



## Transfer Pricing Developments

### Indonesia releases new documentation requirements for TP matters

Greetings from your Tax team at Deloitte Singapore. We are pleased to update you on the following Transfer Pricing developments:

### Indonesia releases new documentation requirements for TP matters

#### Overview

The Minister of Finance of the Republic of Indonesia has issued Regulation No. 213/PMK.03/2016 (PMK-213), dated and effective from 30 December 2016, implementing the new documentation requirements for transfer pricing matters. This includes the Master File/Local File requirement and Country-by-Country Reporting (CbCR) for Indonesian taxpayers dealing with related parties. As anticipated, Indonesia's Master File/Local File and CbCR rules are consistent with the Organisation for Economic Co-operation and Development (OECD) recommendations outlined in the final BEPS report on Transfer Pricing Documentation and CbCR – Action 13.

This new regulation on the documentation requirement essentially introduces the three-tiered approach consistent with the BEPS Action 13 recommendations, provides a threshold on the maintenance of such documentation, and requires the documentation to be submitted in the local language, i.e. Bahasa Indonesia. The regulation provides detailed guidance on who should prepare it, what it should include and when such documentation should be made available.

This regulation is issued primarily in relation to the transfer pricing documentation requirements and does not override the existing transfer pricing regulations governing the application of the arm's length principle, i.e. Directorate General of Taxation (DGT) Regulation No. PER-43/PJ/2010 (as amended by DGT Regulation No. PER-32/PJ/2011).

#### Type of documents to be maintained

Under the prevailing regulation governing transfer pricing, taxpayers were required to only maintain local transfer pricing documentation to establish the arm's length principle of the related party transactions. Under PMK-213, taxpayers are now required to maintain the following three levels of documentation:

- a. Master File;
- b. Local File; and
- c. CbCR.

The aforementioned documents have to be submitted in the local language, i.e. Bahasa Indonesia. Exception is granted for taxpayers who have attained prior approval to maintain their books in a foreign language and are using another currency besides Rupiah. They can maintain the documents in English accompanied with a translated version.

The table below provides a summary of requirements under PMK-213 and the key points that Indonesian taxpayers should consider.

Requirements	Key points								
<b>Master File and Local File (Transfer Pricing Document)</b>									
<p><b>Coverage</b> Taxpayers having related party transactions meeting any one of the following thresholds / conditions are required to prepare the Transfer Pricing Document.</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="background-color: #00a651; color: white;">Item</th> <th style="background-color: #00a651; color: white;">Threshold</th> </tr> </thead> <tbody> <tr> <td>Gross Revenue<sup>1</sup> in the preceding tax year</td> <td>Exceeding Indonesian Rupiah (IDR) 50,000,000,000 (fifty billion Rupiah)</td> </tr> <tr> <td>Tangible goods transactions in the preceding tax year OR Services, Royalties, Interest or other transactions in the preceding tax year</td> <td>Exceeding IDR 20,000,000,000 (twenty billion Rupiah) OR Exceeding IDR 5,000,000,000 (five billion Rupiah)</td> </tr> <tr> <td>Related party transactions with affiliated party located in a jurisdiction with tax rate lower than Indonesia's (i.e. currently at 25%)</td> <td>No threshold</td> </tr> </tbody> </table> <p>In addition, a taxpayer that qualifies as a Parent Entity<sup>2</sup> of a Business Group having consolidated gross revenue of IDR 11,000,000,000,000 (eleven trillion Rupiah) is also required to maintain the Transfer Pricing Document.</p> <p>In the event the preceding tax year covers a period less than 12 months, the gross revenue or the related party transactions are required to be annualised.</p> <p>For bookkeeping in currency other than Rupiah, the monetary value of the threshold is to be calculated using the exchange rate set by the MoF for tax calculation at the end of the tax year.</p> <p>The regulation clearly specifies that even if the taxpayers do not meet the above threshold to maintain the Transfer Pricing Document, they are still required to adhere to the arm's length principle for related party transactions.</p>		Item	Threshold	Gross Revenue <sup>1</sup> in the preceding tax year	Exceeding Indonesian Rupiah (IDR) 50,000,000,000 (fifty billion Rupiah)	Tangible goods transactions in the preceding tax year OR Services, Royalties, Interest or other transactions in the preceding tax year	Exceeding IDR 20,000,000,000 (twenty billion Rupiah) OR Exceeding IDR 5,000,000,000 (five billion Rupiah)	Related party transactions with affiliated party located in a jurisdiction with tax rate lower than Indonesia's (i.e. currently at 25%)	No threshold
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<p><b>Contemporaneousness</b> The Transfer Pricing Document is to be based on the data and information available at the time the related party transactions are conducted. If the above is not satisfied, the Taxpayer shall be deemed not to apply the arm's length principle.</p>	<p>Taxpayers should anticipate tight timeline for the preparation as it is required to be made available within 4 months. It also poses a practical challenge on the availability of the external comparable data and information.</p>								
<p><b>Timeline</b> The Transfer Pricing Document must be available within 4 months after the end of the tax year and must be accompanied by a statement letter stating the time of the availability of such documents. Such statement letter needs to be signed by the party providing the Transfer Pricing Document.</p>	<p>Requires tight timeline for the preparation. Poses a practical challenge on the availability of the external comparable data and information.</p>								
<p><b>Bare minimum contents of Master File</b></p> <ul style="list-style-type: none"> <li>• Ownership structure and chart as well as the jurisdictions of the Group Companies;</li> <li>• Business activities carried out by the Business Group;</li> <li>• Intangible assets owned by the Business Group;</li> <li>• Financial activity / Financing activities within the Business Group; and</li> <li>• Consolidated financial statements of the Parent entity and tax information in relation to the related party transactions.</li> </ul> <p><b>Bare minimum contents of Local File</b></p> <ul style="list-style-type: none"> <li>• Taxpayer's identity and business activity;</li> <li>• Information on transactions with related party/ies and independent parties respectively;</li> <li>• Application of the arm's length principle;</li> <li>• Financial information of the taxpayer;</li> <li>• Non-financial events/ occurrences/facts influencing the pricing or the level of profits.</li> </ul> <p>In relation to the Local File, specifically for commodity transactions, a more detailed factual disclosure is required.</p>	<p>The contents of Master File and Local File are generally aligned with BEPS Action 13. However, the requirements in the Local File in this new regulation are more extensive than in the existing regulations. This will require taxpayers to revisit the existing transfer pricing documentation structure and make necessary additions. The Local File requires availability of legal agreements / contracts for all significant related party transactions, as well as financial information. A segmented approach has been prescribed in the event the taxpayer has more than one business or functional characterisation.</p>								

<sup>1</sup> Gross Revenue is defined as the gross amount of revenue received or accrued in connection with the Taxpayer's work, business or main activities before deduction of discount, rebates, and other deductions

<sup>2</sup> Parent entity is defined as the Entity directly or indirectly controlling the Business Group and is required to prepare consolidated financial statements under Indonesian Financial Accounting Standards.

<p><b>Disclosure Requirement</b> Taxpayers are required to file a summary of the Master File and Local File as an attachment to the Annual Corporate Income Tax Return in the format prescribed. The summary requires taxpayers to declare that the Master File and Local File contains the bare minimum content as per the requirement and to provide the date on which the Master File and Local File became available.</p>	<p>This summary is in addition to the Special Attachment Forms (Forms 3A/3A-1 and Forms 3B/3B-1) that is filed along with the Annual Corporate Income Tax Return. Taxpayers should ensure that the disclosures in the Special Attachment Forms and the summary are consistent with the Transfer Pricing Document.</p>
<p><b>Timing of submission of the Transfer Pricing Document</b> The Transfer Pricing Document is required to be submitted to the Director General of Tax (DGT) upon request within the time specified under the provisions of tax laws and regulations.</p> <p>In case of delayed submission, the Transfer Pricing Document shall not be considered. Further penal implication as regulated in the prevailing tax laws may apply in case of non-compliance.</p>	<p>Strict enforcement to ensure timely submission of the Transfer Pricing Report to the DGT. PMK-213 stipulates that the DGT can request for Transfer Pricing Document to review and monitor Taxpayer's compliances.</p>

Requirements	Key points
<b>Country – by – Country Reporting</b>	
<p><b>Coverage</b> Required to be prepared and submitted by a taxpayer that qualifies as Parent Entity of a Business Group having consolidated gross revenue of IDR 11,000,000,000,000 (eleven trillion Rupiah). Where the Parent Entity is located in a foreign jurisdiction, the resident taxpayer is required to submit the CbCR when the country of the Parent Entity:</p> <ul style="list-style-type: none"> <li>Does not require submission of CbCR; or</li> <li>Does not have an agreement with the Government of Indonesia on exchange of information; or</li> <li>Has an agreement but the CbCR cannot be obtained by the Government of Indonesia.</li> </ul>	<p>Additional requirement for Business Groups with Parent entity based in Indonesia especially if the Business Group also comprise of foreign subsidiaries.</p>
<p><b>Contemporaneousness</b> The CbCR is to be based on the data and information available up to the end of the tax year.</p>	<p>Tax year 2016 is the first year of coverage.</p>
<p><b>Timeline</b> The CbCR must be available within 12 months after the end of the tax year.</p>	<p>If tax year ends on 31 December 2016, CbCR should be available by 31 December 2017.</p>
<p><b>Content</b> The CbCR is required to be prepared in the form / format prescribed as an attachment to PMK-213. The format is aligned with the CbCR template prescribed in BEPS Action 13 and requires preparation of the following information:</p> <ol style="list-style-type: none"> <li>Allocation of income, taxes paid, and business activities per country per jurisdiction of all members of the Business Group, both local and foreign. This includes: <ol style="list-style-type: none"> <li>Name of country or jurisdiction;</li> <li>Gross revenue divided between independent and related party transactions. However, payments treated as dividend in the payer's jurisdiction is excluded;</li> <li>Profit (loss) before tax (non – operating income and expense are included);</li> <li>Income Tax that has been withheld/ collected/ self-paid;</li> <li>Income Tax payable as reported in the income / (loss) statement and does not include deferred tax;</li> <li>Registered capital. For Permanent Establishment (PE), the amount will be registered capital reported by the Head Office unless the specific country requirement on capital for the PE;</li> <li>Accumulated retained earnings. For PE, the accumulated retained earnings must be reported by the Head Office;</li> <li>Number of permanent employees; and</li> <li>Net Book value of tangible assets other than cash and cash equivalent. For the PE the net value of the tangible assets must be reported for the countries where the PE is located.</li> </ol> </li> <li>A list of members of the Business Group and principal business activities per country or jurisdiction. This includes: <ol style="list-style-type: none"> <li>Name of the entity in each jurisdiction;</li> <li>Principal Business Activity.</li> </ol> </li> <li>Working paper of CbCR which includes the above information used for preparation of the above Forms. Additional requirement is the Tax ID number of the entity in the Business Group.</li> </ol> <p>Further implementing guidance is expected to be issued by the DGT in regard to the CbCR filing.</p>	<p>The CbCR format is in line with BEPS Action 13 which is adopted by most countries. However, there is an additional requirement in of preparation and submission of a "working paper" as part of the CbCR.</p>
<p><b>Timing of Submission</b> The first year of coverage is FY2016 and is required to be filed with the Annual Corporate tax return for the subsequent tax year i.e. Tax year 2017.</p>	<p>Only to be filed by taxpayers mentioned in the Coverage section above.</p>

## Conclusion

The new documentation regulation reflects Indonesia's commitment to the OECD's BEPS project in the interest of global transfer pricing consistency. The new documentation rule intends to strengthen the quality of documents maintained by the taxpayers and enhance transparency. Given the limited timeframe (i.e. 4 months from the end of tax year or 30 April 2017 for some taxpayers) to get the Master File and Local File ready, taxpayers will need to constantly ensure rigour in managing their transfer pricing affairs. Taxpayers also need to

be proactive and make sure that the required information for preparation of Master File and Local File is available to ensure compliance with the requirements as prescribed under this new regulation.

The new documentation rule will require coordinated efforts between the taxpayer and its Group to gather and prepare the necessary information, as certain data may not be readily available to the taxpayer at the local level. This will ensure that the information disclosure is consistent across Master File, Local File, CbCR and related-party transaction disclosure forms.

Transfer pricing policies need to be robust and taxpayers are advised to take this opportunity to examine and revisit their existing transfer pricing policies to proactively manage transfer pricing issues and related exposure.

### Find out more

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