service providers that purchase raw materials and/or other production factors from independent parties or affiliates at prices that fulfil the ALP;[4] and

(ii) the manufacturers or service providers do not assume significant business risks and do not have unique and valuable contributions to the transactions influenced by a special relationship.

3.6. PER-43/2010 as amended by PER-32/2011 also describe the appropriate conditions in implementing the CPM, including:

(i) semi-finished goods are sold to related parties; or

(ii) there is a joint facility agreement or a long-term buy and supply agreement between the related parties.

3.7. *Fourth*, the **Profit Split Method (PSM)**. The PSM is appropriate for the characteristics of transactions influenced by a special relationship and business characteristics of the parties to the transaction, as follows:

(i) the transactions influenced by a special relationship are conducted by parties that have unique and valuable contributions to the transactions influenced by a special relationship;

[4] Please note that the appropriateness of the CPM selection also requires taking into account several matters described in paragraphs 3.16 and 3.17 in this chapter. One of the main matters is related to the consistency of accounting standards. When testing transactions influenced by a special relationship using the CPM, the taxpayer needs to ensure the comparability of the cost bases.

(ii) the businesses of the parties to the transaction are highly integrated, thereby, the contributions of each party to the transaction cannot be analysed separately; and

(iii) the parties to the transaction share the assumption of economically significant risks or separately assume closely related risks.

3.8. *Fifth*, the **Transactional Net Margin Method (TNMM)**. The TNMM may be selected insofar as no comparable at reliable and comparable levels of price and gross profit are available and is appropriate for the characteristics of transactions influenced by a special relationship and business characteristics of the parties to the transaction, as follows:

(i) the transactions influenced by a special relationship are conducted by one of the parties or the parties that do not have any unique and valuable contribution to the transactions influenced by a special relationship;

(ii) the businesses of the parties to the transaction are non-highly integrated; and

(iii) the parties to the transaction do not share the assumptions of economically significant risks or do not separately assume closely related risks.

3.9. *Sixth*, the **Comparable Uncontrolled Transaction (CUT) method**. The CUT method is appropriate for characteristics of transactions influenced by a special relationship that are commercially valued on a certain basis, in the form of interest rates, discounts, fees, commissions and the percentage of the royalty from sales or operating profits.

3.10. *Seventh*, **tangible asset and/or intangible asset valuation methods**. These methods are appropriate for characteristics of transactions influenced by a special relationship in the form of:

(i) transfer transactions of tangible assets and/or intangible assets;

(ii) rental transactions of tangible assets;

(iii) transactions in connection with the use or right to use intangible assets;

(iv) transfer transactions of financial assets;

(v) transfer transactions of rights in connection with the exploitation of mining areas and/or other similar rights; and

(vi) transfer transactions of rights in connection with the cultivation of plantation, forestry and/or other similar rights.

3.11. *Eighth*, **business valuation method**. Business valuation method is appropriate for characteristics of transactions influenced by a special relationship in the form of:

(i) transactions in connection with business restructuring, including the transfer of functions, assets and/or risks between affiliates;

(ii) transfer transactions of assets other than cash to companies, partnerships and other entities in lieu of shares or capital participation (*inbreng*); and

(iii) transfer transactions of assets other than cash to shareholders, partners or members of companies, partnerships or other entities.

3.12. In the event that the CUP/CUT method and other methods can be used and have equivalent reliability, the CUP/CUT method is preferred over other methods. Further, if RPM, CPM, PSM and TNMM can be used and have equivalent reliability, the RPM/CPM is preferred over the PSM and TNMM. However, when selecting a transfer pricing method, one must continue to take into account the accuracy and reliability of each method, which fulfils several aspects, as mentioned in paragraph 2.44.

3.13. Please note that the term unique and valuable contributions of the transfer pricing method are contributions that:

(i) are more significant than the contributions by independent parties under comparable conditions; and

(ii) constitute the main source of actual or potential economic benefits in the business.

B. The Application of Transfer Pricing Methods and the Determination of the Arm's Length Transfer Price

3.14. This section will describe how to apply the transfer pricing method to determine the arm's length transfer price.

3.15. *First*, the CUP method is implemented by comparing **prices** (goods or services) between the tested transactions influenced by a special relationship and uncontrolled transactions. The CUP method is applied to transactions of sales or purchase of goods/services in the following steps.

(i) Conducting the Comparability Analysis

Before prices are compared, the comparability between transactions influenced by a special relationship and uncontrolled transactions must first be ensured. The following is an explanation of the comparability factors that must be considered in testing transactions influenced by a special relationship using the CUP method.

a. The characteristics of goods and services

In conducting a comparability analysis, it should be understood that minor differences in the characteristics of goods and services may have a material influence on the price of goods and services. Therefore, the comparability of goods or services constitutes an important factor to be considered in the CUP method compared to the application of other transfer pricing methods.

b. Functional analysis

In addition to the characteristics of goods and services, the comparability of Functions, Assets and Risks (FAR) between transactions influenced by a special relationship and uncontrolled transactions also has a material influence on the price of goods and services. In general, significant differences in FAR reflect differences in the expected return.

For example: When transacting with a parent company that owns the intangible assets, PT A functions as a contract manufacturing that does not assume the market risk, while when transacting with an independent party, PT A functions as fully-fledged manufacturing that assumes the market risk. In this case, there are differences in FAR and expected returns between transactions influenced by a special relationship and uncontrolled transactions that materially affect the price of goods.

c. In addition to product characteristics and functional analysis, differences in contract terms, business strategies and economic conditions also constitute important comparability factors to consider in the application of the CUP method.

After a comparability analysis is conducted, the price of goods or services in transactions influenced by a special relationship with the price of goods or services in uncontrolled transactions may be compared.

(ii) Comparability Adjustments

Comparability adjustments are conducted if there are differences in conditions between transactions influenced by a special relationship and uncontrolled transactions that materially affect the price of goods and services. The purpose of comparability adjustments is to eliminate the material effect.

The comparability in the CUP method is increased by performing accurate adjustments to the differences in conditions between transactions influenced by a special relationship and uncontrolled transactions. Some examples of differences in conditions that may be subject to accurate adjustments are the terms of delivery for the goods and payment terms.

Having adjusted the difference in conditions between transactions influenced by a special relationship and uncontrolled transactions, the taxpayer needs to ensure that the adjustments performed are accurate adjustments. If accurate adjustments cannot be performed, the taxpayer needs to choose another

transfer pricing method that is more appropriate for the facts and conditions.

3.16. *Second*, the RPM is implemented by subtracting the arm's length **gross profit** of the distributor or reseller from the resale price. This implies that the RPM is a transfer pricing method that determines the purchase price of goods and services from related parties by subtracting the gross profit of a comparable independent party from the resale price of these goods and services to independent parties.

ALP = Resale Price – (Uncontrolled Gross Margin X Resale Price)

3.17. The RPM is applied to the purchase of goods transactions in the following steps.

(i) Performing Comparability Analysis

In applying the RPM, the comparability factors between transactions influenced by a special relationship and uncontrolled transactions must be considered, including.

a. Characteristics of Goods and Services

In the application of the RPM, differences in characteristics of products generally do not have a material effect on gross margin. For example: A toaster distribution company and blender distribution company have comparable FAR, thus, the two distribution companies should have comparable gross margins on the sales of the said toasters and blenders.
In the application of the RPM, although differences in goods and services may be tolerated, the comparability of the characteristics of products must still be considered. Significant differences in characteristics of products tend to indicate differences in FAR that have a material effect on gross margin.

b. Functional Analysis

For the RPM, the comparability of FAR between transactions influenced by a special relationship and uncontrolled transactions is more emphasised than the comparability of the characteristics of products/services. Transactions influenced by a special relationship and uncontrolled

transactions may be deemed non-comparable if there are significant differences in FAR. Generally, significant differences in FAR reflect differences in the expected return.

c. Consistency of Accounting Standards

Another important issue in the application of the RPM is the consistency of accounting standards between transactions influenced by a special relationship and uncontrolled transactions. Among the consistency of accounting standards that need to be considered is the uniformity of cost classification.

d. Significant Added Value of Products

In general, this method will be more appropriate if the reseller does not add significant value to the products being sold.

e. Intangible Assets that May Be Generated

If a distributor conducts extensive marketing activities (for example, the establishment of distribution channels or substantial promotional/advertising expenses), it can be said that the distributor is likely to have become the economic owner of the intangible asset (economic ownership) related to the extensive marketing activities. In general, this method will be more appropriate for distributors that do not conduct extensive marketing activities.

f. Existence of Exclusive Rights

If the distributor acquires the exclusive rights to sell goods, this may affect the gross margin level. This exclusive right is influenced by several things, such as the size of the area and the presence of competitors. In general, this method will be more appropriate for distributors that do not have exclusive rights.

g. Other Comparability Factors

Differences in contractual terms, business strategies and economic conditions are also important comparability factors in the application of the RPM.

(ii) Comparability Adjustments

Comparability adjustments are conducted if there are differences in conditions between transactions influenced by a special relationship and uncontrolled transactions that materially affect the gross margin. The purpose of comparability adjustments is to eliminate the material effect on the gross margin.

Comparability may be increased by performing reasonably accurate adjustments, using multiple-year data, aggregating transactions and performing manual search and selection criteria. If it is difficult to perform reasonable accurate adjustments, taxpayers need to consider other transfer pricing methods that are more appropriate to the facts and conditions.

3.18. *Third*, the CPM is implemented by adding the arm's length **gross profit** for the manufacturer or service provider to the cost of goods or services sold. This CPM is a transfer pricing method that adds the gross profit from a comparable uncontrolled transaction to the costs incurred in a transactions influenced by a special relationship.

ALP = Costs + (Uncontrolled Gross Mark-Up x Costs)

3.19. The CPM method is applied to sales or purchases of goods/services transactions in the following steps.

(i) Performing the Comparability Analysis

In the application of the CPM, comparability factors between transactions influenced by a special relationship and uncontrolled transactions must be taken into account, including the following.

a. Characteristics of Goods and Services

In the CPM, differences in the characteristics of goods and services generally do not have a material effect on the gross mark-up. For example: A toaster manufacturing company and an iron manufacturing company have comparable FAR, thereby, the two manufacturing companies should have comparable gross mark-up levels. Toaster manufacturing and iron manufacturing are compared with the assumption that there is no reliable comparable of toaster manufacturers.

Although differences in goods or services may be tolerated, the comparison of the characteristics of products and services between transactions influenced by a special relationship and uncontrolled transactions must still be considered. Significant differences in the characteristics of products and services tend to indicate differences in FAR that have a material effect on the gross mark-up.

b. Functional Analysis

For the CPM, the comparability of FAR between transactions influenced by a special relationship and uncontrolled transactions is more emphasised than the comparability of the characteristics of goods and services.

c. Consistency of Accounting Standards

Another important issue in using the CPM is that the compared gross mark-up is related to the cost base, thereby, when testing transactions influenced by a special relationship using the CPM, the taxpayer needs to ensure the comparability of the cost base. In respect of the cost base, the consistency of the cost structure is an important aspect. There may be differences in accounting treatment in each country and even between companies within the same country.

d. Other Comparability Factors

Differences in contractual terms, business strategies and economic conditions are also important comparability factors in the application of the CPM.

(ii) Comparability Adjustments

Comparability adjustments are conducted if there are differences in conditions between transactions influenced by a special relationship and uncontrolled transactions that materially affect the gross mark-up.

3.20. *Fourth*, the PSM is implemented by splitting the relevant **consolidated profit** of the transaction based on FAR and/or contributions of the parties in transactions influenced by a special relationship. The profit split uses an economically acceptable basis that provides an estimate of the profit split that will occur and will be reflected in the agreement between non-related parties.

3.21. The consolidated profit in the PSM may be split at the level of gross profit or net operating profit. The level of the split consolidated profit is determined by the the level of integration of functions, use of assets and/or sharing of economically significant business risks of the parties to the transaction in transactions influenced by a special relationship. The consolidated profit may be split using:

(i) contribution analysis; or

(ii) residual analysis.

3.22. In its implementation, the **contribution** analysis is conducted by splitting the consolidated profit based on splitting factors. The **residual** analysis is conducted by splitting the consolidated profit into:

(i) the profit from the contribution of each party to the transaction whose comparables may be reliably obtained in uncontrolled transactions; and

(ii) the residual consolidated profit after deducted by the profit referred to in number (i), which may be positive or negative. The residual consolidated profit is split based on splitting factors. The splitting factors may be in the form of:

   a. the percentage of profit sharing by parties in comparable uncontrolled transactions; or

   b. the relative value or percentage of the contribution of the parties to the transaction in transactions influenced by a special relationship if the data referred to in letter (a) is not available.

   The splitting factors referred to above must also fulfil the following criteria.

   a. Free from transactions influenced by a special relationship;

   b. Verifiable; and

   c. Supported by comparable data or internal data of the parties to the transaction and/or other relevant data.

3.23. *Fifth*, the TNMM is implemented by comparing the level of **net operating profit** of the tested party with the level of net operating profit of the comparables. In this case, the TNMM is a transfer pricing

method that uses a comparable uncontrolled transaction profit level indicator to determine net profit from transactions influenced by a special relationship.

3.24. The TNMM is applied to the purchase/sale of tangible goods transactions in the following steps:

(i) Selecting the Most Appropriate Profit Level Indicator (PLI) in Accordance with the Facts and Conditions

PLI is shown in the form of a comparison between net profit and sales, total costs, assets, etc. The denominator used in the TNMM is determined by considering the company's profit driver and the independence of the denominator used. Another factor to consider in selecting PLI is the type of business and the availability of data. Service providers, manufacturers and the like generally use net profit compared to total costs as PLI. Distribution activities, on the other hand, generally use net profit compared to sales.

The ratios commonly used as PLI are net margin, net mark-up and Return on Assets (ROA).

a. Net Margin

Net margin is calculated using the following formula:

$$Net\ Margin = \left(\frac{Net\ Operating\ Profit}{Sales}\right) \times 100\%$$

b. Net Mark-up

Net mark-up is calculated using the following formula:

$$Net\ Mark-up = \left(\frac{Net\ Operating\ Profit}{COGS + Operating\ Expenses}\right) \times 100\%$$

c. Return on Asset (ROA)

ROA is calculated using the following formula:

$$ROA = \left(\frac{Net\ Operating\ Profit}{Total\ Operating\ Assets}\right) \times 100\%$$

$$ROA = \left(\frac{Net\ Operating\ Profit}{Total\ Assets - Non - operating\ Assets, incl.\ Cash}\right) \times 100\%$$

Total operating assets include operating fixed assets (including land, buildings, plants and equipment), intangible assets used in the business (such as patents or know-how) and working capital assets (such as inventories and accounts receivable less accounts payable). Investments and cash are not included in operating assets, except for companies engaged in the financial industry.

See Subchapter D. Profit Level Indicator for other financial ratios.

(ii) Comparability Adjustments

Comparability in the TNMM is increased by, among others:

a. manual search and selection criteria;
b. use of multiple-year data;
c. transaction by transaction (segregated) or aggregated transaction approach.

See Chapter 2 The Arm's Length Principle for more detailed discussion on efforts to comparability adjustments.

3.25. *Sixth*, the CUT method is implemented by comparing the price or profit of a transaction **on a certain basis** between transactions influenced by a special relationship and uncontrolled transactions.

3.26. *Seventh*, valuation methods with transfer of assets approach and business transfer approach. **Valuation methods for tax purposes** are stipulated under MoF Reg. 79/2023.

3.27. Pursuant to MoF Reg. 172/2023, valuation methods are the approriate method for transfer of assets (tangible or intangible) and business restructuring transactions. In particular, business restructuring is referred to as a transfer of functions, risks and assets, where business valuation approaches are considered more approriate.

3.28. The regulations are, however, silent whether business restructuring transactions are only limited to cross-border transactions or not. Considering that in domestic transactions, there is no transfer of profit potential (on going concern) to another jurisdiction when functions, risks and assets are transferred out from a company. In other words, there is no foregone future income in domestic transactions.

3.29. On the other hand, business valuation is defined in further detail in the Director General of Taxes Circular Letter Number SE-54/2016 as amended by SE-05/2020. In the circular letter, business valuation refers to a valuation of **the transfer of the "on going concern"**, including business ownership interest as well as transactions and activities that have an impact on the value of the company.

C. The Determination of the Arm's Length Transfer Price

3.30. A transfer price fulfils the ALP in that the value of the transfer price indicator is equal to the value of the price indicator of a comparable uncontrolled transaction. The value of this uncontrolled transaction price indicator can be in the form of the following two aspects.

(i) Arm's length point

An arm's length point is a price indicator point established from one or more comparables with the same price indicator value; or

(ii) Arm's length range

An arm's length range is a price indicator range established from two or more comparables with different price indicator values, in the form of:

a. the minimum value up to the maximum value (full range) if established by two comparables; or
b. the values of quartile one to quartile three (interquartile range) if established by three or more comparables.

3.31. The price indicator value of uncontrolled transactions is established based on single-year or multiple-year comparable data

insofar as it can increase comparability. The single-year or multiple-year comparable data is **data that is available and closest to the time of the transfer price setting and/or the occurrence of transactions influenced by a special relationship**.

3.32. In the event that transfer prices do not fulfil the ALP, the transfer prices are determined as in the pricing in uncontrolled transactions using:

(i) arm's length point;

(ii) the most appropriate point in the arm's length range according to the comparability; or

(iii) the median in the arm's length range in the event that the most appropriate point cannot be determined as referred to in number (ii).

3.33. Further, when the results of the application of the ALP by a taxpayer are out of the arm's length range, the taxpayer is allowed to explain non-financial events, occurrences or facts that affect pricing or profit levels in the local file. Further discussions of the local file can be found in Chapter 4 Transfer Pricing Documentation.

D. Profit Level Indicator

3.34. As aforementioned, the RPM is implemented by subtracting the arm's length **gross profit** of the distributor or reseller from the resale price. Further, the CPM is implemented by adding the arm's length **gross profit** for the manufacturer or service provider to the cost of goods or services sold.

3.35. Moreover, the TNMM is implemented by comparing the level of **net operating profit** of the tested party with the level of net operating profit of the comparables. Pursuant to PER-22/2013, the following are several financial ratios at the gross or operating profit level that may be used as the basis for the comparables to determine whether a taxpayer's business is at arm's length.

(i) Gross Margin

$$Gross\ Margin = \frac{Gross\ Profit}{Sales}$$

(ii) Gross Mark-up

$$Gross\ Mark-up = \frac{Gross\ Profit}{Cost\ of\ Goods\ Sold\ (COGS)}$$

(iii) Return on Sales (ROS)

$$ROS = \frac{Net\ Operating\ Profit}{Sales}$$

(iv) Return on Total Cost (ROTC)

$$ROTC = \frac{Net\ Operating\ Profit}{COGS + Operating\ Expenses}$$

(v) Return on Assets (ROA)

$$ROA = \frac{Net\ Operating\ Profit}{Total\ Operating\ Assets}$$

(vi) Return on Capital Employed (ROCE)

$$ROCE = \frac{Net\ Operating\ Profit}{Assets - Current\ Liabilities}$$

(vii) Berry Ratio

$$Berry\ Ratio = \frac{Gross\ Profit}{Operating\ Expenses}$$

(viii) Debt-to-Equity Ratio (DER)

$$DER = \frac{Debt}{Equity}$$

(ix) Research and Development (R&D) Expenses to Sales Ratio

$$R\&D\ Expenses\ to\ Sales = \frac{R\&D\ Expenses}{Sales}$$

(x) Marketing Expense to Sales Ratio

$$Marketing\ Expenses\ to\ Sales = \frac{Marketing\ Expenses}{Sales}$$

3.36. As a key note, the denominator used in the PLI is determined by considering the company's profit driver and the independence of the denominator used. Another factor to consider in selecting PLI is the type of business and the availability of data.

CHAPTER 4
TRANSFER PRICING DOCUMENTATION

A. Overview

4.1. Transfer pricing documentation refers to documents prepared by taxpayers that contain data and/or information to support that the transactions conducted with related parties conform with the Arm's Length Principle (ALP or *Prinsip Kewajaran dan Kelaziman Usaha*/PKKU in Indonesian). Under Indonesian statutory tax provisions, provisions on the preparation of transfer pricing documentation have been stipulated since the issuance of Gov. Reg. No. 80/2007 which constitutes an implementing regulation of the General Provisions and Tax Procedures Law (GPTP Law). Gov. Reg. No. 80/2007 stipulates the procedures for the exercise of tax rights and fulfilment of tax obligations.

4.2. Pursuant to Art. 28 of the GPTP Law, corporate taxpayers in Indonesia are required to maintain bookkeeping or recording. Books of accounts, records and documents constituting the basis for bookkeeping or recording and **other documents,** including the results of data processing from bookkeeping managed electronically or through an online application program must be retained for ten years in Indonesia, i.e., at the place of activity or residence of individual taxpayers or at the domicile of corporate taxpayers.

4.3. Further, pursuant to Art. 16 paragraph (2) of Gov. Reg. No. 80/2007, in the event that a taxpayer conducts transactions with parties related to the taxpayer, the obligation to retain **other documents** include additional documents and/or information to support that the transaction conducted with the related parties comply with the ALP.

Gov. Reg. No. 80/2007 also states that further provisions on the types of the aforementioned additional documents and/or information and the procedures for their management are stipulated by or based on the minister of finance regulation.

4.4. Since the amendment to Gov. Reg. No. 80/2007 by Gov. Reg. No. 74/2011, until a few years later, no minister of finance regulation further had stipulated these types of additional documents and/or information. The provisions on the preparation of transfer pricing documentation are further stipulated in the Director General of Taxes regulation number PER-43/2010 as amended by PER-32/2011. Art. 18 of the Director General of Taxes regulation states that taxpayers are required to maintain and retain books of account, records and documents constituting the basis for bookkeeping or recording and other documents referred to in Art. 28 of the GPTP Law and implementing regulations thereto.

4.5. Included in the definition of documents are documents constituting the basis for the application of the ALP to transactions with related parties. Pursuant to PER-43/2010 as amended by PER-32/2011, taxpayers may self-determine the types and forms of documents that are adjusted to their business sectors insofar as the documents support the use of the selected arm's length price or arm's length profit method, including segmented financial statements.

4.6. Until finally in 2016, Indonesia issued a minister of finance regulation that specifically stipulates the types of additional documents and/or information that must be submitted in the transfer pricing documentation, namely through MoF Reg. 213/2016. Since the 2016 tax year, Indonesia has adopted a three-tiered transfer pricing documentation obligation, in line with agreed standards in Action 13 of the BEPS Project.

4.7. Transfer pricing documentation consists of a master file, local file and Country-by-Country (CbC) report/CbCR. These three documents must be prepared by the taxpayers that fulfil certain requirements.

4.8. The obligation to prepare transfer pricing documentation and the obligation to apply the ALP must be differentiated. The ALP must be applied to all transactions influenced by a special relationship (there is no threshold), whereas the obligation to prepare transfer pricing documentation has a certain threshold.

4.9. Therefore, for example, a taxpayer conducts controlled transactions (transactions conducted with related parties), but does not fulfil the threshold to prepare transfer pricing documentation, the taxpayer conducting controlled transactions is not required to prepare and retain transfer pricing documentation. The taxpayer, however, remains required to comply with the ALP provisions.

4.10. Further, in the event that the taxpayer does not conduct controlled transactions, but there are transactions influenced by a special relationship, the taxpayer must prepare and retain documentation. Such documentation is one that contains data and/or information to support that the transactions are conducted pursuant to the ALP provisions.

4.11. Please note that at the entry of force of PER-43/2010 as amended by PER-32/2011, the transfer pricing documentation only applies to transactions conducted by resident taxpayers or Permanent Establishments (PEs or *Bentuk Usaha Tetap*/BUT in Indonesian) in Indonesia with non-resident taxpayers overseas.

4.12. In the event that a taxpayer conducts transactions with related parties constituting resident taxpayers or PEs in Indonesia, the obligation to apply the ALP and prepare the transfer pricing documentation pursuant to PER-43/2010 as amended by PER-32/2011 only applies to transactions conducted by the taxpayer with related parties to take advantage of the difference in tax rates caused by, among others:

(i) the imposition of final or non-final income tax on certain business sectors;

(ii) the imposition of Sales Tax on Luxury Goods (STLGs); or

(iii) transactions conducted with contractor taxpayers of oil and gas cooperation contracts.

4.13. However, since the entry of force of MoF Reg. 213/2016 as amended by MoF Reg. 172/2023, the obligation to prepare and retain transfer pricing documentation imposed on taxpayers conducting controlled transactions with certain requirements.

B. Master File and Local File

4.14. The obligation to prepare the master file and local file is imposed on taxpayers conducting controlled transactions with the following requirements.[1]

(i) The annual gross turnover in the preceding tax year within one tax year exceeding IDR50 billion;

(ii) The value of controlled transactions in the preceding tax year in one tax year exceeding IDR20 billion for tangible goods transactions or exceeding IDR5 billion for each supply of services, payment of interest, utilisation of intangible property or other controlled transactions; or

(iii) Affiliates are located in countries or jurisdictions with lower income tax rates (i.e., jurisdictions with a statutory corporate income tax rate lower than 22%).

4.15. Please note that the gross turnover referred to in the transfer pricing documentation threshold is income received and/or accrued from business and other than from business **after** being deducted by sales returns and deductions as well as cash discounts, before being

[1] In the event that taxpayers conduct controlled transactions but are not required to prepare and retain transfer pricing documentation because they do not fulfil the specified threshold, the taxpayers remain required to fulfil the ALP.

deducted by the expenses to derive, collect and maintain income. This provision differs from that listed in MoF Reg. 213/2016.[2]

4.16. Please also note that the above-mentioned thresholds of the gross turnover and the value of controlled transactions are calculated by annualising in the event that the tax year in which gross turnover is accrued and/or the controlled transactions are conducted covers a period of less than twelve months. In addition, the master file and local file must be prepared based on **data and information available at the time the controlled transactions are conducted** (*ex-ante* approach).

4.17. Further, both the master file and local file must be available no later than four months after the end of the taxpayer's fiscal year. However, the regulation does not require the filing of the master file and local file in the annual corporate income tax return.

4.18. Pursuant to Art. 19 of MoF Reg. 172/2023, a summary of these documents in the form of a thick box (*ikhtisar* in Indonesian) must be prepared using a prescribed format and must be attached along with the letter of statement when filing the corporate income tax return for the tax year concerned.[3] The information contained in the summary includes the statement that the taxpayer has prepared the master file and local file that covers the information stipulated under MoF Reg. 172/2023, including the date when such documentation becomes available.

4.19. Transfer pricing documentation that includes the master file and local file must be prepared in the Indonesian language. Taxpayers that have obtained a permit to use English must submit the

[2] Under MoF Reg. 213/2016, gross turnover is the gross amount of income received or accrued in connection with the taxpayer's work, business or main activities **before** being deducted with discounts, rebates and other deductibles.

[3] Pursuant to Art. 18 of MoF Reg. 172/2023, the letter of statement includes information on the time the master file and local file signed by the party providing the transfer pricing documentation is available.

documentation in English and accompanied by the translation in Indonesian.[4]

B.1 Information in the Master File

4.20. The master file must at the minimum contain the following information regarding the business group.

(i) Ownership structure and chart as well as the country or jurisdiction of each member

The structure and ownership chart of the business group and the countries or jurisdictions of each member of the business group contain the following information:

a. the list of shareholders and percentage of shareholding as well as the list of management of each business group member;
b. the ownership chart of the business group indicating the overall shareholding relationship of business group members; and
c. the geographical location (the country or jurisdiction) of each business group member.

(ii) Business activities conducted

The business activities conducted by the business group contain the following information:

a. the list of business group members and business activities of each business group member;
b. the key factors with an important role in determining the profit of each business group member;
c. the explanation and schemes/graphs/diagrams concerning the business chain for five major products and/or services

[4] If the taxpayer has received permission from the Minister of Finance to maintain bookkeeping using a foreign language and a currency other than rupiah, the value of money in rupiah in the threshold of the obligation to prepare transfer pricing documentation is equivalent to the value of the currency other than rupiah based on the exchange rate determined by the Minister of Finance for the calculation of taxes at the end of the tax year.

produced by the business group as well as for other products or services produced by the business group with a value of gross business turnover of 5% or more of the total gross turnover of the business group;

d. the list and explanation of important contracts/agreements between business group members, including the explanation of the capability of each business group member that provides services as well as transfer pricing policies for the allocation of costs in the context of the provision of services as well as pricing that must be paid for the services provided between business group members;

e. the explanation of the geographical location (country or jurisdiction) constituting the main market for the products and/or services produced by the business group;

f. the general explanation of the functional analysis of the business group that includes the analysis of functions, assets and risks conducted by the business group explaining the contribution of each business group member in the value creation; and

g. the explanation of business restructuring, acquisitions and divestments conducted by the business group members for the last five years.

(iii) Intangible assets owned

Intangible assets owned by the business group contain the following information:

a. the explanation of the business group's strategies in the development, ownership and exploitation of intangible assets, including the location of Research and Development (R&D) activities facilities as well as the location of R&D management;

b. the list of intangible assets or groups of intangible assets of the business group that are important for transfer pricing analysis as well as the explanation of business group members that legally own the assets;

c. the list and explanation of the parties within the business group members contributing to the development of intangible assets;

d. the list of contracts/agreements between members of the business group related to intangible assets including Cost Contribution Arrangement (CCA) agreements, R&D service agreements as well as agreements related to the granting of licenses;
e. the explanation of the business group's transfer pricing policy related to R&D activities and intangible assets; and
f. the explanation of the transfer of ownership of intangible assets occurring between business group members in the tax year concerned, including the names of the business group members, the countries or jurisdictions and compensation for the transfer of ownership of intangible assets.

(iv) Financial and financing activities

Financial and financing activities in the business group contain the following information:

a. the explanation of the financing used by the business group, including financing agreements with independent lenders;
b. the identification and explanation of business group members carrying out functions as financial/financing centres for business group members, including information on the countries or jurisdictions where the business group members are incorporated, and where their places of effective management are located; and
c. the explanation of the transfer pricing policies in connection with financing agreements between business group members.

(v) The parent entity’s consolidated financial statements and tax information related to controlled transactions

The parent entity's consolidated financial statements and tax information related to controlled transactions contain the following information:

a. the consolidated financial statements of the business group for the tax year concerned, either those prepared for external or internal purposes; and
b. the list and explanation of the Advance Pricing Agreement (APA) held by business group members and other tax

provisions related to the allocation of income among business group members.

B.2 Information in the Local File

4.21. The local file should at least contain the following information.

(i) Identity and business conducted

The identity and business activities conducted by the taxpayer contain the following information:

a. the explanation of the taxpayer's management structure, organisational chart, information on domestic or foreign parties constituting related parties and the countries or jurisdictions where these parties are located;
b. the detailed explanation of the business, including the operational aspects of business activities and business strategies carried out by the taxpayer, including indications in the event that the taxpayer is involved in or affected by business restructuring or transfer of intangible assets within the business group which are occurring or occurred in the previous year and the explanation of the impact on taxpayers;
c. the detailed description of the business environment, including the list of major competitors.

(ii) The information on controlled transactions and uncontrolled transactions conducted

The information on controlled transactions and uncontrolled transactions conducted by taxpayers contains the following information:

a. the transaction scheme and explanation;
b. the pricing policies implemented for the last five years;
c. the explanation of each transaction and the background to the transactions;
d. the information in the form of a table that should at least contain:
   - the nominal amount of transactions detailed per transaction type and per counterparty;

- the information on counterparties in each type of transaction and the explanation of the taxpayer's relationship with each counterparty;
- the countries or jurisdictions of the counterparties;
- the names of the products;
- the number of units/quantity; and
- the price per unit (the minimum commonly used size); and

e. copies of agreements/contracts related to transactions of significant value.

(iii) The application of the ALP

The application of the ALP contains the following information:

a. transactions influenced by a special relationship conducted by taxpayers, parties involved in transactions influenced by a special relationship and the forms of the special relationship;

b. industry analysis, in the form of:

- details of the types of products in the form of goods or services;
- the explanation of industry and market characteristics, such as market growth, market segmentation, market cycle, technology, market size, market prospects, supply chain and value chain;
- the explanation of competitors and level of business competition;
- the explanation of the level of efficiency and advantages of the taxpayer's location;
- the explanation of economic conditions that affect business performance in the industry, such as inflation rates, economic growth, interest rates and exchange rates;
- the explanation of the regulation that affects and/or determines the success in the industry; and
- the explanation of factors other than above-mentioned that affect business performance in the industry;

c. the analysis of the conditions of transactions in the context of identifying commercial and/or financial relationships between taxpayers and affiliates, in the form of:
   - the explanation of contractual provisions;
   - the explanation of the functions performed, assets used and risks assumed;
   - the explanation of the characteristics of the transacted products;
   - the explanation of the economic condition; and
   - the explanation of the business strategies implemented by the parties to the transaction;

d. the comparability analysis, including:
   - the explanation of the characteristics of transactions influenced by a special relationship that are being tested based on the results of identification of commercial and/or financial relationships between taxpayers and the business characteristics of each party to the transaction;
   - the explanation of uncontrolled transactions constituting reliable potential comparables, including the list and explanation of the selected internal and/or external comparable transactions and a detailed explanation of the criteria used in the search for comparable data and the sources of comparable data information used;
   - the explanation of the party whose price indicators are tested, reason for the selection and the financial ratios or net operating profit level used in the application of the transfer pricing method in the event that the method used is a profit-based method;
   - the explanation of the differences in conditions between the transactions influenced by a special relationship being tested and potential comparables;
   - the explanation of reasonably accurate adjustments to potential comparables to eliminate the material impact of differences in conditions on transaction price indicators; and
   - the explanation of uncontrolled transactions constituting the selected comparables.

e. the explanation of the transfer pricing method selected based on accuracy and reliability for each type of controlled transaction and the reason for selecting the method;
f. the explanation of the application of the transfer pricing method and the arm's length transfer price, including:
   - the explanation of the application of the transfer pricing method based on selected comparables, arm's length point, arm's length range and a point in the arm's length range used as the basis of the transfer price setting;
   - the summary of financial statements used in the application of the transfer pricing method, including segmented financial statements in the event that the taxpayer has more than one business characteristic;
   - the explanation of the reason for using multiple-year analysis if necessary;
   - the explanation of the conclusion that transfer pricing complies or does not comply with the ALP;
g. the explanation of the preliminary stages conducted for transactions influenced by a certain special relationship (specific transactions);
h. a copy of the APA held by other business group members and other tax provisions related to the taxpayer's controlled transactions.

(iv) Financial information

The financial information of the taxpayer contains the following information:

a. the taxpayer's financial statements that have been audited by a public accountant for the tax year related to transfer pricing documentation or the financial statements that have not been audited in the event that the taxpayer's financial statements that have been audited by a public accountant are not yet available;
b. the taxpayer's financial statements segmented based on business characteristics, in the event that the taxpayer has more than one business characteristic;

c. the information and explanation of the use of information in financial statements related to the application of the transfer pricing method; and
d. the summary of relevant financial information of the comparables used in the application of the transfer pricing method and the source of the financial information.

(v) Non-financial events/occurrences/facts that affect pricing or profit levels.

4.22. In the event that a taxpayer has more than one business with different business characteristics, the local file must be presented in a segmented manner according to the characteristics of the businesses.

B.3 Contemporaneous Documentation

4.23. Pursuant to Art. 17 paragraph (1) of MoF Reg. 172/2023, transfer-pricing-related regulations in Indonesia have adopted **an ex-ante approach**. Although the transfer pricing documentation is submitted according to the above-mentioned submission period, the **ALP must be applied at the time of the transfer price setting**.

4.24. Considering the *ex-ante* approach, the application of the ALP in the taxpayer's transfer pricing documentation in Indonesia needs to be **evaluated periodically** during the current year period. The periodic evaluation concerned is from the time of the determination of the arm's length price/profit before the controlled transaction is conducted until the transfer pricing documentation of the controlled transactions is submitted to the tax authority or referred to as **contemporaneous documentation**.

4.25. Transfer pricing documentation is considered 'contemporaneous' if prepared during or before the transaction occurs. For example, the preparation of transfer pricing documentation (for example, for the 2024 tax year) must begin at the same time as or be prepared immediately after the completion of transfer pricing documentation for the 2023 tax year.

4.26. The preparation of transfer pricing documentation is not only for taxpayers conducting cross-border controlled transactions, but also domestic controlled transactions. Transfer pricing documentation for domestic controlled transactions is also necessary considering that certain transactions have the risk of tax avoidance.

4.27. Tax avoidance may occur due to differences in corporate income tax rates between the transacting affiliates, differences in the mechanism for the imposition corporate income tax between transacting affiliates, transactions that contain elements of sales tax on luxury goods or one of the transacting affiliates has carry-forward of loss.

C. Country-by-Country Report

4.28. The obligation to file the Country-by-Country (CbC) report is imposed on taxpayers that fulfil the following criteria.

(i) A resident taxpayer that constitutes the **(ultimate) parent entity** of a business group with a consolidated gross revenue of a minimum of IDR11 trillion in the tax year before the reporting tax year (primary filing mechanism).[5] The resident taxpayer constituting the parent entity referred to in this case is an entity that is:

   a. directly or indirectly owns one or more other members in the business group;

   b. required to prepare consolidated financial statements based on financial accounting standards applicable in Indonesia and/or pursuant to binding statutory provisions on stock exchange issuers in Indonesia; and

[5] Under MoF Reg. 213/2016, the parent entity's consolidated gross turnover threshold is determined based on the consolidated gross turnover **in the relevant tax year**. This is different from the provisions under MoF Reg. 172/2023 where the parent entity's consolidated gross turnover is determined based on the consolidated gross turnover **in the tax year before the reported tax year**.

c. not directly or indirectly owned by another constituent entity in the business group or owned directly or indirectly by another constituent entity, but the other constituent entity is not required to consolidate the financial statements of the said parent entity.

This taxpayer is not allowed to appoint another constituent entity as a surrogate in fulfilling the obligation to submit the CbC report, either in Indonesia or in another country or jurisdiction; **or**

(ii) If a resident taxpayer constituting a constituent entity[6] and the (ultimate) parent entity of a business group is a non-tax resident[7],

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6 A constituent entity is (i) any separate business entity that is a member of a multinational business group and included in the parent entity's consolidated financial statements for financial reporting purposes, (ii) any business entity that is a member of a multinational business group not included in the consolidated financial statements solely due to considerations of business size or materiality and/or (iii) any Permanent Establishment (PE or *Bentuk Usaha Tetap*/BUT in Indonesian) of the business entity referred to in number (i) or number (ii) insofar as such a PE has separate financial statements for financial reporting purposes, implementation of statutory provisions, tax reporting or company management control purpose.

7 The parent entity constituting a non-tax resident referred to in this provision is an entity that:
(i) directly or indirectly owns one or more other members in the multinational business group;
(ii) is required to prepare consolidated financial statements based on financial accounting standards or provisions applicable in the country or jurisdiction where the parent entity is domiciled;
(iii) is not directly or indirectly owned by another constituent entity in a multinational business group or is directly or indirectly owned by another constituent entity, but the other constituent entity is not required to consolidate the financial statements of the said parent entity; and
(iv) has consolidated gross turnover in the tax year before the reporting tax year of a minimum of:
a. equivalent to EUR750 million based on the parent entity's functional currency exchange rate if the country or jurisdiction where the parent entity is domiciled does not require the submission of the CbC report; or
b. amounting to the consolidated gross turnover threshold constituting the basis for the determination of the obligation to

the resident taxpayer must submit the CbC report insofar as the country or jurisdiction where the parent entity is domiciled (secondary filing mechanism):

a. does not require the submission of the CbC report;
b. does not enter into an agreement with the government of Indonesia concerning the exchange of tax information[8]; or
c. enters into an agreement with the government of Indonesia concerning the exchange of tax information, but the CbC report cannot be obtained by the government of Indonesia from that country or jurisdiction.[9] The CbC report cannot be obtained through the automatic exchange of information due to:
    - a postponement in the automatic exchange of the CbC report due to matters other than those stipulated in the Qualifying Competent Authority Agreement (QCAA); or
    - repeated failure to exchange the CbC report automatically with the partner country or jurisdiction.

In the event that the parent entity of a business group which constitutes a non-tax resident has appointed another constituent

submit the CbC report as stipulated in the country or jurisdiction where the parent entity is domiciled.

8 The Director General of Taxes exchanges the CbC report automatically with a partner country or jurisdiction that has a QCAA. The CbC report is exchanged by the competent authority in charge of information exchange. Therefore, the country or jurisdiction where the parent entity is domiciled that does not enter into an agreement with the government of Indonesia concerning the exchange of tax information is the country or jurisdiction where the parent entity is domiciled which enters into an international agreement stipulating the exchange of tax information with the government of Indonesia but does not have a QCAA.

9 In the event of this condition, the resident taxpayers constituting constituent entities and the parent entity of a business group constituting a non-tax resident must submit the CbC report within a period of three months after the announcement of the list of partner countries or jurisdictions whose CbC reports cannot be obtained. In the event that the CbC report is not submitted within a period of three months, the Director General of Taxes through the competent authority in charge of information exchange (the Directorate of International Taxation) is authorised to request the resident taxpayers to submit the CbC report.

entity overseas as a surrogate parent entity, **the resident taxpayer is not required** to submit the CbC report insofar as they fulfil the following provisions:

a. the resident taxpayer notifies the other constituent entity appointed as the surrogate parent entity to the Director General of Taxes; and
b. the country or jurisdiction where the other constituent entity appointed as the surrogate parent entity is domiciled:
   - requires the submission of the CbC report; and
   - have a QCAA and the CbC report may be obtained by the government of Indonesia from the partner country or jurisdiction where the other constituent entity appointed as the surrogate parent entity is domiciled.

The constituent entity appointed as the surrogate parent entity is the only constituent entity appointed to replace the parent entity in submitting the CbC report to the tax authority in the country or jurisdiction where the appointed business group member is domiciled. In the event that more than one resident taxpayer constitutes a constituent entity, the parent entity which constitutes a non-tax resident may appoint one of the constituent entities constituting the resident taxpayers to submit the CbC report to the Directorate General of Taxes (DGT).

4.29. CbC reports must subsequently be prepared based on **data and information available up to the end of the tax year**. Please also note that before preparing the CbC report, the ultimate parent entity must prepare the CbC report working paper in the form of a softcopy with the Extensible Markup Language (XML) extension.

4.30. Further, resident taxpayers in Indonesia constituting members of a business group or conducting controlled transactions included in the CbC report are required to submit the notification to the DGT through an online taxpayer portal platform (DJP Online). The notification submitted online must identify which entities in the group

have a CbC report prepared, including the country where it is submitted.[10]

4.31. In the event that the ultimate parent entity or surrogate parent entity is an Indonesian resident taxpayer, the entity must submit the CbC report and notification to the DGT within twelve months after the end of the taxpayer's fiscal year. In addition, the ultimate parent entity is required to file the CbC working papers along with the aforementioned documents.

4.32. A taxpayer that has submitted the CbC report and the notification will receive a receipt. This receipt may be used as a substitute for the CbC report that must be filed in the annual corporate income tax return.

4.33. In the event of errors in the filing of the CbC report, the taxpayer may submit the amendment of the CbC report by re-submitting the amended CbC report attached with the CbC report working paper via the taxpayer portal platform.

C.1 Information in the Country-by-Country Report

4.34. The CbC report must contain the following information.

(i) The allocation of income, taxes paid and business activities per country or jurisdiction of all members of the business group either domestically and overseas, which includes the names of the countries or jurisdictions, gross income, profit (loss) before tax, income tax that has been withheld, collected or self-paid, income tax payable, capital, accumulated retained earnings, number of

[10] In other words, subsidiary entities constituting tax residents in Indonesia and members of a business group subject to CbC, whether they have controlled transaction or not, are required to report the CbC notification to the DGT. The notification consists of a disclosure on a statement concerning (i) the identification of the resident taxpayer constituting the parent entity, (ii) the identification of the resident taxpayer not constituting the parent entity and (iii) the statement of the obligation to submit the CbC report. See the sample format listed in Appendix letter C of MoF Reg. 172/2023.

permanent employees and tangible assets other than cash and cash equivalents; and

(ii) The list of business group members and main business activities per country or jurisdiction.

4.35. The CbC report containing the information described in number (i) paragraph 4.34 is prepared using the sample format listed in Appendix letter F of MoF Reg. 172/2023. The CbC report containing the information referred to in number (ii) paragraph 4.34 is prepared using the sample format listed in Appendix letter G of MoF Reg. 172/2023.

4.36. Please note that the information in the CbC report referred to in number (i) paragraph 4.34 is used only in the context of assessing the risk of tax avoidance. As such, the information contained in the CbC report cannot be used to adjust the arm's length transfer price.

D. Penalties Related to Transfer Pricing Documentation

4.37. As aforementioned in the previous subchapter, the summary of the local file and master file (*ikhtisar* in Indonesian) must be attached along with the letter of statement when filing the annual corporate income tax return for the tax year concerned. The filing deadline for the summary is the same as the filing deadline for the annual corporate income tax return, i.e., no later than four months after the end of the taxpayer's fiscal year.

4.38. Moreover, in the fulfillment of the obligation of the CbC reporting compliance, a taxpayer that has submitted the CbC report and/or notification will receive an electronic receipt. This receipt is used as a substitute for the CbC report that must be attached to the annual corporate income tax return.

4.39. If the taxpayer does not submit the summary of the master file and local file as well as the receipt for the submission of the CbC report and/or notification in the annual corporate income tax return, **the tax return is deemed incomplete** as stipulated in Art. 3 paragraph (7) subparagraph (b) of the GPTP Law, thereby, **the tax return is deemed**

not filed. The penalty for tax returns that are not filed within the specified period is an administrative penalty in the form of a fine of IDR1,000,000 for the annual corporate income tax return (Art. 7 paragraph (1) of the GPTP Law).

4.40. Further, if a reprimand has been given in writing, but the summary of the master file and local file as well as the receipt of the filing of the CbC report and/or notification as an attachment to the annual corporate income tax return is not filed within the period specified in the reprimand letter, an audit will subsequently be conducted and the DGT may issue a notice of tax underpayment assessment (*Surat Ketetapan Pajak Kurang Bayar*/SKPKB in Indonesian) of Art. 13 paragraph (1) subparagraph (b) of the GPTP Law with a penalty in the form of monthly interest amounting to the reference interest rate and an uplift factor of 20% (maximum 24 months).

4.41. The connection between the master file, local file and CbC report with the completeness of tax return filing may result in additional penalties and consequences if the tax returns are potentially deemed false, including the possibility of criminal charges. However, such occurrences are exceedingly rare in practice.

4.42. Moreover, to supervise compliance and audits, the DGT is authorised to request the master file and the local file from taxpayers. Pursuant to Art. 34 paragraph (2) of MoF Reg. 172/2023, taxpayers must comply with the request from the DGT within a maximum period of one month. If taxpayers are unable to fulfil this obligation, they will be subject to penalties pursuant to statutory provisions in the field of taxation below.

(i) If the DGT requests the transfer pricing documentation, but the taxpayers submit it past the specified period, the DGT tests the ALP *ex officio* and will not consider the transfer pricing documentation. In this case, the transfer pricing documentation submitted by the taxpayers will only be considered as data. Further, the DGT may issue a notice of tax underpayment

assessment pursuant to Art. 13 paragraph (1) subparagraph (a) of the GPTP Law.

(ii) If the DGT requests the transfer pricing documentation, but the taxpayers do not submit the transfer pricing documentation, the taxpayers are deemed to have not fulfilled their obligation to prepare and retain transfer pricing documentation. In this case, the ALP is tested *ex officio* and the DGT may issue a notice of tax underpayment assessment pursuant to Art. 13 paragraph (1) subparagraph (d) of the GPTP Law. This penalty refers to the consequences of taxpayers' non-compliance with their obligation to prepare and retain transfer pricing documentation as part of the obligation to retain other documents referred to in statutory provisions in the field of taxation (Art. 28 of GPTP Law).

4.43. In the event that the master file and the local file are not submitted or submitted not in a timely manner at the time of the audit, the consequence at the objection stage is that the DGT will not admit the transfer pricing documentation as part of evidence in the settlement of the objection process (Art. 26A paragraph (4) of the GPTP Law).

4.44. The new regulation concerning transfer pricing documentation pursuant to MoF Reg. 172/2023 applies to transfer pricing documentation starting in the 2024 tax year. Therefore, transfer pricing documentation prepared before the 2024 tax year continues to comply with the provisions outlined in MoF Reg. 213/2016.

E. Burden of Proof

E.1 The Burden of Proof in Indonesia

4.45. The sharing of the burden of proof in tax disputes in Indonesia is integral to the tax procedure system adopted by Indonesia, namely the self-assessment system. The application of the sharing of the burden of proof in this system is evident in the issuance process of notices of tax assessment. The elucidation of Art. 13 paragraph (1) of Law Number 28 of 2007 concerning the Third Amendment to Law Number 6 of 1983

concerning General Provisions and Tax Procedures (GPTP Law) states that:

> "...**Evidencing** of the description of the calculation used as the basis for the *ex officio* calculation by the Director General of Taxes **is borne by the Taxpayer**... The burden of proof also applies to the assessment issued as referred to in paragraph (1) subparagraph b."
>
> (with added emphasis)

4.46. Pursuant to the provisions on the issuance of notice of tax assessment above, the party that must bear the burden of proof for the incorrectness of the notice issued *ex officio* is the taxpayer. The following are some of the factors that cause the *ex officio* issuance of notice of tax assessment.

(i) If the tax return is not filed within the period referred to in Art. 3 of the GPTP Law as last amended by the HPP Law and after being reprimanded in writing, it is not filed on time as specified in the reprimand letter; or

(ii) If the obligations referred to in Art. 28 or Art. 29 of the GPTP Law as last amended by the HPP Law are not fulfilled, thereby, the amount of tax payable cannot be ascertained.

4.47. The burden of proof that lies with the taxpayer on the notice of tax assessment issued *ex officio* is then reaffirmed in the objection process, i.e., pursuant to Art. 26 paragraph (4) of the GPTP Law as last amended by the HPP Law which regulates as follows.

> "In the event that the Taxpayer files an objection to the notice of tax assessment as referred to in Art. 13 paragraph (1) subparagraph (b) and subparagraph (d), **the Taxpayer concerned must be able to prove the incorrectness of the tax determination**."
>
> (with added emphasis)

4.48. Pursuant to the provisions under Art. 26 paragraph (4) of the GPTP Law as last amended by the HPP Law, it can be concluded that the burden of proof on taxpayers is only limited to the taxes determined *ex officio*. Thus, the burden of proof for the notice of tax assessment issued not *ex officio* lies with the tax authority.

4.49. The mechanisms for sharing the burden of proof at the objection stage may also be continued to the appeal stage. The reason is that the judge's efforts to determine the burden of proof are integral to the procedural system adopted in the tax law. Further, the tax dispute for which an appeal is filed is a continuation of the dispute process at the objection level.

E.2 The Burden of Proof in Transfer Pricing Disputes in Indonesia

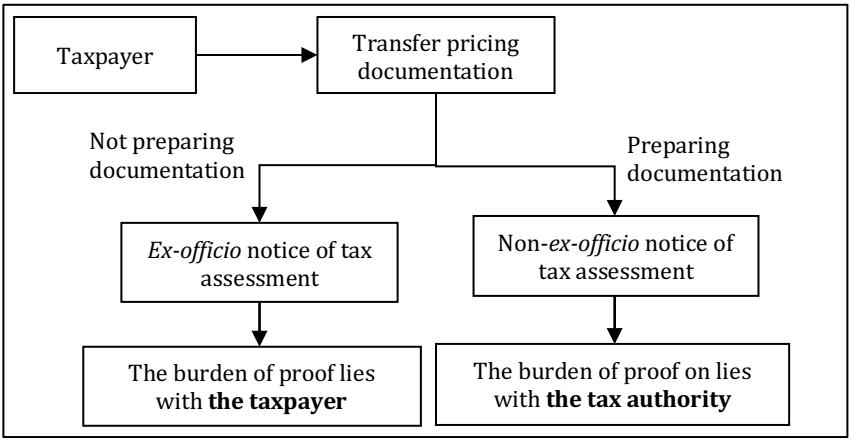
4.50. In thorough considerations of the reasons for the issuance of a notice of tax assessment *ex officio*, the basic aspect that needs to be considered by taxpayers is the taxpayers' obligation to prepare and retain documents constituting the basis for bookkeeping. Indonesian statutory provisions on bookkeeping require taxpayers conducting controlled transactions to prepare additional documents and/or information that support whether controlled transactions are at arm's length.

4.51. The obligation to document the steps, review and results of the review in determining the transfer price has been specifically stipulated under the PER-43/2010 as amended by PER-32/2011. Figure 1 below illustrates the application of the sharing of the burden of proof in the transfer pricing context in Indonesia.

4.52. Based on the illustration in Figure 1, it is evident that transfer pricing documentation is part of bookkeeping which constituting the "dividing line" in the sharing of the burden of proof between taxpayers and tax authority in the transfer pricing context in Indonesia. If the taxpayer is unable to fulfil the obligation to prepare and retain transfer pricing documentation, the taxpayer may be considered not to have

maintained bookkeeping pursuant to the provisions under Art. 28 of the GPTP Law as last amended by the HPP Law.

Figure 1 Illustration of the Sharing of Transfer Pricing Burden of Proof in Indonesia



Source: processed by the Author.

4.53. In this condition, the notice of tax assessment issued is a *ex officio* notice of tax assessment pursuant to the provisions under Art. 13 paragraph (1) subparagraph (d) of the GPTP Law as last amended by the HPP Law. Thus, the taxpayers must bear the burden of proving the correctness of the notice of tax assessment.

4.54. On the other hand, if the taxpayer has fulfilled the obligation to prepare and retain transfer pricing documentation, but the tax authority rejects to the arm's length price or profit of the controlled transactions conducted by the taxpayers, the tax authority should issue a notice of tax assessment not *ex officio*. This provision is as interpreted from Art. 12 paragraph (3) of the GPTP Law as last amended by the HPP Law. Thus, the burden of proving the correctness of the notice of tax assessment lies with the tax authority.

4.55. In the derivative regulation that specifically discusses transfer pricing provisions in Indonesia, Art. 20 paragraph (2) of PER-43/2010

as amended by Art. 20 paragraph (3) of PER-32/2011 emphasises that the existence of **transfer pricing documentation must first be considered** by the DGT before performing transfer pricing adjustments.

4.56. Further, pursuant to Art. 20 paragraph (3) of PER-43/2010 as amended by Art. 20 paragraph (4) of PER-32/2011, **if the taxpayer is unable to provide** an adequate explanation and/or show supporting documents for the application of the ALP, the **DGT is authorised to**[11] **determine** the arm's length price or profit based on data or other documents. The determination is based on the method of determining the arm's length price or profit deemed appropriate by the DGT as per the authority pursuant to Art. 13 paragraph (1) of the GPTP Law as last amended by the HPP Law.

4.57. This implies that if the DGT wishes to perform transfer pricing adjustments based on its analysis, the DGT **must first test** (in the form of a rebuttal) the results of the analysis as well as the relevant information **submitted by the taxpayer in the taxpayer's transfer pricing documentation**. If based on the transfer pricing analysis conducted by the taxpayer, non-conformity with the ALP after testing can be proven, the DGT is entitled to prepare its own transfer pricing analysis. Thus, the sharing of the burden of proof in the transfer pricing context in Indonesia receives special attention beyond the sharing of the burden of proof in general tax disputes, as described above.

11 Pursuant to Art. 20 paragraph (1) and paragraph (2) of PER-32/2011, the DGT is authorised to perform transfer pricing adjustments, but this authority is not exercised if the taxpayer has fulfilled the principles of the ALP in transactions conducted with related parties. This provision is also re-affirmed under Art. 36 paragraph (5) of MoF Reg. 172/2023.

CHAPTER 5
TRANSFER PRICING AUDITS AND ADJUSTMENTS

A. Transfer Pricing Audit Guidelines

5.1. The rapid growth of multinational companies is followed by the rising number of intra-group transactions of multinational companies (transactions between related parties/controlled transactions). Related taxpayers frequently use transfer pricing instruments in carrying out tax avoidance measures, namely determining the transfer price of controlled transactions with motives, including tax minimisation, capital repatriation, currency difference risks, window dressing of the parent company's financial statements and other business reasons.

5.2. Given that controlled transactions can be used as a tool to avoid taxes, Indonesia has established Specific Anti-Avoidance Rule (SAAR) to prevent tax avoidance that may arise due to related party transactions. Under these anti-tax avoidance provisions, when a taxpayer determines the transfer price of controlled transactions, the taxpayer must apply the Arm's Length Principle (ALP or *Prinsip Kewajaran dan Kelaziman Usaha*/PKKU in Indonesian).[1]

[1] Please note that since the release of MoF Reg. 22/2020 as amended by Mof Reg. 172/2023 and Gov. Reg. 55/2022, the obligation to implement the ALP applies to taxpayers conducting transactions influenced by a special relationship. This implies that the application of ALP is not only limited to controlled transactions, but also to transactions conducted between non-related parties (independent parties), but the affiliates of one or both parties to the transaction is involved in determining the counterparty and the transaction price. Therefore, in the writing of this book, the term transactions influenced by a special relationship

5.3. The ALP stipulates that if the conditions in a transaction conducted between related parties are the same or comparable to the conditions in a transaction conducted between non-related parties that is used as a comparable, the price or profit in the transaction conducted between related parties must be the same as or within the range of the price or profit in the transaction conducted between non-related used as the comparable.

5.4. Further, to prevent tax avoidance in related party transactions , the Directorate General of Taxes (DGT) is authorised to test the application of the ALP to such transactions . The DGT's authority to test the application of the ALP in related party transactions is stated in Art. 18 paragraph (3) of the Income Tax Law (ITL) as last amended by the Law No. 7/2021 (HPP Law),[2] as follows.

> "**The Director General of Taxes is authorised to re-determine** the amount of income and deductible expenses and determine debt as equity to calculate the amount of Taxable Income **for Taxpayers related to other Taxpayers** according to the arm's length principle not influenced by a special relationship using the comparable uncontrolled price method, the resale price method, the cost-plus method or other methods."
>
> (with added emphasis)

5.5. The elucidation of Art. 18 paragraph (3) of the ITL as last amended by the HPP Law states that:

> "**This provision is intended to prevent tax avoidance,** which may occur **due to special relationships.** In the event of a special relationship, there may be under-filed income or

is used. However, in several contexts, in the event of excerpts from regulations, the author continues to use the terms written in the regulations.

[2] Similarly, Art. 2 paragraph (1) of the Value Added Tax Law (VAT Law) states that in the event that the selling price or reimbursement is influenced by a special relationship, the selling price or reimbursement is calculated based on the fair market price at the time the Taxable Goods (*Barang Kena Pajak*/BKP in Indonesian) or Taxable Services (*Jasa Kena Pajak*/JKP in Indonesian) are transferred.

> overcharging of expenses. In such a case, the Director General of Taxes is authorised to re-determine the amount of income and/or deductible expenses according to the circumstance if there were no special relationship between the Taxpayers."
>
> (with added emphasis)

5.6. These provisions are further regulated under Art. 20 of PER-43/2010 as amended by PER 32/2011. In addition, after the issuance of HPP Law, these provisions are further regulated under Art. 32 paragraph (2) subparagraph (b) of Gov. Reg. 55/2022 and Art. 36 paragraph (1) of MoF Reg. 172/2023 that the DGT is authorised to re-determine the amount of income and/or deductible expenses to calculate the amount of taxable income by testing taxpayer compliance in applying the ALP.[3]

5.7. To **ensure quality audits** in exercising the above authority, the DGT has prepared technical guidelines for auditing related taxpayers. These technical guidelines are technical guidelines for audits that can be used by tax auditors in auditing related taxpayers. The technical guidelines for audits are stipulated under PER-22/2013 and SE-50/2013. General matters related to audits refer to PER-23/2013 concerning audit standards.

5.8. Thus, pursuant to PER-22/2013 and SE-50/2013, before the DGT conducts the ALP test on the determination of the taxpayer's transfer price, the DGT first needs to ensure the following matters.[4]

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[3] Pursuant to MoF Reg. 172/2023, the testing of taxpayer compliance in applying the ALP includes:
(i) the testing of compliance with the provisions on the preparing of transfer pricing documentation; and
(ii) the application of the ALP by tracing the correctness of the transfer pricing documentation compared to the actual circumstances of the taxpayer.
If the taxpayer is not required to prepare transfer pricing documentation, the DGT tests the application of the ALP by tracing the actual circumstances of the taxpayer.

[4] The discussion of each stage of confirmation is further reviewed in the next subchapter.

(i) There are transactions between parties influenced by a special relationship;

(ii) There is a risk of tax avoidance in the transactions. See the discussion on the risk of tax avoidance analysis in Subchapter A.3;

(iii) Transactions between parties influenced by a special relationship conducted by the taxpayer fulfil one of the following four conditions:

a. the taxpayer is known not to apply the ALP;
b. the taxpayer applies the ALP, but not in accordance with the provisions;
c. the taxpayer cannot prove certain transactions influenced by a special relationship based on the preliminary stages; or
d. the transfer prices determined by the taxpayers do not fulfil the ALP.

5.9. In the event that it can be proven that (i) there are transactions influenced by a special relationship, (ii) there is a risk of tax avoidance carried out by the taxpayer through the transfer pricing scheme and (iii) one of the four conditions above is fulfilled, the DGT is authorised to re-determine the amount of income and deductible expenses as well as determine debt as equity to calculate the amount of taxable income for a taxpayer related to other taxpayers according to the ALP that is not influenced by a special relationship. The transfer price according to the ALP is re-determined by the DGT is a form of primary adjustment. However, if one of the confirmation stages above is not fulfilled, the authority does not need to be exercised.

5.10. Further, when the DGT re-determines the amount of income and/or deductible expenses to calculate the amount of taxable income or the taxpayer applies the ALP in the exercise of rights and fulfilment of obligations in the field of taxation related to transactions influenced by a special relationship, a discrepancy is found between the value of the transactions influenced by a special relationship that do not comply with the ALP and transactions influenced by a special relationship that

comply with the ALP, the discrepancy between these value is deemed as an indirect distribution of profits to affiliates treated as dividends.

5.11. The indirect distribution of profits to affiliates treated as dividends is referred to as a secondary adjustment. The secondary adjustment applies to all transactions in the form of cross-border or domestic transactions and all forms of special relationships, notwithstanding whether the affiliate constituting the counterparty constitutes a shareholder or not. See Subchapter C. Primary, Secondary and Corresponding Adjustment for further elaboration of the secondary adjustment.

5.12. Moreover, if (i) the transfer price set by the DGT through audits or (ii) adjustments to the determination of the transfer price by the tax authorities of the tax treaty partner for non-tax residents results in double taxation, the resident taxpayer constituting the counterparty may perform the corresponding adjustment. Corresponding adjustment is an adjustment to transfer pricing materials in the calculation of the taxable income of a resident taxpayer constituting the counterparty:

(i) the resident taxpayer subject to the determination of the transfer price by the DGT (domestic corresponding adjustment); or

(ii) the non-tax resident subject to transfer pricing adjustment by the tax authorities of the tax treaty partner (cross-border corresponding adjustment).

A.1 Transactions Influenced by a Special Relationship

5.13. Please note that before conducting the ALP test, the main issue that must be examined by the DGT (tax auditors) pertains to the examination of the status of the special relationship. This is because the amount of income or deductible expenses pursuant to Art. 18 paragraph (3) of the ITL as amended by the HPP Law may only be re-calculated for transactions between parties influenced by a special relationship (Art. 32 of Gov. Reg. 55/2022).

5.14. Pursuant to Art. 1 number (7) of MoF Reg. 172/2023, transactions influenced by a special relationship are transactions that include controlled transactions and/or non-related party transactions but the affiliates of one or both parties to the transaction determines the counterparty and the transaction price.

A.2 Anti-Tax Avoidance Provisions

5.15. As stated in Chapter 1 History of Transfer Pricing Regulations in Indonesia, pursuant to Law No. 7/1983 and the latest amendment, i.e., Law No. 7/2021 (HPP Law), transfer pricing provisions are intended to prevent tax avoidance. Indonesia has established Specific Anti-Avoidance Rule (SAAR) to prevent tax avoidance that may occur due to transactions between related taxpayers since 1983. However, in terms of the writing, there are differences between Law No. 7/1983 and its amendment in Law No. 10/1994.

5.16. Under Law No. 7/1983, the transfer pricing provisions are intended to prevent tax evasion. However, pursuant to Law No. 10/1994, the transfer pricing provisions are intended to prevent tax avoidance. This is evident that in the past, the terms tax evasion and tax avoidance did not have a clear definition to distinguish between the two, thereby, they were interpreted the same at that time, namely intended to prevent tax avoidance.

5.17. Art. 18 paragraph (2) of Law No. 7/1983 concerning Income Tax states that:

> "(2) The Director General of Taxes is authorised to re-determine the amount of income and/or deductible expenses and determine debt as equity to calculate the amount of Taxable Income for a Taxpayer related to other Taxpayers."

5.18. Elucidation of Art. 18 paragraph (2) of Law No. 7/1983 affirms that this provision is intended to prevent tax evasion.

> "**This provision is intended to prevent tax evasion**, which may occur due to special relationships. In the event of a special relationship, there may be under-filed income or overcharging

> of expenses if transactions between the parties concerned occur."
>
> (with added emphasis)

5.19. Pursuant to Art. 18 paragraph (3) of Law No. 10/1994 concerning the amendment to Law No. 7/1983 concerning Income Tax as amended by Law No. 7/1991.

> "(3) The Director General of Taxes is authorised to re-determine the amount of income and deductible expenses as well as determine debt as equity to calculate the amount of Taxable Income for a Taxpayer related to other Taxpayers according to the arm's length principle not influenced by a special relationship."

5.20. Elucidation of Art. 18 paragraph (3) of Law No. 10/1994 further emphasises that this provision is intended to prevent tax avoidance.

> "**This provision is intended to prevent tax avoidance,** which may occur due to special relationships. In the event of a special relationship, there may be under-filed income or overcharging of expenses. In such a case, the Director General of Taxes is authorised to re-determine the amount of income and/or deductible expenses according to the circumstances if there is no special relationship between the Taxpayers."
>
> (with added emphasis)

5.21. Further, through the HPP Law, the provisions on SAAR in Indonesia, including transfer pricing provisions, are increasingly emphasised. This statement is evident in the elucidation of Art. 18 of ITL as last amended by the HPP Law that states:

> **"The government is authorised to prevent tax avoidance** practices as an effort by a Taxpayer to reduce, avoid or postpone the payment of taxes that should be payable which contradict the purpose and objective of statutory provisions in the field of taxation. One of the methods to avoid taxes is to conduct transactions that are not in accordance with the actual circumstances which contradict the principle of substance over form."

(with added emphasis)

5.22. The provisions on transfer pricing can be seen in the elucidation of Art. 18 paragraph (3) of the ITL as last amended by the HPP Law as follows.

> "The DGT's authority to re-determine the amount of income and/or deductible expenses and determine debt as equity to calculate the amount of taxable income **for taxpayers related to other taxpayers** according to the arm's length principle that is not influenced by a special relationship is **intended to prevent tax avoidance** that may occur due to the existence of the **special relationship**."

(with added emphasis)

5.23. Please note that in the elucidation of Art. 18 paragraph (3) of the ITL as last amended by the HPP Law, this provision is intended to prevent tax avoidance that may occur due to a special relationship. In the event of a special relationship, there may be under-filed income or overcharging of expenses. In such a case, the DGT is authorised to re-determine the amount of income and/or deductible expenses according to the circumstances if there is no special relationship between the taxpayers.

A.3 Tax Avoidance Risk Analysis

5.24. In the context of transfer pricing audits, the DGT has issued special audit guidelines related to transfer pricing disputes in PER-22/2013 and SE-50/2013. SE-50/2013 constitutes technical guidance for tax auditors in auditing related taxpayers **to ensure quality audits**.

5.25. One of the steps undertaken in the audit preparation stage that needs to be considered by tax auditors is analysing the risk of tax avoidance in transactions influenced by a special relationship. The risk analysis is the main matter to be conducted before entering the ALP analysis.

5.26. The following is an excerpt from Appendix I Chapter I of SE-50/2013.

> "**To prevent tax avoidance in controlled transactions, the Directorate General of Taxes**, as regulated under Art. 18 paragraph (3) of the Income Tax Law, **is authorised to re-determine** the amount of income and deductions as well as determine debt as equity to calculate the amount of Taxable Income for **the Taxpayers related to other Taxpayers** according to the arm's length principle that is not influenced by a special relationship using the comparable uncontrolled price method, the resale price method, the cost-plus method or other methods."
>
> (with added emphasis)

5.27. Referring to SE-50/2013, in the event of a special relationship, the tax auditors will identify the issue to analyse **the risk of tax avoidance** in the transaction. The results of the analysis are subsequently outlined in the tax audit working paper (*Kertas Kerja Pemeriksaan*/KKP in Indonesian) for issue identification.

5.28. In addition, Director General of Taxes Circular Letter Number SE-15/2018 concerning audit policies also outlines the variables that determine taxpayers as audit targets. The taxpayers in question are taxpayers with indications of high non-compliance, indications of non-compliance modes, identification of potential tax value, identification of the taxpayers' ability to pay taxes and the DGT's considerations.

5.29. One indication of taxpayers' non-compliance modes is performing aggressive tax planning. Taxpayers performing aggressive tax planning are, among others, signified by indications of the following **transfer pricing risks**.[5]

[5] In the context of Indonesia, DGT will examine several indicators as listed in SE-15/2018 and SE-50/2013. Further, since the existence of the term transactions influenced by a special relationship, the tax avoidance risk analysis has applied to transactions influenced by a special relationship as stipulated under Art. 18

(i) The taxpayer conducts controlled transactions with a counterparty that applies a lower effective tax rate (the counterparty is domiciled in a lower tax rate country);

(ii) There are indications of a transaction scheme involving entities/parties without economic substance and/or do not add any economic value (re-invoicing);

(iii) Taxpayers have a significant value of controlled transactions to their gross turnover. Pursuant to SE-50/2013, this significant value of controlled transactions can be measured from their proportion to sales or net operating profit;

(iv) There are specific intra-group transactions, such as the provision of services, royalty payments, cost distribution arrangement, transfer of intangible assets (licensing), interest expenses and so forth;

(v) There are non-routine controlled transactions, such as business restructuring (including mergers, acquisitions and so forth). Under SE-50/2013, the type of non-routine controlled transactions, for example business restructuring including the transactions involving and not involving intangible assets and the sale of intangible property;

(vi) The financial performance of taxpayers is different from the financial performance of the industry. More specifically, the performance of the taxpayer's net profit is lower than that of other companies in the same industry;

(vii) Taxpayers suffer losses for several consecutive years (SE-15/2018 specifically mentions three tax years within a period of five years);

(viii) The significance of controlled transactions not included in the component of the taxpayer's net operating profit that can be measured from their proportion to the net operating profit. For

paragraph (3) of the ITL as last amended by the HPP Law and Gov. Reg. No. 55/2022.

example, profit/loss on the sale of assets and foreign exchange gain/loss.

5.30. In addition, the indication of high non-compliance of taxpayers characterised by a gap between the tax profile and the actual economic profile is evident from the several conditions below.[6]

(i) Analysis of Corporate Tax to Turn Over Ratio (CTTOR), Gross Profit Margin (GPM) and/or Net Profit Margin (NPM) compared to similar industry benchmarking, such as based on industry reports or benchmarking results pursuant to the provisions stipulating benchmarking. The risk of non-compliance is high if the difference between the analysis and the industry average is greater than 10%;

(ii) Conducting transactions with related parties, in particular, affiliates domiciled in a country with an effective tax rate lower than Indonesia;

(iii) Conducting domestic controlled transactions with a transaction value of more than 50% of the total transaction value; and/or

(iv) Conducting domestic controlled transactions with business group members with a loss carry-forward.

5.31. The results of the risk analysis above are the compliance map (*Peta Kepatuhan* in Indonesian) and the list of priority targets for tax revenue optimisation (*Daftar Sasaran Prioritas Penggalian Potensi*/DSP3 in Indonesian) which must be prepared no later than at the end of January every year.

A.3.1 Tax Avoidance Motives

5.32. In conditions where there are specific intra-group transactions (such as the provision of services, royalty payments, interest expenses and so forth), as stipulated under Art. 4 paragraphs (5) and (6) of MoF

[6] Tax profile is a profile based on the tax return (*Surat Pemberitahuan*/SPT in Indonesian). The actual economic profile is known from various sources, ranging to internal and external data to field observations.

Reg. 172/2023, the ALP is applied to specific transactions using preliminary stages. Thus, after the DGT identifies the risk of tax avoidance and there are specific transactions, the transactions must first be tested.

5.33. The preliminary stages constitute an absolute requirement to be conducted by tax auditors in applying the ALP. One of the important points that should not be overlooked in the preliminary stage is to prove the **motives**, objectives and economic rationale of the transaction.

A.3.2 Domestic Transactions

5.34. In general, tax avoidance efforts may be conducted, among others, by shifting profits from one country to another through transactions between related parties domiciled in different countries (cross-border transactions). However, profit shifting may also occur between related parties domiciled in the same country (domestic transactions).

5.35. Profit shifting is carried out by taxpayers in domestic transactions by taking advantage of differences in tax rates caused by, among others, in terms of the final or non-final income tax treatment in certain business sectors, the Sales Tax on Luxury Goods (STLGs) treatment or transactions conducted with contractor taxpayers of oil and gas cooperation contracts.

5.36. If the taxpayer conducts a controlled transaction with a resident taxpayer or Permanent Establishment (PE or *Bentuk Usaha Tetap* in Indonesian) in Indonesia, the tax auditors need to confirm with the Tax Office (*Kantor Pelayanan Pajak*/KPP in Indonesian) where the counterparty is domiciled to ensure:

(i) the correctness of the value and type of the transaction; and

(ii) **there is no tax avoidance** by taking advantage of the difference in tax rates or other matters in controlled transactions referred to in Art. 2 paragraph (2) of PER-32/2011 (as mentioned in paragraph 5.35) or the replacement regulations thereof.

5.37. Thus, under Indonesian tax regulations, before performing adjustments to domestic transactions influenced by a special relationship, an agreement between two Tax Offices through the confirmation step is necessary. The agreement is based on real evidence to determine that a transaction is proven to be a tool for related taxpayers in conducting tax avoidance.

A.4 The Application of the ALP

5.38. In the event that the DGT is authorised to re-determine the amount of income and/or deductible expenses to calculate the amount of taxable income according to the ALP, the DGT must also first prove that the taxpayer fulfils one of the following four conditions.

5.39. *First*, the taxpayers are known not to apply the ALP. *Second*, the taxpayers apply the ALP, but not in accordance with the provisions. *Third*, the taxpayers cannot prove certain transactions influenced by a special relationship based on the preliminary stages. *Fourth*, the transfer prices determined by the taxpayers do not fulfil the ALP.

5.40. If one of the four conditions is fulfilled, the DGT is authorised to re-determine the amount of income and/or deductible expenses to calculate the amount of the taxpayer's taxable income. This provision is in line with the spirit of Art. 20 paragraph (4) of PER-43/2010 as amended by Art. 20 paragraph (2) of PER-32/2011.

> "The Director General of Taxes' authority referred to in paragraph (1) is not exercised if Taxpayers have fulfilled the Arm's Length Principle in transactions conducted with Related parties."

B. Transfer Pricing Audit

5.41. Art. 1 number (11) of MoF Reg. 172/2023 provides the definition of an audit. An audit is a series of activities to collect and process data, information and/or evidence conducted in an objective and professional manner based on an auditing standard to assess

compliance in the fulfilment of tax obligations and/or for other purposes to implement statutory tax provisions.

5.42. In respect of related party transactions, taxpayers are required to prepare transfer pricing documentation containing the information required by the DGT. Therefore, the DGT's starting point of analysis is based on the information provided in the transfer pricing documentation prepared by the taxpayers.

5.43. In the condition where taxpayers do not provide transfer pricing documentation and its explanation, the DGT may establish the facts and analysis based on information available to the DGT. If this is the case, the DGT is authorised to propose a primary adjustment, and the burden of proof lies on the taxpayer to prove that the notice of tax assessment (*Surat Ketetapan Pajak*/SKP in Indonesian) is incorrect.

5.44. The role of the taxpayers in any tax audit is to assist in the audit process by attending the discussions and providing books of accounts, documents or other relevant records as requested by the DGT to be audited within the specified time limit.

B.1 Transfer Pricing Audit Stages

5.45. The complexity of transfer-pricing-related issues has led to the audit process being time-consuming, requiring considerable effort and costs for taxpayers and the tax authorities. In Indonesia, audits to assess compliance with the fulfilment of tax obligations for transfer pricing issues are conducted through field audits (Art. 5 paragraph (5) of MoF Reg. 17/2013 as last amended by MoF Reg. 18/2021). The rights and obligations of tax auditors and taxpayers are outlined in MoF Reg. 17/2013 as last amended by MoF Reg. 18/2021.

5.46. In a field audit, the transfer pricing audit process is divided into two parts, i.e., the assessment period and the closing conference.[7] The assessment process requires a maximum period of six months calculated from the time the notice of field audit is submitted to the

[7] Art. 15 of MoF Reg. 17/2013 as amended by Art. 16 of MoF Reg. 184/2015.

taxpayer, the taxpayer's representative, attorney, employee or adult family member until the date the notice of tax audit findings (*Surat Pemberitahuan Hasil Pemeriksaan*/SPHP in Indonesian) is submitted to the taxpayer, the taxpayer's representative, attorney, employee or adult family member.

5.47. The assessment period may be extended to a maximum period of six months and may be extended three times according to the time required to conduct the assessment. In contrast, the closing conference and filing period is limited to a maximum of two months. If a transfer pricing audit is conducted on a taxpayer applying for a tax refund, the audit period must take into account the period for the application for tax refunds referred to in Art. 17B of the GPTP Law.

5.48. A noteworthy matter is that the **resolution of transfer pricing audit cases is highly dependent on the on-field facts and conditions**. In fact, the statement on the dependence of the resolution of the transfer pricing audit case on the on-field facts and conditions is repeated thirteen times in SE-50/2013 and repeated six times in PER-22/2013. Therefore, tax auditors must implement the ALP by considering the facts and conditions in each transfer pricing case.

5.49. As described in Subchapter A. Transfer Pricing Audit Guidelines, the examination or application of the ALP must start with the examination of the status of the special relationship and transactions with affiliates. In the event that the tax auditors are assured or able prove the existence of the special relationship and have confirmed whether or not there are the risks of tax avoidance as well as other confirmation processes as described in Subchapter A. Transfer Pricing Audit Guidelines, the tax auditors may continue the audit by:[8]

(i) examining the comparability analysis conducted by the taxpayer or conducting a comparability analysis;

[8] Since the existence of the term transactions influenced by a special relationship, these provisions have applied to transactions influenced by a special relationship as stipulated under Art. 18 paragraph (3) of the ITL as last amended by the HPP Law and Gov. Reg. No. 55/2022.

(ii) examining the taxpayer's conclusion on the characteristics of the transaction and making a conclusion concerning the characteristics of controlled transactions and uncontrolled transactions constituting the comparables, based on the results of the comparability analysis;

(iii) examining the Functions, Assets and Risks (FAR) analysis conducted by the taxpayer or conducting a FAR analysis;

(iv) examining the taxpayer's conclusions concerning the characteristics and economic substance of the parties involved in the transaction and making conclusions concerning the characteristics and economic substance of the parties involved in controlled transactions and uncontrolled transactions constituting the comparables, based on the results of the FAR analysis;

(v) examining the Profit Level Indicator (PLI) chosen by the taxpayer or selecting the PLI to be compared;

(vi) examining the transfer pricing method selected and applied by the taxpayer or selecting the transfer pricing method to be applied;

(vii) examining the application of the transfer pricing method by the taxpayer or applying the transfer pricing method that has been selected.

5.50. Tax auditors are required to outline the entire process and results of the examination or application of the ALP in the audit working paper, including documenting the information and the process of the provision of verbal information from the taxpayer, thereby, the obligation to document the process and results of the examination will include the entire process and results of obtaining or requesting information, data and information from the taxpayer and other sources.

5.51. In the event that the tax auditors constitute the party implementing the ALP (because the taxpayers cannot prove whether their transactions influenced by a special relationship are at arm's length), every application stage of the ALP must be documented and the

documentation of each application stage of the ALP must be supported by supporting data, either provided by the taxpayer or sought by the tax auditors themselves.

B.1.1 Audit Preparation Stage

5.52. In a transfer pricing audit, the preparation stage is carried out according to applicable audit procedures. One noteworthy aspect is the tax auditors are required to collect and review taxpayer data in respect of the special relationship with the counterparties. This is also supported in relation to the self-assessment principle that applies in Indonesia.

5.53. In the preparation stage, tax auditors first review information related to controlled transactions and parties related to the taxpayer through documents in the form of Attachment V of the corporate income tax return, Special Attachment 3A/3B of the corporate income tax return (for tax years up to 2008), Special Attachment 3A/3B, 3A-1/3B-1, 3A-2/3B-2 and Attachment 8 of the corporate income tax return (for the 2009 tax year and onwards) or other attachments in the corporate income tax returns in connection with controlled transactions.

5.54. If a taxpayer does not complete Special Attachment 3A/3B, tax auditors need to review the information in respect of controlled transactions and parties related to the taxpayer as outlined in the notes to the audited financial statements, as stipulated in the statement of financial accounting standards (*Pernyataan Standar Akuntansi Keuangan*/PSAK in Indonesian) number 7.

5.55. Further, by considering that in connection with related party transactions, taxpayers are required to prepare transfer pricing documentation containing the information required by the DGT. Therefore, the starting point of the DGT's analysis is based on the information contained in the transfer pricing documentation prepared by the taxpayer. The documentation contains various information required by the tax auditors, such as the special relationship and conditions of controlled transactions.

5.56. If the tax auditors find indications of related party transactions with tax avoidance risks but cannot find information concerning the special relationship with counterparties, verification may be conducted through websites, commercial databases or other data sources to ascertain the existence of the special relationship with the counterparties.

5.57. Moreover, in the event that there is a special relationship, the tax auditors should identify the issue by analysing the tax avoidance risks in the controlled transactions conducted by the taxpayer. The factors to be examined are outlined in Subchapter A.3 Tax Avoidance Risk Analaysis. If in the identification of the issue, the tax auditors:

(i) **discover tax avoidance risks** through controlled transactions, the tax auditors must state it in the audit plan and audit program; or

(ii) **have not discovered any tax avoidance risk** through controlled transactions, the tax auditors need to **conduct testing in the audit implementation stage**. Having performed testing and discovered the tax avoidance risks, the tax auditors include it in the changes to the audit plan and audit program.

5.58. Highlighting the trend of transfer pricing audits that currently prioritise the *ex-ante* approach, taxpayers are also required to make available data and information that can reflect the fulfilment of these requirements. This is stated in Art. 17 paragraph (1) of MoF Reg. 172/2023 that transfer pricing documentation (the master file and local file) must be prepared based on the data and information available at the time of the controlled transaction conducted (*ex-ante* approach). In other words, taxpayers are required to provide contemporaneous documentation.

B.1.2 Audit Implementation Stages

5.59. The transfer pricing implementation stages consist of three stages, namely determining the taxpayer's business characteristics, selecting the transfer pricing method and applying the ALP. In the

implementation of transfer pricing audits, tax auditors need to take into account the documentation constituting the basis for the application of the ALP to related party transactions. Notwithstanding, during the audit, tax auditors may collect information and evidence related to controlled transactions, either through the taxpayer or external parties.

5.60. The following are matters to be taken into account in the transfer pricing audit implementation stage.

(i) After the audit order (*Surat Perintah Pemeriksaan*/SP2 in Indonesian) is issued, the tax auditors may submit a request for information/evidence on controlled transactions using a request letter for information/evidence and the attachments thereto (Appendix II of PER-22/2013) along with the submission of the notice of field audit.

(ii) In the event that the taxpayer can show the transfer pricing documentation, **the request for information/evidence may be adjusted to the data and information that has been submitted**.

(iii) In the event that the taxpayer has filled in the attachment of the request letter for information/evidence and/or submitted the transfer pricing documentation, the **tax auditors must analyse the data and information** in respect of the taxpayer's controlled transactions and include it in the audit working paper.

(iv) Tax auditors need to request an explanation of the controlled transactions by summoning the taxpayers using the summons to provide taxpayer information in respect of controlled transactions (Appendix II of PER-22/2013).

(v) The verbal statements or verbal explanations submitted by taxpayers that are relevant to controlled transactions must be stated in the official report of taxpayer information provision (*Berita Acara Pemberian Keterangan*/BAPK in Indonesian) related to controlled transactions (Appendix II of PER-22/2013).

(vi) Tax auditors may exchange information with the proposed partner country pursuant to the provisions under PER-67/2009 as amended by PER-24/2018, with the aim of:

a. clarifying the special relationship if there are strong indications of controlled transactions of which the special relationship is not yet confirmed;

b. ensuring controlled transactions with questionable validity.

(vii) If a taxpayer conducts controlled transactions with a resident taxpayer or a PE in Indonesia, tax auditors need to confirm with the Tax Office where the counterparty is domiciled to ensure:

a. the correctness of the value and type of transactions;

b. there is no tax avoidance by taking advantage of differences in tax rates or other matters in controlled transactions as referred to in Art. 2 paragraph (2) of PER-32/2011 or its replacement regulations.

(viii) Tax auditors test tax avoidance risks in controlled transactions, by considering the factors referred to in Subchapter A.3 Tax Avoidance Risk Analysis. If during the audit, the tax auditors believe that there are tax avoidance risks, the tax auditors shall change the audit plan and audit program.

B.1.2.1 Determining the Characteristics of a Taxpayer's Business

5.61. Accurate determination of the taxpayer's business characteristics will facilitate the selection of reliable comparables. The steps in determining taxpayer's business characteristics include identifying the characteristics of the taxpayer's controlled transactions and conducting a functional analysis. By determining the taxpayer's business characteristics and understanding the functions of the counterparty, the tax auditors will obtain an overview of the expected return by each party to the transaction as well as the risk of tax avoidance using transactions conducted between related parties.

(i) Identifying the Characteristics of the Taxpayer's Controlled Transactions

An understanding of the conditions of the controlled transactions is required as a basis for conducting a comparability analysis. To gain an understanding of the conditions of the controlled transactions, it is necessary to identify the characteristics of the taxpayer's controlled transactions. The controlled transactions are identified by taking account several factors, including:

a. Conditions that affect the industry

Tax auditors may conduct industry analysis to obtain an overview of the taxpayer's industry conditions. The taxpayer's industry analysis is conducted by considering the main characteristics of the taxpayer's industry and industry performance. Several other conditions also need to be considered, including:

- the characteristics of the industry and market in which the taxpayer conducts business, such as industrial growth, technology, size and market growth;
- the competitiveness of the taxpayer as well as the identification of competitors;
- economic factors as well as regulations that affect the taxpayer's business.

To obtain the above information, tax auditors may use external sources of information, including industry research reports, annual financial statements of major players in the taxpayer's industry that are available to the public, data from the Statistics Indonesia (*Badan Pusat Statistik*/BPS in Indonesian), transfer pricing documentation and other information media available on the internet or databases.

b. Conditions of the controlled transactions

In understanding tax avoidance risks using transactions conducted between related parties, tax auditors need to understand the controlled transaction scheme. In the controlled transaction scheme, the following are to be taken into account:

- parties involved in controlled transactions as well as relationships between these parties, for example parent-subsidiary relationship, joint venture, franchise, cost contribution arrangement;
- the types and value of controlled transactions;
- the time the controlled transactions occur, which includes the time and frequency of such transactions;
- terms of agreement, including set-off arrangements between affiliates;
- terms of the contract, including terms of delivery, discounts;
- transaction chain wherein the taxpayer's controlled transactions are a part of.

Matters that also need to be considered in preparing the controlled transaction scheme are functions performed by each party, the country where the counterparty is located as well as the flow of goods/services.

c. Characteristics of the taxpayer as part of a group company

In determining the characteristics of taxpayers as part of a group company, PER-22/2013 describes the following data/information that may be used.

- The taxpayer's organisational structure in the group as well as the taxpayer's decision-making process;
- The taxpayer's capital structure as well as the group;
- The taxpayer's strategies, policies and targets;
- The functions performed by each group company member (supply chain management);
- The taxpayer's business restructuring.

As is known, a company is an organisation that manages the production of goods or services to maximise profit. To produce these goods or services, the company performs functions, including the Research and Development (R&D) function, procurement function, manufacturing function, distribution function, logistics function or marketing function. The functions performed by a company are known as the supply chain.

In general, a group company performs supply chain functions through several companies in an integrated and global manner. In performing the supply chain functions, a group company may choose to do so in-house or through outsourcing to an independent party. A group company chooses to outsource a function if some functions are less beneficial if carried out in-house.

The analysis of the functions performed by a group company is known as the **supply chain analysis**. This analysis is carried out to understand how a group company conducts its business. Several things may be carried out in supply chain analysis, including:

- mapping the group company's supply chain;
- distinguishing the group company's main functions from its supporting functions; and
- identifying and understanding the group company's main functions constituting the main factors for its success.

To obtain information on the functions performed by a group company, tax auditors may use information sources, including annual financial statements and/or prospectuses from the principal or holding of a group company, company profile of the group company as well as other information media available on the internet or databases. To improve the quality of supply chain analysis results, tax auditors may request the taxpayer to explain the group company's supply chain.

d. Financial ratios

In a transfer pricing audit, it is necessary to conduct an initial examination of the taxpayer's financial performance to identify tax avoidance risks that may occur due to a special relationship. The initial examination may be conducted by reviewing the average ratio of taxpayer's industry.

At the application stage of the ALP, the taxpayer's financial ratio (gross/net profit level) will be compared with the financial ratio (gross/net profit level) of companies constituting comparables, to determine whether the taxpayer's business is at arm's length. Several financial ratios

that may be used as the basis for the comparables can be seen in Chapter 3 Transfer Pricing Methods.

(ii) Conducting Functional Analysis

Functional analysis is conducted to accurately identify the business characteristics of the taxpayer as well as counterparties. Identifying the business characteristics of the taxpayer and counterparties will enable the estimation of the level of assumed risks and remuneration (profit) commensurate with the risks assumed by each party.

In conducting the functional analysis, tax auditors are required to understand several sources of information that are also used by the taxpayer in conducting the functional analysis as mentioned in Chapter 2 The Arm's Length Principle and the taxpayer's transfer pricing documentation. In conducting the functional analysis, tax auditors need to take into account several matters as follows.

a. Identifying significant functions with economic relevance that are performed by the taxpayer, including design, processing, assembly, R&D, sales and distribution, purchasing, service supply, marketing, promotion, transportation, financing and management.
b. Identifying significant functions based on, among others:
   - transfer pricing documentation and/or forms of function, asset and risk analyses;
   - the taxpayer's financial statement;
   - organisational chart.
c. Preparing a list of questions required in interviews with key personnel. Key personnel to be interviewed are those who are involved in significant functions.
d. Conducting field observations and interviews with key personnel. Field observations and interviews are aimed at understanding/obtaining a detailed description of the functions performed, the assets used and the risks assumed by the taxpayer. Tax auditors need to prepare the official report of information (*Berita Acara Pemberian*

Keterangan/BAPK in Indonesian) in respect of information relevant to the functional analysis.

e. Confirming the functions performed by affiliates constituting the counterparties, which include the following efforts.
   - In transactions with an affiliate that functions as the intermediary in product sales/purchase transactions, tax auditors need to verify the organisational chart, the number and qualifications of employees as well as financial statement of the affiliate to ensure that the affiliate has a function in the taxpayer's controlled transactions.
   - In a transaction of intangible asset transfer, tax auditors need to ensure the qualifications of the transferee of the intangible asset. For example, by considering the transferee's ability to develop, protect or maintain the intangible asset. This may be carried out by analysing the organisational chart, the number and qualifications of employees and financial statement of the affiliate.
   - In a transaction of intra-group service supply, tax auditors need to ensure the qualifications of the parties providing the intra-group services. This may be carried out by analysing the organisational chart, the number and qualifications of employees providing these services.

f. Identifying and/or confirming the types of assets used by the taxpayer, including land, buildings and machines, use of valuable intangible asset, financial assets and the nature of the assets used, including the useful life, market value, location, legal protection available for the said intangible asset. See Chapter 2 The Arm's Length Principle for further description on identifying the use or existence of the intangible asset.

g. Mapping and/or confirming the risks assumed by taxpayers in respect of controlled transactions. This may be carried out, among others, by analysing the sales/purchase agreement contracts, identifying write-off transactions, including bad debts, operating expenses in the form of foreign exchange losses, warranty expenses and inventory obsolescence. Tax auditors need to consider the appropriateness of the party

assuming the risks as stated in the contract to the on-field facts and conditions.

In conducting the functional analysis, the tax auditors need to identify the taxpayer's contribution to the development, enhancement, protection or maintenance of intangible assets. Matters that must be considered in identifying the contribution of taxpayers can be seen in Chapter 2 The Arm's Length Principle. After conducting a functional analysis, the tax auditors should be able to conclude the characteristics of the taxpayer's business characteristics and the functions performed by its affiliates as well as examine the appropriateness of the return received by the taxpayer and the affiliates with the functions performed, assets used and the risks assumed by each party.

The conclusion on the characteristics of a taxpayer's business can be toll manufacturing, contract manufacturing, fully-fledged manufacturing, fully-fledged distributor, limited risk distributor, commissionaire, commission agent, service provider or others. In practice, according to business developments, there will be characteristics of the taxpayer's business that are different from the above-mentioned characteristics. In such a case, the tax auditors determine the remuneration based on the functions performed, the assets used and the risks assumed according to the facts and conditions.

B.1.2.2 Selecting the Transfer Pricing Method

5.62. After the stage of determining the taxpayer's business characteristics has been conducted, the tax auditors can conclude the taxpayer's business characteristics and the functions performed by the counterparty which may be used as a basis for selecting the most appropriate method. Selecting the transfer pricing method consists of identifying the availability of comparables and determining the most appropriate transfer pricing method based on facts and conditions.

5.63. The following are the necessary steps in selecting the most appropriate transfer pricing method.

(i) Identifying the availability of comparables

One of the important aspects in selecting the transfer pricing method is the availability of reliable independent comparables. The stage is aimed at ensuring the availability and reliability of the independent comparables to be used. The comparables to be identified may be in the form of price data (for example, market prices for commodity goods), data on gross profit margin or data on net profit margin.

Comparables used to test the taxpayer's controlled transactions may be grouped into internal comparables and external comparables.[9] To be used as reliable comparables, internal comparables and external comparables must take into account the following five comparability factors.

a. Contractual terms;
b. Function, asset and risk analysis;
c. Characteristics of goods or services;
d. Economic circumstances; and
e. Business strategies.

If no reliable internal comparable is found, external comparables may be used.[10] External comparables that may be used as comparables are comparables constituting domestic or foreign public data, commercial databases, the London Metal Exchange and other databases.

In the process of data identification, it is necessary to collect additional data deemed important to evaluate the role of intangible assets used in the taxpayer's business as well as the

9 See Chapter 2 The Arm's Length Principle for further explanation concerning internal and external comparables.

10 The tax auditors must first test the existence and reliability of internal comparables and if no reliable internal comparables are found or the tax auditor concludes that the use of internal comparables is expected to result in the results of the application of the ALP being unreliable, the tax auditors may use external comparables. Thus, in the application of the ALP, there is a preference in the selection of uncontrolled transactions to be determined as comparables.

taxpayer's contribution to the development of these intangible assets. This additional data is required to consider the most appropriate transfer pricing method based on the facts and conditions of the taxpayer's controlled transactions.

(ii) Determining the most appropriate transfer pricing method based on facts and conditions

In determining the transfer pricing method, the principle used is the most appropriate method based on facts and conditions, considering among others:

a. advantages and disadvantages of each method;
b. the appropriateness of the transfer pricing method for the nature of the transaction, which is determined based on functional analysis;
c. the availability of reliable information (with respect to independent comparables) to apply the selected method and/or other methods;
d. the level of comparability between controlled transactions and uncontrolled transactions, including the reliability of adjustments performed to eliminate the material effect of existing differences.

To select the most appropriate method in a transfer pricing case, information related to the comparability factors for controlled transactions that are being examined is required, specifically information on the functions, assets and risks of all affiliates transacting with the taxpayer, including affiliates located overseas.

In the event that the tax auditors apply the Resale Price Method (RPM), Cost-Plus Method (CPM) or the Transactional Net Margin Method (TNMM), the tax auditors must first determine the tested party. The tested party is selected based on the functional analysis that has been conducted as well as the reliability of the data/evidence/information and facts obtained in the audit. See Chapter 2 The Arm's Length Principle for matters to be taken into account in selecting the tested party. In general, the tested party

is one that performs less complex functions and has no unique/valuable intangible asset.

Tax auditors may select the taxpayer constituting the audited party as the tested party. In addition, tax auditors may also select a taxpayer's counterparty that is being audited as the tested party. In other words, the price or other profit indicators do not always have to be tested against the price and profit indicators of the audited party but may also be tested against the price and profit indicators of the counterparty in the controlled transactions.

B.1.2.3 Applying the Arm's Length Principle

5.64. The ALP is applied after the most appropriate transfer pricing method is selected. Matters to be taken into account in applying the ALP include the following.

(i) Conducting Comparability Analysis

A transfer pricing audit is conducted by comparing the conditions of controlled transactions with the conditions of uncontrolled transactions. Controlled transactions are considered comparable to uncontrolled transactions in the event that:

a. the difference (if any) between the conditions of the controlled transactions and the conditions of the uncontrolled transactions has no material effect on the price or profit;
b. reasonably accurate adjustments may be performed to eliminate the material effect.

(ii) Comparability Adjustments

To compare the conditions of controlled transactions with the conditions of uncontrolled transactions, the economically relevant characteristics of the conditions being compared must be adequately comparable for the comparison to be more accurate. See Chapter 2 The Arm's Length Principle related to measures that can be undertaken to increase comparability.

(iii) The Determination of the Arm's Length Price of Profit in a Transfer Pricing Audit

Once reliable comparables have been obtained and the transfer pricing method to be used has been determined, the next step is comparing the price or profit of controlled transactions with the price or profit of the comparables according to the method that will be used. The following are two ways of comparing prices or profits.

a. Direct comparison is carried out if there is no difference in conditions between controlled transactions and uncontrolled transactions that materially affect the price or profit, thereby, the difference in the price or profit may be immediately adjusted by the tax auditors.
b. Indirect comparison is performed if there are differences in conditions between controlled transactions and uncontrolled transactions that materially affect the price or profit and reasonable accurate adjustments may be made to eliminate these material effects.

(iv) Primary Adjustment, Secondary Adjustment and Corresponding Adjustment

The difference between the price or profit in a controlled transaction and the arm's length price or profit constitutes the primary adjustment. If the primary adjustment is performed at the profit level, the tax auditors must attribute the profit adjustment to controlled transactions that choose a high risk of tax avoidance.

The primary adjustment performed by tax auditors may result in a secondary adjustment. The secondary adjustment is a follow-up adjustment that may occur due to the primary adjustment in controlled transactions. For example, tax auditors may perform positive adjustments to the taxpayer's controlled transactions. This adjustment results in overpayment to affiliates. For the overpayment, tax auditors may perform a secondary adjustment pursuant to the applicable tax provisions.

For the overpayment, tax auditors may perform a secondary adjustment pursuant to the applicable tax provisions. Further, the primary adjustment and secondary adjustment may be subject to the corresponding adjustment pursuant to applicable tax provisions. Further discussion can be seen in Subchapter C. Primary, Secondary and Corresponding Adjustment.

5.65. In practice, the above-mentioned three transfer pricing audit implementation stages, i.e., determining the taxpayer's business characteristics, selecting the transfer pricing method and applying the ALP, are not linear stages. There are circumstances where tax auditors may repeat the stages that have been conducted, for example, tax auditors have determined the most appropriate transfer pricing method, however, the tax auditors cannot find information related to comparables or cannot perform reasonably accurate adjustments. Therefore, tax auditors may repeat the second stage to select the most appropriate transfer pricing method.

5.66. The application of the ALP to different types of controlled transactions is described in the next subchapter. The application of ALP to sales or purchase transactions of goods and services, it can be seen in Chapter 3 Transfer Pricing Methods.

B.1.2.3.1 Applying the ALP to Intragroup Service Transactions

5.67. Intra-group services are activities provided by one party in a business group that provide benefits to one or more other members of the business group. Intra-group services may be in the form of management services, administrative services, technical services, support services, purchasing services, marketing services, distribution services and other commercial services that are supplied in respect of the nature of the group's business.

5.68. Basically, the existence of supplies of intra-group services transactions is recognised if the services provide economic benefits or commercial value that increases the commercial position of the service recipient company (for example, increasing profits or increasing

efficiency through decreasing operating expenses). This may be determined by considering whether an independent party in comparable conditions will be willing to pay the independent party or perform the service supply in-house.

5.69. The following are steps to apply the ALP to intra-group service transactions.

(i) Ensuring that services from the affiliates **have actually been performed** and **provide economic benefits** for the taxpayer. Testing whether the services by the affiliates have, in fact, been carried out as follows.

a. Ensuring the existence or realisation of the services provided, tax auditors need to carry out the following:

- examining the background process of the requirements for services and related documents;
- examining the appointment process of the service provider, including examining the qualifications of the service provider (for example, indicated by a curriculum vitae containing work experience, educational background and track record of the service provider). This may also be conducted by reviewing the organisational chart as well as the quantity and qualifications of employees providing services. The verification is intended to show that the service provision activities have actually been carried out by the service provider and that the service provider has the ability and capability to provide the services;
- examining the negotiation process regarding fees for the services provided;
- examining the process and results of service provision as well as related documents/evidence;
- reviewing documents related to the service activities, such as agreement contracts and invoices;
- examining the parties involved in the implementation of the provision of services (services may be provided in-house by the affiliate or by involving the taxpayer and third parties);

b. Ensuring that the services rendered provide economic benefits, tax auditors need to conduct the following:
   - ensuring the appropriateness between the functions performed by the taxpayer and the types of received intra-group services. For example: Based on the functional analysis results, it is known that PT X as a distributor does not conduct activities that add value to the product. Therefore, PT X should not be charged any technical service expenses in respect of manufacturing;
   - examining the details of the services charged (if there is more than one service) and understanding specifically how these services may or have provided economic benefits to the taxpayer;
   - ensuring that the intra-group services do not constitute the following activities.
     1) Shareholder activity

        Shareholder activity is a service intended for the parent company's activities. See Chapter 2 The Arm's Length Principle for detailed description of the services included in the shareholder activity.

     2) Duplicative services

        Duplicative services are services performed by members of a business group that are duplications of activities conducted by the taxpayers themselves or conducted by third parties. In evaluating duplicative services, it is necessary to examine the taxpayer's ability to provide the service in-house (for example, in respect of the qualifications, expertise and availability of employees) or whether the taxpayer has paid an independent party to provide the service. If the charging constitutes a duplication of services, the intra-group service fees cannot be charged. For example: PT Y has conducted capital and operating budget analysis in-house, however, in the same year, the parent company also charges PT Y the same service fees for the capital and operating budget analysis. Exclusion may occur if the duplicative services are only temporary and specific.

3) Services that provide incidental benefits

Services that provide incidental benefits are activities carried out by a member of a business group for certain members that also provide incidental benefits to taxpayers in the group. In general, intra-group services will be provided to fulfil the needs of certain recipients. Other group members may obtain incidental benefits from the service. The expenses charged for the received incidental benefits are not expenses that may be charged. For example: A group has a centralised information technology function, company A installs a new computerised system to handle orders in company B (an affiliate). Company B sells its products to third parties as well as to company C (its affiliated company). The efficiency of company B's new system allows company C to reduce overhead expenses in the form of reducing employees in the purchasing department.

Company C obtains incidental benefits from the services provided by company A to company B. However, company A is not considered to provide services to company C, wherein under arm's length conditions, company C is not willing to contribute to the burden of implementing the new system to company B because the activities conducted by company A are aimed at fulfilling company B's needs.

4) Passive association

Passive association is a service paid to an affiliated company solely because the taxpayer is a member of a group company. For example: No service fee must be paid by a taxpayer simply because the taxpayer obtains a higher credit rating when it is part of a group company than when the taxpayer is not part of a group company.

5) On call services

On-call services are services provided by a member of a business group (usually the parent company) which are always available whenever required by the

taxpayer or if provided by an independent party, the services will be subject to special fees to ensure their availability. On-call services cannot be charged if:

- the potential for the need for these services is very minimum;
- the benefits derived from the services are insignificant (negligible); or
- the on-call services may be obtained at any time and are available from other independent parties without having to enter into an on-call standby agreement beforehand.

In analysing the potential needs and benefits of the provided on-call services, tax auditors may consider the use of these services in the relevant year and previous years.

(ii) Calculating whether the payments for the intra-group services are at arm's length. The following are steps to be undertaken to calculate whether service payments are at arm's length.

a. Reviewing the basis for charging intra-group service fees. The charging of fees for intra-group services should be based on the actual expenses incurred to provide these services. For example, the charging of management services should be based on the amount actually incurred, not based on the taxpayer's turnover. To discover the basis for charging intra-group services, tax auditors need to:
   - view the intra-group service agreement documents; and/or
   - interview key personnel.

b. Examining the components of the cost base actually incurred by the service provider and the appropriateness with the services provided and the economic benefits for the taxpayer. For example: AR Co. charges accounting services to PT AR with the following cost basis details: the salary of an accounting expert assigned to Indonesia, AR Co.'s director's bonus, Indonesia-X return flight tickets and vacation expenses to Bali. In this case, AR Co. cannot account for AR Co.'s director's bonus and the vacation expenses to Bali as a

component of the cost basis of accounting services that will be charged to PT AR.

c. Examining the charges method for the services used. Charges methods consist of the direct charges method and indirect charges method.
   - Direct charges method
     1) The direct charges method is used in situations where the services, the service recipients, the fees charged, and the charge basis can be clearly identified. Expenses may be allocated directly to recipients.
     2) The direct charges method should be applied by the service provider company when similar services, in addition to being supplied to an affiliate, are also supplied to an independent party.
   - Indirect charges method

     The indirect charges method is used when the direct charges method is not applicable or when the expenses associated with the services provided are not easily identifiable and attributable to affiliated companies. For example: The supply of information technology services, such as management information systems involving the development, implementation and maintenance of electronic data for several members of a group company.

     The indirect charges method is based on cost allocation and distribution which refer to the key allocation according to the nature and purpose of the services provided. For example, the provision of payroll services may be more closely related to the number of staff than turnover, whereas the allocation of network infrastructure usage may be allocated according to the number of computers.

d. Examining the key allocation of service charges. The application of the ALP to intra-group services requires that the amount of expenses allocated to group members is comparable to the benefits expected from the services. Tax auditors are expected to document the analysis performed for the key allocation. The key allocation of service charges should be adjusted to the nature and purpose of the services

provided. Sales-based allocation is acceptable if the taxpayer can explain the correlation between sales and costs incurred.

e. Examining whether there are comparables for intra-group services and the mark up and applying the transfer pricing method that is most appropriate to the conditions and facts. The methods that may be used in the arm's length assessment of the value of service charges include:
   - the Comparable Uncontrolled Price (CUP) method;
   - the Cost-Plus Method (CPM); and
   - the Transactional Net Margin Method (TNMM).

B.1.2.3.2 Applying the ALP to Intangible Asset Transactions

5.70. An intangible asset for transfer pricing analysis purposes is an asset that is not a physical asset or a financial asset. Intangible assets are divided into two major groups which include manufacturing intangibles and marketing intangibles. The following are the steps for testing in respect of intangible asset transactions.

(i) Identifying the existence of each intangible asset that has contributed to the product's success in the market. This identification may be carried out through functional analysis. In functional analysis, tax auditors are expected to have a sound understanding of the taxpayer's business.

(ii) Identifying the value of the intangible asset and determining the parties that contribute to the establishment of the intangible asset, including the proof of ownership of the intangible asset. This is necessary to determine whether the taxpayer in Indonesia contributes to its establishment, thereby, is entitled to receive the gains from the exploitation of the intangible asset.

(iii) Analysing whether there has, in fact, been a transfer of the intangible asset in the transaction. Analysis of the time of the transfer of the intangible asset in uncontrolled transactions may be used as the guidelines.

(iv) Determining the arm's length compensation for each transferred intangible asset. This is conducted by referring to the market

where the intangible asset is used and comparing it with the comparable transaction.

5.71. The arm's length test for the use or transfer of intangible asset should consider the perspectives of the transferor and the transferee. The transferor must ensure that the transferor will obtain greater benefits from the supply/utilisation of the intangible asset than the incurred expenses. On the other hand, from the perspective of the transferee of the intangible asset, the transferee observes whether greater benefits will be obtained from using/acquiring the intangible asset compared to the expenses incurred.

5.72. In the arm's length test of intangible asset transactions, it is necessary to understand the types and characteristics of the intangible asset. This understanding will facilitate the determination of the factors that will affect the license value of the intangible asset and the determination of comparable transactions. The following are factors commonly used as the basis for considerations in determining the license value of intangible asset.

(i) Protection and period

Some types of intangible assets, such as patents, are protected by legal period. This establishes protection from competitors that will duplicate. The longer the protection period for the intangible asset, the greater the expected benefits to be received.

(ii) Exclusivity

This is related to whether the utilisation of the intangible asset is protected by exclusive rights or not. Parties utilizing the intangible asset with exclusive rights should be willing to pay higher royalty fees than parties using the intangible asset without exclusive rights.

(iii) Geographic coverage

The broader the geographical coverage provided, the greater the benefits obtained.

(iv) Useful life of the intangible asset

Some intangible assets have a limited useful life. The useful life is not only influenced by the abovementioned legal protection but also influenced by the high level of technological inventions of a particular industry. Intense competition in certain industries causes the useful life of the discovered intangible asset shorter.

(v) The rights to develop, revise and improve

Protection of the intangible asset becomes obsolete if new technology is discovered. To remain competitive, the beneficiaries of the intangible asset may be given the right to participate in developing, revising and making improvements. If this right is granted, it needs to be considered in determining the license value of the intangible asset.

(vi) The existence of other intangible asset or services inherent in the supply or utilisation of the intangible asset. The utilisation of the intangible asset is often accompanied by the ongoing provision of services by the licensor. This needs to be taken into account in determining the amount of royalties paid and in determining comparables.

(vii) There is a right to sublicence to third parties.

(viii) Other factors that may economically affect the license value of the intangible asset.

5.73. In the event that the taxpayer is the licensee or the buyer of the intangible asset, the following matters are to be taken into account.

(i) Payments made will be subject to a rate of return proportional to the royalties paid (whether the value of royalty fees are at arm's length). This is indicated by the financial analysis of the transaction.

(ii) Payments made will provide economic benefits for the use of the intangible asset of affiliates.

5.74. The following are methods that may be used in assessing whether the intangible asset is at arm's length.

(i) The CUP method;

(ii) The Resale Price Method (RPM);

(iii) The CPM;

(iv) The TNMM;

(v) The Profit Split Method (PSM);

(vi) Other Methods:

a. the method based on cost approach;

b. the method based on market approach;

c. the method based on income approach.

B.1.2.3.3 Applying the ALP to Interest Payment Transactions

5.75. Intra-group loans are loans given by one party in a business group to another member. In intra-group loan transactions, generally, the given compensation may be in the form of an interest rate or a guarantee fee in the event that the loan is guaranteed by the group company which is charged to the borrower.

5.76. Intra-group loan transactions are audited to test whether the taxpayer's debt-to-equity ratio is at arm's length as well as to test whether the interest rate and/or other expenses related to intra-group loan transactions charged to the taxpayer are at arm's length. In other words, in loan and interest payment transactions, the examination of whether such transactions are at arm's length includes the examination of:

(i) The existence of the loan

A loan is said to exist if there is an inflow of money into a taxpayer's account and the loan provides benefits to the taxpayer;

(ii) Whether the loan value is at arm's length

DER must be taken into account when examining whether the loan value is at arm's length;

(iii) Whether the loan interest rate is at arm's length.

5.77. The following are steps to be undertaken in testing interest payment transactions.

(i) Analysing debt needs

The arm's length test of loans and the amount of loans to affiliates may be performed by observing the following factors.

a. The nature and purpose of the debt

The decision to borrow must take into account the existence and economic purpose of the debt to affiliates. The economic purpose of the loans may be determined by calculating the taxpayer's working capital analysis.

b. Market conditions when the loan is granted

The decision to borrow usually takes into account market conditions in respect of interest rates. When interest rates are high, taxpayers should greatly consider the economic costs and benefits of the debt.

c. The principal amount of the debt and the term of the debt

The decision to borrow should take into account the amount of funds required by the borrower for the expected economic purpose. In addition, the repayment period should take into account the taxpayer's ability to repay the loan.

d. The security offered by the borrower and the collateral in the loan

The decision to give a loan and the amount of funds to lend should take into account the security of the funds provided. Collateral in loans may be in the form of the taxpayer's assets or personal guarantee from other parties.

e. The outstanding amount of debt payable to the borrower

The decision to borrow should take into account the outstanding amount of loan payable to the taxpayer. This relates to the taxpayer's ability to fulfil all obligations that will arise, including payment of the loan principal and interest. The taxpayer's ability to pay interest expenses may be calculated using the common interest coverage ratio of similar companies.

The interest coverage ratio may be calculated as follows:

$$\text{Interest Coverage Ratio} = \frac{\text{EBIT}}{\text{Interest Charge}}$$

Notes:

EBIT : Earnings Before Interest and Taxes

Interest Charge : Interest Expense

(ii) Ensuring that the debt actually occurs

To ensure that the debt actually occurs, tax auditors may examine the debt contract documents as well as the money flow of the loan or payment of the principal amount and/or interest.

(iii) Conducting an arm's length test of the Debt-to-Equity Ratio (DER)

Whether the DER is at arm's length may be tested by comparing the debt and equity of similar companies. Under Indonesian statutory tax laws and regulations, please note that there is a threshold of the amount of loan expenses that may be charged for the purpose of tax calculation. If the DER is not at arm's length, adjustments may be performed pursuant to Art. 18 paragraph (3) of the ITL as last amended by the HPP Law.

In connection with the method for determining a certain DER, MoF Reg. 169/2015 concerning the determination of the debt-to-equity ratio of companies to calculate income tax stipulates that the DER is set at a maximum of 4:1.

(iv) Conducting the interest rate or other cost test on loans to affiliates

The interest rate on loans to affiliates is tested by comparing the interest rates on loans to affiliates with the interest rate commonly used by independent parties. The interest rate commonly used by independent parties is usually calculated from a certain interest rate (for example, SIBOR, LIBOR[11] or JIBOR) plus

[11] The interest rate offered by LIBOR is calculated by the British Bankers' Association (BBA) based on the average daily interest rate. However, since a controversy in 2012 that reduced the reliability of LIBOR as a global reference related to financial transactions, LIBOR has been discontinued. Since then, various authorities and stakeholders at the global level and various other key institutions have developed a reference that has been referred to as the

a certain value based on the credit rating of the party receiving the loan or other matters.

5.78. Another provision relevant to internal funding transactions in Indonesia is Art. 12 of Gov. Reg. No. 94/2010 concerning the calculation of taxable income and settlement of income tax in the current year as last amended by Gov. Reg. No. 55/2022. The article states that taxpayers in the form of limited liability companies in Indonesia are allowed to receive non-interest bearing loans from their shareholders insofar as they fulfil certain requirements.

5.79. The requirements concerned are (i) the loan is sourced from the funds of the shareholders themselves and not sourced from other parties, (ii) the capital that should be paid by the lender's shareholders has been fully paid-up, (iii) the lender's shareholders are not in a loss condition and (iv) the borrower's taxpayers are experiencing financial difficulties for their business continuity. If the four cumulative requirements are not fulfilled, the non-interest-bearing loan is subject to interest at an arm's length rate.

B.1.3 Transfer Pricing Audit Reporting and Completion Stage

5.80. The transfer pricing audit reporting stage is conducted according to the applicable audit procedures. The taxpayer may apply for discussions with the Quality Assurance team if the closing conference with the tax auditor team, the taxpayer finds that there should be a quality review.

Alternative Risk-Free Rate (ARR). The transition from LIBOR to ARR will pose significant obstacles to financial transactions, including controlled transactions, specifically, loan agreements that use floating interest rates with LIBOR's benchmark interest rate. It is not impossible that taxpayers need to amend ongoing intra-group financial agreements to adapt to this situation. Issues related to the challenges in facing the LIBOR transition for Indonesia are further discussed in Romi Irawan and Muhammad Putrawal Utama, "Death of Libor and Impact on TP: Indonesian Perspective," International Tax Review, Internet, can be accessed via https://www.internationaltaxreview.com/article/2a6abhsoozg3247t8xn9c/death-of-libor-and-impact-on-tp-indonesian-perspective.

5.81. The Quality Assurance team is an internal part of the DGT whose function is discussing audit findings that have not been agreed upon between tax auditors and taxpayers with the aim of producing quality audits. The scope of the Quality Assurance process is to evaluate the differences in opinion of the legal basis of the adjustment with tax auditors.

5.82. Further, the taxpayer discloses the results of the evaluation to the Quality Assurance team as well as the proposal for the notice of assessment to be issued. The results of the closing conference and/or discussion with the Quality Assurance team will be documented in the closing minutes.

C. Primary, Secondary and Corresponding Adjustment

5.83. As aforementioned, transactions influenced by a special relationship must apply the ALP. If taxpayers do not apply the ALP, the tax authority (in this case, the DGT) is authorised to re-determine the amount of the arm's length prices. The transfer pricing adjustment performed by the DGT is referred to as primary adjustment.

5.84. The DGT's authority to adjust taxpayers' arm's length transfer prices for transactions influenced by a special relationship is stipulated under Art. 18 paragraph (3) of the ITL. However, if it cannot be proven that tax avoidance has occurred, the DGT's authority is not necessary to be exercised.

5.85. In cross-border transactions, the primary adjustment performed by the tax authorities of a country may not necessarily be followed by an adjustment by the tax authorities of the counterparty's country. In this situation, double taxation may occur. Mutual Agreement Procedure (MAP) must be initiated to avoid potential double taxation and obtain a corresponding adjustment.

5.86. MoF Reg. 172/2023 also stipulates the procedure to obtain corresponding adjustment in domestic transactions. Through MoF Reg.

172/2023, provisions on domestic corresponding adjustment provisions are stipulated as follows.

(i) Resident taxpayers constituting counterparties may perform corresponding adjustment in the event that the taxpayer's transfer price is determined by the DGT through audits results in double taxation. Corresponding adjustment is not automatically performed by each Tax Office, but an application based on the taxpayers' initiative must be submitted.

(ii) From the perspective of the taxpayers subject to the primary adjustment, the taxpayers must state their agreement to the transfer pricing adjustment materials proposed by the DGT during the tax audit and the taxpayer does not file a legal remedy in the form of an objection against the notice of tax assessment. In other words, corresponding adjustment may be performed if the taxpayer who is subject to the primary adjustment agrees to the transfer pricing adjustment materials submitted by the DGT and the taxpayer does not file any legal remedy in the form on an objection against the notice of tax assessment.

(iii) The corresponding adjustment is implemented through the following:

a. the amendment of the annual income tax return by the taxpayer's counterparty by considering the primary adjustment if the counterparty **is not yet subject to tax audit**. The annual income tax return is amended accompanied by written notification by the taxpayer to the Tax Office where the taxpayer is registered concerning the information on the transfer price determined by the DGT;

b. the issuance of a notice of tax assessment by the DGT by considering the primary adjustment if the counterparty **is currently being audited.** Corresponding adjustment through the issuance of the notice of tax assessment is performed in the event that the taxpayer has submitted written notification to the Tax Office where the taxpayer is registered concerning the information on the transfer price determined by the DGT or resident taxpayer subject to the

primary adjustment by the DGT discloses the incorrectness in the completion of the tax return according to the information on the transfer price determined by the DGT[12]; or

c. the amendment of the notice of tax assessment by the DGT by considering the primary adjustment if the counterparty **is already subject to a tax audit and a notice of tax assessment has been issued** and no legal remedy is filed against the corresponding adjustment materials. The corresponding adjustment through the amendment of the notice of tax assessment is performed if the counterparty has submitted written notification to the Tax Office where the taxpayer is registered concerning information on the transfer price determined by the DGT. The corresponding adjustment through the amendment of the notice of tax assessment is performed *ex officio* by the DGT.

(iv) The corresponding adjustment that constitutes adjustments to the transfer pricing materials in the calculation of the taxable income of the resident taxpayer constituting the counterparty of the non-tax resident subject to the transfer pricing adjustment by the tax authority of the tax treaty partner is performed through MAP.

5.87. MoF Reg. 172/2023 does not guarantee that a corresponding adjustment for domestic transactions will be granted even if the taxpayer has fulfilled the required conditions.

5.88. Further, in respect of the follow-up to the primary adjustment, the DGT is also authorised to perform secondary adjustment. The secondary adjustment is performed to restore a company's cash position in the event of transfer pricing adjustments conducted by the DGT. Currently, the provisions on the secondary adjustment are also

12 The written notification and disclosure of the incorrectness in the completion of tax returns may be submitted in person, by post, a shipping company or courier services with proof of postage or electronically. The written notification and disclosure of the incorrectness in the completion of tax returns are submitted electronically if the system is available.

stipulated under the domestic transfer pricing provisions in Indonesia through MoF Reg. 172/2023.

5.89. Pursuant to MoF Reg. 172/2023, the following are the provisions on secondary adjustment.

(i) The discrepancy between the value of transactions influenced by a special relationship that comply and do not comply with the ALP is deemed an indirect distribution of profits to affiliates treated as dividends.

(ii) The indirect distribution of profits in the form of dividends is also subject to income tax pursuant to applicable statutory provisions in the field of taxation.

(iii) The dividends are subject to income tax at the time the income is paid, allocated for payment or on the maturity date of the payment, depending on whichever event occurs first.

(iv) These dividends are also eligible for benefits from the provisions under the tax treaty.

(v) The provisions on the secondary adjustment apply to cross-border and domestic transactions and all forms of special relationships.

5.90. However, secondary adjustment may not apply to the DGT if the taxpayer chooses to repatriate and/or the taxpayer agrees to the transfer price determined by the DGT. Repatriation refers to an addition and/or return of cash or cash equivalents amounting to the discrepancy between the transaction value that does not comply and that which complies with the ALP.

5.91. Repatriation is performed before the notice of tax assessment is issued, namely during the audit process until the closing conference. However, up to the writing of this book in October 2024, there is no further regulation concerning detailed technical provisions on repatriation, such as the period for the repatriation and whether the cash or cash equivalents may be used during the current repatriation period.

D. VAT Transfer Pricing Adjustment

5.92. Further, the DGT is also authorised to adjust the selling price or remuneration influenced by the special relationship as a basis for calculating Value Added Tax (VAT) payable. This adjustment to the selling price or remuneration influenced by a special relationship is calculated on the basis of arm's length market price at the time of supply of the taxable goods or taxable services if the selling price or remuneration is lower than the arm's length market price (hereinafter referred to as VAT transfer pricing adjustment).

5.93. Please also note that the VAT transfer pricing adjustment is conducted only in the event of the determination of the transfer price by the DGT that can be allocated to each supply of taxable goods and/or services transaction. Further, the VAT transfer pricing adjustment will not result in an input VAT adjustment for the taxable person (*Pengusaha Kena Pajak*/PKP in Indonesian) of the buyer of taxable goods or the recipient of taxable services. However, the taxable person for purchasing taxable goods or services is allowed to credit input VAT based on the applicable regulation concerning tax invoices.

5.94. Art. 9 paragraph (2b) of the VAT Law also states that credited input VAT must use a tax invoice. Thus, taxable persons constituting buyers of taxable goods or recipients of taxable services may continue to credit VAT listed in the tax invoices issued by taxable persons supplying taxable goods and/or services insofar as the provisions on input VAT crediting are fulfilled.

CHAPTER 6
TRANSFER PRICING DISPUTE RESOLUTION

6.1. Three instruments may be used by taxpayers in resolving transfer pricing issues, i.e., through the Advance Pricing Agreement (APA), Mutual Agreement Procedure (MAP) and appeals to the Tax Court, which may extend to the application for civil review to the Supreme Court.

6.2. If a transfer pricing issue has escalated to a dispute, the taxpayer may file a legal remedy in the form of an appeal up to a civil review. The tax dispute resolution processes in Indonesia takes twelve months respectively for objection and appeal, while civil review takes six months. However, in appeals and civil review processes, the dispute resolution period may be longer than stipulated.

6.3. Further, in the event that a transfer pricing issue has escalated to a dispute, the MAP may be used by taxpayers as a form of an Alternative Dispute Resolution (ADR). MAP provisions refer to the rules contained in the tax treaty clauses between Indonesia and a tax treaty partner.

6.4. On another note, MAP can be initiated by taxpayers or the Directorate General of Taxes (DGT). In general, the MAP process may commence if an action of the contracting state **results or will result** in taxation not complying with the provision under a tax treaty. In practice, taxpayers can initiate MAP following the issuance of a tax assessment resulting into a double taxation that is not in accordance with tax treaty provisions. Therefore, the exhaustion of domestic dispute resolution remedies is not necessary to initiate an MAP.

6.5. In addition to MAP, APA is an alternative solution for addressing transfer pricing issues. Through APA, taxpayers may prevent the rise of future transfer pricing disputes. APAs may be concluded unilaterally, bilaterally or multilaterally. Moreover, APAs can cover a period of up to five tax years.

6.6. Pursuant to MoF Reg. 22/2020 as amended by MoF Reg. 172/2023, APAs can now also cover a roll-back period for tax years for which the statute of limitation for an assessment by the DGT has not elapsed (i.e., five years under the current regulations).

A. Mutual Agreement Procedure

6.7. Mutual Agreement Procedure (MAP) refers to an administrative procedure regulated in a tax treaty to resolve issues arising in the application of the tax treaty, i.e., in the event of tax treatment by the tax authority of the tax treaty partner that does not comply with the provisions of the tax treaty. Pursuant to MoF Reg. 172/2023, the DGT is authorised to implement MAP to prevent or resolve issues, such as **double taxation** and **differences in the interpretation** of the provisions of the tax treaty.

A.1 Background of Indonesian MAP Provisions

6.8. Under Indonesian statutory tax provisions, the provisions on the implementation of the MAP have been stipulated since 2010 with the issuance of the Director General of Taxes Regulation Number PER-48/2010 concerning procedures for the implementation of the MAP based on tax treaties.

6.9. Although PER-48/2010 is a prevailing implementing regulation of the MAP, this regulation has no clear standing after the issuance of Gov. Reg. No. 74/2011 concerning procedures for the exercise of tax rights and fulfilment of tax obligations. Several contradicting matters are found between PER-48/2010 and Gov. Reg. No. 74/2011.

6.10. For example, Art. 57 paragraph (3) of Gov. Reg. No. 74/2011 allows taxpayers to apply for the implementation of the MAP simultaneously with the taxpayers' application to file an objection, appeal or application for the relief or cancellation of an incorrect notice of tax assessment. In contrast to Art. 4 paragraph (8) of PER-48/2010, this article disallows taxpayers to apply for MAP if the taxpayers file an objection or appeal.

6.11. Considering the higher hierarchy of legal power of government regulation than that of a Director General of Taxes regulation, the provisions that must be applied as guidelines in implementing MAP is Gov. Reg. No. 74/2011. Nonetheless, Gov. Reg. No. 74/2011 has not fully regulated procedures for the implementation of the MAP.

6.12. On 12 December 2022, the government of Indonesia issued Gov. Reg. No. 50/2022 concerning procedures for the exercise of tax rights and fulfilment of tax obligations. The issuance of Gov. Reg. No. 50/2022 aims to improve Gov. Reg. No. 74/2011 which was considered not to comply with the needs of tax administration and regulation in Law No. 7/2021 concerning the Harmonisation of Tax Regulations (HPP Law).

6.13. The HPP Law has amended and added the provisions under Law No. 16/2009 concerning the Fourth Amendment to Law No. 6/1983 concerning General Provisions and Tax Procedures (hereinafter referred to as the GPTP Law as last amended by HPP Law), including the provisions related to MAP. Gov. Reg. No. 50/2022 confirms the update in Art. 27C of the GPTP Law as last amended by the HPP Law. In the article, **a taxpayer may apply for the implementation of the MAP simultaneously with the taxpayer's application to file an objection, appeals as well as the application for the reduction or cancellation of an incorrect notice of tax assessment**.

6.14. Prior to the changes in Art. 27C of the GPTP Law as last amended by the HPP Law, the recurring issue was related to the definition of 'dispute' in the context of not fully consistent MAP and domestic dispute resolution procedures. In domestic dispute resolution, a dispute is related to one notice of tax assessment or one objection

decision letter, regardless of the types of tax adjustments therein.[1] In the MAP procedures, on the other hand, only adjustments resulting in double taxation may be covered in the MAP.

6.15. The above lack of consistency leads to the simultaneous implementation of the MAP and domestic dispute resolution, specifically, in cases where a notice of assessment contains two types of adjustments, for example, a transfer pricing adjustment (covered in the MAP) and a non-transfer pricing adjustment (which cannot be covered in the MAP). If it is decided that the MAP decision will be applied, automatically, the taxpayer is not required to continue the dispute resolution of the non-transfer pricing adjustment.

6.16. The changes in Art. 27C of the GPTP Law as last amended by HPP Law are viewed as a solution to the above issues by the introduction of a new legal product. The new legal product in question refers to a "mutual agreement decision letter" as mentioned in Art. 27C paragraph (5) of the GPTP Law as last amended by the HPP Law.

6.17. The mutual agreement decision letter constitutes a legal basis for tax refund or collection. This is considering that in the past, prior implementation of the MAP decision was required for such a decision to constitute a valid basis, *inter alia,* by revising the notice of tax assessment or objection decision letter.

6.18. With the update of the GPTP Law, (i) the legitimate legal products for transfer pricing disputes covered by the MAP are the mutual agreement decision letter[2] and (ii) legitimate legal products for non-transfer pricing are in the form of a notice of tax assessment or objection decision letter. Thus, a taxpayer's non-transfer pricing dispute resolution may continue despite the fact that the MAP procedures have been separately completed.

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1 Elucidation of Art. 25 paragraph (1) of the GPTP Law as last amended by the HPP Law states that "... This paragraph stipulates that **1 (one) objection** may be filed against **1 (one) type of tax** and **1 (one) Taxable Period or Tax Year."**

2 Art. 10, Art. 45, Art. 56, Art. 58 of Gov. Reg. No. 50/2022.

6.19. Further provisions on procedures for the implementation of the MAP are stipulated through a minister of finance regulation. At the end of 2014, the government of Indonesia issued MoF Reg. 240/2014 concerning procedures for the implementation of the MAP.

6.20. In line with the development of the international tax system, i.e., Action 14 of the BEPS Project, which contains minimum standards in resolving double taxation disputes, the government of Indonesia subsequently accommodated global attention to this issue by releasing MoF Reg. 49/2019 concerning procedures for the implementation of the MAP.

6.21. MoF Reg. 49/2019 was issued due to the consideration that the provisions on procedures for the implementation of the MAP stipulated under MoF Reg. 240/2014 were not yet fully compliant with the minimum standards in Action 14 of the BEPS Project. MoF Reg. 240/2014 failed to provide legal certainty, particularly, in respect of the procedures, period and follow-up to requests for the implementation of the MAP. MoF Reg. 240/2014, thus, was repealed and replaced by MoF Reg. 49/2019.

6.22. As aforementioned, issues that may be negotiated and resolved through the implementation of the MAP in Indonesia were disputes over tax treatment not compliant with the tax treaty. MoF Reg. 49/2019 states that the taxpayer may apply for MAP if they have received the first notification.

6.23. The applicable provisions on the first notification may differ pursuant to the domestic tax provisions of each jurisdiction. Pursuant to Art. 3 paragraph (1) subparagraph (c) of MoF Reg. 49/2019, the first notification in Indonesia is from the date of receipt of the (i) notice of tax assessment, (ii) the date of the income tax payment, withholding or collection receipt or (iii) the time the tax treatment does not comply with the provisions under the tax treaty.

6.24. Pursuant to MoF Reg. 49/2019, the time of the MAP process implemented through consultation between DGT and the tax authority

in a tax treaty partner is determined to be a maximum of two years (24 months) from the receipt or submission of the application for the implementation of the MAP in writing from the competent authority in the tax treaty partner.

6.25. As outlined in Chapter 1 History of Transfer Pricing Regulations in Indonesia, MoF Reg. 49/2019 has been consolidated into one minister of finance regulation along with the provisions on APA and transfer pricing documentation, i.e., into MoF Reg. 172/2023. However, in general, the provisions on MAP under MoF Reg. 172/2023 remain the same as those stipulated under MoF Reg. 49/2019.

A.2 Procedures for the Implementation of the MAP

A.2.1 The Submission of the Request for the Implementation of the MAP

6.26. MAP may be implemented based on a request from a resident taxpayer, Indonesian citizen, the DGT or the tax authority of a tax treaty partner through the competent authority of the tax treaty partner pursuant to the provisions under the tax treaty. If MAP is implemented based on a **resident taxpayer's** request, the resident taxpayer may request the implementation of the MAP to the DGT as the Indonesian competent authority in the context of the corresponding adjustment.

6.27. In addition to the corresponding adjustment, the **resident taxpayer** may also request the implementation of the MAP to the DGT in the event of tax treatment by the tax authority of the tax treaty partner which does not comply with the provisions of the tax treaty. The tax treatment by the tax authority of the tax treaty partner which does not comply with the provisions of the tax treaty consists of:

(i) the imposition of taxes by the tax authority of the tax treaty partner which results in double taxation due to:
    a. transfer pricing adjustments;

b. adjustments related to the existence and/or profits of Permanent Establishment (PE/*Bentuk Usaha Tetap* in Indonesian); and/or

c. other income tax object adjustments;

(ii) the imposition of taxes, including Withholding Tax (WHT) or income tax collection in the tax treaty partner which does not comply with the provisions stipulated in the tax treaty;

(iii) the determination of the status as tax residents by the tax authority of the tax treaty partner;

(iv) the discrimination in tax treatment in the tax treaty partner; and/or

(v) interpretation of tax treaty provisions.

6.28. Further, the request for the implementation of the MAP by an **Indonesian citizen** is submitted for all forms of discriminatory treatment in the tax treaty partner which contradicts the provisions on non-discrimination stipulated under the tax treaty. Moreover, the request for the implementation of the MAP by the **DGT** may be submitted in the context of:

(i) following up on the proposed requests for the implementation of the MAP by a resident taxpayer;[3] and/or

(ii) following up on the application for the bilateral or multilateral Advance Pricing Agreement (APA) submitted by the resident taxpayer according to the procedures for the implementation of the APA.

6.29. The request for the implementation of the MAP submitted by the resident taxpayer, DGT and tax authority of a tax treaty partner through the competent authority of the tax treaty partner pursuant to

[3] The proposed request for the implementation of the MAP may be submitted if according to the resident taxpayer, tax treatment by the DGT that does not comply with the provisions of the tax treaty occurs. The tax treatment by the DGT that does not comply with the provisions of the tax treaty consist of:
(i) double taxation caused by transfer pricing; and/or
(ii) differences in the interpretation of the provisions of the tax treaty.

the provisions under the tax treaty **may be submitted simultaneously** with the resident taxpayer's application to submit:

(i) the application for lawsuits stipulated under Art. 23 of the GPTP Law;

(ii) the application for objections stipulated under Art. 25 of the GPTP Law;

(iii) the application for appeals stipulated under Art. 27 of the GPTP Law;

(iv) the application for the reduction or cancellation of incorrect notices of tax assessment stipulated under Art. 36 paragraph (1) subparagraph (b) of the GPTP Law; or

(v) the application for civil reviews stipulated under Art. 77 paragraph (3) of the Tax Court Law.

6.30. The request for the implementation of the MAP does not postpone the obligation to pay tax payable, the implementation of tax collection and tax refunds pursuant to statutory provisions in the field of taxation.

A.2.2 Requirements for the Request for the Implementation of the MAP

6.31. The request for the implementation of the MAP submitted by the **applicant**[4] must fulfil the following requirements:

(i) submitted in writing in the Indonesian language;

(ii) stating the non-conformity of the application of provisions of the tax treaty according to the applicant;

(iii) submitted within the time limit stipulated under the tax treaty or no later than three years if not stipulated under the tax treaty, starting from:

a. the date of the notice of tax assessment;

[4] The applicant is a resident taxpayer or an Indonesian citizen.

b. the date of the payment receipt, withholding tax or income tax collection receipt; or

c. the time the tax treatment that does not comply with the provisions of the tax treaty occurs;

(iv) signed by the applicant or the taxpayer's representatives as referred to in Art. 32 paragraph (1) of the GPTP Law; and

(v) attached with:

a. the Certificate of Domicile (CoD or *Surat Keterangan Domisili*/SKD in Indonesian) or other documents containing the identity of the resident taxpayer of the tax treaty partner related to the request for the implementation of the MAP referred to in Art. 41 paragraph (6) subparagraph (a) dan subparagraph (b) of MoF Reg. 172/2023 (see number (i) and (ii) of paragraph 6.27);

b. the list of information and/or evidence or details held by the applicant which shows that tax treatment by the tax authority of the tax treaty partner or discriminatory treatment in the tax treaty partner does not comply with the provisions of the tax treaty; and/or

c. a statement letter stating the applicant's willingness to submit information and/or evidence or details referred to in letter (b) completely and on time.

6.32. The proposed request for the implementation of the MAP by the **DGT** to follow up on the proposed request for the implementation of the MAP by a resident taxpayer must fulfil the following requirements:

(i) submitted in writing in the Indonesian language;

(ii) stating the tax treatment by the DGT that does not comply with the provisions of the tax treaty according to the resident taxpayer;

(iii) submitted within the time limit stipulated under the tax treaty or no later than three years if not stipulated under the tax treaty, starting from the time the tax treatment which does not comply with the provisions of the tax treaty occurs;

(iv) signed by the resident taxpayer or the taxpayer's representatives as referred to in Art. 32 paragraph (1) of the GPTP Law; and

(v) attached with evidence showing the tax treatment by the DGT that does not comply with the provisions of the tax treaty.

6.33. The request for the implementation of the MAP submitted based on the **request by the tax authority of the tax treaty partner** through the competent authority of the tax treaty partner pursuant to the provisions under the tax treaty submitted within the time limit stipulated under the tax treaty.

6.34. For the MAP implementation request submitted by the applicant that fulfils the requirements as mentioned in paragraph 6.31, the request for the implementation of the MAP based on the request by the tax authority of the tax treaty partner through the competent authority of the tax treaty partner and the proposed request for the implementation of the MAP by the DGT to follow up on the proposed request for the implementation of the MAP by a resident taxpayer submitted to the DGT through:

(i) the Tax Office (*Kantor Pelayanan Pajak*/KPP in Indonesian) where the resident taxpayer is registered if the request for the implementation of the MAP submitted by the applicant that fulfils the requirements as mentioned in paragraph 6.31; or

(ii) the Directorate of International Taxation, in the event of:

a. the request for the implementation of the MAP submitted by the applicant, i.e., an Indonesian citizen who fulfils the requirements as mentioned in paragraph 6.31;
b. the request for the implementation of the MAP by the competent authority of the tax treaty partner; or
c. the proposed request for the implementation of the MAP by the DGT to follow up on the proposed request for the implementation of the MAP by the resident taxpayer.

6.35. The request for the implementation of the MAP based on the request by the resident taxpayer, Indonesian citizen and the tax authority of the tax treaty partner through the competent authority of the tax treaty partner as well as the proposed request for the implementation of the MAP by the DGT to follow up on the proposed

request for the implementation of the MAP by the resident taxpayer may be submitted in person or by post, shipping companies or courier services with proof of postage. The request for the implementation of the MAP based on the request by the Indonesian citizen and the tax authority of the tax treaty partner through the competent authority of the tax treaty partner as well as the proposed request for the implementation of the MAP by the DGT to follow up on the proposed request for the implementation of the MAP by the resident taxpayer may also be submitted by electronic mail. The request for the implementation of the MAP is submitted electronically if the system is available.

6.36. The request letter for the implementation of the MAP is prepared using the sample format listed in Appendix letter I.1. for resident taxpayer applicants or Appendix letter I.2. for Indonesian citizen applicants under MoF Reg. 172/2023. The statement letter stating the applicant's willingness to submit information and/or evidence or details completely and on time is prepared using the sample format listed in Appendix letter I.3. of MoF Reg. 172/2023.

A.2.3 The Handling of the Request for the Implementation of the MAP

A.2.3.1 Examinations

6.37. The DGT examines:

(i) the request for the implementation of the MAP submitted by a resident taxpayer, Indonesian citizen and the tax authority of the tax treaty partner through the competent authority of the tax treaty partner; and

(ii) the proposed request for the implementation of the MAP by the DGT to follow up on the proposed request for the implementation of the MAP by the resident taxpayer.

6.38. The request for the implementation of the MAP referred to in number (i) of paragraph 6.37 is examined in respect of:

(i) the completeness of the fulfilment of the requirements for the request for the implementation of the MAP based on the provisions referred to in Art. 42 paragraph (1) or paragraph (3) of MoF Reg. 172/2023 (see paragraph 6.31 or 6.33); and

(ii) the conformity between the matters for which the request for the implementation of the MAP is submitted and the tax treatment for which the request for the implementation of the MAP may be submitted as referred to in paragraph 6.26 (a request from the competent authority of the tax treaty partner), 6.27 (the request for the implementation of the MAP by a resident taxpayer) or 6.28 (the request for the implementation of the MAP by an Indonesian citizen),

to determine whether the request for the implementation of the MAP may be followed up or not.

6.39. The proposed request for the implementation of the MAP referred to in number (ii) of paragraph 6.38 is examined in respect of:

(i) the completeness of the fulfilment of the requirements for the proposed request for the implementation of the MAP referred to in paragraph 6.32; and

(ii) the conformity between the matters for which the proposed request for the implementation of the MAP is submitted (the proposed request for the implementation of the MAP by the DGT to follow up on the proposed request for the implementation of the MAP by the resident taxpayer as referred to in number (i) of paragraph 6.28) and the tax treatment for which the proposed request for the implementation of the MAP may be submitted,

to determine whether the proposal may be followed up into the request for the implementation of the MAP by the DGT to the competent authority of the tax treaty partner.

6.40. The DGT follows up on the results of the examination related to the request for the implementation of the MAP submitted by a **resident taxpayer and Indonesian citizen** by issuing:

(i) written notification to the applicant that the request for the implementation of the MAP may be followed up and the request for the implementation of the MAP in writing to the competent authority of the tax treaty partner if the request for the implementation of the MAP fulfils the requirements and conformity of the matters; or

(ii) the rejection letter for the request for the implementation of the MAP to the applicant listing the matters constituting the basis for the rejection if the request for the implementation of the MAP does not fulfil the requirements and/or does not fulfil the conformity of the matters,

within a maximum period of one month from the date the request for the implementation of the MAP is received.

6.41. The DGT follows up on the results of the examination related to the request for the implementation of the MAP submitted by the **competent authority of the tax treaty partner** by issuing:

(i) written notification to the competent authority of the tax treaty partner and resident taxpayer related to the request for the implementation of the MAP that the request for the implementation of the MAP may be followed up if the request for the implementation of the MAP fulfils the requirements and conformity of the matters; or

(ii) the rejection letter for the request for the implementation of the MAP to the competent authority of the tax treaty partner listing the matters constituting the basis for the rejection if the request for the implementation of the MAP does not fulfil the requirements and/or the conformity of the matters,

within a maximum period of one month from the date the request for the implementation of the MAP is received.

6.42. The DGT follows up on the results of the examination of **the proposed request for the implementation of the MAP by the DGT to**

follow up on the proposed request for the implementation of the MAP by the resident taxpayer by issuing:

(i) written notification to the resident taxpayer that the proposed request for the implementation of the MAP may be followed up and the request for the implementation of the MAP to the competent authority of the tax treaty partner if the proposed request for the implementation of the MAP fulfils the requirements and the conformity of the matters; or

(ii) the rejection letter for the proposed request for the implementation of the MAP to the resident taxpayer listing the matters constituting the basis for the rejection if the proposed request for the implementation of the MAP does not fulfil the requirements and/or does not fulfil the conformity of the matters,

within a maximum period of one month from the date the proposed request for the implementation of the MAP is received.

6.43. If the above-mentioned time limit has elapsed and the DGT has not issued written notification, the request for the implementation of the MAP or the proposed request for the implementation of the MAP is deemed feasible to be followed up and the DGT issues written notice no later than one month after the maximum time limit of one month referred to in paragraphs 6.40, 6.41 and 6.42 has elapsed.

6.44. If the request for the implementation of the MAP to the competent authority of the tax treaty partner referred to in number (i) paragraph 6.40 and number (i) paragraph 6.42 does not receive a written response from the competent authority of the tax treaty partner within a maximum time limit of eight months after the request for the implementation of the MAP is submitted, the DGT issues written notification to:

(i) the applicant or the resident taxpayer related to the request for the implementation of the MAP referred to in paragraph 6.26 (i.e., based on a request from the DGT and the competent authority of

the tax treaty partner) that the request for the implementation of the MAP cannot be followed up; and

(ii) the competent authority of the tax treaty partner that the request for the implementation of the MAP is revoked.

6.45. For the rejected request for the implementation of the MAP referred to in number (ii) of paragraph 6.40, the rejected proposed request for the implementation of the MAP referred to in number (ii) of paragraph 6.42 and the request for the implementation of the MAP that cannot be followed up referred to in number (i) of paragraph 6.44, the applicant may re-submit the request for the implementation of the MAP or the resident taxpayer may re-submit the proposed request for the implementation of the MAP insofar as the time limit referred to in number (iii) paragraph 6.31 and number (iii) paragraph 6.32 has not elapsed.

6.46. If the request for the implementation of the MAP submitted by the applicant can be followed up as referred to in number (i) of paragraph 6.40, the applicant must submit the information and/or evidence or details contained in the applicant's list of information and/or evidence or details as referred to in number (v) letter (b) of paragraph 6.31 to the DGT through the Directorate of International Taxation.

6.47. The information and/or evidence or details may be in the form of hardcopy and/or softcopy. The applicant must submit the information and/or evidence or details referred to in number (v) letter (b) of paragraph 6.31 no later than **two months** after:

(i) the date of issuance of the written notification that the request for the implementation of the MAP can be followed up as referred to in number (i) of paragraph 6.40; or

(ii) the one month time limit has elapsed, thereby, the request for the implementation of MAP submitted by the applicant is considered feasible to be followed up as referred to in paragraph 6.43 above.

6.48. Information and/or evidence or details referred to in number (v) letter (b) of paragraph 6.31 may be submitted in person, by post, shipping company or courier services with proof of postage or by electronic mail.

A.2.3.2 Negotiations

6.49. In the context of the implementation of the MAP, the DGT conducts negotiations with the competent authority of the tax treaty partner. The negotiations are correspondence activity, material assessments and meetings of the competent authority to resolve issues arising in the application of the tax treaty.

6.50. The negotiations are conducted within **a maximum period of 24 months** from:

(i) the receipt of the written request for the implementation of the MAP from the competent authority of the tax treaty partner referred to in paragraph 6.26; or

(ii) the submission of the written request for the implementation of the MAP to the competent authority of the tax treaty partner referred to in number (i) of paragraph 6.40 and number (i) of paragraph 6.42.

6.51. The negotiation period **may be extended one time** for a **maximum of 24 months** for every request for the implementation of the MAP. The negotiation period may be extended before the negotiation period ends if an initial agreement has been entered into as contained in the minutes of meeting or other documents concerning:

(i) the existence of transactions, selection of transaction analysis approaches, selection of the tested party, selection of the transfer pricing method and selection of price indicator for the request for the implementation of the MAP in connection with transfer pricing adjustment or in connection with the bilateral or multilateral APA; or

(ii) interpretation of the provisions of the tax treaty, for the request for the implementation of the MAP other than that referred to in number (i).

6.52. The extension of the negotiation period is subsequently outlined in the minutes of meeting or other documents within a period of six months before the end of the negotiation period referred to in paragraph 6.50.

A.2.3.3 Material Assessments

6.53. In the context of the material assessment, the DGT is authorised to:

(i) request information and/or evidence or details other than those referred to in number (v) letter (b) of paragraph 6.31 or number (v) of paragraph 6.32 to:
   a. the applicant (resident taxpayer or Indonesian citizen);
   b. the resident taxpayer related to the request for the implementation of the MAP referred to in paragraph 6.26 (i.e., based on a request from the DGT and the competent authority of the tax treaty partner); and/or
   c. other related parties;

(ii) conduct discussions with the applicant, the resident taxpayer related to the request for the implementation of the MAP referred to in paragraph 6.26 (i.e., based on a request from the DGT and the competent authority of the tax treaty partner) and/or other related parties;

(iii) inspect the place of business of the applicant and/or the resident taxpayer related to the request for the implementation of the MAP referred to in paragraph 6.26 (i.e., based on a request from the DGT and the competent authority of the tax treaty partner);

(iv) exchange tax information in the context of the MAP to the tax authority of the tax treaty partner; and/or

(v) conduct audits for other purposes and/or valuation in the context of the MAP to obtain information and/or evidence or details required in the context of completing the MAP.

6.54. The applicant and resident taxpayer related to the request for the implementation of the MAP referred to in paragraph 6.26 (i.e., based on a request from the DGT and the competent authority of the tax treaty partner) are required to:

(i) provide the information and/or evidence or details referred to in number (i) of paragraph 6.53 above;

(ii) attend the discussions referred to in number (ii) of paragraph 6.53 above; and

(iii) allow the inspection of the place of business referred to in number (iii) of paragraph 6.53 above.

6.55. The competent authority of the tax treaty partner may request information and/or evidence or details from the applicant, the resident taxpayer related to the request for the implementation of the MAP as referred to in paragraph 6.26 ((i.e., based on a request from the DGT and the competent authority of the tax treaty partner) and/or other related parties. The request for information and/or evidence or details by the competent authority of the tax treaty partner may only be submitted through:

(i) procedures for the exchange of information based on the request to the DGT stipulated under the tax treaty or international agreement stipulating the exchange of tax information; and/or

(ii) the direct request during the meeting process of the competent authority referred to in the above-mentioned paragraph 6.49.

6.56. The meetings of the competent authority are conducted through in-person meetings, telephone connection, video conferencing and/or other channels agreed upon by the DGT and the competent authority of the tax treaty partner. The meetings of the competent authorities are outlined in the minutes of meeting or other equivalent documents.

A.2.3.4 Results of Negotiations

6.57. In the context of the negotiations, the DGT formulates a negotiating position. The negotiating position contains a written explanation of the opinion of the Indonesian competent authority in connection with the matters for which the request for the implementation of the MAP is submitted.

6.58. If the negotiations have not resulted in a mutual agreement until the appeal decision or civil review decision is pronounced, the DGT:

(i) continues the negotiations if the matter in dispute decided in the appeal decision or civil review decision do not constitute the matter in dispute for which the request for the implementation of the MAP is submitted;

(ii) uses the appeal decision as the negotiating position or terminate the negotiations if:

   a. against the appeal decision, no application for civil review is submitted; and

   b. the matter in dispute in the appeal decision constitute matter in dispute for which the request for the implementation of the MAP is submitted; or

(iii) uses the civil review decision as a negotiating position or terminates the negotiations if the matter in dispute in the civil review decision constitutes the matter in dispute for which the request for the implementation of the MAP is requested.

6.59. The results of the negotiations are outlined in the mutual agreement which may contain agreements or disagreements that have been agreed upon in respect of the matters for which the implementation of the MAP is requested. The DGT subsequently issues a written notification concerning the results of the negotiations containing the agreement to the applicant or the resident taxpayer related to the request for the implementation of the MAP submitted by the DGT and the competent authority of the tax treaty partner no later than **fourteen calendar days** after the date mutual agreement.

6.60. The written notification may be accompanied by:

(i) the request to submit a statement letter of not applying for dispute resolution other than the MAP; or

(ii) the request to submit a statement letter of revocation or adjustment attached with written approval from the Tax Court or Supreme Court concerning the revocation or adjustment to the dispute if for the matter in dispute for which the MAP is requested, an application referred to in paragraph 6.29 is also submitted.

6.61. The statement letter of not applying for dispute resolution other than the MAP must be submitted by the applicant or the resident taxpayer related to the request for the implementation of the MAP submitted by the DGT and the competent authority of the tax treaty partner to the DGT no later than **fourteen calendar days** after the date of the written notification as mentioned in paragraph 6.59.

6.62. The statement letter of revocation or adjustment attached with written approval from the Tax Court or Supreme Court concerning the revocation or adjustment to the dispute referred to in paragraph 6.29 must be submitted by the applicant or the resident taxpayer related to the request for the implementation of the MAP submitted by the DGT and the competent authority of the tax treaty partner to the DGT no later than **eight months** after the date of the written notification as mentioned in paragraph 6.59.

6.63. The DGT submits written notification to the competent authority of the tax treaty partner that the mutual agreement can or cannot be implemented after the issuance of a written notification concerning the results of negotiations containing the agreement as mentioned in paragraph 6.59.

6.64. If the DGT submits a request as referred to in paragraph 6.60, the written notification to the competent authority of the tax treaty partner that mutual agreement can be implemented is submitted after the applicant or the resident taxpayer related to the request for the

implementation of the MAP submitted by DGT and the competent authority of the tax treaty partner fulfils the provisions referred to in paragraph 6.61 or 6.62.

6.65. If the applicant or the resident taxpayer does not fulfil the provisions referred to in paragraph 6.61 or 6.62, the DGT submits written notification to the competent authority of the tax treaty partner that the mutual agreement cannot be implemented.

6.66. If the results of the negotiations contain a disagreement, the DGT issues:

(i) written notification of the negotiation results containing the disagreement to the applicant or the resident taxpayer related to the request for the implementation of the MAP submitted by the DGT or the tax authority of the tax treaty partner through the competent authority of the tax treaty partner; and

(ii) written notification to the competent authority of the tax treaty partner,

no later than **fourteen calendar days** after the date mutual agreement.

6.67. The statement letter of not applying for dispute resolution other than the MAP and statement letter of revocation or adjustment referred to in paragraph 6.60 are prepared using the sample format listed in Appendix letter J.1. of MoF Reg. 172/2023 for the statement letter of not applying for dispute resolution other than the MAP or Appendix letter J.2. of MoF Reg. 172/2023 for the statement letter of revocation or adjustment.

A.2.3.5 Issuance of the Mutual Agreement Decision Letter

6.68. The DGT issues the mutual agreement decision letter within a maximum period of one month from:

(i) the date the written notification from the competent authority of the tax treaty partner that the mutual agreement may be implemented is received; and

(ii) the date the written notification to the competent authority of the tax treaty partner that the mutual agreement may be implemented is submitted.

6.69. The mutual agreement decision letter is prepared using the sample format listed in Appendix letter J.3. of MoF Reg. 172/2023 for mutual agreement in connection with double taxation or Appendix letter J.4. of MoF Reg. 172/2023 for mutual agreement other than that in connection with double taxation.

6.70. Further, the mutual agreement decision letter is submitted to the applicant, the resident taxpayer related to the request for the implementation of the MAP submitted by the DGT and the competent authority of the tax treaty partner and/or work units within the DGT authorised to follow up. If the negotiation results contain an agreement in connection with the application for the bilateral or multilateral APA, the DGT follows up on the mutual agreement by issuing a decision letter on the enactment of the APA according to the procedures for the implementation of the APA.

A.2.3.6 Termination of MAP Negotiations

6.71. The DGT may terminate MAP negotiations if:

(i) the applicant does not submit information and/or evidence or details within the time limit referred to in paragraph 6.47;

(ii) the competent authority of the tax treaty partner requests information and/or evidence or details not in accordance with the provisions to the provisions referred to in paragraph 6.55;

(iii) the negotiations do not result in an agreement until the time limit referred to in paragraph 6.50 or 6.51;

(iv) the statute of limitation for the assessments has elapsed as stipulated under the GPTP Law for tax years, fractions of a tax year or taxable periods covered in the request for the implementation of the MAP and the negotiations have not resulted in agreement;

(v) the resident taxpayer participates in the tax amnesty program stipulated under statutory provisions in the field of taxation for tax years, fractions of a tax year or taxable periods covered in the request for the implementation of the MAP;

(vi) an appeal decision or civil review decision has been issued if the decided matter in dispute are matters for which the application for MAP is submitted;

(vii) the competent authority of the tax treaty partner does not agree on the negotiating position of the DGT referred to in number (ii) or (iii) of paragraph 6.58; or

(viii) a lawsuit decision has been issued to cancel the notice of tax assessment related to the MAP.

6.72. The DGT submits written notification concerning the termination of negotiations to the applicant, the resident taxpayer related to the request for the implementation of the MAP submitted by the DGT and the competent authority of the tax treaty partner and/or the competent authority of the tax treaty partner.

A.2.4 Revocation of the Request for the Implementation of the MAP

6.73. For the request for the implementation of the MAP, an application for revocation may be submitted by a resident taxpayer, Indonesian citizen, the DGT or the tax authority of the tax treaty partner through the competent authority of the tax treaty partner pursuant to the provisions under the tax treaty.

6.74. The DGT may revoke the request for the implementation of the MAP submitted by the DGT in the context of:

(i) following up on the application for the revocation of the proposed request for the implementation of the MAP by the resident taxpayer; and/or

(ii) following up on the revocation of the application for bilateral or multilateral APA submitted by the resident taxpayer according to the procedures for the implementation of the APA.

6.75. The application for the revocation of the request for the implementation of the MAP submitted by the resident taxpayer, Indonesian citizen and the competent authority of the tax treaty partner as well as the application for the revocation of the proposed request for the implementation of the MAP by the DGT to follow up on the proposed request for the implementation of the MAP by the resident taxpayer submitted to the DGT through the Directorate of International Taxation. The application for the revocation of the request for the implementation of the MAP submitted by the resident taxpayer and Indonesian citizen as well as the application for revocation of the proposed request for the implementation of the MAP by the DGT to follow up on the proposed request for the implementation of the MAP by the resident taxpayer must fulfil the following requirements:

(i) submitted in writing in the Indonesian language;

(ii) submitted within a maximum time limit of six months from the start of the negotiations conducted within a maximum period of 24 months (paragraph 6.50);

(iii) including underlying reasons for the revocation; and

(iv) signed by the applicant, the resident taxpayer or the taxpayer's representatives as referred to in Art. 32 paragraph (1) of the GPTP Law.

6.76. For the application for the revocation of the request for the implementation of the MAP submitted by the resident taxpayer and Indonesian citizen as well as the application for revocation of the proposed request for the implementation of the MAP by the DGT to follow up on the proposed request for the implementation of the MAP by the resident taxpayer, the DGT examines the fulfilment of the above requirements mentioned in paragraph 6.75. Further, based on the examination of the application for the revocation of the request for the implementation of the MAP, the DGT issues written notification to:

(i) the applicant that the application for revocation is approved or not approved; and

(ii) the competent authority of the tax treaty partner that the request for the implementation of the MAP is revoked if the application for revocation is approved and submitted after the negotiations start,

no later than **21 calendar days** after the date the application for revocation of is received by the DGT.

6.77. Further, based on the examination of the application for revocation of the proposed request for the implementation of the MAP by the DGT to follow up on the proposed request for the implementation of the MAP by the resident taxpayer, the DGT issues written notification to:

(i) the resident taxpayer that the application for the revocation of the proposed request for the implementation of the MAP is approved or not approved; and

(ii) the competent authority of the tax treaty partner that the request for the implementation of the MAP by the DGT is revoked if the application for revocation of the proposed request for the implementation of the MAP is approved and submitted after the start of the negotiations,

no later than **21 calendar days** after the date the application for revocation of the proposed request for the implementation of the MAP is received by the DGT.

6.78. If the above-mentioned time limit referred to in paragraphs 6.76 and 6.77 has elapsed and the DGT has not issued written notification, the application for the revocation of the request for the implementation of the MAP is deemed approved and the DGT issues a written notice no later than **fourteen calendar days** after the time limit above has elapsed.

6.79. The application for the revocation of the request for the implementation of the MAP based on the request by the resident

taxpayer, Indonesian citizen as well as the application for revocation of the proposed request for the implementation of the MAP by the DGT to follow up on the proposed request for the implementation of the MAP by the resident taxpayer may be submitted in person, by post or freight forwarding services with proof of postage or by electronic mail. The application for revocation is submitted electronically if the system is available.

6.80. The application letter for the revocation of the request for the implementation of the MAP submitted by the resident taxpayer is prepared using the sample format listed in Appendix letter K.1. of MoF Reg. 172/2023. The application letter for the revocation of the request for the implementation of the MAP submitted by Indonesian citizen is prepared using the sample format listed in Appendix letter K.2. of MoF Reg. 172/2023.

6.81. Moreover, the application letter for the revocation of the proposed request for the implementation of the MAP by the DGT to follow up on the proposed request for the implementation of the MAP by the resident taxpayer is prepared using the sample format listed in Appendix letter K.3. of MoF Reg. 172/2023.

6.82. The application for the revocation of the request for the implementation of the MAP submitted by the tax authority of the tax treaty partner through the competent authority of the tax treaty partner may be submitted insofar as the application is submitted before the mutual agreement is obtained. For the application for the revocation of the request for the implementation of the MAP submitted by the competent authority of the tax treaty partner, the DGT examines the fulfilment of the provisions insofar as the application is submitted before the mutual agreement is obtained and issues written notification to:

(i) the competent authority of the tax treaty partner that the application for revocation is approved or disapproved; and

(ii) the resident taxpayer related to the request for the implementation of the MAP by the competent authority of the tax

treaty partner that the negotiation is terminated if the application for revocation is approved.

A.2.5 Follow-up to Mutual Agreement

6.83. Provisions under Art. 27C paragraph (6) of the GPTP Law as last amended by the HPP Law are reaffirmed under MoF Reg. 172/2023, i.e., the mutual agreement decision letter (a decision letter to follow up on the agreement in MAP) constitutes the basis for tax refunds or the basis for tax collection. This implies that the MAP decision stands alone as the basis for tax refunds or tax collection.

6.84. This signifies that in the event of issuance of a notice of tax assessment and an objection decision letter, the notice of tax assessment and the objection decision letter need not be corrected because it stands alone. Matters in the MAP may be submitted or not submitted in the appeal and objection matters in dispute. In the event that the implementation of the MAP has not produced a mutual agreement until the appeal decision or the civil review decision is pronounced, the DGT:

(i) negotiations are continued, in the event that the matter in dispute decided in the appeal decision or civil review decision is not the matter for which the application for MAP is submitted; or

(ii) the appeal decision or civil review decision is used as the negotiating position or to terminate the negotiations, in the event that the decided matter in dispute is the matter for which the application for MAP is submitted.

6.85. The following is a summary in terms of re-calculation of the tax payable after the issuance of a mutual agreement decision letter.

(i) The mutual agreement decision letter is issued before the notice of tax assessment is issued.

   a. The resident taxpayer related to the implementation of the MAP request must re-calculate the amount of tax payable. This re-calculation is based on a mutual agreement decision letter by submitting amendments of the tax return or

disclosure of incorrectness in the filing of the tax return within the time limit stipulated under statutory laws and regulations in the field of taxation.

If within a time limit of three months from the issuance of the mutual agreement decision letter or with due regard to the statute of limitation of assessments under the GPTP Law, the resident taxpayer does not amend tax returns or do not disclose the incorrectness of the completion of the tax returns, the DGT issues a notice of tax assessment by taking into account the mutual agreement decision letter.

b. If the mutual agreement decision letter is issued before the notice of tax assessment and results in the over-withholding and/or over-collection of income tax payable, the resident taxpayer of the tax treaty partner may apply for refunds. The application for tax refunds which should not be otherwise payable is submitted pursuant to statutory provisions in the field of taxation.

(ii) The mutual agreement decision letter is issued after the notice of tax assessment is issued.

The DGT may issue the mutual agreement decision letter by re-calculating the amount of tax payable in the notice of tax assessment. The said condition arises if the mutual agreement decision letter is issued after the notice of tax assessment is issued and against the notice of tax assessment:

a. no objection is filed;
b. no application for the reduction or cancellation of incorrect notices of tax assessment is submitted;
c. an objection or application for the relief or cancellation of incorrect notices of tax assessment is filed but not considered;
d. an objection or application for the relief or cancellation of incorrect notices of tax assessment is filed but is revoked; or
e. an objection is filed but it has been adjusted based on the matters agreed in the mutual agreement.

(iii) The mutual agreement decision letter is issued after the tax assessment relief decision letter or tax assessment cancellation decision letter is issued.

In this situation, the DGT issues the mutual agreement decision letter by re-calculating the amount of tax payable in the tax assessment relief decision letter or the tax assessment cancellation decision letter.

(iv) The mutual agreement decision letter is issued after a lawsuit decision.

If the mutual agreement decision letter is issued after a lawsuit decision on cancellation is issued, the DGT issues the mutual agreement decision letter by re-calculating the amount of tax payable in the notice of tax assessment. The lawsuit decision on cancellation is issued against the tax assessment relief decision letter, the tax assessment cancellation decision letter or the objection decision letter whose issuance does not comply with the procedures or methods stipulated under statutory laws and regulations in the field of taxation.

(v) The mutual agreement decision letter is issued after the objection decision letter is issued.

The DGT issues the mutual agreement decision letter by re-calculating the amount of tax payable in the objection decision letter. These provisions apply if the mutual agreement decision letter is issued after the objection decision letter and against the objection decision letter:

a. no appeal is filed;
b. an appeal is filed but is revoked and the Tax Court has granted written approval of the revocation;
c. an appeal is filed but has been adjusted based on the matters agreed upon in the mutual agreement and the Tax Court has granted written approval of the adjustments; or
d. an appeal is filed but a Tax Court decision on rejection is issued.

(vi) Other non-covered matters in dispute:

a. in the event of other matters in dispute that are not covered in the mutual agreement decision letter, but have a connection with the matters in dispute covered in the mutual

agreement decision letter, the DGT issues the objection decision letter or the relief or cancellation of incorrect notice of tax assessment decision letter by considering the mutual agreement decision letter;

b. if the mutual agreement decision letter is issued when the taxpayer file an appeal against matters in dispute not included in the mutual agreement decision letter, the DGT issues the mutual agreement decision letter by re-calculating the amount of tax payable in the objection decision letter;

c. if the mutual agreement decision letter is issued after the appeal or civil review decision that covers matters in dispute other than those covered in the mutual agreement decision letter is issued, the DGT issues the mutual agreement decision letter by re-calculating the amount of tax payable in the implementation letter of appeal decision or the implementation letter of civil review decision;

d. if for the taxpayer, the mutual agreement decision letter is issued after the issuance of the objection decision, appeal decision and/or civil review decision, the basis for the imposition of administrative penalties in the notice of tax collection also considers the amount of taxes in the mutual agreement decision letter.

B. Advance Pricing Agreement

6.86. Advance Pricing Agreement (APA) refers to a written agreement between the DGT and a taxpayer or the competent authority of a tax treaty partner to agree on (i) the criteria in setting the transfer price and (ii) determine the setting of the transfer price in advance.

6.87. Please note that an application for the APA is submitted for transfer pricing for **controlled transactions**. These controlled transactions may be in the form of controlled transactions between the taxpayer and another resident taxpayer and/or non-tax resident.

6.88. The criteria in setting the transfer price referred to in number (i) of paragraph 6.86 must at the minimum include:

(i) the identity of affiliates covered in the APA;

(ii) controlled transactions covered in the APA;

(iii) the transfer pricing method used;

(iv) the application method of the agreed upon transfer pricing method; and

(v) critical assumptions that affect transfer pricing.

6.89. The critical assumptions referred to in number (v) of paragraph 6.88 at the minimum include:

(i) written and unwritten contractual provisions in connection with controlled transactions;

(ii) the functions performed by each party to the transaction, assets used and risks assumed to occur and borne by the parties;

(iii) the characteristics of the transactions and characteristics of the parties conducting controlled transactions; and

(iv) economic conditions that affect transfer pricing.

6.90. Further, the setting of the transfer price in advance is determined by applying the Arm's Length Principle (ALP or *Prinsip Kewajaran dan Kelaziman Usaha*/PKKU in Indonesian) according to conditions that have occurred and are expected to occur during the APA period.

6.91. APA period is a tax year covered under APA according to the application of a resident taxpayer or according to the mutual agreement for **a maximum of five tax years** after the tax year the application for the APA is submitted. APA may be subject to **a roll-back** if the taxpayer requests a roll-back in the application for the APA.

6.92. The roll-back applies insofar as for the tax year:

(i) the facts and conditions of controlled transactions do not differ materially from the facts and conditions of controlled transactions agreed upon in the APA;

(ii) the statute of limitation of the assessment has not expired;

(iii) the notice of corporate income tax assessment has not been issued; and

(iv) no preliminary audits, tax crime investigations, tax crime prosecutions, tax crime trials are conducted or not serving sentences for tax crimes.

6.93. APAs are normally initiated based on the request from the taxpayer and/or competent authority of the counterparty with written approval from the taxpayer. However, there is a specific window when the APA request may be submitted, i.e., twelve to six months before the first covered year, i.e. if the covered year is 2025-2029, assuming the accounting year is January-December, the APA request must be submitted between 1 January 2024 and 30 June 2024 (the first covered year is 2025).

B.1 Background of Indonesian APA Provisions

6.94. The provisions on the implementation of the APA in Indonesia have been regulated since 2010[5] marked by the issuance of the Director General of Taxes Regulation Number PER-69/2010 concerning APA. Pursuant to PER-69/2010, APA is defined as follows.

> "Advance Pricing Agreement is an agreement between the Directorate General of Taxes and a Taxpayer and/or the tax authority of another country to agree **on the criteria** and/or determine the Arm's Length Price or Arm's Length Profit **in advance** between Related Parties."
>
> (with added emphasis)

6.95. Similar to the conditions pursuant to PER-48/2010, PER-69/2010 does not have a clear standing either after the issuance of Gov. Reg. No. 74/2011. Nonetheless, Gov. Reg. No. 74/2011 has not fully regulated the procedures for the implementation of APA. The issuance of MoF Reg. 7/2015 concerning procedures for the establishment and

[5] In the same year as the issuance of the first regulation stipulating the provisions on the implementation of MAP.

implementation of APA is a breath of fresh air for taxpayers wishing to apply for the APA on account of the clearer legal basis.

6.96. On 12 December 2022, the provisions on APA in Gov. Reg. No. 74/2011 were repealed and the provisions on APA were further stipulated under Gov. Reg. No. 55/2022 concerning adjustments to the regulation in the field of income tax. Further provisions on procedures for the implementation of APA remain stipulated under a minister of finance regulation.

6.97. In connection with the latest developments of Action 14 of the BEPS Project, the government of Indonesia released MoF Reg. 22/2020 concerning procedures for the implementation of APA and repealed MoF Reg. 7/2015[6]. MoF Reg. 22/2020 also improves the provisions under MoF Reg. 7/2015 to be more effective and provide legal certainty, specifically related to the setting of the transfer price, procedures, period and follow-up of the application for the implementation of APA.

6.98. MoF Reg. 22/2020 also stipulates procedures for the application, negotiations, civil reviews, cancellation and renewal of APA as well as the application of the Arm's Length Principle (ALP). Although titled APA, MoF Reg. 22/2020 also applies to the general transfer pricing provisions in Indonesia.

6.99. In implementing APA procedures in Indonesia, the APA negotiating team consists of civil servants within the DGT and/or professionals appointed by the Director General of Taxes. The tasks of the APA negotiating team include (i) analysing and evaluating the application for the APA, including economic analysis for the tax year covered by the APA, (ii) conducting APA negotiations with taxpayers, (iii) preparing the proposed recommendations of the APA paper position of the DGT and (iv) documenting all stages in the establishment of APA.

6 MoF Reg. 7/2015 has not accommodated procedures for the implementation of APA recommended by the final report of the BEPS Project.

6.100. In the documentation process, all documents and information submitted and filed by taxpayers in the establishment of APAs constitute the taxpayers' confidentiality unpermitted to be disclosed to other parties due to the protection by the provisions under Art. 34 of the GPTP Law as last amended by the HPP Law. Therefore, Art. 22 paragraph (5) of MoF Reg. 22/2020 emphasises that such documents or information cannot be used by the DGT as a basis to conduct an audit, preliminary audit or a tax crime investigation.

6.101. The results of an APA negotiation are in the form of an agreement between the DGT and the taxpayer which is subsequently outlined in the preparation of the decree on the enactment of APA (*Naskah* APA in Indonesian) and signed by both parties. However, if the APA involves an agreement with the competent authority of the tax treaty partner, the agreement resulting from the (bilateral or multilateral) APA negotiation will be outlined in the MAP. The DGT subsequently follows up on the MAP by issuing a decision letter on the implementation of the APA according to the procedures for the implementation of APA.

6.102. With the regulatory update at the minister of finance regulation level, PER-69/2010 was also repealed and replaced with the Director General of Taxes Regulation Number PER-17/2020 concerning procedures for the settlement of the application, implementation and evaluation of APA. The regulation also encompasses APA provisions during the Covid-19 pandemic. Art. 3 paragraph (4) of PER-17/2020 states that:

> "If the application for the APA is submitted by a Taxpayer whose business has been negatively affected by a non-natural disaster caused by the spread of the Corona Virus Disease 2019 (Covid-19), the profit level in the projected financial statements referred to in paragraph (2) is the adjusted profit level in normal conditions filed by the Taxpayer using the format listed in the appendix which constitutes an integral part of this Director General Regulation."

6.103. As described in Chapter 1 History of Transfer Pricing Regulations in Indonesia, MoF Reg. 22/2020 has been consolidated into one minister of finance regulation along with the provisions on MAP and transfer pricing documentation, i.e., into MoF Reg. 172/2023. However, in general, the provisions on APA stipulated under MoF Reg. 172/2023 are not subject to major changes as those stipulated under MoF Reg. 22/2020.

B.2 Submission of the Application for the APA

6.104. The DGT is authorised to enter into the APA with a taxpayer or the competent authority of the tax treaty partner to determine arm's length transfer prices according to the ALP, which is valid for a certain period based on the application for the ALP submitted by a resident taxpayer.[7] The resident taxpayer may apply for the APA for the controlled transactions based on:

(i) the taxpayer's initiative, in the form of the application for the unilateral, bilateral or multilateral APA;[8] or

(ii) the written notification from the DGT in connection with the application for the bilateral or multilateral APA submitted by non-tax residents to the competent authority of the tax treaty partner.

6.105. A resident taxpayer applying for the APA must submit the application to the Tax Office where the taxpayer is registered. The submission of this application must fulfil the requirements listed in MoF Reg. 172/2023. The following are the requirements for a taxpayer to apply for APA.

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7 The APA may cover all or part of the controlled transactions during the APA period and roll-back if the taxpayer requests roll-back in the application for the APA.

8 Three types of APA are known under MoF Reg. 172/2023, namely unilateral, bilateral and multilateral APA. Unilateral APA refers to the agreement between the DGT and a resident taxpayer, whereas bilateral/multilateral APA refers to the agreement between the DGT and one or more competent authorities of the tax treaty partner implemented based on the application by a resident taxpayer.

(i) The taxpayer has fulfilled the obligation to file the annual corporate income tax returns pursuant to statutory provisions in the field of taxation for three consecutive tax years before the tax year the application for the APA is submitted;

(ii) The taxpayer been required and having fulfilled the obligation to prepare and retain transfer pricing documentation in the form of master file and local file for three consecutive tax years before the tax year the application for the APA is submitted;

(iii) The taxpayer is not subject to preliminary audits, tax crime investigations, tax crime prosecutions, tax crime trials or serving sentences for tax crimes;

(iv) The controlled transactions proposed to be covered in the application for the APA are controlled transactions that have been filed by the taxpayer in the annual corporate income tax return referred to in number (i); and

(v) The proposed transfer pricing in the application for the APA is prepared based on the ALP and **does not result in the taxpayer's operating profit being lower** than the operating profit that has been filed in the annual corporate income tax returns for three consecutive tax years before the tax year the application for the APA is submitted (as referred to in number (i)).

The application for the APA is deemed to not result in the taxpayer's operating profit being lower insofar as the lower level of profit in projected financial statements during the APA period is greater or equal to the lowest level of profit in the annual corporate income tax returns for three tax years before the tax year the application for the APA is submitted.

In the application for the APA, the profit level indicators used are (i) Return on Sales (ROS) ratio or (ii) Net Cost Plus Mark-up (NCPM) ratio.

However, if the taxpayer's business is negatively affected by a national disaster determined by the central government, the profit level in the projected financial statements may be adjusted

to the profit level in normal conditions. The projected financial statements are prepared using the sample format listed in Appendix letter M of MoF Reg. 172/2023. An example of a national disaster that has been declared by the government is Covid-19 pandemic which was declared a national disaster through Presidential Decree No. 12/2020.

6.106. Next, if a taxpayer has fulfilled the requirements mentioned in paragraph 6.105, the application for the APA must fulfill the following administrative requirements.

(i) Submitted in writing in the Indonesian language by completing the application form for the APA using the sample format listed in Appendix letter L of MoF Reg. 172/2023;

(ii) Signed by the management whose names are listed in:
   a. the deed of incorporation; or
   b. the deed of amendments in the event of changes in management;

(iii) Submitted:
   a. in a period of **twelve months up to six months before the start of the APA period** in the event that the application for the APA is **based on the taxpayer's initiative**; or
   b. before the start of the APA period, in the event that the application for the APA is based on the written notification from the DGT in connection with the application for the bilateral or multilateral APA submitted by a non-tax resident to the competent authority of the tax treaty partner; and

(iv) Attached with:
   a. the statement letter that the taxpayer is willing to complete all documents required in the APA process; and
   b. the statement letter that the taxpayer is willing to implement the agreement listed in the APA.

6.107. If all the requirements have been fulfilled, the taxpayer may apply for the APA in person or electronically if the system is available. For the application for the APA, the DGT issues proof of receipt. The date

listed in the proof of receipt is the date of receipt of the application for the APA.

6.108. For the application for the APA submitted to the DGT through the Tax Office, the DGT examines the fulfilment of the provisions on taxpayers that may apply for the APA and the completeness of the fulfilment of the administrative requirements for the application of the APA. The DGT follows up on the results of the examination by issuing written notification of whether the application for the application for the APA can or cannot be followed up to (i) the taxpayer and/or (ii) the competent authority of the tax treaty partner, in the event of the application for bilateral or multilateral APA, within a maximum period of one month after the date of receipt of the application for the APA.

6.109. If the period of one month has elapsed and the DGT has not issued written notification, the application for the APA submitted by the taxpayer is deemed feasible to be followed up and the DGT issues the written notice no later than one month after the time limit of one month for the issuance of the written notification for the results of the examination has elapsed.

6.110. Further, if the notification of the application for the bilateral or multilateral APA to the competent authority of the tax treaty partner does not receive a written response in a period of eight months from the date of the written notification from the DGT, the DGT issues written notification of the termination of the APA process to the taxpayer applying for the APA and the competent authority of the tax treaty partner.

6.111. However, if the application for the APA **cannot be followed up** and the application for the APA whose process is terminated, the taxpayer may **re-apply** for the APA insofar as fulfilling the provisions on the taxpayers that may apply for the APA and the completeness of the fulfilment of the administrative requirements for the application for the APA as aforementioned in paragraphs 6.105 and 6.106.

6.112. For the application for the APA that **may be followed up** or is **deemed feasible to be followed up**, the taxpayer must submit the complete application for the APA in person directly to the DGT through the Directorate of International Taxation in the form of hardcopy and/or softcopy. The complete application for the APA is submitted no later than two months after the date of the notification that the application for the APA may be followed up. The complete application for the APA is at the minimum in the form of:

(i) financial statements that have been audited by a public accountant for the last three tax years before the tax year the application for the APA is submitted;

(ii) transfer pricing documentation for the last three tax years before the tax year the application for the APA is submitted; and

(iii) documents containing a detailed explanation of the application of the ALP for each controlled transaction proposed to be covered in the APA in the Indonesian language. The minimum detailed explanation contains the information listed in Appendix letter N of MoF Reg. 172/2023.

6.113. The DGT subsequently issues proof of receipt for the submission of the complete application for the APA directly. The date listed in the proof of receipt of the complete application for the APA is the date of the receipt of the complete application for the APA.

6.114. If the complete application for the APA is not submitted by the taxpayer in a period of two months, the DGT issues written notification of the termination of the APA process to (i) the taxpayer and (ii) the competent authority of the tax treaty partner in the event of bilateral or multilateral APA. If the APA application process is **terminated**, the taxpayer may **re-apply** for the APA insofar as fulfilling the provisions on the taxpayers that may apply for the APA and the completeness of the fulfilment of the administrative requirements for the application for the APA as aforementioned in paragraphs 6.105 and 6.106.

B.3 Settlement of the Application for APA

B.3.1 Material Assessments

6.115. If a taxpayer's application for the APA has fulfilled the completeness of the fulfilment of the administrative requirements, the DGT conducts material assessment. In the material assessment, the DGT is authorised to:

(i) conduct discussion with the taxpayer in connection with the taxpayer's application for the APA;

(ii) inspect the place of business of the taxpayer and/or affiliates;

(iii) interview the taxpayer's management and/or employees;

(iv) request additional data and/or information in the form of evidence, either in the form of documents or details, from the taxpayer;

(v) request data and/or information in the form of evidence, either in the form of documents or details, from affiliates or other related parties;

(vi) request an exchange of information;

(vii) request information and/or evidence or details from financial services institutions, other financial services institutions and/or other entities; and/or

(viii) request valuation.

6.116. If necessary for the material assessment, the DGT may conduct audits for other purposes pursuant to statutory provisions in the field of taxation. The audits for other purposes may be conducted if the taxpayer:

(i) has never been subject to audits in connection with transfer pricing for the controlled transactions proposed to be covered in the APA up to three tax years before the tax year the application for the APA is submitted;

(ii) requests roll-back in the application for APA.

6.117. The material assessment is conducted by applying the ALP. The resident taxpayer applying for the APA for the controlled transactions is required to:

(i) attend the discussions;

(ii) allow the inspection of the place of business;

(iii) allow the DGT to interview the taxpayer's management and/or employees; and

(iv) provide additional data and/or information in the form of evidence, either in the form of documents or details.

6.118. The taxpayer's documents used during the material assessment process cannot be used by the DGT as a basis to conduct audits, preliminary audits or tax crime investigations.

B.3.2 Negotiations

6.119. After the material assessment is conducted, the DGT conducts APA negotiations. APA negotiations are conducted with:

(i) the taxpayer, in the event of the unilateral APA; or

(ii) the competent authority of the tax treaty partner, in the event of bilateral or multilateral APA.

6.120. The unilateral APA negotiation must start no later than six months from the time the taxpayer submits the complete application for the APA within a maximum of two months from the date of the notification that the application for the APA can be followed up. The unilateral APA negotiation is completed in a period of twelve months from the start of the APA negotiation.

6.121. The bilateral or multilateral APA negotiation is completed in the period pursuant to the provisions on the MAP referred to in Art. 45 paragraph (3) and paragraph (4) of MoF Reg. 172/2023.

6.122. If during the APA negotiation, it is discovered that the taxpayer is subject to a preliminary audit, tax crime investigation, tax crime prosecution, tax crime trial or serving sentences for tax crimes, the DGT

terminates the APA process and issues written notification of the termination of the APA process to (i) the taxpayer and (ii) the competent authority of the tax treaty partner in the event of the application for bilateral or multilateral APA.

6.123. The results of the APA negotiation may contain agreement or disagreement on the criteria in setting the transfer price and determine the setting of the transfer price in advance.

6.124. In the APA negotiation, the following are several reasons for the DGT to not agree on the APA.

(i) The controlled transactions are not based on economic motives;

(ii) The economic substance of controlled transactions differs from their legal form;

(iii) The controlled transactions are conducted with minimising tax burden as one of the aims;

(iv) The information and/or evidence or details submitted by the taxpayer are incorrect or do not correspond to the actual conditions;

(v) The information and/or evidence or details in connection with the implementation of authority referred to in number (iv) of paragraph 6.115 cannot be obtained by the DGT in a period of 21 calendar days after the date of the written request; and/or

(vi) For the tax year in the APA period or roll-back, the notice of corporate income tax assessment has been issued.

6.125. The results of the APA negotiation are deemed to contain a disagreement as referred to in paragraph 6.124 if:

(i) the APA negotiation does not result in an agreement until the expiration of the APA negotiation period; or

(ii) the DGT receives written notification from the competent authority of the tax treaty partner that the APA negotiation cannot be conducted.

6.126. If the APA negotiation results in disagreement, the DGT terminates the APA process and issues written notification to the taxpayer.

6.127. Further, if the results of the APA negotiation contain an agreement, the results of the APA negotiation are outlined in:

(i) the decree on the enactment of APA (*Naskah* APA in Indonesian) in the event of unilateral APA; or

(ii) the mutual agreement according to the MAP in the event of bilateral or multilateral APA.

6.128. The decree on the enactment of APA is prepared using the sample format listed in Appendix letter O of MoF Reg. 172/2023. Based on the decree on the enactment of APA, the DGT issues a decision letter on the enactment of the APA within a maximum period of one month from the time the decree on the enactment of APA is signed.

6.129. Further, if the results of APA negotiation are outlined in mutual agreement, based on the mutual agreement, the DGT issues a decision letter on the enactment of the APA within a maximum period of one month from:

(i) the date the written notification from the competent authority of the tax treaty partner that the mutual agreement may be implemented is received; and

(ii) the date the written notification to the competent authority of the tax treaty partner that the mutual agreement may be implemented is submitted.

6.130. The decision letter on the enactment of the APA is prepared using the sample format listed in Appendix letter P and Q of MoF Reg. 172/2023. Further, the decision letter on the enactment of the APA is submitted to the taxpayer applying for the APA and work units within the DGT authorised to follow up.

6.131. Please note that if (i) **the bilateral or multilateral APA** negotiation results in a disagreement or (ii) the bilateral or multilateral

APA process is **terminated** because the competent authority of the tax treaty partner does not submit the written response, the taxpayer **may apply for unilateral APA** to the DGT through the Tax Office where the taxpayer is registered no later than fourteen calendar days after the date of the written notification that the APA negotiation results in a disagreement (Art. 61 paragraph (4) of MoF Reg. 172/2023) or the written notification that the APA process is terminated by the DGT (Art. 57 paragraph (4) of MoF Reg. 172/2023).

6.132. For the submitted application for the unilateral APA, the DGT conducts a negotiation with the taxpayer within a maximum period of:

(i) six months from the time the application is received if the application is submitted because the bilateral or multilateral APA results in a disagreement; or

(ii) twelve months from the time the application is received if the application is submitted because the bilateral or multilateral APA process is terminated.

6.133. If until the above time limit as mentioned in paragraph 6.132, no agreement has been reached, the results of the unilateral APA negotiation are deemed to be in the form of a disagreement.

B.4 Revocation of the Application for APA

6.134. A taxpayer may apply for the revocation of the application for the APA. However, to apply for the revocation of the application for the APA, the taxpayer must fulfil the following requirements.

(i) Submitted in writing in the Indonesian language by including the underlying reasons for the revocation;

(ii) Submitted before an agreement is obtained; and

(iii) Signed by the management whose names are listed in the deed of incorporation or deed of amendment in the event of changes in management.

6.135. The revocation of the application for the APA is submitted by a taxpayer to the DGT through the Directorate of International Taxation.

The revocation of the application for the APA is prepared using the sample format listed in Appendix letter R of MoF Reg. 172/2023.

6.136. The application for revocation submitted by the taxpayer may be submitted in person or electronically. The application for revocation may be submitted electronically if the system is available. Further, the DGT issues proof of receipt for the submission of the revocation of the application for the APA.

6.137. Moreover, for the revocation of the application for the APA submitted by the taxpayer, the DGT examines the fulfilment of the requirements for the revocation of the application for the APA as aforementioned in paragraph 6.134.

6.138. The DGT subsequently follows up on the results of the examination by issuing written notification of whether the revocation of the application for the APA is approved or not approved to (i) the taxpayer and (ii) the competent authority of the tax treaty partner in the event of bilateral or multilateral APA, within a maximum period of fourteen calendar days after the date the revocation of the application for the APA is received.

6.139. If the period mentioned in paragraph 6.138 has elapsed and the DGT has not issued written notification, the revocation of the application for the APA is deemed approved and the DGT issues the written notice no later than fourteen calendar days after the time limit mentioned in paragraph 6.138 has elapsed.

6.140. However, if based on the examination of the fulfilment of the requirements, the revocation of the application for the APA does not fulfil the requirements as aforementioned in paragraph 6.134, the revocation of the application for the APA is not approved and the application for the APA is continued.

6.141. Please note that if the revocation of the application for the APA is submitted after the APA negotiation starts, the taxpayer may not re-apply for the APA for the tax year covered in the revoked application for the APA.

6.142. Further, when the taxpayer revokes the application for the bilateral or multilateral APA and the revocation fulfils the criteria of the requirements for the revocation of the application for the APA as aforementioned in paragraph 6.134, the taxpayer may apply for the unilateral APA to the DGT through the Tax Office where the taxpayer is registered no later than fourteen calendar days after the date of the written notification of whether the revocation of the application for the APA (as referred to in paragraph 6.138) is approved or not approved or the written notification that the application for the APA is deemed approved (as referred to in paragraph 6.139).

6.143. For the application for the unilateral APA, the DGT implements the APA negotiation with the taxpayer in a period of:

(i) six months if the bilateral or multilateral APA negotiation has been conducted; or

(ii) twelve months if the bilateral or multilateral APA negotiation has not been conducted,

from the date the application for the unilateral APA is received.

6.144. If until the period above-mentioned in paragraph 6.143, no agreement has been reached, the results of unilateral APA negotiation is deemed to be in the form of a disagreement. The application for the unilateral APA is prepared using the sample format of the application for the APA referred to in paragraph 6.106.

6.145. The written notification submitted by the competent authority of the tax treaty partner concerning the revocation of the application for the bilateral or multilateral APA is deemed written notification from the competent authority of the tax treaty partner that the APA negotiation cannot be conducted.

B.5 Implementation of APA

6.146. The taxpayer must implement the APA contained in the decision letter on the enactment of the APA pursuant to statutory provisions in the field of taxation. Further, the agreement in the **APA must be**

implemented in the taxpayer's transfer pricing policies and the **implementation must be outlined in the transfer pricing documentation for the APA period**.

6.147. If for the APA period and/or roll-back, **the annual corporate income tax return has been filed** and it is known that there is an underpayment of income tax payable calculated based on the agreement in the APA but the **DGT has not conducted audits**, the taxpayer must amend the annual corporate income tax return according to the APA contained in the decision letter on the enactment of the APA. The annual corporate income tax return must be amended no later than one month after the decision on the enactment of the APA is issued.

6.148. Moreover, if for the APA period and/or roll-back, **the annual corporate income tax return is subject to audits**, the DGT issues a notice of tax assessment (*Surat Ketetapan Pajak*/SKP in Indonesian) by taking into account the APA contained in the decision letter on the enactment of the APA. If for the tax year in the APA period, a notice of tax assessment has been issued, the DGT amends the notice of tax assessment *ex officio* pursuant to the provisions referred to in the GPTP Law by taking into account the APA contained in the decision letter on the enactment of the APA.

6.149. In the event of administrative penalties arising due to the amendment of the annual corporate income tax return, the issuance of the notice of tax assessment or the amendment of the notice of tax assessment, **the DGT may nullify the administrative penalties** pursuant to the provisions referred to in the GPTP Law.

6.150. However, the agreement in the APA does not prevent the DGT from conducting audits, preliminary audits or tax crime investigations pursuant to statutory provisions in the field of taxation. Nevertheless, if the taxpayer implements the agreement in the APA and is subject to audits, preliminary audits or tax crime investigations, the DGT cannot adjust the transfer pricing transactions covered in the APA.

6.151. On the contrary, the prohibition for DGT to adjust the transfer pricing transactions covered in the APA does not apply if the taxpayer:

(i) files the annual corporate income tax return whose transfer pricing does not conform to the agreement in the APA;

(ii) does not file the amendment of the annual corporate income tax return until no later than one month after the decision letter on the enactment of the APA is issued;

(iii) files the amendment of the annual corporate income tax return whose transfer pricing does not conform to the agreement in the APA; or

(iv) does not file the annual corporate income tax return for the tax year in the APA period.

B.6 Evaluation of APA

6.152. The DGT is authorised to supervise the implementation of the APA by the taxpayer. The implementation of the APA is supervised through the evaluation of compliance in the implementation of the agreement in the APA and the conformity of the criteria in the pricing under the APA agreement.

6.153. In the context of the evaluation, the DGT is authorised to:

(i) conduct discussions with the taxpayer in connection with the implementation of the agreement in the APA;

(ii) request the taxpayer to provide necessary information and/or evidence or details;

(iii) inspect the place of business of the taxpayer and/or affiliates of the taxpayer;

(iv) interview the taxpayer's management and/or employees; and/or

(v) request information and/or evidence or details from affiliates or other related parties.

6.154. In the evaluation by the DGT, taxpayer is required to:

(i) attend the discussions;

(ii) provide information and/or evidence or details;

(iii) allow the inspection of the place of business; and/or

(iv) allow the DGT to interview the taxpayer's management and/or employees.

6.155. If based on the results of the evaluation of compliance in the implementation of the agreement in the APA, it is known that the taxpayer does not implement the APA contained in the decision letter on the enactment of the APA, the DGT follows up pursuant to the applicable statutory tax provisions. The follow-up is conducted by implementing the APA contained in the decision letter on the enactment of the APA.

6.156. Based on the results of the evaluation, the DGT is authorised to:

(i) review for a subsequent amendment to the concluded APA, insofar as there are material changes to the facts and conditions of controlled transactions covered in the APA with the critical assumptions agreed upon in the APA; or

(ii) cancellation of the APA contained in the decision letter on the enactment of the APA,

before the APA period expires.

B.6.1 The Amendment to the Concluded APA

6.157. A review (*peninjauan kembali* in Indonesian) of the APA is conducted based on the results of the evaluation of the agreement in the APA initiated by DGT or the application for review of the APA submitted by the taxpayer. Based on the results of the evaluation of the agreement in the APA, the DGT issues written notification to the taxpayer. The written notification to the taxpayer contains:

(i) material changes to the facts and conditions of controlled transactions covered in the APA with the critical assumptions agreed upon in the APA; and

(ii) the implementation of the APA negotiation in the context of the review of the APA.

6.158. The written notification is submitted before the tax year in which the review of the APA will be conducted ends.

6.159. The application for the review of the APA must be submitted to the DGT through the Directorate of International Taxation by completing the application form for the review of the APA. The application form for the review of the APA is prepared using the sample format listed in Appendix letter S of MoF Reg. 172/2023.

6.160. The application for the review of the APA may be submitted in person or electronically. The application for the review of the APA may be submitted electronically if the system is available.

6.161. The DGT issues proof of receipt for the submission of the application for the review of the APA. The date listed in the proof of receipt is the date of receipt of the application for the review of the APA.

6.162. The provisions on the examination, submission of the complete application, material assessment and negotiations of the application for the APA apply *mutatis mutandis* to the application for the review of the APA. Further, the results of the negotiations of the review of the APA are outlined in the amendment to the decree on the enactment of APA or mutual agreement.

6.163. For the amendment to the decree on the enactment of APA or the amendment to the mutual agreement, the DGT issues a decision on the amendment to the APA by including the tax year in the APA period subject to the review. The decision on the amendment to APA is prepared using the sample format listed in Appendix letter T and U of MoF Reg. 172/2023.

B.6.2 Cancellation of APA

6.164. If based on the results of the above-mentioned evaluation, there are indications that the taxpayer:

(i) submits information and/or evidence or details that are incorrect or does not correspond to the actual conditions; and/or

(ii) does not submit information and/or evidence or details that:

a. are known or should be known by the taxpayer; and
b. may affect the results of the agreement in the APA,

the DGT sends written notification to taxpayer to clarify the non-conformity of the information and/or evidence or details submitted during the APA process.

6.165. The taxpayer must submit a written response to the DGT through the Directorate of International Taxation for the written notification in a period of 21 calendar days after the date of the written notification. The DGT subsequently examines the taxpayer's written response.

6.166. The DGT cancels the APA contained in the decision letter on the enactment of the APA if the taxpayer:

(i) is proven to fulfil the provisions outlined in paragraph 6.164 based on the examination by the DGT; or

(ii) does not submit a written response or submit a written response but the period of 21 calendar days from the date of the written notification has elapsed.

6.167. In the context of the cancellation of the APA, the DGT issues:

(i) the decision letter on the cancellation of the APA to the taxpayer that is prepared using the sample format listed in Appendix letter V of MoF Reg. 172/2023; and

(ii) the notification of the cancellation of the APA to the competent authority of the tax treaty partner in the event of bilateral or multilateral APA.

6.168. The DGT issues the decision letter of the cancellation of the APA to the taxpayer in a period of 21 calendar days after:

(i) the written response from the taxpayer is received in the event of cancellation of the agreement in the APA based on the results of the examination; or

(ii) the period of 21 calendar days has elapsed from the date of the written notification.

6.169. If the DGT cancels the APA:

(i) the taxpayer cannot re-apply for the APA for the APA period and/or roll-back covered in the cancelled APA; and

(ii) the DGT may conduct audits, preliminary audits and/or crime investigations pursuant to statutory provisions in the field of taxation.

B.7 Renewal of APA

6.170. A taxpayer may apply for the renewal of APA to the DGT through the Tax Office where the taxpayer is registered. The application for the renewal of APA must be submitted in a period of twelve months up to six months before the APA period for which renewal is applied starts.

6.171. The application form for the renewal of APA is prepared using the sample format listed in Appendix letter W of MoF Reg. 172/2023. The application for the renewal of APA may be submitted in person or electronically. The application for the renewal of APA is submitted electronically if the system is available.

6.172. Procedures for the submission of the application for the renewal of APA are implemented pursuant to the ministerial regulation stipulating procedures for the exercise of tax rights and the fulfilment of tax obligations as well as the electronic issuance, signing and submission of decisions or tax assessments.

6.173. The DGT subsequently issues proof of receipt for the submission of the application for the renewal of APA. The date listed in the proof of receipt is the date of receipt of the application for the renewal of APA. For the application for the renewal of the APA, the taxpayer must submit the completeness referred to in paragraph 6.112.

6.174. The provisions on the submission of the complete application for the material assessment and the negotiations for the application for the APA shall apply *mutatis mutandis* to the application for the renewal of the APA. The renewal of the APA may only be granted one time for one APA period.

LIST OF ABBREVIATIONS

A	
ADR	Alternative Dispute Resolution
ALP	Arm's Length Principle
APA	Advance Pricing Agreement
ARR	Alternative Risk-Free Rate
Art.	Article
B	
BBA	British Bankers' Association
BEPS	Base Erosion and Profit Shifting
C	
CbC	Country-by-Country
CbCR	Country-by-Country Report
CCA	Cost Contribution Arrangement
CoD	Certificate of Domicile
COVID-19	Corona Virus Disease 2019
CPO	Crude Palm Oil
CPM	Cost Plus Method
CRM	Compliance Risk Management
CTTOR	Corporate Tax to Turn Over Ratio
CUP	Comparable Uncontrolled Price
CUT	Comparable Uncontrolled Transaction
D	
DEMPE	Development, Enhancement, Maintenance, Protection and Exploitation
DER	Debt-to-Equity Ratio
DGT	Directorate General of Taxes
E	
EUR	Euro
F	
FAR	Functions, Assets and Risks

G	
Gov. Reg.	Government Regulation
GPM	Gross Profit Margin
GPTP	General Provisions and Tax Procedures
H	
HPP	*Harmonisasi Peraturan Perpajakan*
I	
IDR	Indonesian Rupiah
ITL	Income Tax Law
J	
JIBOR	Jakarta Interbank Offered Rate
L	
LIBOR	London Interbank Offered Rate
M	
MAP	Mutual Agreement Procedure
MoF	Minister of Finance
MoF Reg.	Minister of Finance Regulation
N	
NCPM	Net Cost Plus Mark-up
NPM	Net Profit Margin
O	
OECD	Organisation for Economic Co-operation and Development
P	
PE	Permanent Establishment
PSM	Profit Split Method
Q	
QCAA	Qualifying Competent Authority Agreement
R	
R&D	Research and Development
ROA	Return on Assets
ROCE	Return on Capital Employed

ROS	Return on Sales
ROTC	Return on Total Cost
RPM	Resale Price Method
S	
SIBOR	Singapore Interbank Offered Rate
STLGs	Sales Tax on Luxury Goods
T	
TNMM	Transactional Net Margin Method
V	
VAT	Value Added Tax
W	
WHT	Withholding Tax
X	
XML	Extensible Markup Language

FOUNDERS OF DDTC

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Areas of Expertise:

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Danny Septriadi

Founder of DDTC

Areas of Expertise:

All Taxes

TAX EXPERT TEAM OF DDTC

David Hamzah Damian

Managing Partner, DDTC Consulting

Areas of Expertise:

Corporate Income Tax, Business Restructuring, Tax Dispute and Litigation

B. Bawono Kristiaji

Director, DDTC Fiscal Research & Advisory

Areas of Expertise:

Tax Policy and System Design, Tax Advisory, International Tax and Transfer Pricing

Romi Irawan

Transfer Pricing Leader and Senior Advisor, DDTC Consulting

Areas of Expertise:

Transfer Pricing Documentation, Transfer Pricing Policy Design, Transfer Pricing Control Framework, Business Restructuring

Yusuf Wangko Ngantung

Partner, DDTC Consulting

Areas of Expertise:

Transfer Pricing, Tax Litigation, MAP & APA, High Net Worth Individual (HNWI), Business Restructurings

Ganda Christian Tobing

Associate Partner, DDTC Consulting

Areas of Expertise:

International Tax, Financial Transactions, Business Restructuring, Tax Litigation

Khisi Armaya Dhora

Senior Manager, DDTC Consulting

Areas of Expertise:

Value Added Tax, International Tax, Tax Advisory and Risk Management

Cindy Kikhonia Febby

Senior Manager, DDTC Consulting

Areas of Expertise:

Transfer Pricing Disputes, Transfer Pricing Litigation and Audit Support, Transfer Pricing Risk Management and Mitigation

Veronica Kusumawardani

Senior Manager, DDTC Consulting

Areas of Expertise:

Transfer Pricing Disputes, Transfer Pricing Litigation and Audit Support, Transfer Pricing Risk Management and Mitigation

Rinan Auvi Metally

Manager, DDTC Consulting

Areas of Expertise:

Corporate Income Tax, Tax Dispute and Litigation

Puput Bayu Wibowo

Manager, DDTC Consulting

Areas of Expertise:

Tax Compliance, Business Restructuring, Tax Dispute and Litigation

Fakry

Manager, DDTC Consulting

Areas of Expertise:

Tax Compliance, Tax Advisory, Tax Dispute and Litigation, Income Tax and Value Added Tax

Pretty Wulandari

Manager, DDTC Consulting

Areas of Expertise:

Transfer Pricing Issues in Specific Industries: Automotive, Electronics, Pharmacy, Logistics, Consumer Goods

Flouresya Lousha

Manager, DDTC Consulting

Areas of Expertise:

Transfer Pricing Issues in Specific Industries: Commodities, Oil and Gas, Chemical, Digital and Technology, Media and Telecommunications

Muhammad Putrawal Utama

Manager, DDTC Consulting

Areas of Expertise:

Transfer Pricing Issues in Specific Transactions: Financial Transactions, Intellectual Property Licensing, Cost Contribution Arrangement

Riyhan Juli Asyir

Manager, DDTC Consulting

Areas of Expertise:

Tax Compliance, Tax Management, Tax Dispute and Litigation, International Tax

Erika

Manager, DDTC Consulting

Areas of Expertise:

Individual Income Tax, Corporate Income Tax, Tax Due Diligence

Denny Vissaro

Manager, DDTC Fiscal Research & Advisory

Areas of Expertise:

Tax Facility Support, Tax Advisory, Local Taxes

Atika Ritmelina Marhani

Tax Expert, CEO Office

Areas of Expertise:

Transfer Pricing, International Tax, Tax Risk Management, Income Tax

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