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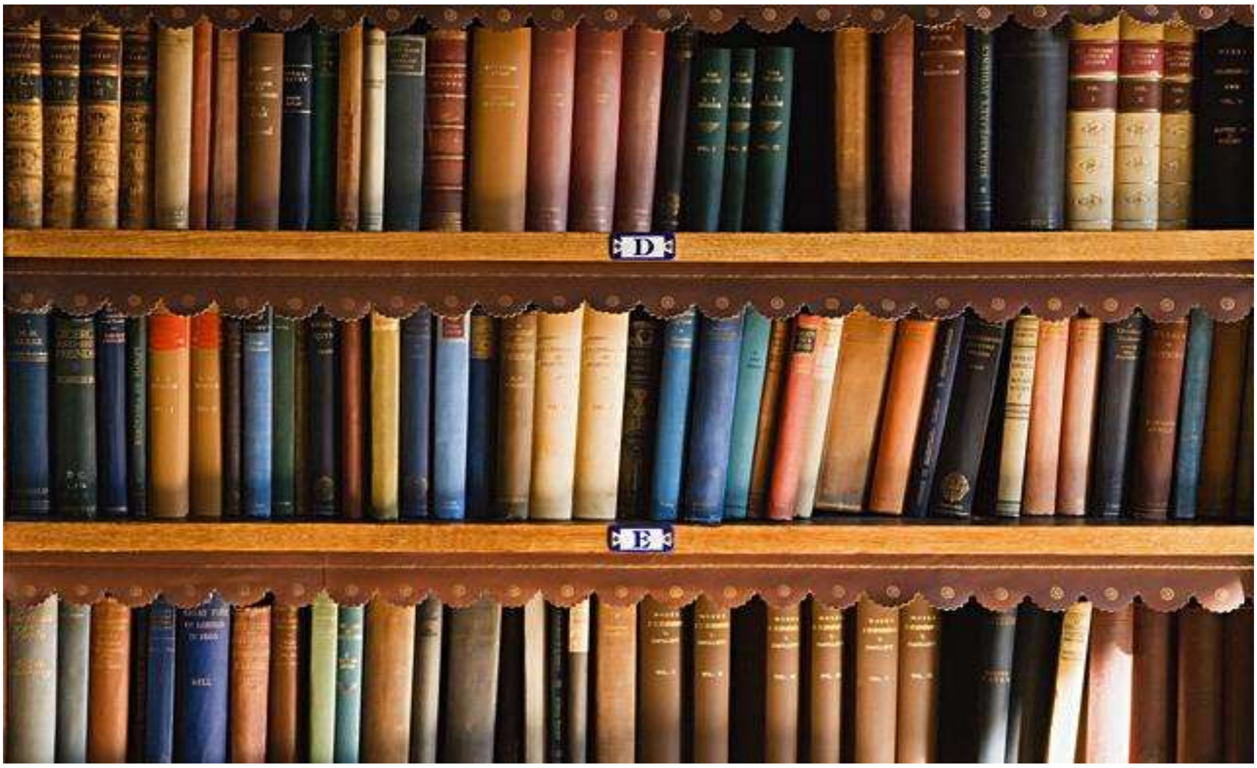

Transfer pricing alert January 2017 Minister of Finance Regulation No. 213/PMK.03/2016

Indonesia releases legislation for new documentation requirement including master file/local file and Country-by-Country Reporting ("CbCR")

The Minister of Finance of the Republic of Indonesia ("MoF") has issued Regulation No. 213/PMK.03/2016 ("PMK-213") dated and effective 30 December 2016, implementing the new documentation requirement for transfer pricing matters. This includes the Master file/Local File requirement and 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 report on Transfer Pricing Documentation and Country-by-Country Reporting – Action 13.

This new regulation on the documentation requirement essentially introduces the 3 (three) tiered approach to documentation 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).

This Alert summarises the salient features of PMK-213 and provides insight on the requirements for Taxpayers in Indonesia in relation to their transfer pricing documentation obligation.

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 required to maintain the following three levels of documentation:

a. A Master file;

b. A Local File; and

c. Country–by–Country Report.

The aforementioned documents have to be submitted in the local language, i.e. Bahasa Indonesia. Exception is for the Taxpayers having approval to maintain their books in foreign language and using currency other than Rupiah 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.

<table>
<tr><th>Requirements</th><th>Key points</th></tr>
<tr><td colspan="2">Master File and Local File ("Transfer Pricing Document")</td></tr>
<tr><td>
Coverage

Taxpayers having related party transactions meeting any one of the following thresholds / conditions are required to prepare the Transfer Pricing Document.

<table>
<tr><th>Item</th><th>Threshold</th></tr>
<tr><td>Gross Revenue[1] 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)

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>
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In addition, a Taxpayers that qualifies as a Parent Entity[2] 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.

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.

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.

The regulation clearly specifies that even if the Taxpayers do not meet the above threshold to maintain the Transfer Pricing Document, they
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The regulation has replaced the existing threshold determination based on the "per counterparty per annum" with thresholds based on gross revenue or transaction type or counterparty's jurisdiction.

The regulation does not clearly specify exclusion of tax - neutral domestic transactions which was relieved in the prevailing regulations (subject to certain conditions).

The threshold should be calculated based on the preceding tax year. For example, to determine the requirement for Transfer Pricing Document for tax year 2016, the threshold will be based on the values as per tax year 2015.

Taxpayers should check the applicable corporate income tax rate of the jurisdictions in which its related parties (with whom it transacts) are located to assess eligibility for maintaining Transfer Pricing Document.

With the new gross revenue threshold, PMK-213 generally does provide relief to small and medium taxpayers in relation to administrative burden of documentation. However, with the new
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[1] 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

[2] 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.

Requirements	Key points
Master File and Local File ("Transfer Pricing Document")	
are still required to adhere to the arm's length principle for related party transactions.	prescribed threshold, it aims to cover more transactions within the ambit of requirements of Transfer Pricing Document.
Contemporaneousness 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.	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.
Timeline The Transfer Pricing Document must be available within 4 (four) months after the end of the tax year and must be accompanied by a statement letter concerning the time of the availability of such documents. Such statement letter needs to be signed by the party providing the Transfer Pricing Document.	Requires tight timeline for the preparation. Poses a practical challenge on the availability of the external comparable data and information.
Bare minimum contents of Master File • Ownership structure and chart as well as the jurisdictions of the Group Companies; • Business activities carried out by the Business Group; • Intangible assets owned by the Business Group; • Financial activity / Financing activities within the Business Group; and • Consolidated financial statements of the Parent entity and tax information in relation to the related party transactions. **Bare minimum contents of Local File** • Taxpayer's Identity and Business Activity; • Information on transactions with related party/ies and independent parties respectively; • Application of the Arm's length principle; • Financial information of the Taxpayer; • Non-financial events/ occurrences/facts influencing the pricing or the level of profits. In relation to the Local File, specifically for commodity transactions, a more detailed factual disclosure is required. More detailed content of the above is prescribed in the Attachment to the PMK-213.	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.
Disclosure Requirement 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.	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.

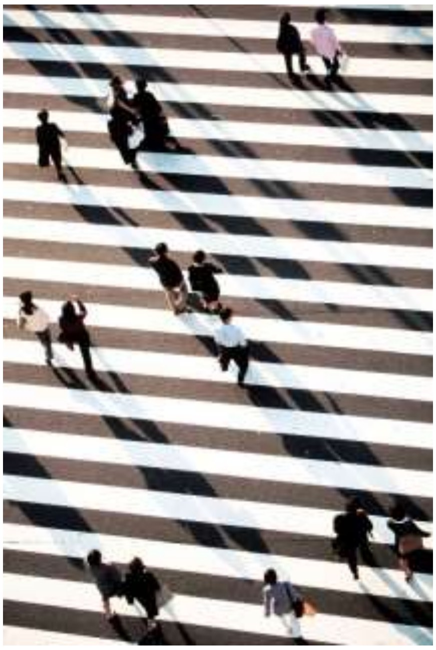
Requirements	Key points
Master File and Local File ("Transfer Pricing Document")	
Timing of submission of the Transfer Pricing Document The Transfer Pricing Document is required to be submitted to the Director General of Tax ("DGT") upon request within the time specified under the provisions of tax laws and regulations. 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.	Strict enforcement to ensure timely submission of the Transfer Pricing Report to the DGT. PMK-213 stipulates that the DGT can request Transfer Pricing Document to review and monitor Taxpayer's compliances.

Requirements	Key points
Country – by – Country Report ("CbCR")	
Coverage 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: • Does not require submission of CbCR; or • Does not have an agreement with the Government of Indonesia on exchange of information; or • Has an agreement but the CbCR cannot be obtained by the Government of Indonesia.	Additional requirement for Business Groups with Parent entity based in Indonesia especially if the Business Group also comprise of foreign subsidiaries.
Contemporaneousness The CbCR is to be based on the data and information available up to the end of the Tax Year.	Tax year 2016 is the first year of coverage.
Timeline The CbCR must be available within 12 (twelve) months after the end of the tax year.	For tax year ended 31 December 2016, CbCR should be available by 31 December 2017.
Content 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: 1. 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: a. Name of country or jurisdiction; b. Gross revenue divided between independent and related party transactions. However, payments treated as dividend in the Payer's jurisdiction is excluded; c. Profit (loss) before tax (non – operating income and expense are included); d. Income Tax that has been withheld/ collected/ self-paid; e. Income Tax payable as reported in the income / (loss) statement and does not include deferred tax;	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.

Requirements	Key points
Country – by – Country Report ("CbCR")	
f. 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; g. Accumulated retained earnings. For PE, the accumulated retained earnings must be reported by the Head Office; h. Number of permanent employees; and i. 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. 2. A list of members of the Business Group and principal business activities per country or jurisdiction. This includes: a. Name of the entity in each jurisdiction; b. Principal Business Activity. 3. 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. Further implementing guidance is expected to be issued by the DGT in regard to the CbCR filing.	
Timing of Submission 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.	Only to be filed by Taxpayers mentioned in the Coverage section above.

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, (30 April 2017 for some Taxpayers) for made available the Master file and Local File, Taxpayers will need to exercise more 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.

Contact Persons

Questions concerning any of the subjects or issues contained in this newsletter should be directed to your usual contact in our firm, or any of the following individuals:

Roy David Kiantiong	National Transfer Pricing Leader	rkiantiong@deloitte.com
Balim	Tax Director	bbalim@deloitte.com
Shivaji Das	Technical Advisor	shivdas@deloitte.com
Amit Sharma	Technical Advisor	asharma2@deloitte.com
Eddy Ivan Utama	Senior Manager	eutama@deloitte.com

You may also get in touch with your usual contact in our firm, or any of the following individuals:

Melisa Himawan	Tax Managing Partner	mehimawan@deloitte.com
Cindy Sukiman	Tax Partner	csukiman@deloitte.com
Dionisius Damijanto	Tax Partner	ddamijanto@deloitte.com
Heru Supriyanto	Tax Partner	hsupriyanto@deloitte.com
Irene Atmawijaya	Tax Partner	iatmawijaya@deloitte.com
John Lauwrenz	Tax Partner	jlauwrenz@deloitte.com
Turmanto	Tax Partner	tturmanto@deloitte.com
Yan Hardyana	Tax Partner	yhardyana@deloitte.com
Koji Sugimoto	Technical Advisor	kojisugimoto@deloitte.com

Deloitte Tax Solutions
The Plaza Office Tower, 32nd Floor
Jl. M.H. Thamrin Kav 28-30
Jakarta 10350, Indonesia
Tel: +62 21 2992 3100
Fax: +62 21 2992 8303
Email: iddttl@deloitte.com
www.deloitte.com/id