

TaxFlash



New Rules on Country-by-Country Report

Indonesia has been consistent with the OECD/G20 BEPS Action 13 in applying a new set of Transfer Pricing Documentation (TPD), namely: a Master file, a Local file, and a Country-by-Country Report (CbCR). This policy has been regulated in the Minister of Finance Regulation No.213/PMK.03/2016 (PMK-213). Please refer to TaxFlash No.01/2017 for our discussion of PMK-213.

On 29 December 2017, the Director General of Tax (DGT) issued Regulation No.PER-29/PJ/2017 (PER-29), which provides more detailed provisions on CbCR, specifically, including its domestic reporting mechanism.

CbCR requires a group of business enterprises to provide all of the relevant governments with the necessary information regarding their global allocation of income, economic activity, and taxes paid among countries, according to a common template. The Constituent Entities are the Parent Entity and the members of the Group that are included in the CbCR. A Constituent Entity that meets certain requirements is required to prepare, maintain, and submit the CbCR in its jurisdiction of tax residence on behalf of the Group.

This CbCR will later be exchanged annually on an automatic basis between the tax jurisdictions in which multinational enterprise (MNE) groups operate. Indonesia agreed to participate in this automatic exchange, by signing the Multilateral Competent Authority Agreement on the Exchange of CbCR, on 26 January 2017.

PMK-213 stipulates that the CbCR obligation generally falls under the Parent Entity's role. An Indonesian taxpayer that serves as a subsidiary of an MNE Group ("Indonesian subsidiary") must submit the CbCR to the DGT if the countries or jurisdictions of the Parent Entity meet certain conditions, which prevent Indonesia from obtaining the CbCR.

Scope of Parent Entity

PER-29 stipulates that the Parent Entity of a Group must prepare, maintain, and submit the CbCR if it meets the following conditions:

- a. it directly or indirectly controls (for an Indonesian Parent Entity) or owns (for an offshore Parent Entity) one or more Constituent Entities in a Group;
- b. it is required to prepare Consolidated Financial Statements based on the accounting standards or provisions that are applied in its jurisdiction of tax residence;
- c. it is not directly or indirectly owned by other Constituent Entity of a Group, or it is directly or indirectly owned by other entity, but that other entity has no obligation to consolidate the Financial Statements of the Entity; and
- d. it has a current year consolidated gross turnover of a minimum of:
 - 1) for an Indonesian Parent Entity: IDR 11 trillion
 - 2) for an offshore Parent Entity:
 - equivalent to € 750 million as of 1 January 2015 if the country or jurisdiction of the Parent Entity does not oblige a CbCR submission; or
 - based on a threshold determined by the country or jurisdiction of the Parent Entity.

In the event that there are multiple Constituent Entities that meet the threshold requirement (including Indonesian subsidiaries with a consolidated gross turnover of a minimum of IDR 11 trillion), the Group needs to determine which Constituent Entity in the Group should prepare the CbCR.

Scope of Indonesian Subsidiaries

PER-29 stipulates that an Indonesian subsidiary can be in one of the following forms:

- a. any separate business unit of an MNE Group that is included in the Consolidated Financial Statements of the Group for financial reporting purposes;
- b. any such business unit that is excluded from the MNE Group's Consolidated Financial Statements solely on size or materiality grounds; and/or
- c. any permanent establishment (PE) of any separate business unit of the MNE Group included in (a) or (b) above, provided that the PE has a separate Financial Statement for financial reporting, regulatory, tax reporting, or management control purposes.

Obligations for the Indonesian subsidiary to Submit the CbCR

The Indonesian subsidiary must submit the CbCR to the DGT if certain conditions prevent Indonesia from obtaining the CbCR. These conditions are if the country or jurisdiction of the Parent Entity:

- a. does not oblige a CbCR submission;
- b. has no Exchange of Information (EOI) agreement with Indonesia; or
- c. has an EOI agreement with Indonesia, but the CbCR cannot be obtained by Indonesia from that country or jurisdiction through the automatic EOI mechanism.

Point (b) also covers situations where a country or jurisdiction has a current International Agreement with Indonesia, but does not have a Qualifying Competent Authority Agreement (QCAA) that enables the automatic exchange of CbCR with Indonesia.

PER-29 also elaborates the meaning of "cannot obtain the CbCR" under point (c), as a situation where Indonesia cannot obtain the CbCR from the country or jurisdiction of the Parent Entity, even though it has an EOI agreement, due to:

- a. a delay in the implementation of the automatic EOI of CbCR for reasons other than those agreed in QCAA; or
- b. there has been a repeated systemic failure to implement the automatic EOI of CbCR.

The DGT will announce a list of countries or jurisdictions that have EOI agreements with Indonesia, but where the CbCR cannot be obtained through the EOI mechanism. If the jurisdiction of the Indonesian subsidiary's Parent Entity is included in this list, the subsidiary must submit the CbCR within three months of the DGT announcement. The DGT will request the CbCR if the taxpayer fails to submit it within the timeline.

Appointment of a Surrogate Parent Entity

An Offshore Parent Entity may appoint another offshore Constituent Entity as its sole substitute for filing the CbCR in that Constituent Entity's jurisdiction of tax residence, on behalf of the MNE Group (i.e. the Surrogate Parent Entity). The Indonesian subsidiary is not obliged to submit the CbCR in this case, if the following criteria are satisfied:

- a. the Indonesian subsidiary submits a Notification to the DGT that provides information about this Surrogate Parent Entity; and
- b. the jurisdiction in which the Surrogate Parent Entity is resident for tax purposes:
 - 1) obliges a CbCR submission; and
 - 2) has a QCAA with Indonesia and the CbCR can be obtained by Indonesia from that country or jurisdiction.

An Indonesian Parent Entity is not allowed to delegate CbCR obligations to other Constituent Entities.

Reporting Requirements

The CbCR should be prepared with the data and information that is available up to the end of the tax year, and it should be readily available within 12 months of the end of the tax year.

PER-29 requires separate filing from the Corporate Income Tax Return (CITR), in the form of a Notification and the CbCR (if applicable).

A Notification to the DGT must be submitted by any Indonesian subsidiary or entities that have related party transactions, in order to declare whether it has an obligation to submit the CbCR or not. The standard form of Notification is available in [PER-29](#).

If the taxpayer is obliged to submit the CbCR, it has to be submitted together with the Notification.

Specifically for the Indonesian Parent Entity, the CbCR should be completed with the associated working papers, based on PMK-213, in a prescribed digital format (i.e. an XML file).

The Notification and the CbCR must be submitted to the tax office through DJP Online or manually to the tax office, by, at the very latest:

- a. 16 months after the end of a tax year for the 2016 Tax Year; or
- b. 12 months after the end of a tax year for the 2017 Tax Year onwards.

The taxpayer will be given a receipt upon the submission of the Notification and the CbCR. This receipt is to be attached to the CITR of the following year, as a substitute to the CbCR submission and as proof that the relevant CbCR has already been submitted. Any amendments to the CbCR should also be reported to the DGT.

DGT Announcement

The DGT will announce the list of countries or jurisdictions that have the below agreements with Indonesia:

- a. International Agreements;
- b. QCAA; and
- c. QCAA, but the CbCR cannot be obtained by Indonesia through the automatic EOI mechanism.

This announcement will be published on the DGT official website on a yearly basis or following any changes to the list.

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