



Estonia

WTS Global Country TP Guide

Last Update: December 2017

1. Legal Basis	
Is there a legal requirement to prepare TP documentation?	Yes
Since when does a TP documentation requirement exist in your country?	2007
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?	Five transfer pricing methods recommended by OECD – comparable uncontrolled price (CUP) method, resale price, cost-plus, transactional net margin method (TNMM) and profit split – are recognised. In addition, taxpayers are allowed to use any other method in order to achieve more reliable results.
Are any TP methods preferred over others?	There is no priority of transfer pricing methods in Estonia.
Have the documentation requirements of OECD BEPS Action 13 already been implemented (i.e. the LF, MF and CbCR concepts)?	CbCR is implemented. MF and LF requirements from earlier laws.
Reference to documentation and statements of local-government or tax authorities regarding OECD BEPS implementation status	Article 203 in Tax Information Exchange Act and Article 512 of the Taxation Act.
Reference to relevant articles of law, legislative regulation or applicable administrative guidance that are in place for TP documentation in general:	1. Article 8, 14, 50, 53 in the Income Tax Act; 2. Article 18 and 20 of Ministry of finance Regulation No. 53. "Methods for determining values of transactions between related persons"

2. Master File (MF)	
What is the (consolidated revenue) threshold requirement for the obligation to prepare a MF?	EUR 50 million or more than 250 employees or consolidated balance of more than EUR 43 million
As from which year does this obligation exist?	Since 2007
When does the Master File need to be available?	Upon request by tax authorities
When does it need to be submitted?	Minimum deadline is 60 days from the request by tax authorities
How and where should the MF be filed?	No specific format
Does the MF have to be prepared in the relevant local language ?	No
Is documentation in English permissible?	Yes
What are the (possible) consequences of not having the required MF available?	Administrative penalty up to EUR 2,640 in total and a misdemeanour penalty of EUR 3,200. No criminal sanction
What are the possible consequences of not having the MF available?	
Penalties?	Yes
Imprisonment?	No
Other?	No

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?	Consistent with OECD requirements.
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3. Local File (LF)	Yes
What is the threshold requirement for the obligation to prepare a LF?	EUR 50 million or more than 250 employees or consolidated balance more than EUR 43 million
As from which year does this obligation exist?	2007
When does the LF need to be available?	Upon request by tax authorities.
When does the LF need to be submitted?	Minimum deadline is 60 days from the request by tax authorities
How and where should the LF be filed?	No specific format
Does the LF have to be prepared in the relevant local language?	No
Or is documentation in English permissible?	Yes, but Estonian translation may be asked by the tax authorities.
What are the (possible) consequences of not having the required LF available?	Administrative penalty up to EUR 3,300 in total and a misdemeanour penalty of EUR 3,200
What are the possible consequences of not having the LF available?	
Penalties?	Yes
Imprisonment?	No
Other?	No
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?	Consistent with OECD requirements

4. Country-by-Country Reporting	Yes
What is the threshold requirement for the obligation to prepare Country-by-Country Reporting?	EUR 750 million
As from which year does this CbCR obligation exist?	<p>As from the year following the year that the threshold is met.</p> <ul style="list-style-type: none"> • For primary reporting, CbCR is first to be prepared for fiscal years starting on 1 January 2016; • For secondary reporting, CbCR is first to be prepared for fiscal years starting on 1 January 2017. <p>For the further taxation periods CbCR has to be prepared 12 months after the end of the taxation year.</p> <p>A reporting entity that is not a parent entity of the group shall submit the country-by country report for the first time for the financial year that begins on 1 January 2017 or at a later date.</p>
When and how do the tax authorities need to be notified who the reporting entity is?	<p>The notification obligation shall be performed within six months as of the end of the financial year that is the reporting year of the group, usually by 30 June. Notification should be one-time notification unless there are changes in reporting entity.</p> <p>The notification can be submitted:</p> <ol style="list-style-type: none"> 1. by e-mail to address emta@emta.ee if digitally signed or 2. via e-Tax/e-Customs in subsection "Messages" (https://www.emta.ee/et/emta_login/nojs).
If the reporting entity (ultimate parent or surrogate parent) is in your country, what is the CbCR submission deadline?	12 months from the end of the fiscal year to which CbCR relates
Are there any deviating submission deadlines for the secondary mechanism?	No

Does your country have a requirement that the financial figures of the group need to be aligned with?	Yes. Group members can choose on which documents the entity relies when submitting the report: consolidated annual reports, unconsolidated annual reports, or other reports which are required by laws. The same sources must be used each year. Income, profits and tax accounting must not be aligned with consolidated financial reports. There is no need to do adjustments due to differences in accounting rules applicable in different jurisdictions. (according to official guideline by the tax authority)
Does your country have a requirement that the financial years of the group need to be aligned with?	No
Where is the CbCR to be submitted ?	To the Tax and Customs Board via e-Tax Board platform
How is the CbCR to be submitted, specifically, is there any prescribed standard?	XML format file or entering data online
What are the (possible) consequences of not having the required CbCR available?	Administrative penalty up to EUR 3,300, misdemeanour penalty up to EUR 3,200
What are the possible consequences of not having the CbCR available?	
Penalties?	Yes
Imprisonment?	No
Shifting of the burden of proof?	No, may affect
Other?	No
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?	Consistent with OECD requirements
Did your country sign the Multilateral Competent Authority Agreement on the Exchange of CbC Reports ("CbC MCAA")?	Yes
Did your country enter into other information exchange agreements, such as on a bilateral basis?	Yes
Please specify the country involved and date the agreement came into force.	Agreement between the Government of the Republic of Estonia and the Government of the United States of America to Improve International Tax Compliance and to Implement FATCA (signed 11 April 2014)
Can a taxpayer in your country fulfil his CbCR requirement by referring to the reporting entity in the same or another country?	Yes

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?	No, 60 days as of the tax authorities request.
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?	<p>In case the taxpayer knows or should have known that the amount of taxes reported is too low, it can lead to the following consequences:</p> <ul style="list-style-type: none"> (i) The taxpayer must make corrections to the tax return and pay the taxes unpaid. The tax may be assessed by the Tax and Customs Board so that they make the tax assessment ruling and correct the returns themselves. (ii) Delay interest in the amount of 0.06% per day on the amount of unpaid taxes must be paid to the state; (iii) In case the amount of taxes not paid is smaller than EUR 40,000, it can be treated as a misdemeanour provided the taxes were not paid intentionally. The fine can be up to EUR 32,000; (iv) In case the amount of taxes not paid intentionally exceeds of EUR 40 000, it can be treated as a criminal act. The monetary penalty is not limited for this specific crime, meaning it can be up to EUR 16,000,000. For individuals, the punishment for committing such crime is up to seven years imprisonment. In practice, it may be difficult to evidence the intention of a company to show smaller transfer prices. This would mean it would be rather unusual that such action may lead to criminal liability. But in case the clear intention can be evidenced by the Public Prosecutors Office, there is a risk that such miscalculation and non-payment of taxes will lead to a criminal liability; (v) If the transfer price is different from the market price and the tax authority uses the market price to assess the tax liability, the double taxation will be eliminated under specific regulation provided in section 19 of the Regulation no 53 from 10 November 2006 on the methods of determining the value of the transactions between related persons. According to this, the double taxation will be eliminated under the procedures set forth in respective convention (no 90/436/EEC) or in the bilateral treaty on information exchange and mutual agreement procedure with non-EU country, if such treaty exists.
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?	Such persons can be liable for providing a support for committing the crime and, if so, can be punished under the criminal law for the same crime. A representative under the law, CEO or a manager of assets is liable for the unpaid taxes of the taxpayer if it breaches its tax related obligations. Other persons (such as accountant, tax advisors) may be liable in case they have been committed for a tax crime causing such tax liability.
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?	Yes. According to Regulation no 53 and Guideline on Transfer Pricing issued by the Tax and Customs Board provides criteria which must be taken into account.
Are there any materiality thresholds that apply for the requirement to have a benchmark study available?	No
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?	Yes
Or is a new search every three years without any financial updates in year 2 and 3 sufficient?	According to the regulation No 53, it is officially recommended to rely on OECD's guidelines in the extent what is not regulated by regulation No 53

7. Year-end adjustments	
Are year-end adjustments permissible?	No
Does the taxpayer have to comply with any specific features or guidance?	Yes. The Estonian Tax and Customs Board has issued Guidelines for determining the transfer prices.

8. Transfer Pricing Audit and Dispute Resolution Mechanisms	
What are currently the main TP areas of scrutiny by the tax authorities in your country?	There are no specific areas in which tax authorities mainly carry out transfer pricing audits. Usually tax administration initiates a transfer pricing audit within the framework of other tax audit. However, taxation of loans and using group accounts and cash pooling has been more closely monitored by the tax authorities
Based on your experience, are joint or multilateral audits initiated and carried out?	Yes
Does the taxpayer have the option to apply for bilateral or multilateral APAs?	No

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