

# New Zealand Transfer Pricing Guide 2024

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# New Zealand

## 1. Legal Basis

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

Yes, on a contemporaneous basis. TP documentation is prepared annually to support the annual income tax position. While there is no statutory obligation to maintain documentation, New Zealand's tax system operates on a self-assessment basis, where the Taxpayer is expected to keep sufficient contemporaneous records to support its tax position. Accurate and contemporaneous TP documentation supporting that the Taxpayer's transfer prices are consistent with the arm's length principle, in light of the relevant facts and circumstances, is a key element for addressing this requirement.

While the New Zealand TP rules require the application of the OECD Guidelines, IR provides some additional New Zealand specific simplified guidelines detailing their expectations for producing local TP documentation around financing arrangements.

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

It is expected for income years commencing on or after 1 January 2016.

### **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)?**

New Zealand is a member of the OECD inclusive framework as of 12 May 2016.

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

The OECD's TP Guidelines for multinational enterprises and tax administrations (2022) are legislated in New Zealand's TP rules.

However, the local TP legislation includes novel sections assessing the deductibility of interest expense connected to inbound loans from associated parties, which can lead to outcomes that may differ from the OECD Guidelines. These specific rules are unique to New Zealand.

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

New Zealand legislation presents 5 available TP methods to determine an arm's length consideration for those cross-border associated party transactions undertaken by a New Zealand Taxpayer.

IR accepts the most reliable method (or combination of methods) chosen from among these methods: 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 IRD endorses OECD's recommendations and believes that the MF and LF approach provides a platform through which Taxpayers, subject to the local TP regime, can meaningfully describe their compliance with the arm's length

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standard. The IRD expects New Zealand Taxpayers to maintain contemporaneous TP documentation in two forms:

- › A MF providing an overview of the multinational's global business operations and TP policies; and
- › A LF providing detailed information regarding the operations of the New Zealand Taxpayer and main cross-border associated party transactions, as well as TP analysis supporting the arm's length nature of these transactions from a New Zealand perspective.

Only New Zealand based groups with revenue higher than EUR750 million are required to lodge CbCR. There are currently 20 NZ HQ MNCs that fall into this category.

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

New Zealand introduced new legislation addressing OECD's BEPS initiative, which is effective for the income years commencing on or after 1 July 2018.

## Is there any statute of limitation period?

The IRD generally has four years from the end of the tax year in which a Taxpayer files an income tax return to investigate and amend the tax position taken by the Taxpayer. However, the four-year time bar is extended to seven years for TP tax positions.

This extension applies only in cases where the IRD notifies the Taxpayer that a tax audit or investigation has commenced within the standard four-year period.

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

Relevant guidance includes:

- › Sections YD 5, GB 2, and GC 6 to GC 14 of the Income Tax Act 2007 ("ITA");
- › Sections GC15 to GC19 (interest limitation

rules);

- › The Tax Administration Act 1994 ("TAA"); and
- › New Zealand's double tax agreements.

## 2. Master File (MF)

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

New Zealand based groups with a revenue higher than EUR 750 million.

### Euro Equivalent

EUR 750 million.

### From which year does this obligation exist?

For income years commencing on or after 1 January 2016.

### When does the MF need to be available?

The MF is expected to be made available to IRD on request.

### When does it need to be submitted?

The MF should be prepared by the date on which the relevant income tax return is filed.

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

It is expected that local TP documentation is prepared in the local language (English). The IRD could require that documents in other languages be translated.

### Is documentation in English permissible?

Yes.

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

### Penalties?

Yes.

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## **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 and LF is consistent with the OECD Action 13 requirements with some additional requirements around financing arrangements.

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

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

New Zealand based groups with a revenue higher than NZD 1.3 billion.

#### **Euro Equivalent**

EUR 750 million.

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

For income years commencing on or after 1 January 2016.

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

The LF is expected to be made available to the IRD on request and Taxpayers are generally given 60 days from the date of request to file the LF.

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

While each case is different, based on our experience, a Taxpayer generally is given 20 working days to submit the documentation upon request.

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

It is expected that local TP documentation is prepared in the local language (English). The IRD could require that documents in other languages be translated.

## **Or is documentation in English permissible?**

Yes.

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

### **Penalties?**

Yes, if the LF is not produced within 60 days from request, or is considered to be inadequate, the penalty is up to 40% of the tax assessed on the TP items in the tax return that are unsupported by an adequate or correct local file submission.

## **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 MF and LF is consistent with the OECD Action 13 requirements with some additional requirements around financing arrangements.

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

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

Only New Zealand based groups with revenues higher than NZD1.3 billion are required to lodge CbCR in New Zealand.

### **Euro Equivalent**

EUR 750 million.

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

For income years commencing on or after 1 January 2016.

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

No CbCR notification is required in New Zealand.

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

Not applicable.

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

A CbCR, if required, must be filed within 12 months after the relevant balance date. This applies to New Zealand headquartered groups only.

### **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 with?**

No.

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

The IRD's CbCR guidance states that the IRD will individually contact each group that is required to participate in CbCR, it is likely that these Taxpayers will be able to email their reporting directly to an IRD investigator.

Alternatively, the IRD maintains a generic postal address where all mail can be sent.

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

The data is provided using the following form: <http://www.ird.govt.nz/resources/9/f/9f96d3a8-1c8b-49e4-852f-3ec3bc8a31/cbc-report.pdf>

### **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 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 prescribed information required to be disclosed in the MF and LF is consistent with the OECD Action 13 requirements.

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

Yes. It was signed on 12 May 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?**

No.

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

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

A Taxpayer's income tax return requires disclosure of:

- › Whether the Taxpayer made payments to non-residents (such as dividends, interest, management fees, "know how" payments, royalties, or contract payments); and
- › Whether the Taxpayer holds an interest in a controlled foreign company ("CFC"), when relevant.

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

TP Documentation and Policy are required on a contemporaneous basis. Although there is no explicit legislative requirement for a Taxpayer to document its TP policies and practices, TP documentation supporting the tax position should be prepared before the date the relevant income tax return is filed.

Local Taxpayers who prepare and maintain accurate and contemporaneous TP documentation is less likely to be exposed to penalties. IR will generally request a copy of the TP documentation as part of an income tax audit or TP risk assessment.

## **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?**

Knowingly or carelessly under reporting income is an offence under the Tax Administration Act 1994. An offence is committed when a Taxpayer knowingly commits a specified act, or fails to act, about that Taxpayer's tax obligations and in either case, does so intending to evade tax or to obtain a refund or a tax payment: S143B of the Tax Administration Act 1994.

The offence of evasion is also committed when a Taxpayer evades or attempts to evade the payment or assessment of tax. The penalty for evasion is a fine of not more than NZD 50,000; a term of imprisonment of not more than five years, or both.

## **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?**

The offence of evasion, as described above, is also committed when a person evades or attempts to evade the payment or assessment of tax for another person. The penalty for evasion is a fine of not more than NZD 50,000; a term of imprisonment of not more than five years, or both. In practice, it is rare for tax advisors to be prosecuted for this offence.

There is also a separate "promoter penalty". The promoter penalty applies where a Taxpayer becomes a party to the arrangement and, as a result of the arrangement, a shortfall penalty is imposed for taking an abusive tax position, and the arrangement is offered, sold, issued, or promoted in a tax year to at least 10 persons who claim tax related benefits as a result of the arrangement.

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

There is no separate TP return required to be filed in New Zealand (notwithstanding the

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disclosures outlined above). However, the IRD regularly requires that MNEs and branches complete detailed TP questionnaires as part of their routine TP risk assessment activities.

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

IR1250.

### **What would be the filing deadline?**

For balance dates ending between 1 October to 31 March, the filing deadline is 7 July. For balance dates ending between 1 April to 30 September, the deadline is the 7th day of the 4th month following the balance date. Where the company is on a tax agency list (the most common scenario), an extension to the following 31 March is granted.

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

Even though there are no specific submission requirements, any failure to provide information or documentation when requested can constitute an offense.

## **6. Benchmarking**

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

There is no requirement to conduct a fresh search every year. The best practice in New Zealand is to conduct a fresh search every three years, with financial updates in the interim years.

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

Local benchmarking is preferred (Australian comparables are generally the best option if New Zealand benchmarks are not available); however, reliable benchmarks based on other jurisdictions (the UK or North America) are also acceptable. APAC benchmarks are often not accepted by the IRD based on the dissimilarity of the market compared to New Zealand.

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

Benchmarks should be independent. That said, there is no guidance related to specific independence criteria when completing benchmarking analysis. Comparability is a key aspect when completing benchmarking analysis, and the IRD endorses OECD guidance related to this.

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

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

Yes. If a methodology has been challenged, there is a high risk that an adjustment will be proposed and a dispute process will commence. Disputes have typically been resolved through settlement before litigation.

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

There are no specific regulations on TP adjustments. Generally, it should be to a point within the interquartile range.

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

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

Yes, the methodology being challenged depends on the complexity of the cross-border associated party transaction. Transactions involving the provision of intangibles, financing, and intragroup services tend to receive higher scrutiny during a TP risk review.

New Zealand subsidiaries that provide sales and marketing services to an offshore principal or carry-on various marketing related activities can expect a more detailed TP review. Financing transactions are also subject to a high level of challenge.

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### **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?**

Section 91E of the TAA allows a unilateral APA to be issued in the form of a binding ruling. Bilateral or multilateral APAs may be entered into, under New Zealand's double tax agreements under the MAP provisions.

The IRD has not established any formal process for APAs, as each case is considered to be different, depending on a Taxpayer's specific facts and circumstances. The IRD encourages pre application conferences to make the APA application process less time consuming.

Unilateral APAs are more common in New Zealand and are actively encouraged by the IRD.

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

APAs are given in the form of a private binding ruling. Binding rulings bind the Commissioner of the IRD to apply the tax laws ruled on in the manner stated in the binding ruling, as long as the description of the relevant "arrangement" is accurate and does not change after the ruling is issued, and as long as any conditions stipulated by the IRD are adhered to by the Taxpayer. The Taxpayer is not otherwise bound by the ruling.



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