

India Transfer Pricing Guide 2024

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1. Legal Basis

Is there a legal requirement to prepare TP documentation?

Yes.

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

2002.

Adoption of the OECD or UN legislation in your country?

Yes.

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.

Which TP methods may be applied?

The TP methods prescribed in the regulations are Comparable Uncontrolled Price ("**CUP**"); Resale Price method ("**RPM**"); Cost Plus method ("**CPM**"), Profit Split ("**PS**"); and Transaction Net Margin Method ("**TNMM**" and Other methods).

Is there a stated preference for any particular TP methods?

There is no preference for any particular TP Method. Selection of the most appropriate method based on facts of the case.

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

The MF and CbCR are implemented and the OECD LF is not implemented. However, a local variation of LF similar to the LF contents of OECD is implemented.

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

1. Local file: Section 92D of Income Tax Act 1961 (Act) read with Rule 10D of Income Tax Rules, 1962 (Rules).
2. CbCR: Section 286 of the Act read with Rule 10DB.
3. Master File: Section 92D(1) & (4) of the Act read with Rule 10DA.

Is there any statute of limitation period?

The statute of limitations under the Income tax Act is as under:

1. For filing of an Accountant's Report (in Form 3CEB) is 7 months from the end of the relevant tax year (i.e., 31 October).
2. For completion of tax assessment is 9, 12, 18, 21, or 24 months (the time limit to be increased by another 12 months if the case involves TP matter) from the end of the relevant assessment year.
3. For completion of tax reassessment ranges from 3 to 10 years from the end of the relevant assessment year.

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

1. Local file: Section 92D of Income Tax Act

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1961 (Act) read with Rule 10D of Income Tax Rules, 1962 (Rules).

2. CbCR: Section 286 of the Act read with Rule 10DB.
3. Master File: Section 92D(1) & (4) of the Act read with Rule 10DA.

2. Master File (MF)

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

The threshold is set at two levels:

1. Consolidated Group Revenue of INR 5 billion & above; and
2. Aggregate value of the international transactions during the year exceeds INR 500 million; or
3. Aggregate value of the international transaction in respect of purchase/sale/transfer/lease or use of Intangible Property during the year exceeds INR 100 million.

Euro Equivalent

EUR 55,783,050.

From which year does this obligation exist?

Financial year starting from 1 April 2016.

When does the Master File need to be available?

By the filing due date for the filing of the return of income i.e. on or before 30 November of the relevant assessment year.

When does it need to be submitted?

Same as above.

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

No.

Is documentation in English permissible?

Yes.

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

Penalties?

Yes.

Imprisonment?

No.

Shifting of the burden of proof?

Yes.

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 contents of the MF as prescribed in Rule 10DA are mostly in line with the OECD standard.

3. Local File (LF)

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

If the value of international transactions with associated enterprise exceeds INR10 million.

Euro Equivalent

EUR 111,568.

From which year does this obligation exist?

Financial Year 2001-02.

When does the LF need to be available?

The LF shall be maintained on a contemporaneous basis and shall be available 1 month prior to the filing of return of income i.e. on or before 31 October of the relevant assessment year.

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When does the LF need to be submitted?

The LF shall be filed with the tax office upon request/ notice from them, usually filed during the course of tax assessment/ audit.

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

No.

Or is documentation in English permissible?

Yes. In practice, all the Taxpayers prepare the LF/ documentation in English.

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

Penalties?

Yes.

Imprisonment?

No.

Shifting of the burden of proof?

Yes.

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?

Specific information which are not covered in the local rules include a description of the business strategy; business restructurings; details of key competitors; description of the individuals to whom the management of the local entity reports and countries in which such individuals maintain their principal offices and details relating to unilateral/ bilateral APAs and similar rulings.

4. Country-by-Country Reporting (CbCR)

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

INR 64 billion (i.e. EUR 714.05 million approx.) consolidated revenue in the previous year.

From which year does this CbCR obligation exist?

Financial year starting from 1 April 2016.

Are Taxpayers required to notify of CbCR filing in your country? If yes, when and how do the tax authorities need to be notified?

Yes. The Taxpayer shall inform the income tax authority in the prescribed form the details of the entity that is filing the CbCR, on or before 2 months from the due date of filing the tax return.

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

The period for furnishing the report shall be 12 months from the end of the reporting accounting year, i.e. 31st March of the succeeding accounting year.

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. The source of data considered for preparing the CbCR should be consistently followed year on year. In case of a change in source data, the same needs to be mentioned in Table 3 / Notes to the CbCR.

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

No.

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Where is the CbCR to be submitted?

The CbCR related Forms need to be electronically uploaded to:
<https://www.incometax.gov.in/iec/foportal/>.

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

Electronic filing using the Digital Signature of the person authorised to sign the tax return of the legal entity.

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

Penalties?

Yes.

Imprisonment?

No.

Shifting of the burden of proof?

Yes.

Other?

Yes.

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.

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

Yes.

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

Is there a threshold for Related Party Transactions?

There is no threshold for international transactions. However, in case of "specified domestic transactions", reporting is required only if the aggregate value of such transactions exceeds INR 200 million.

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

Yes. The Taxpayer is required to disclose in the tax return whether the TP provisions are applicable and if yes, the date of filing of an Accountant's Report in the prescribed form.

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?

In a situation where the Taxpayer's case is selected for tax audit/ tax assessment, additional tax along with interest will be charged on the additional income (i.e. arising on account of TP adjustment) and also penalty as mentioned in Para 3 above. Further, the TP adjustments may also be subject to secondary adjustment as per section 92CE of the Act.

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?

Where the Tax Office during the course of tax audit proceedings finds that the tax advisor/consultant has furnished incorrect information in any report or certificate submitted to the tax office, the tax office may

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direct the advisor/consultant to pay a penalty of INR 10,000 (i.e. EUR 111.57 approx.) for each such report or certificate.

Does a Taxpayer need to file TP specific returns?

Yes.

Please state the filing form number and name.

Form 3CEB - Report from an accountant to be furnished under 92E of the act.

What would be the filing deadline?

October 31 of the relevant assessment year.

What would be the penalties for non-compliance?

Penalty for failure to furnish Accountant's Report in Form 3CEB – INR 100,000 (i.e. EUR 1,115.7 approx.).

Failure to report a transaction or furnishing incorrect information in the Accountant's Report (Form 3CEB) attracts a penalty of 2% of the value of the international transaction or specified domestic transaction not reported.

6. Benchmarking

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

Yes. Section 92C of the Act read with Rule 10B has prescribed 6 methods. The benchmarking exercise is part of the TP Documentation Report as prescribed in section 92D of the Act read with Rule 10D of the Rules.

Is there any stated preference for local benchmarks?

Not in the regulations. However, the tax authorities may expect the comparables from local jurisdictions.

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

Yes. TP Study Report need to be prepared only if the value of the international transaction exceeds INR10 million.

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.

8. Transfer Pricing Audit and Dispute Resolution Mechanisms

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

Allocation of Management fees, Transfer of Intangibles, Advertising Marketing and Promotional expenses incurred for brand building, intercompany financing transactions (i.e., guarantees and interest), notional interest on outstanding receivables, etc.

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 detailed rule for filing APA is given in Rule 10F to 10T and Rule 44GA. Taxpayers can apply for an APA covering any or all current/ future transactions without any threshold limit.

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Further, the Tax office has the power to cancel an APA in the following situations:

- › If the applicant has failed to comply with the terms of the agreement;
- › If there is a failure to file the annual compliance report within the stipulated timeline;
- › There are material errors in the annual compliance report filed by the applicant; or
- › If the applicant is in disagreement with the proposed revision in the APA or effect cannot be given to the rollback provision of the agreement for any rollback year on account of failure on the part of the applicant.

Also, if an agreement is cancelled based on the discovery of fraud or misrepresentation of facts on the part of the Taxpayer the same shall be deemed cancelled ab-initio and a regular detailed TP audit will take place accordingly.

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Contacts

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Dhruva Advisors

Sunil Nayak
Principal

sunil.nayak@dhruvaadvisors.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

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