



## India

### 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?	2002
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?	Same as OECD TP guidelines
Are any TP methods preferred over others?	No. TP method to be selected shall be the most appropriate method
Have the documentation requirements of OECD BEPS Action 13 already been implemented (i.e. the LF, MF and CbCR concepts)?	CbCR/MF implemented and OECD LF not implemented (but local variation of LF similar to the LF contents of OECD).
Reference to documentation and statements of local-government or tax authorities regarding OECD BEPS implementation status	<ul style="list-style-type: none"> <li>Local File: Section 92D of Income Tax Act 1961 (Act) read with Rule 10D of Income Tax Rules, 1962 (Rules)</li> <li>CbCR: Section 286 of the Act read with Rule 10DB</li> <li>Master File: Section 92D(1) &amp; (4) of the Act read with Rule 10DA</li> </ul>
Reference to relevant articles of law, legislative regulation or applicable administrative guidance that are in place for TP documentation in general:	Same as above.

2. Master File (MF)	
What is the (consolidated revenue) threshold requirement for the obligation to prepare a MF?	Yes Threshold set at two levels: 1. Consolidated Group Revenue of INR 500 Crore & above; AND 2 Aggregate value of the international transactions during the year exceeds INR 50 Crores; OR Aggregate value of the international transaction in respect of purchase/sale/transfer/lease or use of Intangible Property during the year exceeds INR 10 Crore.
Euro Equivalent	EUR 62,655,000
As from which year does this obligation exist?	Financial year starting from 1 April 2016.
When does the Master File need to be available?	At the time of tax return is being filed. However, for FY 2016-17 same should be available latest by 31 March 2018 being the first year of filing.
When does it need to be submitted?	The Master File shall be filed before the prescribed due date mentioned as under: For FY 2016-17: 31 March 2018 From FY 2017-18 onwards : On or before the due date of filing of return of income for the relevant Assessment Year i.e. on or before 30 November.
How and where should the MF be filed?	Master File shall be filed electronically with the Director General of Income Tax (Risk Assessment).
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 MF available?	
Penalties?	Yes
Imprisonment?	No
Shifting of the burden of proof?	Yes
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?	The contents of the Master File as prescribed in Rule 10DA are mostly in line with the OECD standard.

<b>3. Local File (LF)</b>	Yes
What is the threshold requirement for the obligation to prepare a LF?	If value of International Transaction with associated enterprise exceeds INR 10 Million
Euro Equivalent	EUR 124,982
As from which year does this obligation exist?	Financial year 2001-2002
When does the LF need to be available?	The Local file shall be maintained on a contemporaneous basis and shall be available on or before the filing of return of income for the relevant Assessment Year i.e. on or before 30 November.
When does the LF need to be submitted?	The Local file shall be filed with the tax office upon request/ notice from them, usually filed during the course of tax assessment/ audit.
How and where should the LF be filed?	The Local file is required to be submitted before the Assessing Officer/ Transfer Pricing Officer only when the taxpayer's case is selected for tax assessment/ audit.
a. Does the LF have to be prepared in the relevant local language?	No. The regulations do not prescribe any language
b. Or is documentation in English permissible?	Yes. In practice, all the taxpayers prepare the Local file/ documentation in English.
What are the possible consequences of not having the LF available?	
Penalties?	Yes
Imprisonment?	No
Shifting of the burden of proof?	Yes
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?	Specific information which are not covered in the local rules include description of the business strategy; business restructurings; details of key competitors; description of the individuals to whom the management of the local entity reports and countries in which such individuals maintain their principal offices and details relating to unilateral/ bilateral APAs and similar rulings.

<b>4. Country-by-Country Reporting</b>	Yes
What is the threshold requirement for the obligation to prepare Country-by-Country Reporting?	INR 5,500 Crore (i.e., equivalent to EUR 750 million) consolidated revenue in the previous year
Euro Equivalent	EUR 689,205,000
As from which year does this CbCR obligation exist?	Financial year starting from 1 April 2016

<p>When and how do the tax authorities need to be notified who the reporting entity is?</p>	<p>Taxpayer shall file the CbCR in the prescribed form on or before the due date of filing of tax return for any relevant Assessment Year i.e. on or before 30 November.</p> <p>Taxpayer shall also intimate the income tax authority in the prescribed form the details of the entity who is filing the CbCR, on or before 2 months from due date of filing the tax return.</p> <p>FY 2016-17 being the first year of filing of CbCR, the due date for filing the CbCR has been extended to 31 March 2018 and accordingly, the notification deadline is extended to 31 January 2018</p>
<p>If the reporting entity (ultimate parent or surrogate parent) is in your country, what is the CbCR submission deadline?</p>	<p>Same as above.</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. The source of data considered for preparing the CbCR should be consistently followed year on year. In case of change in source data, the same need to be mentioned in the Table 3 / Notes to CbCR.</p>
<p>Does your country have a requirement that the financial years of the group need to be aligned with?</p>	<p>No</p>
<p>Where is the CbCR to be submitted ?</p>	<p>The CbCR related Forms need to be electronically uploaded to 'incometaxefilingindia.gov.in'.</p>
<p>How is the CbCR to be submitted, specifically, is there any prescribed standard?</p>	<p>Electronic filing using the Digital Signature of the person authorised to sign the tax return</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>Other?</p>	<p>Yes</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>Yes</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>Indian regulation also provides for exchange of information through existing bilateral treaties. We understand that currently India has initiated the negotiation for exchange of information with few countries with which India has already entered tax treaties.</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. Taxpayer is required to disclose in the tax return whether the Transfer Pricing provisions are applicable and if yes, the date of filing of an Accountant's Report in the prescribed form.
What would be the filing deadline?	November 30 of the relevant assessment year
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?	In a situation where the taxpayer's case is selected for tax audit/ tax assessment, additional tax along with interest will be charged on the additional income (i.e. arising on account of transfer pricing adjustment) and also penalty as mentioned in para 3.7 (a) above. Further, the transfer pricing adjustments may also be subject to secondary adjustment as per section 92CE of the Act.
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?	Where the Tax Office during the course of tax audit proceedings finds that, the tax advisor/consultant has furnished incorrect information in any report or certificate submitted to the tax office, the tax office may direct the advisor/consultant to pay penalty of INR 10,000 (i.e. USD 150 approx.) for each such report or certificate.
Does a taxpayer need to file TP-specific returns?	Yes
Please state the filing form number and name.	Form 3CEB - Report from an accountant to be furnished under section 92E of the Act.
What would be the filing deadline?	November 30 of the relevant assessment year
What would be the penalties for non-compliance?	Penalty for failure to furnish Accountant's Report in Form 3CEB - INR 100,000  Failure to report a transaction or furnishing incorrect information in the Accountant's Report (Form 3CEB) attracts a penalty of 2% of the value of international transaction or specified domestic transaction not reported.

## 6. Benchmarking

Is there any local guidance or requirement with regard to the preparation of a benchmark study?	Yes. Section 92C of the Act read with Rule 10B has prescribed six methods. The benchmarking exercise is part of the Transfer Pricing Documentation Report as prescribed in section 92D of the Act read with Rule 10D of the Rules.
Are there any materiality thresholds that apply for the requirement to have a benchmark study available?	Yes. Transfer Pricing Study Report need to be prepared only if value of international transaction exceeds INR 10 Million
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. Under the current regulations, the transactions have to be benchmarked for each year and therefore, the benchmarking search is required to be undertaken each year.

## 7. Year-end adjustments

Are year-end adjustments permissible?	Yes
Does the taxpayer have to comply with any specific features or guidance?	No

8. Transfer Pricing Audit and Dispute Resolution Mechanisms	
What are currently the main TP areas of scrutiny by the tax authorities in your country?	Allocation of Management fees, Transfer of Intangibles, Advertising Marketing and Promotional expenses incurred for brand building, intercompany financing transactions (i.e., guarantees and interest) 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 detailed rule for filing APA is given in Rule 10F to 10T and rule 44GA. Taxpayer can apply for an APA covering any or all current/ future transactions without any threshold limit.</p> <p>Furthermore, the Tax office has the power to cancel an APA in following situation:</p> <ul style="list-style-type: none"> <li>- If applicant has failed to comply with the terms of agreement,</li> <li>- If there is failure to file the annual compliance report within the stipulated timeline,</li> <li>- There are material errors in the annual compliance report filed by the applicant, or</li> <li>- If the applicant is in disagreement with the proposed revision in the APA.</li> </ul> <p>Also, if an agreement is cancelled based on the discovery of fraud or misrepresentation of facts on the part of the taxpayer the same shall be deemed cancelled ab-initio and regular detailed transfer pricing audit will take place accordingly.</p>

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