Australia
Transfer Pricing Guide 2024

wts global

Australia

1. Legal Basis

Is there a legal requirement to prepare TP documentation?

The preparation of TP documentation is not mandatory. However, penalties will apply for Taxpayers who don't meet the requirements set out in Subdivision 284-E and are precluded from establishing a reasonably arguable position in the event of a TP adjustment.

Since when does a TP documentation requirement exist in your country?

Division 13 was enacted in 1982 (current legislative framework since June 2013), at the discretion of the Commissioner of Taxation.

Adoption of the OECD or UN legislation in your country?

Australia is a member of the OECD and largely follows the OECD Guidelines in practice.

Is your country a member of the OECD, Inclusive Framework, or other OECD groups (e.g. BEPS)?

Yes.

Are TP policies of multinational enterprises in principle accepted by the tax authorities, if they are in line with the OECD TP Guidelines?

Yes, but some extra considerations may be required for issues around Cross Border Treasury and Financing transactions.

Which TP methods may be applied?

Methods include traditional transaction methods (e.g., Comparable Uncontrolled Price (**"CUP"**); Resale Price method (**"RPM"**); and Cost Plus method (**"CPM"**)) and traditional profits based methods (Profit Split (**"PS"**); and Transaction Net Margin Method (**"TNMM"**)).

Any other method that results in an arm's length outcome is also acceptable. However, other methods should only be used where one of the other traditional transaction or profits based methods cannot be reliably applied.

Is there a stated preference for any particular TP methods?

The legislation requires Taxpayers to adopt the "most appropriate" TP method and refers to the OECD Guidelines in this regard.

Have the documentation requirements of OECD BEPS Action 13 already been implemented (i.e. the LF, MF, and CbCR concepts)?

Australia has adopted the OECD's three tiered documentation approach set out in BEPS Action 13, however, the LF differs from the OECD approach. The requirements are met through the lodgement of the LF, the MF (LCMSF), and the CbCR.

The Australian Local File requirements include entity and transactional information for risk profiling. There are two LF forms, simple and long form. The Australian LF does not include TP documentation such as functional analysis, adjustments, etc.

Reference to documentation and statements of local government or tax authorities regarding OECD BEPS implementation status

In response to key TP cases that questioned the relevance of the OECD Guidelines in interpreting Division 13 and the Australia Tax Office (**"ATO"**)'s reliance on such interpretation, revised TP provisions were enacted. These

provisions refer directly to the 2010 OECD Guidelines (or the 1999 Guidelines for earlier years) as relevant guidance for the determination of the arm's length conditions.

For years starting on or after 1 July 2017, the relevant guidance also incorporates the changes as per the 2017 amended version of the OECD Guidelines.

Is there any statute of limitation period?

Under Subdivisions 815-B, C, and D, amendments can be made within seven years following the date on which a notice of assessment is issued to the Taxpayer.

Historically, there has been no statute of limitations for TP adjustments. The tax legislation applicable for financial years starting before 1 July 2013 specifically empowers the Commissioner to make amendments to tax assessments in any year for TP adjustments under Division 13. As such, years starting before 1 July 2013 remain open to challenge indefinitely.

Adjustments can be made under Subdivision 815-A for any financial year starting between 1 July 2004 and 30 June 2013 (inclusive). Like Division 13, there is no limitation on when adjustments can be made.

Some of Australia's double tax agreements, including those with New Zealand and Japan, specify time limits for adjustments.

Reference to relevant articles of law, legislative regulation, or applicable administrative guidance that are in place for TP documentation in general.

Subdivision 284-E TAA 1953.

2. <u>Master File (MF)</u>

What is the (consolidated revenue) threshold requirement for the obligation to prepare a MF?

CbCR requirements apply to Country by Country Reporting Entity (**"CbCRE"**)s, largely Australian Taxpayers that form part of an MNE with an annual global income of AUD 1 billion or more. While the definition of the global group generally follows accounting consolidation rules, there are exceptions to that are specific to Australia's MF submissions.

Euro Equivalent

EUR 601,365,000.

From which year does this obligation exist?

Years starting on or after 1 July 2017.

When does the MF need to be available?

As a CbCR reporting entity, the MF must be lodged directly with the ATO within 12 months after the end of the Taxpayer's year. The MF shall be maintained on a contemporaneous basis.

When does it need to be submitted?

If required, this must be filed 12 months after the end of the financial year of the Taxpayer unless the Taxpayer has received a Replacement Reporting Period ("**RRP**"), in which case the deadline is 12 months after the end of the RRP (typically the global parent entity's year immediately preceding the Taxpayer's year-end). An exemption may be available where Australia is the only jurisdiction in which the MF needs to be prepared.

Does the MF have to be prepared in the relevant local language?

The TP documentation needs to be maintained in English (local language) or be readily convertible into English.

Is documentation in English permissible?

Yes, it is required to be in English.

What are the possible consequences of not having the MF available?

Penalties?

Yes, penalties apply to the underpaid tax (shortfall penalties), failure to submit or late submission (failure to lodge penalties), or

incorrect disclosures (false and misleading disclosure penalties). Failure to meet MF lodgement requirements could lead to penalties of up to AUD 782,500 per year.

Imprisonment?

No.

Shifting of the burden of proof?

No.

Other?

No.

To what 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?

The prescribed information required to be disclosed in the MF is largely consistent with the OECD Action 13 requirements.

3. Local File (LF)

What is the threshold requirement for the obligation to prepare a LF?

CbCR requirements apply to CbCREs, largely Australian Taxpayers that form part of an MNE with an annual global income of AUD 1 billion or more. While the definition of global group generally follows accounting consolidation rules, some exceptions require careful consideration.

Further, if the local entity has less than AUD 2 million in total international related party transactions and no transactions that are on the exclusions list, it may submit the short form Local File.

Euro Equivalent

EUR 601,365,000.

From which year does this obligation exist?

Years starting on or after 1 July 2017.

When does the LF need to be available?

For CbCR reporting entities, an Australian LF must be filed 12 months after the end of the financial year of the Taxpayer. If the Taxpayer prepares and lodges at least Part A of the Australian Local File by the due date of the corporate tax return, questions 2 to 17 of the abovementioned IDS do not need to be completed (this is an "administrative concession" provided by the ATO).

When does the LF need to be submitted?

If required, an Australian Local File must be filed 12 months after the end of the financial year of the Taxpayer. If the Taxpayer prepares and lodges at least Part A of the Australian LF by the due date of the corporate tax return, questions 2 to 17 of the abovementioned IDS do not need to be completed (this is an "administrative concession" provided by the ATO).

Does the LF have to be prepared in the relevant local language?

The TP documentation needs to be maintained in English (local language) or be readily convertible into English.

Or is documentation in English permissible?

Yes, it is required to be in English.

What are the possible consequences of not having the LF available?

Penalties?

Yes, penalties apply to underpaid tax (shortfall penalties), failure to submit or late submission (failure to lodge penalties), or incorrect disclosures (false and misleading disclosure penalties). The Australian LF lodgement is mandatory for jurisdiction-by-jurisdiction Reporting Entities, and failure to lodge is subject to the same penalties.

Imprisonment?

No.

Shifting of the burden of proof?

No.

Other?

No.

To what 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?

The prescribed information required to be disclosed in the LF, both Short Form and Long Form, is not consistent with the OECD Action 13 requirements.

The Australian LF requirements include entity and transactional information for risk profiling by the ATO. There are two LF forms, simple and long form. The Australian LF does not include TP documentation such as functional analysis, adjustments, etc as in the OECD content requirements.

4. Country-by-Country Reporting (CbCR)

What is the threshold requirement for the obligation to prepare Country-by-Country Reporting?

CbCR requirements apply to CbCREs, largely Australian Taxpayers that form part of an MNE with an annual global income of AUD 1 billion or more. While the definition of a global group generally follows accounting consolidation rules, some exceptions require careful consideration.

Euro Equivalent

EUR 601,365,000.

From which year does this CbCR obligation exist?

Years starting on or after 1 July 2017.

Are Taxpayers required to notify of CbCR filing in your country?

Yes.

If yes, when and how do the tax authorities need to be notified?

If the CbCR is lodged with another revenue authority with whom the ATO has a formal information exchange, the Australian Taxpayer can provide a notification through the LCMSF form, and the ATO then obtains a copy of the CbCR directly from the other revenue authority 12 months from the end of the relevant income year. CbCR notification is required annually.

For cases where multiple entities are not members of the same tax consolidated group, each entity will need to lodge a notification. There is an option for one entity to notify that it will be lodging the information on behalf of those entities, but it will need to state this within its notification.

If the reporting entity (ultimate parent or surrogate parent) is in your country, what is the CbCR submission deadline?

The CbCR (or the CbCR Notification if applicable) must be lodged directly with the ATO within 12 months after the end of the Taxpayer's year-end. If required, the CbCR is due 12 months after the end of the financial year of the Taxpayer unless the Taxpayer has received an RRP, in which case the deadline is 12 months after the end of the RRP.

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?

No.

Where is the CbCR to be submitted?

In addition to the LCMSF, Australian Taxpayers must lodge the CbCR in Australia through the use of a separate XML schema.

How is the CbCR to be submitted, specifically, is there any prescribed standard?

Where the CbCR is lodged in a jurisdiction that automatically exchanges it with the ATO, this lodgement can be replaced with a notification. Such CbCR lodgement notification is provided through the lodgement of the LCMSF, due 12 months after the end of the financial year.

It should be noted that where an Australian subsidiary has a different financial year-end from the Ultimate Parent Entity lodging the CbCR, a replacement reporting period will need to be established with the ATO, which can impact the deadlines for the CbCR.

A local lodgement is required if the CbCR is not lodged in a jurisdiction that automatically exchanges it with the ATO. This lodgement will need to be made through a separate XML and a conversion process is required to align the CbCR with the Australian requirements.

What are the possible consequences of not having the CbCR available?

Penalties?

Yes, penalties apply to underpaid tax (shortfall penalties), failure to submit or late submission (failure to lodge penalties), or incorrect disclosures (false and misleading disclosure penalties). Failure to lodge for SCEs ranges from AUD 156,500 to AUD 782,500.

Imprisonment?

No.

Shifting of the burden of proof?

No.

Other?

No.

To what 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 CbCR ("CbCR MCAA")?

Yes, it is as of 27 January 2016, with the dates on which exchange relations became active listed on the OECD website.

Did your country enter into other information exchange agreements, such as on a bilateral basis?

Yes, Australia has signed a bilateral agreement with the US.

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 the tax return or TP specific returns

Is there a threshold for Related Party Transactions?

In addition, if the aggregate number of transactions or dealings with international related parties, both revenue and capital in nature, is greater than AUD 2 million, the following information must be disclosed:

- Top three transactions (individually) and other transactions (combined) for the top three specified "low tax" jurisdictions; and
- The top three transactions and other transactions for the top three non-specified jurisdictions.

Does a Taxpayer need to disclose information regarding TP documentation in his tax return?

Related party disclosures may be required in the financial statement and annual report.

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 TP, what could be the legal consequences?

Penalties apply to underpaid tax (shortfall penalties). Penalties depend on the entity as well as various other factors, such as the level of culpability.

Where the ATO concludes that an entity entered the arrangement with the sole or dominant purpose of that entity or another getting a TP benefit, the penalties will be either 50% or 25% of the TP shortfall amount, depending on whether the entity has appropriate documentation.

Higher penalties apply where there are further culpability factors such as intentional disregard for the law. These penalties are doubled for Significant Global Entities.

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?

A self-assessment regime effectively requires public officers to determine whether the Taxpayer has received a TP benefit to satisfy their duties in signing off on the tax return. In extreme cases, the public officers may be liable for penalties if they do not discharge this responsibility.

Does a Taxpayer need to file TP specific returns?

No, other than those mentioned.

Please state the filing form number and name.

Together with income tax return lodging.

What would be the filing deadline?

In most cases, the income tax return is due for lodgement six months and 15 days after the end of the income tax year.

What would be the penalties for non-compliance?

Yes, penalties apply to failure to submit or late submission (failure to lodge penalties). Penalties depend on the entity as well as various other factors, such as the level of culpability.

Penalties for SGEs, i.e., any entity that is part of a group with a global turnover of AUD 1 billion or more, are particularly high. Failure-to-lodge penalties for these entities start at AUD 156,500 for filings that are one date late and gradually increase to AUD 782,500 for lodgements that are 112 days late or more.

6. Benchmarking

Is there any local guidance or requirement about the preparation of a benchmark study?

There are no formal guidelines on the determination of the appropriate point in the benchmarking interquartile range. Interquartile ranges calculated using spreadsheet quartile formulas are generally acceptable, but there may still be challenges in terms of the most appropriate point within the interquartile range (i.e., it is not necessarily accepted that if the tested party results fall within the interquartile range, it may automatically be concluded that such results are consistent with the arm's length principle).

The ATO practice is generally to use the median of the interquartile range and will generally only accept local comparable companies in the benchmarking. Only under extenuating circumstances where no local comparables can be identified would the ATO consider comparables from outside of Australia.

Is there any stated preference for local benchmarks?

Although there is no legal or formal requirement for local jurisdiction comparables, the ATO has a strong preference for local comparables and uses local databases that contain information on more companies than the typical regional and global databases.

The ATO will generally accept foreign comparables only if it can be demonstrated that reliable local comparables are not available. Regional Asian comparables are typically not accepted due to market differences.

Are there any materiality thresholds that apply to the requirement to have a benchmark study available?

Reportable Tax Position Schedule for companies with a turnover of more than AUD 25 million that form part of an Australian economic group with a turnover over AUD 250 million must be disclosed.

7. Year-end, secondary, and corresponding adjustments

Are year-end/ secondary/ corresponding adjustments permissible?

Yes, although there is no legislative requirement to make year-end adjustments.

Corresponding adjustments are not mandatory but are possible.

Does the Taxpayer have to comply with any specific features or guidance?

TR 2007/1: effect of determinations under Division 13, including consequential adjustments

TR 2000/16: for corresponding adjustments

8. TP Audit and Dispute Resolution Mechanisms

What are currently the main TP areas of scrutiny by the tax authorities in your country?

All top 1,100 companies in Australia are subject to review over a four year period, with the top 100 companies being subject to annual reviews. A similar review process has recently been started for large privately owned Australian companies.

The ATO has also recently selected companies in the pharmaceutical and technology industries for audits as well as Taxpayers with significant intragroup financing.

Outside these groups, the possibility of an annual tax audit in Australia is typically medium. However, if Taxpayers exhibit risk factors, the possibility of a review or audit increases significantly.

Where the Taxpayer enters a material level of international related party transactions, TP is almost always reviewed if any general tax review or audit is started.

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, both unilateral and bilateral APAs are possible. The ATO's APA program is outlined in ATO PS LA 2015/4. A review of the APA program by the ATO is currently underway.

Are there any restrictions?

An APA in which the ATO is involved typically has a three to five year term.

.

About WTS Global

We are the leading independent non-audit tax practice worldwide with representation in more than 100 countries. WTS Global deliberately refrains from conducting annual audits in order to avoid any conflicts of interest and to be the long-term trusted advisor for its international clients. Clients of WTS Global include multinational companies, international mid-size companies as well as private clients and family offices.

The member firms of WTS Global are carefully selected through stringent quality reviews. They are strong local players in their home market who are united by the ambition of building a truly global practice that develops the tax leaders of the future and anticipates the new digital tax world.

WTS Global effectively combines senior tax expertise from different cultures and backgrounds and offers world-class skills in advisory, in-house, regulatory and digital, coupled with the ability to think like experienced businesspeople in a constantly changing world.

For more information please visit:
https://wts.com

Contacts

Australia

Nuwaru
Teena Ingram
Specialist Consultant
teena.ingram@nuwaru.com

WTS Asia Pacific Transfer Pricing leader

WTS Taxise (Taxise Asia LLC)
Christine Schwarzl
Associate Principal

T: +65 6304 7972
E: christine.schwarzl@taxiseasia.com

wts.com