



Japan

WTS Global Country TP Guide

Last Update: December 2017

| 1. Legal Basis   |  |
|--|--|
| Is there a legal requirement to prepare TP documentation?  | Yes  |
| Since when does a TP documentation requirement exist in your country?  | 2010   |
| 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?   | CUP, RP, CP, PS, TNMM, Berry Ratio   |
| Are any TP methods preferred over others?  | Best Method Rule   |
| Have the documentation requirements of OECD BEPS Action 13 already been implemented (i.e. the LF, MF and CbCR concepts)?                               | CbCR/MF/LF implemented   |
| Reference to documentation and statements of local-government or tax authorities regarding OECD BEPS implementation status                             | <ul style="list-style-type: none"> <li>• Local File: Article 22-10 Paragraph 1 of the Ordinance for Enforcement of the Act on Special Measures Concerning Taxation (approved by the Japanese Diet in FY 2017 Tax Reform)</li> <li>• Master File: Article 22-10-5 Paragraph 1 of the Ordinance for Enforcement of the Act on Special Measures Concerning Taxation (approved by the Japanese Diet in FY 2017 Tax Reform)</li> <li>• CbCR: Article 22-10-4 Paragraph 1 of the Ordinance for Enforcement of the Act on Special Measures Concerning Taxation (approved by the Japanese Diet in FY 2017 Tax Reform).</li> </ul>  |
| Reference to relevant articles of law, legislative regulation or applicable administrative guidance that are in place for TP documentation in general: | <p>Same as above and in addition, there are other laws, legislative regulations, administrative circulars applicable to transfer pricing in general. Most notably, Article 66-4, 66-4-4, 66-4-5 of the Act on Special Measures Concerning Taxation, Article 39-12, 39-12-4 of the Cabinet Order of the ASMT (Act on Special Measures Concerning Taxation), Article 22-10, 22-10-4, 22-10-5 of the ASMT Ministerial Ordinance, Commissioner's Directive on Transfer Pricing Operation and Supplement</p> <p>Additionally, there is supplementary guidance by the National Tax Agency such as FAQ of Transfer Pricing Documentation, Illustrative Guidance on how to make Local File, 2 samples of Local File (manufacturer, distributor).</p> |

| 2. Master File (MF)  |  |
|--|--|
| What is the (consolidated revenue) threshold requirement for the obligation to prepare a MF? | Yes  |
| Euro Equivalent  | Group consolidated revenue of JPY 100 billion (EUR 754,980,000) or higher  |
| As from which year does this obligation exist?   | EUR 754.980.000  |
| When does the Master File need to be available?  | For fiscal years starting on or after April 1, 2016  |
| When does it need to be submitted?   | The entity needs to notify the tax authorities to surrogate filings via e-Tax within one year from the end of each fiscal year of the ultimate parent company. |
| Does the MF have to be prepared in the relevant local language ?                             | Due within one year from each fiscal year end of the ultimate parent company   |
| Is documentation in English permissible?   | No. Japanese or English (Article 22-10-5 of the ASMT Ministerial Ordinance)  |
|  | Yes  |

|   |                                    |
|---|------------------------------------|
| What are the possible consequences of not having the MF available?  |                                    |
| Penalties?  | Yes                                |
| Imprisonment?   | No                                 |
| Shifting of the burden of proof?  | Yes                                |
| Other?  | Yes                                |
| To which extent do the local rules differ from the OECD standard regarding the OECD content requirements for the MF as shown in the BEPS implementation overview chart? | Consistent with OECD requirements. |

|   |  |
|---|--|
| <b>3. Local File (LF)</b>   | Yes  |
| What is the threshold requirement for the obligation to prepare a LF? | JPY 5 billion or more in total related transaction volumes; or JPY 300 million or more in intangible related transaction volume in the preceding year  |
| Euro Equivalent   | EUR 37,968,000   |
| As from which year does this obligation exist?                        | Fiscal year starting on or after April 1, 2017   |
| When does the LF need to be available?                                | It is required to prepare local file by the due date of Corporate Final Return. The preservation period of Local File set forth is 7 years. Local file shall be submitted upon request in a tax audit.   |
| When does the LF need to be submitted?                                | Upon request <ul style="list-style-type: none"> <li>• 45 days upon request in a tax audit for the document of calculating arm's length price</li> <li>• 60 days upon request in a tax audit for the important document of calculating arm's length price</li> </ul>  |
| Does the LF have to be prepared in the relevant local language?       | Yes. In practice, many Japanese taxpayers prepare transfer pricing documentation in Japanese. Japanese taxpayers may request to submit transfer pricing documentation in English. Taxpayers can negotiate with auditors to limit the scope of translation of documents into Japanese. But it is up to the discretion to the tax audit whether to accept or to deny such a request. |
| Or is documentation in English permissible?                           | Yes. In practice, many Japanese taxpayers prepare transfer pricing documentation in Japanese. Japanese taxpayers may request to submit transfer pricing documentation in English. Taxpayers can negotiate with auditors to limit the scope of translation of documents into Japanese. But it is up to the discretion to the tax audit whether to accept or to deny such a request. |
| What are the possible consequences of not having the LF available?    |  |
| Penalties?  | No   |
| Imprisonment?   | No   |
| Shifting of the burden of proof?                                      | Yes  |
| Other?  | Yes  |

|   |   |
|---|---|
| <p>To which extent do local rules differ from the OECD standard regarding the OECD content requirements for the LF as shown in the 2017 OECD TP Guidelines?</p> | <p>The Japanese Local File must include following information:</p> <p><u>Item 1:</u> Documents describing the content of controlled transactions (a) Details of assets and the content of services related to the Controlled Transactions<br/>           (b) Functions fulfilled by the foreign-related parties in the controlled transactions and risks assumed by the foreign-related parties in the controlled transactions<br/>           (c) Content of intangible fixed assets and other intangible assets used by foreign-related parties in the controlled transactions<br/>           (d) Agreements related to, or documents describing the content of agreements on, the controlled transactions<br/>           (e) Details of the amount of compensation received or paid by the foreign-related parties in the controlled transactions, the method to set the amount of compensation received or paid, and the content of negotiations about such setting, as well as the method to calculate arm's length prices<br/>           (f) Details of profits/losses for the foreign-related parties in the controlled transactions and the process in which the amount of profits/losses is calculated<br/>           (g) Analyses of markets related to the sale or purchase of assets, the provision of services, and other transactions in the controlled transactions<br/>           (h) Content of business, business policy, and organisational structure of the foreign related parties related thereto<br/>           (i) Documents describing whether there are other transactions closely related to the controlled transactions as well as the content of the transactions and the circumstances under which the transactions are closely related to the controlled transactions</p> <p><u>Item 2:</u> Documents to calculate arm's length prices for Controlled Transactions,<br/>           (a) Calculation method which is selected by the corporations, important prior conditions for 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)<br/>           (b) Documents related to the selection of comparable uncontrolled transactions and details of comparable uncontrolled transactions including financial information<br/>           (c) Documents for the corporations to calculate the amount computed as one that belongs to the corporations and the foreign-related parties related (excluding the documents listed in (b) and (e))<br/>           (d) Documents describing the reason 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<br/>           (e) Documents describing the reason differences are adjusted for comparable uncontrolled transactions and the method to adjust such differences</p> |
|---|---|

|  |   |
|--|---|
| <b>4. Country-by-Country Reporting</b>   | Yes   |
| What is the threshold requirement for the obligation to prepare Country-by-Country Reporting?  | Total consolidated revenue of 100 billion yen or more in the preceding fiscal year (EUR 754,980,000).   |
| Euro Equivalent  | EUR 754,980,000   |
| As from which year does this CbCR obligation exist?  | For fiscal years starting on or after April 1, 2016   |
| When and how do the tax authorities need to be notified who the reporting entity is?   | The entity needs to notify the tax authorities regarding surrogate filings via e-Tax. The Japanese taxpayer has to notify followings: (a) parent company of MNE, (b) designated surrogate parent company or (c) subsidiary of MNE via e-Tax by the day when the Ultimate Parent Entity's fiscal year ends. The Japanese taxpayer has to declare in its notification the name of the MNE's headquartered entity and the competent authority to which it has submitted the Master file, CbCR applicable for the ultimate parent entity's fiscal year starting on and after April 1, 2016. |
| If the reporting entity (ultimate parent or surrogate parent) is in your country, what is the CbCR submission deadline?                                    | Following day of one year after fiscal year end of the parent company.  |
| 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. FAQ of Japanese Transfer Pricing Documents #36 says that taxpayer does not need to make any accounting adjustments even if there are difference in accounting standard of a constituent entity.   |
| 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 be submitted electronically (e-Tax) to the competent District Director of the tax authority.   |
| How is the CbCR to be submitted, specifically, is there any prescribed standard?   | Import CSV file into the site called "MNE information reporting corner" , then transform CbCR information into XML form and transmit via e-Tax.   |
| What are the possible consequences of not having the CbCR available?   |   |
| Penalties?   | Yes   |
| Imprisonment?  | No  |
| Shifting of the burden of proof?   | No  |
| 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? | Consistent with OECD requirements.  |
| Did your country sign the Multilateral Competent Authority Agreement on the Exchange of CbC Reports ("CbC MCAA")?  | Yes   |
| Did your country enter into other information exchange agreements, such as on a bilateral basis?   | 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 transfer pricing specific returns  |   |
|--|---|
| Does a taxpayer need to disclose information regarding TP documentation in his tax return?   | No, (apart from personal tax return, a taxpayer needs to submit CbCR and Master file via e-Tax within due date above).  |
| 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?   | Submitting intentionally incorrect / too low tax returns and/or not informing tax authorities may likely trigger tax investigation. Legal consequences may range from (monetary) fines to imprisonment of up to 10 years. |
| 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? | Submitting intentionally incorrect / too low tax returns and/or not informing tax authorities may likely trigger tax investigation. Legal consequences may range from (monetary) fines to imprisonment of up to 10 years. |
| Does a taxpayer need to file TP-specific returns?  | Yes   |
| Please state the filing form number and name.  | Schedule 17-4 ( "Detailed Statement Regarding Foreign Affiliated Companies").   |
| What would be the filing deadline?   | Same as the deadline of corporate final tax return.   |

| 6. Benchmarking   |   |
|---|---|
| Is there any local guidance or requirement with regard to the preparation of a benchmark study? | <p>Yes.</p> <p>In Japan, there is no legal requirement about benchmarking report update. In the transfer pricing Administrative Guidelines 1-2 (3), it says that "To solve international double taxation caused by transfer pricing taxation, it is important for the tax authorities of each country to share an understanding of transfer pricing. Therefore, an examination or APA review shall be conducted in an appropriate manner by referring to the OECD Transfer Pricing Guidelines as necessary." In addition, the transfer pricing Administrative Guidelines 2-4 (3) says that a tax auditor do not ask for the renewal of financial information of comparable transactions in the transfer pricing audit. Therefore, as long as the OECD transfer pricing guideline is followed (search in every 3 years with an annual data update), it will be accepted. Article 22-10 Paragraph 1 (Item2) of the Ordinance for Enforcement of the Act on Special Measures Concerning Taxation related to the requirement of benchmarking in Local File as follows.</p> <p>(a) Calculation method which is selected by the corporations, important prior conditions for 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)</p> <p>(b) Documents related to the selection of comparable uncontrolled transactions and details of comparable uncontrolled transactions including financial information</p> <p>(c) Documents for the corporations to calculate the amount computed as one that belongs to the corporations and the foreign-related parties related (excluding the documents listed in (b) and (e))</p> <p>(d) Documents describing the reason 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</p> <p>(e) Documents describing the reason differences are adjusted for comparable uncontrolled transactions and the method to adjust such differences.</p> |

| 7. Year-end adjustments  |  |
|--|--|
| Are year-end adjustments permissible?                                    | Yes  |
| Does the taxpayer have to comply with any specific features or guidance? | <p>Yes. Administrative Guidelines 3-20 (Points to Note Concerning the Monetary Transfer for Price Adjustment, etc.) says that " In cases where a corporation changes the amount of consideration for transactions with a foreign affiliate already conducted nominally for the purpose of price adjustment, it shall be examined whether the changes fall under the adjustment of transaction prices based on reasonable grounds. In cases where the changes are made by paying money to a foreign affiliate or by recording the cost, etc. (hereinafter referred to as "payment and recording"), whether the payment and recording is based on reasonable grounds shall be examined by comprehensively considering the reasons for the payment and recording, the details of prior agreement, the method of the calculation and the grounds thereof, the date on which the payment and recording was determined and the date on which the payment and recording was made. If it is recognized as a result of the examination that the payment and recording is based on reasonable grounds, the changes shall be deemed to be the adjustment of transaction prices. If it is not recognized that the payment and recording is based on reasonable grounds, it shall be examined whether the provisions of Article 66-4, paragraph (3) of the ASMT shall be applied to the payment and recording. (Note) Article 66-4, paragraph (3) of the ASMT is the provisions of non-deductible donation tax treatment.</p> |

| 8. Transfer Pricing Audit and Dispute Resolution Mechanisms                              |  |
|--|--|
| What are currently the main TP areas of scrutiny by the tax authorities in your country? | Intangibles transactions and intra-group service transactions.   |
| Based on your experience, are joint or multilateral audits initiated and carried out?    | No   |
| Does the taxpayer have the option to apply for bilateral or multilateral APAs?           | Yes  |
| Are there any restrictions?  | <p>Since APAs in Japan are not stipulated by laws and regulations, they are merely administrative acts. However, since APA based on the tax treaty is deemed be an agreement under the treaty, practically all APAs are bound both by taxpayers and by the tax authorities. Details of APAs are stipulated in "Chapter 6 APA" of the transfer pricing Administrative Guidelines.</p> |

**Your contact person:**

Ms. Itsuko Hori  
 hori@has-partners.com  
 T: +81 03 3824 3396