

A Comparison of Transfer Pricing Methods and Its Adoption in Disputed Tax Cases in Indonesia

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Abstract- In most countries including Indonesia, entities are given liberty to use their own discretion in deciding the most appropriate methods in measuring transfer prices. Consequently, it leads to a non-uniformity on methods applied to similar arm's length transactions by entities from similar industries. The loopholes in this area has been susceptible to tax avoidance practices since a few decades ago. This paper aims to compare the available methods for transfer pricing measurement. In addition, disparities in methods adopted by Indonesian multinational enterprises across similar transactions will be analysed. There are three steps involved in this study. Firstly, the available methods under the Organization for Economic Co-operation and Development ("OECD") guidelines and the Indonesian Taxation Laws will be presented. Secondly, the study will group the methods used in transactions among the MNEs with transfer pricing disputes with Directorate General of Taxes ("DGT") at a Judicial Review level. Lastly, the study will determine whether there is a similarity across these transactions or present the discrepancies in methods' adoptions. Although it can be concluded that particular methods are the most commonly adopted by these MNEs, there is no exact measure that can justify the underlying reasons for the selection. Further, the study could not find specific patterns that supported the selected methods. Therefore, it is deemed necessary that a more rigorous standards should be drafted and imposed in order to avoid cross-border tax evasion and avoidance practices.

Index Terms- Arm's Length, Transfer Pricing, Tax Disputes, Cross-Border, Tax Avoidance, MNEs

I. INTRODUCTION

Transfer pricing is a prevailing topic in current business practices (KPMG 2010). As global trades have flourished, giant corporations and market leaders seek to expand their businesses globally by engaging in growth strategies through foreign direct investments, joint ventures, strategic alliances, mergers or acquisitions (Darussalam et al., 2013). United Nations Conference on Trade and Development (2019) studies showed that global trade-to-output ratio was around 30% in 2018. Inevitably, most MNEs have multiple levels of subsidiaries in foreign soils and the occurrences of related parties' transactions among these companies have been accelerated at a record rate (Kristiaji 2015). Since 2008, these transactions have been regulated by DGT under Income Tax Law No.36 of 2008, with large references to the OECD guidelines and the UN (Karyadi and Irawati 2017).

Unfortunately, the complexity in this area has been a challenging issue due to lack of experience in transfer pricing (KPMG n.d.). To accommodate the lack of management expertise, rapid tax evolution and tax minimization, enormous number of tax and business consulting firms including DDTTC, Deloitte, EY, KPMG and PwC have been offering services in transfer pricing strategies and measurements since its inception (Siregar and Sujono 2020). These practitioners offer diverse transfer pricing services – from compliance, planning to dispute resolution and prevention (KPMG n.d.).

Despite the availability of services offered by consultancy companies, as there is no legislation or law that enforce the adoption of specific transfer pricing methods around the globe, this issue continues to create loopholes in Indonesian tax system and tax audit in practice (Kristiaji 2015). In addition, as Indonesia follows the UN or the ASEAN model for its tax treaties, Nofyanti and Arsajah (2019) states that many subsidiaries were established in tax heaven countries including Singapore, Netherlands, Virgin Island, and Hongkong, where the tax rate is significantly lower in these countries compared to Indonesia. Investments in these countries are not without any considerations as Simamora and Hermawan (2018) suggests these factors have led to a condition that is susceptible to further tax abuses such as profit shifting and creation of non-existence expenses or intra-group services by many market players.

Many studies indicated that intra-group services i.e. royalty fee or patent license have largely contributed to low tax revenues among MNEs (Simamora and Hermawan 2018). As an illustration, Siregar and Sujono (2020) states that the realization of tax revenue target accounts is an average of 84.16% for year 2014-2018. Moreover, approximately 4,000 MNEs has continued to report losses in their annual tax returns since 2013 (Kristiaji, 2015). To understand the rationale of these losses, independent variables including tax rate, tunnelling, and bonus were studied (Susanti and Firmansyah 2018). Susanti and Firmansyah (2018) shows that there is a strong correlation between transfer pricing decisions and tax avoidance practices in Indonesian manufacturing companies. On the contrary to the common beliefs that tax is one of the major determinants in transfer pricing transactions, Nofryanti and Arsajah (2019) proposed that tax minimization has a negative influence on transfer pricing.

Based on the different views on transfer pricing's relation to tax avoidance and continuously evolving tax law, the usage of available methods has become more challenging (OECD 2010). This study is conducted to contribute to the literature on the

transfer pricing methods' disparities in Indonesian disputed cases at the Judicial Review level.

II. LITERATURE REVIEW

1.1 *Transfer Pricing and Arm's length principle*

Organization for Economic Cooperation and Development (OECD) and United Nations (UN) are two major contributors in setting the standards that are used as international tax regime (Karyadi and Irawati 2017). As such these institutions have contributed in setting the guidelines for transfer pricing since decades ago (Darussalam et al., 2013). Eden (1998) proposed that the purpose for established these guidelines is to avoid double taxation on MNEs' income and to avoid tax evasion and tax avoidance practices.

OECD (2001) defines "transfer price as a price, adopted for book-keeping purposes, which is used to value transactions between affiliated enterprises integrated under the same management at artificially high or low levels in order to effect an unspecified income payment or capital transfer between those enterprises". This definition is aligned with the purpose of transfer pricing scheme to impose arm's length principle ("ALP") in related-party transactions, as if they occur between a company and an unrelated party (Darussalam et al., 2013).

The term of related parties, which is provided in Article 18(4) of Law No.7 (1983), stipulates that related parties takes place if a taxpayer has:

- A direct or indirect ownership of at 25% or more capital of other taxpayer(s);
- A direct or indirect control through management or ownership, where two taxpayers or more are under common control; or
- A family relationship by blood or marriage with other taxpayer(s).

Although there are many transactions that are susceptible to related-party transactions, the most common transactions are categorized into four groups: goods/service sales or purchase, intra-group services, intangible asset and interest on loan (Simamora and Hermawan 2018).

1.2 *The Transfer Pricing Methods*

Identical to OECD (2010) guidelines, the following methods are used in determining arm's length price as regulated in PER-32 (2011):

1. Comparable Uncontrolled Price Method (CUPM)
2. Resale Price Method (RPM)
3. Cost Plus Method (CPM)
4. Profit Split Method (PSM)
5. Transactional Net Margin Method (TNMM)

2.2.1 *The Comparable Uncontrolled Price Method (CUPM)*

The CUPM compares the transaction price of goods or services that is charged to controlled parties to those charged for uncontrolled parties (OECD 2010). The difference between these two prices indicates that the transaction is not at an arm's length price. The CUPM allows the taxpayer to use either transactional

price with independent enterprises ("internal comparable") or transactional price between other independent enterprises ("external comparable") (Karyadi and Irawati 2017).

According to Darussalam et al (2013), the CUPM is the most appropriate for establishing an arm's length price for sales of commodities where market prices or interest rate are publicly available and the products or services are sold without further processes or differentiation i.e. crude palm oil, cocoa bean, paper pulp, coal. Kristiaji (2015) stipulates that some of the Indonesian market data that can serve as external comparables for this method are as follows:

- Commodity: crude palm oil; External comparable: Bappebti (Badan Pengawas Perdagangan Berjangka Komoditas), MPOB (Malaysia Palm Oil Board).
- Commodity: cocoa bean; External comparable: Bappebti, ASKINDO (Asosiasi Kakao Indonesia).
- Commodity: paper pulp; External comparables: RISI Asian Pulp and Paper Monitor
- Commodity: coal; External comparables: Indonesian Coal Index/Argus Coalindo
- Interest rate: the London Interbank Offered Rate (LIBOR), the Jakarta Interbank Offered Rate (JIBOR).

2.2.2 *Resale Price Method (RPM)*

The RPM is calculated using the resale price to an independent buyer for goods or services which was initially purchased from a related company (OECD 2010). Appropriate margin and other costs associated with the purchase of the goods or services are then reduced from the resale price to calculate the arm's length price (Darussalam et al 2013).

OECD (2010) proposes that this method is the most appropriate for determining arm's length price for sales and marketing operations such as those typically carried out by a distributor.

2.2.3 *Cost Plus Method (CPM)*

The CPM is calculated by adding the arm's length mark-up to the cost base of the goods supplied or services provided (OECD 2010). An appropriate mark-up as suggested by Darussalam et al (2013) is the mark-up applied by a supplier when the good or service is provided to an independent party. In general, the cost base includes the direct and indirect costs of production, but does not include the operating expenses of the supplier (OECD 2010). Eden (1998) states that this method is the most appropriate if adopted by manufacturers with straightforward costs that activities do not include complex transactions i.e. intangible assets or unusual risks.

2.2.4 *Profit Split Method (PSM)*

The PSM begins with splitting the combined profit when a controlled transaction takes place among related parties (OECD 2010). Objectivity is the prominent concern in this method as the combined profit are split based on a splitting factor that should reflect the contributions of the parties to income earning (Eden 1998).

This method is usually used in complex transfer pricing transactions that are challenging to be determined under the traditional transaction methods, including intangible assets,

integrated commercial transactions, complex intra-group services (Darussalam et al. 2013).

2.2.5 Transactional Net Margin Method (TNMM)

Unlike the CPM and the RPM which examine the gross margin as the indicator, TNMM uses the net profit indicator in comparing the profit earned from a controlled transaction to those earned from a comparable uncontrolled transaction (OECD 2010).

Similar to the CUPM, either internal or external comparable can be referenced in this method and the most common-used indicator is the operating profit before interest and income taxes (Darussalam et al. 2013).

1.3 Selection of Transfer Pricing Methods

There are three methods in selection of transfer pricing, i.e. hierarchy of methods, best method rule and the most appropriate method (Darussalam et al. 2013).

Hierarchy of methods is the oldest method and is regarded out of date in many countries for current practices (Eden 1998). However, in Indonesia this method was also popular especially before the introduction of PER-32. In this method, the CUPM is regarded as the best method, followed by RPM and CPM (KPMG 2012). In case of analysis cannot be made under the gross profit methods, the TNMM and PSM can be adopted for analysis in the net profit level (Darussalam et al. 2013).

Best method rule, which was proposed in 1994, was introduced to combat the inflexibility of hierarchy of methods (OECD 2001). In this selection, the three key elements, i.e. fairness level, quality of data and assumptions and confirmation from other measurements are compared under all available methods (OECD 2010). As a consequence, the analysis process would put a burden in the company administrative costs (Eden 1998).

As there is no particular method that suitable in every related transaction and best method rule is not cost efficient, under OECD (2010), applications of distinct methods across different transactions are allowed. This proposal is also adopted in Indonesia where the hierarchical criteria, which is required by PER-43 has been abandoned by PER-32. The most appropriate method approach is proposed by PER-32 (2011) for related transactions with the following considerations:

1. Each method's strengths and weaknesses;
2. The degree of the method's appropriateness based on related party transaction, determined by a functional analysis;
3. Valid information's availability to be applied under the selected method;
4. The comparability of transactions between related party and non-related party (includes any adjustments necessary to eliminate materiality differences)

Furthermore, when performing the comparability analysis, the elements including characteristic of property transferred or services provided, functional analysis, contractual terms of the transactions, economic circumstances and business strategies should be taken into consideration based on Article 5 of Law No. 43 (2010). Nevertheless, Indonesia's regulations for transfer pricing transaction are not as extensive and detailed as regulated by the OECD or UN (Karyadi and Irawati 2017).

III. METHODOLOGY

1.4 Research design and analysis

This study main objective is to analyse the disparity in adoption of transfer pricing methods among similar transactions in disputed cases in Indonesia. More specifically, the research questions aim to examine the legal reasoning between the differences. The qualitative research with the basis of exploratory study is chosen as the methodologies of this study. There are two steps involved in this research.

The first step, legal research, which is paramount to the fundamental principles that govern the transfer pricing across arm's length transactions in Indonesia. This is performed by determining of the legal sources, relevant regulations and principles that are related to the issues and are imposed by the Indonesian Taxation Law. This process is performed by reading, learning, quoting, and comparing Indonesian laws in practice and international guidelines. These sources are managed and evaluated based on its subject matter and then organized into each separate group to ensure a systematic group of sources. Lastly, analytical procedure is conducted by describing, interpreting, understanding and explain in depth the transfer pricing in taxation system in Indonesia.

The second step is selecting and obtaining the cases to be studied. There are 78 cases that were ruled by the Indonesian Supreme Court from 2016 to 2019, which are filtered through the search engine using the keyword 'transfer pricing' on the directory of the Indonesian Supreme Court's website (Indonesian Supreme Court, n.d.). The cases that were ruled by this court is at the level of 'Judicial Review'. Out of these cases, 76 cases were selected for the purpose of this study. The nature of cases used in this research were varied, including Value Added Tax (VAT) and Corporate Income Tax (CIT), and/or related to intra-group services disputes. Based upon the selected cases, analyses are then conducted to assess the basis of the tax disputes, the position of DGT and taxpayers in the Judicial Review, the disputed affiliated transactions, the application of ALP in the transactions, the decisions of the Supreme Court and its bases.

3.2 Research gaps

There is a limitation in knowledge of the calculation of transfer pricing method. The DGT do not offer guidance on the distinction between transfer pricing methods and the relevant methods to be adopted under specific transactions (Karyadi and Irawati 2017). Under this situation, entities are given the liberty to determine the most appropriate methods for their arm's length transactions. In most cases, the transfer price calculated by tax practitioners will be audited by the DGT to test the fairness and ALP.

It is difficult to understand the rationale between the discrepancies as suggested by the DGT during a tax audit. In practice, the DGT usually began with calculation of transfer prices using the CUPM. The results were then compared with the reported methods in the 'Transfer Pricing Documentations' by taxpayers. Where same methods were being adopted by the DGT and the taxpayers, both parties often had different perspectives in deciding the comparable. On the other hand, in the case of different methods were proposed, the DGT often argued that the methods used by taxpayer did not satisfy the ALP.

To date, the existing studies has not sufficiently discussed the comparison between these methods, the legal reasoning why certain methods were chosen by taxpayers and the DGT and the disparity on methods applied among similar transactions in disputed cases at Judicial Review level in Indonesia. This study aims to fill these gaps.

3.3 Research topic and question

As mentioned above, the research objective is to bring more understanding regarding the appropriateness of transfer pricing methods' adoption by taxpayers in Indonesia.

Specifically, this study addresses the following questions:

- a. The strengths and weaknesses of each transfer pricing method.
- b. The summary of companies with cases ruled by the Supreme Court in Indonesia from 2015 to 2019.
- c. The methods selected by these companies.
- d. The factors that influence the adopted methods.

IV. ANALYSIS AND FINDING

1.5 Transfer pricing strength and weaknesses

The first consideration in selecting transfer pricing method under the most appropriate approach is to determine the strengths and weaknesses under each method. The following table presents the strengths and weaknesses of available methods:

Method	Strengths	Weaknesses
CUP	- The most direct and reliable method if there are comparable uncontrolled transactions.	- There are material differences in transactions between the related party and independent party.
RPM	- A fewer adjustment is necessary compared to the CUPM	- It is only applied to retail or marketing sector.
CPM	- A fewer adjustment is necessary compared to the CUPM.	- It is difficult to determine the costs for each transaction as these costs may not be the determinant of the appropriate profit.
PSM	- It offers solution for highly	- It is difficult to access

	integrated operations for which a one-sided method would not be appropriate.	information from foreign affiliates. - It is difficult to measure combined revenue and costs for all the related parties participating in the affiliated transactions.
TNM M	<ul style="list-style-type: none"> - The net profit indicators (e.g. return on assets, operating income to sales) are less affected by transactional differences than is the case with price, as used in the CUPM. - It avoids the problem caused by the unclarity in expenses' classification in gross profit calculation. - The financial indicators examination is easier to be performed for complex transactions with many interrelated activities. 	<ul style="list-style-type: none"> - It is hard to choose accurate and reliable determinants are used as net profit indicators. - Information on uncontrolled transactions as a comparability factor is unavailable. - It is difficult to determine an appropriate corresponding adjustment to work back to a transfer price (associated enterprises on both the buying and the selling sides of the controlled transaction).

1.6 Transfer Pricing Cases at Judicial Review in Indonesia

Based on the legal research that was performed through the search feature in the Indonesian Supreme Court's website, there are 76 transfer pricing cases that were ruled at the Judicial Review level from 2015 to 2019 by the Indonesian Supreme Court. Of

these years, 2017 has the highest number of ruled cases, while 2019 has the least.

The table below summarize the case facts of these cases:

Criteria	Findings
Petitioners	Both the DGT and taxpayers acted alternately as the petitioners.
Respondents	Both the DGT and taxpayers acted alternately as the respondents.
Taxpayers in Judicial Review (by industry)	<p>Automobile and Ships companies – parts, manufacturers: PT Astra Daihatsu Motor, PT AT. Indonesia, PT Krama Yudha Tiga Berlian Motors, PT NGK Ceramics Indonesia, PT NPR Manufacturing Indonesia, PT Nanindah Mutiara Shipyard (ship builders).</p> <p>Chemical based companies: PT Bumi Karyatama Raharja, PT Sika Indonesia, PT Chandra Asri Petrochemical, Tbk., PT Bridgestone Tire Indonesia, PT Monagro Kimia, PT. Givaudan Indonesia, PT Kaltim Parna Industri, PT Nagai Plastic Indonesia</p> <p>Real estate and hotel management company: PT Hyatt Indonesia</p> <p>Healthcare company: PT Prasasti Mitra</p> <p>Mining and metals company: PT Molten Aluminum Producer Indonesia, PT Freeport Indonesia, PT Jembayan Muarabara, PT Kitadin, PT Smelting, PT Sinar Mas Speciality Minerals</p> <p>Other materials Oil & Gas: PT Patra SK</p> <p>Paper & forest products company: PTPDM Indonesia</p> <p>Information technology company: PT Oracle Indonesia</p> <p>Customer discretionary and staples – manufacturers: PT Panasonic Gobel Energy Indonesia, PT Latexco Indonesia, PT Acergy Indonesia, PT Adidas Indonesia, PT Coca Cola Indonesia, PT Kraft Indonesia, PT Sojitz Indonesia, PT Vista Agung Kencana</p> <p>Materials and construction company: PT Saint Gobain Abrasive Indonesia, PT Maccaferri Indonesia, PT Rehau Indonesia, PT Sumitomo Electric Wintec Indonesia</p>
Tax issues	Value Added Tax (PPN), Corporate Income Tax (PPh Badan)
Related transactions	Supply of goods and services (sales price, costs of goods sold), intra-group services

disputed in Judicial Review	(management fee, technical services, corporate service, stewardship activity, commission, agency cost), intangible asset transactions (royalty, trademarks, licenses, development costs) and interest on loan transactions.
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Transfer Pricing Methods Adopted in Indonesia's Disputed Cases

Based on the cases included in this study, the methods adopted by companies are varied. The following discussions provide a more detailed analysis into each method adopted and its measurement.

4.3.1. CUPM

- PT Adidas Indonesia paid Adidas International Marketing BV ("AIMBV") for royalty, which was calculated using the CUPM. The reason behind this selection was because AIMBV also provides similar license to unrelated parties. The price charged to unrelated parties (internal comparable) was the fair value for that royalty payment.
- PT Chandra Asri Petrochemical, Tbk. used the CUPM for supplies of 'Propylene' (using external comparable) and 'Ethylene' (using internal comparable) to its affiliates 'PT Tri Polyta Indonesia' which were higher than the market price. The different comparable was used due to unavailability of the ICIS FOBSEA (Independent Chemical Industry Service Freight-On-Board South East Asia). Thus, the ICIS SEA CFR (Independent Chemical Industry Service South East Asia Cost and Freight) was used and the final transfer price was adjusted for freight cost.
- PT Coca Cola paid 'PT Coca Cola Distribution Indonesia' for marketing fees using the deemed gross profit margin for marketing function, (32.60%). The comparable used was those proposed by US SIC 8742 Management Consulting Services.
- PT Freeport used the CUPM in setting selling prices of copper, gold and silver concentrates to its affiliates 'Atlantic Copper – Spain' and 'PT. Smelting Gresik' using the internal comparable and external comparable.
- PT Givaudan Indonesia paid for royalty fee – intellectual property to its majority shareholder 'Givaudan SA, Swiss' using the CUPM. The percentage of the royalty charged was 25% based on external comparable issued by 'Transfer Pricing Associates (Australia) Pty Limited' in the *Economic Benchmarking Study*.
- PT Kaltim Parna Industri used the CUPM less transportation fee for supplies of ammonia product to its affiliates 'Mitsubishi Corporation', 'Marigold Development Ltd.' and PT MC Indonesia. FERTECON index was used as the comparable by this company
- PT Patra SK charged its affiliate 'SK Group' for the supply of Lube Base Oil using the CUPM. The international market price was used as an external comparable in determining the price.
- PT Sinar Mas Speciality Minerals paid its affiliates 'PT. Indah Kiat Pulp & Paper Tbk.' and 'Specialty Minerals Int. Inc.' for royalty fee and management fee using the CUPM. This method was later challenged by DGT in 2017 and the Indonesia Supreme Court ruled in favour of the DGT. The method proposed by DGT was TNMM as there was no fair comparable for these transactions.

4.3.2 RPM

- PT Jembayan Muarabara ("JMB") charged its affiliate 'Tiger Energy Trading ('TET')' for the sales using the RPM. The transfer price in this case was 5% lower than its price to unrelated party. However, JMB argued that the 5% is the trading discount to compensate TET's risk and function as a fully-fledged coal trader, which has supported by comprehensive transfer pricing studies. The CUPM was not used because the price differences between contract and actual transaction.

4.3.3 CPM

- PT Astra Daihatsu Motor used the CPM for supplies of automobile products to its affiliates. OSIRIS database was used as an external comparable in prices determination.
- PT Kraft Indonesia charged for export sales using the CPM with markup level at 6%. The mark-up was considerably lower compared to the local sales due to many factors that showed differences in variables between the two markets. 'Benchmarking Analysis' was performed by KPMG using 15 companies in Asia Pacific region and 1 company in North America in deciding the mark-up used. The Benchmarking Analysis result showed that a median from NCPM was 5.9%.
- PT Maccaferri Indonesia recalculated its related party transactions using the CPM. The transactions were initially calculated using the TNMM. The internal and external comparable used in this method were Tokyo Rope Mfg. Co. Ltd, Nichia Steel Works Ltd, Henan Hengxing Science & Technology Co. Ltd, Dongli Steel Mfg, dan Shadrinskii Elektrodny Zavod.
- PT NPR Manufacturing Indonesia calculated its transactions with 'Nippon Piston Ring Co. Ltd' using the CPM. Although the Mark-up on Total Cost ('MOTC') was lower than the arm's length profit range for 2010 (2.61% - 5.32%), the supreme court ruled that the arm's length principal had been exercised appropriately.
- PT Oracle Indonesia paid the Oracle Corporation for the supply of four Line of Business (licensing, support, consulting, education) based on the costs of services supplied plus mark-up. The reason was because the line of business was specific to the Oracle and the breadth and depth of technical services in software industry varied between companies. Therefore, there was no external comparable that could be used.
- PT Panasonic Gobel Energy Indonesia paid its related parties 'Matsushita Battery Industrial Company Limited' for technical assistance fee and royalty fee for intangible properties. The prices charged were calculated using the CPM, however, there was no transfer pricing documentation as the base for the price.
- PT PDM Indonesia was charged for multiple intra-group services by its affiliates ('Paperteries de Mauduit SAS-Perancis', CEO of 'Schweitzer-Mauduit International Inc (USA)' and 'SMIC Regional Operating Headquarter', 'Presiden Southeast Asian Operation Office') using the CPM with different percentage charged by each affiliate.
- PT Prasasti Mitra used the CPM in determining the prices for the supply of medical equipment to its related

party 'PT Dos Ni Roha'. The margin used in this case was 0%.

4.3.4 TNMM

- PT Bridgestone Tire Indonesia ("BTI") sold its product to the affiliated price using the TNMM calculation. The sales prices were lower to the non-related party price due to the special promotion (trade discount) for items with many substitutes to boost sales, extra discount for distributors, early bird discount (2% of sales) and volume discount (1%). BTI provided that the differences did not violate the ALP and the distributors had the rights to purchase the items at a lower price as they were advertised.
- PT BumiKaryatamaRaharja used the TNMM in calculating the supply of its two products to its related parties, PTCahaya KalbarTbk. and PT Bukit KapurReksa. The prices charged to its related parties were significantly lower than its prices to independent parties. PT BumiKaryatamaRaharja argued that the CUPM could not be used because sales price is heavily affected by

their inventory volume, as well as credit risks and the payment terms.

- PT Nanindah Mutiara Shipyard used the TNMM in calculating the foreign exchange gains or losses for its transaction with its domestic or international affiliates.
- PTSojitz Indonesia used the TNMM in calculating the transfer prices for related party transactions. As there was no internal comparable, the appropriate indicator to be used was net operating margin.

4.3.5 Other methods

Apart from the methods mentioned above, other methods are also allowed if a method is deemed as the most appropriate. The other methods adopted by some entities in the research scope includes the net sales approach and the adjusted income approach. Net sales approach

Net sales approach has been adopted by many companies for its transactions with its related parties. The application for net sales approach is presented in the table below:

Company	Related party	Nature of transactions	Basis of calculation
PT AT. Indonesia	Aisin Takaoka Co Ltd	Royalty fee	- 2% x net sales of sand molding - 3% x net sales of permanent mold casting
PT Latexco Indonesia	Latexco Asia Pacific Pte Ltd Singapura	Commission fee	- 6% x sales revenue
PT Monagro Kimia	MonsatoAgChem Affiliates	Patent -license fee	- 2% x net sales of Glyphosate & Butachlor herbicide products.
PT Nagai Plastic Indonesia	Nagai Plastic Industry Co., Ltd Japan	Royalty fee	- 4% x sales revenue
PT Rehau Indonesia	RehauPte. Ltd Singapore	Technical Assistant Development (TAD) charges	- 24% x targeted sales and cost allocation from cost of goods sold from each contry.
PT Saint Gobain Abrasive Indonesia	Saint-Gobain Abrasives France	Royalty fee	- 1% x net sales of abrasive products
PT Sika Indonesia	Sika InformationsSystem AG	IT fee	- Net sales (PTSika Indonesia)/ Worldwide Sales x Total Sika Services AG
PT Sumitomo Electric Wintec Indonesia	Sumitomo Electric Wintec, Inc., Japan	Royalty fee, technical assistance fee	- 1.5% x net sales - The technical assistance fee was deemed reasonable and at arm length.
PT Sumitomo Electric Wintec Indonesia	Sumitomo Electric Industries Ltd	Interest on bank guarantee	- The interest on bank guarantee was deemed reasonable and at arm length.
PT Vista Agung Kencana	Charoen Pokphand International Group of Companies Ltd	Royalty fee	- Total sales to its proportion to intellectual property used.

Discounted & adjusted income:

- PT Hyatt Indonesia paid its affiliate 'Hyatt International Corporation' for technical service and brand positioning service. To calculate the transfer prices for these services, independent appraisal 'Arthur Andersen LLP' was appointed. Arthur Andersen used the income approach where the expected income from each contract is compared to the discounted actual cash inflow, operating expenses and necessary initial investment. The rationale behind this method is this is the fair value for unaffiliated party.

In the following disputed cases, the methods used were not clearly indicated, nor that the tax court decisions were available online. However, all the following cases were ruled in the favour of the taxpayer except for 'PT Murinwood Indah Industry'. The DGT's Judicial Review Requests for the following cases were rejected because transfer prices for related party transactions were deemed fair and in compliance with ALP.

- PT Krama Yudha Tiga Berlian Motors
- PT NGK Ceramics Indonesia
- PT Kitadin
- PT Smelting
- PT Acergy Indonesia

Nevertheless, research shows that during the tax court proceeding and the Supreme Court Judicial Review, PT Molten Aluminum Producer Indonesia had not provided the transfer pricing documentation / Advance Pricing Agreement ("APA") which laid out the method it used in calculating the transfer price for the supply of aluminium ingot to its related parties.

1.7 Factors that influence the adoption of transfer pricing method in Indonesia

It can be seen that CUPM, CPM, TNMM and percentage of sales method were widely used by companies either with similar characteristic or from the similar industries. The following shows the method used by companies in the Judicial Review in calculating their transfer prices:

- Automobile and ships
 - CPM: PT Astra Daihatsu Motor, PT NPR Manufacturing Indonesia
 - TNMM: PT Nanindah Mutiara Shipyard
 - Net sales approach: PT AT Indonesia
- Chemical
 - CUPM: PT Chandra Asri Petrochemical, Tbk., PT Givaudan Indonesia, PT Kaltim Parna Industri
 - TNMM: PT Bridgestone Tire Indonesia, PT Bumi Karyatama Raharja
 - Net sales approach: PT Monagro Kimia, PT Nagai Plastic Indonesia, PT Sika Indonesia
- Real estate and hotel management - Adjusted income: PT Hyatt Indonesia
- Healthcare - CPM: PT Prasasti Mitra
- Mining and metals

- CUPM: PT Freeport Indonesia, PT Sinar Mas Speciality Minerals
- RPM: PT Jembayan Muarabara
- Oil & Gas - CUPM: PT Patra SK
- Paper & Forest products - CPM: PT PDM Indonesia
- IT - CPM: PT Oracle Indonesia
- Customer discretionary & staples – manufacturer
 - CUPM: PT Adidas Indonesia, PT Coca Cola Indonesia
 - CPM: PT Kraft Indonesia, PT Panasonic Gobel Energy Indonesia
 - TNMM: PT Sojitz Indonesia
 - Net sales approach: PT Latexco Indonesia
- Materials and constructions
 - CPM: PT Maccaferri Indonesia
 - Net sales approach: PT Saint Gobain Abrasive Indonesia, PT Rehau Indonesia, PT Sumitomo Electric Wintec Indonesia

The discrepancies also can be seen if the transactions are groups based on its nature of transaction:

- Good and Sales Tax: CUPM (4); RPM (1); CPM (6); TNMM (3)
- Intra-group services: CUPM (2); CPM (2); TNMM (1); Net sales approach (4); Adjusted income (1)
- Intangible asset transactions: CUPM (3); CPM (1); TNMM (5)
- Interest on loan transactions: TNMM (1)

Based on the above analysis, it can be seen that the nature of the transactions and the industries are not a determinant in choosing an appropriate transfer pricing method.

V. CONCLUSION

The methods used in transfer pricing transactions in Indonesia cannot be mapped or classified by its industries or types of transactions. While some taxpayers in same industry and similar disputed cases, used a similar approach, there were numerous companies which showed different views in determining prices and recognizing transactions between themselves and their affiliated party. In addition, some entities in this study did not provided the documentation for the method they used or preferred to adopt other alternative methods.

The popular methods adopted by companies in this study (at the level of Judicial Review) are the CUPM, CPM, TNMM and net sales approach. These methods were chosen by the taxpayers in determining its related party transactions as they were considered to be the most appropriate methods. The DGT and the Supreme Court also ruled each transfer pricing case based on the appropriateness of method and compliance to the ALP. In most cases covered by this study, the tax audits were conducted using the hierarchical method where the DGT calculated the transfer price using the CUPM method. Nevertheless, the rationale on

which the methods proposed by the DGT often did not aligned to the taxpayers' transactions and certain variables, such as comparable were not available in the market. As a consequence, there has been disparities in methods selected not only among the taxpayers, but also between the taxpayers and the DGT during the tax audits.

It may be beneficial if the Indonesian Taxation Law can enforce a more detailed transfer pricing regulations and guidelines as those proposed by the OECD, thus create a more harmonized transfer pricing regulations and adoptions between domestic affiliates and international affiliates.

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