



Gibraltar

WTS Global Country TP Guide

Last Update: December 2017

1. Legal Basis	
Is there a legal requirement to prepare TP documentation?	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
Have the documentation requirements of OECD BEPS Action 13 already been implemented (i.e. the LF, MF and CbCR concepts)?	CbCR implemented; No MF/LF
Reference to relevant articles of law, legislative regulation or applicable administrative guidance that are in place for TP documentation in general:	Section 40 and Schedule 4, Part II of the Income Tax Act 2010 in Gibraltar.
2. Master File (MF)	
	Not implemented
3. Local File (LF)	
	Not implemented
4. Country-by-Country Reporting	
	Yes
What is the threshold requirement for the obligation to prepare Country-by-Country Reporting?	Under section 10M of the Income Tax Act 2010, an MNE group with total consolidated group revenue of EUR 750 million or more during the fiscal year immediately preceding the reporting fiscal year as reflected in its consolidated financial statements for that fiscal year.
As from which year does this CbCR obligation exist?	Under section 10T(2) of the Income Tax Act 2010, the first country by country report shall be provided - (a) by an ultimate parent entity or its surrogate parent entity for the fiscal year commencing on or after 1 January 2016; and (b) by a constituent entity providing a report under section 10O for the fiscal year commencing on or after 1 January 2017.
When and how do the tax authorities need to be notified who the reporting entity is?	Subject to Part 1B of the Income Tax Act 2010, a notification in writing to the Commissioner for the Income Tax must be made in writing no later than the first day of filing to the Commissioner for Income Tax must be made by an entity resident for tax purposes in Gibraltar if the entity is an "ultimate parent entity", "a surrogate parent entity" or "constituent entity". If it does not fall within the above categories, it must notify the Commissioner of the identity, jurisdiction of tax residence and of the entity required to file the country by country report on behalf of its group. Notifications by the ultimate parent entity or surrogate parent entity must be made no later than the last day for filing of the tax return of the notifying constituent entity for the preceding fiscal year. Notifications by the constituent entity not later than 12 months after the last day of the fiscal year to which the country by country report relates.
If the reporting entity (ultimate parent or surrogate parent) is in your country, what is the CbCR submission deadline?	Under section 10T(1), the CbCR submission deadline is no later than 12 months after the last day of the fiscal year to which the country by country report 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. As of 1 January 2015, GAAP is the recognised accounting standard in Gibraltar. New UK GAAP currently consists of four standards: (1) FRS 100, (2) FRS 101, (3) FRS 102 and (4) FRS 103. FRS101 is eligible for qualifying entities that meet specific criteria. FRS 102 is the standard which all of the old FRS's and SSAP's have been transferred into and in some cases updated.
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 ?	Under section 10T (1) of the Income Tax Act 2010, country by country reports is to be submitted to the Commissioner in the form and manner, including by electronic means, that the Commissioner may from time to time specify. We are not aware that such form has as yet been specified.
How is the CbCR to be submitted, specifically, is there any prescribed standard?	As set out in the answer to question 4.11, the country by country report is to be submitted in a way that is specified by the Commissioner.
What are the (possible) consequences of not having the required CbCR available?	Under section 10S(2) of the Income Tax Act 2010, if a report is not sent to the Commissioner in the manner specified, then the report is to be treated as not having been provided or made.
What are the possible consequences of not having the CbCR available?	
Penalties?	Yes
Imprisonment?	No
Shifting of the burden of proof?	No
Other?	Yes
To which extent do your local rules differ from the OECD standard regarding the content requirements for the CbCR as shown in the 2017 OECD TP Guidelines?	There may be content in the OECD standard which remains to be implemented in Gibraltar.
Did your country sign the Multilateral Competent Authority Agreement on the Exchange of CbC Reports ("CbC MCAA")?	No
Did your country enter into other information exchange agreements, such as on a bilateral basis?	Yes
Please specify the country involved and date the agreement came into force.	Gibraltar implemented the European Union Automatic Information Exchange Directive (EU Directive 2016/881/EU), as well as the Common Reporting Standards. In addition to the Directive, Gibraltar has also entered into Tax Exchange Agreement, Intergovernmental Agreement - FACTA and the UK C.DOT Regime. The EU Directive was implemented in Gibraltar on 1st May 2017
Can a taxpayer in your country fulfil his CbCR requirement by referring to the reporting entity in the same or another country?	Yes

5. TP disclosure in tax return or transfer pricing specific returns	
Does a taxpayer need to disclose information regarding TP documentation in his tax return?	No
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?	There are no specific transfer pricing penalties in Gibraltar. If tax is underpaid, or paid late, a surcharge of 10% of the underpaid amount is due immediately after the date at which the tax was due. An additional surcharge of 20% of the underpaid amount is due if the amount remains underpaid after a further 90 days. Further penalties are payable for the failure to comply with specific provisions in the Income Tax Act 2010, but these do not specifically relate to transfer pricing. The Commissioner of Income Tax has a year from the date that a return is received to make inquiries about a return. After that date expires, and only up to six years from the end of the relevant accounting period or tax year, the Commissioner of Income Tax may raise an assessment upon discovery that a person has either (a) not been assessed tax; or (b) was assessed at a lesser amount than ought to have been assessed. There is no time limit for additional assessments to be raised when any form of fraudulent or wilful default or negligent conduct has been committed.
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?	We have no specific legislation which imposes liability on the advisor, accountant and administrator drafting the tax return, however, members of professional bodies such as accountants and solicitors are subject to their rules of professional conduct and may be disciplined by the relevant bodies in such circumstances.
Does a taxpayer need to file TP-specific returns?	No

6. Benchmarking	
Is there any local guidance or requirement with regard to the preparation of a benchmark study?	No
Are there any materiality thresholds that apply for the requirement to have a benchmark study available?	No
Does your country apply the general guidance by the OECD to prepare a new benchmarking search every three years and an update of the financial data of the accepted comparable in year 2 or 3?	No
Or is a new search every three years without any financial updates in year 2 and 3 sufficient?	No

7. Year-end adjustments	
Are year-end adjustments permissible?	Yes
Does the taxpayer have to comply with any specific features or guidance?	No, as long as the adjustments represent a true and fair view of the company's accounts. All adjustments must be undertaken within the framework of the applicable accounting standards and rules.

8. Transfer Pricing Audit and Dispute Resolution Mechanisms	
<p>What are currently the main TP areas of scrutiny by the tax authorities in your country?</p>	<p>Queries are frequently raised by the Income Tax Office on behalf of the Commissioner of Income Tax, but queries relating to transfer pricing are uncommon.</p> <p>As a result of Gibraltar's relatively low rate of corporate tax (10% for most companies), the requirement to justify transfer pricing is more likely to be an issue from the jurisdiction in which the Gibraltar-taxable entity's counterparty is taxable. This would not apply when the counterparty is located in a zero-tax jurisdiction.</p>
<p>Based on your experience, are joint or multilateral audits initiated and carried out?</p>	<p>No</p>
<p>Does the taxpayer have the option to apply for bilateral or multilateral APAs?</p>	<p>Yes</p>

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