



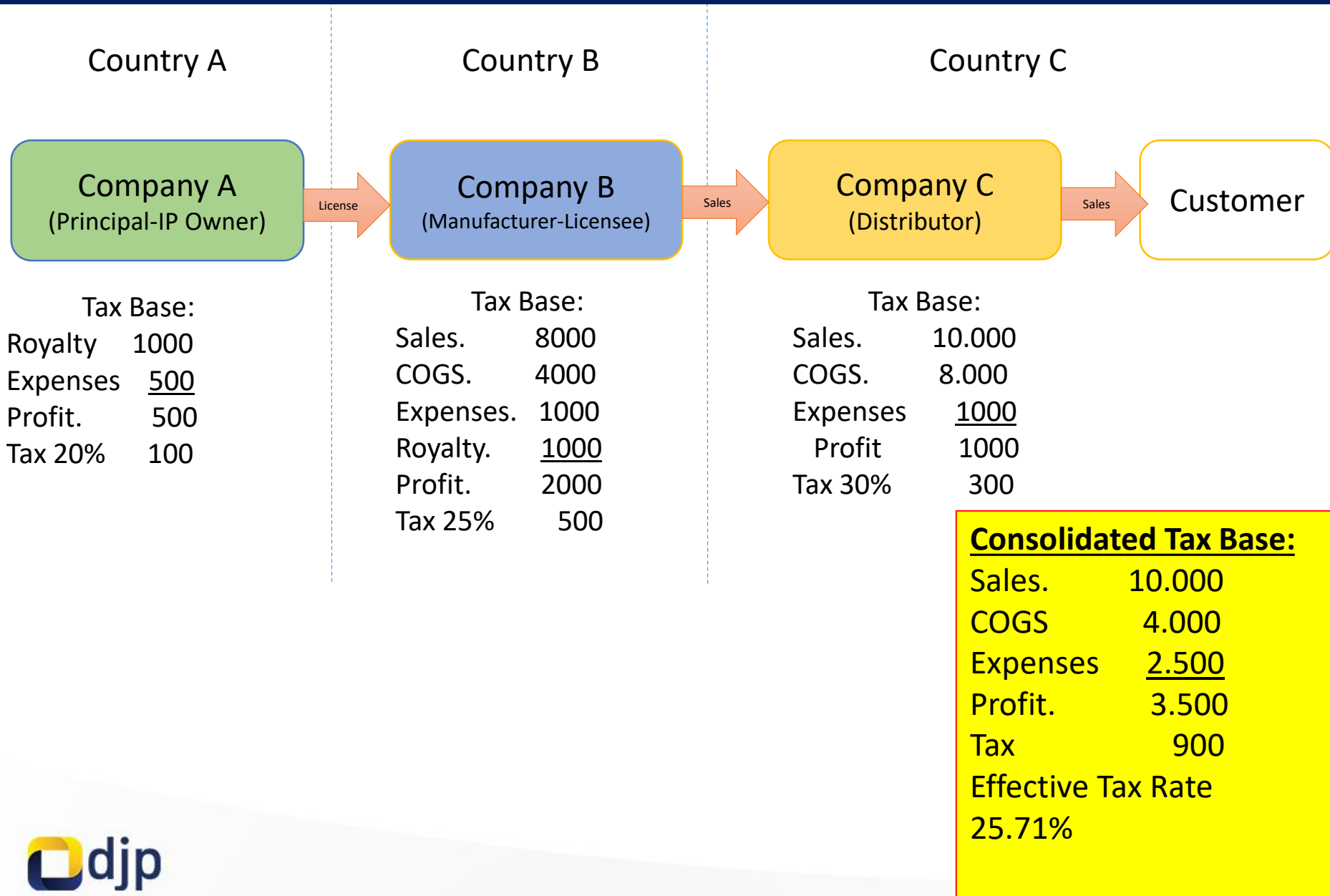
# **Transfer Pricing: The Most Recent TP Issues**

By Achmad Amin

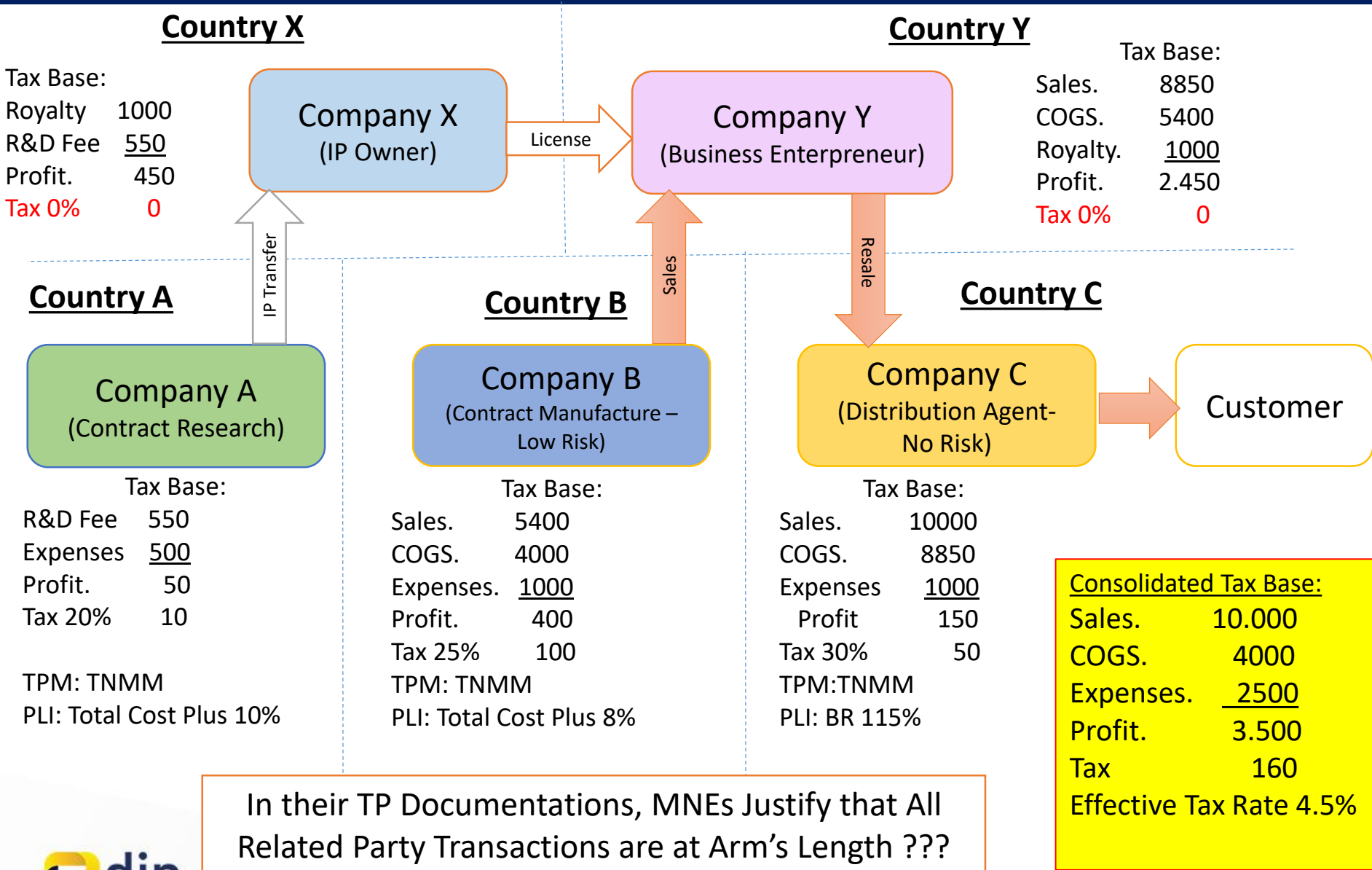
Direktorat Perpajakan Internasional

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# MNE GLOBAL PROFIT (NORMAL SCHEME)



# MNE GLOBAL PROFIT (ABUSIVE SCHEME)





# MOST RECENT TP ISSUES

- Aggregation VS Segregation
- Aggregate VS Transactional
- Multi Years VS Single Year
- Testing Royalty : CUP Applicable?
- Local VS Foreign Comparables
- Internal VS External Comparables
- Profit Split : When is It Applicable?
- Constructive Dividend



# Aggregation VS Segregation

Financial Statement			
	Total	Independent	Related Parties
Sales	9.000	4.000	5.000
Raw Material	5.000	???	???
FOH	1.000	???	???
G/P	3.000	???	???
Opex	500	???	???
NOP	2.500	???	???



# Aggregation VS Segregation

Financial Statement	Distributor		Manufacturer	
	Product A	Product B	Export to A	Export to B
Sales	8.000	10.000	10.000	9.000
COGS	7.000	9.500	7.000	8.000
Gross Profit	1.000	500	3.000	1.000
Op Expense	300	200	2.000	200
Net Opr Profit	700	300	1.000	700

Distributor Product A: Full Risk Distributor  
Distributor Product B: Low Risk Distributor  
Export to A: Fully Fledge Manufacturer  
Export to B: Contract Manufacturer



# Aggregate VS Transactional

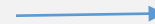
Financial Statement	
	Total
Sales*	10.000
Raw Material*	5.000
FOH	1.000
G/P	4.000
G&A Expenses	1.000
Royalty*	1.500
Intragroup Services*	1.000
NOP	500
FCMU	5,26%

How to Set/Test these Related Party Transactions?

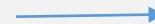


# Multi Years VS Single Year

	2016	2017	2018
Tested Company			✓
Comparables	✓	✓	✓



single year used



multi years used

Is it proper?  
Which approach is correct?



OECD TP Guidelines, Para 3.68:  
Tested fiscal year = comparables' fiscal year





# Testing Royalty: Is CUP Applicable?

- CUP :
  - Comparing the price between tested transactions and comparables
  - Relies on the similarity of the products/commodities tested and comparables
- Royalty testing:
  - Involving unique and valuable character of intangibles
  - Difficult to find reliable comparables



# Local VS Foreign Comparables

OECD TP Guidelines para 3.7.

Essential for comparability analysis:

The industry, competition, economic and regulatory factors, and other elements affecting taxpayer and its environment

Foreign Comparables may be less reliable than local comparables

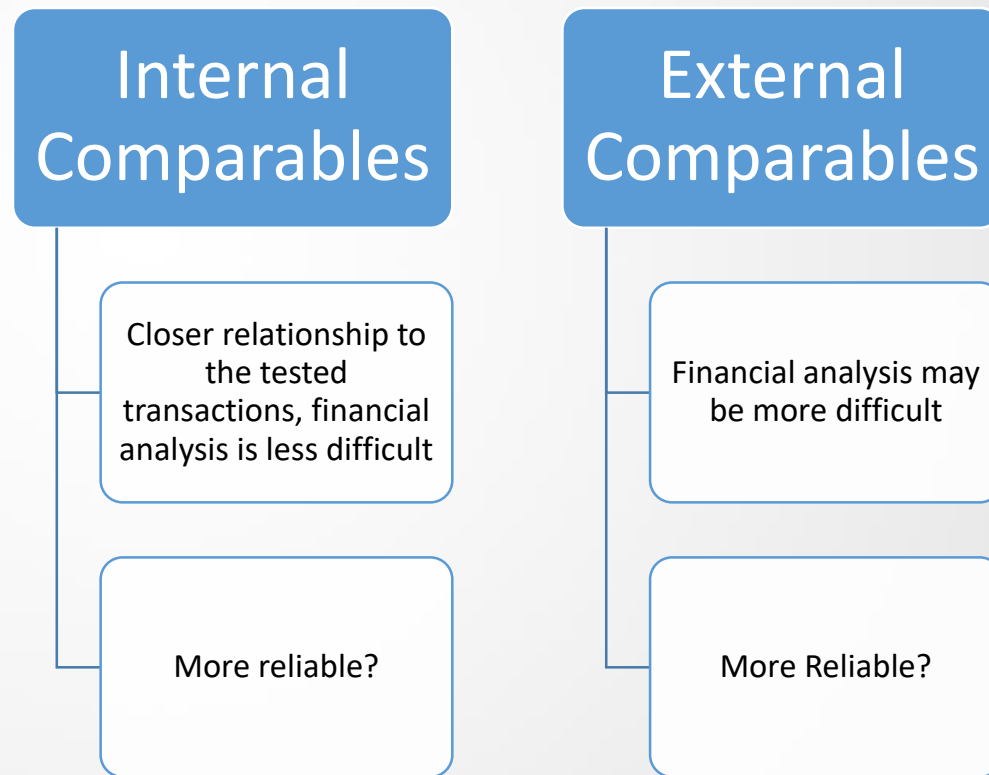
OECD TP Guidelines para 3.35

Non-domestic comparables should not be automatically rejected just because they are not domestic

Where there are insufficient data available at domestic level, five comparability factors of foreign comparables should be examined



# Internal VS External Comparables





# When is PS likely to be the most appropriate method?

- Unique and valuable contributions by each party
  - Such contributions may be unique and valuable intangibles, other assets or functions
  - Clearest indicator
- Unique & Valuable
  - Where not comparable to contributions made by uncontrolled parties in comparable circumstances; and
  - They represent a key source of actual / potential economic benefits in the business operations



# When is PS likely to be the most appropriate method?

- Highly integrated operations
  - E.g. joint performance of functions; joint ownership of assets, shared assumption of risks → impossible to evaluate those contributions in isolation from those of others
  - High degree of inter-dependency e.g. long term arrangement where each party has made a significant contribution whose value depends on the other party
  - Where party A contributes to control of economically significant risk, but that risk is assumed by party B, it may be appropriate for A to share in the potential upside and downside associated with that risk
- Shared assumption of economically significant risks; separate assumption of closely related risks



# Constructive Dividend

Service Fee at Book	Rp. 100M
Service Fee at Fiscal (ALP)	<u>Rp. 40M</u>
Fiscal Adjustment	Rp. 60M

## Accounting (Original):

Operating Expenses	Rp. 100M
Bank/Cash	Rp. 100M

## Adjustment (ALP):

Bank/Cash	Rp. ?????
Operating Expenses	Rp. 60M

Opr Expenses		Bank/Cash	
100M	60 M	???M	100 M
40M			

Pasal 9 ayat (1) huruf f + Penjelasan:

Jumlah yang melebihi kewajaran tidak dapat dikurangkan.

Bagi penerimanya dianggap sebagai dividend.



# Constructive Dividend

Sales at Book

Rp. 100M

Sales at Fiscal (ALP)

Rp. 140M

Fiscal Adjustment

Rp. 40M

## Accounting (Original):

Bank/Cash	Rp. 100M
Sales	Rp. 100M

## Adjustment (ALP):

Bank/Cash	Rp. ?????
Sales	Rp. 40M

Sales

Bank/Cash

100 M
40M
<hr/> 140M

100 M
???M



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for the Benefit of Indonesian**