

Taiwan Transfer Pricing Guide 2024

wts global

Taiwan

1. Legal Basis

Is there a legal requirement to prepare TP documentation?

Yes.

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

2004.

Adoption of the OECD or UN legislation in your country?

Yes, Taiwan has adopted OECD guidelines but also has its own regulation governing the assessment of profit seeking enterprise income tax on non-arm's length TP (referred to as TP regulation here).

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

No.

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

No. It depends on whether the TP report or analyses under OECD TP Guidelines are followed with prepared TP regulation. However, some officers may challenge the comparison data or index applied and question the analysis result.

Which TP methods may be applied?

Following the OECD Guidelines, the TP pricing methods are as follows: Comparable Uncontrolled Price ("**CUP**"); Resale Price method ("**RPM**"); Cost Plus method ("**CPM**"), Profit Split ("**PS**"); and Comparable Profit, and

other methods prescribed by the Ministry of Finance ("**MOF**").

Is there a stated preference for any particular TP methods?

The MOF follows the changes in the hierarchy of the methods in favour of the "most appropriate method" approach within the OECD Guidelines.

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

There are no material differences between the OECD report template or format and Taiwan's regulations. However, for CbCR, there is an additional requirement for the appendix list of all constituent entities of the MNE.

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

The new regulation provides for LF, MF and CbCR since 2017, according to articles as follows:

- › **Local File:** Article 22 of the non-arm's length transaction auditing regulation (TP regulation);
- › **Master File:** Article 21-1 of the non-arm's length transaction auditing regulation (TP regulation); and
- › **CbCR:** Article 22-1 of the non-arm's length transaction auditing regulation (TP regulation).

Is there any statute of limitation period?

For the tax which should be declared and paid by a Taxpayer under and has been declared within the statutory period for filing a tax return, and which the Taxpayer has no intention to

Taiwan

evade by fraud or any other unrighteous means, the period for assessment shall be five years.

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

Same as above. In addition, the original legal base for TP auditing is Article 43-1 of the Income Tax Law which authorises the Tax Authority to investigate related party transactions. More than TP Documentation, tax officers can request more reasonable documentation if they deem this necessary.

2. Master File (MF)

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

The thresholds for preparing MF are Taxpayers with:

- TWD 3 billion in total operating and non-operating revenue; and
- TWD 1.5 billion in related party transactions. The related party transactions amount is calculated with aggregate separate transaction types by the gross base.

Euro Equivalent

EUR 83,361,100.

From which year does this obligation exist?

Since the 2017 fiscal year.

When does the Master File need to be available?

In one year after the end of the fiscal year, which Taxpayer reached the threshold.

When does it need to be submitted?

The Taxpayer should file to the local tax authority in one month upon request by the tax authority.

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

Yes. If prepared in English, a Chinese translation may be requested and should be submitted within one month.

Is documentation in English permissible?

No, unless it has been approved by the tax authority.

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

Penalties?

Yes, If the tax adjustment was regarded as tax avoidance, then an administration penalty from TWD 3,000 to TWD 30,000 to apply and the tax adjustment will be based on the deemed profitability. If the tax adjustment was regarded as tax evasion, then this would trigger a penalty of up to 200% of underpaid tax liability.

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?

Consistent with OECD requirements.

Taiwan

3. Local File (LF)

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

A Taxpayer with related party transactions, where two conditions were met:

- › TWD 300 million in revenue; and
- › TWD 200 million of related party transactions.

Euro Equivalent

EUR 83,361,100.

From which year does this obligation exist?

From the fiscal year of 2004.

When does the LF need to be available?

There are five months for preparing LF after the end of the fiscal year, however, Taxpayer submission is based on the request from the tax authority and has a one-month submission period.

When does the LF need to be submitted?

Upon request and having one month to submit.

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

Yes. If prepared in English, a Chinese translation may be requested and should be submitted within 1 month.

Or is documentation in English permissible?

No, unless it has been approved by the tax authority.

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

Penalties?

Yes, if the TP report or substitute document is not provided for review or investigation, then the tax authority may refer to the relevant business net profit, operating cost, and

operating expense to compute the taxable income according to the profit standard of the same trade. Meanwhile, failure to submit or provide the information or document related to the taxable income, the tax authority may continue to fine from TWD 3,000 to TWD 30,000. If the tax adjustment was regarded as tax evasion, then would trigger a penalty of up to 200% of underpaid tax liability.

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?

Consistent with OECD requirements.

4. Country-by-Country Reporting (CbCR)

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

The threshold is TWD 27 billion of consolidated revenue of the parent company.

Euro Equivalent

EUR 750 million.

From which year does this CbCR obligation exist?

From 1 January 2017 (FY2017).

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

The multinationals need to submit CbCR to the tax authority in one year after the end of the fiscal year.

Taiwan

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

Taxpayers need to provide CbCR notification by the annual filing date of the tax return for the relevant fiscal year.

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

In one 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.

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 CbCR must be submitted to the tax authority.

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

Notification shall be done upon filing an income tax return by completing a form of the tax return (page B6). Annual submission is required and each entity shall fill in the information required in the tax return.

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?

Consistent with OECD requirements.

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

Yes, Japan and New Zealand (2017); Australia (2018); Switzerland (2019).

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

Yes, for the following countries:

Singapore, Indonesia, Vietnam, South Africa, Australia, New Zealand, Gambia, Malaysia, Swaziland, Macedonia, Netherlands, UK, Senegal, Sweden, Belgium, Denmark, Israel, Paraguay, Hungary, France, India, Slovakia, Switzerland, Germany, Thailand, Kiribati, Luxembourg, Austria, Italy, Japan, Canada, Poland, Czech Republic, Saudi Arabia and South Korea.

Can a Taxpayer in your country fulfil his CbCR requirement by referring to the reporting entity in the same or another country?

Yes.

Taiwan

5. TP disclosure in tax returns or TP specific returns

Is there a threshold for Related Party Transactions?

Yes. Some basic information such as related party transaction types, amount and counter parties information.

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

The tax authority currently does not require TP-specific returns.

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?

The increase in the taxable income of the controlled transactions, which are not disclosed in the report or TP document under Articles 21 to 22-1 by a profit seeking enterprise, adjusted and assessed by the collection authorities in charge is more than 5% of the annual taxable income of the enterprise and more than 1.5% of the annual net operating revenue.

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 the Taxpayer's behaviour was treated as tax evasion and the tax advisor/ accountant was proven to assist the Taxpayer, then they may have at most four and half years imprisonment. Otherwise, there is no legal responsibility for the tax advisor/accountant/ administrator.

Does a Taxpayer need to file TP specific returns?

No.

Please state the filing form number and name.

A Taxpayer must disclose related party transactions and include the disclosure with the annual income tax return (pages B2-B5), under the TP guidelines.

The disclosure generally includes:

- › The investing structure;
- › Identification of related parties;
- › The related party transaction amounts by type, including transfer of tangible assets, use of tangible assets, transfer of intangible assets, use of intangible assets, rendering of services, use of funds, and other types of transactions prescribed by the MOF;
- › The related party transaction balances;
- › The related parties' financial information, including total revenues, gross margins, operating margins, and net margins; and
- › Whether the enterprise has prepared TP documentation for that Fiscal Year.

What would be the filing deadline?

5 months after the end of the fiscal year.

What would be the penalties for non-compliance?

The increase in the taxable income of the controlled transactions, which are not disclosed in the report or TP document under Articles 21 to 22-1 by a profit seeking enterprise, adjusted and assessed by the collection authorities in charge is more than 5% of the annual taxable income of the enterprise and more than 1.5% of the annual net operating revenue.

6. Benchmarking

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

No.

Is there any stated preference for local benchmarks?

No, Asia Pacific regional benchmarks are widely acceptable in practice.

Taiwan

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?

No.

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

No.

8. TP Audit and Dispute Resolution Mechanisms

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

The tax authority prefers reviewing the related party transactions by separate types of transactions, which means they prefer to test the profitability of different types of transactions, such as trading, services providing, etc., not reviewing the aggregate amount of one party.

Entities with transactions with low tax jurisdictions are more easily selected for tax audits.

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, Taiwan has unilateral, bilateral, and multilateral APAs.

Are there any restrictions?

There are a few conditions for applying to the APA process as below:

1. The revenue is over TWD500 million and

- TWD200 million related party;
2. No significant tax compliance failure in 3 years;
3. Well prepared TP Documentation; and

Other requirements made by the Treasury.

About WTS Global

We are the leading independent non-audit tax practice worldwide with representation in more than 100 countries. WTS Global deliberately refrains from conducting annual audits in order to avoid any conflicts of interest and to be the long-term trusted advisor for its international clients. Clients of WTS Global include multinational companies, international mid-size companies as well as private clients and family offices.

The member firms of WTS Global are carefully selected through stringent quality reviews. They are strong local players in their home market who are united by the ambition of building a truly global practice that develops the tax leaders of the future and anticipates the new digital tax world.

WTS Global effectively combines senior tax expertise from different cultures and backgrounds and offers world-class skills in advisory, in-house, regulatory and digital, coupled with the ability to think like experienced businesspeople in a constantly changing world.

For more information please visit:
<https://wts.com>

Contacts

Taiwan

Youth International & Associates, CPA

Audrey Lin
Managing Partner
audrey.lin@youth-cpa.com.tw

WTS Asia Pacific Transfer Pricing leader

WTS Taxise (Taxise Asia LLC)

Christine Schwarzl
Associate Principal

T: +65 6304 7972
E: christine.schwarzl@taxiseasia.com

wts.com