TaxFlash

Transfer Pricing Documentation

The Minister of Finance (MoF) has issued Regulation No.213/PMK.03/2016 (PMK-213) that regulates new Transfer Pricing Documentation (TPD) requirements dated and effective since 30 December 2016. As such, the requirements under this regulation are applicable for the tax year ending on 30 December 2016 and onwards.

PMK-213 does not revoke the existing Transfer Pricing regulations[1]. However, PMK-213 prevails over the existing regulations to the extent that there are any inconsistencies.

This regulation provides the following document requirements as part of the TPD:

a. Master file
b. Local file; and/or
c. Country-by-Country Report (CbCR)

Overall, the Indonesian requirements as mentioned above continue to be largely consistent with OECD BEPS Action 13. This is a positive continuation for Indonesia and, as Southeast Asia's largest economy, should help multinational companies manage and support their Indonesian transfer pricing needs.

[1] Director General of Tax Regulation No.PER-43/PJ/2010 as amended by PER-32/PJ/2011.

Master File and Local File

The Master and Local files must be prepared and maintained by taxpayers who have related party transactions and:

a. whose prior year annual gross turnover exceeds IDR 50 billion[2]; or
b. whose prior year annual related party transactions exceeds:
    1) IDR 20 billion[3] for tangible goods transactions; or
    2) IDR 5 billion[4] for each transaction on services, interest, intangible goods, or other related party transactions; or
c. have related party transactions with parties domiciled in countries or jurisdictions with lower income tax rates than Indonesia.

With regards to point (c) above, taxpayers need to identify the applicable income tax rates in the jurisdictions of the related party counterparts, as this criteria does not have a threshold amount. Therefore, even a small transaction can trigger a Master and Local files requirement if the counterparty's jurisdiction has a lower income tax rate than Indonesia.

It should also be noted that 'gross turnover' is turnover derived from services or main business activities before deducting any discounts, rebates, and other deductions. Further, where a taxpayer has operated for less than 12 months (in the preceding year) the gross turnover and related party transaction amounts must be annualised before being compared to the thresholds above.

Master file required contents

The Master file must, at a minimum, include the following information about the business group:

1. organisational and ownership structure and country/jurisdiction of each entity;
2. type of business activities performed;
3. intangible assets owned;
4. financial activities; and
5. parent company's consolidated financial statements and tax information related to related party transactions.

Further, amplifying on these broad categories, PMK-213 also includes an attachment detailing minimum requirements which are similar to the Master file requirements in OECD BEPS Action 13.

Local file required contents

The Local file must, at a minimum, include the following information about the Indonesian taxpayer:

1. identity and description of the business activities;
2. related party transaction and independent transaction informations;
3. application of arm's length principle;
4. financial information; and
5. non-financial events or facts that affect price determination or profit level.

Consistent with the Master file requirements, PMK-213 also provides an attachment detailing minimum requirements which are similar to the Local file requirements in OECD BEPS Action 13. PMK-213 requires the Local file to be presented on a segmented basis showing the different business characterisations. We recommend that taxpayers review the quality and comparability of data available to support their transfer pricing positions and assess whether a segmented or whole-of-entity approach provides a more reliable outcome.

Timeline for the preparation of the Master and Local files

The Master and Local files must be available no later than four months after the end of the tax year. These files are not required to be lodged with the Indonesian Tax Office at that time. A signed statement letter regarding the time when the documents are available must be attached to the documents.

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[2] For indicative purposes only, IDR 50 billion equates to approx. USD3.7 million as at the date of writing.
[3] For indicative purposes only, IDR 20 billion equates to approx. USD1.5 million as at the date of writing.
[4] For indicative purposes only, IDR 5 billion equates to approx. USD375,000 as at the date of writing.

This is a significant departure from Indonesia's previous 'practical' regime. It is also a slight departure from OECD BEPS Action 13 which recommended that the Master and Local files be available at the time of lodging the Corporate Income Tax Return (CITR). The regulation does not provide an extension for the preparation of Master and Local files, even where taxpayers have an extension to lodge their CITR.

Further, the timeline will place some time constraints on multinational enterprises that wish to leverage both the Master and Local files. It is imperative that Indonesian taxpayers liaise with their stakeholders so that they can get access to the Master file and leverage Local file within the four-month period for Indonesia.

In addition, a 'Summary' (or effectively a declaration) has to be lodged with the CITR. This 'Summary' is effectively a checklist of the content of the Master and Local files and declares the date as at when these files become available.

Circumstances requiring submission of the Master and Local files

The Director General of Tax (DGT) can request Master and Local files upon the following circumstances:

a. compliance monitoring, general tax audit, tax audit on preliminary evidence of a tax crime, or investigation
b. objection process, reduction/cancellation of administrative sanction, or reduction/cancellation/revision of incorrect tax assessment

Taxpayers must submit the documents within the required timeline as regulated in prevailing tax regulations.

Under the circumstances in point (a) above, if the taxpayer fails to submit the documents within the required timeline, the DGT will not consider the taxpayer documents as TPD as prescribed by the regulation. If the taxpayer fails to submit the documents, the DGT will consider the taxpayer to have failed to comply with its obligations to prepare and maintain TPD.

Country-by-Country Reporting

Consistent with OECD BEPS Action 13, a member of a group company with the following requirements must also prepare and maintain CbCR. The requirements are that the Indonesian taxpayer:

- controls directly or indirectly one or more of other member companies in a business group; and
- has an obligation to prepare a consolidated financial statements based on Indonesian accounting standards and/or stock exchange requirements; and
- has a current year consolidated gross turnover of a minimum of IDR 11 trillion[5].

Similar to the Master and Local files, the gross turnover limitation is turnover derived from main business activities before deducting any discounts, rebates, and other deductions.

A member of group companies must also prepare and maintain CbCR if the countries or jurisdictions of the parent company:

a. do not require CbCR; or
b. do not have an Exchange of Information (EoI) agreement with Indonesia; or
c. have an EoI agreement with Indonesia, however the CbCR cannot be obtained by Indonesia from that country or jurisdiction.

Country-by-Country Report required contents

The main report (working paper) of CbC will contain the following information:

1. Country/Jurisdiction
2. Name and tax ID of the entities
3. Type of business activities
4. Gross Turnover – divided by independent and related party transactions (not including payment deemed as dividend in the payer's jurisdiction)
5. Profit(loss) before income tax
6. Income tax <u>already</u> paid (cash basis) – through withholding and self-paid, including Foreign Tax Credit

[5] For indicative purposes only, IDR11 trillion equates to approx. USD825 million or Euro784 million as at the date of writing.

7. Income tax due – based on financial statements
8. Stated Capital
9. Accumulated Retained Earnings
10. Number of permanent employees (which may include independent contractors)
11. Tangible assets (other than cash/cash equivalents or monetary assets)

The information from the main CbCR will be presented in:

- CbC-1 report, which mainly provides per-country information as referred to in point (4) to (11);
- CbC-2 report, which provides type of business activities per-country; and
- CbC-3 report, which provides any other information which is not referred to in the CbC-2 report.

Timeline

CbCR must be made readily available within 12 months after the end of a tax year.

From tax year 2016 onwards, CbCR must be submitted as an attachment to the following year's CITR. For example, 2016 CbCR for a taxpayer whose tax year ended on 31 December 2016 must be submitted to the DGT together with the 2017 CITR.

Data, language and general requirements

The Master and Local files must be prepared based on data and information available at the time the related party transaction takes place, while CbCR must be prepared based on the data and information available up to the end of the tax year in question. This could be a particularly onerous requirement to be satisfied by the taxpayers, for example, often there are lags in the availability of data. We recommend further discussion with the DGT to take place in order to understand the details of this requirement. Taxpayers would be deemed to have not applied the arm's length principle if they did not fulfil these requirements.

In a change from Indonesia's previous practice, official TPD must now be in Indonesian language. Taxpayers who have an approval to use a foreign language or currency can prepare TPD using that foreign language, however it also needs to be accompanied with the translated Indonesian version.

PMK-213 also clearly states that even if taxpayers are not required to prepare TPD, they are still required to transact with their related parties in accordance with the arm's length principle. Therefore, for Indonesian taxpayers, the preparation of TPD should not be considered as merely an 'administrative' action. It should form part of their comprehensive support of their transfer pricing position and audit defense strategy.

The reporting templates and more detailed information on the required contents for the Master file, Local file, and CbCR can be found on the MoF website.

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