

# EY Indonesia Tax Insight

## SPECIAL TRANSFER PRICING ALERT

On 23 November 2011 the Director General of Taxation released PER 32/PJ2011 dated 11 November 2011, amending PER 43/PJ2010 dated 6 September 2010, on the application of the arm's length principle on transactions between parties that have a special relationship. The salient changes under this new regulation are as follows:

- ▶ Taxpayers are no longer required to document and conduct comparability analysis for transactions with a total value of less than IDR10,000,000,000 for each transaction counterpart. However, the regulation is unclear on whether or not these transactions are subject to transfer pricing audits. In the absence of documentation, the tax authorities may invoke Article 20 (4) of the same regulation to make adjustments on these transactions.
- ▶ The regulation only applies to domestic transactions if the related domestic enterprises are subject to different tax rates under the following circumstances:
  - ▶ The related party transaction is subject to final and non final taxes within a specific sector;
  - ▶ The related party transaction is subject to Luxury Goods Tax; or
  - ▶ The related party transaction is conducted with a taxpayer as an Oil and Gas Production Sharing Contractor.
- ▶ Uncontrolled internal comparable transactions, which are incidental in nature, may only be used as comparable transactions with respect to incidental related party transactions.
- ▶ The hierarchy of transfer pricing methods is replaced with "the most appropriate method" test. This implies that taxpayers can choose to use the method that is appropriate based on the nature of the transaction and available data, among others, without having to reject methods which have been traditionally preferred.
- ▶ The applicability of the transaction net margin method (TNMM) has been limited to transactions where one of the parties provides "special contribution" or to transactions that are complex and interconnected with each other.
- ▶ The concept of "intangible asset" has been clarified and includes both marketing and trade intangibles.
- ▶ Cost contribution arrangements, which were not formerly covered, are now recognized and covered under Article 17A of the new regulations.



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We welcome your feedback on Tax Insight and ideas for the next issue.

PER 32 takes effect on 11 November 2011 and will apply to fiscal year 2011 transactions and onwards.

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