This is a follow-up to our January 2017 Client Alert and reminder of the implications of the new Transfer Pricing Regulation (Minister of Finance Regulation No. 213/ PMK.03/2016 dated 30 December 2016 – "PMK-213").

PMK-213 significantly broadened the categories of taxpayers that are required to prepare transfer pricing ("TP") documentation, imposed tighter deadlines for when TP documentation must be in place and the consequences if it does not exist or is not made available to the Tax Office when requested.

Reminder — Implications of New Transfer Pricing Regulation

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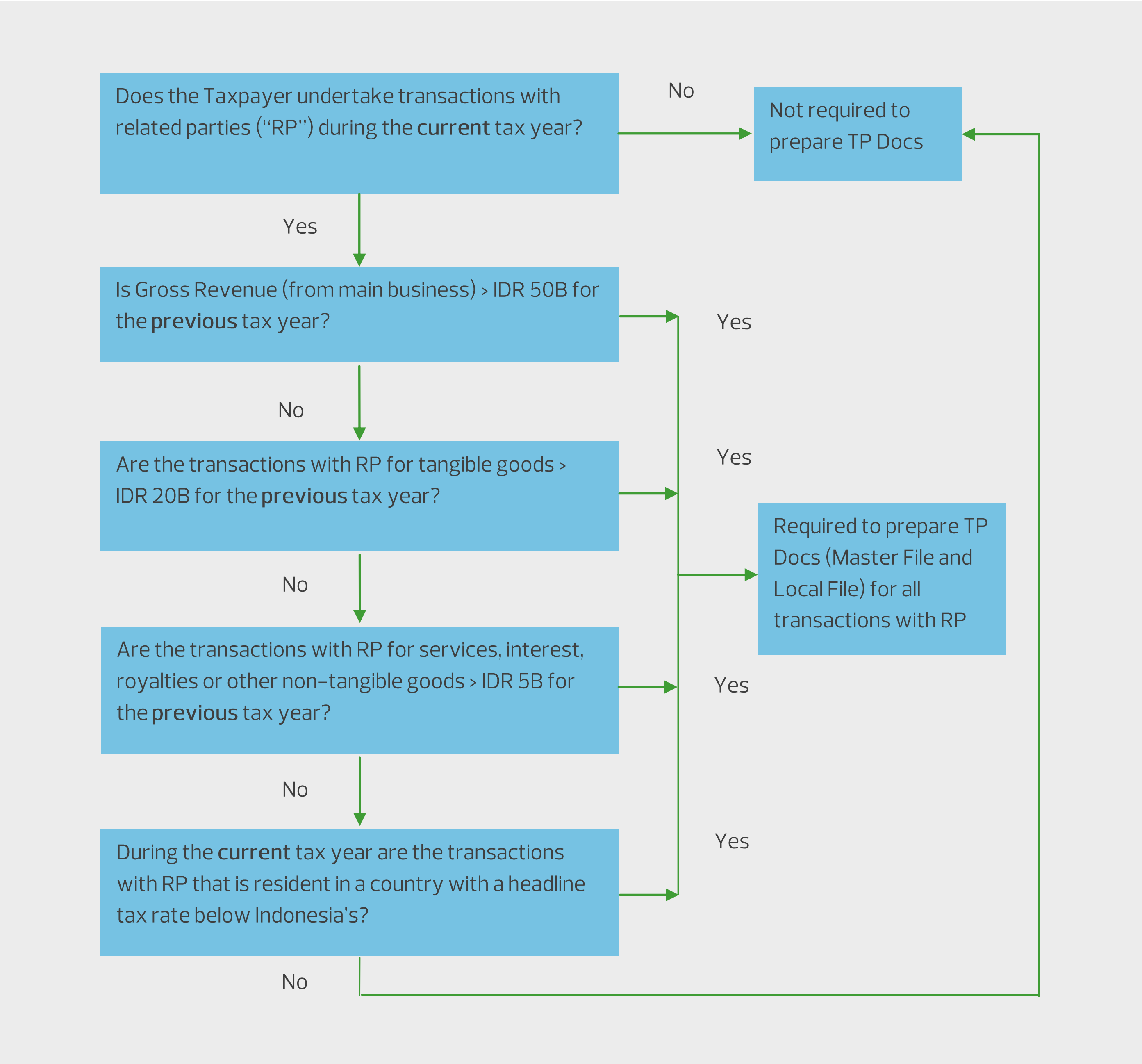
Who Must Prepare TP Documents?

Previously TP Documents were required if:

- companies had transactions with related parties overseas and the annual value of these transactions exceeded IDR 10 billion per counterparty, or
- companies had transactions with related parties within Indonesia (exceeding IDR 10B) where the parties are subject to different corporate tax rates (e.g. due to final tax regimes or historic Contracts of Work or Coal COW)

The chart below summarizes the broader requirements, noting that it is necessary to consider firstly whether there are transactions with related parties in the current year and, if so, whether these are with related parties in lower-tax jurisdictions in the current year or if the value of transactions in the prior year exceed certain thresholds. Do also note the thresholds are no longer are "per-counterparty".



What TP Documents are required?

TP Documents must be in bh. Indonesia.

In most cases the TP Documents are a Master File and a Local File. In limited cases a Country-by-Country Report ("CbC Report") is also required, or only required. Please refer the table below:

	Master File & Local File	CbC Report
Have RP transactions in current year and fulfill criteria per chart above	YES	
Have RP transactions in current year, fulfill criteria per chart above AND the Parent Company is in Indonesia with consolidated revenue > IDR 11 Trillion in the previous tax year	YES	YES
Have **NO** RP transactions in current year AND the Parent Company is in Indonesia with consolidated revenue > IDR 11 Trillion in the previous tax year		YES

A CbC Report is also required if the taxpayer is part of a business group (subsidiary company), but the parent company is not a resident in Indonesia, and the country/jurisdiction of the parent company:

- Does not require CbC Reports;
- Has no agreement with Indonesia for the exchange of tax information; or
- Has an agreement with Indonesia for the exchange of tax information with, but the CbC Report cannot be obtained from that country/jurisdiction.

When are the TP Documents required?

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

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

Consequences of not complying to PMK-213

If a taxpayer does not prepare the TP Documents on time (i.e. as per above) or does not provide the TP Documents when requested by the Tax Office (whether during a tax audit or if requested by the taxpayer's Account Representative at the Tax Office) , then the taxpayer is deemed to not fulfill their tax obligations regarding the preparation of TP Documents and the TP 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.

In addition, the regulation states that the failure to provide TP Documents will be deemed as a failure to maintain books and records. In such cases any adjustments to tax payable can be subject to an additional sanction of 50% rather than the more usual late payment penalty of 2% per month.

Recommended Actions

Taxpayers should review their obligations to prepare TP Documents and then undertake the necessary actions before the due date for lodgement of their Corporate Tax Return.

The review should be undertaken in relation to 2016 and updated every year given that the monetary thresholds refer to the previous year's amounts.

In some cases a cost-benefit analysis might be appropriate to determine whether low-level intercompany charges are appropriate if these create an excessive TP compliance burden. This analysis should, however, consider the TP obligations of the related party.

Finally, whether TP Documents are required or not, you will always need to maintain documents to support the actual transactions (e.g. agreements, invoices and, especially for payments for intercompany services, evidence of the services provided and benefits received).

Our TP Team can assist the assessment and/or preparation of TP Documents.

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