



Poland

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?	2001
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 transfer pricing methods accepted by the tax authorities are based on the OECD Guidelines: CUP, Resale Price Method, Cost Plus, TNMM, Profit Split Method. Until the end of 2016, the application of the above methods was obligatory for the tax authorities when making the tax assessment (the taxpayers could choose different methods). Since 2017, the taxpayer has been required to present in the TP documentation the applied TP method (indicated in the OECD Guidelines) and its justification.
Are any TP methods preferred over others?	Until the end of 2016, if the taxpayer applied one of the following TP methods (CUP, Resale Price Method, Cost Plus) in a particular transaction, the tax authorities were obliged to apply such method whilst making a tax assessment. Since 2017, taxpayers have been obliged to apply one of the methods indicated in the OECD Guidelines.
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	Local File: Article 9a, Section 2b of the Corporate Income Tax Act, Article 25a Section 2b of the Personal Income Tax Act Master File: Article 9a, Section 2d of the Corporate Income Tax Act, Article 25a Section 2d of the Personal Income Tax Act CbCR: Articles 82-88 of the Act of automatic exchange of tax information with other countries.
Reference to relevant articles of law, legislative regulation or applicable administrative guidance that are in place for TP documentation in general.	The main transfer pricing regulations: - Articles 9a, 11, 19, and 27 of the Corporate Income Tax Act; Articles 25, 25a, and 45 of Personal Income Tax Act; - section IIa of Tax Ordinance of 29 August 1997 (APAs), - Articles 82-88 of Act on the automatic exchange of tax information with other countries of 9 March 2017 (for CbC-Reporting), - Transfer Pricing Decrees of 10 September 2009 (with further amendments), - Decrees on Tax Havens of 17 May 2017, - Decrees on additional information CIT-TP and PIT-TP of 8 June 2017, - Decree on the CbC-Reporting of 13 June 2017, - Decrees on detailed content of Local File and Master File - final drafts were published on 12.09.2017 and are awaiting the Minister of Finance and Development's signature, - the Accounting Act of 24 September 1994 which requires entities to disclose in their financial statements information on significant transactions with related entities that are not at arm's length.

2. Master File (MF)	
	Yes
What is the (consolidated revenue) threshold requirement for the obligation to prepare a MF?	The obligation exists if taxpayers' revenues or costs exceed the threshold of EUR 20.000.000 during the financial year previous to the year for which the TP documentation is being prepared (notwithstanding the consolidated revenue for the whole Group).
Euro Equivalent	EUR 20,000,000
As from which year does this obligation exist?	The obligation exists from the year following the year that the threshold is met.
When does the Master File need to be available?	The taxpayer should have the Master File available by the statutory deadline for filing the annual tax return of the entity being responsible for developing the Master File (the holding company).
When does it need to be submitted?	The taxpayer will be obliged to provide the Master File to the tax authorities upon their formal request (within statutory 7-days deadline).
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?	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?	<p>Generally consistent with OECD requirements. Details on the content have been published in the Decrees of 12.09.2017 which were published on 18.09.2017. The Master File will have to include, among others:</p> <ul style="list-style-type: none"> <li>- description of TP policy applied within the group (including: information on pricing intercompany services, intangibles, incl. results of R&amp;D works, intercompany financing with information on the type of financing and the details on the group entity providing financing, other areas of group's activity where the intercompany pricing rules are applied),</li> <li>- detailed information on intellectual property owned by the entities in the group that influence the intercompany pricing,</li> <li>- information about the related party, which was responsible for preparing Master File and its deadline for submitting annual tax return,</li> <li>- presentation of organisation structure (scheme), which presents names, legal forms and places of headquarters and equity participation in companies of the group,</li> <li>- information on the geographical markets, on which at least 10% of profits are obtained in particular major supply chains,</li> <li>- description of important business restructuring transactions, acquisitions and divestitures in each major supply chain (detailed criteria are provided).</li> </ul>

3. Local File (LF)	
	Yes
What is the threshold requirement for the obligation to prepare a LF?	The obligation exists if the taxpayers' revenues or costs exceed the threshold of EUR 2 million during the financial year previous to the year for which the TP documentation is being prepared. The documentation should contain the relevant information for all transactions or business events with the related parties that exceed a specific materiality level (the lowest materiality threshold has been set at EUR 50k and increases pro rata depending on the taxpayer's revenue or costs, the highest threshold is EUR 500k for the taxpayers with revenues costs in previous year exceeding EUR 100 million).
Euro Equivalent	EUR 2,000,000
As from which year does this obligation exist?	The obligation exists from the year following the year that the threshold is met.

When does the LF need to be available?	The Polish taxpayer should have the Local File prepared by the statutory deadline for filing the annual tax return (in case of CIT taxpayers 3 months after the fiscal year-end).
When does the LF need to be submitted?	The taxpayer is obliged to provide the Local File to the tax authorities only upon formal request (within statutory 7-days deadline). The tax authorities may also request the taxpayer to prepare documentation in respect of transactions / events even if the value does not exceed the statutory limits, provided that the circumstances suggest that their value could have been underreported in order to avoid the documentation obligation. In that case, the Local File should be submitted within 30 days of the request.
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?	Yes
Imprisonment?	No
Shifting of the burden of proof?	No
Other?	Yes
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>Generally consistent with OECD requirements. Details on the content have been published in the decrees of 12.09.2017 published on 18.09.2017</p> <p>Those taxpayers whose revenue or costs exceed €10 million during a preceding tax year will have to include in their Local File comparables or benchmarking study showing that the intercompany prices are arm's length. The comparable study should contain comparable data of the Polish entities, if such data is available.</p> <p>The scope of information has been extended to not only cover the description of a transaction, but also "other events included in the accounting books" if they were agreed by related parties and influence the taxpayer's taxable income, such as cash pooling arrangements, cost contribution arrangements, partnership agreements or similar arrangements. Additionally, descriptions of any business restructurings must be included.</p> <p>Together with the tax return for a particular tax year the taxpayer files a statement that the Local File has been prepared.</p>

<b>4. Country-by-Country Reporting</b>	Yes
What is the threshold requirement for the obligation to prepare Country-by-Country Reporting?	Consistent with OECD requirements - EUR 750 million consolidated revenue in the previous financial year
Euro Equivalent	EUR 750,000,000
As from which year does this CbCR obligation exist?	The obligation of preparing Country-by-Country Report (CbC-R) exists from the year the threshold is met (so that CbC-R is prepared for the group's reporting year in which the threshold was met or exceeded). First reports will be provided for the reporting period that starts after 31 December 2015.
When and how do the tax authorities need to be notified who the reporting entity is?	<p>Each Polish entity that belongs to a group obliged to file a CbC-R will have to:</p> <ul style="list-style-type: none"> <li>- notify tax authorities that it is an ultimate parent company; or</li> <li>- specify the reporting entity and the state in which the information will be provided.</li> </ul> <p>For the group's reporting year beginning after 31 December 2015 but no later than on 31 December 2016, the notification is to be filed within 10 months after the end of such reporting year. For the following periods, the notification is to be filed no later than on the last day of the reporting period.</p>
If the reporting entity (ultimate parent or surrogate parent) is in your country, what is the CbCR submission deadline?	<p>Consistent with OECD requirements - for reporting years starting after 31 December 2015, with filing within 12 months from the year end. For the first time taxpayers have to prepare CbC-R for the year 2016 (with deadline until 31 December 2017).</p> <p>There are particular situations when CbC-R obligation applies also to Polish entities not being the ultimate parent if there is no other reporting entity designated in the group, i.e. (i) if the ultimate parent entity is not obliged to file a CbC-R for the reporting year in its tax jurisdiction, (ii) if the appropriate jurisdiction in which ultimate parent entity is resident for tax purposes has not undertaken to share information about the entity group within 12 months of the end of the given reporting year, (iii) the tax jurisdiction of the ultimate parent entity suspended automatic sharing of CbC-R or failed to fulfil the obligation without notifying the dominating entity.</p> <p>In such cases, if the Polish entity being reporting does not receive all required information about the group from the parent company, the Polish company should disclose this fact in the CbC-R.</p>
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. According to the Decree on the CbC Reporting, the reporting entity may choose the data source (e.g. consolidated financial statements, internal management accounting documents). Data source chosen should be consequently used in the following years. The information on the source of the data used should be disclosed in the Table 3 of the CbC-R (Additional Information).
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 ?	<p>The way of submitting CbC-R is only via electronic communication means. Generally it follows the OECD CbC-R XML Schema, however the specific template announced by the Polish Ministry of Finance has to be followed.</p> <p>The Polish Ministry of Finance has also published an electronic version of notification which must be submitted in order to inform tax authorities which group member prepares the CbC-R and in which tax jurisdiction CbC-R will be submitted (CbC-P).</p>

How is the CbCR to be submitted, specifically, is there any prescribed standard?	The way of submitting CbC-R is only via electronic communication means. Generally it follows the OECD CbC-R XML Schema, however the specific template announced by the Polish Ministry of Finance has to be followed. The Polish Ministry of Finance has also published an electronic version of notification which must be submitted in order to inform tax authorities which group member prepares the CbC-R and in which tax jurisdiction CbC-R will be submitted (CbC-P).
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 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
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.	The regulations regarding the CbC-R came into force in 1 January 2016 (they were initially included in the Corporate Income Tax Act). In 2017, the regulations were transferred to the Act of automatic exchange of tax information with other countries of 9 March 2017 and entered into force for the reporting years starting after 31 December 2015. Poland implemented to the local regulations the European Union Automatic Information Exchange Directive (EU Directive 2016/881/EU) - Act of automatic exchange of tax information with other countries of 9 March 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?	Yes. As of the date of filing the tax return the taxpayer needs to state whether the TP documentation has been prepared. No further information at this point is required.
What would be the filing deadline?	The deadline for filing the annual tax return (in case of CIT taxpayers 3 months after 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?	When a tax assessment is made in a course of a tax audit, the taxpayer will have to pay the outstanding tax amount (at standard 19% tax rate in case of CIT, 18/19/32% in case of PIT) plus penalty interest (currently 8% p.a.). If the TP documentation is not provided to the tax authorities within 7 days upon their formal request or the submitted TP documentation does not fulfil necessary requirements, a 50% penal tax rate could be applied for income assessed by the tax authorities. Additionally, the taxpayer's Board Members / individuals assigned to be responsible for the financial matters could be held personally responsible on the basis of Fiscal Penal Code (monetary fine or imprisonment depending on the circumstances).

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?	When a tax assessment is made in a course of a tax audit, the taxpayer will have to pay the outstanding tax amount (at standard 19% tax rate in case of CIT, 18/19/32% in case of PIT) plus penalty interest (currently 8% p.a.). If the TP documentation is not provided to the tax authorities within 7 days upon their formal request or the submitted TP documentation does not fulfil necessary requirements, a 50% penal tax rate could be applied for income assessed by the tax authorities. Additionally, the taxpayer's Board Members / individuals assigned to be responsible for the financial matters / the person drafting and filing the tax return could be held personally responsible on the basis of Fiscal Penal Code (monetary fine or imprisonment depending on the circumstances). Potentially, in case of professional advisors some disciplinary procedures may be applied.
Does a taxpayer need to file TP-specific returns?	Yes
Please state the filing form number and name.	Tax form CIT-TP, PIT-TP (obligatory for the taxpayers with income / costs for the particular year exceeding EUR 10 million).
What would be the filing deadline?	The deadline for filing the annual tax return (in case of CIT taxpayers 3 months after the fiscal year-end).
What would be the penalties for non-compliance?	The taxpayers' Board Members / individuals assigned to be responsible for the financial matters could be held personally responsible for the lack of the additional CIT-TP/ PIT-TP on the basis of Fiscal Penal Code (monetary fine).

## 6. Benchmarking

Is there any local guidance or requirement with regard to the preparation of a benchmark study?	Yes. According to the TP regulations in force, those taxpayers whose revenue or costs exceed EUR 10 million during a previous tax year will have to include in their Local File comparables or benchmarking study showing that the intercompany prices are arm's length. The comparable study should contain comparable data of the Polish entities, if such data is available. The Decrees of 12.09.2017 published on 18.09.2017 contain details on the contents of the benchmarking study .
Are there any materiality thresholds that apply for the requirement to have a benchmark study available?	Yes. The obligation exists if the taxpayer's costs or revenues exceeded EUR 10 million in previous tax year
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?	Yes. In case of benchmarking study, the analysis should be updated at least once every 3 years (if the business circumstances change in a way affecting the analysis the benchmarking analysis should be reviewed earlier).

## 7. Year-end adjustments

Are year-end 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?	Intangible services (management, consulting etc.), royalties, intercompany financing, 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?	<p>The APA decision is not issued in case of transactions being subject to tax audit or court proceedings.</p> <p>The APA decision applies only if the facts, circumstance and critical conditions underlying the APA decision do not change.</p> <p>In case of material changes in the economic environment affecting the TP method subject to APA, the APA decision can be changed (upon the request by the taxpayer or ex officio by the tax authority).</p> <p>The Polish taxpayer must prepare and submit periodical APA compliance reports.</p> <p>The APA proceedings are subject to fee (the fee amount depends on the type of APA applied for and the value of the transaction).</p>

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