TRANSFER PRICING ISSUES IN INDONESIA

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ABSTRACT
This study proposes ways to resolve transfer pricing (TP) cases in Indonesia. The method used is a normative analytical juridical legal research method by looking at and analyzing problems following applicable regulations. From the study results, it was found that there are three ways to settle cases of TP in stages, namely 1. Investigative audit: if the tax authority suspects that TP has been abused, the final result is a tax assessment letter (SKP). 2. through the tax court if the taxpayer (WP) is not satisfied with the results of the Investigative Audit decision. If necessary, appeal to the Supreme Court. However, this legal settlement takes a long time, impacting the company's liquidity and affecting state revenues. Besides that, the compromise through this tax court is often suspected of being unfair by taxpayers. It is more favorable to the tax authorities because the tax court is under the Ministry of Finance, which is also the supervisor of the taxation authority. 3. through a win-win solution scheme provided by the Organization for Economics. Co-operation and Development (OECD) through the Mutual Agreement Procedure (MAP). However, settlement through the MAP channel is considered less effective because it does not provide certainty or require the parties to reach an agreement. The best solution must be through the tax court to be legal certainty and justice for the parties. It's just that this institution must be under the judicial institution of the Supreme Court.
Keywords: *Advance Pricing Agreement, Arm's Length Principle, Investigative Audit, Mutual Agreement Procedure, Transfer Pricing*

INTRODUCTION

The digital era has led to globalization in which the flow of goods, services, and capital becomes limitless. It, by implication, affects the amount and structure of tax revenues in many countries. For companies or taxpayers, globalization has allowed them to run business organizations in one command for the common goal of maximizing profits and minimizing all kinds of costs, including tax expenditures.

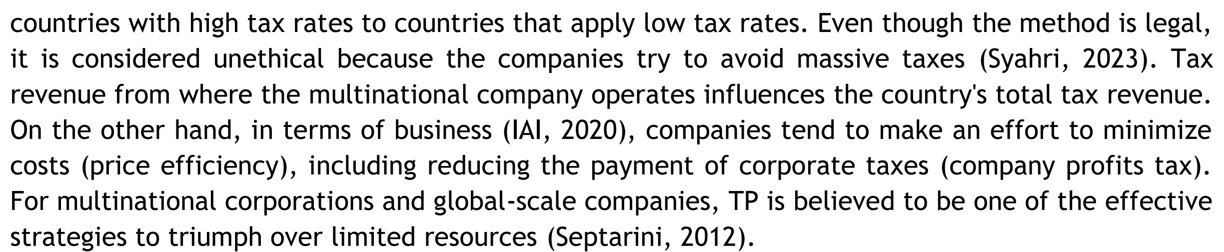
Efforts are being made to avoid tax for maximum profit and tax planning. From the tax law perspective, tax avoidance behavior cannot be said to violate the law. However, this action has eroded state revenues from the tax sector. One of the business schemes carried out by multinational companies for tax avoidance is transfer pricing (TP). The practice of TP is a global issue. For this reason, we must resolve problems related to the TP issue through international cooperation and agreements or domestic settlements such as investigative audits, objections and appeals, and accommodations through the tax court (Harahap, 2020).

Theoretically, tax planning, also known as effective tax planning, encourages taxpayers to get tax savings through systematical tax avoidance procedures under the provisions of the Taxation Law. Tax avoidance schemes in many countries are divided into acceptable and unacceptable tax avoidance. Unacceptable tax avoidance also goes by aggressive tax planning (Hanlon & Heitzman, 2010). This article does not discuss how effective tax planning is but focuses on overcoming unacceptable tax avoidance through TP.

LITERATURE REVIEW

Definition of Transfer Pricing

As it happens, TP is a classic issue in taxation, especially concerning international transactions made by multinational companies. From the government's perspective, TP is believed to reduce the potential tax revenues of a country because global companies tend to shift their tax obligations from



countries with high tax rates to countries that apply low tax rates. Even though the method is legal, it is considered unethical because the companies try to avoid massive taxes (Syahri, 2023). Tax revenue from where the multinational company operates influences the country's total tax revenue. On the other hand, in terms of business (IAI, 2020), companies tend to make an effort to minimize costs (price efficiency), including reducing the payment of corporate taxes (company profits tax). For multinational corporations and global-scale companies, TP is believed to be one of the effective strategies to triumph over limited resources (Septarini, 2012).

According to Tsurumi in Gunadi, TP refers to the price calculated for management control over the transfer of goods and services between profit centers and cost centers (Gunadi, 1999:111). In a broader sense, TP includes pricing among several entities whose owners can legally be the same or different (Iman Santoso, 2004:126). Meanwhile, Jerry M. Rosenburg stated that transfer pricing is: "the price charged by one segment of an organization for a product or service it supplies to another part of the same firm (Rosenburg (1983:505)." Meanwhile, Hansen and Mowen reported that "a transfer price is a price charged for a component by the selling division to the buying division of the same company (Hansen & Mowen, 2009)."

In line with Garrison, Noreen, and Brewer, "a transfer price is the price charged when one company segment provides goods or services to another segment of the same company (Noreen & Brewer, 2010:558)." Conforming to the above definitions, Bhimani, Horngren, Datar, and Foster define TP as "the price one subunit (segment, department, division, and so on) of an organization charge for a product or service supplied another subunit of the same organization (Bhimani, Horngren, Datar, & Foster (2008:619)."

The Organization for Economic Co-operation and Development defines transfer pricing as a price determined in transactions between group members in a multinational company where the specified transfer price can deviate from the fair market price as long as it is acceptable for the group (OECD, 1979: 7).

When viewed from a multinational company's perspective, TP, according to Madura is, a "policy for pricing goods sent by either the parent or a subsidiary to a subsidiary of an MNC (Madura (2014:708)." This explanation is similar to the descriptions given by Hansen and Mowen, Bhimani, Horngren, Datar, and Foster, and Garrison, Noreen, and Brewer above (Herman et al., 2021).

Understanding TP can be observed from three different aspects. From the legal point of view of the company, for instance, TP is considered a tool to increase efficiency and synergy between the company and its shareholders. From industrial or management accounting, TP is applied to maximize company profits by determining the price of goods or services from an organizational unit to other organizations within the same company. Meanwhile, from the aspect of taxation, TP can be regarded as a price policy in transactions made by parties with unique relationships. Thus, concerning taxation, TP is a mechanism commonly used by multinational companies for tax planning. TP for tax planning is against the law as long as it meets the government's regulations.

There will be no problems when a multinational company performs TP under applicable tax regulations and at a reasonable price. The case will be different because TP is an attempt at tax avoidance and tax evasion that violates the law. By all means, a tax crime or abuse of Transfer Pricing can harm state finances.

There are at least three types of TP abuse in practice: mark-up, mark-down, and avoidance. First, an example of the mark-up is a multinational company Liong Corp domiciled in Country "P," a subsidiary in Indonesia named Company X, engaged in fashion. Company X obtains raw materials from Liong Corp at a fair price in the USD 15/pcs import market to produce apparel in Indonesia. However, in the transaction between the two companies, the cost of the same raw materials is sold for USD 25/pcs, so there was a mark-up of USD 10/pcs. A mark-down is the opposite of a mark-up. Lastly, avoidance occurs when Liong Corp sells raw materials to company X through several countries first. It has a small profit margin or could lose to avoid potential taxes. The scheme goes on as Liong Corp sells raw materials to its subsidiary in Thailand, and then the goods are sold to other subsidiaries in Malaysia. The raw materials are sold to company X in Indonesia only after Malaysia. The TP abuse practices mentioned above can potentially reduce tax revenues and harm the state's finances.

Transfer Pricing Supervision Instrument

To address the issue of tax avoidance and create fair taxation, the OECD launched a project called Anti-Base Erosion and Profit Shifting (Anti-BEPS).

One of the agreements on the anti-BEPS project refers to the rules for Transfer Pricing Documentation and Country-by-Country Reporting contained in BEPS Action 13. BEPS Action 13 (OECD, 2013) suggests that transfer pricing documentation consists of 3 (three) documents, namely a master file, a local file, and Country-by-Country (CbC) Reporting. CbC reporting is one of the TP documents that must be submitted by taxpayers who make affiliate transactions or taxpayers who meet the criteria to file the document (Dina Lathifa, 2021). This CbC reporting must be submitted with the Annual Tax Return for corporate income; otherwise, there are sanctions that taxpayers must face. In the implementation, CbC reporting filed by the parent entity Taxpayer to the tax authorities will be exchanged through Automatic Exchange of Information (AEoI) with tax authorities of the country/jurisdiction with a Qualifying Competent Authority Agreement (QCAA).

The OECD Guidelines Transfer Pricing recommends the following steps: the first stage is to conduct a fair price comparability analysis to find out whether there is a TP. Comparability analysis (fair price), in general, is to portray and describe the actual affiliate transactions. The next stage compares the affiliate transactions described in the first stage with independent transactions using economically relevant characteristics or comparability factors. This second stage aims to determine the price or profit that has met the arm's length principle. Find out whether there is a TP or not can be seen in the OECD Guidelines Transfer Pricing (OECD TPG, 2017).

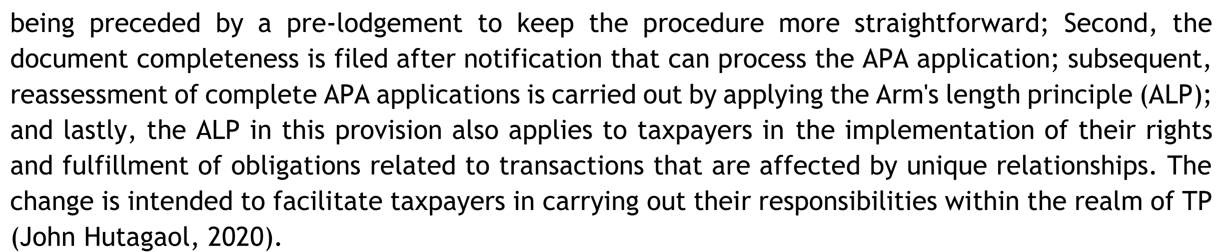
Advance Pricing Agreement (APA)

APA is an agreement between the Directorate General of Taxes (DGT) and Taxpayers, or the DGT and other countries' tax authorities, to agree on the criteria and determine the Fair Price or Fair Profit for the parties having a Special Relationship. This agreement is signed before the tax year applies or the transaction is made. Thus, the price that must report to the tax office has been determined for existing transactions. The agreement binds the tax office and the taxpayers if agreed upon (AgusSuparman, 2019).

The purpose of APA is to provide a means to resolve TP problems caused by taxpayers with parties with unique relationships. Apart from providing legal certainty and ease of tax calculation, the advantage of APA is that tax authorities no longer need to make corrections in the audit of the selling price and profit of products sold by taxpayers to companies in the same group (see the explanation of Law No. 36 of 2018).

Indonesia has introduced APA since 2000 through Law Number 17 of 2000 concerning the Third Amendment to Law Number 7 of 1983 concerning Income Tax, followed by issuing Regulation of the Director-General of Taxes Number PER-69/PJ/2010 concerning Transfer Price Agreements (Advance et al./APA). These regulations, however, do not regulate the procedures for implementing APA. Had handled the APA implementation procedure in the Minister of Finance Regulation number 7/PMK.03/2015 concerning the guidelines for forming and implementing APA (Hardiyanto, 2019). Replace this regulation with the Regulation of the Minister of Finance of the Republic of Indonesia Number 22/PMK.03/2020 concerning Procedures for Establishing and Implementing an Advance Pricing Agreement (JDIH et al., 2020). To be carried out to follow APA practices internationally. The previous regulations did not cover the minimum standards in Action Plan Number 14 of the OECD/G20 Base Erosion and Profit Shifting (BEPS). Also made amendments to improve the provisions to provide legal certainty in determining transfer prices, procedures, timeframes, and follow-up requests for APA implementation.

The most significant difference from previous regulations lies in submitting APA, which became easier. The prior procedure of APA submission required a pre-lodgement activity, but taxpayers only need to make a formal application/filling stage (Otto Budihardjo, 2020). The filling stage is performed by taxpayers through a written application and submitted to the relevant tax authority. To further understand the requirements for this application in the Minister of Finance Regulation No.22/PMK.03/2020 Articles 5, 6, and 7: First, the APA is applied through a formal application without



being preceded by a pre-lodgement to keep the procedure more straightforward; Second, the document completeness is filed after notification that can process the APA application; subsequent, reassessment of complete APA applications is carried out by applying the Arm's length principle (ALP); and lastly, the ALP in this provision also applies to taxpayers in the implementation of their rights and fulfillment of obligations related to transactions that are affected by unique relationships. The change is intended to facilitate taxpayers in carrying out their responsibilities within the realm of TP (John Hutagaol, 2020).

For multinational companies, APA guarantees legal certainty in determining the transfer price of transactions to other companies, be it companies in the same group or independent companies. That is vital so that TP actions taken by a company are not considered something that violates the law (illegal).

For the government (tax authority), APA also guarantees legal certainty. Tax authorities do not need to worry about reduced tax revenues since the Director-General of Taxes has a more substantial basis for determining reasonable transfer prices. For other business actors as competitors, TP actions carried out by other taxpayers will certainly harm independent business actors (no special relationship). If addressed, it will create legal certainty. Business actors who at first did not perform TP will tend to do TP activities to survive in business competition. With a stricter APA regarding TP, other business actors do not need to worry about TP's activities since there is legal certainty that they will receive the same transfer price treatment despite no special relationship.

Arm’s length principle (ALP)

Before applying for APA to DGT, the company must use the Arm's length principle (ALP) due to a special relationship between taxpayers that often makes unfair transactions. The price for transactions with affiliates is usually either lower or higher than transactions made with non-affiliated parties.

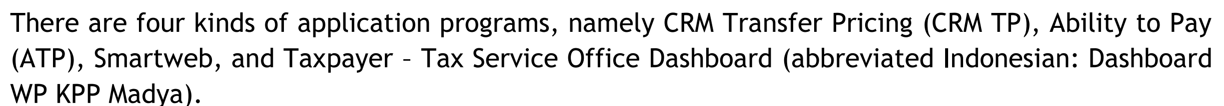
A special relationship is said to occur when (i) the Taxpayer has capital participation in other taxpayers of at least 25 percent, either directly or indirectly; (ii) a Taxpayer controls two or more other taxpayers who are under the same control either directly or indirectly; or (iii) there is a family relationship in a straight line and sideways one degree, either by blood or by marriage (Taxation Glossary, 2020).

The ALP on goods and services transactions is considered to be fulfilled when the delivery or acquisition of the goods or services occurs; the value of transactions between parties with a Special Relationship is the same as that of parties without a Special Relationship. It is also worth noting that the transactions should have comparable conditions for transferring intangible assets.

Taxpayers must organize and maintain books, records, and documents that form the basis for bookkeeping, recording, and other documents. Includes documents that form the basis for applying ALP in transactions with Special Relationship parties (Transfer Pricing Document/TP Doc). If suspected, the DGT is authorized to re-determine the amount of income and deductions to calculate the amount of Taxable Income in transactions made between parties with a Special Relationship. However, the Directorate General of Taxes will not act if the Taxpayer has fulfilled the ALP carried out with Special Relationship parties. If a Taxpayer can provide an acceptable explanation and show supporting documents for the application of ALP, the Directorate General of Taxes has the authority to determine a Fair Price or Fair Profit based on data or other documents, as well as to decide the suitable method for determining the assessed Fair Price or Fair Profit (Perpajakan, 2020).

Compliance Risk Management (CRM) Application

To improve taxpayer compliance and prevent TP practices, the DGT, in July 2021, began to use a monitoring method by operating a CRM (Compliance et al.) digital application system based on Taxpayer data. CRM is a comprehensive risk management process for taxpayer compliance that includes identifying, mapping, modeling, and mitigating taxpayer compliance risk and its evaluation. CRM will create a systematic, measurable, and objective framework (Perpajakan, 2021).



There are four kinds of application programs, namely CRM Transfer Pricing (CRM TP), Ability to Pay (ATP), Smartweb, and Taxpayer – Tax Service Office Dashboard (abbreviated Indonesian: Dashboard WP KPP Madya).

The CRM TP works to provide a risk map of taxpayers using TP for tax avoidance. In the application, there is business intelligence in the form of a featured snippet that can describe the network of unique relationships in the business group of taxpayers (Atpetsi, 2021).

Surprisingly, CRM is very prone to be misused since its contents involve data from taxpayers, which is confidential, and both entrepreneurs and taxpayers have this concern. They are worried their data security is lost to unauthorized hands through the tax authorities despite claiming that the data is secured due to limited access. Only employees related to supervision, inspection, and collection processes can access the analysis data from those four applications. Even though data access is carried out in stages, the data can be skimmed or stolen in today's digital era. Moreover, not all Tax Authorities master Information Technology, so CRM may potentially abuse power.

Therefore, choosing a tax officer with integrity and high morals is necessary. An excellent result from the psychological test must be proven so that the applications are used within the corridor of legislation while maintaining taxpayers' rights. Even though these digital tools are considered cutting-edge to improve taxpayer compliance, there is still room for improvement to prevent power abuse from tax authorities.

This application also prompts Tax Authorities to enhance their capacity and capability regarding tax administration systems. One of them is forming big data. It is essential to support all business processes carried out by DGT, so the big data must be based on single taxation data for all Indonesians.

All the efforts by DGT in preventing TP practice need to be appreciated because, as is well known, taxes play a vital role as the primary source of state revenue. Sound state finances depend on good tax receipts so that the state can stand independently as a sovereign country, as it is not advisable to keep on relying on foreign loans from a time-to-time increase in size. According to Robert Goulder, good tax revenue indicates a country's progress. Each year, the rise in tax revenue due to taxpayer compliance and being proud to be a citizen paying taxes to support the country's social programs can be measured (Robert Goulder, 2019). Taxes are the primary source to finance several spending, including routine expenditures, infrastructure development, and government policy implementation in social and economic. Ridwan argued that the state and government must be actively involved in the economic and social life of the community as the primary step to creating public welfare and maintaining order and security (Ridwan, 2018).

METHODOLOGY

This research is normative legal research using a law, case, and conceptual approach (Peter et al., 2009). It is based on an analysis of legal norms in statutory regulations and court decisions. However, this research is limited to more than just analyzing the legal standards contained in the legislation. The data used in this study is only secondary data, including primary legal materials and secondary legal materials. The primary materials are binding legal materials, consisting of basic norms, basic regulations, statutory regulations, jurisprudence and treaties, official records or minutes in legislation, and judges' decisions. The secondary materials are in publications on law, including textbooks, legal dictionaries, legal journals, expert opinions, and commentaries on court decisions. (Soerjono Soekanto & Sri Mahmudji, 2001:14)

They conducted the research by examining favorable laws as an initial and primary assessment activity (Bambang Sunggono, 1997, p. 81). The secondary legal materials support the primary legal materials.

The nature of the research is a descriptive qualitative analysis focusing on research subjects around regulation and legal certainty in investment in Indonesia. The study begins with library research and continues with field observations (JR Raco, 2010, p. 18).

RESULT AND DISCUSSIONS

Transfer Pricing Case Resolution

Transfer Pricing Audit

Various efforts to prevent TP practices mentioned earlier do not guarantee that TP will end. Even though there is APA and taxpayers have applied the ALP guidelines, TP cases are still found. To earn big profits is the nature of a company, even sometimes by taking advantage of regulatory loopholes and weaknesses. In line with their Routine Activity Theory, Felson and Lawrence Cohen 2020 explained that crime occurs when three conditions converge: a motivated offender, an attractive target, and the absence of a guardian. Being able to commit a crime is not enough; motivated offenders must also be willing. Suitable targets are attractive and vulnerable. Guardians are persons or objects that stop or deter offenses (Felson & Lawrence Cohen (2020). Taxes always seek to generate tax savings through evasion; speculating about offender motivations is unproductive. Tax savings are an inherently attractive target that becomes more attractive the higher the tax liability. Reducing the tax burden makes tax evasion less rewarding.

Therefore, if the tax authorities suspect a TP has occurred in a multinational company, they can immediately conduct an audit. In this regard, concerning the auditing theory, the most appropriate type or approach of audit to be carried out is the investigative audit.

An investigative audit is an audit or investigation that aims to identify and uncover fraud or crime by using approaches, procedures, and techniques commonly used in an investigation or inspection. Based on the DGT Regulation No. Per-22/PJ//2013, the inspection stage starts from the preparation phase, implementation phase, and reporting phase, which will interpret below:

a. Preparation Phase

The applicable inspection procedures conduct the preparation phase. The important thing that needs to be considered is that the Tax Auditor should collect and study the Taxpayer's data related to the Special Relationship with the transaction counterparty.

b. Implementation phase

This phase consists of three steps: first, determining the characteristics of the taxpayer's business; next, choosing the TP method; and last, applying the ALP.

Determining the business attributes of Taxpayers is performed to determine the exact characteristics of their affiliate(s) and business transactions. Determination of these characteristics will ease the selection process of a reliable comparison. Determining the factors of a taxpayer's business include identifying the aspects of a taxpayer's affiliate transaction and performing Functional Analysis. The characteristics of the taxpayer's affiliate transactions are required To conduct a comparability analysis. Determining affiliate transactions is done by considering factors that affect the industry, conditions of affiliate transactions, characteristics of taxpayers as part of a group company, and financial ratios.

In a TP audit, conducting initial research on the taxpayer's financial performance is necessary to identify the risk of tax evasion due to a special relationship. Can do the Initial research by studying the average industry ratio of the taxpayer. When applying ALP, the taxpayer's financial ratio (gross/net profit rate) will be compared with the comparison companies to determine the taxpayer's ALP.

Functional analysis is performed to identify the business characteristics of taxpayers and their counterparties accurately. Knowing this, it will be possible to estimate the risk level borne and the remuneration (profit) commensurate with the risk taken by each party.

Next, the selection of the TP method consists of identifying the availability of comparisons and determining the most appropriate TP method based on facts and conditions.

a. Identifying the availability of comparisons

This stage aims to ensure the availability and reliability of the independent comparator to be used. The comparison can take the forms of price data (e.g., market prices for commodity goods), gross profit margin data, or net profit margin data. Comparators used to investigate taxpayer transactions with affiliates can be grouped into internal and external comparators. To be used as a reliable comparison, internal and external comparators must pay attention to five comparability factors,

namely (1) Characteristics of goods or services, (2) Analysis of functions, assets, and risks, (3) Contract terms, (4) Economic conditions, and (5) Business strategy.

b. Determining the most appropriate TP method based on facts and conditions

The principle used in determining the most appropriate TP method is based on facts and conditions while taking into account some factors, such as the advantages and disadvantages of each technique, the suitability of the TP method with the nature of the transaction, which is determined based on analysis of function, availability of reliable information (concerning independent comparators) to apply the selected method and other methods, plus the degree of comparability between affiliate transactions and transactions between independent parties, including the reliability of adjustments made to eliminate material effects and differences.

The most appropriate method choice in a TP case is required for information regarding the comparability factors of the affiliate transaction being researched. This information refers to the functions, assets, and risks of all affiliated parties who transact with the taxpayer, including affiliates abroad. The selection of the tested party is based on the analysis of functions made and the reliability of data/evidence/information and facts obtained in the audit. The Tax Auditor can choose the taxpayer being audited (audited party) as the tested party. The Tax Auditor can also choose the counterparty of the taxpayer being audited as the tested party. The last step is applying the Arm's length principle. Things that need to be considered in the implementation include performing a comparability analysis, determining fair price or profit in TP audit, and Primary/Secondary/ Corresponding Adjustment. Comparability analysis compares the conditions of affiliate transactions with those of independent transactions.

To compare the conditions of an affiliate transaction with independent marketing, economically relevant characteristics of the compared circumstances must be reasonably comparable for the comparison to be more accurate. Testing for the fairness of a transaction requires researching several years of data on affiliate or independent transactions. In this way, differences due to product or business cycles can be overcome, resulting in more reliable comparability. After a reliable comparison has been obtained and the TP method has been determined, the next step is to compare the affiliate transaction's price or profit with the comparison's price or gain according to the method used.

The difference between the price or profit of affiliate transactions with a fair or fair profit is a primary adjustment. The direct adjustment made by the Tax Auditor may result in a secondary adjustment. For example, the Tax Auditor makes a positive correction on a Taxpayer's affiliate transaction. As a result of this adjustment, there is an overpayment to the affiliate. The Tax Auditor may make a secondary adjustment for this overpayment based on the applicable tax provisions. Furthermore, the applicable tax provisions can make a corresponding adjustment for the primary and secondary adjustments.

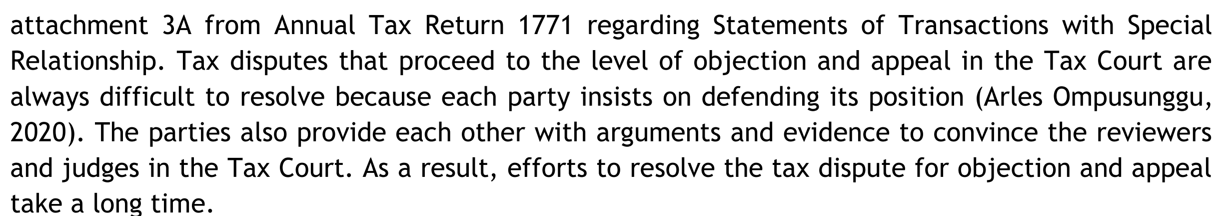
The three steps of implementing a TP audit mentioned above are not linear. There are circumstances where the Tax Auditor can repeat the steps that have been carried out. For example, the Tax Auditor has determined the most appropriate TP method based on facts and conditions. Still, information related to comparisons cannot be found or cannot make reasonably accurate adjustments.

An audit report is issued by issuing a Tax Assessment (letter). This notice functions to collect tax underpayments, refund tax overpayments, notify the amount owed, impose tax administration sanctions, and collect taxes (Dina Lathifa, 2019).

Observing the length and complexity of an investigative audit, plus it must do it within the specified time, cooperation between Tax Authorities and Taxpayers regarding the audit results is possible. Therefore, tax auditors with high morals and a good work ethic are required. Taxpayers who commit cooperation should be given severe sanctions, blocklisting their companies. For fair law enforcement, Tax Authorities should be penalized when proven guilty.

Settlement through Tax Court

Misunderstanding between Tax Authorities and Taxpayers related to TP risk usually stems from arguments regarding applying the arm's length principle (ALP) on affiliate transactions found in the audits. Meanwhile, identifying affiliate transaction schemes begins with reporting in special



attachment 3A from Annual Tax Return 1771 regarding Statements of Transactions with Special Relationship. Tax disputes that proceed to the level of objection and appeal in the Tax Court are always difficult to resolve because each party insists on defending its position (Arles Ompusunggu, 2020). The parties also provide each other with arguments and evidence to convince the reviewers and judges in the Tax Court. As a result, efforts to resolve the tax dispute for objection and appeal take a long time.

An excellent example of the issue is the case of TP committed by Toyota Motor Manufacturing Indonesia (TMMIN). The DGT has long suspected the company of exploiting transactions between domestic and foreign-affiliated companies to avoid paying taxes. The tax officer considers Toyota Motor Manufacturing Indonesia to conduct TP out of the ALP to reduce its tax payments in Indonesia. The DGT's findings from the tax audit of the company's 2007 Tax Return revealed that throughout 2007 TMMIN was recorded to have exported 17,181 Fortuner car units to Singapore (Denny Sugiarto, 2014).

From an audit of Toyota's financial statements, the tax officer found that the Fortuner's cost of goods sold (COGS) was IDR 161 million per unit. Surprisingly, Toyota's internal documents show that all Fortuners were sold at 3.49 percent cheaper than that value (Herlin Zelfianita, 2019).

Thus (PDFCOFFEE, n.d), Toyota Indonesia bore the loss from selling these cars to Singapore. The tax officer also received the same investigative findings on the sale of Innova diesel and Innova gasoline car units. TMMIN sold both Innova diesel and gasoline to Toyota Motor Asia Pacific Pte. Ltd. for 1.73 percent and 5.14 percent, respectively, lower than the production cost per unit. Meanwhile, as for Rush and Terios car exports, the automotive manufacturer only made a slight profit, only 1.15 percent and 2.69 percent of its production costs per unit. These findings on export sales of TMMIN become even more intriguing compared to domestic sales. Toyota Indonesia sold similar products to local buyers in Indonesia at different prices.

However, the tax audit findings must be revised to conclude that TMMIN has evaded taxes through TP. The price discrimination policy between export and domestic sales is reasonable when the price determination is based on the guidelines of ALP. In addition, it could be more efficient, so the company was forced to export sales at a selling price below the cost of production. To prove the occurrence of tax evasion through TP, the tax officer must check the fair value of all transactions from Toyota Motor Manufacturing Indonesia to Toyota Motor Asia Pacific Pte. Ltd. in Singapore.

The method used the DGT to assess the TP fairness from the transaction of TMMIN to Toyota Motor Asia Pacific Pte. Ltd. in Singapore by comparing the price with transactions of similar companies abroad. This method is called the Comparable Uncontrolled Price (CUP), which refers to the Transfer Pricing Guideline compiled by the OECD. The tax officer then used five automotive manufacturers considered similar characteristics to Toyota. They were Hindustan Motors (India), Yulon Motor (Taiwan), Force Motor Limited (India), Shenyang Jinbei, and DonganHeibao (China). From the audit of the affiliate transactions of the five companies, the tax auditor determined that the range of gross margins within the arm's length range for automotive companies that export is from 3.22 percent to 13.58 percent. Since the value of gross margins from the transactions of TMMIN to Toyota Motor Asia Pacific Pte. Ltd. in Singapore was below the predefined range, the DGT concluded that Toyota Motor Manufacturing Indonesia conducted TP for tax avoidance.

However, the company denied the DGT's conclusion that TMMIN conducted TP for tax avoidance. In the Tax Court trial, TMMIN argued that the three companies used as comparisons by the tax officer, namely Hindustan Motors (India), Yulon Motor (Taiwan), and Force Motor Limited (India), were at a loss. At the same time, TMMIN was still profitable in 2008. Thus, Toyota Motor Manufacturing Indonesia argued that those companies were not suitable for comparison in this case. The dispute became lengthy since it was difficult to determine a fair price, not to mention the absence of APA between DGT and TMMIN. APA was introduced through the Regulation of the Director-General of Taxes Number PER-69/PJ/2010 concerning the Advance Pricing Agreement.

Alternative Settlement for Transfer Pricing

Starting from the same understanding between the tax authorities and taxpayers regarding the assessment of affiliate transactions, there are several alternative ways of resolving TP disputes (Arles Oppusunggu, 2020).

First, the taxpayer immediately prepares complete data and information synchronized between the description presented in the Transfer Pricing Document (TP Doc) and the actual situation or business processes. It is essential to follow the facts when related to characteristic conditions and comparability analysis.

Second, the taxpayer can propose an alternative procedure for accelerating the audit completed before the given period ends. This step is under the provisions of Article 8, paragraph (4), and Paragraph (5) of the Taxation General Provision and Procedure Law. Suppose the tax authorities have communicated the findings from the TP analysis. In that case, the taxpayer can immediately submit a mechanism for disclosing untruths or corrections in the proposed Annual Tax Return accompanied by additional administrative sanctions in the form of an increase of 50 percent of the underpaid tax.

Third, taxpayers submit APA following the Minister of Finance Regulation Number 22/PMK.02/2020 to obtain legal certainty for their affiliate transactions performed in the coming year.

The Mutual Agreement Procedure (MAP) can be reached if the tax dispute concerns different jurisdictions. MAP is an alternative for taxpayers to resolve conflicts that cause double taxation. The procedure can also determine a dispute over indications that the actions of the partner country's authorities have resulted in the imposition of taxes that are not following Double Tax Treaties (DTTs) or TP disputes. MAP can be an alternative solution in light of the tendency to increase tax disputes. The increase in conflicts is influenced by the dynamics of international taxation, especially after the BEPS Project initiated by the OECD/G20. In addition, the potential for increasing disputes is also influenced by the COVID-19 pandemic. The pandemic would trigger every country to optimize tax revenues to support economic recovery and fiscal sustainability.

The MAP is a 'special' remedy for dispute resolution out of the domestic realm, such as objections or appeals. The MAP is not intended to revoke taxpayers' rights to settle domestic disputes.

Even though the number of MAP applications continues to increase in various countries, this figure differs from the level of MAP applications that can be completed. The comparison between the number of MAP applications that still need to be completed or are still in process is not proportional to the number of MAP applications that have been completed. Therefore, the result is considered less effective.

Signals that the tax data collection and documentation system still needs to be better organized. The DGT still needs personnel with particular expertise in TP and, more specifically, tax negotiators who can peacefully resolve TP cases as a win-win solution or mutual benefit. In other words, tax authorities must keep on reforming bureaucratic resources and Information Technology skills following the digital industry 4.0 era. Besides, the MAP also has another weakness: the procedure is considered not to provide certainty because it does not require the tax authorities to reach an agreement.

CONCLUSIONS

To improve supervision of TP practices in the industry 4.0 era, the DGT utilizes a digital application of CRM Transfer Pricing to enable data access for Tax Authorities. However, this raises concerns among entrepreneurs or taxpayers that the data could be misused despite a guarantee from Tax Officers that the entry is restrictedly limited. Therefore, continuous effort from the government to grow taxpayers' trust is required. When the Tax Authorities find or suspect that unfairness has occurred in a TP transaction, they are authorized to determine the Fair Price or Fair Profit based on other data or documents and the appropriate method of determining the Price or Profit. Therefore, Taxpayers must have and keep a TP Doc. If the Tax Authorities believe a company has implemented ALP, they should follow it immediately by making APA. APA will provide legal certainty, facilitate tax calculations, guarantee state revenues, and not harm other independent business actors. On the other hand, if a TP dispute cannot be resolved at the executive level, the taxpayer may file an appeal to the Tax Court. The settlement through this court takes a long time or even a very long time, mainly

when the case proceeds to the Supreme Court. It will harm both the government and the taxpayer. Also can choose alternative settlements through the MAP for different jurisdictions. However, the MAP is only considered a consultation process and does not provide certainty.

CONFLICT OF INTEREST

There is no conflict of interest.

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