



New Zealand

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?	<ul style="list-style-type: none"> – The comparable uncontrolled price (CUP) method – The resale price (RP) method – The cost plus method. – The profit split method – The comparable profits method.
Are any TP methods preferred over others?	No, methods are preferred under law; taxpayers may have their own preferences.
Have the documentation requirements of OECD BEPS Action 13 already been implemented (i.e. the LF, MF and CbCR concepts)?	CbCR Implemented; No MF/LF.
Reference to documentation and statements of local-government or tax authorities regarding OECD BEPS implementation status	<p>http://www.ird.govt.nz/international/business/international-obligations/country-by-country-reporting/</p> <p>http://www.legislation.govt.nz/bill/government/2017/0003/latest/DLM7505806.html#DLM7506031</p>

<p>Reference to relevant articles of law, legislative regulation or applicable administrative guidance that are in place for TP documentation in general.</p>	<p>New Zealand's current transfer pricing provisions are contained in ss GB 2 and GC 6–GC 14 of the Income Tax Act 2007. The transfer pricing legislation closely follows the current OECD Guidelines and the United States s 482 regulations. Other features of the legislation are as follows:</p> <ul style="list-style-type: none"> • The rules are based on the arm's length principle, as defined by the OECD Guidelines, using five permitted pricing methods. • The arm's length consideration amount must be determined by applying whichever method or combination of methods will produce the most reliable measure of the amount that completely independent parties would have agreed upon after real and fully adequate bargaining. • The substitution of an arm's length price applies only so as to increase New Zealand's tax base. The burden of proof as to the arm's length nature of the consideration currently rests with the Commissioner, unless the Commissioner can show the taxpayer has not co-operated or can demonstrate another amount to be a more reliable measure of an arm's length amount. • There are specific powers, in addition to those in the double taxation agreements (DTAs), to allow compensating adjustments and corresponding adjustments. • Section GB 2 contains an anti-avoidance provision that includes arrangements entered into for the purposes of defeating certain transfer pricing rules. <p>Section GC 6 describes the purpose and application of New Zealand's transfer pricing rules, to "substitute an arm's length consideration in the calculation of a person's net income ...". New Zealand's transfer pricing regime applies to any cross-border arrangement between "associated persons". Inland Revenue applies the OECD 2010 transfer pricing guidelines http://www.ird.govt.nz/transfer-pricing/transfer-pricing-guidelines.html Further comments are available at http://www.ird.govt.nz/transfer-pricing/practice/transfer-pricing-practice-documentation.html.</p>
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<p>2. Master File (MF)</p>	<p>Not implemented</p>
<p>What is the (consolidated revenue) threshold requirement for the obligation to prepare a MF?</p>	<p>In practice, Inland Revenue will expect a master file/local file documentation approach to be used by certain multinationals. However, there are no legislative requirements in place concerning the thresholds or requirements of the local or master file. Inland Revenue communicates directly with affected taxpayers to ensure these taxpayers provide the required information.</p>

<p>3. Local File (LF)</p>	<p>Not implemented</p>
<p>What is the threshold requirement for the obligation to prepare a LF?</p>	<p>In practice, Inland Revenue will expect a master file/local file documentation approach to be used by certain multinationals. However there are no legislative requirements in place concerning the thresholds or requirements of the local or master file.</p>

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?	Groups with 31 December balance dates are impacted first, with data to be collected for the 12 months beginning 1 January 2016. For 31 March balance date and 30 June balance date groups, data needs to be collected for the 12 months beginning 1 April 2016 and 1 July 2016 respectively. The first reporting of CbC data is taking place during the 2017 calendar year.
When and how do the tax authorities need to be notified who the reporting entity is?	The data is provided using the following form http://www.ird.govt.nz/resources/9/f/9f96d3a8-1c8b-49e4-852f-3ec3bcbc8a31/cbc-report.pdf
If the reporting entity (ultimate parent or surrogate parent) is in your country, what is the CbCR submission deadline?	Inland Revenue will contact New Zealand-headquartered groups each year to inform them of the reporting requirements. http://www.ird.govt.nz/international/business/international-obligations/country-by-country-reporting/new-country-by-country-reporting-requirements.html The report will be due to Inland Revenue 12 months after the end of the period to which it 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?	No
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 ?	This information is not provided by Inland Revenue. As the Inland Revenue's CbCR guidance states that Inland Revenue will individually contact each group which is required to participate in CbCR, it is likely that these taxpayers will be able to email their reporting directly to an Inland Revenue investigator. Alternatively, Inland Revenue maintains a generic postal address where all mail can be sent.
How is the CbCR to be submitted, specifically, is there any prescribed standard?	The data is provided using the following form http://www.ird.govt.nz/resources/9/f/9f96d3a8-1c8b-49e4-852f-3ec3bcbc8a31/cbc-report.pdf
What are the possible consequences of not having the CbCR available?	A new offence has been introduced into the Tax Administration Act 1994 which applies to a member of a large multi-national group failing to provide information. The penalty is a fine of up to NZD 100,000. It will also be possible for a taxpayer to be prosecuted under existing law for failing to provide the CbCR report. The consequences of breach these provisions are set out below.
Penalties?	Yes
Imprisonment?	Yes
Shifting of the burden of proof?	Yes
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

<p>Please specify the country involved and date the agreement came into force.</p>	<p>FATCA and AEOI, tax information exchange agreements and double tax agreements. FATCA: Country is United States of America. Came into force 1 July 2014. AEOI: Multilateral agreement. Came into force 1 July 2017. Information regarding New Zealand's TIEAs and DTAs is available at the following link http://taxpolicy.ird.govt.nz/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>No</p>

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

<p>Does a taxpayer need to disclose information regarding TP documentation in his tax return?</p>	<p>No, the CbCR reporting is a distinct requirement</p>
<p>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>	<p>Knowingly or carelessly under reporting income is an offence under the Tax Administration Act 1994. An offence is committed when a person knowingly commits a specified act, or fails to act, in relation to that person's tax obligations and in either case does so intending to evade tax or to obtain a refund or a tax payment: s 143B of the Tax Administration Act 1994. The offence of evasion is also committed when a person evades or attempts to evade the payment or assessment of tax. The penalty for evasion is a fine of not more than NZD 50,000; a term of imprisonment of not more than 5 years, or both.</p>
<p>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?</p>	<p>The offence of evasion, as described above, is also committed when a person evades or attempts to evade the payment or assessment of tax for another person. The penalty for evasion is a fine of not more than NZD 50,000; a term of imprisonment of not more than 5 years, or both. In practice it is rare for tax advisors to be prosecuted for this offence. There is also a separate "promoter penalty". The promoter penalty applies where a taxpayer becomes a party to the arrangement and, as a result of the arrangement, a shortfall penalty is imposed for taking an abusive tax position, and the arrangement is offered, sold, issued or promoted in a tax year to at least 10 persons who claim tax-related benefits as a result of the arrangement.</p>
<p>Does a taxpayer need to file TP-specific returns?</p>	<p>No</p>

6. Benchmarking

<p>Is there any local guidance or requirement with regard to the preparation of a benchmark study?</p>	<p>No. The Inland Revenue's transfer pricing guidelines indicate that the use of a benchmark will be necessary or highly desirable in accurately applying certain of the approved pricing methodologies. However there is no explicit requirement to prepare a benchmark study.</p>
<p>Are there any materiality thresholds that apply for the requirement to have a benchmark study available?</p>	<p>No</p>
<p>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?</p>	<p>Yes</p>

7. Year-end adjustments	
Are year-end adjustments permissible?	Yes
Does the taxpayer have to comply with any specific features or guidance?	Yes. Inland Revenue applies the OECD transfer pricing guidelines.

8. Transfer Pricing Audit and Dispute Resolution Mechanisms	
What are currently the main TP areas of scrutiny by the tax authorities in your country?	Inland Revenue publishes guides to their areas of focus which in our experience are generally accurate indicators of IRD's audit activity. The most recent of these, from 2016, is available here: https://www.ird.govt.nz/resources/6/2/62414b82-6ab8-4017-b04d-cc5d950cab47/compliance-focus-2016.pdf
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?	APAs are given in the form of a private binding ruling. Binding rulings bind the Commissioner of Inland Revenue to apply the tax laws ruled on in the manner stated in the binding ruling, as long as the description of the relevant "arrangement" is accurate and does not change after the ruling is issued, and as long as any conditions stipulated by IRD are adhered to by the taxpayer. The taxpayer is not otherwise bound by the ruling.

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