

INDONESIA ADOPTS CBC REPORTING AND NEW TRANSFER PRICING DOCUMENTATION REQUIREMENTS



Introduction

Since the release of the OECD final reports on Action Plan on BEPS in 2015, including Action 13 regarding guidance on transfer pricing documentation and country-by country (“CbC”) reporting, many countries have reacted through draft or enacted legislation. CbC reporting is part of the minimum standard in the Action Plan on BEPS that has been agreed to by G20/OECD member countries for consistent implementation in each country. Under the standard, a multinational enterprise (“MNE”) group that meets a certain revenue threshold is required to file a CbC report consisting of tax jurisdiction-wide information relating to the global allocation of the income, the taxes paid and certain indicators of the location of economic activity among tax jurisdiction in which the MNE group operates.

As part of Indonesia’s commitment to the implementation of the standard, the Ministry of Finance released on 30 December 2016, Minister of Finance Regulation No. PMK-213/PMK.03/2016 (“MoF 213/2016”), the much-anticipated regulations on CbC

reporting and its corresponding updates to transfer pricing documentation requirements. MoF 213/2016 brings clarity to the transfer pricing documentation legal framework. Previously, transfer pricing documentation requirements are only regulated by way of Directorate General of Tax (“DGT”) Regulations, which is not mandated directly by the Law.

Documentation Requirements and Reporting Taxpayers

MoF 213/2016 distinguishes 3 types of transfer pricing documentations:

1. A “master file” that consist of high level information concerning the MNE group global operations and transfer pricing policies;
2. A “local file” that consist of information regarding the taxpayer specific business operations, financial information and affiliated transactions, including the transfer pricing analysis of the covered affiliated transactions; and

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3. A “CbC” report that must be prepared in accordance with the template provided in the attachment of MoF 213/2106. The template requires MNE’s to report information on its affiliated parties, including amount of revenue, profits, income tax paid and accrued, employees, retained earnings and assets. In addition, information regarding functions performed and business activities by each entity in a particular tax jurisdiction must also be disclosed.

In general, the contents required in the master file, local file and CbC report are in line with BEPS Action Plan 13 recommendations.

Taxpayers who conducts affiliated transactions and that fulfills the following criteria must prepare a two-tiered transfer pricing documentation, i.e. master file and local file:

- Taxpayers with a gross revenue in one tax year more than IDR 50,000,000,000 (fifty billion rupiah); or
- Taxpayers with an accumulated affiliated transactions amounting to more than IDR 20,000,000,000 (twenty billion rupiah) for transactions pertaining to tangible assets or more than IDR 5,000,000,000 (five billion rupiah) for transactions pertaining to intangible assets, services, interest payments or other affiliated transactions; or
- If there are transactions is conducted with affiliated persons that are tax resident in a jurisdiction with a lower statutory tax rate than Indonesia (lower than 25%).¹

While, a three-tiered transfer pricing documentation i.e. master file, local file and CbC report must be prepared by the following taxpayers:

- Taxpayers that are considered parent entity of a group of entities with a consolidated gross revenue in one tax year of at least IDR 11,000,000,000,000 (eleven trillion rupiah)²; or
- Taxpayers that are subsidiaries of one or more parent entities that is tax resident in a jurisdiction which does not obligate CbC reporting, or does not have an exchange of information agreement with Indonesia, or does have an exchange of information agreement

with Indonesia but a CbC report cannot be obtained by Indonesia from such jurisdiction.

Note hereby that in contrast with BEPS Action Plan 13 recommendation, MoF 213/2016 defined “parent entity” as a member entity of a group of entities that have direct or indirect control over one or more member entities within the group and that has an obligation to prepare a consolidated financial reporting according to Indonesian GAAP and/or stock exchange regulations, without referring to the criteria of the non-existence of any other entity that owns directly or indirectly the parent entity concerned. Therefore CbC reporting requirement does not apply only to ultimate parent entities but also to member entities of a MNE that has the obligation to conduct a consolidated financial report. In such case, only CbC information concerning the entities owned direct or indirectly by the reporting entity are required to be reported.

The policy behind this deviation is to ensure the availability of CbC reports to the DGT. Such CbC reports may also be useful to map in a more clear way the value creation and contribution made by each member entity in the same supply chain. It is expected that the DGT will issue further clarifications concerning which MNE group operating in Indonesia will require to, in any case, prepare a CbC report.

Administration and Filing

MoF 213/2016 states that the regulations are in force as of 1 January 2017. The intention of the MoF is to apply the new transfer pricing documentation requirements as of tax year 2016 (tax return filing deadline on 30 April 2017).

Reporting entities that are required to prepare master files and local files are required to file at the time of filing the tax return, a statement letter indicating that such master file and local file documentation has been prepared in accordance with the regulations, including the period when such documentation has been created. MoF 213/2016 namely requires the date of creation of the documentation to be within 4 months after the end of the tax year (e.g. for fiscal year ending on 31 December 2016, the deadline is on 30 April 2017). Note that the statement letter must follow the template as provided in the attachment of MoF 213/2016.

MoF 213/2016 does not require taxpayers to submit the master file and local file documentations along with the tax return, but only upon DGT request. While, CbC reports must be filed along the tax return of the subsequent tax year. This means that CbC report for

1. Previously, the regulations obligated taxpayers to disclose affiliated transaction and/or transactions with parties domiciled in tax haven jurisdictions in their tax return. DGT Regulation No. PER-39/2009 defined tax haven jurisdictions as a jurisdiction that imposes no income taxes or a income tax with a statutory rate that is 50% lower than the statutory rate in Indonesia or a jurisdiction that applies a bank secrecy policy and that prohibits the exchange of information among jurisdictions, including for the purposes relating to taxation. Now it appears that all jurisdictions with a statutory rate lower than 25% qualify as low taxed jurisdiction targeted by Indonesia transfer pricing regulations.

2. This is in line with the BEPS Action Plan 13 required minimum threshold of EUR 750,000,000.- (seven hundred and fifty million euros).

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tax year 2016 must be filed along the 2017 tax return. Note that, MoF 213/2016 requires that CbC reports are created within 12 months after the end of the tax year.

Penalties

MoF 213/2016 does not impose specific penalties for non-compliance, but rather refer to the General Procedures and Tax Provision Law. MoF 213/2016 however specify the following non-compliance events:

- Transfer pricing documentations is not based on contemporaneous data and information. In such case, the taxpayer is deemed not to have applied the arm's length principle.
- Non-compliance during monitoring, audit, preliminary tax crime investigation, or tax crime investigation i.e. late submission or failure to submit a transfer pricing documentation when requested by DGT. In case of late submission, the transfer pricing documentation submitted by the taxpayer cannot be considered in the remaining course of the ongoing procedure. While, in case of failure to submit, the taxpayer is deemed to have not conducted an appropriate bookkeeping.
- Failure to submit the statement letter on master file and local file documentation and/or CbC report during tax return filing. MoF 213/2016 does not specify the consequences in this event, however generally documents that are required to be submitted along the tax return, but not submitted by the taxpayer, may result that the tax return is considered not complete.

Other Important Changes

Previously transfer pricing documentation requirements does not stipulate language requirements. As such in practice, many documentations were written in English. MoF 213/2016 now requires that all transfer pricing documentations must be written in Bahasa Indonesia. Documentation in foreign language and foreign currency is permitted by approval from the Minister of Finance, nonetheless such documents must be accompanied with a translation in Bahasa Indonesia.

In addition noteworthy is the change of terminology used. Transfer pricing documentation is now referred as "price setting document". Further there is special clause concerning the timing of the availability of information and data used in the documentation. The regulation also requires a statement letter indicating when the documentation is created. Clearly, the new transfer pricing documentation must now be based on a contemporaneous basis and use an ex-ante perspective.

Taxpayers are expected to have a robust transfer pricing price setting policies based on comparable data that is available before or during transactions. In other words, taxpayer may consider applying a proactive intercompany margin management and internal coordination so as to ensure an arm's length behavior.

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We were established in 2007 by Indonesian well known taxation experts, Darussalam and Danny Septriadi. Our team consists of multidisciplinary specialists, professionals, experts, and researchers.

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