

# Asia Pacific Transfer Pricing Guide 2024

wts global

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## WTS Global at a glance



Founded in 2003 by WTS Germany



Locally rooted – Globally connected: Present in more than 100 countries with more than 3,500 tax professionals



Tax-focused: Coverage of the entire range of tax advisory services



Independent & free of conflict: No audit



Quality assurance: Stringent quality reviews



Diverse customer base: From multinationals to private clients



Central management & coordination: Centrally managed global tax practice

### About WTS Global

We are the leading independent non-audit tax practice worldwide with representation in more than 100 countries. WTS Global deliberately refrains from conducting annual audits in order to avoid any conflicts of interest and to be the long-term trusted advisor for its international clients. Clients of WTS Global include multinational companies, international mid-size companies as well as private clients and family offices.

The member firms of WTS Global are carefully selected through stringent quality reviews. They are strong local players in their home market who are united by the ambition of building a truly global practice that develops the tax leaders of the future and anticipates the new digital tax world.

WTS Global effectively combines senior tax expertise from different cultures and backgrounds and offers world-class skills in advisory, in-house, regulatory and digital, coupled with the ability to think like experienced businesspeople in a constantly changing world.

For more information please visit: <https://wts.com>

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## Author's Note

Dear Reader,

We are pleased to bring you our updated WTS Global Transfer Pricing (“**TP**”) Country Guide for Asia Pacific countries, featuring an overview of TP legislation; TP documentation requirements (including OECD BEPS<sup>1</sup> Action 13 documentation standard adoption); and practical TP considerations – in 21 countries in Asia Pacific.

A key aim of OECD BEPS is to enhance transparency along the multinational enterprise (“**MNE**”) regional or global value chain. The OECD BEPS Action item 13 therefore introduces a three tiered TP documentation requirement (comprising a Master File (“**MF**”), Local File (“**LF**”), and Country-by-Country Reporting (“**CbCR**”) based on meeting gross revenue or other thresholds in most countries.

The MF provides an overview of the MNE group, including its organisational structure, description of its business(es), the MNE’s intangibles, the intercompany financial activities, and the financial and tax positions. The MF is generally centrally prepared for the group and is included with the LF for each group entity that meets local TP Documentation thresholds. The need to prepare a MF is generally based on the revenue threshold of the local company and in Asia countries, can vary from being the same as the LF threshold (e.g. Hong Kong, Indonesia, South Korea, Thailand, the UAE and Vietnam), the same as the CbCR threshold (e.g. Japan and New Zealand) or not required at all (e.g. Cambodia, Laos and the Philippines).

The LF is the TP documentation for the local entity countries and it contains detailed information on significant intercompany transactions and demonstrates their arm’s length nature. The LF is an addition to the MF and both the LF and MF are only submitted to the local tax administration in line with local submission rules. The threshold and content requirements for preparing a LF differ across countries.

The CbCR requires reporting aggregate financial information per country and a list of group entities globally (including business activities), where consolidated group revenues meet or exceed EUR 750 million. The CbCRs are typically submitted within 12 months after the UPE fiscal year-end of the year to which the CbCR refers. The CbCR is prepared and submitted by the (parent) company (under a primary reporting obligation) or a designated company (under a secondary reporting obligation) – and shared by the receiving tax authority with other relevant tax authorities via an information exchange mechanism. Several countries require CbCR notifications to indicate in the tax return if and by which entity CbCR is prepared and submitted.

Since the publication of the final BEPS reports, most local countries have implemented the initiatives in Asia, with the exception of some developing countries. This Asia Pacific study includes the implementation status of OECD BEPS 13 and related practical TP practices in 21 countries as of March 2024. It is envisaged that this Transfer Pricing Guide will be updated regularly. Updates will be available on the following website: <https://www.wts.com/global/insights/country-tp-guide>.

We hope that you enjoy reading this Transfer Pricing Guide. Should you have any questions on TP or tax issues, please feel free to contact one of the colleagues in the relevant countries in the contact list. We will be happy to assist you.

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<sup>1</sup> The Organisation for Economic Cooperation and Development (“OECD”) BEPS Action items. BEPS (Base Erosion and Profit Shifting) refers to tax planning strategies that exploit gaps and mismatches in tax rules to artificially shift profits to low-or no-tax jurisdictions where there are little or no economic activities.

## Your Contact Person

If you have any queries regarding our Asia Pacific TP study, please contact the author mentioned below:

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# Australia

## 1. Legal Basis

### **Is there a legal requirement to prepare TP documentation?**

The preparation of TP documentation is not mandatory. However, penalties will apply for Taxpayers who don't meet the requirements set out in Subdivision 284-E and are precluded from establishing a reasonably arguable position in the event of a TP adjustment.

### **Since when does a TP documentation requirement exist in your country?**

Division 13 was enacted in 1982 (current legislative framework since June 2013), at the discretion of the Commissioner of Taxation.

### **Adoption of the OECD or UN legislation in your country?**

Australia is a member of the OECD and largely follows the OECD Guidelines in practice.

### **Is your country a member of the OECD, Inclusive Framework, or other OECD groups (e.g. BEPS)?**

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, but some extra considerations may be required for issues around Cross Border Treasury and Financing transactions.

### **Which TP methods may be applied?**

Methods include traditional transaction methods (e.g., Comparable Uncontrolled Price (“**CUP**”); Resale Price method (“**RPM**”); and Cost Plus method (“**CPM**”)) and

traditional profits based methods (Profit Split (“**PS**”); and Transaction Net Margin Method (“**TNMM**”)).

Any other method that results in an arm's length outcome is also acceptable. However, other methods should only be used where one of the other traditional transaction or profits based methods cannot be reliably applied.

### **Is there a stated preference for any particular TP methods?**

The legislation requires Taxpayers to adopt the “most appropriate” TP method and refers to the OECD Guidelines in this regard.

### **Have the documentation requirements of OECD BEPS Action 13 already been implemented (i.e. the LF, MF, and CbCR concepts)?**

Australia has adopted the OECD's three tiered documentation approach set out in BEPS Action 13, however, the LF differs from the OECD approach. The requirements are met through the lodgement of the LF, the MF (LCMSF), and the CbCR.

The Australian Local File requirements include entity and transactional information for risk profiling. There are two LF forms, simple and long form. The Australian LF does not include TP documentation such as functional analysis, adjustments, etc.

### **Reference to documentation and statements of local government or tax authorities regarding OECD BEPS implementation status**

In response to key TP cases that questioned the relevance of the OECD Guidelines in interpreting Division 13 and the Australia Tax Office (“**ATO**”)'s reliance on such interpretation, revised TP provisions were enacted. These provisions refer directly to the 2010 OECD Guidelines (or the 1999 Guidelines for earlier years) as relevant guidance for the determination of the arm's length conditions.

# Australia

For years starting on or after 1 July 2017, the relevant guidance also incorporates the changes as per the 2017 amended version of the OECD Guidelines.

## Is there any statute of limitation period?

Under Subdivisions 815-B, C, and D, amendments can be made within seven years following the date on which a notice of assessment is issued to the Taxpayer.

Historically, there has been no statute of limitations for TP adjustments. The tax legislation applicable for financial years starting before 1 July 2013 specifically empowers the Commissioner to make amendments to tax assessments in any year for TP adjustments under Division 13. As such, years starting before 1 July 2013 remain open to challenge indefinitely.

Adjustments can be made under Subdivision 815-A for any financial year starting between 1 July 2004 and 30 June 2013 (inclusive). Like Division 13, there is no limitation on when adjustments can be made.

Some of Australia's double tax agreements, including those with New Zealand and Japan, specify time limits for adjustments.

## Reference to relevant articles of law, legislative regulation, or applicable administrative guidance that are in place for TP documentation in general.

Subdivision 284-E TAA 1953.

## 2. Master File (MF)

### What is the (consolidated revenue) threshold requirement for the obligation to prepare a MF?

CbCR requirements apply to Country by Country Reporting Entity ("CbCRE")s, largely Australian Taxpayers that form part of an MNE with an annual global income of AUD 1 billion or more. While the definition of the global group generally follows accounting consolidation rules, there are exceptions to that are specific to Australia's MF submissions.

### Euro Equivalent

EUR 601,365,000.

### From which year does this obligation exist?

Years starting on or after 1 July 2017.

### When does the MF need to be available?

As a CbCR reporting entity, the MF must be lodged directly with the ATO within 12 months after the end of the Taxpayer's year. The MF shall be maintained on a contemporaneous basis.

### When does it need to be submitted?

If required, this must be filed 12 months after the end of the financial year of the Taxpayer unless the Taxpayer has received a Replacement Reporting Period ("RRP"), in which case the deadline is 12 months after the end of the RRP (typically the global parent entity's year immediately preceding the Taxpayer's year-end). An exemption may be available where Australia is the only jurisdiction in which the MF needs to be prepared.

### Does the MF have to be prepared in the relevant local language?

The TP documentation needs to be maintained in English (local language) or be readily convertible into English.

### Is documentation in English permissible?

Yes, it is required to be in English.

### What are the possible consequences of not having the MF available?

#### Penalties?

Yes, penalties apply to the underpaid tax (shortfall penalties), failure to submit or late submission (failure to lodge penalties), or incorrect disclosures (false and misleading disclosure penalties). Failure to meet MF lodgement requirements could lead to penalties of up to AUD 782,500 per year.

#### Imprisonment?

No.

#### Shifting of the burden of proof?

No.

#### Other?

No.

# Australia

## To what 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 prescribed information required to be disclosed in the MF is largely consistent with the OECD Action 13 requirements.

### 3. Local File (LF)

#### What is the threshold requirement for the obligation to prepare a LF?

CbCR requirements apply to CbCREs, largely Australian Taxpayers that form part of an MNE with an annual global income of AUD 1 billion or more. While the definition of global group generally follows accounting consolidation rules, some exceptions require careful consideration.

Further, if the local entity has less than AUD 2 million in total international related party transactions and no transactions that are on the exclusions list, it may submit the short form Local File.

#### Euro Equivalent

EUR 601,365,000.

#### From which year does this obligation exist?

Years starting on or after 1 July 2017.

#### When does the LF need to be available?

For CbCR reporting entities, an Australian LF must be filed 12 months after the end of the financial year of the Taxpayer. If the Taxpayer prepares and lodges at least Part A of the Australian Local File by the due date of the corporate tax return, questions 2 to 17 of the abovementioned IDS do not need to be completed (this is an “administrative concession” provided by the ATO).

#### When does the LF need to be submitted?

If required, an Australian Local File must be filed 12 months after the end of the financial year of the Taxpayer. If the Taxpayer prepares and lodges at least Part A of the Australian LF by the due date of the corporate tax return, questions 2 to 17 of the abovementioned IDS do not need to be completed (this is an “administrative concession” provided by the ATO).

## Does the LF have to be prepared in the relevant local language?

The TP documentation needs to be maintained in English (local language) or be readily convertible into English.

## Or is documentation in English permissible?

Yes, it is required to be in English.

## What are the possible consequences of not having the LF available?

### Penalties?

Yes, penalties apply to underpaid tax (shortfall penalties), failure to submit or late submission (failure to lodge penalties), or incorrect disclosures (false and misleading disclosure penalties). The Australian LF lodgement is mandatory for jurisdiction-by-jurisdiction Reporting Entities, and failure to lodge is subject to the same penalties.

### Imprisonment?

No.

### Shifting of the burden of proof?

No.

### Other?

No.

## To what 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?

The prescribed information required to be disclosed in the LF, both Short Form and Long Form, is not consistent with the OECD Action 13 requirements.

The Australian LF requirements include entity and transactional information for risk profiling by the ATO. There are two LF forms, simple and long form. The Australian LF does not include TP documentation such as functional analysis, adjustments, etc as in the OECD content requirements.

### 4. Country-by-Country Reporting (CbCR)



# Australia

## What is the threshold requirement for the obligation to prepare Country-by-Country Reporting?

CbCR requirements apply to CbCREs, largely Australian Taxpayers that form part of an MNE with an annual global income of AUD 1 billion or more. While the definition of a global group generally follows accounting consolidation rules, some exceptions require careful consideration.

## Euro Equivalent

EUR 601,365,000.

## From which year does this CbCR obligation exist?

Years starting on or after 1 July 2017.

## Are Taxpayers required to notify of CbCR filing in your country?

Yes.

## If yes, when and how do the tax authorities need to be notified?

If the CbCR is lodged with another revenue authority with whom the ATO has a formal information exchange, the Australian Taxpayer can provide a notification through the LCMSF form, and the ATO then obtains a copy of the CbCR directly from the other revenue authority 12 months from the end of the relevant income year. CbCR notification is required annually.

For cases where multiple entities are not members of the same tax consolidated group, each entity will need to lodge a notification. There is an option for one entity to notify that it will be lodging the information on behalf of those entities, but it will need to state this within its notification.

## If the reporting entity (ultimate parent or surrogate parent) is in your country, what is the CbCR submission deadline?

The CbCR (or the CbCR Notification if applicable) must be lodged directly with the ATO within 12 months after the end of the Taxpayer's year-end. If required, the CbCR is due 12 months after the end of the financial year of the Taxpayer unless the Taxpayer has received an RRP, in which case the deadline is 12 months after the end of the RRP.

## 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?

No.

## Where is the CbCR to be submitted?

In addition to the LCMSF, Australian Taxpayers must lodge the CbCR in Australia through the use of a separate XML schema.

## How is the CbCR to be submitted, specifically, is there any prescribed standard?

Where the CbCR is lodged in a jurisdiction that automatically exchanges it with the ATO, this lodgement can be replaced with a notification. Such CbCR lodgement notification is provided through the lodgement of the LCMSF, due 12 months after the end of the financial year.

It should be noted that where an Australian subsidiary has a different financial year-end from the Ultimate Parent Entity lodging the CbCR, a replacement reporting period will need to be established with the ATO, which can impact the deadlines for the CbCR.

A local lodgement is required if the CbCR is not lodged in a jurisdiction that automatically exchanges it with the ATO. This lodgement will need to be made through a separate XML and a conversion process is required to align the CbCR with the Australian requirements.

## What are the possible consequences of not having the CbCR available?

### Penalties?

Yes, penalties apply to underpaid tax (shortfall penalties), failure to submit or late submission (failure to lodge penalties), or incorrect disclosures (false and misleading disclosure penalties). Failure to lodge for SCEs ranges from AUD 156,500 to AUD 782,500.

### Imprisonment?

No.

# Australia

## Shifting of the burden of proof?

No.

## Other?

No.

## To what 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 CbCR ("CbCR MCAA")?

Yes, it is as of 27 January 2016, with the dates on which exchange relations became active listed on the OECD website.

## Did your country enter into other information exchange agreements, such as on a bilateral basis?

Yes, Australia has signed a bilateral agreement with the US.

## 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 the tax return or TP specific returns

### Is there a threshold for Related Party Transactions?

In addition, if the aggregate number of transactions or dealings with international related parties, both revenue and capital in nature, is greater than AUD 2 million, the following information must be disclosed:

- › Top three transactions (individually) and other transactions (combined) for the top three specified "low tax" jurisdictions; and
- › The top three transactions and other transactions for the top three non-specified jurisdictions.

### Does a Taxpayer need to disclose information regarding TP documentation in his tax return?

Related party disclosures may be required in the financial statement and annual report.

### 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 TP, what could be the legal consequences?

Penalties apply to underpaid tax (shortfall penalties). Penalties depend on the entity as well as various other factors, such as the level of culpability.

Where the ATO concludes that an entity entered the arrangement with the sole or dominant purpose of that entity or another getting a TP benefit, the penalties will be either 50% or 25% of the TP shortfall amount, depending on whether the entity has appropriate documentation.

Higher penalties apply where there are further culpability factors such as intentional disregard for the law. These penalties are doubled for Significant Global Entities.

### 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?

A self-assessment regime effectively requires public officers to determine whether the Taxpayer has received a TP benefit to satisfy their duties in signing off on the tax return. In extreme cases, the public officers may be liable for penalties if they do not discharge this responsibility.

### Does a Taxpayer need to file TP specific returns?

No, other than those mentioned.

### Please state the filing form number and name.

Together with income tax return lodging.

### What would be the filing deadline?

In most cases, the income tax return is due for lodgement six months and 15 days after the end of the income tax year.

### What would be the penalties for non-compliance?

## Australia

Yes, penalties apply to failure to submit or late submission (failure to lodge penalties). Penalties depend on the entity as well as various other factors, such as the level of culpability.

Penalties for SGEs, i.e., any entity that is part of a group with a global turnover of AUD 1 billion or more, are particularly high. Failure-to-lodge penalties for these entities start at AUD 156,500 for filings that are one date late and gradually increase to AUD 782,500 for lodgements that are 112 days late or more.

### 6. Benchmarking

#### **Is there any local guidance or requirement about the preparation of a benchmark study?**

There are no formal guidelines on the determination of the appropriate point in the benchmarking interquartile range. Interquartile ranges calculated using spreadsheet quartile formulas are generally acceptable, but there may still be challenges in terms of the most appropriate point within the interquartile range (i.e., it is not necessarily accepted that if the tested party results fall within the interquartile range, it may automatically be concluded that such results are consistent with the arm's length principle).

The ATO practice is generally to use the median of the interquartile range and will generally only accept local comparable companies in the benchmarking. Only under extenuating circumstances where no local comparables can be identified would the ATO consider comparables from outside of Australia.

#### **Is there any stated preference for local benchmarks?**

Although there is no legal or formal requirement for local jurisdiction comparables, the ATO has a strong preference for local comparables and uses local databases that contain information on more companies than the typical regional and global databases.

The ATO will generally accept foreign comparables only if it can be demonstrated that reliable local comparables are not available. Regional Asian comparables are typically not accepted due to market differences.

#### **Are there any materiality thresholds that apply to the requirement to have a benchmark study available?**

Reportable Tax Position Schedule for companies with a turnover of more than AUD 25 million that form part of an Australian economic group with a turnover over AUD 250 million must be disclosed.

### 7. Year-end, secondary, and corresponding adjustments

#### **Are year-end/ secondary/ corresponding adjustments permissible?**

Yes, although there is no legislative requirement to make year-end adjustments.

Corresponding adjustments are not mandatory but are possible.

#### **Does the Taxpayer have to comply with any specific features or guidance?**

**TR 2007/1:** effect of determinations under Division 13, including consequential adjustments

**TR 2000/16:** for corresponding adjustments

### 8. TP Audit and Dispute Resolution Mechanisms

#### **What are currently the main TP areas of scrutiny by the tax authorities in your country?**

All top 1,100 companies in Australia are subject to review over a four year period, with the top 100 companies being subject to annual reviews. A similar review process has recently been started for large privately owned Australian companies.

The ATO has also recently selected companies in the pharmaceutical and technology industries for audits as well as Taxpayers with significant intragroup financing.

Outside these groups, the possibility of an annual tax audit in Australia is typically medium. However, if Taxpayers exhibit risk factors, the possibility of a review or audit increases significantly.

Where the Taxpayer enters a material level of international related party transactions, TP is almost always reviewed if any general tax review or audit is started.

#### **Based on your experience, are joint or multilateral audits initiated and carried out?**

## Australia

Yes.

### **Does the Taxpayer have the option to apply for bilateral or multilateral APAs?**

Yes, both unilateral and bilateral APAs are possible. The ATO's APA program is outlined in ATO PS LA 2015/4. A review of the APA program by the ATO is currently underway.

### **Are there any restrictions?**

An APA in which the ATO is involved typically has a three to five year term.

# Bangladesh

## 1. Legal Basis

### **Is there a legal requirement to prepare TP documentation?**

According to TP regulations in Bangladesh, taxpayers are required to maintain TP documentation before the due date of filing the annual Corporate Tax return. However, they only need to submit the documentation to the tax authorities upon request. It's important to note that the data of comparable must be relevant to the financial year and therefore, there is a contemporaneous requirement.

### **Since when does a TP documentation requirement exist in your country?**

Transfer pricing regulations in Bangladesh have been made effective from 1 July 2014 by SRO 161-Law/Income Tax/2014.

### **Adoption of the OECD or UN legislation in your country?**

Bangladesh is not a member of the OECD. Its legislation is broadly based on the OECD Guidelines. Six methods prescribed in the Bangladeshi legislation to compute arm's length prices conform with the OECD Guidelines.

### **Is your country a member of the OECD, Inclusive Framework, or other OECD groups (e.g. BEPS)?**

Bangladesh is not a member of the OECD, but it participates in the BEPS Inclusive Framework.

### **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?**

Bangladesh legislation prescribes the following methods: Comparable Uncontrolled Price ("CUP"); Resale Price method ("RPM"); Cost Plus method ("CPM"), Profit Split ("PS"); and Transaction Net Margin Method ("TNMM") and any other method. When it can be demonstrated that none of the first five methods can be reasonably applied to determine the arm's length price for an international transaction, Section 235 allows the use of any other method that can yield a result consistent with the arm's length price.

To determine a comparable uncontrolled transaction, the relevant rule provides that only the data pertaining to the relevant financial year should be used. However, the rule permits the use of data before the relevant financial year, if it can be substantiated that such data bears facts that could influence the analysis of comparability.

### **Is there a stated preference for any particular TP methods?**

The legislation requires Taxpayers to adopt the "most appropriate" TP method.

### **Have the documentation requirements of OECD BEPS Action 13 already been implemented (i.e. the LF, MF, and CbCR concepts)?**

No.

### **Reference to documentation and statements of local government or tax authorities regarding OECD BEPS implementation status**

This is still pending.

### **Is there any statute of limitation period?**

Section 239 of the Income Tax Act 2023 (act no. 12 of 2023) require specified information, documents and records to be maintained by every person who has

# Bangladesh

entered into international transactions of aggregate value exceeding BDT 30 million with related parties. These information, documents and records shall be maintained for eight years from the end of the relevant assessment year.

**Reference to relevant articles of law, legislative regulation, or applicable administrative guidance that are in place for TP documentation in general.**

Sections 233 to 239 and Section 276 to 279 of the Income Tax Act, 2023 (the Act), refers to TP.

## 2. Master File (MF)

**What is the (consolidated revenue) threshold requirement for the obligation to prepare a MF?**

BDT 30000000.

**Euro Equivalent**

EUR 250,000.

**From which year does this obligation exist?**

From 26 June 2014. Applicable for Year of Assessment 2015-2016.

**When does the MF need to be available?**

When international transaction with associated parties exceeds BDT 30 million.

**When does it need to be submitted?**

When the TP officer asks for the MF.

**Does the MF have to be prepared in the relevant local language?**

As the TP laws are in the local (Bengali) language, the documentation should be prepared in the local language.

**Is documentation in English permissible?**

Yes, English is also acceptable in Bangladesh.

**What are the possible consequences of not having the MF available?**

**Penalties?**

1% of the international transaction amount.

**Imprisonment?**

No.

**Shifting of the burden of proof?**

No.

**Other?**

No.

**To what 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?**

Bangladesh TP rules are broadly based on the OECD TP Guidelines.

## 3. Local File (LF)

**What is the threshold requirement for the obligation to prepare a LF?**

There is an applicable materiality limit in Bangladesh for the purpose of preparing TP documentation in LF based on aggregate transaction values of Bangladesh taka (BDT) 30 million.

**Euro Equivalent**

EUR 250,000.

**From which year does this obligation exist?**

From 26 June 2014. Applicable for Year of Assessment 2015-2016.

**When does the LF need to be available?**

TP documentation is required to be maintained by the taxpayer on or before the due date of filing the TP return.

**When does the LF need to be submitted?**

When the TP officer asks for the LF.

**Does the LF have to be prepared in the relevant local language?**

# Bangladesh

As the TP laws are in the local (Bengali) language, the documentation should be prepared in the local language.

## Or is documentation in English permissible?

Yes, English is also acceptable in Bangladesh.

## What are the possible consequences of not having the LF available?

### Penalties?

Yes, penalties apply for:

- › Failure to keep, maintain or furnish any information or documents as required by Section 237 of the Act, the taxpayer faces a penalty not exceeding 1% of the value of the international transaction.
- › Failure to comply with the notice or requisition under Section 235 of the Act by the Deputy Commissioner of Taxes, the taxpayer faces a penalty not exceeding 1% of the value of the international transaction.
- › Failure to file an Statement of International Transactions (“SIT”), there is a penalty of 2% of the value of the international transaction under Section 238 of the Act.
- › Not furnishing an accountant’s certificate, the taxpayer is fined an amount not exceeding BDT300,000.

### Imprisonment?

No.

### Shifting of the burden of proof?

No.

### Other?

No.

## To what 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?

Bangladesh TP rules are broadly based on the OECD TP Guidelines.

## 4. Country-by-Country Reporting (CbCR)

### What is the threshold requirement for the obligation to prepare Country-by-Country Reporting?

Not applicable.

### Euro Equivalent

Not applicable.

### From which year does this CbCR obligation exist?

Not applicable.

### Are Taxpayers required to notify of CbCR filing in your country?

Not applicable.

### If yes, when and how do the tax authorities need to be notified?

Not applicable.

### If the reporting entity (ultimate parent or surrogate parent) is in your country, what is the CbCR submission deadline?

Not applicable.

### Are there any deviating submission deadlines for the secondary mechanism?

Not applicable.

### Does your country have a requirement that the financial figures of the group need to be aligned?

Not applicable.

### Where is the CbCR to be submitted?

Not applicable.

### How is the CbCR to be submitted, specifically, is there any prescribed standard?

Not applicable.

### What are the possible consequences of not having the CbCR available?

# Bangladesh

## Penalties?

Not applicable.

## Imprisonment?

Not applicable.

## Shifting of the burden of proof?

Not applicable.

## Other?

Not applicable.

## To what 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?

Not applicable.

## Did your country sign the Multilateral Competent Authority Agreement on the Exchange of CbCR ("CbCR MCAA")?

No.

## Did your country enter into other information exchange agreements, such as on a bilateral basis?

No.

## Can a Taxpayer in your country fulfil his CbCR requirement by referring to the reporting entity in the same or another country?

Not applicable.

## 5. TP disclosure in the tax return or TP specific returns

### Is there a threshold for Related Party Transactions?

There is an applicable materiality limit in Bangladesh for the purpose of preparing TP documentation based on aggregate transaction values of Bangladesh taka (BDT) 30 million.

Not applicable for domestic transactions.

## Does a Taxpayer need to disclose information regarding TP documentation in his tax return?

Under Section 238 of the Act, every person that has entered into an international transaction shall furnish, along with the return of income, an SIT in the form and manner as may be prescribed.

Under Section 239, the Deputy Commissioner of Taxes may, by written notice, ask for an accountant's report certifying that the documents and information maintained by a taxpayer are in line with Bangladesh's TP regulations, provided the taxpayer is entering into an international transaction in which the aggregate value of the international transactions entered into by the taxpayer exceeds BDT30 million.

## 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 TP, what could be the legal consequences?

For failure to file a TP Return, there is a penalty of 2% of the value of the international transaction under Section 278 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?

The taxpayer may face a penalty not exceeding 1% of the value of the international transaction.

## Does a Taxpayer need to file TP specific returns?

Yes.

## Please state the filing form number and name.

Rule 75A (Earlier; new form will come soon).

## What would be the filing deadline?

Every company (resident or non-resident) is required to file a return of income by the 15th day of the seventh month following the end of the income year or 15 September, following the end of the income year where the said 15th day falls before 15 September.

## What would be the penalties for non-compliance?



# Bangladesh

For failure to file an SIT, there is a penalty of 2% of the value of the international transaction under Section 278 of the Act. For not furnishing an accountant's certificate, the taxpayer is fined an amount not exceeding BDT300,000 under Section 279 of the Act.

## 6. Benchmarking

**Is there any local guidance or requirement about the preparation of a benchmark study?**

Bangladesh TP legislation has not provided any preference for single-year or multiyear testing. Since Bangladesh TP regulations are broadly based on the OECD Guidelines, it is generally suggested that multiple-year data be used. As per Bangladesh TP laws, in case six or more data sets are being used, the arm's length price shall be considered as the range of the 30th percentile to the 70th percentile. A fresh benchmarking search every year is preferable.

The regulations do not explicitly provide guidance in relation to the use of contemporaneous data but the relevant rule provides that only the data pertaining to the relevant financial year should be used. However, the rule permits the use of data before the relevant financial year, if it can be substantiated that such data bears facts that could influence the analysis of comparability.

**Is there any stated preference for local benchmarks?**

Since no local databases are available, regional benchmarking is undertaken.

**Are there any materiality thresholds that apply to the requirement to have a benchmark study available?**

No materiality threshold.

## 7. Year-end, secondary, and corresponding adjustments

**Are year-end/ secondary/ corresponding adjustments permissible?**

No.

**Does the Taxpayer have to comply with any specific features or guidance?**

No.

## 8. TP Audit and Dispute Resolution Mechanisms

**What are currently the main TP areas of scrutiny by the tax authorities in your country?**

No. The first round of audits in Bangladesh is yet to be initiated.

**Based on your experience, are joint or multilateral audits initiated and carried out?**

No. The first round of audits in Bangladesh is yet to be initiated.

**Does the Taxpayer have the option to apply for bilateral or multilateral APAs?**

Bangladesh does not have a formal APA program.

**Are there any restrictions?**

Not applicable.

# Cambodia

## 1. Legal Basis

### Is there a legal requirement to prepare TP documentation?

Yes, there are TP documentation rules. A TP report has to be prepared annually.

### Since when does a TP documentation requirement exist in your country?

From 10 October 2017.

### Adoption of the OECD or UN legislation in your country?

OECD.

### Is your country a member of the OECD, Inclusive Framework, or other OECD groups (e.g. BEPS)?

No.

### 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?

The Guidelines provide for all methods described in the OECD TP Guidelines (OECD methods are Comparable Uncontrolled Price (“CUP”); Resale Price method (“RPM”); Cost Plus method (“CPM”), Profit Split (“PS”); and Transaction Net Margin Method (“TNMM”).

### Is there a stated preference for any particular TP methods?

The most appropriate method should be used.

### Have the documentation requirements of OECD BEPS Action 13 already been implemented (i.e. the LF, MF and CbCR concepts)?

Only the LF is applicable - Prakas 986 requires the retention of annual documentation. No guidance is available on MF or CbCR.

### Reference to documentation and statements of local-government or tax authorities regarding OECD BEPS implementation status

While Prakas 986 requires transactions be undertaken at arm’s length and documentation to be retained annually, Cambodia has not indicated its intention to implement OECD BEPS Action 13.

### Is there any statute of limitation period?

The statute of limitations is three years, which may be extended to 10 years if fraud or obstruction of the implementation of the law is involved.

### Reference to relevant articles of law, legislative regulation or applicable administrative guidance that are in place for TP documentation in general.

The documentation requirements: Prakas 986.

## 2. Master File (MF)

### What is the (consolidated revenue) threshold requirement for the obligation to prepare a MF?

Not applicable.

### Euro Equivalent

Not applicable.

## Cambodia

### From which year does this obligation exist?

Not applicable.

### When does the MF need to be available?

Not applicable.

### When does it need to be submitted?

Not applicable.

### Does the MF have to be prepared in the relevant local language?

Not applicable.

### Is documentation in English permissible?

Not applicable.

### What are the possible consequences of not having the MF available?

#### Penalties?

Not applicable.

#### Imprisonment?

Not applicable.

#### Shifting of the burden of proof?

Not applicable.

#### Other?

Not applicable.

### To what 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?

Not applicable.

### 3. Local File (LF)

### What is the threshold requirement for the obligation to prepare a LF?

No thresholds, a file is prepared per entity.

### Euro Equivalent

Not applicable.

### From which year does this obligation exist?

From 10 October 2017.

### When does the LF need to be available?

There is no specified deadline for the preparation of TP documentation.

### When does the LF need to be submitted?

The documentation should be filed within seven working days, on request.

### Does the LF have to be prepared in the relevant local language?

There is none specified, as TP documentation prepared in the English language may be submitted to the GDT.

### Or is documentation in English permissible?

Yes.

### What are the possible consequences of not having the LF available?

#### Penalties?

Yes. If TPD is incomplete or non-contemporaneous, a penalty of 10% to 40% of the underdeclared amount may be assessed, depending on the quantum of the underdeclared amount relative to the tax amount declared. Monthly interest is calculated at 1.5% of the amount of taxes deemed underdeclared. It may also result in the withdrawal of the Taxpayer's Certificate of Tax Compliance.

#### Imprisonment?

No.

#### Shifting of the burden of proof?

No.

#### Other?

No.

## Cambodia

**To what 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?**

The prescribed information required to be disclosed in the LF is consistent with the OECD Action 13 requirements.

#### **4. Country-by-Country Reporting (CbCR)**

**What is the threshold requirement for the obligation to prepare Country-by-Country Reporting?**

Not applicable.

**Euro Equivalent**

Not applicable.

**From which year does this CbCR obligation exist?**

Not applicable.

**Are Taxpayers required to notify of CbCR filing in your country?**

Not applicable.

**If yes, when and how do the tax authorities need to be notified?**

Not applicable.

**If the reporting entity (ultimate parent or surrogate parent) is in your country, what is the CbCR submission deadline?**

Not applicable.

**Are there any deviating submission deadlines for the secondary mechanism?**

Not applicable.

**Does your country have a requirement that the financial figures of the group need to be aligned?**

Not applicable.

**Where is the CbCR to be submitted?**

Not applicable.

**How is the CbCR to be submitted, specifically, is there any prescribed standard?**

Not applicable.

**What are the possible consequences of not having the CbCR available?**

**Penalties?**

Not applicable.

**Imprisonment?**

Not applicable.

**Shifting of the burden of proof?**

Not applicable.

**Other?**

Not applicable.

**To what 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?**

Not applicable.

**Did your country sign the Multilateral Competent Authority Agreement on the Exchange of CbCR ("CbCR MCAA")?**

Not applicable.

**Did your country enter into other information exchange agreements, such as on a bilateral basis?**

Not applicable.

**Can a Taxpayer in your country fulfil his CbCR requirement by referring to the reporting entity in the same or another country?**

Not applicable.

#### **5. TP disclosure in tax return or TP specific returns**

**Is there a threshold for Related Party Transactions?**

No.

## Cambodia

### **Does a Taxpayer need to disclose information regarding TP documentation in his tax return?**

Yes. Annex 1, which is the related party disclosure form, must be attached to the CIT return.

The TP disclosure form is required as an annex of the annual CIT return which should be filed within 90 days after the end of the fiscal year-end.

### **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?**

Failure to submit, late submission or incorrect disclosures will result in administrative penalties and may also result in the withdrawal of the Taxpayer's certificate of tax compliance.

### **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?**

Same as above.

### **Does a Taxpayer need to file TP specific returns?**

Yes, TP disclosure is required as Annex 1 of the annual CIT return which should be filed within 90 days after the end of the Fiscal Year-end.

### **Please state the filing form number and name.**

TP disclosure form is Annex 1 of the annual CIT return.

### **What would be the filing deadline?**

It should be filed within 90 days after the end of the fiscal year-end.

### **What would be the penalties for non-compliance?**

Failure to submit, late submission or incorrect disclosures will result in administrative penalties and may also result in the withdrawal of the Taxpayer's certificate of tax compliance.

## **6. Benchmarking**

### **Is there any local guidance or requirement with regard to the preparation of a benchmark study?**

No, although single year is acceptable, use of full range and interquartile range based on the spreadsheet quartile formula is accepted, roll forward study is acceptable and simple average is acceptable.

### **Is there any stated preference for local benchmarks?**

Finding local comparables is extremely difficult because of a lack of publicly available databases and only a few companies are listed on the local stock exchange. Accordingly, regional comparables are accepted.

### **Are there any materiality thresholds that apply to the requirement to have a benchmark study available?**

No.

## **7. Year-end, secondary, and corresponding adjustments**

### **Are year-end/ secondary/ corresponding adjustments permissible?**

No.

### **Does the Taxpayer have to comply with any specific features or guidance?**

This is not specified by the Law. It will depend on each tax inspector.

## **8. TP Audit and Dispute Resolution Mechanisms**

### **What are currently the main TP areas of scrutiny by the tax authorities in your country?**

Historically, the revenue authority has focused on the garment industry for TP audits. The logistic, shipping and freight-forwarding industries are also a focus for TP audits by the authorities. At an individual transaction level, payment of management fees, royalties, and payments for other intangibles are all currently being closely scrutinised by the tax authority.

### **Based on your experience, are joint or multilateral audits initiated and carried out?**

No.

## Cambodia

**Does the Taxpayer have the option to apply for bilateral or multilateral APAs?**

No.

**Are there any restrictions?**

No.

# China

## 1. Legal Basis

**Is there a legal requirement to prepare TP documentation?**

Yes.

**Since when does a TP documentation requirement exist in your country?**

2009.

**Adoption of the OECD or UN legislation in your country?**

No. the State Administration of Taxation (“SAT”) has referenced in their legislation both the OECD Guidelines and the UN Practical Manual on Transfer Pricing for Developing Jurisdictions.

**Is your country a member of the OECD, Inclusive Framework, or other OECD groups (e.g. BEPS)?**

No.

**Are TP policies of multinational enterprises in principle accepted by the tax authorities, if they are in line with the OECD TP Guidelines?**

China SAT has issued some of China's specific regulations on TP policies, referring to the OECD TP Guidelines. Minor differences may exist between the China regulations and MNE TP policies.

**Which TP methods may be applied?**

The five OECD TP methods (Comparable Uncontrolled Price (“CUP”); Resale Price method (“RPM”); Cost Plus method (“CPM”), Profit Split (“PS”); and Transaction Net Margin Method (“TNMM”)) are applied in China.

Practically, there are other methods like the asset appraisal method, which is generally applied to define a fair market value, and the CUP is used.

**Is there a stated preference for any particular TP methods?**

The most appropriate method should be used.

**Have the documentation requirements of OECD BEPS Action 13 already been implemented (i.e. the LF, MF and CbCR concepts)?**

Yes, BEPS Action 13 (requiring preparation of a LF, MF and CbCR) has been implemented.

**Reference to documentation and statements of local-government or tax authorities regarding OECD BEPS implementation status**

LF: Article 13 of SAT Announcement [2016] No. 42.  
MF: article 11 of SAT Announcement [2016] No. 42.  
CbCR: article 5 of SAT Announcement [2016] No. 42.

**Is there any statute of limitation period?**

10 years.

**Reference to relevant articles of law, legislative regulation or applicable administrative guidance that are in place for TP documentation in general.**

In addition to those mentioned above, there are other regulations regarding TP, as follows:

- › Chapter 6 of Corporate Income Tax and Implementation (special tax adjustment);
- › SAT Announcement [2017] No. 6 (special tax adjustment);
- › SAT Announcement [2016] No. 64 (APAs); and
- › Chapter 7 (cost sharing agreement), chapter 8 (controlled foreign enterprise), chapter 9 (thin capitalisation), chapter 10 (general anti avoidance) of Guoshuifa [2009] No.2.

## 2. Master File (MF)

**What is the (consolidated revenue) threshold requirement for the obligation to prepare a MF?**

# China

- (I) Cross-border related party transactions have occurred in the year, and the ultimate holding enterprise which consolidates tested company's financial report already prepared the MF; or
- (II) The total amount of the related party transactions in the year exceeds RMB 1 billion.

## Euro Equivalent

EUR 128,730,000.

## From which year does this obligation exist?

Following the year that the threshold is met (so that the MF is prepared for the year in which the threshold was met or exceeded).

Applies for fiscal years starting from 2016.

## When does the MF need to be available?

The MFs shall be completed within 12 months from the end of accounting year of the ultimate holding enterprise of the whole business group. The MF shall be maintained on a contemporaneous basis.

## When does it need to be submitted?

The MFs shall be submitted within 30 days upon request by the tax authority.

## Does the MF have to be prepared in the relevant local language?

Yes. TP documentations should be prepared in Chinese.

## Is documentation in English permissible?

No.

## What are the possible consequences of not having the MF available?

### Penalties?

Yes, different levels of fines, ranging from less than CNY 10,000 to CNY 50,000.

### Imprisonment?

No.

## Shifting of the burden of proof?

No.

## Other?

No.

## To what 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?

Most consistent with OECD requirements. In addition, China requires the provision of the following items:

- › Industry structure adjustment, and shifting of enterprise functions, risks or assets within the group, which occurred in the accounting year;
- › The main functions, risks, assets and personnel of main R&D organisation;
- › The bilateral pre agreed pricing arrangement entered into by each member entity in the enterprise group;
- › Name of the enterprise submitting the nationality report and its location.

## 3. Local File (LF)

### What is the threshold requirement for the obligation to prepare a LF?

Enterprises whose amount of yearly related party transactions satisfy any one of the following criteria shall prepare LFs:

- i. The amount of transfer of ownership of tangible assets (for processing of supplied materials, computed in accordance with the Customs declaration prices in the year) exceeds CNY 200 million;
- ii. The amount of transfer of financial assets exceeds CNY 100 million;
- iii. The amount of transfer of ownership of intangible assets exceeds CNY 100 million;
- iv. The total amount of other related party transactions exceeds CNY 40 million; or
- v. For enterprises with simple functions and limited risks and occurs continuous operating loss, even if it does not meet the threshold of LFs, the enterprise shall prepare the LF.

## Euro Equivalent



## China

EUR 12,873,000.

### From which year does this obligation exist?

The LF is prepared for the year in which the threshold was met or exceeded. The LF shall be maintained on a contemporaneous basis.

### When does the LF need to be available?

The LF shall be prepared before 30 June of the year following the year in which the related party transactions occur.

### When does the LF need to be submitted?

The LF shall be submitted within 30 days upon request by the tax authorities.

### Does the LF have to be prepared in the relevant local language?

Yes. TP documentation should be prepared in Chinese.

### Or is documentation in English permissible?

No.

### What are the possible consequences of not having the LF available?

#### Penalties?

Yes, there are different levels of fines, ranging from less than CNY 10,000 to CNY 50,000.

#### Imprisonment?

No.

### Shifting of the burden of proof?

No.

### Other?

Yes. For failure to submit TP Documentation to tax authorities (upon request) or for submitting false or incomplete information, a tax assessment (by way of a deemed profit rate) can also apply.

### To what 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?

Most consistent with OECD requirements. In addition, China requires to provide the following items:

- › Value chain analysis;
- › Foreign investment;
- › Equity transfer by related parties;
- › Factors that influence transaction pricing, including intangible assets involved in related party transactions and their impact, and special geographical factors such as cost savings, market premiums etc.;
- › Pre agreed pricing arrangements entered into with the tax authorities of any country other than China and tax rulings made by the tax authorities of any country other than China, which are directly related to related party transactions of the enterprise; and
- › Explanation of the contribution of the enterprise towards the group's overall profits or remaining profits.

## 4. Country-by-Country Reporting (CbCR)

### What is the threshold requirement for the obligation to prepare Country-by-Country Reporting?

Resident enterprises which fall under any of the following, shall prepare a CbCR:

- › The Ultimate Parent Entity (“UPE”) of the group, with revenue of CNY 5.5 billion or greater; and
- › A Chinese subsidiary which is delegated by its UPE to submit the CbCR.

### From which year does this CbCR obligation exist?

CbCR is prepared for the year in which the threshold was met or exceeded. It applies for fiscal years as of 2016.

### Are Taxpayers required to notify of CbCR filing in your country?

Yes.

### If yes, when and how do the tax authorities need to be notified?

The notification is to be filed together with the annual corporate income tax return (due 31 May), if a Chinese

## China

company meet the criteria for the CbCR filing. It is possible to apply for an extension.

For fiscal years starting in 2016. It should submit the CbCR simultaneously and notify the reporting entity.

**If the reporting entity (ultimate parent or surrogate parent) is in your country, what is the CbCR submission deadline?**

Before 31 May of the year following the year in which the entity has such obligation.

**Are there any deviating submission deadlines for the secondary mechanism?**

Yes.

OECD: CbCR filed no later than 12 months after the last day of the reporting fiscal year of the MNE group.

China: Before 31 May of the year following the year in which the entity has such obligation.

**Does your country have a requirement that the financial figures of the group need to be aligned with?**

No practical guidance issued to date.

**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?**

CbCR should be submitted to the tax authority in charge, together with the annual CIT tax return.

**How is the CbCR to be submitted, specifically, is there any prescribed standard?**

The CbCR report is submitted in the annual CIT filing via the e-tax system.

**What are the possible consequences of not having the CbCR available?**

**Penalties?**

Yes, different levels of fines, ranging from less than CNY 10,000 to CNY 50,000.

**Imprisonment?**

No.

**Shifting of the burden of proof?**

No.

**Other?**

No.

**To what 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?**

The threshold for CbCR is EUR 750 million according to OECD, whereas CNY 5.5 billion according to China's regulation.

**Did your country sign the Multilateral Competent Authority Agreement on the Exchange of CbCR ("CbCR MCAA")?**

Yes.

**Did your country enter into other information exchange agreements, such as on a bilateral basis?**

Yes.

**Can a Taxpayer in your country fulfil his CbCR requirement by referring to the reporting entity in the same or another country?**

No.

### **5. TP disclosure in tax return or TP specific returns**

**Is there a threshold for Related Party Transactions?**

No.

**Does a Taxpayer need to disclose information regarding TP documentation in his tax return?**

Yes. Related Party Transaction Form delivered in the annual CIT filings indicates TPD prepared or not.

**When a Taxpayer files a tax return for which he understands or should understand that the result**

# China

## **reported in that tax return is too low due to incorrect TP, what could be the legal consequences?**

The tax authorities have the right to determine the taxable amount of income and impose a penalty pursuant to the law.

## **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?**

No practical guidance so far.

## **Does a Taxpayer need to file TP specific returns?**

Yes.

## **Please state the filing form number and name.**

Related Party Transaction Form (22 forms).

## **What would be the filing deadline?**

Before 31 May of the year following the year in which the related party transactions occur.

## **What would be the penalties for non-compliance?**

Penalties (no more than CNY 10,000) should be imposed if the required tax return is not available.

## **6. Benchmarking**

### **Is there any local guidance or requirement with regard to the preparation of a benchmark study?**

Yes. Article 14(4) of SAT Announcement [2016] No. 42 regulates comparable analysis should include the following factors:

- › Factors taken into consideration in comparability analysis, including the characteristics of transaction assets or services, functions, risks and assets of the transaction parties, contract clauses, economic environment, business strategies etc.;
- › The relevant information on functions performed, risks borne, and assets used by comparable enterprises;

- › Method for searching, information source, selection criteria and reason for comparable targets;
- › Selected internal or external comparable uncontrolled transaction information, and financial information of comparable enterprises; and
- › Adjustment of variance in comparable data and the reason.

### **Is there any stated preference for local benchmarks?**

No clear rulings.

### **Are there any materiality thresholds that apply to the requirement to have a benchmark study available?**

No.

## **7. Year-end, secondary, and corresponding adjustments**

### **Are year-end/ secondary/ corresponding adjustments permissible?**

There are no clear rulings about the year-end adjustment. China's customs rules and foreign exchange policies could cause issues in the implementation of the year-end adjustment.

### **Does the Taxpayer have to comply with any specific features or guidance?**

No.

## **8. TP Audit and Dispute Resolution Mechanisms**

### **What are currently the main TP areas of scrutiny by the tax authorities in your country?**

Tax authorities usually focus on enterprises with the following risk characteristics:

- i. Involves related party transactions with a large transaction amount or varied types of related party transactions;
- ii. incurs long term losses, low profits or non-linear profits;
- iii. profit is lower than the industry's level;
- iv. the profit level does not match the functional risks borne, or the earnings shared do not match the costs shared;
- v. carries out related party transactions with related parties located at low tax countries

## China

- (regions);
- vi. fails to declare related party transactions or prepare contemporaneous documentation under the provisions;
  - vii. the ratios of debt investments and equity investments accepted from the related parties exceed the stipulated standards;
  - viii. an enterprise controlled by a resident enterprise or by a resident enterprise and a Chinese resident which is established in a country (region) with an actual tax burden lower than 12.5% does not distribute profit or reduces profit distribution and such non-distribution or reduced distribution is not due to reasonable business needs; or
  - ix. implements other tax planning or arrangements that do not have a reasonable business objective.

### **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?**

Yes.

### **Are there any restrictions?**

An enterprise whose related party transactions exceed CNY 40 million for 3 consecutive years has the opportunity to apply for APA.

Under any of the following circumstances, the tax authorities may decline the APA application:

- a) the tax authorities have implemented case investigation for special tax adjustment on the enterprise or other tax related case investigation, and it is yet to be closed;
- b) the enterprise has not completed and submitted a report on annual related party transactions under the relevant provisions;
- c) the enterprise has not prepared and given contemporaneous documentation under the relevant provisions; or
- d) the tax authorities and the enterprise are unable to arrive at a consensus during the preparatory meeting phase.

# Hong Kong

## 1. Legal Basis

### **Is there a legal requirement to prepare TP documentation?**

Yes, the Amendment Ordinance (Inland Revenue (Amendment) (No. 6) Ordinance 2018, gazetted on 13 July 2018) adopts the OECD's recommended three tiered documentation structure, comprising a MF, a LF and the CbCR based on BEPS Action 13. The Amendment Ordinance codifies TP principles into the Inland Revenue Ordinance (Cap. 112) ("IRO"). The Amendment Ordinance introduced mandatory TP documentation requirements and rules in Hong Kong, where documentation is required to be prepared contemporaneously if the Hong Kong entity meets certain thresholds and is to be submitted upon request.

### **Since when does a TP documentation requirement exist in your country?**

The effective date is the accounting period beginning on or after 1 January 2018 (for CbCR) and 1 April 2018 (for MF and LF).

### **Adoption of the OECD or UN legislation in your country?**

OECD. Hong Kong is a BEPS Associate jurisdiction (announced in June 2016). The Hong Kong TP framework is largely based on the OECD Guidelines, and the IRD generally will not differ from the TP methodologies recommended by the OECD Guidelines.

The Amendment Ordinance specifically references the 2017 OECD Guidelines within the legislation and indicates that the arm's length provision (along with other rules) should be consistently determined in accordance with OECD Guidelines.

### **Is your country a member of the OECD, Inclusive Framework, or other OECD groups (e.g. BEPS)?**

Hong Kong has been an OECD associate since 2016.

### **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?**

Methods include traditional transaction methods (e.g., Comparable Uncontrolled Price ("CUP"); Resale Price method ("RPM"); Cost Plus method ("CPM"), Profit Split ("PS"); and Transaction Net Margin Method ("TNMM").

### **Is there a stated preference for any particular TP methods?**

The most appropriate method should be used.

### **Have the documentation requirements of OECD BEPS Action 13 already been implemented (i.e. the LF, MF and CbCR concepts)?**

Yes, the Amendment Ordinance (Inland Revenue (Amendment) (No. 6) Ordinance 2018, gazetted on 13 July 2018) adopts the OECD's recommended three tiered documentation structure, comprising a MF, a LF and the CbCR based on BEPS Action 13.

### **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 TP: Addition of New Part 9A and Schedule 17I of the Amendment Bill No. 6.

### **Is there any statute of limitation period?**

A Hong Kong entity must retain the files for a period of not less than six years after the end of the accounting period concerned. In the case of fraud or wilful evasion, the statute of limitations is extended to 10 years from the end of the assessment year.

# Hong Kong

## Reference to relevant articles of law, legislative regulation or applicable administrative guidance that are in place for TP documentation in general.

Legislative Council of (Amendment) (No. 6) Bill 2017. The bill was gazetted and became law of Hong Kong on 13 July 2018 which codifies certain TP principles, introduces mandatory TP documentation requirements into the Inland Revenue Ordinance.

## 2. Master File (MF)

### What is the (consolidated revenue) threshold requirement for the obligation to prepare a MF?

Taxpayers engaging in related party transactions will not be required to prepare MFs and LFs if they meet either one of the following exemption criteria:

- (a) Exemption based on size of business (Taxpayer must meet any 2 of 3 conditions below will not be required to prepare MF and LF):
  - (i) total annual revenue not more than HKD 400 million (i.e. EUR 47,202,458 approx.);
  - (ii) total assets not more than HKD 300 million;  
or
  - (iii) not more than 100 employees.
- (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, Taxpayers will not be required to prepare LF for that category of transaction):
  - (i) transfer of properties (other than financial assets and intangibles): HKD 220 million (i.e. EUR 25,961,352 approx.);
  - (ii) transaction of financial assets: HKD 110 million (i.e. EUR 12,980,676 approx.);
  - (iii) transfer of intangibles: HKD 110 million; and
  - (iv) any other transaction (e.g. service income and royalty income): HKD 44 million (i.e. EUR 5,192,270 approx.).

If the enterprise concerned is fully exempted from preparing a LF (i.e. its related party transactions of all categories are below the prescribed thresholds), it will not be required to prepare the MF either.

## Euro Equivalent

See above for the Euro Equivalents.

## From which year does this obligation exist?

From the year in which the threshold is met (so that the MF/LF is prepared for the year in which the threshold was met or exceeded).

## When does the MF need to be available?

Under section 58C(2)(a) of the IRO, a Hong Kong entity must prepare a MF and a LF no later than 9 months after the end of its accounting period. There is no specific date as the end date of the accounting year for Hong Kong entities might be different.

The Hong Kong entity has to declare in the profits tax return and supplementary form S2 whether a master file and a local file have to be prepared. The MF and the LF should be ready for submission upon request by the Assessor.

A Hong Kong entity has to review and update its MF annually.

## When does it need to be submitted?

There is no submission deadline. The MF should be ready for submission upon request by the Inland Revenue Department (“IRD”).

## Does the MF have to be prepared in the relevant local language?

No. Documentation can be prepared either in Chinese or in English.

## Is documentation in English permissible?

Yes.

## What are the possible consequences of not having the MF available?

## Penalties?

Yes, starting at HKD 50,000 (and a court order due to failure to comply without reasonable excuse, escalating to HKD 100,000 for failure to comply with the court order).

## Imprisonment?

## Hong Kong

No.

### Shifting of the burden of proof?

No.

### Other?

No. Although In addition to the TP penalties stated above, the IRD can impose penalties for the broader tax related issues.

### To what 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 prescribed information required to be disclosed in the MF and LF is consistent with the BEPS Action 13 requirements.

### 3. Local File (LF)

#### What is the threshold requirement for the obligation to prepare a LF?

Same as for MF.

#### Euro Equivalent

Same as for MF.

#### From which year does this obligation exist?

Same as for the MF.

#### When does the LF need to be available?

Same as for the MF.

#### When does the LF need to be submitted?

Same as for the MF.

#### Does the LF have to be prepared in the relevant local language?

The TP documentation can be prepared in either Chinese or in English or be readily convertible into English.

#### Or is documentation in English permissible?

Yes, it is required to be in English.

### What are the possible consequences of not having the LF available?

#### Penalties?

Same as for the MF.

#### Imprisonment?

No.

### Shifting of the burden of proof?

No.

### Other?

No, the same as for the MF.

### To what 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?

The prescribed information required to be disclosed in the MF and LF is consistent with the OECD Action 13 requirements.

### 4. Country-by-Country Reporting (CbCR)

#### 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 (i.e. HKD 6.8 billion approx.).

#### Euro Equivalent

EUR 750 million.

#### From which year does this CbCR obligation exist?

For accounting periods on or after 1 January 2018, CbCR is required to be prepared and submitted within 12 months after the end of the UPEs accounting period when there is a CbCR filing obligation (i.e. when the threshold has been met or exceeded).

## Hong Kong

The same preparation and submission deadline applies to all MNEs regardless of the location of their headquarters.

### **Are Taxpayers required to notify of CbCR filing in your country?**

Yes.

### **If yes, when and how do the tax authorities need to be notified?**

A Hong Kong entity of a reportable group is required to give notification on the CbCR for an accounting period. Under normal circumstances, the UPE of the HK MNEs would be the reporting entity. If the UPE 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 a secondary filing obligation.

CbCR notifications are due within 3 months after the end of the reportable group's accounting period. There is no specific date as the end date of the accounting year for the UPEs might be different. CbCR notifications are required to be submitted on a yearly basis.

If an MNE has more than one entity in Hong Kong, one entity can act as the reporting entity and file on behalf of all other entities. The CbCR notification is separately filed, although Hong Kong Taxpayers are required to confirm CbCR compliance in the revised tax returns, from YA19.

### **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 relevant accounting period to which the CbCR.

### **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?**

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.

### **Where is the CbCR to be submitted?**

The CbCR is to be submitted via the CbC Reporting Portal.

### **How is the CbCR to be submitted, specifically, is there any prescribed standard?**

The IRD has developed a data scheme in XML which is based on the CbC Return XML Schema v2.0 issued by the OECD.

### **What are the possible consequences of not having the CbCR available?**

#### **Penalties?**

Yes.

For failure to file or notify CbCR without a reasonable excuse will trigger a fine at level 5 (i.e. HKD 50,000), with a further fine of HKD 500 for every day thereafter under certain conditions, along with a court order. On failure to comply with the court order, the fine will be at level 6 (i.e. HKD 100,000).

For filing misleading, false or inaccurate information, the fine will be at level 5 (i.e. HKD 50,000) and if filed with wilful intent, penalties will be either on summary conviction (i.e., a fine at HKD 10,000 and imprisonment for 6 months) or on conviction on indictment (i.e., a fine at HKD 50,000 and imprisonment for 3 years).

These penalties related to CbCR apply to directors and key officers as well as service providers engaged by the reporting entity.

#### **Imprisonment?**

Yes.

For filing misleading, false or inaccurate information, the fine will be at level 5 (i.e. HKD 50,000) and if filed



## Hong Kong

with wilful intent, penalties will be either on summary conviction (i.e., a fine at HKD 10,000 and imprisonment for 6 months) or on conviction on indictment (i.e., a fine at HKD 50,000 and imprisonment for 3 years).

These penalties related to CbCR apply to directors and key officers as well as service providers engaged by the reporting entity.

### Shifting of the burden of proof?

No.

### Other?

In addition to the TP penalties stated above, the IRD can impose penalties for the broader corporate tax related issues.

### To what 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 CbCR ("CbCR MCAA")?

Yes, Hong Kong signed the CbC MCAA on 26 July 2018.

### Did your country enter into other information exchange agreements, such as on a bilateral basis?

Yes, Hong Kong has entered into bilateral arrangements with the following countries:

- (i) Austria, the CbCR for first exchange is applicable for 2017;
- (ii) Canada, the CbCR for first exchange is applicable for 2017;
- (iii) France, the CbCR for first exchange is applicable for 2016;
- (iv) Guernsey, the CbCR for first exchange is applicable for 2017;
- (v) Indonesia, the CbCR for first exchange is applicable for 2017;
- (vi) Ireland, the CbCR for first exchange is applicable for 2016;
- (vii) Italy, the CbCR for first exchange is applicable for 2018;
- (viii) Japan, the CbCR for first exchange is applicable

- for 2017;
- (ix) Jersey, the CbCR for first exchange is applicable for 2017;
- (x) Korea, the CbCR for first exchange is applicable for 2017;
- (xi) Latvia, the CbCR for first exchange is applicable for 2018;
- (xii) Malta, the CbCR for first exchange is applicable for 2017;
- (xiii) Mexico, the CbCR for first exchange is applicable for 2017;
- (xiv) the Netherlands, the CbCR for first exchange is applicable for 2017;
- (xv) New Zealand, the CbCR for first exchange is applicable for 2017;
- (xvi) Portugal, the CbCR for first exchange is applicable for 2017;
- (xvii) Russia, the CbCR for first exchange is applicable for 2017;
- (xviii) South Africa, the CbCR for first exchange is applicable for 2016; and
- (xix) the United Kingdom, the CbCR for first exchange is applicable for 2016.

### 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 TP specific returns

### Is there a threshold for Related Party Transactions?

Form S2 needs to be completed where:

- (a) Taxpayer has transactions with non resident associated persons; or
- (b) Taxpayer had entered into an advance pricing arrangement with the Commissioner; or
- (c) Taxpayer belonged to a multinational enterprise group ("**MNE Group**") which has the obligation to file CbCR in Hong Kong or elsewhere; or
- (d) Taxpayer is a constituent entity of a multinational enterprise group with a total consolidated group revenue of at least EUR750 million, or an equivalent amount as at the accounting period end date, for the immediate preceding accounting period.

### Does a Taxpayer need to disclose information regarding TP documentation in his tax return?

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Yes, the IRD requires Taxpayers to disclose certain related party information (i.e., the location of the non-resident associated persons) and confirm their TP documentation compliance in the profits tax return BIR 51 and form Supplementary form S2 (TP).

### **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 TP, what could be the legal consequences?**

Penalties would be imposed where a tax return was filed with incorrect information on TP without a reasonable, rationale or with the intent to evade tax. Taxpayers will be liable for an administrative penalty, calculated as an additional tax not exceeding the amount of tax undercharged. Section 82A(1G) provides that no additional tax should be imposed on a Taxpayer who proves reasonable efforts have been made to determine the arm's length amount.

It is worth noting that the IRD has not ruled out the possibilities of imposing more stringent penalties or initiating criminal prosecutions on blatant cases in accordance with relevant provisions of the IRO. The availability of TP documentation alone will not qualify for an exemption from penalties, but will be considered in determining whether individual Taxpayers have a "reasonable excuse" to be exempt from the penalties.

### **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, other than those mentioned.

### **Please state the filing form number and name.**

IRD announced on 23 January 2019 a revised profits tax return for corporations (i.e., BIR51 and a set of new Supplementary Forms S1 to S10).

From YA19, Hong Kong Taxpayers are required to disclose certain related party information (i.e., the location of the non-resident associated persons) and

confirm their TP documentation compliance in the BIR51 and Supplementary Form S2, TP.

Form S2 is an additional form to the profits tax return for TP purposes. In addition, having declared the obligation to prepare Master File and Local File in the Supplementary Form S2 of the profits tax return, selected Taxpayers may be requested to complete Form IR1475, TP Documentation — Master File and Local File, electronically and submit it to the IRD within one month upon receipt of the request.

### **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 an accounting period that falls between (i) 1 Dec to 31 Dec and (ii) 1 January to 31 March respectively.

### **What would be the penalties for non-compliance?**

The IRD may impose penalty, Estimated Assessment or even prosecution against any Taxpayer who without reasonable excuse fails to furnish a return in time. In this regard, the offence is subject to a fine in the amount of HKD 10,000 and a further fine of triple the amount of the tax undercharged. In addition, the Court may order the convicted Taxpayer to furnish the return within a specified time.

## **6. Benchmarking**

### **Is there any local guidance or requirement with regard to the preparation of a benchmark study?**

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 benchmarking analysis should be part of the Local File, which should include:

- › Selection of the most appropriate TP method/tested party and reasons for the same;
- › Important assumptions made in applying the TP method;

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- › 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; and
- › Financial information used in applying the TP methodology.

### Is there any stated preference for local benchmarks?

The quality of comparable data is more important than the number of comparables identified. DIPN 59 suggests that Hong Kong comparables should be considered in the first instance. If there are no Hong Kong comparables, or the potential Hong Kong comparable companies identified are not applicable, then it may be necessary to consider using comparables from other jurisdictions.

Appropriately selected overseas data is accepted by the IRD. Jurisdictions recognised as Hong Kong's closest reference jurisdictions in terms of demographics, size of economy and stage of economic development should be considered.

### Are there any materiality thresholds that apply to the requirement to have a benchmark study available?

Yes. The same thresholds relevant for Master File and Local File apply. The same or similar market principle is important.

### 7. Year-end, secondary, and corresponding adjustments

#### Are year-end/ secondary/ corresponding adjustments permissible?

Yes.

#### Does the Taxpayer have to comply with any specific features or guidance?

No, not specified.

### 8. TP Audit and Dispute

### 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 intragroup services/management fees), financial transactions, royalties etc.

Other scenarios in which a tax audit may be triggered include:

- › fluctuating profit margins,
- › if the accounts of a business are heavily qualified,
- › profits or turnover are deemed unreasonably low,
- › filing of tax returns is persistently delayed or omitted,
- › business records are not properly maintained, or
- › requested information is not provided.

### 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, there is an APA program available in Hong Kong. The APA program will cover unilateral, bilateral and multilateral agreements.

### Are there any restrictions?

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 HKD80 million for sale and purchase of goods, HKD40 million for services, or HKD20 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.

Typical information/documentation required to be set out in an APA case plan includes:

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- (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.

# India

## 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.

**Adoption of the OECD or UN legislation in your country?**

Yes.

**Is your country a member of the OECD, Inclusive Framework, or other OECD groups (e.g. BEPS)?**

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?**

The TP methods prescribed in the regulations are Comparable Uncontrolled Price (“**CUP**”); Resale Price method (“**RPM**”); Cost Plus method (“**CPM**”), Profit Split (“**PS**”); and Transaction Net Margin Method (“**TNMM**” and Other methods).

**Is there a stated preference for any particular TP methods?**

There is no preference for any particular TP Method. Selection of the most appropriate method based on facts of the case.

**Have the documentation requirements of OECD BEPS Action 13 already been implemented (i.e. the LF, MF and CbCR concepts)?**

The MF and CbCR are implemented and the OECD LF is not implemented. However, a local variation of LF similar to the LF contents of OECD is implemented.

**Reference to documentation and statements of local-government or tax authorities regarding OECD BEPS implementation status**

1. Local file: Section 92D of Income Tax Act 1961 (Act) read with Rule 10D of Income Tax Rules, 1962 (Rules).
2. CbCR: Section 286 of the Act read with Rule 10DB.
3. Master File: Section 92D(1) & (4) of the Act read with Rule 10DA.

**Is there any statute of limitation period?**

The statute of limitations under the Income tax Act is as under:

1. For filing of an Accountant's Report (in Form 3CEB) is 7 months from the end of the relevant tax year (i.e., 31 October).
2. For completion of tax assessment is 9, 12, 18, 21, or 24 months (the time limit to be increased by another 12 months if the case involves TP matter) from the end of the relevant assessment year.
3. For completion of tax reassessment ranges from 3 to 10 years from the end of the relevant assessment year.

**Reference to relevant articles of law, legislative regulation or applicable administrative guidance that are in place for TP documentation in general.**

1. Local file: Section 92D of Income Tax Act 1961 (Act) read with Rule 10D of Income Tax Rules, 1962 (Rules).

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2. CbCR: Section 286 of the Act read with Rule 10DB.
3. Master File: Section 92D(1) & (4) of the Act read with Rule 10DA.

### 2. Master File (MF)

#### What is the (consolidated revenue) threshold requirement for the obligation to prepare a MF?

The threshold is set at two levels:

1. Consolidated Group Revenue of INR 5 billion & above; and
2. Aggregate value of the international transactions during the year exceeds INR 500 million; or
3. Aggregate value of the international transaction in respect of purchase/sale/transfer/lease or use of Intangible Property during the year exceeds INR 100 million.

#### Euro Equivalent

EUR 55,783,050.

#### From which year does this obligation exist?

Financial year starting from 1 April 2016.

#### When does the Master File need to be available?

By the filing due date for the filing of the return of income i.e. on or before 30 November of the relevant assessment year.

#### When does it need to be submitted?

Same as above.

#### 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 what 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 MF as prescribed in Rule 10DA are mostly in line with the OECD standard.

### 3. Local File (LF)

#### What is the threshold requirement for the obligation to prepare a LF?

If the value of international transactions with associated enterprise exceeds INR10 million.

#### Euro Equivalent

EUR 111,568.

#### From which year does this obligation exist?

Financial Year 2001-02.

#### When does the LF need to be available?

The LF shall be maintained on a contemporaneous basis and shall be available 1 month prior to the filing of return of income i.e. on or before 31 October of the relevant assessment year.

#### When does the LF need to be submitted?

The LF shall be filed with the tax office upon request/ notice from them, usually filed during the course of tax assessment/ audit.

#### Does the LF have to be prepared in the relevant local language?

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No.

**Or is documentation in English permissible?**

Yes. In practice, all the Taxpayers prepare the LF/ 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 what 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 a 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.

#### **4. Country-by-Country Reporting (CbCR)**

**What is the threshold requirement for the obligation to prepare Country-by-Country Reporting?**

INR 64 billion (i.e. EUR 714.05 million approx.) consolidated revenue in the previous year.

**From which year does this CbCR obligation exist?**

Financial year starting from 1 April 2016.

**Are Taxpayers required to notify of CbCR filing in your country? If yes, when and how do the tax authorities need to be notified?**

Yes. The Taxpayer shall inform the income tax authority in the prescribed form the details of the entity that is filing the CbCR, on or before 2 months from the due date of filing the tax return.

**If the reporting entity (ultimate parent or surrogate parent) is in your country, what is the CbCR submission deadline?**

The period for furnishing the report shall be 12 months from the end of the reporting accounting year, i.e. 31st March of the succeeding accounting year.

**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. The source of data considered for preparing the CbCR should be consistently followed year on year. In case of a change in source data, the same needs to be mentioned in Table 3 / Notes to the CbCR.

**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?**

The CbCR related Forms need to be electronically uploaded to:

<https://www.incometax.gov.in/iec/foportal/>.

**How is the CbCR to be submitted, specifically, is there any prescribed standard?**

Electronic filing using the Digital Signature of the person authorised to sign the tax return of the legal entity.

**What are the possible consequences of not having the CbCR available?**

**Penalties?**

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Yes.

### Imprisonment?

No.

### Shifting of the burden of proof?

Yes.

### Other?

Yes.

### To what 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 CbCR ("CbCR MCAA")?

Yes.

### Did your country enter into other information exchange agreements, such as on a bilateral basis?

Yes.

### 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

#### Is there a threshold for Related Party Transactions?

There is no threshold for international transactions. However, in case of "specified domestic transactions", reporting is required only if the aggregate value of such transactions exceeds INR 200 million.

#### Does a Taxpayer need to disclose information regarding TP documentation in his tax return?

Yes. The Taxpayer is required to disclose in the tax return whether the TP provisions are applicable and if

yes, the date of filing of an Accountant's Report in the prescribed form.

#### 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 TP adjustment) and also penalty as mentioned in Para 3 above. Further, the TP 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 a penalty of INR 10,000 (i.e. EUR 111.57 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 92E of the act.

#### What would be the filing deadline?

October 31 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 (i.e. EUR 1,115.7 approx.).

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 the



## India

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 6 methods. The benchmarking exercise is part of the TP Documentation Report as prescribed in section 92D of the Act read with Rule 10D of the Rules.

**Is there any stated preference for local benchmarks?**

Not in the regulations. However, the tax authorities may expect the comparables from local jurisdictions.

**Are there any materiality thresholds that apply to the requirement to have a benchmark study available?**

Yes. TP Study Report need to be prepared only if the value of the international transaction exceeds INR10 million.

### 7. Year-end, secondary, and corresponding adjustments

**Are year-end/ secondary/ corresponding 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), notional interest on outstanding receivables, 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?**

The detailed rule for filing APA is given in Rule 10F to 10T and Rule 44GA. Taxpayers can apply for an APA covering any or all current/ future transactions without any threshold limit.

Further, the Tax office has the power to cancel an APA in the following situations:

- › If the applicant has failed to comply with the terms of the agreement;
- › If there is a failure to file the annual compliance report within the stipulated timeline;
- › There are material errors in the annual compliance report filed by the applicant; or
- › If the applicant is in disagreement with the proposed revision in the APA or effect cannot be given to the rollback provision of the agreement for any rollback year on account of failure on the part of the applicant.

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 a regular detailed TP audit will take place accordingly.

# Indonesia

## 1. Legal Basis

### **Is there a legal requirement to prepare TP documentation?**

Indonesian TP Guidelines are currently regulated with MoF 172/2023 (referred to as Indonesia TP Omnibus Law) which combines various regulations related to TP, MAP, and APA, including providing clarification and improving old provisions from MoF 213/2016, MoF 49/2019, and MoF 22/2022.

### **Since when does a TP documentation requirement exist in your country?**

2010.

### **Adoption of the OECD or UN legislation in your country?**

OECD.

### **Is your country a member of the OECD, Inclusive Framework, or other OECD groups (e.g. BEPS)?**

Indonesia is a member of the OECD/G20 Inclusive Framework on BEPS.

### **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?**

Indonesia TP Methods consist of: Comparable Uncontrolled Price (“CUP”); Resale Price method (“RPM”); Cost Plus method (“CPM”), Profit Split (“PS”); and Transaction Net Margin Method (“TNMM”), Comparable Uncontrolled Transaction; Tangible asset and intangible asset valuation; and Business valuations.

Currently regulated in MoF 172/2023 Article 9 para. 2.

### **Is there a stated preference for any particular TP methods?**

The most appropriate method should be used.

### **Have the documentation requirements of OECD BEPS Action 13 already been implemented (i.e. the LF, MF, and CbCR concepts)?**

Yes. LF, MF and CbCR have been implemented.

### **Reference to documentation and statements of local government or tax authorities regarding OECD BEPS implementation status**

Currently regulated in MoF 172/2023.

### **Is there any statute of limitation period?**

There is no separate statute of limitations for TP. The statute of limitations for TP assessments will follow the statute of limitations for tax.

Under Indonesian tax law, the DGT is permitted to conduct a tax audit and issue an underpayment tax assessment of the arm’s length nature of related party transactions, within 5 years of the relevant Fiscal Year.

The statute of limitation will be extended to 10 years in the case of the conduct of a tax fraud/tax crime.

### **Reference to relevant articles of law, legislative regulation, or applicable administrative guidance that are in place for TP documentation in general.**

Income Tax Law number 7 Year 1983 last amended by Harmonisation Tax Law number 7 Year 2021.

TP guidelines provide that documents for the determination of fair price or fair profit must be made available by the Taxpayer is previously regulated within MoF 213/2016, PER 32/2011, and PER 43/2010 currently regulated within MoF 172/2023.

# Indonesia

The guidelines for TP Audit are still the same.

APA was previously regulated within MoF 22/2020 and is currently regulated within MoF 172/2023.

The exchange of information for MAP and APA which is regulated in Circular number SE - 16/PJ/2017 about the request for information and/or proof regarding related financial information for tax purposes is still valid.

## 2. Master File (MF)

### **What is the (consolidated revenue) threshold requirement for the obligation to prepare a MF?**

MF is required if the Taxpayer meets certain thresholds in the previous fiscal year.

The thresholds are as follows: affiliated party transaction and:

- (i). gross revenue above IDR 50 billion;
- (ii). tangible goods affiliated party transaction above IDR 20 billion;
- (iii). transactions of intangible goods affiliated party transaction above IDR 5 billion; or
- (iv). any amount of affiliated party transaction with an affiliated party in a tax jurisdiction with a tax rate lower than the Indonesian corporate tax rate of 25%.

Point (i) to point (iii) is the threshold for the previous year while point (iv) is for the related fiscal year.

### **Euro Equivalent**

EUR 3,186,500.

### **From which year does this obligation exist?**

Applies for fiscal years beginning on or after 1 January 2016 with the previous year threshold.

### **When does the MF need to be available?**

The MFs must be available at the latest of 4 months of the end of the relevant tax year. However, the MF is not necessary to be filed with the tax return. It is based on the request from the tax office.

### **When does it need to be submitted?**

With the enactment of MoF 172/2023, MF must be available when requested by DGT 1 month upon request in the context of tax compliance monitoring and tax audit (Article 34).

### **Does the MF have to be prepared in the relevant local language?**

Yes, it is mandatory to prepare MF in Bahasa.

### **Is documentation in English permissible?**

No.

### **What are the possible consequences of not having the MF available?**

#### **Penalties?**

Yes.

#### **Imprisonment?**

No.

#### **Shifting of the burden of proof?**

No.

#### **Other?**

No.

### **To what 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.

## 3. Local File (LF)

### **What is the threshold requirement for the obligation to prepare a LF?**

Thresholds are the same as for the MF, and the LF is required if the Taxpayer meets certain thresholds in the previous year. The thresholds are affiliated party transaction and:

- (i). gross revenue above IDR 50 billion;
- (ii). tangible goods affiliated party transaction above IDR 20 billion;

## Indonesia

- (iii). transactions of intangible goods affiliated party transaction above IDR 5 billion; or
- (iv). any amount of affiliated party transaction with an affiliated party in a tax jurisdiction with a tax rate lower than the Indonesian corporate tax rate of 25%.

Point (i) to point (iii) is the threshold for the previous year while point (iv) is for the related fiscal year.

### **Euro Equivalent**

EUR 2,971,940.

### **From which year does this obligation exist?**

LF is required if the Taxpayer meets certain thresholds as mentioned above in the previous year. Applies for fiscal years beginning on or after 1 January 2016.

### **When does the LF need to be available?**

The LF must be available at the latest of 4 months of the end of the relevant tax year. The LF is not to be filed with the tax return. However, the LF is not necessary to be filed with the tax return. It is based on a request from the tax office.

### **When does the LF need to be submitted?**

With the enactment of MoF 172/2023, LF must be available when requested by DGT 1 month upon request in the context of tax compliance monitoring and tax audit (Article 34).

### **Does the LF have to be prepared in the relevant local language?**

Yes, based on regulation, the documentation should be in Bahasa.

### **Is documentation in English permissible?**

Yes. The English version is usually only for internal reports in the company's group.

### **What are the possible consequences of not having the LF available?**

### **Penalties?**

Yes.

### **Imprisonment?**

No.

### **Shifting of the burden of proof?**

No.

### **Other?**

No.

### **To what 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?**

The deadline for LF and MF for availability is 4 months after the end of the Fiscal Year. The responsibility of providing MF is merged with LF, instead of the CbCR.

## **4. Country-by-Country Reporting (CbCR)**

### **What is the threshold requirement for the obligation to prepare Country-by-Country Reporting?**

If the Taxpayer is the UPE, under PMK 172/2023, where gross revenue is IDR 11 trillion or greater in the prior year, the CbCR should be prepared, with no restriction for only MNE companies. Local companies with consolidated gross revenue of IDR11 T are also required to prepare CbCR.

### **Euro Equivalent**

EUR 750 million.

### **From which year does this CbCR obligation exist?**

For fiscal years starting from 1 January 2016.

### **Are Taxpayers required to notify of CbCR filing in your country?**

Yes.

### **If yes, when and how do the tax authorities need to be notified?**

CbCR filing regulation which was previously stipulated in MoF 213/2016 and PER 29/2017 is currently regulated within PMK 172/2023 in section IV.

## Indonesia

The threshold and requirement are as above. The Indonesian Taxpayer with a related party transaction is required to submit a notification to the DGT to acknowledge whether it is required to provide the CbCR and which entity is appointed as a surrogate parent, using the standardised form in PMK 172/2023.

The notification should be submitted at the latest by:

- a) 16 months after the end of a tax year for the 2016 Tax Year; or
- b) 12 months after the end of a tax year for the 2017 Tax Year onwards.

**If the reporting entity (ultimate parent or surrogate parent) is in your country, what is the CbCR submission deadline?**

The CbCR together with notification should be submitted by:

- a) 16 months after the end of a tax year for the 2016 Tax Year; or
- b) 12 months after the end of a tax year for the 2017 Tax Year onwards.

The receipt of CbCR and Notification will be attached to the next fiscal year corporate tax return.

**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?**

No.

**Where is the CbCR to be submitted?**

Currently, based on MoF 172/2023, CbCR is required to be submitted electronically to the Indonesian DGT through the Taxpayer tax portal (Article 23 para.2).

**How is the CbCR to be submitted, specifically, is there any prescribed standard?**

CbCR is to be submitted with the notification before submission of Corporate Income Tax. The receipt will be attached to the Corporate Income Tax based on the Regulation of Directorate General of Tax number

29/PJ/2017. The CbCR is submitted in the prescribed digital format (XML file).

For primary and secondary filing rule: Submissions are to be made as attachments to the next fiscal year corporate tax return. The companies may not need to submit the CbCR in the primary filing mechanism if Indonesia and the countries in which the UPE resides are conducting AEOI and the EOI is already active.

**What are the possible consequences of not having the CbCR available?**

**Penalties?**

Yes, the tax office will still receive the CIT return submission without CbCR receipt but may consider it incomplete, resulting in a penalty of IDR 1 million.

Under current regulation (Law number 7 Year 2021), if the Tax Authority issues a reprimand letter regarding the request by CbCR, DGT may issue an Underpaid Tax Assessment Letter with a penalty based on MoF monthly interest rate with a maximum of 24 months.

**Imprisonment?**

No.

**Shifting of the burden of proof?**

No.

**Other?**

No.

**To what 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?**

Indonesia required an additional form (working paper of CbCR) which contains the details data per entity of forms CbC 1 and 2.

**Did your country sign the Multilateral Competent Authority Agreement on the Exchange of CbCR ("CbCR MCAA")?**

Yes, it was signed on 26 January 2017.

# Indonesia

## Did your country enter into other information exchange agreements, such as on a bilateral basis?

Yes.

## 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 the tax return or transfer pricing specific returns

### Is there a threshold for Related Party Transactions?

Based on MoF 172/2023, there is a materiality limit for preparing TP documentation. If the Taxpayer conducts a related party transaction and:

- › Has gross revenues of more than IDR 50 billion (i.e. USD 3.7 million approx.) in the prior Fiscal Year;
- › Conducts related party transactions in the prior Fiscal Year with a value of:
  - More than IDR 20 billion (i.e. USD 1.4 million approx.) for tangible goods transactions; or
  - More than IDR 5 billion (i.e. USD 372,000 approx.) for each service, interest payment, utilisation of intangible properties or other affiliated transactions;
- › Conducts transactions with related parties that are located in countries or jurisdictions with income tax rates lower than the Indonesian corporate income tax rate, as specified in Article 17 of Income Tax Law No. 7 of 1983 as last amended by Law Number 7 Year 2021.

### Does a Taxpayer need to disclose information regarding TP documentation in his tax return?

Yes, it is currently regulated in MoF 172/2023. The form is Form 3A in the Tax return.

### 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 TP, what could be the legal consequences?

The summary as regulated in MoF Regulation Number 172/2023 must be submitted at the latest of 4 months

after the end of the relevant tax year, as an attachment of the Tax Return.

There is no specific regulation for this condition. the Indonesian Tax Office may proceed to review the affiliated party transaction in tax audit which will resulted in an interest penalty on underpayment based on the MoF monthly interest rate with a maximum of 24 months.

### 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?

There is no specific regulation for this condition.

### Does a Taxpayer need to file TP specific returns?

No.

### Please state the filing form number and name.

Disclosures related to TP must be attached to the CITR (Form 3A/3B and Summary Form).

### What would be the filing deadline?

The corporate income tax return filing deadline is 4 months after the Fiscal Year-end.

### What would be the penalties for non-compliance?

If the incorrect information results in an incorrect calculation of taxable income, it will subject the Taxpayer to a tax penalty based on the interest rate per month according to the referenced interest rate (maximum 24 months) of the tax liability. In certain conditions, an uplift factor of 20% can be imposed on such interest rates.

## 6. Benchmarking

### Is there any local guidance or requirement about the preparation of a benchmark study?

Yes. PER-22 authorises the use of public data (either foreign or domestic) commercial databases, the London Metal Exchange, and other databases for external comparables.

## Indonesia

In practice, the Indonesian tax authorities generally use the BvD database, including Osiris and Oriana. Other guidance include:

- › steps to identify the characteristics of the transaction;
- › steps to identify the entity characterisation.
- › the financial ratio;
- › the methods to be used;
- › provide the tools of FAR analysis and comparability analysis;
- › explanation of related party transactions (intragroup services, intangible property, loan); and
- › explanation of primary, secondary, and corresponding adjustment).

### Is there any stated preference for local benchmarks?

Local and ASEAN region comparables are preferred; however, if not available, Asia Pacific regional comparables may be accepted.

### Are there any materiality thresholds that apply to the requirement to have a benchmark study available?

Yes (same as above).

### 7. Year-end, secondary, and corresponding adjustments

#### Are year-end/ secondary/ corresponding adjustments permissible?

Yes.

#### Does the Taxpayer have to comply with any specific features or guidance?

Under the current regulation of MoF 172/2023, there is some guidance related to secondary and corresponding adjustments.

#### Secondary adjustment:

If a difference is found between the value of Transactions with Affiliated Parties which is not under the ALP and the value of transactions under the ALP, the DGT has the authority to determine the distribution of profits indirectly to Affiliated Parties which are treated as dividend.

The above provisions do not apply in the case where:

- i. There is an addition and/or refund of cash or cash equivalents in the amount of the difference before the issuance of the tax assessment letter; or
- ii. The Taxpayer approves the transfer price determination by the DGT.

#### Corresponding adjustment:

If there is a transfer price determination by the DGT through a tax audit or adjustment of TP determination by the tax treaty partner on foreign Taxpayers, domestic Taxpayers who are counterparties to the transaction can make corresponding adjustments.

Corresponding adjustments can be made in the case of domestic Taxpayers whose transfer prices are determined by the DGT:

- i. approve the determination of the transfer price by the DGT; and
- ii. does not submit legal action regarding the tax assessment letter regarding the material for determining the transfer price by the DGT.

If the counterparty is a foreign Taxpayer, the corresponding adjustment is done through the MAP.

If the counterparty is a local Taxpayer, the corresponding adjustment is done through the amendment of the CIT return, or the issuance of the tax assessment letter, or the amendment of the tax assessment letter.

### 8. TP Audit and Dispute Resolution Mechanisms

#### What are currently the main TP areas of scrutiny by the tax authorities in your country?

Intercompany financing, intangible property, losses, and compliance with OECD BEPS.

In addition, preliminary assessments are currently included in the main TP areas of scrutiny by the tax authorities on benefit tests of the existence of the service and non-duplicating service.

#### Based on your experience, are joint or multilateral audits initiated and carried out?

No.

## Indonesia

**Does the Taxpayer have the option to apply for bilateral or multilateral APAs?**

Yes.

**Are there any restrictions?**

Currently, APA is regulated in MoF regulation number 172/2023 and the maximum APA period is 5 Tax Years after the year the APA application is submitted.



# Japan

## 1. Legal Basis

### Is there a legal requirement to prepare TP documentation?

Yes.

### Since when does a TP documentation requirement exist in your country?

An amendment to the Special Taxation Measures Law ("STML"), which became effective on April 1, 2010, clarified the requirements for TP documentation in Japan.

Before the amendment, TP documentation requirements had an implied rather than a legal basis.

### Adoption of the OECD or UN legislation in your country?

OECD.

### Is your country a member of the OECD, Inclusive Framework, or other OECD groups (e.g. BEPS)?

Japan is a member of the OECD/G20 Inclusive Framework on BEPS.

### Are TP policies of multinational enterprises in principle accepted by the tax authorities, if they are in line with the OECD TP Guidelines?

Yes. In practice, however, the OECD Guidelines are interpreted and implemented according to Japan's own TP legislation.

### Which TP methods may be applied?

TP methods include the Comparable Uncontrolled Price ("CUP"); Resale Price method ("RPM"); Cost Plus method ("CPM"), Profit Split ("PS"); and Transaction Net Margin Method ("TNMM") and Discounted Cash Flow methods).

### Is there a stated preference for any particular TP methods?

There is no hierarchy of TP methods. The most appropriate method should be used considering the nature of the foreign related transactions and the functions of the parties involved.

### Have the documentation requirements of OECD BEPS Action 13 already been implemented (i.e. the LF, MF and CbCR concepts)?

Yes. In Japan, Taxpayers may be required to submit a LF, notification for the UPE ("NUPE"), CbCR and MF.

### Reference to documentation and statements of local-government or tax authorities regarding OECD BEPS implementation status

The STML was revised in fiscal year 2016 based on the recommendations of the OECD's BEPS Project. A Taxpayer is required to prepare and maintain a LF for all intragroup transactions, except if the transaction amount is less than JPY 5 billion and the intangible transaction value is less than JPY 300 million (Article 66-4-6, STML).

All Japanese corporations and foreign corporations with PEs that are a member of a multinational enterprise (MNE) group, are also required to file a notification of UPE (NUPE), CbCR (Article 66-4-4, STML) and MF (Article 66-4-5, STML) if they are part of a MNE group with revenue exceeding EUR750 million or JPY100 billion in the immediately fiscal preceding year.

### Is there any statute of limitation period?

Japanese LFs must be preserved for 7 years from the deadline for submission of final tax returns. For TP assessments, the statute limitation is 6 years from the due date of filing a tax return; For tax fraud, the statute of limitation is 7 years.

# Japan

## Reference to relevant articles of law, legislative regulation or applicable administrative guidance that are in place for TP documentation in general.

STML, Articles 66-44 and 68-88.

Special Taxation Measures Law Enforcement Ordinance, Article 22-10 and 22-74.

Special Taxation Measures Law Enforcement Order, Articles 39-12 and 39-112.

Special Taxation Measures Law Circular, Article 66-4.

Commissioner's Directive on the Operation of TP.

Commissioner's Directive on the Operation of TP for Consolidated Taxpayers.

Commissioner's Directive on Mutual Agreement Procedures.

## 2. Master File (MF)

### What is the (consolidated revenue) threshold requirement for the obligation to prepare a MF?

JPY 100 billion in the immediate fiscal preceding year.

### Euro Equivalent

EUR 750 million.

### From which year does this obligation exist?

The MF must be prepared in accordance with ultimate parent entity's fiscal year starting on or after 1 April 2016.

### When does the MF need to be available?

The MF must be submitted to the competent District Director via e-tax within one year following the close of the ultimate parent entity's fiscal year to which the report relates.

### When does it need to be submitted?

The MF must be submitted electronically to the competent District Director via e-tax system within one year following the close of the UPE's fiscal year to which the report relates.

### Does the MF have to be prepared in the relevant local language?

Japanese or English (Article 22-10-5, Paragraph 2 of the Special Taxation Measures Law Enforcement Ordinance).

### Is documentation in English permissible?

Yes, English is permissible.

### What are the possible consequences of not having the MF available?

#### Penalties?

Yes, a fine of up to JPY300,000 if a corporation fails to submit a MF to the District Director by the deadline without good reason (Article 66-4-5, Paragraph 3, STML).

#### Imprisonment?

No.

#### Shifting of the burden of proof?

Yes. Theoretically, the burden of proof rests with the government to prove that the price charged in an intragroup transaction was not an arm's length price. However, this burden can be shifted to the Taxpayer if the Taxpayer fails to prove any requested documents in a timely manner.

#### Other?

No.

### To what 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?

MF is consistent with Annex I to Chapter V of the OECD TP Guidelines ("TPG").

## 3. Local File (LF)

### What is the threshold requirement for the obligation to prepare a LF?

A Taxpayer is required to prepare and maintain a LF for all controlled transactions amounting to JPY5 billion or

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more for the preceding fiscal year, or for transactions of intangibles amounting to JPY300 million or more for the preceding fiscal year by the deadline for submission of final returns (duty of contemporaneous documentation) (Article 66-4-6, STML).

### Euro Equivalent

Controlled transactions: EUR 3,0650,000.  
Intangible transactions: EUR 1,839,000.

### From which year does this obligation exist?

Fiscal years commencing on or after 1 April 2017.

### When does the LF need to be available?

By the deadline for submission of final returns (duty of contemporaneous documentation). The LF must be stored in the Japanese offices of corporations engaged in Controlled Transactions for 7 years from the deadline date for submission of final returns (Article 22-10, para. 2, Special Taxation Measures Law Enforcement Ordinance).

### When does the LF need to be submitted?

The LF must be submitted no later than the date designated by the tax examiner which must be within 45 days (60 days if contemporaneous documentation is not required) from the date of request.

### Does the LF have to be prepared in the relevant local language?

If the LF is prepared in a language other than Japanese, the tax authorities may request the corporation to submit a Japanese translation.

### Or is documentation in English permissible?

A file may be prepared in English, but the tax authorities may request a Japanese translation.

### What are the possible consequences of not having the LF available?

### Penalties?

There are no penalties for failing to prepare the LF contemporaneously or for failing to submit it within the period requested by a tax examiner during an audit. However, if the LF is not submitted in a timely manner,

the tax authorities have the right to conduct their own analysis and reach their own conclusions using tax estimation and/or secret comparables.

### Imprisonment?

No.

### Shifting of the burden of proof?

Yes. Theoretically, the burden of proof rests with the government to prove that the price charged in an intragroup transaction was not an arm's length price. However, this burden can be shifted to the Taxpayer if the Taxpayer fails to provide any requested documents in a timely manner.

### Other?

No.

### To what 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?

The LF is consistent with Annex II to Chapter V of the OECD TP Guidelines ("TPG").

## 4. Country-by-Country Reporting (CbCR)

### What is the threshold requirement for the obligation to prepare Country-by-Country Reporting?

JPY 100 billion in the immediate fiscal preceding year.

### Euro Equivalent

EUR 750 million.

### From which year does this CbCR obligation exist?

Fiscal years commencing on or after 1 April 2016.

### Are Taxpayers required to notify of CbCR filing in your country?

Yes.

### If yes, when and how do the tax authorities need to be notified?

Japanese Corporations that are Constituent Entities of a Specified MNE Group (limited to those that fall into

## Japan

the category of Ultimate or Surrogate Parent Entities) must submit CbCR to the competent District Director via e-Tax within one year following the close of the ultimate parent entity's fiscal year to which the report relates (Article 66-4-4 Paragraph 1, SMTL). In this case, the CbCR is transmitted to the tax authorities in the country where the Constituent Entity resides according to the information exchange system based on Tax treaties ("**Direct Filing**").

If the ultimate or surrogate parent entity is located in a foreign country, Japanese corporations and foreign corporations with PE that are constituent entities of a specified MNE Group do not have to submit a CbCR because the information equivalent to the CbCR submitted by the ultimate or surrogate parent entity to the tax authorities in the country where it resides is transmitted by the tax authorities to the national tax authorities in Japan.

However, if the tax authorities in the country in which the ultimate or surrogate parent entity resides are considered as unable to transmit the CbCR to Japan, Japanese corporations or foreign corporations with a PE that is a Constituted Entity of a Specified MNE Group must submit a CbCR to the competent District Director via e-Tax within one year following the close of the ultimate parent entity's fiscal year to which the report relates ("**Local Filing**").

### **If the reporting entity (ultimate parent or surrogate parent) is in your country, what is the CbCR submission deadline?**

A Japanese corporation that is the ultimate or surrogate parent entity must submit a CbCR to the competent District Director via e-Tax within one year following the close of the ultimate parent entity's fiscal year to which the report relates. This is called Direct Filing.

### **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?**

No. There is no need for adjustments (Frequently Asked Questions on TP Documentation Number 33).

### **Does your country have a requirement that the financial years of the group need to be aligned with?**

No. There is no need for adjustments (Frequently Asked Questions on TP Documentation Number 36).

### **Where is the CbCR to be submitted?**

The CbCR must be submitted to the competent District Director.

### **How is the CbCR to be submitted, specifically, is there any prescribed standard?**

The CbCR must be electronically submitted to the competent District Director via e-Tax.

### **What are the possible consequences of not having the CbCR available?**

#### **Penalties?**

Fine of up to JPY300,000 if a corporation fails to submit a CbCR to the District Director by the deadline without good reason (Article 66-4-5, Paragraph 3, STML).

#### **Imprisonment?**

No.

#### **Shifting of the burden of proof?**

No.

#### **Other?**

No.

### **To what 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?**

The CbCR is consistent with Annex III to Chapter V of the TPG.

### **Did your country sign the Multilateral Competent Authority Agreement on the Exchange of CbCR ("CbCR MCAA")?**

Yes. Signing date was 27 January 2016.

## Japan

**Did your country enter into other information exchange agreements, such as on a bilateral basis?**

Yes.

**Can a Taxpayer in your country fulfil his CbCR requirement by referring to the reporting entity in the same or another country?**

Yes. However, if the tax authorities in the foreign country in which the ultimate or surrogate parent entity resides are considered as unable to transmit the CbCR to Japan, Local Filing must be made.

If there are several Japanese corporations and foreign corporations with PE that must submit a CbCR, if one of the corporations submits information on the corporations it represents when it submits a CbCR, corporations other than the representative one do not need to submit a CbCR (Article 66-4-4, Para. 3, STML).

### **5. TP disclosure in tax return or TP specific returns**

**Is there a threshold for Related Party Transactions?**

No.

**Does a Taxpayer need to disclose information regarding TP documentation in his tax return?**

Yes.

**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 TP, what could be the legal consequences?**

Tax examiners may impose a TP assessment where they may also levy an underpayment penalty and delinquency tax.

The underpayment penalty tax is 10% of the additional tax up to JPY 500,000 (Article 65-2, National Taxes Common Provisions Law or NTCPL) or the amount of the original reported tax (whichever is greater) and 15% of the additional tax beyond this amount (Article 66-1, NTCPL).

Any Taxpayer who makes a false statement is also subject to a criminal penalty of imprisonment with hard labour for one year or less or a fine of JPY 500,000 or less (Article 162(ii), Corporation Tax Law or CTL).

**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?**

If a tax accountant intentionally prepares tax representation or tax returns contrary to the true facts or commits an act in breach of the provisions of Article 36 (prohibition of tax evasion counselling, etc.) of the Act, he or she will be subject to a disposition of suspension of tax advisor services for up to 2 years or a disposition of prohibition of tax advisor services.

If a tax accountant fails to exercise due care and diligence, prepares tax representation or tax documents contrary to the genuine facts, or commits an act in breach of the provisions of Article 36 (prohibition of tax evasion counselling, etc.) of the Act, he or she will be subject to a warning or suspension of tax accountant services for a period not exceeding 2 years.

**Does a Taxpayer need to file TP specific returns?**

Yes.

**Please state the filing form number and name.**

Information on Foreign Related Parties (Form 17-4).

**What would be the filing deadline?**

Same deadline for filing final corporate tax return.

**What would be the penalties for non-compliance?**

Failure to attach Form 17-4 is not per se subject to penalty.

### **6. Benchmarking**

**Is there any local guidance or requirement with regard to the preparation of a benchmark study?**

Article 22-10 Paragraph 1 (Item 2) of the Special Taxation Measures Law Enforcement Ordinance provides that the following are the requirements of benchmarking in LF:

- (a) Calculation method which is selected by the corporations, important prior conditions for

## Japan

- such selection and the reasons for such selection as well as other documents prepared by the corporations to calculate arm's length prices (excluding those listed in (b) to (e) below);
- (b) Documents related to the selection of comparable uncontrolled transactions and details of comparable uncontrolled transactions including financial information;
  - (c) Documents for the corporations to calculate the amount computed as one that belongs to the corporations and the foreign related parties (excluding the documents listed in (b) and (e));
  - (d) Documents describing the reasons the corporations consider several controlled transactions as a single one and calculate an arm's length price for the transaction and the content of each transaction if they make such a calculation; and
  - (e) Documents describing the reason differences are adjusted for comparable uncontrolled transactions and the method to adjust such differences.

### Is there any stated preference for local benchmarks?

Yes. This is especially true if the tested party is a Japanese entity.

### Are there any materiality thresholds that apply to the requirement to have a benchmark study available?

No.

## 7. Year-end, secondary, and corresponding adjustments

### Are year-end/ secondary/ corresponding adjustments permissible?

Year-end adjustments to transfer prices may be made, but TP examiners may investigate whether the adjustment was made for a rational reason (Article 2-20, Administrative Guidelines).

Yes, secondary adjustment is possible. For example, if royalty paid by a Japanese licensee to a foreign related licensor is reduced for Japanese TP purposes, the Japanese licensee may choose to receive back the overpayment provided that a certain report is filed with the relevant tax office.

When foreign tax authorities make price adjustments, corresponding adjustments become necessary to

alleviate economic double taxation. Japanese tax authorities will agree to a corresponding adjustment only when they agree to a part or the whole of the tax levied by a foreign tax authority pursuant to its TP rules and the Mutual Agreement Procedures provided for under an applicable tax treaty.

### Does the Taxpayer have to comply with any specific features or guidance?

Commissioner's Directive on the Operation of Transfer Pricing (Administrative Guidelines) provides that:

- (a) In cases where the corporation has changed the amount of price previously effected foreign related transaction on the pretext of price adjustment, it shall be examined whether the change falls under a change of transaction price based on reasonable grounds.
- (b) In cases where the change is made by a payment of money or recording of expenses (hereinafter referred to as "payment") for the foreign related party, examination shall be made in a comprehensive consideration of the reason concerning the payment, contents of the prior agreement, calculation method and the calculation basis, the date of determination of the payment etc., and the date of the payment.
- (c) In cases where such a payment is deemed to be based on reasonable grounds, the change shall be treated as a change of transaction price.
- (d) In cases where the payment is not deemed to be based on reasonable grounds, examination shall be given whether the payment is eligible for application of the provisions of Article 66-4 (3) of ASMT.

## 8. TP Audit and Dispute Resolution Mechanisms

### What are currently the main TP areas of scrutiny by the tax authorities in your country?

Intangible transactions and intra-company transactions.

### Based on your experience, are joint or multilateral audits initiated and carried out?

Yes. Joint corporate tax and TP audits have become common.

### Does the Taxpayer have the option to apply for bilateral or multilateral APAs?

## Japan

Yes. A Taxpayer may apply for a bilateral or multilateral APAs.

### **Are there any restrictions?**

Among others, Japanese tax authorities might not grant an APA for a transaction structure that is not normally observed between third parties and the purpose of the APA is to reduce Japanese taxation (Article 5-14(1), Administrative Guidelines).

# Laos

## 1. Legal Basis

### Is there a legal requirement to prepare TP documentation?

No, but if the Taxpayer is part of a group that has a TP policy, this documentation should be maintained, even if not required by law, to explain and provide supporting evidence for the pricing used in transactions between the Lao entity and its related parties.

### Since when does a TP documentation requirement exist in your country?

Not applicable.

### Adoption of the OECD or UN legislation in your country?

Not applicable.

### Is your country a member of the OECD, Inclusive Framework, or other OECD groups (e.g. BEPS)?

Not applicable.

### Are TP policies of multinational enterprises in principle accepted by the tax authorities, if they are in line with the OECD TP Guidelines?

No, but if the Taxpayer is part of an MNE group with a TP policy that supports the arm's length returns for intercompany transactions in line with OECD TP Guidelines, this documentation should be maintained, even if not required by law to justify the pricing used in transactions between the Lao entity and its related parties. The Laos Tax Authority may refer to the policy during tax audits.

### Which TP methods may be applied? Is there a stated preference for any particular TP methods?

Comparable Method.

### Have the documentation requirements of OECD BEPS Action 13 already been implemented (i.e. the LF, MF and CbCR concepts)?

Not applicable.

### Reference to documentation and statements of local-government or tax authorities regarding OECD BEPS implementation status

Not applicable.

### Is there any statute of limitation period?

3 accounting years.

### Reference to relevant articles of law, legislative regulation or applicable administrative guidance that are in place for TP documentation in general.

The current practice of some tax auditors is to use point 11 of Article 18 of the Amendment of the Tax Laws No. 01/NA dated 7 August 2021 to reject any expense that is "higher than reality".

## 2. Master File (MF)

### What is the (consolidated revenue) threshold requirement for the obligation to prepare a MF?

Not applicable.

### Euro Equivalent

Not applicable.

### From which year does this obligation exist?

Not applicable.

### When does the MF need to be available?

Not applicable.



## Laos

**When does it need to be submitted?**

Not applicable.

**Does the MF have to be prepared in the relevant local language?**

Not applicable.

**Is documentation in English permissible?**

Not applicable.

**What are the possible consequences of not having the MF available?**

**Penalties?**

Not applicable.

**Imprisonment?**

Not applicable.

**Shifting of the burden of proof?**

Not applicable.

**Other?**

Not applicable.

**To what 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?**

Not applicable.

### **3. Local File (LF)**

**What is the threshold requirement for the obligation to prepare a LF?**

Not applicable.

**Euro Equivalent**

Not applicable.

**From which year does this obligation exist?**

Not applicable.

**When does the LF need to be available?**

Not applicable.

**When does the LF need to be submitted?**

Not applicable.

**Does the LF have to be prepared in the relevant local language?**

Not applicable.

**Or is documentation in English permissible?**

Not applicable.

**What are the possible consequences of not having the LF available?**

**Penalties?**

Not applicable.

**Imprisonment?**

Not applicable.

**Shifting of the burden of proof?**

Not applicable.

**Other?**

Not applicable.

**To what 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?**

Not applicable.

### **4. Country-by-Country Reporting (CbCR)**

**What is the threshold requirement for the obligation to prepare Country-by-Country Reporting?**

Not applicable.

**Euro Equivalent**

Not applicable.

## Laos

**From which year does this CbCR obligation exist?**

Not applicable.

**Are Taxpayers required to notify of CbCR filing in your country?**

Not applicable.

**If yes, when and how do the tax authorities need to be notified?**

Not applicable.

**If the reporting entity (ultimate parent or surrogate parent) is in your country, what is the CbCR submission deadline?**

Not applicable.

**Are there any deviating submission deadlines for the secondary mechanism?**

Not applicable.

**Does your country have a requirement that the financial figures of the group need to be aligned?**

Not applicable.

**Where is the CbCR to be submitted?**

Not applicable.

**How is the CbCR to be submitted, specifically, is there any prescribed standard?**

Not applicable.

**What are the possible consequences of not having the CbCR available?**

**Penalties?**

Not applicable.

**Imprisonment?**

Not applicable.

**Shifting of the burden of proof?**

Not applicable.

**Other?**

Not applicable.

**To what 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?**

Not applicable.

**Did your country sign the Multilateral Competent Authority Agreement on the Exchange of CbCR ("CbCR MCAA")?**

No.

**Did your country enter into other information exchange agreements, such as on a bilateral basis?**

Yes.

**Can a Taxpayer in your country fulfil his CbCR requirement by referring to the reporting entity in the same or another country?**

Not applicable.

### **5. TP disclosure in tax return or TP specific returns**

**Is there a threshold for Related Party Transactions?**

No.

**Does a Taxpayer need to disclose information regarding TP documentation in his tax return?**

No.

**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 TP, what could be the legal consequences?**

Penalty for underreporting taxable result (20 to 60% of tax due).

**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?**

## Laos

Tax Law does not provide sanctions against advisor/accountant/administrator. Accounting Law provides sanctions varying from re-education, fine and imprisonment of the advisor/auditor/accountant/administrator in case of infringement of accounting regulation, and in particular, in cases of misstatements in financial reporting.

**Does a Taxpayer need to file TP specific returns?**

No.

**Please state the filing form number and name.**

Not applicable.

**What would be the filing deadline?**

Not applicable.

### 6. Benchmarking

**Is there any local guidance or requirement with regard to the preparation of a benchmark study?**

No.

**Is there any stated preference for local benchmarks?**

No.

**Are there any materiality thresholds that apply to the requirement to have a benchmark study available?**

No.

### 7. Year-end, secondary, and corresponding adjustments

**Are year-end/ secondary/ corresponding adjustments permissible?**

Yes.

**Does the Taxpayer have to comply with any specific features or guidance?**

Yes, Tax Law request Taxpayers to proceed to adjustments of their financial reporting when computing their corporate income tax liability.

To that extent, any intragroup transaction (financial and operational) shall be adjusted for tax calculation on

the basis of guidance given by Tax Law (rates, threshold admission) or on arm's length principles basis.

### 8. TP Audit and Dispute Resolution Mechanisms

**What are currently the main TP areas of scrutiny by the tax authorities in your country?**

Intragroup financing and service/good supplies.

**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?**

No.

**Are there any restrictions?**

No.

# Malaysia

## 1. Legal Basis

### Is there a legal requirement to prepare TP documentation?

A Taxpayer who enters into a controlled transaction shall prepare contemporaneous TP documentation that is brought into existence before the due date for furnishing a return for the respective year.

The TP Documentation is not required to be submitted with the annual Return Forms. However, the documentation should be made available within 14 days upon request by IRBM.

### Since when does a TP documentation requirement exist in your country?

2009.

### Adoption of the OECD or UN legislation in your country?

OECD.

### Is your country a member of the OECD, Inclusive Framework, or other OECD groups (e.g. BEPS)?

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, each entity of an MNE is required to prepare a standalone TP report if it has related party transactions.

### Which TP methods may be applied?

The IRB accepts the following methods (Comparable Uncontrolled Price (“CUP”); Resale Price method (“RPM”); Cost Plus method (“CPM”), Profit Split (“PS”); and Transaction Net Margin Method (“TNMM”).

Under the 2023 TP Rules, a Taxpayer shall determine the arm’s length price for a controlled transaction by applying the most appropriate method as follows:

- › The traditional transactional method;
- › The transactional profit method; or
- › Any other method allowed by the Director General that provides the highest degree of comparability between the transactions.

Further, the basis for the method selected should be supported by an explanation and reasons that the method selected, and the Profit Level Indicator are appropriate as a better approximation to determine the arm’s length price and be based on the facts and circumstances, including the economically relevant characteristics of the controlled transaction that has been accurately delineated.

### Is there a stated preference for any particular TP methods?

The IRB may review the method selected and then replace the selected method with the other most appropriate method if IRB has reason to believe that the Taxpayer’s selected method is not the most appropriate method in determining the arm’s length price.

### Have the documentation requirements of OECD BEPS Action 13 already been implemented (i.e. the LF, MF, and CbCR concepts)?

The Malaysian TP regulations are largely based on OECD Guidelines. However, with the introduction of the 2023 TP Rules, the disclosures required in Malaysia Local File are more detailed and extensive as compared to the BEPS Action 13 requirements for LF.

### Reference to documentation and statements of local government or tax authorities regarding OECD BEPS implementation status.

# Malaysia

Yes. Malaysia adopted and implemented BEPS Action 13 effective from 1 January 2017 for TP documentation in its local regulations.

## Is there any statute of limitation period?

There is a 7-year statute of limitations for additional assessments issued according to TP adjustments, and documentation must be kept for 7 years. There is no statute of limitations in instances of fraud, wilful default, or negligence.

## Reference to relevant articles of law, legislative regulation, or applicable administrative guidance that are in place for TP documentation in general.

Income Tax (Transfer Pricing) Rules 2023 [P.U.(A) 165] (2023 TP Rules), dated 29 May 2023 (effective from FY2023 onward).

Income Tax CbCR Rules 2016 [P.U. (A) 357] (CbCR Rules).

Income Tax (CbCR) (Amendment) Rules 2017 (P.U. [A] 416).

Labuan Business Activity Tax (CbCR) Regulations 2017 (P.U. [A] 409).

Income Tax (Multilateral Competent Authority Agreement on the Exchange of Jurisdiction-by-Jurisdiction Reports Order 2016) (P.U. [A] 358) (Malaysian MCAA).

Transfer Pricing Guidelines 2012 (updated with effect from 15 July 2017).

CbCR Guidelines dated 1 January 2019.

## 2. Master File (MF)

### What is the (consolidated revenue) threshold requirement for the obligation to prepare a MF?

The consolidated revenue threshold for the obligation to prepare a MF in Malaysia is MYR 2,997,791,057.

### Euro Equivalent

EUR 589,146,000.

### From which year does this obligation exist?

As from the year following the year that the threshold is met.

### When does the MF need to be available?

Generally, TP documentation is required to be prepared contemporaneously. Also, at the time a tax return is filed, there is a requirement to declare whether TP documentation was prepared.

### When does it need to be submitted?

14 days upon request from IRBM.

### Does the MF have to be prepared in the relevant local language?

No. TP documentation is required to be either in the National Language (Bahasa Malaysia) or English.

### Is documentation in English permissible?

Yes.

### What are the possible consequences of not having the MF available?

#### Penalties?

Yes, where the contemporaneous TP documentation is not in existence by the due date of filing of the income tax return for the year, a fine ranging from RM 20,000 to RM 100,000 may apply.

#### Imprisonment?

Yes, imprisonment for a term not exceeding 6 months.

#### Shifting of the burden of proof?

No.

#### Other?

Both penalty and imprisonment may apply.

### To what 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?

## Malaysia

The prescribed information required to be disclosed in the MF and LF is consistent with the BEPS Action 13 requirements.

### 3. Local File (LF)

#### **What is the threshold requirement for the obligation to prepare a LF?**

No threshold.

The requirement to prepare TP documentation, with information akin to the requirements of the LF, applies to any Taxpayer who enters into a transaction with an associated person.

However, businesses with revenue not exceeding RM 25 million and the total amount of related party transactions not exceeding RM 15 million are allowed to prepare simplified TP documentation.

#### **Euro Equivalent**

Not applicable.

#### **From which year does this obligation exist?**

2017.

#### **When does the LF need to be available?**

TP documentation is required to be prepared contemporaneously. Also, at the time a tax return is filed, there is a requirement to declare whether TP documentation was prepared.

#### **When does the LF need to be submitted?**

14 days upon request by the IRBM.

#### **Does the LF have to be prepared in the relevant local language?**

No. TP documentation is required to be either in the National Language (Bahasa Malaysia) or English.

#### **Or is documentation in English permissible?**

Yes.

#### **What are the possible consequences of not having the LF available?**

#### **Penalties?**

Yes, where the contemporaneous TP documentation is not in existence by the due date of filing of the income tax return for the year, the above-mentioned fine ranging from RM 20,000 to RM 100,000 may apply.

#### **Imprisonment?**

Yes, imprisonment for a term not exceeding 6 months.

#### **Shifting of the burden of proof?**

No.

#### **Other?**

Both penalty and imprisonment may apply.

#### **To what 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?**

The prescribed information required to be disclosed in the MF and LF is consistent with the BEPS Action 13 requirements.

### 4. Country-by-Country Reporting (CbCR)

#### **What is the threshold requirement for the obligation to prepare Country-by-Country Reporting?**

1. Total consolidated group revenue in the financial year preceding the first reporting financial year is at least 3 billion ringgit (RM 3 Billion); and
2. Any of its constituent entities:
  - a. is an ultimate holding entity that is incorporated, registered or established or deemed to be incorporated, registered or established under the Companies Act 2016 [Act 777], or under any written law and resident in Malaysia;
  - b. is incorporated, registered or established or deemed to be incorporated, registered or established under the Companies Act 2016, or under any written law or the laws of a territory outside Malaysia and resident in Malaysia;
  - c. is a surrogate holding entity that is incorporated, registered or established or deemed to be incorporated, registered or established under the Companies Act 2016,

## Malaysia

- or under any written law and resident in Malaysia; or
- d. is a permanent establishment in Malaysia.

### Euro Equivalent

EUR 750 million.

### From which year does this CbCR obligation exist?

2017.

### Are Taxpayers required to notify of CbCR filing in your country?

Yes.

### If yes, when and how do the tax authorities need to be notified?

Starting YA 2021, constituent entities can now furnish the CbCR notification using Form C. Constituent entities filing other forms should continue furnishing the notification using the existing method. Notification (except for constituent entities submitting other than Form C) should be made on or before the due date to file Form C.

### If the reporting entity (ultimate parent or surrogate parent) is in your country, what is the CbCR submission deadline?

Within 12 months after the last day of the financial reporting year.

### 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?

No.

### Does your country have a requirement that the financial years of the group need to be aligned?

No.

### Where is the CbCR to be submitted?

To the Director General of Inland Revenue.

### How is the CbCR to be submitted, specifically, is there any prescribed standard?

The CbCR must be filed no later than 12 months after the last day of the reporting Fiscal Year of the MNE group (e.g., MNE groups with a Fiscal Year ending on 31 December 2021 will be required to file the CbCR by 31 December 2022 at the latest).

### What are the possible consequences of not having the CbCR available?

#### Penalties?

Yes, where the contemporaneous TP documentation is not in existence by the due date of filing of the income tax return for the year, the abovementioned fine ranging from RM20,000 to RM100,000 may apply.

#### Imprisonment?

Yes, imprisonment for a term not exceeding 6 months.

#### Shifting of the burden of proof?

No.

#### Other?

Both penalty and imprisonment may apply.

### To what 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 standard and requirements.

### Did your country sign the Multilateral Competent Authority Agreement on the Exchange of CbCR ("CbC MCAA")?

Yes, from 27 January 2016, with dates of exchange relations became active listed on the OECD website.

### Did your country enter into other information exchange agreements, such as on a bilateral basis?

Yes.

### Can a Taxpayer in your country fulfil his CbCR requirement by referring to the reporting entity in the same or another country?

## Malaysia

Yes.

### **5. TP disclosure in the tax return or TP specific returns**

#### **Is there a threshold for Related Party Transactions?**

No specific threshold, every Related Party Transaction are required to be filled in the tax return.

#### **Does a Taxpayer need to disclose information regarding TP documentation in his tax return?**

Effective from the year of assessment 2019, Taxpayers are required to disclose the details of their related party transactions on Form C.

#### **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 TP, what could be the legal consequences?**

A surcharge of up to 5% of the adjustment to the income is applicable. The surcharge is not on the incremental tax but on the incremental income. Hence, the surcharge also applies in scenarios where the TP adjustment does not result in additional tax payable.

#### **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?**

Any person who assists any other Taxpayer to evade tax is liable to a fine of not less than RM 1,000 and not more than RM 20,000 or to imprisonment not exceeding 3 years or to both and shall pay a penalty of 300 per cent of the amount of tax which has been undercharged.

#### **Does a Taxpayer need to file TP specific returns?**

No.

#### **Please state the filing form number and name.**

In 2014, the IRB introduced a section in Form C, requiring Taxpayers to declare if they have maintained a TP report for the year of assessment they are filing the tax returns. For Taxpayers who do not have a TP report, they must select "No" and disclose via Form C.

The 2023, TP Rules require Taxpayers to state the date on which the contemporaneous TP documentation is completed. The documentation must be brought into existence before the due date for furnishing the tax return.

Effective from the year of assessment 2019, Taxpayers are required to disclose the details of their related party transactions on Form C.

#### **What would be the filing deadline?**

The CIT return has to be filed within 7 months from the end of the relevant Fiscal Year, e.g., 31 December 2021 year ending companies would file the corporate tax return by 31 July 2022.

#### **What would be the penalties for non-compliance?**

Where the contemporaneous TP documentation is not in existence by the due date of filing of the income tax return for a given year or not prepared in accordance with the 2023 TP Rules, a fine ranging from RM 20,000 to RM 100,000 may apply.

### **6. Benchmarking**

#### **Is there any local guidance or requirement about the preparation of a benchmark study?**

No. Consistent with OECD standards.

#### **Is there any stated preference for local benchmarks?**

In Malaysia, the IRBM gives priority to the availability of sufficient and verifiable information on both tested parties and comparables. As such, IRBM does not accept foreign tested parties where information is neither sufficient nor verifiable.

#### **Are there any materiality thresholds that apply to the requirement to have a benchmark study available?**

Yes. Businesses with revenue not exceeding RM 25 million and the total amount of related party transactions not exceeding RM 15 million are allowed to prepare simplified TP documentation, i.e. without benchmarking study.

However, the TP documentation must detail the pricing policy (along with other required information).

### **7. Year-end, secondary, and corresponding**



# Malaysia

## adjustments

### **Are year-end/ secondary/ corresponding adjustments permissible?**

There is no secondary adjustment as Malaysia does impose tax on dividend payments.

Since 2023, the corresponding adjustment is possible only via a MAP application.

Year-end true up/true down adjustments are based on the facts of the respective arrangement.

### **Does the Taxpayer have to comply with any specific features or guidance?**

No.

## **8. TP Audit and Dispute Resolution Mechanisms**

### **What are currently the main TP areas of scrutiny by the tax authorities in your country?**

Interest-free financial assistance, management fee charging mechanism, production capacity and utilisation rate, foreign sourced income, R&D functions within the Group, and continuous loss-making.

### **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?**

No.

# Myanmar

## 1. Legal Basis

**Is there a legal requirement to prepare TP documentation?**

No.

**Since when does a TP documentation requirement exist in your country?**

Not applicable.

**Adoption of the OECD or UN legislation in your country?**

Not applicable.

**Is your country a member of the OECD, Inclusive Framework, or other OECD groups (e.g. BEPS)?**

No.

**Are TP policies of multinational enterprises in principle accepted by the tax authorities, if they are in line with the OECD TP Guidelines?**

Not applicable.

**Which TP methods may be applied?**

Not applicable.

**Is there a stated preference for any particular TP methods?**

Not applicable.

**Have the documentation requirements of OECD BEPS Action 13 already been implemented (i.e. the LF, MF, and CbCR concepts)?**

No LF, MF or CbCR.

**Reference to documentation and statements of local government or tax authorities regarding OECD BEPS implementation status**

Not applicable.

**Is there any statute of limitation period?**

Not applicable.

**Reference to relevant articles of law, legislative regulation, or applicable administrative guidance that are in place for TP documentation in general.**

Not applicable.

## 2. Master File (MF)

**What is the (consolidated revenue) threshold requirement for the obligation to prepare a MF?**

Not applicable.

**Euro Equivalent**

Not applicable.

**From which year does this obligation exist?**

Not applicable.

**When does the MF need to be available?**

Not applicable.

**When does it need to be submitted?**

Not applicable.

**Does the MF have to be prepared in the relevant local language?**

Not applicable.

# Myanmar

**Is documentation in English permissible?**

Not applicable.

**What are the possible consequences of not having the MF available?**

**Penalties?**

Not applicable.

**Imprisonment?**

Not applicable.

**Shifting of the burden of proof?**

Not applicable.

**Other?**

Not applicable.

**To what 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?**

Not applicable.

### **3. Local File (LF)**

**What is the threshold requirement for the obligation to prepare Country-by-Country Reporting?**

Not applicable.

**Euro Equivalent**

Not applicable.

**From which year does this CbCR obligation exist?**

Not applicable.

**Are Taxpayers required to notify of CbCR filing in your country?**

Not applicable.

**If yes, when and how do the tax authorities need to be notified?**

Not applicable.

**If the reporting entity (ultimate parent or surrogate parent) is in your country, what is the CbCR submission deadline?**

Not applicable.

**Are there any deviating submission deadlines for the secondary mechanism?**

Not applicable.

**Does your country have a requirement that the financial figures of the group need to be aligned?**

Not applicable.

**Where is the CbCR to be submitted?**

Not applicable.

**How is the CbCR to be submitted, specifically, is there any prescribed standard?**

Not applicable.

**What are the possible consequences of not having the CbCR available?**

**Penalties?**

Not applicable.

**Imprisonment?**

Not applicable.

**Shifting of the burden of proof?**

Not applicable.

**Other?**

Not applicable.

# Myanmar

**To what 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?**

Not applicable.

**Did your country sign the Multilateral Competent Authority Agreement on the Exchange of CbCR ("CbCR MCAA")?**

Not applicable.

**Did your country enter into other information exchange agreements, such as on a bilateral basis?**

Not applicable.

**Can a Taxpayer in your country fulfil his CbCR requirement by referring to the reporting entity in the same or another country?**

Not applicable.

#### **4. Country-by-Country Reporting (CbCR)**

**What is the threshold requirement for the obligation to prepare Country-by-Country Reporting?**

Not applicable.

**Euro Equivalent**

Not applicable.

**From which year does this CbCR obligation exist?**

Not applicable.

**Are Taxpayers required to notify of CbCR filing in your country?**

Not applicable.

**If yes, when and how do the tax authorities need to be notified?**

Not applicable.

**If the reporting entity (ultimate parent or surrogate parent) is in your country, what is the CbCR submission deadline?**

Not applicable.

**Are there any deviating submission deadlines for the secondary mechanism?**

Not applicable.

**Does your country have a requirement that the financial figures of the group need to be aligned?**

Not applicable.

**Where is the CbCR to be submitted?**

Not applicable.

**How is the CbCR to be submitted, specifically, is there any prescribed standard?**

Not applicable.

**What are the possible consequences of not having the CbCR available?**

**Penalties?**

Not applicable.

**Imprisonment?**

Not applicable.

**Shifting of the burden of proof?**

Not applicable.

**Other?**

Not applicable.

**To what 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?**

Not applicable.

**Did your country sign the Multilateral Competent Authority Agreement on the Exchange of CbCR ("CbCR MCAA")?**

No.

# Myanmar

**Did your country enter into other information exchange agreements, such as on a bilateral basis?**

No.

**Can a Taxpayer in your country fulfil his CbCR requirement by referring to the reporting entity in the same or another country?**

Not applicable.

## **5. TP disclosure in the tax return or TP specific returns**

**Is there a threshold for Related Party Transactions?**

Not applicable.

**Does a Taxpayer need to disclose information regarding TP documentation in his tax return?**

Not applicable.

**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 TP, what could be the legal consequences?**

Not applicable. There are no TP rules.

However, IRD issued Public Ruling no. 3/2022 on 16 November as an anti-avoidance tool to reprice income or expenses where there are:

- › failure to disclose assets, property, services, or benefits in accordance with market price;
- › the Taxpayer is making non arm's length transfers in cross-border TP;
- › there is the splitting of income between the Taxpayer and associated enterprises with the purpose to reduce tax on income;
- › the Taxpayer is reorganising structures of associations to enjoy tax benefits; and
- › the Taxpayer is abusing bilateral/multilateral treaties.

**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 applicable.

**Does a Taxpayer need to file TP specific returns?**

Not applicable.

**Please state the filing form number and name.**

Not applicable.

**What would be the filing deadline?**

Not applicable.

**What would be the penalties for non-compliance?**

Not applicable.

## **6. Benchmarking**

**Is there any local guidance or requirement about the preparation of a benchmark study?**

Not applicable.

**Is there any stated preference for local benchmarks?**

Not applicable.

**Are there any materiality thresholds that apply to the requirement to have a benchmark study available?**

Not applicable.

## **7. Year-end, secondary, and corresponding adjustments**

**Are year-end/ secondary/ corresponding adjustments permissible?**

Not applicable.

**Does the Taxpayer have to comply with any specific features or guidance?**

Not applicable.

## **8. TP Audit and Dispute Resolution Mechanisms**

**What are currently the main TP areas of scrutiny by the tax authorities in your country?**

## Myanmar

Not applicable.

**Based on your experience, are joint or multilateral audits initiated and carried out?**

Not applicable.

**Does the Taxpayer have the option to apply for bilateral or multilateral APAs?**

Not applicable.

**Are there any restrictions?**

Not applicable.

# New Zealand

## 1. Legal Basis

### **Is there a legal requirement to prepare TP documentation?**

Yes, on a contemporaneous basis. TP documentation is prepared annually to support the annual income tax position. While there is no statutory obligation to maintain documentation, New Zealand's tax system operates on a self assessment basis, where the Taxpayer is expected to keep sufficient contemporaneous records to support its tax position. Accurate and contemporaneous TP documentation supporting that the Taxpayer's transfer prices are consistent with the arm's length principle, in light of the relevant facts and circumstances, is a key element for addressing this requirement.

While the New Zealand TP rules require the application of the OECD Guidelines, IR provides some additional New Zealand specific simplified guidelines detailing their expectations for producing local TP documentation around financing arrangements.

### **Since when does a TP documentation requirement exist in your country?**

It is expected for income years commencing on or after 1 January 2016.

### **Adoption of the OECD or UN legislation in your country?**

OECD.

### **Is your country a member of the OECD, Inclusive Framework, or other OECD groups (e.g. BEPS)?**

New Zealand is a member of the OECD inclusive framework as of 12 May 2016.

### **Are TP policies of multinational enterprises in principle accepted by the tax authorities, if they are in line with the OECD TP Guidelines?**

The OECD's TP Guidelines for multinational enterprises and tax administrations (2022) are legislated in New Zealand's TP rules.

However, the local TP legislation includes novel sections assessing the deductibility of interest expense connected to inbound loans from associated parties, which can lead to outcomes that may differ from the OECD Guidelines. These specific rules are unique to New Zealand.

### **Which TP methods may be applied?**

New Zealand legislation presents 5 available TP methods to determine an arm's length consideration for those cross-border associated party transactions undertaken by a New Zealand Taxpayer.

IR accepts the most reliable method (or combination of methods) chosen from among these methods: Comparable Uncontrolled Price ("CUP"); Resale Price method ("RPM"); Cost Plus method ("CPM"), Profit Split ("PS"); and Transaction Net Margin Method ("TNMM").

### **Is there a stated preference for any particular TP methods?**

The most appropriate method should be used.

### **Have the documentation requirements of OECD BEPS Action 13 already been implemented (i.e. the LF, MF, and CbCR concepts)?**

Yes, the IRD endorses OECD's recommendations and believes that the MF and LF approach provides a platform through which Taxpayers, subject to the local TP regime, can meaningfully describe their compliance with the arm's length standard. The IRD expects New Zealand Taxpayers to maintain contemporaneous TP documentation in two forms:

- › A MF providing an overview of the multinational's global business operations and

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- TP policies; and
- › A LF providing detailed information regarding the operations of the New Zealand Taxpayer and main cross-border associated party transactions, as well as TP analysis supporting the arm's length nature of these transactions from a New Zealand perspective.

Only New Zealand based groups with revenue higher than EUR750 million are required to lodge CbCR. There are currently 20 NZ HQ MNCs that fall into this category.

### **Reference to documentation and statements of local government or tax authorities regarding OECD BEPS implementation status**

New Zealand introduced new legislation addressing OECD's BEPS initiative, which is effective for the income years commencing on or after 1 July 2018.

### **Is there any statute of limitation period?**

The IRD generally has 4 years from the end of the tax year in which a Taxpayer files an income tax return to investigate and amend the tax position taken by the Taxpayer. However, the 4-year time bar is extended to 7 years for TP tax positions.

This extension applies only in cases where the IRD notifies the Taxpayer that a tax audit or investigation has commenced within the standard 4-year period.

### **Reference to relevant articles of law, legislative regulation, or applicable administrative guidance that are in place for TP documentation in general.**

Relevant guidance includes:

- › Sections YD 5, GB 2, and GC 6 to GC 14 of the Income Tax Act 2007 ("ITA");
- › Sections GC15 to GC19 (interest limitation rules);
- › The Tax Administration Act 1994 ("TAA"); and
- › New Zealand's double tax agreements.

## **2. Master File (MF)**

### **What is the (consolidated revenue) threshold requirement for the obligation to prepare a MF?**

New Zealand based groups with a revenue higher than EUR 750 million.

### **Euro Equivalent**

EUR 750 million.

### **From which year does this obligation exist?**

For income years commencing on or after 1 January 2016.

### **When does the MF need to be available?**

The MF is expected to be made available to IR on request.

### **When does it need to be submitted?**

The MF should be prepared by the date on which the relevant income tax return is filed.

### **Does the MF have to be prepared in the relevant local language?**

It is expected that local TP documentation is prepared in the local language (English). The IRD could require that documents in other languages be translated.

### **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?**

No.

### **Other?**

No.

**To what 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?**



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The prescribed information required to be disclosed in the MF and LF is consistent with the OECD Action 13 requirements with some additional requirements around financing arrangements.

### 3. Local File (LF)

#### **What is the threshold requirement for the obligation to prepare a LF?**

New Zealand based groups with a revenue higher than NZD 1.3 billion.

#### **Euro Equivalent**

EUR 750 million.

#### **From which year does this obligation exist?**

For income years commencing on or after 1 January 2016.

#### **When does the LF need to be available?**

The LF is expected to be made available to the IRD on request and Taxpayers are generally given 60 days from the date of request to file the LF.

#### **When does the LF need to be submitted?**

While each case is different, based on our experience, a Taxpayer generally is given 20 working days to submit the documentation upon request.

#### **Does the LF have to be prepared in the relevant local language?**

It is expected that local TP documentation is prepared in the local language (English). The IRD could require that documents in other languages be translated.

#### **Or is documentation in English permissible?**

Yes.

#### **What are the possible consequences of not having the LF available?**

#### **Penalties?**

Yes, if the LF is not produced within 60 days from request, or is considered to be inadequate, the penalty is up to 40% of the tax assessed on the TP items in the

tax return that are unsupported by an adequate or correct local file submission.

#### **Imprisonment?**

No.

#### **Shifting of the burden of proof?**

No.

#### **Other?**

No.

#### **To what 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?**

The prescribed information required to be disclosed in the MF and LF is consistent with the OECD Action 13 requirements with some additional requirements around financing arrangements.

### 4. Country-by-Country Reporting (CbCR)

#### **What is the threshold requirement for the obligation to prepare Country-by-Country Reporting?**

Only New Zealand based groups with revenues higher than NZD1.3 billion are required to lodge CbCR in New Zealand.

#### **Euro Equivalent**

EUR 750 million.

#### **From which year does this CbCR obligation exist?**

For income years commencing on or after 1 January 2016.

#### **Are Taxpayers required to notify of CbCR filing in your country?**

No CbCR notification is required in New Zealand.

#### **If yes, when and how do the tax authorities need to be notified?**

Not applicable.

## New Zealand

**If the reporting entity (ultimate parent or surrogate parent) is in your country, what is the CbCR submission deadline?**

A CbCR, if required, must be filed within 12 months after the relevant balance date. This applies to New Zealand headquartered groups only.

**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?**

The IRD's CbCR guidance states that the IRD will individually contact each group that is required to participate in CbCR, it is likely that these Taxpayers will be able to email their reporting directly to an IRD investigator.

Alternatively, the IRD 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?**

**Penalties?**

Yes.

**Imprisonment?**

No.

**Shifting of the burden of proof?**

No.

**Other?**

No.

**To what 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?**

The prescribed information required to be disclosed in the MF and LF is consistent with the OECD Action 13 requirements.

**Did your country sign the Multilateral Competent Authority Agreement on the Exchange of CbCR ("CbCR MCAA")?**

Yes. It was signed on 12 May 2016.

**Did your country enter into other information exchange agreements, such as on a bilateral basis?**

Yes.

**Can a Taxpayer in your country fulfil his CbCR requirement by referring to the reporting entity in the same or another country?**

No.

### **5. TP disclosure in the tax return or TP specific returns**

**Is there a threshold for Related Party Transactions?**

A Taxpayer's income tax return requires disclosure of:

- › Whether the Taxpayer made payments to non-residents (such as dividends, interest, management fees, "know how" payments, royalties, or contract payments); and
- › Whether the Taxpayer holds an interest in a controlled foreign company ("CFC"), when relevant.

**Does a Taxpayer need to disclose information regarding TP documentation in his tax return?**

TP Documentation and Policy are required on a contemporaneous basis. Although there is no explicit legislative requirement for a Taxpayer to document its

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TP policies and practices, TP documentation supporting the tax position should be prepared before the date the relevant income tax return is filed.

Local Taxpayers who prepare and maintain accurate and contemporaneous TP documentation is less likely to be exposed to penalties. IR will generally request a copy of the TP documentation as part of an income tax audit or TP risk assessment.

### **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 TP, what could be the legal consequences?**

Knowingly or carelessly under reporting income is an offence under the Tax Administration Act 1994. An offence is committed when a Taxpayer knowingly commits a specified act, or fails to act, about that Taxpayer's tax obligations and in either case, does so intending to evade tax or to obtain a refund or a tax payment: S143B of the Tax Administration Act 1994.

The offence of evasion is also committed when a Taxpayer 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.

### **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?**

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.

### **Does a Taxpayer need to file TP specific returns?**

There is no separate TP return required to be filed in New Zealand (notwithstanding the disclosures outlined above). However, the IRD regularly requires that MNEs and branches complete detailed TP questionnaires as part of their routine TP risk assessment activities.

### **Please state the filing form number and name.**

IR1250.

### **What would be the filing deadline?**

For balance dates ending between 1 October to 31 March, the filing deadline is 7 July. For balance dates ending between 1 April to 30 September, the deadline is the 7th day of the 4th month following the balance date. Where the company is on a tax agency list (the most common scenario), an extension to the following 31 March is granted.

### **What would be the penalties for non-compliance?**

Even though there are no specific submission requirements, any failure to provide information or documentation when requested can constitute an offence.

## **6. Benchmarking**

### **Is there any local guidance or requirement about the preparation of a benchmark study?**

There is no requirement to conduct a fresh search every year. The best practice in New Zealand is to conduct a fresh search every 3 years, with financial updates in the interim years.

### **Is there any stated preference for local benchmarks?**

Local benchmarking is preferred (Australian comparables are generally the best option if New Zealand benchmarks are not available); however, reliable benchmarks based on other jurisdictions (the UK or North America) are also acceptable. APAC benchmarks are often not accepted by the IRD based on the dissimilarity of the market compared to New Zealand.

## New Zealand

### **Are there any materiality thresholds that apply to the requirement to have a benchmark study available?**

Benchmarks should be independent. That said, there is no guidance related to specific independence criteria when completing benchmarking analysis. Comparability is a key aspect when completing benchmarking analysis, and the IRD endorses OECD guidance related to this.

### **7. Year-end, secondary, and corresponding adjustments**

#### **Are year-end/ secondary/ corresponding adjustments permissible?**

Yes. If a methodology has been challenged, there is a high risk that an adjustment will be proposed and a dispute process will commence. Disputes have typically been resolved through settlement before litigation.

#### **Does the Taxpayer have to comply with any specific features or guidance?**

There are no specific regulations on TP adjustments. Generally, it should be to a point within the interquartile range.

### **8. TP Audit and Dispute Resolution Mechanisms**

#### **What are currently the main TP areas of scrutiny by the tax authorities in your country?**

Yes, the methodology being challenged depends on the complexity of the cross-border associated party transaction. Transactions involving the provision of intangibles, financing, and intragroup services tend to receive higher scrutiny during a TP risk review.

New Zealand subsidiaries that provide sales and marketing services to an offshore principal or carry-on various marketing related activities can expect a more detailed TP review. Financing transactions are also subject to a high level of challenge.

### **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?**

Section 91E of the TAA allows a unilateral APA to be issued in the form of a binding ruling. Bilateral or multilateral APAs may be entered into, under New Zealand's double tax agreements under the MAP provisions.

The IRD has not established any formal process for APAs, as each case is considered to be different, depending on a Taxpayer's specific facts and circumstances. The IRD encourages pre application conferences to make the APA application process less time consuming.

Unilateral APAs are more common in New Zealand and are actively encouraged by the IRD.

### **Are there any restrictions?**

APAs are given in the form of a private binding ruling. Binding rulings bind the Commissioner of the IRD 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 the IRD are adhered to by the Taxpayer. The Taxpayer is not otherwise bound by the ruling.

# Pakistan

## 1. Legal Basis

**Is there a legal requirement to prepare TP documentation?**

Yes.

**Since when does a TP documentation requirement exist in your country?**

Tax Year 2017.

**Adoption of the OECD or UN legislation in your country?**

OECD.

**Is your country a member of the OECD, Inclusive Framework, or other OECD groups (e.g. BEPS)?**

A member of the BEPS Inclusive Framework.

**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?**

The TP methods applied are those specified in the OECD TP Guidelines: Comparable Uncontrolled Price (“CUP”); Resale Price method (“RPM”); Cost Plus method (“CPM”), Profit Split (“PS”); and Transaction Net Margin Method (“TNMM”).

**Is there a stated preference for any particular TP methods?**

The TP method to be selected shall be the most appropriate method with regard to all of the facts and circumstances. The Profit Split method will apply only if the other methods cannot be reliably applied.

**Have the documentation requirements of OECD BEPS Action 13 already been implemented (i.e. the LF, MF, and CbCR concepts)?**

Yes, Pakistan has implemented the BEPS Action 13 minimum standard for CbCR.

**Reference to documentation and statements of local government or tax authorities regarding OECD BEPS implementation status**

Local File: Rule 27M Chapter VIA Part III of Income Tax Rules, 2002.

Master File: Rule 27K Chapter VIA Part III of Income Tax Rules, 2002.

CbCR: Rule 27B Chapter VIA Part II of Income Tax Rules, 2002 (Complete Chapter).

**Is there any statute of limitation period?**

The general statute of limitations should not exceed more than 6 years from the date of the filing of the return, according to the Income Tax Ordinance, 2001.

**Reference to relevant articles of law, legislative regulation, or applicable administrative guidance that are in place for TP documentation in general.**

Section 108 of Income Tax Ordinance 2001.

Chapter VI and VIA of Income Tax Rules 2002.

## 2. Master File (MF)

**What is the (consolidated revenue) threshold requirement for the obligation to prepare a MF?**

MF preparation for MNEs with a group turnover of more than PKR 100 million.

**Euro Equivalent**

## Pakistan

EUR 330,000.

### From which year does this obligation exist?

Tax Year 2017.

### When does the Master File need to be available?

The MF can be requested by the Commissioner of Inland Revenue [CIR] at any time after the due date of filing of income tax return and shall be furnished within 30 days of such request, with an extended period of a further 45 days if allowed by the CIR.

### When does it need to be submitted?

Same as above.

### Does the MF have to be prepared in the relevant local language?

Yes, it is required to be prepared in English.

### Is documentation in English permissible?

Yes, it is required to be in English.

### What are the possible consequences of not having the MF available?

#### Penalties?

Yes, 1% of the value of transactions.

#### Imprisonment?

No.

#### Shifting of the burden of proof?

Yes.

#### Other?

No.

### To what 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 MF are mostly in line with the OECD standard.

### 3. Local File (LF)

### What is the threshold requirement for the obligation to prepare a LF?

LF preparation for related party transactions of more than PKR 50 million.

#### Euro Equivalent

EUR 165,000.

### From which year does this obligation exist?

Tax Year 2017.

### When does the LF need to be available?

The LF can be requested by the Commissioner Inland Revenue [CIR] at any time after the due date of filing of income tax return and shall be furnished within 30 days of such request, with an extended period of a further 45 days if allowed by the CIR.

### When does the LF need to be submitted?

Same as above.

### Does the LF have to be prepared in the relevant local language?

Yes, it is required to be prepared in English.

### Or is documentation in English permissible?

Yes, it is required to be in English.

### What are the possible consequences of not having the LF available?

#### Penalties?

Yes, 1% of the value of transactions.

#### Imprisonment?

No.

#### Shifting of the burden of proof?

Yes.

#### Other?

## Pakistan

No.

**To what 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?**

The contents of the LF are mostly in line with the OECD standard.

#### 4. Country-by-Country Reporting (CbCR)

**What is the threshold requirement for the obligation to prepare Country-by-Country Reporting?**

CbCR for MNEs with consolidated revenue of more than EUR 750 million or an equivalent amount in PKR in the previous tax reporting year.

**Euro Equivalent**

EUR 750 million.

**From which year does this CbCR obligation exist?**

Tax Year 2017.

**Are Taxpayers required to notify of CbCR filing in your country?**

Yes.

**If yes, when and how do the tax authorities need to be notified?**

The CbCR submission is required within twelve months after the last day of the tax reporting FY of the MNE group. CbCR needs to be sent via email to the Tax Authorities.

**If the reporting entity (ultimate parent or surrogate parent) is in your country, what is the CbCR submission deadline?**

Same as above (twelve months after the last day of the tax reporting FY of the MNE group).

**Are there any deviating submission deadlines for the secondary mechanism?**

The Board may, on an application made by Taxpayers required to furnish information within any period specified in Chapter-VIA, permit through an order in writing to furnish the information within such period as

the Board considers appropriate subject to limitations or conditions specified in the order.

**Does your country have a requirement that the financial figures of the group need to be aligned?**

No.

**Does your country have a requirement that the financial years of the group need to be aligned?**

No.

**Where is the CbCR to be submitted?**

Email to [cbcr@fbr.gov.pk](mailto:cbcr@fbr.gov.pk).

**How is the CbCR to be submitted, specifically, is there any prescribed standard?**

The CbCR is submitted in the prescribed digital format (XML file).

**What are the possible consequences of not having the CbCR available?**

**Penalties?**

Yes, failure to furnish CbCR by the due date is subject to a penalty of PKR 2,000 for each defaulting day (minimum penalty of PKR 25,000).

**Imprisonment?**

No.

**Shifting of the burden of proof?**

Yes.

**Other?**

No.

**To what 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.

## Pakistan

**Did your country sign the Multilateral Competent Authority Agreement on the Exchange of CbCR ("CbCR MCAA")?**

Yes.

**Did your country enter into other information exchange agreements, such as on a bilateral basis?**

Yes.

**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 the tax return or TP specific returns**

**Is there a threshold for Related Party Transactions?**

Taxpayers are expected to disclose related party transactions in their financial statements under the International Financial Reporting Standards ("IFRS"). Taxpayers must report transactions above PKR 50 million with non-residents in their tax returns.

**Does a Taxpayer need to disclose information regarding TP documentation in his tax return?**

Yes.

**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 TP, 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 TP adjustment) and also penalty as mentioned above.

**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?**

Same as above.

**Does a Taxpayer need to file TP specific returns?**

No.

**Please state the filing form number and name.**

Not applicable.

**What would be the filing deadline?**

There is no statutory deadline.

**What would be the penalties for non-compliance?**

Not applicable.

### **6. Benchmarking**

**Is there any local guidance or requirement about the preparation of a benchmark study?**

Although there are no specific references in the regulations about local comparables, the FBR preference has been for local comparables. Where local comparables' information is not available, it is recommended that documentation be provided evidencing that a local search was attempted.

**Is there any stated preference for local benchmarks?**

No.

**Are there any materiality thresholds that apply to the requirement to have a benchmark study available?**

Not applicable.

### **7. Year-end, secondary, and corresponding adjustments**

**Are year-end/ secondary/ corresponding adjustments permissible?**

Yes.

**Does the Taxpayer have to comply with any specific features or guidance?**

No.

### **8. TP Audit and Dispute Resolution Mechanisms**



## Pakistan

**What are currently the main TP areas of scrutiny by the tax authorities in your country?**

Allocation of Management fees, Franchise Fee, Licensing Fee, 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?**

No.

# Philippines

## 1. Legal Basis

### **Is there a legal requirement to prepare TP documentation?**

Yes, provided that the Taxpayer met the established materiality thresholds.

### **Since when does a TP documentation requirement exist in your country?**

2013.

### **Adoption of the OECD or UN legislation in your country?**

OECD.

### **Is your country a member of the OECD, Inclusive Framework, or other OECD groups (e.g. BEPS)?**

Yes, the Philippines joined the Inclusive Framework on 11 October 2023.

### **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?**

The TP regulations adopt the methods to determine the arm's length price under the OECD Guidelines (Comparable Uncontrolled Price ("**CUP**"); Resale Price method ("**RPM**"); Cost Plus method ("**CPM**"), Profit Split ("**PS**"); and Transaction Net Margin Method ("**TNMM**").

### **Is there a stated preference for any particular TP methods?**

There is no specific preference for any one method. In determining the arm's length result, the most appropriate method for a particular case shall be used.

### **Have the documentation requirements of OECD BEPS Action 13 already been implemented (i.e. the LF, MF, and CbCR concepts)?**

Only LF. No MF and CbCR.

### **Reference to documentation and statements of local government or tax authorities regarding OECD BEPS implementation status**

While the Philippines has not yet adopted BEPS Action 13, a local TP documentation is required to be prepared contemporaneously under RR No. 2-2013, subject to materiality thresholds discussed below.

### **Is there any statute of limitation period?**

The general statute of limitations applies, which is 3 years after the last day prescribed by law for filing the return. In cases of fraud with the intent to evade tax, the statute of limitations is 10 years from the discovery of fraud.

### **Reference to relevant articles of law, legislative regulation, or applicable administrative guidance that are in place for TP documentation in general.**

The related guidelines released by the tax authorities in the Philippines are the RR 02-2013, RR 03-13, and RR 34-2020.

# Philippines

## 2. Master File (MF)

**What is the (consolidated revenue) threshold requirement for the obligation to prepare a MF?**

Not applicable.

### **Euro Equivalent**

Not applicable.

**From which year does this obligation exist?**

Not applicable.

**When does the MF need to be available?**

Not applicable.

**When does it need to be submitted?**

Not applicable.

**Does the MF have to be prepared in the relevant local language?**

Not applicable.

**Is documentation in English permissible?**

Not applicable.

**What are the possible consequences of not having the MF available?**

**Penalties?**

Not applicable.

**Imprisonment?**

Not applicable.

**Shifting of the burden of proof?**

Not applicable.

**Other?**

Not applicable.

**To what 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?**

Not applicable.

## 3. Local File (LF)

**What is the threshold requirement for the obligation to prepare a LF?**

- (i) Annual gross revenue exceeding PHP 150 million and total amount of related party transactions with foreign and domestic related parties exceeds PHP 90 million; or
- (ii) aggregate amount of related party transactions involving: (1) Sale of intangible goods to the same related party exceeding PHP 60 million; or (2) service transaction, payment of interest, utilisation of intangible goods, or other RPTs with the same related party exceeding PHP 15 million.

### **Euro Equivalent**

EUR 2.4 million.

**From which year does this obligation exist?**

In general, the guidelines on the preparation of a TP Documentation have been in place since 2013. However, the application of the threshold started only in December 2020.

**When does the LF need to be available?**

Under RR No. 34-2020, the TP documentation is no longer required to be attached to the RPT Form upon filing.

However, the TP documentation and other documents have to be submitted to the BIR within 30 calendar days from receipt of the request to submit during a tax audit, subject to a non-extendible period of 30 calendar days.

# Philippines

## When does the LF need to be submitted?

The TP documentation and other documents have to be submitted to the BIR within 30 calendar days from receipt of the request to submit during a tax audit, subject to a non-extendible period of 30 calendar days.

## Does the LF have to be prepared in the relevant local language?

The TP documentation is prepared in English.

## Or is documentation in English permissible?

Yes.

## What are the possible consequences of not having the LF available?

### Penalties?

Yes.

### Imprisonment?

No.

### Shifting of the burden of proof?

No.

### Other?

No.

## To what 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?

RR 2-2013 is silent on the manner of preparation. However, being largely based on the OECD TP Guidelines, the preparation of TP documentation in year one should be sufficient.

## 4. Country-by-Country Reporting (CbCR)

### What is the threshold requirement for the obligation to prepare Country-by-Country Reporting?

Not applicable.

### Euro Equivalent

Not applicable.

### From which year does this CbCR obligation exist?

Not applicable.

### Are Taxpayers required to notify of CbCR filing in your country?

Not applicable.

### If yes, when and how do the tax authorities need to be notified?

Not applicable.

### If the reporting entity (ultimate parent or surrogate parent) is in your country, what is the CbCR submission deadline?

Not applicable.

### Are there any deviating submission deadlines for the secondary mechanism?

Not applicable.

### Does your country have a requirement that the financial figures of the group need to be aligned?

Not applicable.

### Where is the CbCR to be submitted?

Not applicable.

### How is the CbCR to be submitted, specifically, is there any prescribed standard?

Not applicable.

### What are the possible consequences of not having the CbCR available?

#### Penalties?

Not applicable.

#### Imprisonment?

Not applicable.

#### Shifting of the burden of proof?

# Philippines

Not applicable.

## Other?

Not applicable.

## To what 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?

Not applicable.

## Did your country sign the Multilateral Competent Authority Agreement on the Exchange of CbCR ("CbCR MCAA")?

No.

## Did your country enter into other information exchange agreements, such as on a bilateral basis?

Yes.

## Can a Taxpayer in your country fulfil his CbCR requirement by referring to the reporting entity in the same or another country?

No.

## 5. TP disclosure in the tax return or TP specific returns

### Is there a threshold for Related Party Transactions?

A Taxpayer must disclose all related party transactions irrespective of the amount. The materiality threshold is relevant only in determining who is required to prepare TP documentation.

### Does a Taxpayer need to disclose information regarding TP documentation in his tax return?

Yes. In addition, if a Taxpayer is not required to file the RPT Form, such must be disclosed in the Notes to the Financial Statements.

### 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 TP, what could be the legal consequences?

Taxpayers may be subjected to deficiency taxes upon tax audit. Further, if the over declaration/ under declarations amount exceeds the relevant threshold for fraud, criminal penalties may likewise be imposed.

Also, Taxpayers who have not prepared adequate documentation may find their application for MAP rejected or that the TP issue would be much more difficult to resolve. However, no specific penalties were mentioned.

### 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?

Section 13 of the Revenue Regulations 02-2013 states that the provisions of the Tax Code and other applicable laws regarding the imposition of penalties and other appropriate sanctions shall be applied to any Taxpayer who fails to comply with or violates the provisions and requirements of these regulations.

### Does a Taxpayer need to file TP specific returns?

Yes.

### Please state the filing form number and name.

The BIR Form No. 1709, Information Return on Transactions with Related Party (Domestic and/or Foreign) ("RPT Form").

### What would be the filing deadline?

The RPT Form is filed as an attachment to the Annual Income Tax Return which must be filed on or before the 15th day of the 4th month following the close of the Taxpayer's taxable year.

### What would be the penalties for non-compliance?

The TP regulations adopt the provisions of the Tax Code and other applicable laws in imposing penalties on any Taxpayer who fails to comply with or who violates the regulations.

## 6. Benchmarking

### Is there any local guidance or requirement about the preparation of a benchmark study?

## Philippines

Yes. Benchmarking is commonly known as "comparability analysis". It entails an analysis of the similarities and differences in the conditions and characteristics that are found in the associated enterprise transaction with those in an independent party transaction.

Once the impact of these similarities or differences on the transfer price has been determined, the arm's length price/margin (or a range) can then be established using an appropriate TP method.

### **Is there any stated preference for local benchmarks?**

There is no legal requirement for local jurisdiction comparables, but local comparable companies are used because the BIR requires the most reliable companies and uses local companies in determining the arm's length price of intercompany transactions. Asia Pacific comparables would be acceptable if it can be shown that no local comparables are available.

### **Are there any materiality thresholds that apply to the requirement to have a benchmark study available?**

No.

## **7. Year-end, secondary, and corresponding adjustments**

### **Are year-end/ secondary/ corresponding adjustments permissible?**

Yes.

### **Does the Taxpayer have to comply with any specific features or guidance?**

There is none specified.

## **8. TP Audit and Dispute Resolution Mechanisms**

### **What are currently the main TP areas of scrutiny by the tax authorities in your country?**

Provision for administrative and other support (back-end) services, outsourced front-end services, shared services, sale and distribution of goods, manufacturing of goods (both full-fledged and toll), royalties, leasing real property, interest on intercompany advances/ loans, income and expenses shifted in favour of a related company with special tax privileges such as Board of Investments ("BOI") Incentives and Philippine

Economic Zone Authority ("PEZA") fiscal incentives will further be scrutinised.

### **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. However, there are still no guidelines providing for the mechanism/procedure to govern the same.

### **Are there any restrictions?**

Though not mandatory, if a Taxpayer avails itself of an APA, it may choose freely between a unilateral and bilateral/multilateral APA. If the Taxpayer does not choose to enter into an APA and its transactions are subject later on to TP adjustments, it may still invoke the MAP Article to resolve double taxation issues. It is said that a separate guideline was to be issued regarding the application of APA and MAP processes.

# Singapore

## 1. Legal Basis

### **Is there a legal requirement to prepare TP documentation?**

Yes, Section 34F legislates the mandatory requirement for contemporaneous and adequate TP documentation, and penalties for non-compliance from YA 2019 onward.

### **Since when does a TP documentation requirement exist in your country?**

2006.

### **Adoption of the OECD or UN legislation in your country?**

OECD.

### **Is your country a member of the OECD, Inclusive Framework, or other OECD groups (e.g. BEPS)?**

Yes, Singapore is a member of the Inclusive Framework.

### **Are TP policies of multinational enterprises in principle accepted by the tax authorities, if they are in line with the OECD TP Guidelines?**

Yes. If Taxpayers have prepared similar TP documentation (e.g. OECD MF and LF) for the purpose of complying with the requirements of other tax jurisdictions, such documentation, if relevant to the business operations in Singapore, may form part of the TP documentation for Singapore tax purposes.

### **Which TP methods may be applied?**

There are no provisions for TP methods in the domestic law. However, the Singapore TP Guidelines (Section 5) sets out the TP methods that Taxpayers can use to price their transactions with related parties.

The Guidelines provide for all methods described in the OECD TP Guidelines (Comparable Uncontrolled Price (“CUP”); Resale Price method (“RPM”); Cost Plus method (“CPM”), Profit Split (“PS”); and Transaction Net Margin Method (“TNMM”).

### **Is there a stated preference for any particular TP methods?**

The most appropriate method should be used.

### **Have the documentation requirements of OECD BEPS Action 13 already been implemented (i.e. the LF, MF and CbCR concepts)?**

IRAS has not adopted the application of the BEPS LF concepts as separate documents.

The Income Tax (TPD) Rules 2018 stipulate the information Taxpayers must provide in their TP documentation. The information to be provided by the Taxpayers at entity level and group level is largely similar to the OECD LF and MF respectively.

Nonetheless, the information requirements for Singapore TP documentation are largely aligned to the OECD approaches though the details requested are for the applicable Singapore entity. The concept of CbCR has been implemented.

### **Reference to documentation and statements of local-government or tax authorities regarding OECD BEPS implementation status**

Para 6.25 of the IRAS e-tax Guide on TP Guidelines, first released on 23 February 2006 and updated (6th edition published on 10 August 2021).

### **Is there any statute of limitation period?**

4 years from the Year of Assessment.

# Singapore

## Reference to relevant articles of law, legislative regulation or applicable administrative guidance that are in place for TP documentation in general.

Section 34F of the Singapore Income Tax Act (“ITA”) legislates the mandatory requirement for contemporaneous and adequate TP documentation, and penalties for non-compliance from YA 2019 onward.

Chapter 6 (Paras 6.1 to 6.44) of the Singapore TP Guidelines contains detailed guidance on TP documentation.

## 2. Master File (MF)

### What is the (consolidated revenue) threshold requirement for the obligation to prepare a MF?

Unless exemption from TP Documentation for specified transactions applies, Taxpayers must prepare TP Documentation for their related party transactions in a basis period, when either: (a): The gross revenue from their trade or business for the basis period is more than SGD 10 million; or (b): They were required to prepare TP Documentation under Section 34F of the Singapore ITA for the basis period immediately prior to the current basis period.

Once TP Documentation is required, it applies for:

- › Purchases of goods from related parties (≥SGD 15 million (EUR 9,474,022));
- › Sale of goods to related parties (≥SGD 15 million);
- › Loans owed to related parties (≥SGD 15 million);
- › Loans owed by related parties (≥SGD 15 million); or
- › All other categories of related party transactions (≥SGD 1 million (EUR 631,601), e.g. Service income, Service expense, Royalty income, Royalty expense, Rental income, Rental expense), Guarantee income, Guarantee expense).

The SGD1 million threshold is determining separately by aggregating each category of related party transaction.

Exemptions: IRAS has provided administrative concessions where TP Documentation need not be maintained:

- › Transactions with domestic related parties (excluding related party loans) where both parties are subject to the same CIT rates)
- › Domestic related party loans (where the lender is not in the business of borrowing and lending)
- › Routine low value added services where the 5% cost mark-up safe harbour is applied.
- › Related party loans where the indicative margin safe harbour is applied.
- › Related party transactions covered by an APA.

## Euro Equivalent

EUR 6,316,010.

### From which year does this obligation exist?

As from the year in which the threshold is met (so that the MF is prepared for the year in which the threshold was met or exceeded). Singapore TP Documentation requirements should be practically applicable to Taxpayers from FY2020/21 onwards.

### When does the MF need to be available?

TP Documentation should be prepared on a contemporaneous basis. IRAS does not require Taxpayers to submit the TP Documentation when they file their tax returns. Taxpayers should keep their TP Documentation and submit it to IRAS within 30 days upon request.

### When does it need to be submitted?

The MFs shall be submitted within 30 days based on the request by the tax authority.

### Does the MF have to be prepared in the relevant local language?

The TP Documentation needs to be prepared in English. Paragraph 6.40(c) of the 2021 Singapore TP Guidelines specifies that the IRAS may request translation of any TPD not written in English.

### Is documentation in English permissible?

Yes.

### What are the possible consequences of not having the MF available?

### Penalties?



## Singapore

Yes, a penalty of up to SGD 10,000 (i.e. USD 7,600 approx.) applies to a Taxpayer who knowingly provides materially false or misleading TP Documentation to the comptroller.

### Imprisonment?

Yes.

### Shifting of the burden of proof?

No.

### Other?

No.

### To what 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, except:

- › **Description of Group lines of business:** Singapore TPG (description of all group lines of businesses, products and services, as relevant to Singapore Taxpayer); OECD: (description of group's 5 largest products/services by turnover and those products/services amounting to more than 5% of group turnover).
- › **Industry overview:** Singapore TPG: (Description of industry, market and regulatory factors relevant to the group); OECD: (none).  
Group intangibles/R&D arrangements:
- › **Other:** Singapore TPG (a listing of group intangibles and the related parties owing them); OECD (significant additional disclosures including description of the group strategy for IP development/ownership/ exploitation, R&D locations, key intercompany arrangements, TP policies and IP transfers during the year).
- › **Group financing arrangements:** Singapore TPG (description of financing arrangements between related parties); OECD (additional disclosures such as details of key third party financing arrangements, specific central financing function within the group etc.)
- › **Group financial position:** Singapore TPG (Group financials, as relevant to the Singapore's Taxpayer's line of businesses); OECD (Group's consolidated financial position).

## 3. Local File (LF)

### What is the threshold requirement for the obligation to prepare a LF?

Same as above.

### Euro Equivalent

Same as above.

### From which year does this obligation exist?

As from the year in which the threshold is met (so that the LF is prepared for the year in which the threshold was met or exceeded). Singapore TP Documentation requirements should be practically applicable to Taxpayers from FY2018 onwards.

### When does the LF need to be available?

TP Documentation should be prepared on a contemporaneous basis. IRAS does not require Taxpayers to submit the TP Documentation when they file their tax returns. Taxpayers should keep their TP Documentation and submit it to IRAS within 30 days upon request.

### When does the LF need to be submitted?

The LFs shall be submitted within 30 days upon request by the tax authorities.

### Does the LF have to be prepared in the relevant local language?

The TP Documentation needs to be prepared in English. Paragraph 6.40(c) of the 2021 Singapore TPG specifies that the IRAS may request translation of any TP Documentation not written in English.

### Or is documentation in English permissible?

Yes.

### What are the possible consequences of not having the LF available?

### Penalties?

Yes, a penalty of up to SGD 10,000 (i.e. USD 7,600 approx.) applies to a Taxpayer who knowingly provides

## Singapore

materially false or misleading TP Documentation to the comptroller.

### **Imprisonment?**

Yes.

### **Shifting of the burden of proof?**

No.

### **Other?**

Yes.

### **To what 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?**

Same as above.

## **4. Country-by-Country Reporting (CbCR)**

### **What is the threshold requirement for the obligation to prepare Country-by-Country Reporting?**

IRAS has published an e-tax guide on CbCR. Broadly, CbCR is required for an MNE group for financial years beginning on or after 1 January 2017 (but before 1 January 2018), where the Singapore resident ultimate parent entities (UPEs) of the following two types of MNE groups are required to submit a CbCR to the comptroller (or an authorised person):

- › Type A group: an MNE group with consolidated revenues of at least SGD1.125 billion (USD850 million) and has two or more entities that are tax residents in different countries.
- › Type B group: an MNE group with consolidated revenues of at least SGD1.125 billion having a single entity that is tax resident in one jurisdiction, but is also subject to income tax for its business carried out through a permanent establishment in another jurisdiction.

### **From which year does this CbCR obligation exist?**

From 1 January 2017.

### **Are Taxpayers required to notify of CbCR filing in your country?**

With effect from the Financial Year beginning on or after 1 January 2022, Singapore headquartered MNEs having a filing obligation in Singapore will need to notify IRAS on their obligation to file a CbCR within 3 months from the end of their FY.

### **If yes, when and how do the tax authorities need to be notified?**

IRAS will no longer issue notification letters to the reporting entities.

### **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 financial 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?**

No.

### **Does your country have a requirement that the financial years of the group need to be aligned with?**

Yes. Information in the CbCR should reflect on a consistent basis either:

- a) Information for the fiscal year of the 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 (e.g. if CbCR is for reporting entity's FYE 31 December 2017, financial information of group entities having FYE 31 March 2017, 30 September 2017 and 31 December 2017 would be included); OR
- b) Information for relevant group entities for the fiscal year of the reporting entity (e.g. if CbCR is for reporting entity's FY 1 January 2017 - 31 December 2017, financial information of group entities for that same period be included. This can be done by directly identifying financial information of group entities for the period 1 January 2017 – 31 December 2017).

# Singapore

## Where is the CbCR to be submitted?

For FY beginning on or after 1 Jan 2022, these Singapore MNE groups are also required to notify IRAS of their obligation to file a CbCR, within 3 months from the end of that relevant FY.

## How is the CbCR to be submitted, specifically, is there any prescribed standard?

In accordance with the CbCR XML Schema prescribed by the OECD Guidelines and the IRAS' supplementary instructions.

## What are the possible consequences of not having the CbCR available?

### Penalties?

Yes, a penalty of up to SGD10,000 (USD7,600) applies to the filing of false or misleading CbCR information.

### Imprisonment?

Yes, the responsible Taxpayer may also be imprisoned for up to two years.

## Shifting of the burden of proof?

No.

## Other?

No.

## To what 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 the OECD requirements.

## Did your country sign the Multilateral Competent Authority Agreement on the Exchange of CbCR ("CbCR MCAA")?

Yes.

## Did your country enter into other information exchange agreements, such as on a bilateral basis?

Yes.

## Can a Taxpayer in your country fulfil his CbCR requirement by referring to the reporting entity in the same or another country?

Singapore has MCAA agreements or has included information exchange provisions in its double tax agreements with most treaty partners.

## 5. TP disclosure in tax return or TP specific returns

### Is there a threshold for Related Party Transactions?

SGD 15 million.

### Does a Taxpayer need to disclose information regarding TP documentation in his tax return?

Yes. From YA 2018 (FY2017) onwards, Taxpayers must report certain details of related party transactions if the value of such transactions in the audited accounts for the financial year exceeds SGD15 million (the value of transactions is the sum of all local and cross-border related party transactions (i) in the income statement and (ii) the year-end balances of loans and non-trade amounts).

This is reported in the Form C (submitted with the Tax Return filing) and includes details of related party transactions, values, and related parties. The Form C does not require the Taxpayer to advise whether they have prepared TP Documentation.

### 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 TP, what could be the legal consequences?

The form for reporting related party transactions is part of Form C of the tax return. This form provides IRAS with relevant information to assess companies' TP risks and to improve enforcement of the arm's length requirement. Failure to comply results in up to SGD5,000; and/or Imprisonment of up to 3 years.

Where the error/omission/discrepancy in the tax return was made with intention to evade taxes, a penalty of up to 400% of the amount of tax undercharged; or a fine of up to SGD50,000; and/or imprisonment up to 5 years.

IRAS will consider individual circumstances (e.g. negligence, compliance history, cooperation during audits, future commitment to compliance etc.) when

## Singapore

deciding penalty only in cases where no evidence of any intention to evade taxes.

**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?**

IRAS and takes a serious view of offences by errant tax agents. The IRAS has stated that it will take deterrent actions (e.g. penalties/ fines/ imprisonment) against tax agents who deliberately facilitate their clients' under declaration of taxes, assist in falsifying records or provide objectionable tax advice to clients.

The IRAS will treat any voluntary disclosures of errors in tax returns as mitigating factors and impose lower penalties.

**Does a Taxpayer need to file TP specific returns?**

There is no TP return required to be filed, either separately or along with the Singapore income tax return.

**Please state the filing form number and name.**

With effect from YA2018, companies with related party transactions exceeding SGD15 million are required to complete the Related Party Transactions Form and submit it together with Form C. From YA2020 onwards, the Form for Reporting RPT is available as part of the Corporate Income Tax return (Form C).

**What would be the filing deadline?**

The form for reporting related party transactions is part of Form C and it needs to be submitted together with the tax return. The annual filing deadline for Form C is 30 November.

**What would be the penalties for non-compliance?**

Penalties may be imposed for non-filing or incorrect filing of Form C. In cases where the error/omission/ discrepancy in the tax return was made without any intention to evade taxes, penalty up to 200% of the amount of tax undercharged.

## 6. Benchmarking

**Is there any local guidance or requirement with regard to the preparation of a benchmark study?**

Yes. IRAS provides the following guidance:

- › no preference for commercial database as long as it provides a reliable source of information;
- › Taxpayers should use comparables with publicly available information (preference for listed comparables);
- › if sufficiently reliable local comparables are not available, the search may expand to regional comparables;
- › comparables should be excluded if they have (a) weighted average loss for the tested period; and/or (b) loss incurred for more than half of the tested period;
- › single-year results of the tested party are expected to be compared with multiple-year comparables results;
- › interquartile range is acceptable;
- › no need to conduct a fresh benchmark search each year - although Taxpayers should update their TPD (including benchmark) when there are material changes impacting the functional analysis or TP analysis; and
- › weighted average is preferred over simple average or pooled results.

**Is there any stated preference for local benchmarks?**

As much as possible, Taxpayers should use local comparables in their comparability analysis. When Taxpayers are unable to find sufficiently reliable local comparables, they may expand their search to regional comparables (such as pan-Asian).

**Are there any materiality thresholds that apply to the requirement to have a benchmark study available?**

Yes. Singapore provides thresholds for documentation of related party transactions in the TP Documentation. Benchmarking is required for related party transactions that meet these same thresholds unless the transactions meet the conditions for the safe harbours.

## 7. Year-end, secondary, and corresponding adjustments

**Are year-end/ secondary/ corresponding adjustments permissible?**

## Singapore

Yes, year-end, compensating, self-initiated retrospective and corresponding adjustments are permissible in Singapore (TPG Section 13). Downward year-end adjustments are acceptable if conditions are met (contemporaneous TP Documentation, year-end adjustments are symmetrically applied and adjustments are made before year-end). Self-initiated retrospective adjustments are not permissible unless the adjustments are due to an error under Section 93A (1A) of the ITA.

### **Does the Taxpayer have to comply with any specific features or guidance?**

Yes. Where Taxpayers make year-end adjustments to report arm's length results in the tax return, even if they differ from actual financial results. The IRAS will accept year-end adjustments on the following conditions:

- a. Contemporaneous TP documentation/analyses to establish arm's length prices have been maintained;
- b. Year-end adjustments are made symmetrically in the accounts of all affected related parties; and
- c. Year-end adjustments are made before filing of tax returns.

Even if IRAS has accepted year-end adjustments, it is not precluded from conducting TP audits or making subsequent TP adjustments. Where the conditions are not met, upward adjustments will be subjected to tax. However downward adjustments will not be allowed.

## **8. TP Audit and Dispute Resolution Mechanisms**

### **What are currently the main TP areas of scrutiny by the tax authorities in your country?**

There is none specified.

### **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, Singapore has unilateral, bilateral and multilateral APAs.

### **Are there any restrictions?**

Bilateral/multilateral APAs are available to Singapore resident Taxpayers normally for a period of 3 to 5 years and for two prior/rollback years). Taxpayers must:

- › Comply with all requirements pertaining to pre-filing meetings/application processes.
- › Provide access to TP Documentation.
- › Maintain relevant documents and file annual compliance reports to demonstrate compliance with the terms and conditions of the APA agreement together with the income tax returns.
- › Should notify IRAS and relevant foreign competent authority of any breach of the APA conditions as early as possible.
- › Inform IRAS and relevant foreign competent authorities if the matter is adjudicated through legal/ judicial proceedings while the APA process is still ongoing.
- › Provide an impact analysis and proposed course of action to facilitate the competent authorities' evaluation and discussion.

Notwithstanding the APA process, the IRAS is not precluded from conducting an audit on the Taxpayer if there is non-compliance with Singapore tax law.

# South Korea

## 1. Legal Basis

### **Is there a legal requirement to prepare TP documentation?**

With the emergence of the OECD's base erosion and profit shifting (BEPS) project in 2015, the government codified the contents of BEPS Actions 8–10 and 13 into the Korean TP regime. Consequently, new Taxpayer reporting obligations were introduced into the Law for the Coordination of International Tax Affairs ("LCITA"), including preparing and submitting a Local File ("LF"), Master File ("MF"), and country-by-country ("CbCR") reporting ("BEPS reports").

### **Since when does a TP documentation requirement exist in your country?**

Prior to 2016, when the BEPS report became mandatory, the tax authorities could request data on international transactions, which Taxpayers usually submitted in the form of a TP documentation. The scope of the data that the tax authorities can request is currently stipulated in Article 38 of the Presidential Enforcement Decree of the LCITA, which has been in existence since 1995, when the LCITA was first introduced.

### **Adoption of the OECD or UN legislation in your country?**

The LCITA and its subordinating regulations adopted the main contents of the OECD Guidelines but OECD is not directly referred in the law as a binding authority unlike other countries.

### **Is your country a member of the OECD, Inclusive Framework, or other OECD groups (e.g. BEPS)?**

South Korea is a member of the OECD.

### **Are TP policies of multinational enterprises in principle accepted by the tax authorities, if they are in line with the OECD TP Guidelines?**

Although Korea's LCITA reflects the OECD TP Guidelines, it is not possible to include all of them in the Act. Therefore, even if a MNE's TP policy is in line with the OECD TP Guidelines, it is subject to interpretation and application of the pertinent LCITA provisions by the tax authorities, which sometimes leads to a more or less departure from the OECD TP Guidelines.

### **Which TP methods may be applied?**

Article 8 of the LCITA lists 6 methods of calculating the arm's length price, as follows: Comparable Uncontrolled Price ("CUP"); Resale Price ("RPM"); Cost Plus ("CPM"); Transactional Net Margin Method ("TNMM"); Profit Split ("PS"); and other reasonable methods.

### **Is there a stated preference for any particular TP methods?**

There is no hierarchy in application of TP methods and the most appropriate and reasonable method (or, best method rule) should be applied by Taxpayers

### **Have the documentation requirements of OECD BEPS Action 13 already been implemented (i.e. the LF, MF and CbCR concepts)?**

Yes.

### **Reference to documentation and statements of local government or tax authorities regarding OECD BEPS implementation status**

The Ministry of Economy and Finance puts out BEPS implementation status on a regular basis : <https://english.moef.go.kr/>.

### **Is there any statute of limitation period?**

## South Korea

Korea's statute of limitation is generally 5 years but it is extended to 7 years in the case of cross-border transactions.

### **Reference to relevant articles of law, legislative regulation or applicable administrative guidance that are in place for TP documentation in general.**

Article 16 of the LCITA, its subordinating regulations and interpretation set out the TP Documentation requirements including the contents to be included, the submission deadline, etc.

## **2. Master File (MF)**

### **What is the (consolidated revenue) threshold requirement for the obligation to prepare a MF?**

Taxpayers with sales of KRW 100 billion or more and KRW 50 billion or more in cross-border transactions with their related parties in a given year are required to submit a MF and a LF.

### **Euro Equivalent**

Roughly, sales of EUR 70 million or EUR 35 million for the cross-border transactions.

### **From which year does this obligation exist?**

Applies since 2016 fiscal year.

### **When does the Master File need to be available?**

Within 12 months from the end of fiscal year in which Taxpayers meet the aforesaid threshold.

### **When does it need to be submitted?**

The submission of the MF must be made within 12 months from the end of each fiscal year.

### **Does the MF have to be prepared in the relevant local language?**

Yes.

### **Is documentation in English permissible?**

If the English version is submitted, the Korean translation version must be submitted in a month.

### **What are the possible consequences of not having the MF available?**

### **Penalties?**

If all or part of the report is not submitted or is false, a fine of KRW 30 million is imposed.

### **Imprisonment?**

No

### **Shifting of the burden of proof?**

No

### **Other?**

No

### **To what 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?**

By and large, consistent with OECD requirements.

## **3. Local File (LF)**

### **What is the threshold requirement for the obligation to prepare a LF?**

Taxpayers with sales of KRW100 billion or more and KRW50 billion or more in cross-border transactions with their related parties in a given year are required to submit a MF and a LF.

### **Euro Equivalent**

Roughly, sales of EUR 70 million or EUR 35 million for the cross-border transactions.

### **From which year does this obligation exist?**

Applies since 2016 fiscal year.

### **When does the LF need to be available?**

## South Korea

Within 12 months from the end of fiscal year in which Taxpayers meet the aforesaid threshold.

### When does the LF need to be submitted?

Same as above.

### Does the LF have to be prepared in the relevant local language?

Yes.

### Or is documentation in English permissible?

No.

### What are the possible consequences of not having the LF available?

#### Penalties?

If all or part of the report is not submitted or is false, a fine of KRW30 million is imposed.

#### Imprisonment?

No.

#### Shifting of the burden of proof?

No.

#### Other?

No.

### To what 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?

By and large, consistent with OECD requirements.

## 4. Country-by-Country Reporting (CbCR)

### What is the threshold requirement for the obligation to prepare Country-by-Country Reporting?

As for the CbCR, ultimate parent companies with sales of KRW1 trillion (roughly EUR 750 million) on a consolidated basis in the immediately preceding year should submit a CbCR.

### From which year does this CbCR obligation exist?

Applies since 2016 fiscal year.

### Are Taxpayers required to notify of CbCR filing in your country? If yes, when and how do the tax authorities need to be notified?

If the ultimate parent company filing the CbCR is not a Korean company, the information about the foreign parent company filing the CbCR in another jurisdiction (i.e., reporting entity) must be notified to the Korean tax authorities within 6 months after the end of the fiscal year by filling out a form.

### 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 each applicable fiscal year.

### Are there any deviating submission deadlines for the secondary mechanism?

With the approval of the NTS, the Taxpayer can extend the submission deadline for up to 1 year.

### 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?

It must be aligned with the same financial years (accounting period) as the ultimate parent company filing the CbCR.

### Where is the CbCR to be submitted?

Submit electronically to the AXIS portal operated by NTS: <https://axis.go.kr>.

### How is the CbCR to be submitted, specifically, is there any prescribed standard?

Submit electronically, either by filling out and uploading an Excel file provided by the system or by uploading a file written in XML.

### What are the possible consequences of not having the CbCR available?

#### Penalties?



## South Korea

If all or part of the report is not submitted or is false, a fine of KRW 30 million is imposed.

### Imprisonment?

No.

### Shifting of the burden of proof?

No.

### Other?

No.

### To what 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 CbCR ("CbCR MCAA")?

Yes.

### Did your country enter into other information exchange agreements, such as on a bilateral basis?

Yes. (USA only)

### 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 TP specific returns

### Is there a threshold for Related Party Transactions?

Tangible asset transactions with a value of KRW1 billion or less and other transactions with a value of KRW200 million or less are excluded from TP analysis per LF.

### Does a Taxpayer need to disclose information regarding TP documentation in his tax return?

As a part of corporate tax return package, Taxpayers engaged in cross-border transactions with foreign related parties are required to submit the following TP

disclosure forms within 6 months from the end of each fiscal year-end, unless the transaction amount does not reach a certain threshold.

- › an international transaction statement for each foreign related party;
- › a summary income statement of each foreign related party that has cross-border transactions with a Korean Taxpayer; and
- › a form stating the TP method selected and reasons for such selection for each related party transaction – there are separate forms for tangible property transactions, intangible property transactions, service transactions and CCAs.

### 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 TP what could be the legal consequences?

Taxpayers can file an amended return to pay the underreported tax. This can result in underreporting penalty and additional interest on the amount of tax owed.

### 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?

There is no responsibility of tax advisor or CPA filing a tax return with regard to the low profit level of Taxpayers attributable to incorrect TP implementation because the responsibility for such incorrect TP implementation lies with Taxpayers or Taxpayers' lack of TP policy.

### Does a Taxpayer need to file TP specific returns?

No. However, as mentioned above, Taxpayers are required to submit 3 TP related disclosure forms as part of corporate tax return.

### Please state the filing form number and name.

Taxpayers engaging in cross-border transactions with their foreign related parties must file the international transaction statement (Form 16), the foreign related party's summary income statement (Form 17) and a

## South Korea

form stating the selection of TP methods and reasons (Form 20).

### **What would be the filing deadline?**

Within 6 months from each fiscal year-end.

### **What would be the penalties for non-compliance?**

If any part of the international transaction statement is not submitted or is false, a fine of KRW5 million may be imposed on each foreign related party with which the Korean Taxpayer had a transaction during the year.

## **6. Benchmarking**

### **Is there any local guidance or requirement with regard to the preparation of a benchmark study?**

Article 7 of the enforcement rules of the LCITA sets out the benchmarking analysis procedure.

### **Is there any stated preference for local benchmarks?**

No. However, Korean tax authorities always expect local comparables extracted from local database called KisValue. Local benchmarks are required where the Korean company is the tested party.

### **Are there any materiality thresholds that apply to the requirement to have a benchmark study available?**

No.

## **7. Year-end, secondary, and corresponding adjustments**

### **Are year-end/ secondary/ corresponding adjustments permissible?**

Yes.

### **Does the Taxpayer have to comply with any specific features or guidance?**

The year-end adjustments are referred to in article 6 of the LCITA. Articles 12 and 13 of the LCITA set out the corresponding adjustments and the secondary adjustments respectively.

## **8. TP Audit and Dispute Resolution Mechanisms**

### **What are currently the main TP areas of scrutiny by the tax authorities in your country?**

The Korean tax authorities have recently focused on challenging domestic sales support service providers on the basis that these service providers should be treated as wholesalers or receive a commission equivalent to the wholesaler's gross margin.

### **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?**

No.

# Sri Lanka

## 1. Legal Basis

### **Is there a legal requirement to prepare TP documentation?**

Yes, TP documentation has to be prepared annually as per the TP regulations. LF and MF are required to be submitted upon request.

### **Since when does a TP documentation requirement exist in your country?**

The effective commencement date for Local File and Master File is 1 April 2018. The CbCR is effective from 1 April 2020.

### **Adoption of the OECD or UN legislation in your country?**

OECD legislation adopted. Furthermore, their domestic legislation has been prepared in line with OECD TP guidelines as well as the UN TP Manual.

### **Is your country a member of the OECD, Inclusive Framework, or other OECD groups (e.g. BEPS)?**

Yes, Sri Lanka is a part of the inclusive framework. Domestic legislation has been prepared in line with OECD TP Guidelines as well as the UN TP Manual.

### **Are TP policies of multinational enterprises in principle accepted by the tax authorities, if they are in line with the OECD TP Guidelines?**

Sri Lanka is not a member of the OECD. However, the IRD generally refers to the OECD TP Guidelines to resolve matters involving interpretations of its own TP regulations. By the same token, the IRD broadly recognises the pricing methods stipulated in the OECD TP Guidelines.

### **Which TP methods may be applied?**

The TP regulations prescribe the following methods for the determination of the arm's length price: Comparable Uncontrolled Price ("**CUP**"); Resale Price method ("**RPM**"); Cost Plus method ("**CPM**"), Profit Split ("**PS**"); and Transaction Net Margin Method ("**TNMM**").

### **Is there a stated preference for any particular TP methods?**

The TP regulations do not provide a hierarchy of methods, but require that the process of selecting a method should be aimed at finding the most appropriate method.

### **Have the documentation requirements of OECD BEPS Action 13 already been implemented (i.e. the LF, MF and CbCR concepts)?**

Yes, Sri Lanka has adopted the OECD's three tiered documentation approach (i.e., LF, MF and CbCR) set out in BEPS Action 13.

### **Reference to documentation and statements of local-government or tax authorities regarding OECD BEPS implementation status**

Sri Lanka is not a member of the OECD. However, the IRD generally refers to the OECD TP Guidelines to resolve matters involving interpretations of its own TP regulations. By the same token, the IRD broadly recognises the pricing methods stipulated in the OECD TP Guidelines.

### **Is there any statute of limitation period?**

The statute of limitations is 30 months from the date of the filing of the income tax return. In the case of fraud or wilful evasion, the statute of limitations will not apply.

# Sri Lanka

**Reference to relevant articles of law, legislative regulation or applicable administrative guidance that are in place for TP documentation in general.**

TP rules are primarily contained in Sections 76, 77 and 78 of the Inland Revenue Act.

## 2. Master File (MF)

**What is the (consolidated revenue) threshold requirement for the obligation to prepare a MF?**

If the aggregate revenue exceeds EUR 50 million (or the LKR equivalent).

**Euro Equivalent**

EUR 50 million.

**From which year does this obligation exist?**

The effective commencement date from year of assessment 2020/21 (Regulation 6 of the TP Gazette).

**When does the MF need to be available?**

The MF must be available at the time of the income tax return filing, on or before 30 November following the end of each year-end.

**When does it need to be submitted?**

The MF should be submitted to the IRD within 60 days upon request.

**Does the MF have to be prepared in the relevant local language?**

For international transactions, English should be used. For domestic transactions, Sinhalese or Tamil can be used.

**Is documentation in English permissible?**

Yes.

**What are the possible consequences of not having the MF available?**

**Penalties?**

Yes, The TP specific penalty regime became effective from YA 2020/21. Such penalties are imposed as follows:

- › For not maintaining documentation, a penalty of up to 1% of the aggregate transaction value may be levied;
- › For not furnishing required documents, a penalty of up to LKR 250,000 may be levied;
- › For nondisclosure of any required information, a penalty of up to 2% of the aggregate transaction value may be levied;
- › For failure to submit documents on the specified date, a penalty of up to LKR 100,000 may be levied; and
- › Concealment of income, furnishing inaccurate particulars or evasion could lead to imposing a penalty of 200% of incremental tax on the TP adjustment.

**Imprisonment?**

No.

**Shifting of the burden of proof?**

No.

**Other?**

No.

**To what 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.

## 3. Local File (LF)

**What is the threshold requirement for the obligation to prepare a LF?**

If the aggregate value of associated enterprise transactions exceeds LKR 200 million.

**Euro Equivalent**

# Sri Lanka

EUR 623,706.

adjustment.

## From which year does this obligation exist?

The effective commencement date for LF and MF is 1 April 2018 (commencing for Year of Assessment 2020/2021).

## When does the LF need to be available?

The LF must be available at the time of the income tax return filing, on or before 30 November following the end of each year-end.

## When does the LF need to be submitted?

The LF should be submitted to the IRD within 60 days upon request.

## Does the LF have to be prepared in the relevant local language?

For international transactions, English should be used. For domestic transactions, Sinhalese or Tamil can be used.

## Or is documentation in English permissible?

Yes.

## What are the possible consequences of not having the LF available?

### Penalties?

Yes, The TP specific penalty regime became effective from 1 April 2018. Such penalties are imposed as follows:

- › For not maintaining documentation, a penalty of up to 1% of the aggregate transaction value may be levied;
- › For not furnishing required documents, a penalty of up to LKR 250,000 may be levied.
- › For nondisclosure of any required information, a penalty of up to 2% of the aggregate transaction value may be levied;
- › For failure to submit documents on the specified date, a penalty of up to LKR 100,000 may be levied; and
- › Concealment of income, furnishing inaccurate particulars or evasion could lead to imposing a penalty of 200% of incremental tax on the TP

## Imprisonment?

No.

## Shifting of the burden of proof?

No.

## Other?

No.

## To what 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 (CbCR)

### What is the threshold requirement for the obligation to prepare Country-by-Country Reporting?

If the entity is a member of an MNE group and the group's revenue exceeds EUR 750 million (or the LKR equivalent) in the preceding financial year.

### From which year does this CbCR obligation exist?

The CbCR is effective from 1 April 2020.

### Are Taxpayers required to notify of CbCR filing in your country? If yes, when and how do the tax authorities need to be notified?

The CbCR notification should be filed annually by not later than 31 December of the reporting Fiscal Year of the MNE group. CbCR notification should be filed annually for each reporting Fiscal Year of the MNE group. TP regulations do not provide specific provisions in this regard.

### If the reporting entity (ultimate parent or surrogate parent) is in your country, what is the CbCR submission deadline?

The CbCR should be filed no later than 12 months after the last day of the reporting Fiscal Year of the MNE group.

## Sri Lanka

**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?**

Submitted to the IRD.

**How is the CbCR to be submitted, specifically, is there any prescribed standard?**

It is submitted via the prescribed form (Form No: TP/CbCR/01). CbCR should be submitted to the Commissioner, International Tax Policy, 14th floor, Inland Revenue Department manually (either a hard copy or a compact disc) or electronically by email.

**What are the possible consequences of not having the CbCR available?**

**Penalties?**

Yes, The TP specific penalty regime became effective from 1 April 2018. Such penalties are imposed as follows:

- › For not maintaining documentation, a penalty of up to 1% of the aggregate transaction value may be levied;
- › For not furnishing required documents, a penalty of up to LKR 250,000 may be levied;
- › For nondisclosure of any required information, a penalty of up to 2% of the aggregate transaction value may be levied;
- › For failure to submit documents on the specified date, a penalty of up to LKR 100,000 may be levied; and
- › Concealment of income, furnishing inaccurate particulars or evasion could lead to imposing a penalty of 200% of incremental tax on the TP adjustment.

**Imprisonment?**

No.

**Shifting of the burden of proof?**

No.

**Other?**

No.

**To what 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 CbCR ("CbCR MCAA")?**

No.

**Did your country enter into other information exchange agreements, such as on a bilateral basis?**

No.

**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 TP specific returns**

**Is there a threshold for Related Party Transactions?**

Yes, Regulation 6 of the TP Gazette requires that enterprises having "international transactions", or "transactions other than international transactions" made between associated enterprises who fulfil the requirements of Regulation 1 and that carry out during an assessment year aggregate controlled transactions that exceed LKR 200 million must submit a TPDF along with the Income Tax Return.

**Does a Taxpayer need to disclose information regarding TP documentation in his tax return?**

## Sri Lanka

The TP Disclosure Form filed along with the income tax return should provide information related to the transaction, associated enterprise, TP methodology and arm's length price.

**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 TP, what could be the legal consequences?**

Concealment of income, furnishing inaccurate particulars or evasion could lead to imposing a penalty of 200% of incremental tax on the TP adjustment.

**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?**

Concealment of income, furnishing inaccurate particulars or evasion could lead to imposing a penalty of 200% of incremental tax on the TP adjustment.

**Does a Taxpayer need to file TP specific returns?**

Yes, Taxpayers are required to file a TPDF along with the income tax return by the due date.

**Please state the filing form number and name.**

TP Disclosure Form.

**What would be the filing deadline?**

Taxpayers are required to file a TPDF along with the income tax return by the due date.

**What would be the penalties for non-compliance?**

For not furnishing required documents, a penalty of up to LKR250,000 may be levied.

### **6. Benchmarking**

**Is there any local guidance or requirement with regard to the preparation of a benchmark study?**

As per the TP regulations, use of the interquartile range is mandatory. However, there is a risk that the IRD may amend the TP regulations, narrowing the range further.

**Is there any stated preference for local benchmarks?**

TP regulations neither provide clear guidance on benchmarking studies nor prohibit the use of regional comparables. Therefore, regional comparables should be acceptable, provided that the differences can be eliminated through appropriate adjustments and analyses.

**Are there any materiality thresholds that apply to the requirement to have a benchmark study available?**

As per the TP regulations, if no significant changes have occurred, no fresh benchmarking search needs to be conducted every year, but the financial data of the comparables needs to be updated. A fresh benchmark search is required every 3 years. However, there is no specific guidance on the term "significant changes".

### **7. Year-end, secondary, and corresponding adjustments**

**Are year-end/ secondary/ corresponding adjustments permissible?**

Yes, Sri Lanka allows necessary adjustments in comparability analysis. Reliable and accurate adjustments can be done, if any, between the uncontrolled transactions and controlled transactions being compared.

**Does the Taxpayer have to comply with any specific features or guidance?**

Regulation 4 of TP Gazette Notification No. 2217/7 dated March 02, 2021.

### **8. TP Audit and Dispute**

**What are currently the main TP areas of scrutiny by the tax authorities in your country?**

No particular transaction, industry and situation is more at risk of receiving a tax audit than another. Experience indicates that once the IRD has had substantial success with a tax audit of a particular company, other companies in the same industry have been targeted.

**Based on your experience, are joint or multilateral audits initiated and carried out?**

No.

## Sri Lanka

### **Does the Taxpayer have the option to apply for bilateral or multilateral APAs?**

Yes, The TP regulations provide an opportunity for Taxpayers to opt for a unilateral, bilateral or multilateral APA.

### **Are there any restrictions?**

The TP regulations provide that an APA is available for a period not exceeding 4 years. This term could be reduced if the economic circumstances from 1 year to another change drastically. However, the corresponding guidelines have not yet been issued specifying the procedures to be followed.



# Taiwan

## 1. Legal Basis

### Is there a legal requirement to prepare TP documentation?

Yes.

### Since when does a TP documentation requirement exist in your country?

2004.

### Adoption of the OECD or UN legislation in your country?

Yes, Taiwan has adopted OECD guidelines but also has its own regulation governing the assessment of profit seeking enterprise income tax on non-arm's length TP (referred to as TP regulation here).

### Is your country a member of the OECD, Inclusive Framework, or other OECD groups (e.g. BEPS)?

No.

### Are TP policies of multinational enterprises in principle accepted by the tax authorities, if they are in line with the OECD TP Guidelines?

No. It depends on whether the TP report or analyses under OECD TP Guidelines are followed with prepared TP regulation. However, some officers may criticise the comparison data or index applied and question the analysis result.

### Which TP methods may be applied?

Following the OECD Guidelines, the TP pricing methods are as follows: Comparable Uncontrolled Price (“CUP”); Resale Price method (“RPM”); Cost Plus method (“CPM”), Profit Split (“PS”); and Comparable Profit, and other methods prescribed by the Ministry of Finance (“MOF”).

### Is there a stated preference for any particular TP methods?

The MOF follows the changes in the hierarchy of the methods in favour of the “most appropriate method” approach within the OECD Guidelines.

### Have the documentation requirements of OECD BEPS Action 13 already been implemented (i.e. the LF, MF, and CbCR concepts)?

There are no material differences between the OECD report template or format and Taiwan’s regulations. However, for CbCR, there is an additional requirement for the appendix list of all constituent entities of the MNE.

### Reference to documentation and statements of local government or tax authorities regarding OECD BEPS implementation status

The new regulation provides for LF, MF and CbCR since 2017, according to articles as follows:

- › **Local File:** Article 22 of the non-arm's length transaction auditing regulation (TP regulation);
- › **Master File:** Article 21-1 of the non-arm's length transaction auditing regulation (TP regulation); and
- › **CbCR:** Article 22-1 of the non-arm's length transaction auditing regulation (TP regulation).

### Is there any statute of limitation period?

For the tax which should be declared and paid by a Taxpayer under and has been declared within the statutory period for filing a tax return, and which the Taxpayer has no intention to evade by fraud or any other unrighteous means, the period for assessment shall be 5 years.

# Taiwan

**Reference to relevant articles of law, legislative regulation, or applicable administrative guidance that are in place for TP documentation in general.**

Same as above. In addition, the original legal base for TP auditing is Article 43-1 of the Income Tax Law which authorises the Tax Authority to investigate related party transactions. More than TP Documentation, tax officers can request more reasonable documentation if they deem this necessary.

## 2. Master File (MF)

**What is the (consolidated revenue) threshold requirement for the obligation to prepare a MF?**

The thresholds for preparing MF are Taxpayers with:

- TWD 3 billion in total operating and non-operating revenue; and
- TWD 1.5 billion in related party transactions. The related party transactions amount is calculated with aggregate separate transaction types by the gross base.

### **Euro Equivalent**

EUR 83,361,100.

**From which year does this obligation exist?**

Since the 2017 fiscal year.

**When does the Master File need to be available?**

In 1 year after the end of the fiscal year, which Taxpayer reached the threshold.

**When does it need to be submitted?**

The Taxpayer should file to the local tax authority in 1 month upon request by the tax authority.

**Does the MF have to be prepared in the relevant local language?**

Yes. If prepared in English, a Chinese translation may be requested and should be submitted within 1 month.

**Is documentation in English permissible?**

No, unless it has been approved by the tax authority.

**What are the possible consequences of not having the MF available?**

**Penalties?**

Yes, If the tax adjustment was regarded as tax avoidance, then an administration penalty from TWD 3,000 to TWD 30,000 to apply and the tax adjustment will be based on the deemed profitability. If the tax adjustment was regarded as tax evasion, then this would trigger a penalty of up to 200% of underpaid tax liability.

**Imprisonment?**

No.

**Shifting of the burden of proof?**

No.

**Other?**

No.

**To what 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.

## 3. Local File (LF)

**What is the threshold requirement for the obligation to prepare a LF?**

A Taxpayer with related party transactions, where two conditions were met:

- › TWD 300 million in revenue; and
- › TWD 200 million of related party transactions.

### **Euro Equivalent**

EUR 83,361,100.

**From which year does this obligation exist?**

From the fiscal year of 2004.

**When does the LF need to be available?**

## Taiwan

There are 5 months for preparing LF after the end of the fiscal year, however, Taxpayer submission is based on the request from the tax authority and has a 1-month submission period.

### **When does the LF need to be submitted?**

Upon request and having 1 month to submit.

### **Does the LF have to be prepared in the relevant local language?**

Yes. If prepared in English, a Chinese translation may be requested and should be submitted within 1 month.

### **Or is documentation in English permissible?**

No, unless it has been approved by the tax authority.

### **What are the possible consequences of not having the LF available?**

#### **Penalties?**

Yes, if the TP report or substitute document is not provided for review or investigation, then the tax authority may refer to the relevant business net profit, operating cost, and operating expense to compute the taxable income according to the profit standard of the same trade. Meanwhile, failure to submit or provide the information or document related to the taxable income, the tax authority may continue to fine from TWD 3,000 to TWD 30,000. If the tax adjustment was regarded as tax evasion, then would trigger a penalty of up to 200% of underpaid tax liability.

#### **Imprisonment?**

No.

#### **Shifting of the burden of proof?**

No.

#### **Other?**

No.

#### **To what 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 (CbCR)**

### **What is the threshold requirement for the obligation to prepare Country-by-Country Reporting?**

The threshold is TWD 27 billion of consolidated revenue of the parent company.

#### **Euro Equivalent**

EUR 750 million.

### **From which year does this CbCR obligation exist?**

From 1 January 2017 (FY2017).

### **Are Taxpayers required to notify of CbCR filing in your country?**

The multinationals need to submit CbCR to the tax authority in 1 year after the end of the fiscal year.

### **If yes, when and how do the tax authorities need to be notified?**

Taxpayers need to provide CbCR notification by the annual filing date of the tax return for the relevant fiscal year.

### **If the reporting entity (ultimate parent or surrogate parent) is in your country, what is the CbCR submission deadline?**

In 1 year.

### **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?**

The CbCR must be submitted to the tax authority.

## Taiwan

### How is the CbCR to be submitted, specifically, is there any prescribed standard?

Notification shall be done upon filing an income tax return by completing a form of the tax return (page B6). Annual submission is required and each entity shall fill in the information required in the tax return.

### What are the possible consequences of not having the CbCR available?

#### Penalties?

Yes.

#### Imprisonment?

No.

#### Shifting of the burden of proof?

No.

#### Other?

No.

### To what 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 CbCR ("CbCR MCAA")?

Yes, Japan and New Zealand (2017); Australia (2018); Switzerland (2019).

### Did your country enter into other information exchange agreements, such as on a bilateral basis?

Yes, for the following countries:

Singapore, Indonesia, Vietnam, South Africa, Australia, New Zealand, Gambia, Malaysia, Swaziland, Macedonia, Netherlands, UK, Senegal, Sweden, Belgium, Denmark, Israel, Paraguay, Hungary, France, India, Slovakia, Switzerland, Germany, Thailand, Kiribati, Luxembourg, Austria,

Italy, Japan, Canada, Poland, Czech Republic, Saudi Arabia and South Korea.

### 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 returns or TP specific returns

#### Is there a threshold for Related Party Transactions?

Yes. Some basic information such as related party transaction types, amount and counter parties information.

#### Does a Taxpayer need to disclose information regarding TP documentation in his tax return?

The tax authority currently does not require TP-specific returns.

#### 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 TP, what could be the legal consequences?

The increase in the taxable income of the controlled transactions, which are not disclosed in the report or TP document under Articles 21 to 22-1 by a profit seeking enterprise, adjusted and assessed by the collection authorities in charge is more than 5% of the annual taxable income of the enterprise and more than 1.5% of the annual net operating revenue.

#### 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?

If the Taxpayer's behaviour was treated as tax evasion and the tax advisor/ accountant was proven to assist the Taxpayer, then they may have at most four and half years imprisonment. Otherwise, there is no legal responsibility for the tax advisor/accountant/ administrator.

#### Does a Taxpayer need to file TP specific returns?

No.

# Taiwan

## **Please state the filing form number and name.**

A Taxpayer must disclose related party transactions and include the disclosure with the annual income tax return (pages B2-B5), under the TP guidelines.

The disclosure generally includes:

- › The investing structure;
- › Identification of related parties;
- › The related party transaction amounts by type, including transfer of tangible assets, use of tangible assets, transfer of intangible assets, use of intangible assets, rendering of services, use of funds, and other types of transactions prescribed by the MOF;
- › The related party transaction balances;
- › The related parties' financial information, including total revenues, gross margins, operating margins, and net margins; and
- › Whether the enterprise has prepared TP documentation for that Fiscal Year.

## **What would be the filing deadline?**

5 months after the end of the fiscal year.

## **What would be the penalties for non-compliance?**

The increase in the taxable income of the controlled transactions, which are not disclosed in the report or TP document under Articles 21 to 22-1 by a profit seeking enterprise, adjusted and assessed by the collection authorities in charge is more than 5% of the annual taxable income of the enterprise and more than 1.5% of the annual net operating revenue.

## **6. Benchmarking**

### **Is there any local guidance or requirement about the preparation of a benchmark study?**

No.

### **Is there any stated preference for local benchmarks?**

No, Asia Pacific regional benchmarks are widely acceptable in practice.

### **Are there any materiality thresholds that apply to the requirement to have a benchmark study available?**

No.

## **7. Year-end, secondary, and corresponding adjustments**

### **Are year-end/ secondary/ corresponding adjustments permissible?**

No.

### **Does the Taxpayer have to comply with any specific features or guidance?**

No.

## **8. TP Audit and Dispute Resolution Mechanisms**

### **What are currently the main TP areas of scrutiny by the tax authorities in your country?**

The tax authority prefers reviewing the related party transactions by separate types of transactions, which means they prefer to test the profitability of different types of transactions, such as trading, services providing, etc., not reviewing the aggregate amount of one party.

Entities with transactions with low tax jurisdictions are more easily selected for tax audits.

### **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, Taiwan has unilateral, bilateral, and multilateral APAs.

### **Are there any restrictions?**

There are a few conditions for applying to the APA process as below:

1. The revenue is over TWD500 million and TWD200 million related party;
2. No significant tax compliance failure in 3 years;
3. Well prepared TP Documentation; and
4. Other requirements made by the Treasury.

# Thailand

## 1. Legal Basis

**Is there a legal requirement to prepare TP documentation?**

Yes.

**Since when does a TP documentation requirement exist in your country?**

2019.

**Adoption of the OECD or UN legislation in your country?**

OECD.

**Is your country a member of the OECD, Inclusive Framework, or other OECD groups (e.g. BEPS)?**

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? Is there a stated preference for any particular TP methods?**

In principle, all internationally accepted methods are acceptable, including Comparable Uncontrolled Price (“CUP”); Resale Price method (“RPM”); Cost Plus method (“CPM”), Profit Split (“PS”); and Comparable Profit, and other methods if justifiable and appropriate, but the taxpayer must obtain approval from the Director-General of the Thai Revenue Department (“TRD”).

**Have the documentation requirements of OECD BEPS Action 13 already been implemented (i.e. the LF, MF and CbCR concepts)?**

Yes.

**Reference to documentation and statements of local-government or tax authorities regarding OECD BEPS implementation status**

LF and MF: Section 71 ter of the Revenue Code.  
CbCR: Notification of Director-General of Revenue Department No. 407 (B.E. 2564).

**Is there any statute of limitation period?**

Generally, 5 years. The period of prescription for claims of taxes is 10 years.

**Reference to relevant articles of law, legislative regulation or applicable administrative guidance that are in place for TP documentation in general.**

General TP legislation: Section 35 ter, Section 71 bis and Section 71 ter Revenue Code.

Ministerial Regulation No. 369 (B.E. 2563) – rules and conditions for adjustments that can be made by the Thai Revenue Department (“TRD”) to the income and expenses.

Ministerial Regulation No. 370 (B.E. 2563) – exemption threshold for mandatory TP documentation requirement.

Notification of Director-General of Revenue Department No. 400 (B.E. 2564) – detailed guidelines on how TP adjustments are to be made.

Notification of Director-General of Revenue Department No. 407 (B.E. 2564) – mandatory items to be included in TP documentation.

## Thailand

Notification of Director-General of Revenue  
Department No. 408 (B.E. 2564) – Country-by-Country  
reporting requirement regulation.

### 2. Master File (MF)

**What is the (consolidated revenue) threshold  
requirement for the obligation to prepare a MF?**

THB 200 million.

**Euro Equivalent**

EUR 5 million.

**From which year does this obligation exist?**

2019.

**When does the Master File need to be available?  
When does it need to be submitted?**

Within 60 days after receiving request from Revenue  
Department.

**Does the MF have to be prepared in the relevant local  
language?**

Yes.

**Is documentation in English permissible?**

No.

**What are the possible consequences of not having the  
MF available?**

**Penalties?**

A penalty for incomplete TP Documentation, failure to  
submit, late submission or incorrect disclosure: up to  
THB 200,000 applies for each case.

In the case of TP adjustments: penalty of up to 100% of  
the tax shortfall amount plus a surcharge of 1.5% per  
month of the tax shortfall amount applies (but capped  
at 100% of the tax shortfall amount).

**Imprisonment?**

No.

**Shifting of the burden of proof?**

No.

**Other?**

Not applicable.

**To what 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.

### 3. Local File (LF)

**What is the threshold requirement for the obligation  
to prepare a LF?**

THB 200 million.

**Euro Equivalent**

EUR 5 million.

**From which year does this obligation exist?**

2019.

**When does the LF need to be available?  
When does the LF need to be submitted?**

Companies with annual revenue of THB 200 million or  
more must submit a TP disclosure form (outlining the  
related party transactions) together with the annual tax  
return within 150 days after the end of the financial  
year.

The LF must be submitted within 60 days after  
receiving request from the Revenue Department.

**Does the LF have to be prepared in the relevant local  
language?**

Yes.

**Or is documentation in English permissible?**

No.

**What are the possible consequences of not having the  
LF available?**

**Penalties?**

## Thailand

The penalty for incomplete TP Documentation, failure to submit, late submission or incorrect disclosure: up to THB 200,000 for each case.

In case of TP adjustments: a penalty of up to 100% of the tax shortfall amount plus a surcharge of 1.5% per month of the tax shortfall amount applies (but capped at 100% of the tax shortfall amount).

### Imprisonment?

No.

### Shifting of the burden of proof?

No.

### Other?

Not applicable.

### To what 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 (CbCR)

### What is the threshold requirement for the obligation to prepare Country-by-Country Reporting?

THB 8 billion (i.e. EUR 750 million approx.).

### From which year does this CbCR obligation exist?

2021.

### Are Taxpayers required to notify of CbCR filing in your country? If yes, when and how do the tax authorities need to be notified?

Yes.

Notification is via online submission, within 12 months from the end of the financial year.

### If the reporting entity (ultimate parent or surrogate parent) is in your country, what is the CbCR submission deadline?

Within 12 months from the end of the financial year.

### Are there any deviating submission deadlines for the secondary mechanism?

Within 60 days after receiving the request from the Revenue Department.

### 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?

CbCR is to submitted online.

### How is the CbCR to be submitted, specifically, is there any prescribed standard?

Submission is via an online form.

### What are the possible consequences of not having the CbCR available?

#### Penalties?

A penalty of THB2,000 in case of failure to submit the CbCR applies.

#### Imprisonment?

No.

#### Shifting of the burden of proof?

No

#### Other?

Not applicable.

### To what 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.



## Thailand

**Did your country sign the Multilateral Competent Authority Agreement on the Exchange of CbCR ("CbCR MCAA")?**

Yes.

**Did your country enter into other information exchange agreements, such as on a bilateral basis?**

Automatic Exchange of Information ("AEOI") under Common Reporting Standard ("CRS").

**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 TP specific returns**

**Is there a threshold for Related Party Transactions?**

Annual revenue of THB 200 million.

**Does a Taxpayer need to disclose information regarding TP documentation in his tax return?**

Companies with annual revenue of THB 200 million or more must submit a TP disclosure form (outlining the related party transactions) together with the annual tax return within 150 days after the end of the financial 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 TP, what could be the legal consequences?**

TP adjustments and a subsequent penalty of up to 100% of the tax shortfall amount plus a surcharge of 1.5% per month of the tax shortfall amount applies (but capped at 100% of the tax shortfall amount).

**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?**

The usual professional liability; no specific regulations for TP.

**Does a Taxpayer need to file TP specific returns?**

Companies with annual revenue of THB 200 million or more must submit a TP disclosure form (outlining the related party transactions) together with the annual tax return within 150 days after the end of the financial year.

**Please state the filing form number and name.**

Form for Annual Report of Related Party Transactions as per Section 71 Bis of the Revenue Code (Disclosure Form).

**What would be the filing deadline?**

150 days after the end of the financial year.

**What would be the penalties for non-compliance?**

A penalty for incomplete TP Documentation, failure to submit, late submission or incorrect disclosure: up to THB 200,000 for each case.

In the case of TP adjustments: penalty of up to 100% of the tax shortfall amount plus a surcharge of 1.5% per month of the tax shortfall amount (but capped at 100% of the tax shortfall amount).

### **6. Benchmarking**

**Is there any local guidance or requirement with regard to the preparation of a benchmark study?**

Consistent with the OECD requirements.

**Is there any stated preference for local benchmarks?**

Yes.

**Are there any materiality thresholds that apply to the requirement to have a benchmark study available?**

No.

### **7. Year-end, secondary, and corresponding adjustments**

**Are year-end/ secondary/ corresponding adjustments permissible?**

Yes.

# Thailand

**Does the Taxpayer have to comply with any specific features or guidance?**

General rules apply.

## **8. TP Audit and Dispute Resolution Mechanisms**

**What are currently the main TP areas of scrutiny by the tax authorities in your country?**

Detailed TP Guidelines were introduced in Thailand only in 2019 and the Revenue Department is in its first couple of years of TP audits. All intercompany transactions are queried, although management fees and intercompany financing tend to be accorded special scrutiny.

**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?**

Only bilateral APAs.

**Are there any restrictions?**

Bilateral APAs which cover 3 to 5 accounting periods are available to Thai resident Taxpayers.

## 1. Legal Basis

### Is there a legal requirement to prepare TP documentation?

Yes.

### Since when does a TP documentation requirement exist in your country?

Master file (“MF”), Local file (“LF”) and TP Disclosure Form: Tax Periods commenced on or after 1 June 2023; Country by Country Report (“CbCR”): 1 January 2019.

### Adoption of the OECD or UN legislation in your country?

OECD.

### Is your country a member of the OECD, Inclusive Framework, or other OECD groups (e.g. BEPS)?

Yes.

### Are TP policies of multinational enterprises in principle accepted by the tax authorities, if they are in line with the OECD TP Guidelines?

The UAE TP rules has been introduced for Tax Periods commencing on or after 1 June 2023 and no compliance has been undertaken by Taxpayers to date. Therefore, no TP audits have been initiated by the Federal Tax Authority (“FTA”) thus far.

The UAE TP regulations are intended to be aligned with the OECD TP Guidelines and TP policies aligned with OECD TP Guidelines are likely to be acceptable to the FTA. However, given the early stages of TP implementation in the UAE, further clarity will be available in due course.

### Which TP methods may be applied?

The TP methods to be applied, include

Comparable Uncontrolled Price (“CUP”); Resale Price method (“RPM”); Cost Plus method (“CPM”), Transaction Net Margin Method (“TNMM”), Transactional Profit Split; and any other method.

A combination of two or more TP methods is also permissible.

### Is there a stated preference for any particular TP methods?

There is no general hierarchy for the application of TP methods.

### Have the documentation requirements of OECD BEPS Action 13 already been implemented (i.e. the LF, MF, and CbCR concepts)?

LF, MF and CbCR are implemented. Additionally, a TP Disclosure Form is also required to be filed along with the Tax Return.

### Reference to documentation and statements of local government or tax authorities regarding OECD BEPS implementation status

#### CbCR:

CbCR requirements are covered under Cabinet Resolution No. 44 of 2020 regulating the reports submitted by multinational companies issued on 04 June 2020. The CbCR related compliances are effective from 1 Jan 2019.

#### LF and MF:

LF and MF requirements are covered under Federal Decree-Law No. 47 of 2022 read with Ministerial Decision 97 of 2023. The compliances are effective for Tax Periods commencing on or after 1 June 2023.

### Is there any statute of limitation period?

The statute of limitation is 5 years from the end of the relevant Tax Period as prescribed in Federal Decree-Law No. 28 of 2022. In certain specified instances, the period can extend beyond 5 years.

**Reference to relevant articles of law, legislative regulation, or applicable administrative guidance that are in place for TP documentation in general.**

Cabinet Resolution No. 44 of 2020 regulating the reports submitted by multinational companies released on 04 June 2020.

Articles 34, 35, 36 and 55 of the Federal Decree-Law No. 47 of 2022.

Ministerial Decision No. 97 of 2023 issued on 27 April 2023.

Explanatory Guide on Federal Decree-Law No. 47 of 2022 released in May 2023.

Transfer Pricing Guide (CTGTP1) released on 23 October 2023.

## **2. Master File (MF)**

**What is the (consolidated revenue) threshold requirement for the obligation to prepare a MF?**

A Taxpayer is required to maintain a MF if either of the following conditions are fulfilled:

- › Where the Taxpayer, for any time during the relevant tax period, is a constituent company of an MNE group having a total consolidated group revenue of AED 3.15 billion or more in the relevant tax period; or
- › Where the Taxpayer's revenue in the relevant tax period is AED 200 million or more.

**From which year does this obligation exist?**

The MF is to be maintained for the financial year in which the specified revenue threshold is met (for tax periods commencing on or after 1 June 2023).

**When does the MF need to be available?**

The MF is to be prepared and maintained on a contemporaneous basis by the Taxpayers upon meeting the specified threshold.

**When does it need to be submitted?**

The MF is to be submitted within 30 days following a request from the FTA, or by such later date as directed by the FTA.

**Does the MF have to be prepared in the relevant local language?**

Not specified.

**Is documentation in English permissible?**

Yes.

**What are the possible consequences of not having the MF available?**

There are no specific penalty provisions relating to the MF.

**To what 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?**

In general, consistent with OECD requirements.

## **3. Local File (LF)**

**What is the threshold requirement for the obligation to prepare a LF?**

A Taxpayer is to maintain a LF if either of the following conditions are fulfilled:

- › Where the Taxpayer, for any time during the relevant tax period, is a constituent company of an MNE group having total consolidated group revenue of AED 3.15 billion or more in the relevant tax period; or
- › Where the Taxpayer's revenue in the relevant tax period is AED 200 million or more.

**Euro Equivalent**

Not prescribed in the local regulations.

**From which year does this obligation exist?**

The LF is to be maintained for the financial year in which the specified revenue threshold is met (for tax periods commencing on or after 1 June 2023).

## UAE

### When does the LF need to be available?

The LF is to be prepared and maintained on a contemporaneous basis by the Taxpayers upon meeting the specified threshold.

### When does the LF need to be submitted?

The LF is to be submitted within 30 days following a request from the FTA, or by such later date as directed by the FTA.

### Does the LF have to be prepared in the relevant local language?

Not specified.

### Or is documentation in English permissible?

Yes.

### What are the possible consequences of not having the LF available?

Not prescribed yet.

### To what 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?

In general, consistent with OECD requirements.

## 4. Country-by-Country Reporting (CbCR)

### What is the threshold requirement for the obligation to prepare Country-by-Country Reporting?

The UAE CbCR requirements apply to MNE Groups headquartered in the UAE with consolidated Group revenue equal to or above AED 3.15 billion during the Fiscal Year immediately preceding the reporting Fiscal Year.

### Euro Equivalent

EUR 800 million.

### From which year does this CbCR obligation exist?

For the financial year following the year in which the threshold is met or exceeded.

### Are Taxpayers required to notify of CbCR filing in your country?

Yes, the Ultimate Parent Entity (“UPE”) of the MNE group will be required to submit a CbCR notification to the Competent Authority, no later than the last day of the Group's Reporting Fiscal Year. This requirement applies only to UAE headquartered MNE groups. Groups headquartered outside the UAE are not required to notify the authorities in the UAE.

### If yes, when and how do the tax authorities need to be notified?

CbCR notification is to be submitted electronically on the UAE Automatic Exchange of Information (“AEOI”) Portal.

### If the reporting entity (ultimate parent or surrogate parent) is in your country, what is the CbCR submission deadline?

The UPE is required to file the CbCR no later than 12 months after the last day of the Reporting Fiscal Year of the MNE Group.

### Are there any deviating submission deadlines for the secondary mechanism?

Not applicable.

### Does your country have a requirement that the financial figures of the group need to be aligned?

All amounts should be translated to the stated functional currency of the MNE Group at the average exchange rate for the year, which should be stated in Table 3, along with the source of exchange rates.

### Does your country have a requirement that the financial figures of the group need to be aligned?

For Constituent Entities, at the discretion of the MNE Group, the information should reflect consistently either:

- (i) information for the fiscal year of the relevant Constituent Entities ending on the same date as the fiscal year of the MNE Group, or ending within the 12 months preceding such date; or
- (ii) information for all the relevant Constituent Entities reported for the fiscal year of the MNE Group.

## UAE

A note should be included in Table 3 explaining the period of the information reported.

### Where is the CbCR to be submitted?

CbCR is to be submitted electronically on the UAE AEOI Portal.

### How is the CbCR to be submitted, specifically, is there any prescribed standard?

CbCR are submitted on the UAE AEOI portal. The filing should be in an "XML" format compliant with the OECD XML Schema 2.0.

### What are the possible consequences of not having the CbCR available?

#### Penalties?

Yes, Failure to comply with the CbCR obligations may result in penalties on the Reporting Entity as follows:

- › Penalty of AED 100,000 for failure to maintain and retain supporting documentation and information for 5 years after the date of reporting;
- › Penalty of AED 100,000 for failure to provide the competent authority with requested information;
- › Initial penalty of AED 1 million and an additional AED 10,000 to be applied daily until a maximum of AED 250,000 for failure to file the CbCR notification or CbCR within the specified deadline; or
- › Minimum penalty of AED 50,000 to a maximum of AED 500,000 for failure to report complete and accurate information.

Except for the additional penalty provided under the third point above, total penalties levied shall not exceed AED 1 million.

#### Imprisonment?

No.

#### Shifting of the burden of proof?

No.

#### Other?

No.

### To what 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?

In general, consistent with OECD requirements. Two additional items – "Tax identification number" and "Address" are also required in Table 2, which are not required under the OECD standard.

### Did your country sign the Multilateral Competent Authority Agreement on the Exchange of CbCR ("CbCR MCAA")?

Yes.

### Did your country enter into other information exchange agreements, such as on a bilateral basis?

No.

### Can a Taxpayer in your country fulfil his CbCR requirement by referring to the reporting entity in the same or another country?

No, the burden of filing CbCR notification and CbCR lies upon the Ultimate Parent Entity of the MNE group resident in UAE. None of the other constituent entities in UAE, forming part of the MNE group are required to undertake CbCR compliance.

### 5. TP disclosure in the tax return or TP specific returns

#### Is there a threshold for Related Party Transactions?

This is not specified. Further guidance from the FTA is awaited in this regard.

#### Does a Taxpayer need to disclose information regarding TP documentation in his tax return?

This is not specified. Further guidance from the FTA is awaited in this regard.

#### 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 TP, what could be the legal consequences?

This is not specified. Further guidance from the FTA is awaited in this regard.

**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?**

This is not specified. Further guidance from the FTA is awaited in this regard.

**Does a Taxpayer need to file TP specific returns?**

Yes, a TP Disclosure Form has to be filed together with the corporate tax return. Further guidance from the FTA is awaited about the format and threshold for applicability.

**Please state the filing form number and name.**

This is not specified. Further guidance from the FTA is awaited in this regard.

**What would be the filing deadline?**

The TP Disclosure Form has to be filed together with the corporate tax return, which should be filed no later than 9 months from the end of the relevant tax period.

**What would be the penalties for non-compliance?**

This is not specified. Further guidance from the FTA is awaited in this regard.

## **6. Benchmarking**

**Is there any local guidance or requirement about the preparation of a benchmark study?**

It is recommended to perform the comparability analysis on a 3-year recurring basis if there is no change in conditions and circumstances of the Taxpayer and its controlled transactions.

However, a financial update of the comparability analysis would have to be performed on an annual basis.

**Is there any stated preference for local benchmarks?**

Yes, an order for identifying comparables must be followed by the Taxpayer [i.e., Domestic, Regional (Middle East) and then Foreign comparables], subject to necessary adjustments to account for geographic and other differences.

**Are there any materiality thresholds that apply to the requirement to have a benchmark study available?**

No.

## **7. Year-end, secondary, and corresponding adjustments**

**Are year-end/ secondary/ corresponding adjustments permissible?**

Yes. However, there is no specific guidance regarding secondary adjustments.

**Does the Taxpayer have to comply with any specific features or guidance?**

While undertaking the TP analysis, the Taxpayers have the option to adjust their Transfer Price throughout the Tax period up to the date of filing the Tax return. After submitting the tax return, only adjustments increasing the profit of the Taxpayer are allowed by the FTA. Any adjustment resulting in a decrease in the profit of the Taxpayer may be affected through the operation of the FTA procedures.

Where a foreign competent authority adjusts a transaction or arrangement involving a Taxpayer to meet the arm's length standard, such Taxpayer can make an application to the Authority to make a corresponding adjustment to its Taxable Income.

## **8. TP Audit and Dispute Resolution Mechanisms**

**What are currently the main TP areas of scrutiny by the tax authorities in your country?**

As the implementation of the UAE TP rules has been introduced for Tax Periods commencing on or after 01 June 2023, no compliance has been undertaken by Taxpayers to date. Thus, no TP audit has been initiated by the FTA thus far.

**Based on your experience, are joint or multilateral audits initiated and carried out?**

No.

## **UAE**

### **Does the Taxpayer have the option to apply for bilateral or multilateral APAs?**

Article 59 of the Law provides for the possibility of applying for an Advanced Pricing Agreement. However, more details in this regard are expected in due course.

### **Are there any restrictions?**

This is not specified.



# Vietnam

## 1. Legal Basis

**Is there a legal requirement to prepare TP documentation?**

Yes.

**Since when does a TP documentation requirement exist in your country?**

2006.

**Adoption of the OECD or UN legislation in your country?**

OECD.

**Is your country a member of the OECD, Inclusive Framework, or other OECD groups (e.g. BEPS)?**

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?**

TP methods applied are based on the OECD TP methods and include: Comparable Uncontrolled Price (“CUP”); Resale Price method (“RPM”); Cost Plus method (“CPM”) Transactional Net Margin Method (“TNMM”); and Profit Split (“PS”) methods (Decree 132/2020/ND-CP, Article 13/14/15).

**Is there a stated preference for any particular TP methods?**

Selection is based on the most appropriate method approach to provide the most reliable result.

**Have the documentation requirements of OECD BEPS Action 13 already been implemented (i.e. the LF, MF and CbCR concepts)?**

LF, MF and CbCR are implemented.

**Reference to documentation and statements of local-government or tax authorities regarding OECD BEPS implementation status**

According to Decree No.132/2020/ND-CP which took effect from 20 December 2020:

- i. Declaration of Information on related parties and related party transactions: prepared by using the in the Appendix I to this Decree;
- ii. Local file (LF): prepared by using the in the Appendix II to this Decree;
- iii. Master file (MF): containing information relevant for global corporations, prepared by using the Form given in the Appendix III to this Decree; and
- iv. Country-by-Country report (CbCR) of an ultimate parent company: prepared by using the Form given in the Appendix IV to this Decree.

**Is there any statute of limitation period?**

The statute of limitations for tax audit/assessment is generally 10 years, and 5 years for penalties related to underpayment of tax.

# Vietnam

## Reference to relevant articles of law, legislative regulation or applicable administrative guidance that are in place for TP documentation in general.

In addition, there are further articles of law, legislative regulations, administrative circulars and case law applicable to TP in general.

These include the following laws:

- › the Law on Government Organisation dated 19 June 2015;
- › the Law on Tax Administration dated 13 June 2019;
- › the Law on Corporate Income Tax dated 3 June 2008; the Law on Revision of certain articles of the Law on Corporate Income Tax dated 19 June 2013;
- › The Law on amending some Articles of tax laws dated 26 November 2014;
- › the Law on Enterprises dated 17 June 2020; and
- › the Law on Accounting dated 20 November 2015.

## 2. Master File (MF)

### What is the (consolidated revenue) threshold requirement for the obligation to prepare a MF?

The MF preparation may be exempted if it falls under one of the following conditions:

- › The Taxpayer's annual revenue does not exceed VND 50 billion and the total value of the related party transactions does not exceed VND30 billion;
- › The Taxpayer having Advance Pricing Agreement ("APA") has submitted an annual APA report in accordance with the APA regulations. For those related party transactions which are not covered by the APA, Taxpayers are obliged to comply with the aforesaid TP documentation requirements; or
- › Threshold of profit margin for Taxpayers who perform routine functions and does not generate revenue or incur expense from exploitation and use of intangibles: the Taxpayer's annual revenue does not exceed VND 200 billion and the ratio of net operating profit before interest and CIT to net sales revenue (i.e. operating margin) exceeds: 5% for distributors; 10% for manufacturers; and 15% for toll manufacturers.

## Euro Equivalent

EUR 1,876,649.

## From which year does this obligation exist?

From the year that the threshold is met.

## When does the Master File need to be available?

The TP Documentation package must be prepared before the time of filing CIT returns each year, and must be stored and presented to meet the demand for information requested by tax authorities. When a tax authority carries out TP audit, the time limit for the provision of the TP Documentation package shall not exceed 15 working days from the date of receipt of a request from the provision of information.

## When does it need to be submitted?

It shall be filed no longer than 30 working days upon written request by the tax authority, in the Consultation Procedure prior to the audit.

Where a reasonable basis is provided, the submission deadline is extended only once to no longer than an additional 15 working days upon the expiry date.

## Does the MF have to be prepared in the relevant local language?

Yes.

## Is documentation in English permissible?

Yes, if the tax audit approves. But usually, the Taxpayer has to translate it into the local language.

## What are the possible consequences of not having the MF available?

The Tax authority has the right to determine the price level, profit rate, profit allocation ratio, taxable income, or the amount of CIT payable for Taxpayers who fail to comply with regulations on declaration, identify related party transactions, or provide incomplete or insufficient information and data for determining the prices of related party transactions.

## Penalties?

Yes.

# Vietnam

## Imprisonment?

No.

## Shifting of the burden of proof?

Yes.

## Other?

Yes.

## To what 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?

In general, consistent with OECD requirements.

### 3. Local File (LF)

#### What is the threshold requirement for the obligation to prepare a LF?

LF preparation may be exempted if it falls under one of the following conditions:

- › The Taxpayer's annual revenue does not exceed VND 50 billion and the total value of the related party transactions does not exceed VND 30 billion;
- › Taxpayer having Advance Pricing Agreement ("APA") has submitted annual APA report in accordance with the APA regulations. For those related party transactions which are not covered by the APA, Taxpayers are obliged to comply with the aforesaid TP documentation requirements; or
- › Threshold of profit margin for Taxpayers who perform routine functions and does not generate revenue or incur expense from exploitation and use of intangibles: the Taxpayer's annual revenue does not exceed VND200billion and the ratio of net operating profit before interest and CIT to net sales revenue (i.e. operating margin) exceeds:
  - › + 5% for distributors;
  - › + 10% for manufacturers; or
  - › + 15% for toll manufacturers.

#### Euro Equivalent

EUR 1,876,649.

## From which year does this obligation exist?

From the year that the threshold is met.

## When does the LF need to be available?

The TP documentation package must be prepared before the time of filing CIT returns each year, and must be stored and presented to meet the demand for information requested by tax authorities. When a tax authority carries out TP audit, the time limit for provision of the TP documentation package shall not exceed 15 working days from the date of receipt of request from provision of information.

## When does the LF need to be submitted?

Shall be submitted:

- No later than 15 working days upon receipt of a request from the tax authorities, in a tax audit; or
- No longer than 30 working days upon written request by the tax authority, in the Consultation Procedure prior to the audit. Where reasonable grounds are provided, the submission deadline is extended only once to no longer than an additional 15 working days upon the expiry date.

## Does the LF have to be prepared in the relevant local language?

Yes.

## Or is documentation in English permissible?

Yes, only if the tax audit approves. But usually, the Taxpayer has to translate it to local language.

## What are the possible consequences of not having the LF available?

The Tax authority has the right to determine the price level, profit rate, profit allocation ratio, taxable income, or the amount of CIT payable for Taxpayers who fail to comply with regulations on declaration, identify related party transactions, or provide incomplete or insufficient information and data for determining the prices of related party transactions.

## Penalties?

# Vietnam

Yes.

## Imprisonment?

No.

## Shifting of the burden of proof?

Yes.

## Other?

Yes.

## To what 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?

In general, consistent with OECD requirements.

## 4. Country-by-Country Reporting (CbCR)

### What is the threshold requirement for the obligation to prepare Country-by-Country Reporting?

The CbCR is applicable for a Vietnamese Group having consolidated global revenue of VND 18,000 trillion (i.e. EUR 675 million approx.) and above in the respective tax period.

### From which year does this CbCR obligation exist?

From the year that the threshold is met.

### Are Taxpayers required to notify of CbCR filing in your country? If yes, when and how do the tax authorities need to be notified?

For enterprises with a UPE in Vietnam and annual consolidated global revenue of VND18,000 trillion or more, there is an obligation to prepare and submit the Country-by-Country Report (CbCR) to the Vietnamese tax authority no later than 12 months from the end of the financial year.

- › For an enterprise with a foreign UPE, the submission of the CbCR to the Vietnamese tax authority is not mandatory if the Vietnamese tax authority can receive the CbCR through the Automatic Exchange of Information (“AEOI”) mechanism.
- › However, Vietnamese Taxpayers are required to submit the CbCR to the Vietnamese tax

authority within 12 months from the end of the financial year of the UPE in the following cases:

- (i) The country where the UPE is a resident has an effective international tax agreement (“ITA”) with Vietnam but has not signed the Multilateral Competent Authority Agreement (“MCAA”) related to AEOI with Vietnam at the deadline for CbCR submission.
- (ii) The country where the UPC is a resident has signed the MCAA with Vietnam but has suspended AEOI or does not automatically provide the CbCR to Vietnam.
- (iii) If the group with more than one subsidiary in Vietnam, the UPE must notify the Vietnamese tax authority in writing about the subsidiary designated by the UPE to submit the CbCR to the Vietnamese tax authority.

- › A Vietnamese Taxpayer is not obligated to submit a CbCR to the Vietnamese tax authority if the UPE appoints an organisation to submit the CbCR to the tax authority of the host country on its behalf (appointed organisation) no later than 12 months from the financial year-end of the UPE, and the following conditions are met:

- (i) The jurisdiction of residence of the appointed organisation legally requires the submission of the CbCR.
- (ii) Has an MCAA with Vietnam, and the jurisdiction is a signing party at the time of the CbCR submission deadline.
- (iii) Does not suspend the AEOI and can provide a CbCR to the Vietnamese tax authorities.
- (iv) The appointed organisation provides a written notification on the appointment to submit a CbCR to the jurisdiction of its residence no later than the financial year-end of the UPE.
- (v) The Vietnamese Taxpayer submits the written notification to the Vietnamese tax authority.

- › For Vietnamese businesses with a foreign UPE, compliance with international tax agreements will be applicable if the host country's regulations do not mandate the submission of CbCR.

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**If the reporting entity (ultimate parent or surrogate parent) is in your country, what is the CbCR submission deadline?**

At the latest, within 12 months after the end of the UPE's fiscal year.

**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?**

The CbCR is to be submitted electronically to the Tax authorities Office.

**How is the CbCR to be submitted, specifically, is there any prescribed standard?**

Not required.

**What are the possible consequences of not having the CbCR available?**

Subject to administrative sanctions.

**Penalties?**

Yes.

**Imprisonment?**

No.

**Shifting of the burden of proof?**

Yes.

**Other?**

Yes.

**To what 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?**

In general, consistent with OECD requirements.

**Did your country sign the Multilateral Competent Authority Agreement on the Exchange of CbCR ("CbCR MCAA")?**

No.

**Did your country enter into other information exchange agreements, such as on a bilateral basis?**

No.

**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 TP specific returns**

**Is there a threshold for Related Party Transactions?**

No.

**Does a Taxpayer need to disclose information regarding TP documentation in his tax return?**

No.

**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 TP, what could be the legal consequences?**

The Tax authorities shall have authority to set the level of price, profit margin or profit allocation rate which is used for tax assessment or setting thresholds for taxable revenue or corporate income tax amount payable with respect to Taxpayers engaged in the TP within a specified tax period, based on information, data and analysis of assessment of the tax authority.

**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**

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**should understand that the result reported is too low due to incorrect TP?**

The Tax authorities shall have authority to set the level of price, profit margin or profit allocation rate which is used for tax assessment or setting thresholds for taxable revenue or corporate income tax amount payable with respect to Taxpayers engaged in the TP within a specified tax period, based on information, data and analysis of assessment of the tax authority.

**Does a Taxpayer need to file TP specific returns?**

Yes.

**Please state the filing form number and name.**

Form "Information about interrelationships and related party transactions" issued under Appendix I of Decree 132/2020/ND-CP.

**What would be the filing deadline?**

The TP declaration form is submitted together with the annual CIT return, no later than the last day of the 3rd month from the end of the calendar year or fiscal year.

**What would be the penalties for non-compliance?**

Applicable penalties are:

- VND 16 million to VND 30 million (EUR 640 to EUR 1200) for failure to submit the TP specific returns; or
- 20% of the under declared tax amount or the tax amount that has been exempted, reduced, or refunded in case of incorrect declaration leading to a lack of tax payable or an increase in the tax amount to be exempted, reduced, or refunded for related party transactions.

### 6. Benchmarking

**Is there any local guidance or requirement with regard to the preparation of a benchmark study?**

No.

**Is there any stated preference for local benchmarks?**

No.

**Are there any materiality thresholds that apply to the requirement to have a benchmark study available?**

No.

### 7. Year-end, secondary, and corresponding adjustments

**Are year-end/ secondary/ corresponding adjustments permissible?**

Yes, year-end adjustments are permissible.

However, year-end adjustments that reduce taxable income are not acceptable and may be subject to audit in practice.

**Does the Taxpayer have to comply with any specific features or guidance?**

Yes. Tax authorities will accept year-end adjustment if it is submitted before they issue a tax audit decision to Taxpayers.

### 8. TP Audit and Dispute Resolution Mechanisms

**What are currently the main TP areas of scrutiny by the tax authorities in your country?**

Businesses in finance and insurance, Textile and apparel manufacturing enterprises; Enterprises manufacturing automobile components; and Sewing processing.

**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?**

Yes.

**Are there any restrictions?**

Only according to the content of the APA and regulations requiring implementation and reporting.

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