

# South Korea Transfer Pricing Guide 2024

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# South Korea

## 1. Legal Basis

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

With the emergence of the OECD's base erosion and profit shifting (BEPS) project in 2015, the government codified the contents of BEPS Actions 8–10 and 13 into the Korean TP regime. Consequently, new Taxpayer reporting obligations were introduced into the Law for the Coordination of International Tax Affairs ("LCITA"), including preparing and submitting a Local File ("LF"), Master File ("MF"), and country-by-country ("CbCR") reporting ("BEPS reports").

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

Prior to 2016, when the BEPS report became mandatory, the tax authorities could request data on international transactions, which Taxpayers usually submitted in the form of a TP documentation. The scope of the data that the tax authorities can request is currently stipulated in Article 38 of the Presidential Enforcement Decree of the LCITA, which has been in existence since 1995, when the LCITA was first introduced.

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

The LCITA and its subordinating regulations adopted the main contents of the OECD Guidelines but OECD is not directly referred in the law as a binding authority unlike other countries.

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

South Korea is a member of the OECD.

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

Although Korea's LCITA reflects the OECD TP Guidelines, it is not possible to include all of them in the Act. Therefore, even if a MNE's TP policy is in line with the OECD TP Guidelines, it is subject to interpretation and application of the pertinent LCITA provisions by the tax authorities, which sometimes leads to a more or less departure from the OECD TP Guidelines.

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

Article 8 of the LCITA lists six methods of calculating the arm's length price, as follows: Comparable Uncontrolled Price ("CUP"); Resale Price ("RPM"); Cost Plus ("CPM"); Transactional Net Margin Method ("TNMM"); Profit Split ("PS"); and other reasonable methods.

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

There is no hierarchy in application of TP methods and the most appropriate and reasonable method (or, best method rule) should be applied by Taxpayers

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

Yes.

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

The Ministry of Economy and Finance puts out BEPS implementation status on a regular basis : <https://english.moef.go.kr/>.

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## Is there any statute of limitation period?

Korea's statute of limitation is generally five years but it is extended to 7 years in the case of cross-border transactions.

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

Article 16 of the LCITA, its subordinating regulations and interpretation set out the TP Documentation requirements including the contents to be included, the submission deadline, etc.

## 2. Master File (MF)

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

Taxpayers with sales of KRW 100 billion or more and KRW 50 billion or more in cross-border transactions with their related parties in a given year are required to submit a MF and a LF.

### Euro Equivalent

Roughly, sales of EUR 70 million or EUR 35 million for the cross-border transactions.

### From which year does this obligation exist?

Applies since 2016 fiscal year.

### When does the Master File need to be available?

Within 12 months from the end of fiscal year in which Taxpayers meet the aforesaid threshold.

### When does it need to be submitted?

The submission of the MF must be made within 12 months from the end of each fiscal year.

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

Yes.

## Is documentation in English permissible?

If the English version is submitted, the Korean translation version must be submitted in a month.

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

### Penalties?

If all or part of the report is not submitted or is false, a fine of KRW 30 million is imposed.

### 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?

By and large, consistent with OECD requirements.

## 3. Local File (LF)

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

Taxpayers with sales of KRW100 billion or more and KRW50 billion or more in cross-border transactions with their related parties in a given year are required to submit a MF and a LF.

### Euro Equivalent

Roughly, sales of EUR 70 million or EUR 35 million for the cross-border transactions.

### From which year does this obligation exist?

Applies since 2016 fiscal year.

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

Within 12 months from the end of fiscal year in which Taxpayers meet the aforesaid threshold.

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

Same as above.

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

Yes.

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

No.

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

### **Penalties?**

If all or part of the report is not submitted or is false, a fine of KRW30 million is imposed.

### **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?**

By and large, consistent with OECD requirements.

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

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

As for the CbCR, ultimate parent companies with sales of KRW1 trillion (roughly EUR 750 million) on a consolidated basis in the immediately preceding year should submit a CbCR.

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

Applies since 2016 fiscal year.

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

If the ultimate parent company filing the CbCR is not a Korean company, the information about the foreign parent company filing the CbCR in another jurisdiction (i.e., reporting entity) must be notified to the Korean tax authorities within 6 months after the end of the fiscal year by filling out a form.

### **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 each applicable fiscal year.

### **Are there any deviating submission deadlines for the secondary mechanism?**

With the approval of the NTS, the Taxpayer can extend the submission deadline for up to one year.

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

No.

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

It must be aligned with the same financial years (accounting period) as the ultimate parent company filing the CbCR.

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

Submit electronically to the AXIS portal operated by NTS: <https://axis.go.kr>.

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

Submit electronically, either by filling out and uploading an Excel file provided by the system or by uploading a file written in XML.

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

#### **Penalties?**

If all or part of the report is not submitted or is false, a fine of KRW 30 million is imposed.

#### **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.

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

Yes. (USA only)

### **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?**

Tangible asset transactions with a value of KRW1 billion or less and other transactions with a value of KRW200 million or less are excluded from TP analysis per LF.

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

As a part of corporate tax return package, Taxpayers engaged in cross-border transactions with foreign related parties are required to submit the following TP disclosure forms within six months from the end of each fiscal year-end, unless the transaction amount does not reach a certain threshold.

- › an international transaction statement for each foreign related party;
- › a summary income statement of each foreign related party that has cross-border transactions with a Korean Taxpayer; and
- › a form stating the TP method selected and reasons for such selection for each related party transaction – there are separate forms for tangible property transactions, intangible property transactions, service transactions and CCAs.

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**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?**

Taxpayers can file an amended return to pay the underreported tax. This can result in underreporting penalty and additional interest on the amount of tax owed.

**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?**

There is no responsibility of tax advisor or CPA filing a tax return with regard to the low profit level of Taxpayers attributable to incorrect TP implementation because the responsibility for such incorrect TP implementation lies with Taxpayers or Taxpayers' lack of TP policy.

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

No. However, as mentioned above, Taxpayers are required to submit three TP related disclosure forms as part of corporate tax return.

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

Taxpayers engaging in cross-border transactions with their foreign related parties must file the international transaction statement (Form 16), the foreign related party's summary income statement (Form 17) and a form stating the selection of TP methods and reasons (Form 20).

**What would be the filing deadline?**

Within six months from each fiscal year-end.

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

If any part of the international transaction statement is not submitted or is false, a fine of KRW5 million may be imposed on each foreign related party with which the Korean Taxpayer had a transaction during the year.

### **6. Benchmarking**

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

Article 7 of the enforcement rules of the LCITA sets out the benchmarking analysis procedure.

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

No. However, Korean tax authorities always expect local comparables extracted from local database called KisValue. Local benchmarks are required where the Korean company is the tested party.

**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?**

Yes.

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

The year-end adjustments are referred to in article 6 of the LCITA. Articles 12 and 13 of the LCITA set out the corresponding adjustments and the secondary adjustments respectively.

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

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

The Korean tax authorities have recently focused on challenging domestic sales support service providers on the basis that these service providers should be treated as wholesalers or receive a commission equivalent to the wholesaler's gross margin.

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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?**

Yes.

**Are there any restrictions?**

No.

## About WTS Global

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## Contacts

### South Korea

**Lee & Ko**  
Steve Kim  
Partner  
[steve.kim@leeko.com](mailto:steve.kim@leeko.com)

Donghyun Accounting Corp.  
Shin-Jong Kang  
Partner, CPA  
[Shinjong.kang@dohy.co.kr](mailto:Shinjong.kang@dohy.co.kr)

### WTS Asia Pacific Transfer Pricing leader

**WTS Taxise (Taxise Asia LLC)**  
Christine Schwarzl  
Associate Principal

T: +65 6304 7972  
E: [christine.schwarzl@taxiseasia.com](mailto:christine.schwarzl@taxiseasia.com)



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