



Portugal

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? | 2002 |
| 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? | <p>The following methods that may be adopted to determine an arm's length price are:</p> <ul style="list-style-type: none"> - Comparable uncontrolled price method; - Resale price method; - Cost plus method; - Profit splits method (on a subsidiary basis) - Transactional profit method (on a subsidiary basis) - other methods that are justified according to the relevant facts and circumstances (on a subsidiary basis). |
| Are any TP methods preferred over others? | The comparable uncontrolled price method, resale price method and cost plus method are the preferred methods. Profit splits method, transactional profit method or any other applicable method may only be used if the preferred methods cannot be applied or, although applicable, are not sufficiently reliable in arm's length perspective. |
| Have the documentation requirements of OECD BEPS Action 13 already been implemented (i.e. the LF, MF and CbCR concepts)? | CbCR implemented; MF and LF expected to be implemented - in progress. |
| Reference to documentation and statements of local-government or tax authorities regarding OECD BEPS implementation status | CbCR: Article 121-A and 121-B of the Corporate Income Tax Code. Ministerial Order 367/2017 and 383-A/2017. |
| Reference to relevant articles of law, legislative regulation or applicable administrative guidance that are in place for TP documentation in general. | <p>Regarding CbCR please see above.</p> <p>There are further articles of law and Ministerial Orders.</p> <p>Transfer Pricing is primarily governed by Articles 63 and 138 of the Corporate Income Tax Code, approved by Decree-law No 442-B/88 of 30 November 1988. These provisions contain the main rules and principles related to transfer pricing and advance pricing agreements. This articles are complemented by important secondary legislation:</p> <ul style="list-style-type: none"> - Ministerial Order No 1446-C/2001 of 21 December 2001, which contains, for example, detailed rules on the arm's length principle, transfer pricing methodologies, cost contribution and intra-group services arrangements and ancillary obligations. - Ministerial Order No 620-A/2008 of 16 July 2008, which contains rules on the conclusion of advance pricing agreements - Article 77 of the General Tax Law, approved by Decree-Law No 398/98 of 17 December 1998, which provides that, to be justified, all transfer pricing adjustments made by the Portuguese tax authorities must comply with certain requirements. |

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| 2. Master File (MF) | Intentions |
| 3. Local File (LF) | Intentions |
| What is the threshold requirement for the obligation to prepare a LF? | <p>Although there is only the intention of Portuguese government to implement LF, according to the local TP documentation rules companies with a turnover in the previous tax year that exceeds EUR3 million must prepare a transfer pricing file that must include (among other information):</p> <ul style="list-style-type: none"> • An analysis of all transactions with related parties. • A selection of the best method to assess market conditions. • A benchmarking of comparable companies. |
| 4. Country-by-Country Reporting | Yes |
| What is the threshold requirement for the obligation to prepare Country-by-Country Reporting? | EUR 750 million |
| Euro Equivalent | EUR 750,000,000 |
| As from which year does this CbCR obligation exist? | <p>As from the year following the year that the threshold is met.</p> <ul style="list-style-type: none"> • For primary reporting, CbCR is first to be prepared for fiscal years starting at 1 January 2016 • For secondary reporting, CbCR is first to be prepared for fiscal years starting after 1 January 2017. |
| When and how do the tax authorities need to be notified who the reporting entity is? | The Portuguese taxpayer which is part of a group that has other entity which is required to provide financial and tax information respecting the multiple tax jurisdictions where the group entities are active, must notify the Portuguese Tax Authorities who the reporting entity is and its country of tax residence until 31 May of the year following to the tax year to which CbCR relates. For year 2017, such notification should have been complied with until 31 December 2017. |
| If the reporting entity (ultimate parent or surrogate parent) is in your country, what is the CbCR submission deadline? | 12 months from the end of the reporting period of the multinational group. |
| Are there any deviating submission deadlines for the secondary mechanism? | No. First submission deadline for secondary reporting is one year later than for primary reporting. |
| Does your country have a requirement that the financial figures of the group need to be aligned with? | No |
| Where is the CbCR to be submitted ? | CbCR is to be submitted electronically to the Portuguese Tax Authorities. |
| How is the CbCR to be submitted, specifically, is there any prescribed standard? | CbCR should be submitted electronically through a specific form (Form 55). The reporting entity should also be notified electronically through Form 54. |
| 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 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? | Yes |

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| Please specify the country involved and date the agreement came into force. | Portugal implemented the European Union Automatic Information Exchange Directive (EU Directive 2016/881/EU). The EU Directive 2016/881 has been adopted in August 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

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| Does a taxpayer need to disclose information regarding TP documentation in his tax return? | Yes. Taxpayers need to provide transfer pricing information on their annual Simplified Business Information return (IES). Taxpayer must specify the amount and nature of each controlled transaction and which method was used for its analysis, identify the related parties with which it entered into transactions and declare if contemporaneous documentation is available. |
| What would be the filing deadline? | IES shall be submitted until July 15th of the year following the tax 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? | Tax fraud is defined as any illegitimate conduct under the law that is aimed at avoiding the assessment, delivery or payment of any tax due, provided the tax advantage is at least EUR 15,000. If a taxpayer files a tax return for which he understands or should understand that the result reported is too low and that may provide a tax advantage of at least EUR 15,000 can be accused of tax fraud, and be liable to imprisonment for up to three years (in case of natural person) or to daily fines for up to 360 days (in case of legal person). The prison sentence and fines can be significantly increased in cases of severe fraud. If the taxpayer conduct does not constitute tax fraud, general administrative penalties may still be applicable. |
| 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? | If there is a participation on the tax fraud, legal consequences referred above may also be applicable. |
| 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? | Yes. Tax Authorities show a preference for local comparables. Tax Authorities use SABI and Amadeus database, but other database may be used. |
| 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. Portuguese documentation requirements are silent in this regard. |

| 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. Portuguese documentation requirements are silent in this regard. |

| 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? | In the past 12 to 18 months, transfer pricing disputes have mainly focused on the analysis, under the arm's length principle, of the terms and conditions of financing transactions between related parties, namely payments for intra-group services, financial transactions and business restructuring processes. |
| 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? | The APA procedure requires taxpayers to disclose to the Portuguese tax authorities a wide range of information on transactions with related entities. Taxpayers cannot refuse to provide documents or information on the grounds that they are confidential. Also, the conclusion of an APA requires the payment of administrative fees, which can vary between EUR 3,152 and EUR 34,915. |

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