



Indonesia releases implementation regulation on Country-by-Country Reports (CbCR) that provides detailed instructions on the procedure and filing of the Country-by-Country Report

The Directorate General of Taxes (“DGT”) has issued the long-awaited implementation regulation on Country-by-Country Reports (“CbCR”), *i.e.* DGT Regulation No. 29/PJ/2017 (“PER-29”) regarding “Procedures for the Management of CbCR”, following the release of the CbCR requirements in early 2017 through Minister of Finance (“MoF”) Regulation No. 213/PMK.03/2016 (“PMK-213”, please refer to our Tax Alert January 2017).

Both PMK-213 and PER-29 broadly align with the reporting requirements and implementing guidelines prescribed by the Organisation for Economic Co-operation and Development (“OECD”) through Action 13 of the Base Erosion and Profit shifting (“BEPS”) project and subsequent guidance issued by the OECD for the purpose of implementation of Country-by-Country Reporting.

PER-29 provides detailed guidance broadly on the following matters:

- (a) which Business Groups/ Multinational Business Groups are required to file the CbCR in Indonesia;
- (b) what is required to be prepared and submitted as part of CbCR filing; and
- (c) timing for preparation and filing of the CbCR in Indonesia.

PER-29 is effective from 29 December 2017 and covers the Indonesian CbCR filing requirement from Fiscal Year (FY) 2016 onwards. This alert summarizes the key points of PER-29 and provides insight on the Indonesian CbCR requirements for taxpayers in Indonesia.

Which Business Groups/ Multinational Business Groups are required to file CbCR in Indonesia?

Consistent with PMK-213, any local Taxpayer with the following criteria shall be required to prepare and submit a CbCR in Indonesia:

- Parent Entity¹ of a Business Group having consolidated gross revenue of IDR 11,000,000,000,000 (eleven trillion Rupiah) ("Primary Filing Mechanism");

Under the Primary Filing Mechanism, PER-29 clarifies that the option of surrogate filing is not available for a local Taxpayer that is the Parent Entity of a Business Group. This indicates that the local Parent Entity should prepare and submit CbCR in Indonesia as it cannot appoint another entity in Indonesia or in an overseas jurisdiction to meet the former's CbCR obligation.

Or

- Constituent Entity² whose Parent Entity is located in a foreign jurisdiction, and the country of the Parent Entity:
 - Does not require filing of CbCR; or
 - Does not have an agreement with the Government of Indonesia on exchange of information per the Qualifying Competent Authority Agreement (QCAA)³; or
 - Has an agreement but the CbCR cannot be obtained by the Government of Indonesia ("Secondary Filing Mechanism").

In the case of the Secondary Filing Mechanism, PER-29 limits the CbCR filing requirements only to those local Taxpayers if certain specific criteria of Parent and Constituent Entity are met. The criteria are provided in the table below:

Criteria for Parent Entity	Criteria for Constituent Entity
A Parent Entity having consolidated gross turnover in the relevant FY (based on the Consolidated Financial Report) of at least: <ol style="list-style-type: none"> 1) Equal to €750 million (according to the functional currency exchange rate of the Parent Entity as on 1 January 2015) if the Parent Entity's country/jurisdiction does not require the filing of CbCR); or 2) The threshold of the consolidated gross turnover set by the jurisdiction where such Parent Entity is located which serves as the basis for determining the requirement to submit CbCR. 	<ol style="list-style-type: none"> a. Every separate business entity that is a member of a Multinational Business Group and included in the Consolidated Financial Statements of the Parent Entity or is excluded merely due to business scale or materiality considerations; and/or b. Every Permanent Establishment of the business entity above having separate Financial Statements.

PER-29 further provides an exemption to a local Taxpayer with an overseas Parent Entity to file CbCR in Indonesia under the Secondary Filing Mechanism, if the Parent Entity assigns a Surrogate Parent Entity⁴ and fulfils the following conditions:

¹ "Parent Entity" is a member of a Business Group that is (a) not directly or indirectly owned by one or more other members in the Business Group, or (b) owned directly or indirectly by another entity but the latter is not obligated to prepare consolidated Financial Statements of such Parent Entity.

² A "Constituent Entity" is the Parent Entity and the member(s) of a Business Group covered in the CbCR

³ An agreement between the competent authority (CA) of the Government of Indonesia and the CA of the Partner Country/Jurisdiction that requires the automatic exchange of CbCR between the parties.

⁴ Where a Parent Entity that is a foreign tax subject has appointed a foreign Constituent Entity as a substitute of the Parent Entity

- a. The local Taxpayer submits a notification on the Surrogate Parent Entity to the DGT; and
- b. The country/ jurisdiction in which the Surrogate Parent Entity is domiciled:
 - 1) Requires the filing of CbCR; and
 - 2) Has a QCAA and CbCR that can be obtained by the Government of Indonesia.

As an example of the above, if the Parent Entity is resident in the United States (US) but nominates a subsidiary in a country meeting the conditions, such as the United Kingdom (UK), to file the Multinational Business Group's CbCR in the UK, then the local Taxpayer would not be required to file the CbCR in Indonesia.

What is required to be prepared and submitted as part of CbCR filing?

PER-29 introduces a filing of Notification to the DGT through a CbCR Notification form⁵. The form generally requires the local Taxpayers to provide a statement on whether it has the obligation to submit a CbCR. The table below summarizes the type of documents needed to be filed under each of the Business Groups/ Multinational Business Groups.

Criteria of the entity	Documents
An Indonesian Parent Entity of a Business Group which <u>has to</u> submit a CbCR in Indonesia	- Notification form - CbCR; and - Working paper of the CbCR (referring to Appendix E of PMK-213)
An Indonesian Constituent Entity (where the Parent Entity is located in a foreign jurisdiction) which <u>does not have</u> to submit a CbCR in Indonesia	- Notification form
An Indonesian Constituent Entity (where the Surrogate Parent Entity is located in a foreign jurisdiction) which <u>does not have</u> to submit a CbCR in Indonesia	- Notification form
An Indonesian Constituent Entity (where the Parent Entity is located in a foreign jurisdiction) which <u>has to</u> submit a CbCR in Indonesia	- Notification form - CbCR
An Indonesian Taxpayer having related-party transactions but that <u>has no</u> requirement to file CbCR in Indonesia	- Notification form

It has been clarified through this regulation that only an Indonesian Parent Entity of a Business Group has to submit the working paper of the CbCR.

The above documents should be submitted via DJP Online (DGT's official website) or manually, if the DJP Online cannot be used. PER-29 also stipulates that submission should typically be made electronically, i.e. using Extensible Mark-up Language (XML) file extension which the OECD has recommended as part of BEPS Action 13 for exchanging the information between tax authorities as well as to receive information from the reporting Multinational Business Groups.

Upon the filing of Notification and/or CbCR, the Taxpayer shall receive a receipt. This receipt has to be attached to the Annual Corporate Income Tax Return (CITR). The receipt of the CbCR submission can be attached to the CITR as a substitute of the CbCR. As such, the CbCR itself does not need to be attached to the CITR.

⁵ The format for such notification has been provided as an attachment to the regulation

Timing for preparation and filing of the CbCR in Indonesia

The CbCR must be available within 12 (twelve) months after the end of the Fiscal Year of the local Taxpayer. Both the notification form as well as the CbCR (along with the working paper, where required) should be filed simultaneously within the following period:

- 16 (sixteen) months after the end of the FY for FY 2016;
- 12 (twelve) months after the end of the FY for FY 2017 and thereafter.

PER-29 mentions that the obligation to file the CbCR in Indonesia should be based on the Parent Entity's FY starting 2016.

PER-29 also notes that in cases where the CbCR cannot be obtained by the Government of Indonesia, the local Taxpayer should submit the CbCR within 3 months after the DGT's announcement (in its website) of the list of countries/jurisdictions with which the DGT has QCAA but CbCR cannot be obtained. If after the 3-month period the local Taxpayer fails to submit the CbCR, a formal request letter will be issued by the DGT with the filing deadline of 30 days after the date of the letter.

Other important considerations

Penalties

PER-29 does not specifically clarify the penalties or consequences that may arise due to failure in submitting relevant submissions for CbCR documentation requirements within the required timeline. However, not attaching the required receipt of filing of Notification and/or the filing of CbCR to the CITR may trigger a case where the CITR may be considered incomplete and therefore the Taxpayer may be subject to a fine of IDR 1,000,000 up to 50% of any unpaid tax.

CbCR exchange under QCAA

Indonesia has so far signed QCAA with 46 countries based on the status of the December 2017 update of the activated exchange relationships. So far, 68 countries have signed OECD's Multilateral Competent Authority Agreement on the Exchange of CbCR (MCAA)⁶. However, it needs to be noted that for certain countries, the exchange of CbCR is only effective from taxable years starting on or after 1 January 2017 (such as Singapore, Brazil, etc.) or even 1 January 2018 (Malaysia, Switzerland, etc.). Under such circumstances, the OECD recommends that the Parent Entity of a Multinational Business Group resident in that jurisdiction should be allowed voluntarily filing of their CbCR for the fiscal periods commencing on or from 1 January 2016 in their jurisdiction of tax residence. This would help to fulfil the conditions of meeting the timeline to file CbCR in the local country jurisdiction imposing local filing under the Secondary Filing Mechanism. However, no such references have been made in PER-29. Accordingly, the local Taxpayer should consult and discuss with its Parent Entity on the latter's filing status and requirement.

In other cases, there could also arise a timing issue in terms of the taxable year-end between the Parent Entity and the local Taxpayer for the purpose of filing CbCR in Indonesia. PER-29 has not provided any guidance on the local filing obligations that may arise during such a period or provided any transition relief to address this issue.

Further, PER-29 has also not provided any flexibility on the date of filing of the notification requirement as recommended by the OECD in its implementing guidelines on CbCR.

⁶ Based on the OECD's website <http://www.oecd.org/tax/beps/country-by-country-exchange-relationships.htm> (on Country-by-Country exchange relationships)

CbCR exchange with US

The US has not signed the OECD's MCAA and to date, has not entered into a bilateral competent authority agreement with Indonesia for purpose of exchanging CbCR⁷. Accordingly, all US based Multinational Business Groups with subsidiaries in Indonesia may be required to file the CbCR under the Secondary Filing Mechanism or appoint a Surrogate Parent Entity which fulfils the conditions (mentioned [above](#)) for not having to file the CbCR in Indonesia.

Conclusion

The issuance of PER-29 reflects the continuing efforts of the DGT in bringing clarity with regard to the new transfer pricing rules set forth by the OECD through Action 13 of the BEPS project. The release of this regulation by the DGT was anticipated and it is indeed a much-needed guidance considering the impending deadline to meet the compliance requirement for CbCR filing.

In circumstances where an overseas Parent Entity exceeds the threshold of €750 million and operates in a jurisdiction that is not a party to the MCAA, it is not known whether the exchange can still occur under bilateral agreements, including Indonesia's tax treaties and Tax information exchange agreements. Accordingly, the Multinational Business Group should prepare to file its CbCR in Indonesia by the 16-month deadline for FY2016. Alternatively, it could appoint a Surrogate Parent Entity to file in another jurisdiction (that has QCAA with Indonesia) to obtain the exemption of not having to file the CbCR in Indonesia.

Based on the conditions set forth in this regulation, it is amply evident that Indonesia is committed to the OECD's BEPS project. This new regulation on the implementation aspect of CbCR lays out a clear path for local taxpayers to understand the compliance requirement in regard to CbCR filing. Considering that the first filing of the CbCR in relation to financial year 2016 will be due in April 2018, it is imperative that Taxpayers be proactive in ensuring the compliance requirements are met and coordinate efficiently with the parties responsible within the Business Group/Multinational Business Group to collate and prepare the necessary information.

⁷ Based on the latest update provided in the US Internal Revenue Service (IRS) website (last updated as on 12 January 2018) <https://www.irs.gov/businesses/country-by-country-reporting-jurisdiction-status-table>

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