



WTS Global Country TP Guide

Last Update: December 2017

<b>1. Legal Basis</b>	
Is there a legal requirement to prepare TP documentation?	No
Is the preparation of TP documentation advisable, e.g. to avoid penalties?	Yes
Are TP policies of multinational enterprises in principle accepted by the tax authorities, if they are in line with the OECD TP Guidelines?	No. U.S. tax authorities refer to the Section 482 Regulations for transfer pricing rules and regulations. The Section 482 Regulations and the OECD Guidelines have similarities in their principles and methods.
Does your country apply the arm's length standard?	Yes
Which TP methods may be applied?	Tangible Property: Comparable Uncontrolled Price (CUP), Resale Price Method (PSM), Profit Split Method (PSM), Berry Ratio, Comparable Profits Method (CPM), Cost Plus, other unspecified methods; Intangible Property: Comparable Uncontrolled Transaction (CUT), CPM, PSM, Income Method, Acquisition Price Method, Market Capitalisation, Residual Profit Split, and other unspecified methods; Services: Services Cost Method (SCM), Gross Services Margin (GSM), Cost of Services Plus (CSPM), PSM, other unspecified methods.
Are any TP methods preferred over others?	Section 482 Regulations indicate that whichever method provides the most reliable result (i.e. the "best method") is preferred. In practice, there is a preference for transaction-based approaches (e.g. CUT and CUP).
Have the documentation requirements of OECD BEPS Action 13 already been implemented (i.e. the LF, MF and CbCR concepts)?	CbCR implemented; No MF/LF
Reference to documentation and statements of local-government or tax authorities regarding OECD BEPS implementation status	U.S. Treasury Regulations Section 1.6038-4: Country-by-Country Reporting (IRS Form 8975), Schedules A, Tax Jurisdiction and Constituent Entity Information.
Reference to relevant articles of law, legislative regulation or applicable administrative guidance that are in place for TP documentation in general	Transfer Pricing Regulations: Section 482 Regulations, Treas. Reg. §1.482-0 through 9; CbC Reporting Regulations: Federal Register final regulations: T.D. 9773 Required Information Returns: Prop. Treas. Reg. §1.6038-4.

<b>2. Master File (MF)</b>	Not implemented
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<b>3. Local File (LF)</b>	Not implemented
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<b>4. Country-by-Country Reporting</b>	Yes
What is the threshold requirement for the obligation to prepare Country-by-Country Reporting?	USD 850 million consolidated revenue in the previous financial year
Euro Equivalent	EUR 691,455,000
As from which year does this CbCR obligation exist?	CbC must be prepared in the year following the year that the threshold is met. CbCR applies for fiscal years beginning on or after 30 June 2016. Taxpayers may file voluntary CbC reports for periods beginning between 1 January 2016 and 30 June 2016.
When and how do the tax authorities need to be notified who the reporting entity is?	The U.S. taxpayer has to declare in its tax return if it is a U.S. ultimate parent company of a MNE. However, a U.S. territory ultimate parent entity may designate a U.S. business entity that it controls to file on its behalf. The United States does not provide for the possibility to act as a surrogate. The filer must list the U.S. MNE group's constituent entities, indicating each entity's tax jurisdiction (if any), country of organisation and main business activity, and provide financial and employee information for each tax jurisdiction in which the U.S. MNE does business.
If the reporting entity (ultimate parent or surrogate parent) is in your country, what is the CbCR submission deadline?	Must be filed on or before the due date (including extensions) for the annual tax return.
Are there any deviating submission deadlines for the secondary mechanism?	Yes. Voluntary filers whose period begins between 1 January 2016 and 30 June 2016 have been given an extension with respect to 2016 only. Voluntary filers have 12 months from the last day of the reportable period to submit a CbCR via an amended return (i.e., for calendar year 2016, early period filers have until December 31, 2017).
Does your country have a requirement that the financial figures of the group need to be aligned with?	Yes. MNE groups with a U.S. based ultimate parent entity must consolidate the accounts of its other business entities with its own accounts for financial reporting purposes under US generally accepted accounting principles (GAAP).
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 Form 8975 and Schedules A (Form 8975) must be attached to the applicable paper tax return.
How is the CbCR to be submitted, specifically, is there any prescribed standard?	An ultimate parent entity that files its return electronically must file the Form 8975 through the IRS Modernized e-File system in Extensible Mark-up Language (XML) format, not as a binary attachment (such as a PDF file). If filing the tax return on paper only, the IRS requests that you also mail a copy of page 1 of Form 8975 to Internal Revenue Service P.O. Box 9941 Mailstop 4912 Ogden, UT 84401 in order to notify the IRS that you have filed Form 8975 and Schedules A (Form 8975) with a paper return.
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?	The specific information that must be included in IRS Form 8975 is materially the same as the CbCR model template outlined in BEPS Action 13. However, the tables included in Form 8975 have a materially different structure and format than BEPS Action 13.

Did your country sign the Multilateral Competent Authority Agreement on the Exchange of CbC Reports ("CbC MCAA")?	No
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 United States pursued information exchanges on a bilateral basis. Country-by-Country Reporting data is exchanged pursuant to bilateral Competent Authority Arrangements (CAAs), which rely on Double Taxation Conventions ("DTC"), Tax Information Exchange Agreements ("TIEA"), or the Convention on Mutual Administrative Assistance in Tax Matters that permit automatic exchanges of information. The US signed / is in negotiations with 8 countries for TIEAs and with 34 countries for DTCs.
Can a taxpayer in your country fulfil his CbCR requirement by referring to the reporting entity in the same or another country?	No

### 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. There is no requirement to provide transfer pricing documentation to the IRS at the time of filing the tax return. However, transfer pricing documentation must be prepared contemporaneously with the tax return and kept on file in order to provide penalty protection. There are certain administrative disclosures related to cost sharing arrangements that must be disclosed with the tax return (See IRC Section 482-7(k)(4)).
What would be the filing deadline?	The cost sharing arrangement disclosures must be filed with the annual tax return. The deadline for corporate federal income tax returns is the 15th day of the third month following the close of the tax year (e.g. March 15 for calendar-year taxpayers). Corporate taxpayers may request a seven-month extension to file (e.g. October 15 for calendar-year taxpayers).
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?	The US tax authorities would readjust the income of the multinational, and the firm would be subject to penalties. The IRS has three years from the tax return filing date to make adjustments. However, if gross income in excess of 25 percent of the gross income stated in the return is omitted, the statute is extended to six years. The statute is unlimited if a false or fraudulent return is filed, if a wilful attempt to evade taxes is made, or if no return is filed. There are two types of penalties that can be assessed as an additional 20 percent or 40 percent of the tax underpayment. The Transactional Penalty applies at a 20 percent rate where the misstated transfer price for any property or service is 200 percent or more, or 50 percent or less, of the correct price. The Transactional Penalty applies at a 40 percent rate if the misstated transfer price is 400 percent or more, or 25 percent or less, of the correct price. The Net Adjustment Penalty applies at a 20 percent rate if the total net transfer pricing adjustment for the year is more than USD 5 million or 10 percent of gross receipts. The Net Adjustment Penalty applies at a 40 percent rate if the adjustment is more than USD 20 million or 20 percent of gross receipts.

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?	From U.S. Code § 7201: Any person who wilfully attempts to evade or defeat any tax imposed by this title or the payment thereof shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof: Shall be imprisoned not more than 5 years; Or fined not more than \$250,000 for individuals (\$500,000 for corporations); Or both, together with the costs of prosecution.
Does a taxpayer need to file TP-specific returns?	No
Please state the filing form number and name.	There is no TP-specific return, but required documentation to be filed with the annual return includes IRS 5471, 5472, 8865, schedule UTP (Form 1120). Cost sharing arrangement documentation is also necessary to be governed by Treas. Reg. Section 1.482-7.
What would be the filing deadline?	Due with the filing of the income tax return (including extensions).
What would be the penalties for non-compliance?	A penalty of 10,000 US dollars (USD) is imposed for each Form 5471 or Form 5472 that is filed after the due date of the income tax return (including extensions) or does not include the complete and accurate information described in Section 6038(a).

## 6. Benchmarking

Is there any local guidance or requirement with regard to the preparation of a benchmark study?	Yes. For US tested parties, the IRS typically expects publicly traded US (and sometimes Canadian) comparables to be used in benchmarking studies unless comparables from other regions are expected to provide a more reliable result. For foreign tested parties, the IRS has not shown a specific preference for US comparables, global comparables, regional comparables or country specific comparables as long as the parameters selected provide the most reliable result.
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. At a minimum, taxpayers should update the financials of the comparables included in the benchmarking study annually. The Section 482 Regulations indicate that the results of uncontrolled comparables should be compared with the results of the controlled transaction in the taxable year under review.

## 7. Year-end adjustments

Are year-end adjustments permissible?	Yes
Does the taxpayer have to comply with any specific features or guidance?	Yes. Transfer pricing adjustments that increase or decrease U.S. taxable income are allowed on timely filed original tax returns. Transfer pricing adjustments to amended tax returns are only allowed only if they increase U.S. taxable income.

8. Transfer Pricing Audit and Dispute Resolution Mechanisms	
What are currently the main TP areas of scrutiny by the tax authorities in your country?	Outbound transfers of IP, Financial Transactions, "Round-Trip" transactions involving a foreign licensee (i.e. foreign entity licenses IP from U.S. entity, U.S. entity contract manufactures and sells to foreign licensee, foreign licensee sells back to U.S. limited risk distributor).
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?	No specific restrictions or guidance provided on APA acceptance criteria.

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