

Tinjauan atas ketentuan transfer pricing di Indonesia : studi banding atas ketentuan analisa kesebandingan & dokumentasi = Analysis of transfer pricing regulation in Indonesia : comparative study of comparability analysis & documentation

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Abstrak

Tesis ini meneliti ketentuan analisa kesebandingan pada ketentuan perpajakan transfer pricing di Indonesia dengan membandingkan ketentuan analisa kesebandingan di Indonesia dengan ketentuan Amerika Serikat dan India serta rekomendasi OECD, Penelitian juga menganalisa kesesuaian regulasi terkait analisa kesebandingan di Indonesia dengan asas-asas perpajakan (four maxims) serta kesesuaian ketentuan analisa kesebandingan antara Peraturan Direktur Jenderal Pajak (PER-43/PJ/2010) dengan ketentuan pelaksanaan pemeriksaan (S-153/PJ.04/2010). Penelitian berbentuk deskriptif kualitatif melalui studi literatur dan wawancara dengan nara sumber dari pihak fiskus.

Hasil penelitian menunjukkan bahwa aspek-aspek di dalam ketentuan analisa kesebandingan (faktor-faktor, data pembanding, kewajiban, dokumentasi, sanksi) pada ketentuan perpajakan di Indonesia sudah mengikuti perkembangan dari best practice internasional walaupun belum terdapat ketentuan pelaksanaan yang rinci. Ditinjau dari kriteria safe harbour yang ada, ketentuan perpajakan terkait yaitu PER-43/PJ/2010 belum dapat mengakomodasi asas keadilan, kemudahan serta ekonomi baik bagi fiskus maupun wajib pajak. Adapun untuk asas kepastian hukum sendiri, masih belum terakomodasi secara mutlak karena belum terdapat ketentuan pelaksanaanyang rinci dari analisa kesebandingan. Dengan belum tersedianya Peraturan Menteri Keuangan yang mengatur ketentuan dokumentasi terkait transaksi hubungan istimewa menjadi hambatan dalam memberikan kepastian hukum bagi wajib pajak dalam melakukan kewajiban dokumentasi analisa kesebandingan sesuai PER-43/PJ/2010.

Ketentuan PER-43/PJ/2010 telah sejalan S-153/PJ04/2010 di dalam aspek yang tercakup dalam kewajiban pelaksanaan analisa kesebandingan dan faktor analisa kesebandingan namun terdapat perbedaan dimana pada S-153/PJ/2010 terdapat permintaan data tertentu kepada wajib pajak dimana hal tersebut tidak diwajibkan pada PER-43/PJ/2010.

.....Purposes of this research are to conduct analysis of Indonesia tax regulations regarding comparability analysis in transfer pricing by comparing Indonesia regulations with relevant regulations in United States of America, India and OECD recommendation; to analyze relevant tax regulation related to comparability analysis with taxation principle (“four maxims”); and to analyze whether Director General Of Tax Regulation (PER-43/PJ/2010) is align with Directorate General of Tax Letter for Transaction Arm’s Length Examination (S-153/PJ.04/2010). This study is using descriptive qualitative method, which conducted by literature study and interview to obtain the primary information.

The analysis results provide that the relevant aspects (comparability factor, period and data comparable, tax payer liability, documentation, and penalty) in comparability analysis regulations have follow with which regulated in international best practice. Refer to safe harbour provision in PER-43/PJ/2010, research conclude that PER-43/PJ/2010 is not accommodate principle of equity among tax payers who have affiliated transaction; ease of administration principle; and economics principle for fiscal authority and tax payers.

Further, compliance of principle of certainty, is not completely accommodated, since procedural regulation of comparability analysis not issued yet, and furthermore, absence of Minister of Finance Regulation that regulated documentation related to affiliated transactions is a of constraint in provide certainty of law for tax payers in doing tax compliance to conduct comparability analysis and prepare its documentation refer to PER-43/PJ/2010.

Research provide other results that Per-43/PJ/2010 is in line with S-153/PJ/2010 in liability scope to conduct comparability analysis and comparability factors. Research found a difference of tax payers liability which in S-153/PJ/2010 required tax payers to provide certain data which in PER-43/PJ/2010 this is not included in tax payers liabilities provision.