



## Ukraine

### 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?	2013
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?	1) Comparable uncontrolled price method and modified CUP based on exchange prices for commodities 2) Resale price method; 3) Cost plus method; 4) Transactional net margin method; 5) Transactional profit split method.
Are any TP methods preferred over others?	According to the Tax Code of Ukraine, where it is possible to apply both the CUP method and any other method, the CUP method shall be used. In case where the Resale price method or the Cost plus method and the Transactional net margin method or the Transactional profit split method can be applied by the taxpayer with the same reliability, the Resale price method or the Cost plus method shall be used.
Have the documentation requirements of OECD BEPS Action 13 already been implemented (i.e. the LF, MF and CbCR concepts)?	CbCR Intended, No MF/LF
Reference to documentation and statements of local-government or tax authorities regarding OECD BEPS implementation status	Draft Law No.3630 of 11.12.2015 on amending of the Tax Code of Ukraine.

<p>Reference to relevant articles of law, legislative regulation or applicable administrative guidance that are in place for TP documentation in general</p>	<p>1) subpara. 14.1.159 of para. 14 of the Tax Code of Ukraine (identification of the related parties)                  2) Art. 39 of the Tax Code of Ukraine (arm's length principle, transfer pricing methods, official sources of information, advance pricing agreements)                  3) Resolution of the Cabinet of Ministers Of Ukraine No. 381 as at 4 June 2015 "On approval of the procedure for calculating the price (profitability) range and the median of such range for transfer pricing purposes"                  4) Resolution of the Cabinet of Ministers Of Ukraine No. 191 as at 29 March 2017 "On approval of the Procedure for determining the average weighted profitability indicator for a comparable legal entity for transfer pricing purposes"                  5) Resolution of The Cabinet of Ministers Of Ukraine No. 616 as at 8 September 2016 "On approving the list of commodities quoted on exchanges and commodity exchanges to establish the compliance of conditions of controlled transactions with the arm's length principle"                  6) Resolution of the Cabinet of Ministers Of Ukraine No. 480 as at 4 July 2017 "On approval of the list of organisational and legal forms of non-residents that do not pay income tax (corporate tax), including tax on income received outside of the state of registration of such non-residents, and/or are not tax residents of the state in which they are registered as legal entities"                  7) Ruling of the Cabinet of Ministers of Ukraine No.1045 as at 27 December 2017 "On approval of the list of states (territories) that meet the criteria, set out in para. 39.2.1.2 of para. 39.2.1 of para.39.2 of Art. 39 of the Tax Code of Ukraine" (low-tax jurisdictions)</p>
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<b>2. Master File (MF)</b>	Not implemented
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<b>3. Local File (LF)</b>	Not implemented
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<p>What is the threshold requirement for the obligation to prepare a LF?</p>	<p>The Ukraine has not implemented a LF requirement in line with OECD BEPS 13 but local transfer pricing documentation requirements are in place for annual revenue of UAH 150 million (around EUR 5 million) and value of potentially controlled operations with one counterparty of more than 10 million per year (around EUR 333.333)</p>
<p>As from which year does this obligation exist?</p>	<p>September 2013 upon request by fiscal authorities and mandatory from 01.01.2015</p>
<p>When does the LF need to be available?</p>	<p>After May 1 of the year next to the reporting year.</p>
<p>When does the LF need to be submitted?</p>	<p>30 days upon request.</p>
<p>Does the LF have to be prepared in the relevant local language?</p>	<p>Yes</p>
<p>Or is documentation in English permissible?</p>	<p>No</p>
<p>What are the possible consequences of not having the LF available?</p>	
<p>Penalties?</p>	<p>Yes</p>
<p>Imprisonment?</p>	<p>No</p>
<p>Shifting of the burden of proof?</p>	<p>Yes</p>
<p>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?</p>	<p>More extensive information on the transactions is to be provided, specific independence criteria, specific CUP method for transactions with commodities.</p>

4. Country-by-Country Reporting	
	Intentions
Did your country sign the Multilateral Competent Authority Agreement on the Exchange of CbC Reports ("CbC MCAA")?	No
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.	Austria, Azerbaijan, Algeria, Belgium, Belarus, Bulgaria, Brazil, Great Britain, Vietnam, Armenia, Greece, Georgia, Denmark, Egypt, Estonia, Israel, India, Indonesia, Iran, Ireland, Iceland, Italy, Jordan, Kazakhstan, Canada, Cyprus, Kyrgyz Republic, China, the Republic of Korea, Kuwait, Latvia, Lebanon, Libya, Lithuania, Macedonia, Morocco, Mexico, Moldova, Mongolia, the Netherlands, Norway, the United Arab Emirates, Pakistan, South African Republic, Poland, Portugal, Russian Federation, Romania, Saudi Arabia, Singapore, Syria, Slovakia, Slovenia, USA, Tajikistan, Thailand, Turkey, Turkmenistan, Hungary, Uzbekistan, Finland, France, Federal Republic of Germany, Croatia, the Czech Republic, Switzerland, Sweden, Republic of Serbia and the Republic of Montenegro, Spain, Malaysia, Japan.

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, (except in case of self-adjustments).
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?	If taxpayer understands that the prices are not at arm's length prior to submission of annual corporate profit tax return taxpayer may adjust tax results by filling of separate annex "TL" of the CPT return. At any other time it is possible to submit adjustment CPT return with respective TP corrections. In case of self-assessment of additional tax liabilities taxpayer shall pay the amount of tax and the fine in the amount of 3 per cent of the amount of tax. This fine shall be paid prior to submitting of the adjustment CPT return.
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?	Administrative penalty or criminal prosecution for tax evasion depending on the amount of charges.
Does a taxpayer need to file TP-specific returns?	Yes
Please state the filing form number and name.	Report on the controlled transactions, approved by the Order of the Cabinet of Ministers of Ukraine No. 8 as of January 18, 2016.
What would be the filing deadline?	1st of October of the year following the reporting year.
What would be the penalties for non-compliance?	Penalty for non-submission equals to 300 amounts of living wage set on 1 January of the reporting year (currently UAH480'000 that is around EUR16'000). Penalty for non-declaration of the controlled transactions in the submitted Report on the controlled transactions equals to 1 % of the sum of such non-declared controlled transaction, but shall not exceed 300 amounts of living wage set on 1 January of the reporting year.

6. Benchmarking

<p>Is there any local guidance or requirement with regard to the preparation of a benchmark study?</p>	<p>Yes. Article 39 of the Tax Code of Ukraine is the main guidance that should be considered during the preparation of the benchmark study.</p> <p>According to para. 39.5.3.1 of the Tax Code of Ukraine, the taxpayer and the controlling authority shall use the sources of information that contain information that enables to compare the commercial and financial conditions of transactions in accordance with para. 39.2.2 of Art. 39, in particular:</p> <p>A) information on comparable uncontrolled transactions of the taxpayer, as well as information on comparable uncontrolled transactions of its counterparty (in the controlled transactions) with unrelated parties;</p> <p>B) any sources of information, which contain publicly available information and provide information on comparable transactions and entities;</p> <p>C) other sources of information, from which the information was received by the taxpayer in accordance with the requirements of the legislation and which provide information on comparable transactions and entities, provided that the taxpayer submits such information to the controlling authority;</p> <p>D) information received by the controlling authority under the international agreements, concluded by Ukraine.</p> <p>In accordance with para. 39.3.2.8 of Art. 39 of the Tax Code for the purpose of calculating the profitability range, information about comparable uncontrolled transactions of the taxpayer (or his counterparty in the controlled transaction), as well as information about the comparable legal entities shall be used, based on the accounting and financial reporting data, reflected in accordance with the national accounting regulations (standards) or international financial reporting standards for the reporting (tax) period (year) in which the controlled transaction was executed, or for several tax periods (years).</p> <p>Also in accordance with para. 39.3.2.9 of Art. 39 of the Tax Code, information about comparable legal entities is used for the calculation of financial indicators in the case of simultaneous compliance with the following conditions:</p> <p>1) the comparable legal entity carries out activities comparable to those of the taxpayer within the scope of the controlled transaction and performs comparable functions related to such activity. Comparison of activities is determined taking into account the types of economic activity in accordance with the Classifier of economic activities 009: 2010, as well as international classifiers;</p> <p>2) the comparable legal entity has losses in accordance with the accounting (financial) statements not more than in one reporting period of the periods used to calculate the relevant financial indicators;</p> <p>3) the comparable legal entity does not own directly or indirectly corporate rights of another legal entity with a share of such participation of more than 20 percent and no legal entity own the corporate rights of the comparable legal entity with a share of direct (indirect) participation of more than 20 percent.</p> <p>Art. 39 of the Tax Code of Ukraine also contains other requirements with regard to the preparation of the benchmark study.</p>
<p>Are there any materiality thresholds that apply for the requirement to have a benchmark study available?</p>	<p>No</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?	No
Or is a new search every three years without any financial updates in year 2 and 3 sufficient?	No. Ukrainian documentation requirements are silent in this regard.

### 7. Year-end adjustments

Are year-end adjustments permissible?	Yes
Does the taxpayer have to comply with any specific features or guidance?	Yes. The Company should provide Adjusting Annex "TL" "Self-Adjustment of the Tax Liabilities of the Taxpayer for the TP Purposes" to the Corporate profit tax return. Self-adjustment should not result in lower taxes in Ukraine.

### 8. Transfer Pricing Audit and Dispute Resolution Mechanisms

What are currently the main TP areas of scrutiny by the tax authorities in your country?	Tax authorities pay their attention to the procedural issues and application of the methods of comparative uncontrollable price. Tax authorities usually pay special attention to the activity of the exporters of agricultural products (wheat, corn, sunflower, and sunflower oil), metal products, chemical products and milk products.
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?	Yes. Only large taxpayers (business entity or permanent establishment of non-resident, total income of which for the last 4 tax (reporting) quarters exceeds UAH 1,000,000,000 [around EUR 33.333.333] or the overall sum of money, paid to the Budget by such entity or permanent establishment of non-resident, for the same period exceeds UAH 20,000,000) can apply for bilateral or multilateral APAs.

**Your contact person:**

Mr. Ivan Shynkarenko  
 I.Shynkarenko@wts.ua  
 T: +38 044 490 71 97