

Hong Kong Transfer Pricing Guide 2024

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Hong Kong

1. Legal Basis

Is there a legal requirement to prepare TP documentation?

Yes, the Amendment Ordinance (Inland Revenue (Amendment) (No. 6) Ordinance 2018, gazetted on 13 July 2018) adopts the OECD's recommended three tiered documentation structure, comprising a MF, a LF and the CbCR based on BEPS Action 13. The Amendment Ordinance codifies TP principles into the Inland Revenue Ordinance (Cap. 112) ("IRO"). The Amendment Ordinance introduced mandatory TP documentation requirements and rules in Hong Kong, where documentation is required to be prepared contemporaneously if the Hong Kong entity meets certain thresholds and is to be submitted upon request.

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

The effective date is the accounting period beginning on or after 1 January 2018 (for CbCR) and 1 April 2018 (for MF and LF).

Adoption of the OECD or UN legislation in your country?

OECD. Hong Kong is a BEPS Associate jurisdiction (announced in June 2016). The Hong Kong TP framework is largely based on the OECD Guidelines, and the IRD generally will not differ from the TP methodologies recommended by the OECD Guidelines.

The Amendment Ordinance specifically references the 2017 OECD Guidelines within the legislation and indicates that the arm's length provision (along with other rules) should be consistently determined in accordance with OECD Guidelines.

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

Hong Kong has been an OECD associate since 2016.

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?

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

Is there a stated preference for any particular TP methods?

The most appropriate method should be used.

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

Yes, the Amendment Ordinance (Inland Revenue (Amendment) (No. 6) Ordinance 2018, gazetted on 13 July 2018) adopts the OECD's recommended three tiered documentation structure, comprising a MF, a LF and the CbCR based on BEPS Action 13.

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

Refer to Part 2, Division 4 - Amendments relating to TP: Addition of New Part 9A and Schedule 17I of the Amendment Bill No. 6.

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Is there any statute of limitation period?

A Hong Kong entity must retain the files for a period of not less than six years after the end of the accounting period concerned. In the case of fraud or wilful evasion, the statute of limitations is extended to 10 years from the end of the assessment year.

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

Legislative Council of (Amendment) (No. 6) Bill 2017. The bill was gazetted and became law of Hong Kong on 13 July 2018 which codifies certain TP principles, introduces mandatory TP documentation requirements into the Inland Revenue Ordinance.

2. Master File (MF)

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

Taxpayers engaging in related party transactions will not be required to prepare MFs and LFs if they meet either one of the following exemption criteria:

- (a) Exemption based on size of business (Taxpayer must meet any 2 of 3 conditions below will not be required to prepare MF and LF):
 - (i) total annual revenue not more than HKD 400 million (i.e. EUR 47,202,458 approx.);
 - (ii) total assets not more than HKD 300 million; or
 - (iii) not more than 100 employees.
- (b) Exemption based on related party transactions (If the value of specific categories of related party transactions for the relevant accounting period is below the threshold specified, Taxpayers will not be required to prepare LF for that category of transaction):
 - (i) transfer of properties (other than financial assets and intangibles): HKD

- 220 million (i.e. EUR 25,961,352 approx.);
- (ii) transaction of financial assets: HKD 110 million (i.e. EUR 12,980,676 approx.);
- (iii) transfer of intangibles: HKD 110 million; and
- (iv) any other transaction (e.g. service income and royalty income): HKD 44 million (i.e. EUR 5,192,270 approx.).

If the enterprise concerned is fully exempted from preparing a LF (i.e. its related party transactions of all categories are below the prescribed thresholds), it will not be required to prepare the MF either.

Euro Equivalent

See above for the Euro Equivalents.

From which year does this obligation exist?

From the year in which the threshold is met (so that the MF/LF is prepared for the year in which the threshold was met or exceeded).

When does the MF need to be available?

Under section 58C(2)(a) of the IRO, a Hong Kong entity must prepare a MF and a LF no later than 9 months after the end of its accounting period. There is no specific date as the end date of the accounting year for Hong Kong entities might be different.

The Hong Kong entity has to declare in the profits tax return and supplementary form S2 whether a master file and a local file have to be prepared. The MF and the LF should be ready for submission upon request by the Assessor.

A Hong Kong entity has to review and update its MF annually.

When does it need to be submitted?

There is no submission deadline. The MF should be ready for submission upon request by the Inland Revenue Department ("IRD").

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

No. Documentation can be prepared either in Chinese or in English.

Is documentation in English permissible?

Yes.

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

Penalties?

Yes, starting at HKD 50,000 (and a court order due to failure to comply without reasonable excuse, escalating to HKD 100,000 for failure to comply with the court order.

Imprisonment?

No.

Shifting of the burden of proof?

No.

Other?

No. Although In addition to the TP penalties stated above, the IRD can impose penalties for the broader tax related issues.

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 and LF is consistent with the BEPS Action 13 requirements.

3. Local File (LF)

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

Same as for MF.

Euro Equivalent

Same as for MF.

From which year does this obligation exist?

Same as for the MF.

When does the LF need to be available?

Same as for the MF.

When does the LF need to be submitted?

Same as for the MF.

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

The TP documentation can be prepared in either Chinese or in English 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?

Same as for the MF.

Imprisonment?

No.

Shifting of the burden of proof?

No.

Other?

No, the same as for the MF.

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 MF and LF is consistent with the OECD Action 13 requirements.

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4. Country-by-Country Reporting (CbCR)

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

A group having entities/operations in two or more jurisdictions and consolidated group revenue for the preceding accounting period of at least EUR 750 million (i.e. HKD 6.8 billion approx.).

Euro Equivalent

EUR 750 million.

From which year does this CbCR obligation exist?

For accounting periods on or after 1 January 2018, CbCR is required to be prepared and submitted within 12 months after the end of the UPEs accounting period when there is a CbCR filing obligation (i.e. when the threshold has been met or exceeded).

The same preparation and submission deadline applies to all MNEs regardless of the location of their headquarters.

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?

A Hong Kong entity of a reportable group is required to give notification on the CbCR for an accounting period. Under normal circumstances, the UPE of the HK MNEs would be the reporting entity. If the UPE is in a jurisdiction that does not require CbCR filing or exchange of reports with HK, constituent entities of the MNE in HK could be subject to a secondary filing obligation.

CbCR notifications are due within three months after the end of the reportable group's accounting period. There is no specific date as the end date of the accounting year for the UPEs might be different. CbCR notifications are required to be submitted on a yearly basis.

If an MNE has more than one entity in Hong Kong, one entity can act as the reporting entity and file on behalf of all other entities. The CbCR notification is separately filed, although Hong Kong Taxpayers are required to confirm CbCR compliance in the revised tax returns, from YA19.

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 relevant accounting period to which the CbCR.

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.

Does your country have a requirement that the financial years of the group need to be aligned?

No. Information in the CbCR should reflect on a consistent basis either:

- (a) Information for the fiscal year of relevant group entities ending on the same date as the fiscal year of the reporting entity, or ending within the 12 month period preceding such date; or
- (b) Information for relevant group entities for the fiscal year of the reporting entity.

Where is the CbCR to be submitted?

The CbCR is to be submitted via the CbC Reporting Portal.

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

The IRD has developed a data scheme in XML which is based on the CbC Return XML Schema v2.0 issued by the OECD.

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

Penalties?

Yes.

For failure to file or notify CbCR without a reasonable excuse will trigger a fine at level 5 (i.e. HKD 50,000), with a further fine of HKD 500 for every day thereafter under certain conditions, along with a court order. On failure to comply with the court order, the fine will be at level 6 (i.e. HKD 100,000).

For filing misleading, false or inaccurate information, the fine will be at level 5 (i.e. HKD 50,000) and if filed with wilful intent, penalties will be either on summary conviction (i.e., a fine at HKD 10,000 and imprisonment for six months) or on conviction on indictment (i.e., a fine at HKD 50,000 and imprisonment for three years).

These penalties related to CbCR apply to directors and key officers as well as service providers engaged by the reporting entity.

Imprisonment?

Yes.

For filing misleading, false or inaccurate information, the fine will be at level 5 (i.e. HKD 50,000) and if filed with wilful intent, penalties will be either on summary conviction (i.e., a fine at HKD 10,000 and imprisonment for six months) or on conviction on indictment (i.e., a fine at HKD 50,000 and imprisonment for three years).

These penalties related to CbCR apply to directors and key officers as well as service providers engaged by the reporting entity.

Shifting of the burden of proof?

No.

Other?

In addition to the TP penalties stated above, the IRD can impose penalties for the broader corporate tax related issues.

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, Hong Kong signed the CbC MCAA on 26 July 2018.

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

Yes, Hong Kong has entered into bilateral arrangements with the following countries:

- (i) Austria, the CbCR for first exchange is applicable for 2017;
- (ii) Canada, the CbCR for first exchange is applicable for 2017;
- (iii) France, the CbCR for first exchange is applicable for 2016;
- (iv) Guernsey, the CbCR for first exchange is applicable for 2017;
- (v) Indonesia, the CbCR for first exchange is applicable for 2017;
- (vi) Ireland, the CbCR for first exchange is applicable for 2016;
- (vii) Italy, the CbCR for first exchange is applicable for 2018;
- (viii) Japan, the CbCR for first exchange is applicable for 2017;
- (ix) Jersey, the CbCR for first exchange is applicable for 2017;
- (x) Korea, the CbCR for first exchange is applicable for 2017;
- (xi) Latvia, the CbCR for first exchange is applicable for 2018;
- (xii) Malta, the CbCR for first exchange is applicable for 2017;
- (xiii) Mexico, the CbCR for first exchange is applicable for 2017;
- (xiv) the Netherlands, the CbCR for first exchange is applicable for 2017;
- (xv) New Zealand, the CbCR for first exchange is applicable for 2017;
- (xvi) Portugal, the CbCR for first exchange is applicable for 2017;

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- (xvii) Russia, the CbCR for first exchange is applicable for 2017;
- (xviii) South Africa, the CbCR for first exchange is applicable for 2016; and
- (xix) the United Kingdom, the CbCR for first exchange is applicable for 2016.

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 TP specific returns

Is there a threshold for Related Party Transactions?

Form S2 needs to be completed where:

- (a) Taxpayer has transactions with non-resident associated persons; or
- (b) Taxpayer had entered into an advance pricing arrangement with the Commissioner; or
- (c) Taxpayer belonged to a multinational enterprise group ("**MNE Group**") which has the obligation to file CbCR in Hong Kong or elsewhere; or
- (d) Taxpayer is a constituent entity of a multinational enterprise group with a total consolidated group revenue of at least EUR750 million, or an equivalent amount as at the accounting period end date, for the immediate preceding accounting period.

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

Yes, the IRD requires Taxpayers to disclose certain related party information (i.e., the location of the non-resident associated persons) and confirm their TP documentation compliance in the profits tax return BIR 51 and form Supplementary form S2 (TP).

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 would be imposed where a tax return was filed with incorrect information on TP without a reasonable, rationale or with the intent to evade tax. Taxpayers will be liable for an administrative penalty, calculated as an additional tax not exceeding the amount of tax undercharged. Section 82A(1G) provides that no additional tax should be imposed on a Taxpayer who proves reasonable efforts have been made to determine the arm's length amount.

It is worth noting that the IRD has not ruled out the possibilities of imposing more stringent penalties or initiating criminal prosecutions on blatant cases in accordance with relevant provisions of the IRO. The availability of TP documentation alone will not qualify for an exemption from penalties, but will be considered in determining whether individual Taxpayers have a "reasonable excuse" to be exempt from the penalties.

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?

Not specified.

Does a Taxpayer need to file TP specific returns?

No, other than those mentioned.

Please state the filing form number and name.

IRD announced on 23 January 2019 a revised profits tax return for corporations (i.e., BIR51 and a set of new Supplementary Forms S1 to S10).

From YA19, Hong Kong Taxpayers are required to disclose certain related party information (i.e., the location of the non-resident associated persons) and confirm their TP documentation

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compliance in the BIR51 and Supplementary Form S2, TP.

Form S2 is an additional form to the profits tax return for TP purposes. In addition, having declared the obligation to prepare Master File and Local File in the Supplementary Form S2 of the profits tax return, selected Taxpayers may be requested to complete Form IR1475, TP Documentation — Master File and Local File, electronically and submit it to the IRD within one month upon receipt of the request.

What would be the filing deadline?

Generally, profits tax returns should be filed within one month from the date of issue. The annual profits tax returns are issued in early April and are due for filing in May.

For cases with tax agents, the tax filing due dates are extended to mid-August and mid-November for entities with an accounting period that falls between (i) 1 December to 31 December and (ii) 1 January to 31 March, respectively.

What would be the penalties for non-compliance?

The IRD may impose penalty, Estimated Assessment or even prosecution against any Taxpayer who without reasonable excuse fails to furnish a return in time. In this regard, the offence is subject to a fine in the amount of HKD 10,000 and a further fine of triple the amount of the tax undercharged. In addition, the Court may order the convicted Taxpayer to furnish the return within a specified time.

6. Benchmarking

Is there any local guidance or requirement with regard to the preparation of a benchmark study?

Yes. DIPN 46 recommends maintaining a benchmarking /comparability analysis, consistent with OECD requirements.

The IRD has publicly endorsed the use of BVD's Osiris and S&P databases. In practice, regional comparables are accepted where sufficient local

comparables cannot be found. The benchmarking analysis should be part of the Local File, which should include:

- › Selection of the most appropriate TP method/tested party and reasons for the same;
- › Important assumptions made in applying the TP method;
- › If relevant, an explanation of reasons for performing a multi-year analysis;
- › A list and description of selected comparable transactions (internal or external), their financial information, a description of the search process and sources of information used;
- › Description of any comparability adjustments performed, and whether adjustments were made to tested party/comparables or both;
- › Reasons for concluding that Taxpayer's related party transactions were at arm's length basis based on the selected TP method; and
- › Financial information used in applying the TP methodology.

Is there any stated preference for local benchmarks?

The quality of comparable data is more important than the number of comparables identified. DIPN 59 suggests that Hong Kong comparables should be considered in the first instance. If there are no Hong Kong comparables, or the potential Hong Kong comparable companies identified are not applicable, then it may be necessary to consider using comparables from other jurisdictions.

Appropriately selected overseas data is accepted by the IRD. Jurisdictions recognised as Hong Kong's closest reference jurisdictions in terms of demographics, size of economy and stage of economic development should be considered.

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

Yes. The same thresholds relevant for MF and LF apply. The same or similar market principle is important.

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7. Year-end, secondary, and corresponding adjustments

Are year-end/ secondary/ corresponding adjustments permissible?

Yes.

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

No, not specified.

8. TP Audit and Dispute

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

Particular scrutiny is accorded to services fees paid/received (specifically intragroup services/management fees), financial transactions, royalties etc.

Other scenarios in which a tax audit may be triggered include:

- › fluctuating profit margins,
- › if the accounts of a business are heavily qualified,
- › profits or turnover are deemed unreasonably low,
- › filing of tax returns is persistently delayed or omitted,
- › business records are not properly maintained, or
- › requested information is not provided.

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, there is an APA program available in Hong Kong. The APA program will cover unilateral, bilateral and multilateral agreements.

Are there any restrictions?

The existing APA regime was provided under the Departmental Interpretation and Practice Notes No. 48 which is not legally binding.

APA application is open to all (i) residents and (ii) non-residents with a HK permanent establishment, who are subject to profits tax and have HK pertinent related party transactions.

The annual threshold for an APA application is HKD80 million for sale and purchase of goods, HKD40 million for services, or HKD20 million for intangible properties. In general, an APA will apply for three to five years, with rollbacks available. Currently the IRD is prepared to consider bilateral or multilateral APA applications only.

Typical information/documentation required to be set out in an APA case plan includes:

- (a) functional analysis and industry analysis;
- (b) details of proposed TP methodology;
- (c) terms, conditions and assumptions behind applying the TP methodology;
- (d) data showing that the TP methodology will produce an arm's length result; and
- (e) information/documentation agreed in the pre filing meeting. Taxpayers are required to submit an annual compliance report for each year of the APA.

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