



Kenya

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?	2006
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?	Comparable Uncontrolled Price (CUP) Method, Resale Price Method, Cost Plus Method, Transactional Net Margin Method, Profit Split Method and such other method that may be prescribed by the Commissioner from time to time, where in his opinion and in view of the nature of the transactions, the arm's length price cannot be determined using any of the other methods (Rule 7 of the Transfer Pricing Rules).
Are any TP methods preferred over others?	The TP Rules do not give preference to any of the methods, but they require the taxpayer to apply the "most appropriate" method. However in practice, the CUP Method is preferred for certain industries.
Have the documentation requirements of OECD BEPS Action 13 already been implemented (i.e. the LF, MF and CbCR concepts)?	CbCR/MF/LF - Intentions
Reference to relevant articles of law, legislative regulation or applicable administrative guidance that are in place for TP documentation in general.	Income Tax Act (Section 93 - Failure to maintain documents, Section 94 - Failure to submit tax return or other document), Transfer Pricing Rules, 2006 and the OECD Transfer Pricing Guidelines.
2. Master File (MF)	Intentions
3. Local File (LF)	Intentions
Did your country sign the Multilateral Competent Authority Agreement on the Exchange of CbC Reports ("CbC MCAA")?	No
4. Country-by-Country Reporting	Intentions

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?	Knowingly filing an incorrect/ too low tax return is considered fraud in relation to tax (Section 97 of the Tax Procedures Act). Such action would attract a shortfall penalty of: 75% of the tax shortfall when the statement or omission was made deliberately, or 20% of the tax shortfall in any other case (Section 84 of the Tax Procedures Act) and a tax avoidance penalty.
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?	Knowingly filing an incorrect/ too low tax return is considered fraud in relation to tax (Section 97 of the Tax Procedures Act). Such action would attract a shortfall penalty of: 75% of the tax shortfall when the statement or omission was made deliberately, or 20% of the tax shortfall in any other case (Section 84 of the Tax Procedures Act) and a tax avoidance penalty.
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 local guidance. However, the taxpayer is required to avail documentation to evidence their analysis upon request by the Commissioner (Rule 10(c) of the Transfer Pricing Rules).
Are there any materiality thresholds that apply for the requirement to have a benchmark study available?	No
Or is a new search every three years without any financial updates in year 2 and 3 sufficient?	Yes. It is only sufficient as long as there are no material changes to the factors affecting the transfer prices.

7. Year-end adjustments

Are year-end adjustments permissible?	Yes
Does the taxpayer have to comply with any specific features or guidance?	No. No guidelines. The adjustments should however not be on an ad hoc basis. There needs to be a pre-determined agreed mechanism. Additionally, from experience, upward adjustments are preferred (by the revenue authority) to downward adjustments.

8. Transfer Pricing Audit and Dispute Resolution Mechanisms

What are currently the main TP areas of scrutiny by the tax authorities in your country?	Companies in continuous losses over long periods, brands shared by non-resident entities, intercompany financing.
Does the taxpayer have the option to apply for bilateral or multilateral APAs?	The legislation and TP Rules are silent on this. This is however going to change soon as the KRA is open to the use of APAs.

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