

# Japan Transfer Pricing Guide 2024

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# Japan

## 1. Legal Basis

### **Is there a legal requirement to prepare TP documentation?**

Yes.

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

An amendment to the Special Taxation Measures Law ("**STML**"), which became effective on April 1, 2010, clarified the requirements for TP documentation in Japan.

Before the amendment, TP documentation requirements had an implied rather than a legal basis.

### **Adoption of the OECD or UN legislation in your country?**

OECD.

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

Japan is a member of the OECD/G20 Inclusive Framework on BEPS.

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

Yes. In practice, however, the OECD Guidelines are interpreted and implemented according to Japan's own TP legislation.

### **Which TP methods may be applied?**

TP methods include the Comparable Uncontrolled Price ("**CUP**"); Resale Price method ("**RPM**"); Cost Plus method ("**CPM**"),

Profit Split ("**PS**"); and Transaction Net Margin Method ("**TNMM**") and Discounted Cash Flow methods).

### **Is there a stated preference for any particular TP methods?**

There is no hierarchy of TP methods. The most appropriate method should be used considering the nature of the foreign related transactions and the functions of the parties involved.

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

Yes. In Japan, Taxpayers may be required to submit a LF, notification for the UPE ("**NUPE**"), CbCR and MF.

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

The STML was revised in fiscal year 2016 based on the recommendations of the OECD's BEPS Project. A Taxpayer is required to prepare and maintain a LF for all intragroup transactions, except if the transaction amount is less than JPY five billion and the intangible transaction value is less than JPY 300 million (Article 66-4-6, STML).

All Japanese corporations and foreign corporations with PEs that are a member of a multinational enterprise (MNE) group, are also required to file a notification of UPE (NUPE), CbCR (Article 66-4-4, STML) and MF (Article 66-4-5, STML) if they are part of a MNE group with revenue exceeding EUR750 million or JPY100 billion in the immediately fiscal preceding year.

## Is there any statute of limitation period?

Japanese LFs must be preserved for seven years from the deadline for submission of final tax returns. For TP assessments, the statute limitation is six years from the due date of filing a tax return; For tax fraud, the statute of limitation is seven years.

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

STML, Articles 66-44 and 68-88.

Special Taxation Measures Law Enforcement Ordinance, Article 22-10 and 22-74.

Special Taxation Measures Law Enforcement Order, Articles 39-12 and 39-112.

Special Taxation Measures Law Circular, Article 66-4.

Commissioner's Directive on the Operation of TP.

Commissioner's Directive on the Operation of TP for Consolidated Taxpayers.

Commissioner's Directive on Mutual Agreement Procedures.

## 2. Master File (MF)

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

JPY 100 billion in the immediate fiscal preceding year.

### Euro Equivalent

EUR 750 million.

### From which year does this obligation exist?

The MF must be prepared in accordance with ultimate parent entity's fiscal year starting on or after 1 April 2016.

## When does the MF need to be available?

The MF must be submitted to the competent District Director via e-tax within one year following the close of the ultimate parent entity's fiscal year to which the report relates.

## When does it need to be submitted?

The MF must be submitted electronically to the competent District Director via e-tax system within one year following the close of the UPE's fiscal year to which the report relates.

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

Japanese or English (Article 22-10-5, Paragraph 2 of the Special Taxation Measures Law Enforcement Ordinance).

## Is documentation in English permissible?

Yes, English is permissible.

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

### Penalties?

Yes, a fine of up to JPY300,000 if a corporation fails to submit a MF to the District Director by the deadline without good reason (Article 66-4-5, Paragraph 3, STML).

### Imprisonment?

No.

## Shifting of the burden of proof?

Yes. Theoretically, the burden of proof rests with the government to prove that the price charged in an intragroup transaction was not an arm's length price. However, this burden can be shifted to the Taxpayer if the Taxpayer fails to prove any requested documents in a timely manner.

### Other?

No.

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**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?**

MF is consistent with Annex I to Chapter V of the OECD TP Guidelines ("TPG").

## **3. Local File (LF)**

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

A Taxpayer is required to prepare and maintain a LF for all controlled transactions amounting to JPY5 billion or more for the preceding fiscal year, or for transactions of intangibles amounting to JPY300 million or more for the preceding fiscal year by the deadline for submission of final returns (duty of contemporaneous documentation) (Article 66-4-6, STML).

### **Euro Equivalent**

Controlled transactions: EUR 3,0650,000.

Intangible transactions: EUR 1,839,000.

**From which year does this obligation exist?**

Fiscal years commencing on or after 1 April 2017.

**When does the LF need to be available?**

By the deadline for submission of final returns (duty of contemporaneous documentation). The LF must be stored in the Japanese offices of corporations engaged in Controlled Transactions for 7 years from the deadline date for submission of final returns (Article 22-10, para. 2, Special Taxation Measures Law Enforcement Ordinance).

**When does the LF need to be submitted?**

The LF must be submitted no later than the date designated by the tax examiner which must be within 45 days (60 days if contemporaneous documentation is not required) from the date of request.

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

If the LF is prepared in a language other than Japanese, the tax authorities may request the corporation to submit a Japanese translation.

**Or is documentation in English permissible?**

A file may be prepared in English, but the tax authorities may request a Japanese translation.

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

**Penalties?**

There are no penalties for failing to prepare the LF contemporaneously or for failing to submit it within the period requested by a tax examiner during an audit. However, if the LF is not submitted in a timely manner, the tax authorities have the right to conduct their own analysis and reach their own conclusions using tax estimation and/or secret comparables.

**Imprisonment?**

No.

**Shifting of the burden of proof?**

Yes. Theoretically, the burden of proof rests with the government to prove that the price charged in an intragroup transaction was not an arm's length price. However, this burden can be shifted to the Taxpayer if the Taxpayer fails to provide any requested documents in a timely manner.

**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 LF is consistent with Annex II to Chapter V of the OECD TP Guidelines ("TPG").

## 4. Country-by-Country Reporting (CbCR)

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

JPY 100 billion in the immediate fiscal preceding year.

### **Euro Equivalent**

EUR 750 million.

### **From which year does this CbCR obligation exist?**

Fiscal years commencing on or after 1 April 2016.

### **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?**

Japanese Corporations that are Constituent Entities of a Specified MNE Group (limited to those that fall into the category of Ultimate or Surrogate Parent Entities) must submit CbCR to the competent District Director via e-Tax within one year following the close of the ultimate parent entity's fiscal year to which the report relates (Article 66-4-4 Paragraph 1, SMTL). In this case, the CbCR is transmitted to the tax authorities in the country where the Constituent Entity resides according to the information exchange system based on Tax treaties ("**Direct Filing**").

If the ultimate or surrogate parent entity is located in a foreign country, Japanese corporations and foreign corporations with PE that are constituent entities of a specified MNE Group do not have to submit a CbCR because the information equivalent to the CbCR submitted by the ultimate or surrogate parent entity to the tax authorities in the country where it resides is transmitted by the tax authorities to the national tax authorities in Japan.

However, if the tax authorities in the country in which the ultimate or surrogate parent entity resides are considered as unable to transmit the CbCR to Japan, Japanese corporations or foreign corporations with a PE that is a Constituted Entity of a Specified MNE Group must submit a CbCR to the competent District Director via e-Tax within one year following the close of the ultimate parent entity's fiscal year to which the report relates ("**Local Filing**").

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

A Japanese corporation that is the ultimate or surrogate parent entity must submit a CbCR to the competent District Director via e-Tax within one year following the close of the ultimate parent entity's fiscal year to which the report relates. This is called Direct Filing.

### **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. There is no need for adjustments (Frequently Asked Questions on TP Documentation Number 33).

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

No. There is no need for adjustments (Frequently Asked Questions on TP Documentation Number 36).

### **Where is the CbCR to be submitted?**

The CbCR must be submitted to the competent District Director.

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

The CbCR must be electronically submitted to the competent District Director via e-Tax.

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

### **Penalties?**

Fine of up to JPY300,000 if a corporation fails to submit a CbCR to the District Director by the deadline without good reason (Article 66-4-5, Paragraph 3, STML).

### **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?**

The CbCR is consistent with Annex III to Chapter V of the TPG.

## **Did your country sign the Multilateral Competent Authority Agreement on the Exchange of CbCR ("CbCR MCAA")?**

Yes. Signing date was 27 January 2016.

## **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. However, if the tax authorities in the foreign country in which the ultimate or surrogate parent entity resides are considered as unable to transmit the CbCR to Japan, Local Filing must be made.

If there are several Japanese corporations and foreign corporations with PE that must submit a CbCR, if one of the corporations submits information on the corporations it represents when it submits a CbCR, corporations other than the representative one do not need to submit a CbCR (Article 66-4-4, Para. 3, STML).

## **5. TP disclosure in tax return or TP specific returns**

### **Is there a threshold for Related Party Transactions?**

No.

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

Yes.

## **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?**

Tax examiners may impose a TP assessment where they may also levy an underpayment penalty and delinquency tax.

The underpayment penalty tax is 10% of the additional tax up to JPY 500,000 (Article 65-2, National Taxes Common Provisions Law or NTCPL) or the amount of the original reported tax (whichever is greater) and 15% of the additional tax beyond this amount (Article 66-1, NTCPL).

Any Taxpayer who makes a false statement is also subject to a criminal penalty of imprisonment with hard labour for one year or less or a fine of JPY 500,000 or less (Article 162(ii), Corporation Tax Law or CTL).

**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?**

If a tax accountant intentionally prepares tax representation or tax returns contrary to the true facts or commits an act in breach of the provisions of Article 36 (prohibition of tax evasion counselling, etc.) of the Act, he or she will be subject to a disposition of suspension of tax advisor services for up to two years or a disposition of prohibition of tax advisor services.

If a tax accountant fails to exercise due care and diligence, prepares tax representation or tax documents contrary to the genuine facts, or commits an act in breach of the provisions of Article 36 (prohibition of tax evasion counselling, etc.) of the Act, he or she will be subject to a warning or suspension of tax accountant services for a period not exceeding 2 years.

**Does a Taxpayer need to file TP specific returns?**

Yes.

**Please state the filing form number and name.**

Information on Foreign Related Parties (Form 17-4).

**What would be the filing deadline?**

Same deadline for filing final corporate tax return.

**What would be the penalties for non-compliance?**

Failure to attach Form 17-4 is not per se subject to penalty.

## 6. Benchmarking

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

Article 22-10 Paragraph 1 (Item 2) of the Special Taxation Measures Law Enforcement Ordinance provides that the following are the requirements of benchmarking in LF:

- (a) Calculation method which is selected by the corporations, important prior conditions for such selection and the reasons for such selection as well as other documents prepared by the corporations to calculate arm's length prices (excluding those listed in (b) to (e) below);
- (b) Documents related to the selection of comparable uncontrolled transactions and details of comparable uncontrolled transactions including financial information;
- (c) Documents for the corporations to calculate the amount computed as one that belongs to the corporations and the foreign related parties (excluding the documents listed in (b) and (e));
- (d) Documents describing the reasons the corporations consider several controlled transactions as a single one and calculate an arm's length price for the transaction and the content of each transaction if they make such a calculation; and
- (e) Documents describing the reason differences are adjusted for comparable uncontrolled transactions and the method to adjust such differences.

**Is there any stated preference for local benchmarks?**

Yes. This is especially true if the tested party is a Japanese entity.

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

No.

## **7. Year-end, secondary, and corresponding adjustments**

### **Are year-end/ secondary/ corresponding adjustments permissible?**

Year-end adjustments to transfer prices may be made, but TP examiners may investigate whether the adjustment was made for a rational reason (Article 2-20, Administrative Guidelines).

Yes, secondary adjustment is possible. For example, if royalty paid by a Japanese licensee to a foreign related licensor is reduced for Japanese TP purposes, the Japanese licensee may choose to receive back the overpayment provided that a certain report is filed with the relevant tax office.

When foreign tax authorities make price adjustments, corresponding adjustments become necessary to alleviate economic double taxation. Japanese tax authorities will agree to a corresponding adjustment only when they agree to a part or the whole of the tax levied by a foreign tax authority pursuant to its TP rules and the Mutual Agreement Procedures provided for under an applicable tax treaty.

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

Commissioner's Directive on the Operation of Transfer Pricing (Administrative Guidelines) provides that:

- (a) In cases where the corporation has changed the amount of price previously effected foreign related transaction on the pretext of price adjustment, it shall be examined whether the change falls under a change of transaction price based on reasonable grounds.
- (b) In cases where the change is made by a payment of money or recording of expenses (hereinafter referred to as "**payment**") for the foreign related party, examination shall be made in a comprehensive consideration of the reason concerning the payment, contents of the prior agreement, calculation method and the calculation basis, the date of determination of the payment etc., and

the date of the payment.

- (c) In cases where such a payment is deemed to be based on reasonable grounds, the change shall be treated as a change of transaction price.
- (d) In cases where the payment is not deemed to be based on reasonable grounds, examination shall be given whether the payment is eligible for application of the provisions of Article 66-4 (3) of ASMT.

## **8. TP Audit and Dispute Resolution Mechanisms**

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

Intangible transactions and intra-company transactions.

### **Based on your experience, are joint or multilateral audits initiated and carried out?**

Yes. Joint corporate tax and TP audits have become common.

### **Does the Taxpayer have the option to apply for bilateral or multilateral APAs?**

Yes. A Taxpayer may apply for a bilateral or multilateral APAs.

### **Are there any restrictions?**

Among others, Japanese tax authorities might not grant an APA for a transaction structure that is not normally observed between third parties and the purpose of the APA is to reduce Japanese taxation (Article 5-14(1), Administrative Guidelines).



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