New Transfer Pricing Documentation Requirements

Minister Finance Regulation No. 213/PMK.03/216 dated 30 December 2016

New documentation and/ or additional information required including master file, local file and Country by Country Reporting (CbCR)

On 30 December 2016 the Minister of Finance (MoF) has issued Regulation No.213/PMK.03/2016 (PMK 213) stipulating new documentation requirements for transfer pricing ("TP") matters.

This regulation is broadly consistent with Action 13 of the OECD's BEPS project in that it expands the existing transfer pricing documentation requirements to include:

- A Master File,
- A Local File, and
- Country-by-Country Reporting.

Amongst others, the regulation sets out the required documents and information to be included, the threshold for maintenance of such documents, the use of local language (bahasa Indonesia), who should prepare the documents and when the documents should available.

It should be noted that PMK-213 does not revoke existing transfer pricing regulations but over-rides these where applicable. Areas of change are noted in the commentary below.

Effective Date

PMK-213 is applicable for tax years ending after 30 December 2016. Therefore taxpayers with a 31 December 2016 tax year-end are required to comply immediately.

Type of TP Documents that should be maintained

Previously taxpayers were only required to maintain local TP documentation. Taxpayers are now, potentially, required to maintain the following documents:

1. Master File,
2. Local File (effectively the traditional TP Report), and/or
3. Country-by-Country Report (CbCR).

Permitted Language

The TP Documents should be prepared in bahasa Indonesia unless the taxpayer has approval to maintain their books in foreign language and using currency other than IDR. In this case, the documents can be prepared in the agreed language (until now, though, the only approved alternative language is English) accompanied with a translated version. In effect this means there is no exception to preparing in bahasa Indonesia.

Who must prepare and maintain TP Documents?

Previously taxpayers were required to prepare TP Reports if:

- There were transactions between domestic related parties who utilize different corporate tax rates; and/or
- There were transactions between an Indonesian taxpayer and an overseas related party, and
- These transactions exceeded IDR 10 billion per counterparty during that year.

Taxpayers that had related party transactions outside these criteria/thresholds were not required to prepare a formal TP Report but were required to maintain documentation to support the arms-length nature of the transactions.

PMK-213 significantly revises the criteria. In particular there is no longer a per-counterparty threshold and the monetary thresholds refer to the previous tax year rather than the current year. Taxpayers that have related party transactions are required to maintain TP Documents if any of the following criteria are met:

Prepare Master File and Local File, if:

1. Gross turnover for the previous tax year is more than IDR 50 billion, or
2. Total related party transactions during the previous tax year are:
    - More than IDR 20 billion for tangible goods transactions, or
    - More than IDR 5 billion for services, interest payment, intangible goods (e.g. royalties) or other related party transactions; or

3. The taxpayer has transactions with affiliates that are located in another country/jurisdiction that has a lower income tax rate than Indonesia (i.e. lower than 25%).

Note 1: The thresholds are based on a full 12-months tax year. If the period is less (e.g. due to a newly established company or a change of tax year-end) then the turnover or transaction values should be annualised to determine whether the thresholds are exceed or not.

Note 2: If the taxpayer does not use rupiah as its book currency, then the thresholds are determined using the Minister of Finance tax exchange rates per the relevant year-end.

Note 3: Gross turnover refers to income received/earned from the main business activities before considering discounts, rebates or other deductions.

Therefore, technically, even an IDR 1 transaction with a Singapore Head Office triggers a requirement to maintain TP Documents because Singapore's headline corporate tax rate is 17%.

If the taxpayer has related party transactions that do not meet any of the above then it is only required to keep documents to support that pricing follows the arms length principle.

Prepare Master File, Local File and CbCR if:

- If the taxpayer is Parent Company of a business group having consolidated gross turnover of at least IDR 11 trillion during the previous tax year and there are related party transactions.

  In this regard "Parent Company" is defined as being an entity that directly or indirectly controls the business group and that is required to prepare consolidated financial statements under Indonesian Financial Accounting Standards.

Prepare CbCR if:

- If the taxpayer is Parent Company of a business group having consolidated gross turnover of at least IDR 11 trillion during the previous tax year and there are no related party transactions.

If the taxpayer is part of business group (subsidiary company), but the parent company is non-tax resident in Indonesia, then the taxpayer must provide the CbCR report if the country/jurisdiction of the parent company:

I. Does not require CbCR,
II. Has no agreement with Indonesia for the exchange of tax information, or
III. Has an agreement with Indonesia for the exchange of tax information with, but the CbCR cannot be obtained from that country/jurisdiction.

Timing of data collection

The Master File and Local File should be based on the data and information available at the time the related party transactions are conducted.

The CbCR should be based on the data and information available at the end of the financial year.

Timeline for preparation of TP Documents

- Master File and Local File must available by 4 months after the end of year
- CbCR should available by 12 months after end of year

Potentially the timing for preparation of the Local File will create complications regarding the availability of comparables. Often the databases for comparables are not updated within 4 months of year-end.

A statement regarding the timing of the availability of TP Document should be signed by the party who prepared the TP Document and attached to the TP Document.

If the taxpayer does not prepare the TP Document on time or does not provide the TP Document when requested by the Tax Office, then the taxpayer is deemed to not fulfil their tax obligations and the document is not required to be considered during a tax audit. This could create a higher risk of tax audit adjustments and penalties – especially for transactions that do not involve tangible goods.

Reporting TP as part of Corporate Tax Return

The Master File and Local File should be summarized, and the summary must be reported as an attachment to the Corporate Income Tax Return.

The CbCR are reported as an attachment to the next year's Corporate Income Tax Return (this is because the deadline for preparation of CbCR is 12 months after the year end).

Content of TP Documents

PMK-213's appendices provided detailed information that must be included in the TP Documents. Below is a high-level summary:

- Master File

  The Master File must provide at least the following information about the business group:
  - Ownership structure and charts as well as country or jurisdiction of each entity
  - Type of business activities
  - List of intangible assets
  - Finance and payment activities
  - Consolidated income statement of the Parent Company and tax information related to related party transactions (such as the existence of Advance Pricing Agreements negotiated by group members with other countries and/or information regarding the allocation of income between group members)

- Local File

  The Local File must provide at least the following about the taxpayer:
  - Identity and business activities undertaken
  - Information regarding related party transactions and transactions with non-related parties
  - Implementation of arms length principal (TP analysis, etc)
  - Financial information
  - Non-financial factors that impact on pricing or profitability

- Country by Country Report (CbCR)

  The CbCR must contain:
  - List of business group entities and main business activity per country/jurisdiction
  - On a country-by-country basis gross turnover, profit (loss) before tax, income tax paid, income tax payable, share capital, accumulated retained earnings, total permanent employees, and tangible assets except cash or cash equivalents

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