



Malaysia

WTS Global Country TP Guide

Last Update: December 2017

| 1. Legal Basis | |
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| Is there a legal requirement to prepare TP documentation? | Yes |
| Since when does a TP documentation requirement exist in your country? | 2009 |
| 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? | Consistent with OECD Guidelines |
| Are any TP methods preferred over others? | Consistent with OECD Guidelines |
| Have the documentation requirements of OECD BEPS Action 13 already been implemented (i.e. the LF, MF and CbCR concepts)? | CbCR implemented, MF-Intentions, LF rules akin to those of OECD BEPS 13. |
| Reference to documentation and statements of local-government or tax authorities regarding OECD BEPS implementation status | Country-by-country reporting - Income Tax (Country-by-Country Reporting Rules) 2016. Master file - Transfer Pricing Guidelines 2012, revision effective 15th July 2017 (Para 11.2.5 of Chapter XI (documentation)) Local file - Transfer Pricing Guidelines 2012 (as amended). |
| Reference to relevant articles of law, legislative regulation or applicable administrative guidance that are in place for TP documentation in general. | (1) Section 140A of Income Tax Act 1967 (as amended). (2) Income Tax (Transfer Pricing) Rules 2012. (3) Transfer Pricing Guidelines 2012 (as amended). (4) Income Tax (Country-by-Country Reporting) Rules 2016. |
| 2. Master File (MF) | |
| What is the (consolidated revenue) threshold requirement for the obligation to prepare a MF? | Intentions Total consolidated group revenue in the preceding financial year of at least RM3 billion (EUR 610,438,050) |
| Euro Equivalent | EUR 610,438,050 |
| As from which year does this obligation exist? | As from the year following the year that the threshold is met. |
| When does the Master File need to be available? | Generally, transfer pricing documentation are required to be prepared contemporaneously. Also, at the time tax return is filed, there is a requirement to declare whether transfer pricing documentation were prepared. |
| When does it need to be submitted? | Master file is to be submitted only upon request. Usually 30 days is given for submission of transfer pricing documentation. |
| Does the MF have to be prepared in the relevant local language ? | No. Transfer pricing documentation are required to be either in the National Language (Bahasa Malaysia) or in English. |
| Is documentation in English permissible? | Yes |

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| 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 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. |

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| 3. Local File (LF) | Yes |
| What is the threshold requirement for the obligation to prepare a LF? | No threshold. The requirement to prepare transfer pricing documentation, with information akin to the requirements of local file, applies to any person who enters into a transaction with an associated person. However, businesses with revenue no exceeding RM25 million and the total amount of related party transactions not exceeding RM15 million are allowed to prepare simplified transfer pricing documentation. |
| As from which year does this obligation exist? | Current year |
| When does the LF need to be available? | Transfer pricing documentation are required to be prepared contemporaneously. Also, at the time tax return is filed, there is a requirement to declare whether transfer pricing documentation were prepared. |
| When does the LF need to be submitted? | Upon request (within 30 days from request). |
| Does the LF have to be prepared in the relevant local language? | No. Transfer pricing documentation are required to be either in the National Language (Bahasa Malaysia) or 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 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? | Largely consistent. |

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| 4. Country-by-Country Reporting | Yes |
| What is the threshold requirement for the obligation to prepare Country-by-Country Reporting? | RM 3 billion |
| Euro Equivalent | EUR 623,679,000 |
| As from which year does this CbCR obligation exist? | As from the year following the year that the threshold is met. |
| When and how do the tax authorities need to be notified who the reporting entity is? | Notification by the last day 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 after the last day of the financial reporting year. |
| Does your country have a requirement that the financial figures of the group need to be aligned with? | No |

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| 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 administrative details are yet to be notified. |
| How is the CbCR to be submitted, specifically, is there any prescribed standard? | The administrative details are yet to be notified. |
| What are the possible consequences of not having the CbCR available? | |
| Penalties? | Yes |
| Imprisonment? | Yes |
| 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 standard. |
| 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? | Yes |
| Please specify the country involved and date the agreement came into force. | Malaysia has entered into Double Tax Agreements with more than 70 countries and most of the DTAs permit exchange of information. |
| 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

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| Does a taxpayer need to disclose information regarding TP documentation in his tax return? | Yes |
| What would be the filing deadline? | 7 months from 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 transfer pricing, what could be the legal consequences? | <p>The law empowers the tax department to impose up to 100 per cent penalty for any tax adjustment. Based on administrative guideline, the penalty for transfer pricing adjustments is as follows:</p> <ul style="list-style-type: none"> (i) Taxpayer did not prepare transfer pricing documentation - 35 per cent. (ii) Taxpayer prepared transfer pricing documentation but did not fully comply with the requirements under the Transfer Pricing Guidelines - 25 per cent. (iii) Taxpayer prepared a comprehensive, good quality, contemporaneous transfer pricing documentation in accordance with existing regulations - zero per cent. <p>Note: The penalty rates in the administrative guideline may be varied by the tax department from time to time as the law empowers any penalty up to 100 per cent to be imposed.</p> |

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| 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 assist any other person to evade tax is liable to 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 have been undercharged. |
| Does a taxpayer need to file TP-specific returns? | No |

6. Benchmarking

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| Is there any local guidance or requirement with regard to the preparation of a benchmark study? | No. Consistent with OECD standard. |
| Are there any materiality thresholds that apply for the requirement to have a benchmark study available? | Yes. Businesses with revenue no exceeding RM 25 million and the total amount of related-party transactions not exceeding RM 15 million are allowed to prepare simplified transfer pricing documentation, i.e. without benchmarking study. However, the transfer pricing documentation must detail the pricing policy (along with other required information). |
| 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? | Yes |
| Or is a new search every three years without any financial updates in year 2 and 3 sufficient? | No |

7. Year-end adjustments

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| Are year-end adjustments permissible? | Yes |
| Does the taxpayer have to comply with any specific features or guidance? | No. No written rules. |

8. Transfer Pricing Audit and Dispute Resolution Mechanisms

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| What are currently the main TP areas of scrutiny by the tax authorities in your country? | Excessive marketing cost by distributor, manufacturers paying royalty for outdated manufacturing know-hows and inter-company transactions that are not paid for a long time (non-arm's length credit term). |
| 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? | No |

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