



Romania

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?	All TP methods described in the OECD Guidelines may be applied.
Have the documentation requirements of OECD BEPS Action 13 already been implemented (i.e. the LF, MF and CbCR concepts)?	CbCR implemented and local variation of MF/LF implemented.
Reference to documentation and statements of local-government or tax authorities regarding OECD BEPS implementation status	<p>The master file and local file standard elements contained in Annex I and Annex II of Chapter V of OECD BEPS Action 13 have been implemented in the local country legislation through Order 442/2016 approved by the President of National Agency for Fiscal Administration ("NAFA") on conditions regarding the amounts of transactions, submission of the transfer pricing documentation file, content and conditions of requesting the preparation of the transfer pricing documentation file and application of transfer pricing adjustment/estimation procedure ("Order 442/2016").</p> <p>Thus, the Romanian legislation is not requesting separate documentation for Master File and Local File, these are integral parts/sections of the Transfer pricing documentation ("TP documentation"), the content of which is regulated by Order 442/2016.</p> <ul style="list-style-type: none"> <li>• Local File: Section B. Information on the taxpayer/payer of the Appendix no.3 to Order 442/2016.</li> <li>• Master File: Section A. Information on the group of the Appendix no.3 to Order 442/2016.</li> <li>• CbCR: Emergency Ordinance no. 42/2017 approved by the Romanian Government on 9 June 2017, with effective date on 23 June 2017.</li> </ul>

<p>Reference to relevant articles of law, legislative regulation or applicable administrative guidance that are in place for TP documentation in general .</p>	<p>Same as above (i.e. Order 442/2016 and Emergency Ordinance no. 42/2016). In addition, the local legislation on transfer pricing matters include the following:</p> <p>Romanian Fiscal Code (Law 227/2015) and related Methodological Norms, as further completed and supplemented:</p> <ul style="list-style-type: none"> <li>- definitions included within Article 7, points 26, 32 and 33;</li> <li>- possible adjustments/estimations and description and implementation of the transfer pricing methods article included within Article 11(4) and related methodological norms;</li> <li>- implementation of the market value principle included within Article 19 (6).</li> </ul> <p>Fiscal Procedure Code (Law 207/2015):</p> <ul style="list-style-type: none"> <li>- obligation to prepare the transfer pricing documentation included within Article 108 (2);</li> <li>- definition of concepts: advance pricing agreement and individual anticipated fiscal resolution included within Article 52;</li> <li>- mutual agreement procedure for double tax avoidance defined within Article 282 and Article 283;</li> </ul> <p>Order 3737/2015 approves the template and content of the form "Decision to adjust/estimate income and expenses of an affiliated person".</p> <p>Order 3735/2015 approves the procedure for issuing the advance pricing agreement.</p> <p>Furthermore, the Romanian transfer pricing legislation closely follows the provisions of international legislation:</p> <ul style="list-style-type: none"> <li>- OECD Transfer pricing Guidelines and other reports issued by OECD, as further completed with BEPS measures and other;</li> <li>- Various materials issued by European Joint Transfer Pricing Forum.</li> </ul>
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2. Master File (MF)	Yes
<p>What is the (consolidated revenue) threshold requirement for the obligation to prepare a MF?</p>	<p>The Romanian legislation does not provide a specific threshold on consolidated revenue but it provides certain materiality thresholds on the value of the annual inter-company transactions, based on which a transfer pricing documentation (including Master File and Local File) must be prepared by the taxpayer. Thus, the Romanian legislation makes a distinction between:</p> <ul style="list-style-type: none"> <li>• Large taxpayers with a total annual value of inter-company transactions equal to or above the following materiality thresholds, based on the type of transaction:               <ul style="list-style-type: none"> <li>- EUR 200,000, for interest on financial services;</li> <li>- EUR 250,000, for supply of services;</li> <li>- EUR 350,000, for purchases / sales of tangible or intangible assets.</li> </ul> </li> <li>• The remaining large taxpayers with a total annual value of inter-company transactions equal to or above specific materiality thresholds (i.e. EUR 50,000, for interest on financial services; EUR 50,000, for supply of services and EUR 100,000, for purchases / sales of tangible or intangible assets) but under the above-mentioned materiality thresholds for large taxpayers and</li> <li>• Small- and medium-sized taxpayers with a total annual value of inter-company transactions equal to or above the following materiality thresholds, based on the type of transaction:               <ul style="list-style-type: none"> <li>- EUR 50,000, for interest on financial services;</li> <li>- EUR 50,000, for supply of services;</li> <li>- EUR 100,000, for purchases / sales of tangible or intangible assets.</li> </ul> </li> </ul>
<p>As from which year does this obligation exist?</p>	<ul style="list-style-type: none"> <li>• As from the year following the year that the materiality thresholds are met.</li> <li>• Applies for fiscal years starting after 01 Jan 2016.</li> </ul>
<p>When does the Master File need to be available?</p>	<ul style="list-style-type: none"> <li>• Large taxpayers that carry out inter-company transactions at or exceeding specific materiality thresholds (i.e. euro 200,000 – euro 350,000, based on the type of transaction) are required to prepare TP documentation (including Master File and Local File) on an annual basis. The deadline for preparing TP documentation is the legal deadline for submitting their annual corporate income tax return for the relevant year (i.e. currently, 25 March).</li> <li>• For the rest of large taxpayers, and also the small and medium - sized taxpayers that carry out inter-company transactions at or exceeding specific materiality thresholds (i.e. euro 50,000 – euro 100,000, based on the type of transaction) there is no contemporaneous documentation requirement, meaning that the TP documentation (including Master File and Local File) can be prepared upon request in a tax audit. In practice, it is recommended to prepare TP documentation in advance due to the 30 up to 60 calendar days limitation between the submission request and the submission deadline.</li> </ul>

<p>When does it need to be submitted?</p>	<ul style="list-style-type: none"> <li>• Large taxpayers (defined above) are required to present their TP documentation (including Master File and Local File) at the request by the tax inspectors, during a tax audit but also on other occasions, pursuant to their obligation to provide information and documents to enable the ascertaining of fiscal circumstances in accordance with the Fiscal Procedure Code. The deadline for presenting the TP documentation is 10 days from the date of the request, but not earlier than 10 days after the expiry of the deadline for their preparation (i.e. 25 March).</li> <li>• The remaining large taxpayers, and also the small- and medium-sized taxpayers (defined above) have the obligation to prepare TP documentation (including Master File and Local File), where a written request is made by the tax inspector during a tax audit. The deadline for presenting their TP documentation is between 30 and 60 calendar days. A one-off extension of no more than 30 calendar days is allowed.</li> <li>• Taxpayers that do not meet the materiality thresholds (i.e. EUR 50,000 – EUR 100,000, based on the type of transaction) are required to document the arm's length principle, during a tax inspection, based on the general principles provided by the financial/ accounting and tax regulation.</li> </ul>
<p>Does the MF have to be prepared in the relevant local language ?</p>	<p>Yes. All documents in foreign languages that are included in the TP documentation must be backed up by an official translation into Romanian language.</p>
<p>Is documentation in English permissible?</p>	<p>No</p>
<p>What are the possible consequences of not having the MF available?</p>	
<p>Penalties?</p>	<p>Yes</p>
<p>Imprisonment?</p>	<p>No</p>
<p>Shifting of the burden of proof?</p>	<p>Yes</p>
<p>Other?</p>	<p>Yes</p>
<p>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>	<p>Consistent with OECD requirements.</p>

3. Local File (LF)	Yes
<p>What is the threshold requirement for the obligation to prepare a LF?</p>	<p>The Romanian legislation does not provide a specific threshold on consolidated revenue but it provides certain materiality thresholds on the value of the annual inter-company transactions, based on which a transfer pricing documentation (including Master File and Local File) must be prepared by the taxpayer. Thus, the Romanian legislation makes a distinction between:</p> <ul style="list-style-type: none"> <li>• Large taxpayers with a total annual value of inter-company transactions equal to or above the following materiality thresholds, based on the type of transaction:               <ul style="list-style-type: none"> <li>- EUR 200,000, for interest on financial services;</li> <li>- EUR 250,000, for supply of services;</li> <li>- EUR 350,000, for purchases / sales of tangible or intangible assets.</li> </ul> </li> <li>• The rest of large taxpayers with a total annual value of inter-company transactions equal to or above specific materiality thresholds (i.e. EUR 50,000, for interest on financial services; EUR 50,000, for supply of services and EUR 100,000, for purchases / sales of tangible or intangible assets) but under the above mentioned materiality thresholds for large taxpayers, and</li> <li>• Small and medium-sized taxpayers with a total annual value of inter-company transactions equal to or above the following materiality thresholds, based on the type of transaction:               <ul style="list-style-type: none"> <li>- EUR 50,000, for interest on financial services;</li> <li>- EUR 50,000, for supply of services;</li> <li>- EUR 100,000, for purchases / sales of tangible or intangible assets.</li> </ul> </li> </ul>
<p>Euro Equivalent</p>	<p>No Threshold</p>
<p>As from which year does this obligation exist?</p>	<ul style="list-style-type: none"> <li>• As from the year following the year that the materiality thresholds are met.</li> <li>• Applies for fiscal years starting after 01 Jan 2016.</li> </ul>
<p>When does the LF need to be available?</p>	<ul style="list-style-type: none"> <li>• Large taxpayers that carry out inter-company transactions at or exceeding specific materiality thresholds (i.e. EUR 200,000 - EUR 350,000, based on the type of transaction) are required to prepare TP documentation (including Master File and Local File) on an annual basis. The deadline for preparing TP documentation is the legal deadline for submitting their annual corporate income tax return for the relevant year (i.e. currently, 25 March).</li> <li>• For the rest of large taxpayers, and also the small and medium - sized taxpayers that carry out inter-company transactions at or exceeding specific materiality thresholds (i.e. EUR 50,000 - EUR 100,000, based on the type of transaction) there is no contemporaneous documentation requirement, meaning that the TP documentation (including Master File and Local File) can be prepared upon request in a tax audit. In practice, it is recommended to prepare TP documentation in advance due to the 30 up to 60 calendar days limitation between the submission request and the submission deadline.</li> </ul>

<p>When does the LF need to be submitted?</p>	<ul style="list-style-type: none"> <li>• Large taxpayers (defined above) are required to present their TP documentation (including Master File and Local File) at the request by the tax inspectors, during a tax audit but also on other occasions, pursuant to their obligation to provide information and documents to enable the ascertaining of fiscal circumstances in accordance with the Fiscal Procedure Code. The deadline for presenting the TP documentation is 10 days from the date of the request, but not earlier than 10 days after the expiry of the deadline for their preparation (i.e. 25 March).</li> <li>• The rest of large taxpayers, and also the small and medium - sized taxpayers (defined above) have the obligation to prepare TP documentation (including Master File and Local File), where a written request is made by the tax inspector during a tax audit. The deadline for presenting their TP documentation is between 30 and 60 calendar days. A one-off extension of no more than 30 calendar days is allowed.</li> <li>• Taxpayers that do not meet the materiality thresholds (i.e. EUR 50,000 - EUR 100,000, based on the type of transaction) are required to document the arm's length principle, during a tax inspection, based on the general principles provided by the financial/ accounting and tax regulation.</li> </ul>
<p>Does the LF have to be prepared in the relevant local language?</p>	<p>Yes</p>
<p>Or is documentation in English permissible?</p>	<p>No</p>
<p>What are the possible consequences of not having the LF available?</p>	
<p>Penalties?</p>	<p>Yes</p>
<p>Imprisonment?</p>	<p>No</p>
<p>Shifting of the burden of proof?</p>	<p>Yes</p>
<p>Other?</p>	<p>Yes</p>
<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>Even though Romania is not part of the OECD yet, the OECD Transfer Pricing Guidelines are, in principle, recognised by the Romanian transfer pricing legislation. Nevertheless, the Romanian legislation also contains a number of specific national elements related to transfer pricing, which prevail and which are carefully verified by the tax authorities during transfer pricing tax audits.</p> <p>e.g. The detailed regulations regarding the content of the local transfer pricing documentation file include specific provisions on the procedure to conduct benchmarking studies. These should include local comparables. European or international benchmarking studies are accepted, provided that there are no local comparables or if the set of local comparables is too limited.</p> <p>The content of the "group related information" (MasterFile) and "taxpayer related information" (Local File) is harmonized with the new Chapter V requirements, approved by BEPS Measure 13.</p>
<p><b>4. Country-by-Country Reporting</b></p>	<p>Yes</p>
<p>What is the threshold requirement for the obligation to prepare Country-by-Country Reporting?</p>	<p>EUR 750 million</p>
<p>As from which year does this CbCR obligation exist?</p>	<p>As from the year following the year that the threshold is met (so that CbCR is prepared for the year in which the threshold was met or exceeded).</p>

<p>When and how do the tax authorities need to be notified who the reporting entity is?</p>	<p>Romanian resident entities part of MNE groups have to notify the Romanian tax authorities if they are the ultimate parent, the surrogate parent or other Romanian resident entity required to file the CbC report. Alternatively, the Romanian resident entity has to notify the Romanian tax authority regarding the identity of the MNE member filing the CbC report and its residency.</p> <p>According to the new law, this notification is due by the last day of the MNE group's reporting fiscal year, but no later than the deadline for filing a tax return for the respective constituent entity for the preceding fiscal year.</p>
<p>If the reporting entity (ultimate parent or surrogate parent) is in your country, what is the CbCR submission deadline?</p>	<p>Within 12 months of the last day of the MNE group's reporting fiscal year.</p>
<p>Are there any deviating submission deadlines for the secondary mechanism?</p>	<p>No</p>
<p>Does your country have a requirement that the financial figures of the group need to be aligned with?</p>	<p>No</p>
<p>Does your country have a requirement that the financial years of the group need to be aligned with?</p>	<p>No</p>
<p>Where is the CbCR to be submitted ?</p>	<p>CbC reports should be submitted to the correspondent Romanian tax authority.</p>
<p>How is the CbCR to be submitted, specifically, is there any prescribed standard?</p>	<p>The template and the content for CbC reports, including the notification template, was published by the National Agency for Fiscal Administration Order.</p>
<p>What are the possible consequences of not having the CbCR available?</p>	<p>See below</p>
<p>Penalties?</p>	<p>Yes</p>
<p>Imprisonment?</p>	<p>No</p>
<p>Shifting of the burden of proof?</p>	<p>No</p>
<p>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?</p>	<p>Consistent with OECD requirements</p>
<p>Did your country sign the Multilateral Competent Authority Agreement on the Exchange of CbC Reports ("CbC MCAA")?</p>	<p>Yes</p>
<p>Did your country enter into other information exchange agreements, such as on a bilateral basis?</p>	<p>No</p>
<p>Please specify the country involved and date the agreement came into force.</p>	<p>Emergency Ordinance No. 42/2017 was issued, in order to implement the measures set out in the European Union Automatic Information Exchange Directive (EU Directive 2016/881/EU). The EU Directive was implemented in Romania in June 2017.</p>
<p>Can a taxpayer in your country fulfil his CbCR requirement by referring to the reporting entity in the same or another country?</p>	<p>Yes</p>

## 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?	<p>A non-declaration penalty is applicable, at 0.08% per day, starting from the day following the due date until the date of payment. This penalty applies to the main tax obligations declared incorrectly or not declared by the taxpayer and is established by a tax authorities.</p> <p>The late-payment interest rate is 0.02% for each day of delay. Subsequent late-payment penalties also apply.</p> <p>The penalty is set at 0.01% per day of delay. This penalty does not apply to main tax obligations not declared by the taxpayer and is established by a tax inspection authority decision.</p>
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?	<p>There is no legal penalty. However, legal consequences may arise in case transactions recorded in the accounting statements prove to be artificial.</p> <p>Thus, in determining the amount of any tax, duty or mandatory social contribution, the tax authorities may disregard a transaction which does not have an economic purpose, by adjusting its tax effects, or they may reclassify the form of a transaction in order to reflect the economic substance of the transaction/activity.</p>
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?	<p>Yes. For Romanian transfer pricing purposes, in order to determine the arm's length character of prices charged between a Romanian entity and its related parties, a local market benchmark study has to be carried out first. It is only in the case of insufficiently available information regarding local comparables that Romanian tax authorities will accept a pan-European search.</p> <p>Nevertheless, the search for comparables in the local market has to be documented and justified as "not possible/ not relevant/ not sufficient".</p>
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

## 7. Year-end adjustments

Are year-end adjustments permissible?	Yes
Does the taxpayer have to comply with any specific features or guidance?	Yes. Based on our experience, Romanian tax authorities especially want to see that the adjustments follow a pre-determined mechanism that is laid down and agreed upon in writing between the relevant related parties in advance.

8. Transfer Pricing Audit and Dispute Resolution Mechanisms	
What are currently the main TP areas of scrutiny by the tax authorities in your country?	Intercompany financing, especially cash pools, losses, management services, transfer of intangible assets, business restructuring and compliance with OECD BEPS. We also expect that data alignment issues will be further scrutinized.
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 Romanian taxpayer has to agree with the APA issued. In case the taxpayer / applicant payer disagrees with the APA issued it can submit a notification to the Romanian tax authorities and in such cases the APA has no legal effect.</p> <p>Where an APA is issued, there are specific requirements regarding the content of the annual report to be submitted by the taxpayer/ applicant payer beneficiary of the agreement.</p> <p>The Romanian tax authorities are only bound to the APA agreement if:</p> <ul style="list-style-type: none"> <li>- the underlying facts and circumstances to the APA agreement are met;</li> <li>- the critical conditions are adhered to; and</li> <li>- the tax authorities receive the relevant financial statements/annual APA compliance reports.</li> </ul>

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