



Hong Kong

WTS Global Country TP Guide

Last Update: December 2017

1. Legal Basis	
Is there a legal requirement to prepare TP documentation?	No
Is the preparation of TP documentation advisable, e.g. to avoid penalties?	Yes
Are TP policies of multinational enterprises in principle accepted by the tax authorities, if they are in line with the OECD TP Guidelines?	Yes
Which TP methods may be applied?	DIPN 46 adopts the OECD TP methods but provides that the “most appropriate” method should be used, taking into account the comparability analysis and the availability of information.
Are any TP methods preferred over others?	Traditional transaction methods are preferred over the transactional profit method (Paragraph 69 of DIPN No. 46).
Have the documentation requirements of OECD BEPS Action 13 already been implemented (i.e. the LF, MF and CbCR concepts)?	CbCR/MF/LF Intentions.
Reference to documentation and statements of local-government or tax authorities regarding OECD BEPS implementation status	Refer to Part 2, Division 4 - Amendments relating to Transfer Pricing: Addition of New Part 9A and Schedule 17I of the Amendment Bill No. 6
Reference to relevant articles of law, legislative regulation or applicable administrative guidance that are in place for TP documentation in general:	Please refer to Part 2, Division 4 - Amendments relating to Transfer Pricing: Addition of New Part 9A and Schedule 17I of the Amendment Bill No. 7

2. Master File (MF)	Intentions
<p>What is the (consolidated revenue) threshold requirement for the obligation to prepare a MF?</p>	<p>The BEPS Bill proposes that taxpayers engaging in related-party transactions will not be required to prepare master and local files if they meet either one of the following exemptions:</p> <p>(a) Exemption based on size of business A taxpayer meeting any two of the three conditions below will not be required to prepare master file and local file – (i) total annual revenue not more than HK\$200 million (EUR 22,095,102); (ii) total assets not more than HK\$200 million; and (iii) not more than 100 employees.</p> <p>(b) Exemption based on related-party transactions If the value of specific categories of related-party transactions for the relevant accounting period is below the threshold specified below, taxpayers will not be required to prepare local file for that category of transaction – (i) transfer of properties (other than financial assets and intangibles): HK\$220 million; (EUR 24,304,612) (ii) transaction of financial assets: HK\$110 million; (EUR 12,152,306) (iii) transfer of intangibles: HK\$110 million; and (iv) any other transaction (e.g. service income and royalty income): HK\$44 million (EUR 4,860,922).</p> <p>If the enterprise concerned is fully exempted from preparing a local file (i.e. its related-party transactions of all categories are below the prescribed thresholds), it will not be required to prepare the master file.</p>
<p>As from which year does this obligation exist?</p>	<ul style="list-style-type: none"> • As from the year in which the threshold is met (so that the Master File/Local File is prepared for the year in which the threshold was met or exceeded). • The BEPS proposals will be introduced as part of an amendment bill to the HK Legislative Council by the end of 2017. Once approved, these will become part of legislation.
<p>When does the Master File need to be available?</p>	<p>Not specified.</p>
<p>When does it need to be submitted?</p>	<p>Not specified.</p>
<p>Does the MF have to be prepared in the relevant local language ?</p>	<p>No. Documentation can be prepared either in Chinese or in English.</p>
<p>Is documentation in English permissible?</p>	<p>Yes</p>
<p>What are the possible consequences of not having the MF available?</p>	
<p>Penalties?</p>	<p>Yes</p>
<p>Other?</p>	<p>No</p>
<p>To which extent do the local rules differ from the OECD standard regarding the OECD content requirements for the MF as shown in the BEPS implementation overview chart?</p>	<p>Proposed to be consistent with OECD requirements</p>

3. Local File (LF)	Intentions
What is the threshold requirement for the obligation to prepare a LF?	Same as MF
Euro Equivalent	EUR 50,000,000
As from which year does this obligation exist?	Same as MF above
When does the LF need to be available?	Same as MF above
When does the LF need to be submitted?	Same as MF above
How and where should the LF be filed?	Same as MF above
a. Does the LF have to be prepared in the relevant local language?	No
b. Or is documentation in English permissible?	Yes
What are the possible consequences of not having the LF available?	
Penalties?	Yes
To which extent do local rules differ from the OECD standard regarding the OECD content requirements for the LF as shown in the 2017 OECD TP Guidelines?	Proposed to be consistent with OECD requirements

4. Country-by-Country Reporting	Intentions
What is the threshold requirement for the obligation to prepare Country-by-Country Reporting?	A group having entities/operations in two or more jurisdictions and consolidated group revenue for the preceding accounting period of at least EUR 750 million (or HK\$6.8 billion).
As from which year does this CbCR obligation exist?	CbCR is required to be filed for the accounting period following the accounting period in which the threshold has been met or exceeded. Subject to the enactment of the proposed legislative amendments, CbCR will be required for accounting periods commencing on or after 1 January 2018. As a transitional arrangement, in order to facilitate HK MNE groups fulfil their obligations in those jurisdictions which have introduced CbCR for periods commencing 1 January 2016, the IRD is prepared to accommodate voluntary parent surrogate filing. Thereby, a HK MNE Group will be allowed to file its CbCR for accounting periods commencing between 1 January 2016 and 31 December 2017, provided that (i) the necessary legislative framework in HK and competent authority agreements between the jurisdictions are in place by 31 December 2017; (ii) the IRD and the tax authorities of the relevant jurisdictions have been notified that the CbCRs will be filed by the deadline.

<p>When and how do the tax authorities need to be notified who the reporting entity is?</p>	<p>Under normal circumstances, the ultimate parent entity of HK MNEs would be the reporting entity. If the ultimate parent entity is in a jurisdiction that does not require CbCR filing or exchange of reports with HK, constituent entities of the MNE in HK could be subject to secondary filing obligation.</p> <p>Under the transitional arrangement for the accounting period commencing between 1 January 2016 and 31 December 2017, the ultimate parent entity of the HK MNE seeking parent surrogate filing should submit a notification, duly signed by its responsible officers along with information - (i) name and HK business registration number of the ultimate parent entity; (ii) accounting period for which CbCR will be filed; (iii) names, tax identification numbers, tax jurisdictions of each constituent entity of the group; and (iv) a consent to the IRD to inform the relevant jurisdictions regarding the parent surrogate filing in HK. This notification can be sent by post to the Chief Assessor (Tax Treaty), G.P.O. Box No. 10856, Hong Kong or emailed to cbc_reporting@ird.gov.hk.</p>
<p>If the reporting entity (ultimate parent or surrogate parent) is in your country, what is the CbCR submission deadline?</p>	<p>12 months from the end of the relevant accounting period to which the CbCR relates</p>
<p>Are there any deviating submission deadlines for the secondary mechanism?</p>	<p>No</p>
<p>Does your country have a requirement that the financial figures of the group need to be aligned with?</p>	<p>No</p>
<p>Does your country have a requirement that the financial years of the group need to be aligned with?</p>	<p>No. Information in the CbCR should reflect on a consistent basis either: (a) Information for the fiscal year of relevant group entities ending on the same date as the fiscal year of the reporting entity, or ending within the 12-month period preceding such date; or (b) Information for relevant group entities for the fiscal year of the reporting entity.</p>
<p>Where is the CbCR to be submitted ?</p>	<p>The CbCR is to be submitted via the CbC Reporting Portal.</p>
<p>How is the CbCR to be submitted, specifically, is there any prescribed standard?</p>	<p>The IRD has developed a data scheme in XML which is based on the CbC XML Scheme v1.0.1 issued by the OECD.</p>
<p>What are the possible consequences of not having the CbCR available?</p>	
<p>Penalties?</p>	<p>Yes</p>
<p>Imprisonment?</p>	<p>No</p>
<p>Shifting of the burden of proof?</p>	<p>No</p>
<p>To which extent do your local rules differ from the OECD standard regarding the content requirements for the CbCR as shown in the 2017 OECD TP Guidelines?</p>	<p>Consistent with OECD requirements</p>
<p>Did your country sign the Multilateral Competent Authority Agreement on the Exchange of CbC Reports ("CbC MCAA")?</p>	<p>No</p>
<p>Did your country enter into other information exchange agreements, such as on a bilateral basis?</p>	<p>Yes</p>
<p>Please specify the country involved and date the agreement came into force.</p>	<p>Hong Kong has entered into bilateral arrangements with (i) France, (ii) Ireland, (iii) South Africa and (iv) United Kingdom for exchange of CbCR. The CbCR for first exchange is applicable for 2016.</p>
<p>Can a taxpayer in your country fulfil his CbCR requirement by referring to the reporting entity in the same or another country?</p>	<p>Yes</p>

5. TP disclosure in tax return or transfer pricing specific returns

Does a taxpayer need to disclose information regarding TP documentation in his tax return?	Yes. Currently, the IRD requires disclosure of the following matters in the annual profits tax returns form (under Section 86): (i) transactions for/with non-resident persons, (ii) payments to non-residents for use of intellectual properties, (iii) payments to non-residents for services rendered in Hong Kong, and (iv) transactions with closely connected non-resident persons.
What would be the filing deadline?	Generally, profits tax returns should be filed within 1 month from the date of issue. The annual profits tax returns are issued in early April and are due for filing in May. For cases with tax agents, the tax filing due dates are extended to mid-August and mid November for entities with accounting period falls between (i) 1 Dec to 31 Dec and (ii) 1 January to 31 March respectively.
When a taxpayer files a tax return for which he understands or should understand that the result reported in that tax return is too low due to incorrect transfer pricing, what could be the legal consequences?	Currently, penalties in respect of incorrect tax returns are provided for under sections 80, 82 and 82A of the IRO. Penalties could be potentially up to 300% of underpaid tax. The BEPS bill proposes to introduce a new provision in S82A to impose penalties not exceeding 100% of the amount of tax undercharged resulting from transfer pricing adjustments, unless it can be proved that reasonable efforts have been made to determine the arm's length price for the transaction(s).
What could be the consequences for the tax advisor/accountant/administrator drafting and filing the tax return of a client where that advisor/accountant/administrator understands or should understand that the result reported is too low due to incorrect TP?	Not specified
Does a taxpayer need to file TP-specific returns?	No

6. Benchmarking

Is there any local guidance or requirement with regard to the preparation of a benchmark study?	<p>Yes. DIPN 46 recommends maintaining a benchmarking/comparability analysis, consistent with OECD requirements. The IRD has publicly endorsed the use of BVD's Osiris and S&P databases. In practice, regional comparables are accepted where sufficient local comparables cannot be found. The 2016 consultation paper proposes that the benchmarking analysis should be part of the Local File. Specifically, the Local File should include:</p> <ul style="list-style-type: none"> • Selection of the most appropriate TP method/tested party and reasons for the same. • Important assumptions made in applying the TP method • If relevant, an explanation of reasons for performing a multi-year analysis. • A list and description of selected comparable transactions (internal or external), their financial information, a description of the search process and sources of information used. • Description of any comparability adjustments performed, and whether adjustments were made to tested party/comparables or both • Reasons for concluding that taxpayer's related-party transactions were at arm's length basis based on the selected TP method. • Financial information used in applying the TP methodology.
Are there any materiality thresholds that apply for the requirement to have a benchmark study available?	Yes. The same thresholds relevant for Master File and Local File apply.

Does your country apply the general guidance by the OECD to prepare a new benchmarking search every three years and an update of the financial data of the accepted comparable in year 2 or 3?	No
Or is a new search every three years without any financial updates in year 2 and 3 sufficient?	No

7. Year-end adjustments

Are year-end adjustments permissible?	Yes
Does the taxpayer have to comply with any specific features or guidance?	No, not specified

8. Transfer Pricing Audit and Dispute Resolution Mechanisms

What are currently the main TP areas of scrutiny by the tax authorities in your country?	Particular scrutiny is accorded to services fees paid/received (specifically intra-group services/management fees), financial transactions, royalties etc.
Based on your experience, are joint or multilateral audits initiated and carried out?	No
Does the taxpayer have the option to apply for bilateral or multilateral APAs?	Yes
Are there any restrictions?	<p>The existing APA regime was provided under the Departmental Interpretation and Practice Notes No. 48 which is not legally binding. APA application is open to all (i) residents and (ii) non-residents with a HK permanent establishment, who are subject to profits tax and have HK-pertinent related-party transactions. The annual threshold for an APA application is HK\$ 80 million for sale and purchase of goods, HK\$ 40 million for services, or HK\$ 20 million for intangible properties. In general, an APA will apply for 3 to 5 years, with rollbacks available. Currently the IRD is prepared to consider bilateral or multilateral APA applications only.</p> <p>Typical information/documentation required to be set out in an APA case plan includes: (a) functional analysis and industry analysis; (b) details of proposed TP methodology; (c) terms, conditions and assumptions behind applying the TP methodology; (d) data showing that the TP methodology will produce an arm's length result; and (e) information/documentation agreed in the pre-filing meeting. Taxpayers are required to submit an annual compliance report for each year of the APA.</p> <p>The BEPS BILL proposes provisions which strengthen the APA regime by providing it a statutory basis and also allow unilateral APAs.</p>

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