WTS Global Country TP Guide

A comprehensive survey on Transfer Pricing from 73 countries

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Table of Contents

Preface

Dear Reader,

It is our pleasure to present to you this global survey on TP documentation and related practical questions following numerous local OECD BEPS Action 13 implementation initiatives. This WTS Global Country Guide on TP Documentation and Related Practical Issues is the third WTS consecutive survey, following the Survey on Intra-Group (Management) Services and the WTS Global PE Study. The aim of this survey is to investigate the implementation status of the OECD BEPS Action 13 in 73 countries and to highlight various transfer pricing-related practical issues.

In October 2015, the Organization for Economic Cooperation and Development ("OECD") issued 15 BEPS Action items. BEPS (**B**ase **E**rosion and **P**rofit **S**hifting) refers to tax planning strategies that exploit gaps and mismatches in tax rules to artificially shift profits to low-or no-tax jurisdictions where there are little or no economic activities[1]. One of the aims of OECD BEPS is to create increased transparency along the global value-chain of multinational enterprises ("MNE"s). For this purpose, OECD BEPS Action item 13 introduced a three-tiered transfer pricing documentation approach consisting of a Master File ("MF"), a Local File ("LF") and Country-by-Country Reporting ("CbCR") that are each connected to different threshold requirements.

The MF provides a global footprint of the MNE and consists of five sections according to the suggestions of the OECD: (i) the MNE group's organisational structure, (ii) a description of the MNE's business or businesses, (iii) the MNE's intangibles, (iv) the MNE's intercompany financial activities and (v) the MNE's financial and tax positions. One MF is generally centrally prepared for the MNE group with the purpose to be submitted by each group entity of the MNE that falls under the locally implemented threshold criterion.

The need to prepare a MF is generally based on a revenue threshold of the local group entity varying from below EUR 50 million up to over EUR 100 million.

The LF represents the transfer pricing documentation of the respective country. In contrast to the MF, the LF contains detailed information on significant I/C transactions and demonstrates the arm's length nature of the individual I/C transactions. The LF is an addition to the MF and is only submitted to the local tax administration in line with local submission rules. The threshold and also the content requirements for preparing a LF deviate substantially across countries.

As part of CbCR, aggregate financial information on a per-country basis and a list of all group entities worldwide including the naming of their business activities have to be prepared. According to the suggestions of the OECD, CbCR is to be prepared if the consolidated group revenues amount to at least EUR 750 million and is to be submitted within 12 months after the end of the fiscal year to which the CbCR refers. Under the primary reporting obligation, CbCR is to be prepared by the (parent) company preparing the consolidated financial statements which then must submit CbCR to the relevant responsible tax office. Under the secondary reporting obligation, a (i) domestic designated company or (ii) included subsidiary of a foreign parent company in case of no submission abroad may (be required to) submit CbCR. CbCR is shared by the receiving tax authority with all relevant national tax authorities to which CbCR relates via information exchange. Several countries have implemented notification measures under which the taxpayer has to indicate in the tax return if and by which entity CbCR is prepared and submitted.

[1] www.oecd.org

Prior to this three-tiered transfer pricing documentation approach, transfer pricing documentation often only consisted of a local transfer pricing documentation report, similar to the LFs under OECD BEPS 13. It is apparent that these updated transfer pricing documentation requirements strongly affect the documentation practice. While this uniform and broadened transfer pricing documentation approach could provide companies with simplifications in the long-term, it first and foremost results in significant additional work and costs for transfer pricing documentation.

These new transfer pricing documentation requirements have entered the updated OECD Transfer Pricing Guidelines of July 2017. Since the publication of the final BEPS reports, there has been a wave of local implementation initiatives. In light of these developments, WTS Global prepared a study demonstrating the implementation status of OECD BEPS 13 and related practical transfer pricing questions in more than 70 countries as of the end of the year 2017. It is envisaged that this survey will be updated on a regular basis. Updates will be available on the following website:
https://www.wts.com/global/insights/country-tp-guide.

We hope that you enjoy reading this survey. Should you have any questions on transfer pricing or tax issues, please feel free to contact one of the colleagues in the relevant countries mentioned in the contact list. We will be happy to assist you.

Your Contact Persons

If you have any queries regarding our global TP study, please contact one of the authors mentioned below:

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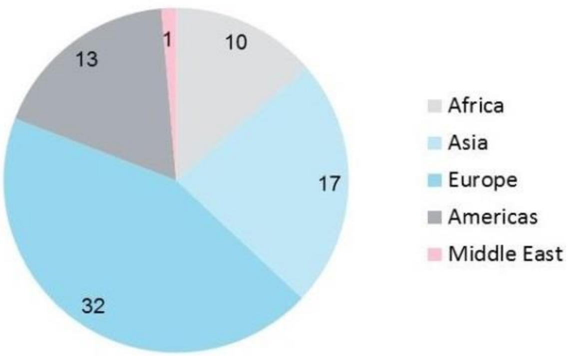
1. About the survey and key findings[2]

1.1. Introduction

The regional distribution of the countries covered in the survey is illustrated in the following pie chart.[3]



The individual country overviews are provided throughout this report from pp. 14 to 301 and cover 6 broad sections:

- Legal basis of TP documentation rules;
- Implementation status of OECD BEPS 13 at the level of the MF, LF and CbCR and legal consequences for non-compliance;
- TP disclosure in tax and TP-specific returns and legal consequences for submitting incorrect information;
- Benchmarking requirements;
- Permissibility of year-end adjustments;
- TP audits and APAs.

Our study confirms a large-scale roll-out especially of CbCR. Various countries have already implemented the MF and LF documentation concept but to a lesser degree than CbCR. It is also apparent that several countries have tightened up rules on penalties for non-compliance.

Specifically, in six countries, non-compliance with the CbCR requirements could lead to imprisonment.

In almost all countries a large penalty and/or imprisonment is imposed, if 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. In many countries the same applies for the advisor/accountant/ administrator who drafts and files the tax return of a client and understands or should understand that the result reported is too low due to incorrect transfer pricing.

Local tax authorities focus on transfer pricing during tax audits, especially on the low hanging fruit such as loss making companies and intercompany charges for services. In addition an increased tax audit focus is seen on the remuneration of intellectual property and on intercompany financing. WTS Global expects an increased transfer pricing audit focus on financing, also given the discussion draft on financial transactions that has been issued by the OECD recently.

Details on some of our key findings are provided in the following.

[2] The survey analysis reflects the individual country feedback as of December 2017.

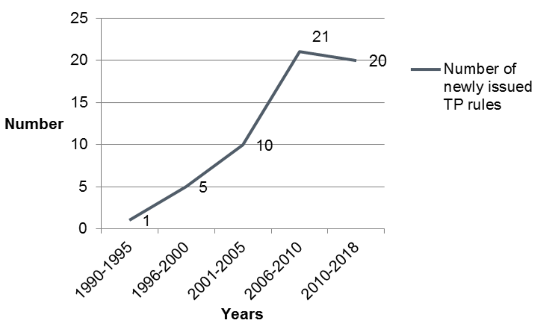
[3] The following countries are covered under Africa: Angola, Benin, Burkina Faso, Ghana, Kenya, Madagascar, Mauritius, Senegal, South Africa and Tanzania. The following countries are covered under Asia and Oceania: China, Georgia, Hong Kong, India, Indonesia, Japan, Kyrgyzstan, Laos, Malaysia, Myanmar, New Zealand, Philippines, Singapore, South Africa, Taiwan, Thailand, Vietnam.
The following countries are covered under Europe: Albania, Austria, Belarus, Belgium, Bulgaria, Czech Republic, Croatia, Denmark, Estonia, Finland, France, Germany, Gibraltar, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Netherlands, Norway, Poland, Portugal, Romania, Russia, Serbia, Slovakia, Spain, Sweden, the UK and Ukraine.
The following countries are covered under Americas: Argentina, Bolivia, Brazil, Chile, Ecuador, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay, USA and Venezuela. Middle East includes the United Arab Emirates.

1.2. Transfer pricing documentation requirements

Out of the 73 countries that have been covered, 56 countries have introduced mandatory transfer pricing documentation rules. For 12 out of the 17 countries where no mandatory transfer pricing rules have been implemented, it is advisable, inter alia, to prepare transfer pricing documentation to avoid penalties. This implies that transfer pricing documentation is either mandatory or advisable for about 90% of the countries covered in the survey.

Transfer pricing documentation rules were implemented from 1995 onwards for the covered countries. A peak in the implementation of local transfer pricing documentations rules can be observed from 2006 onwards as demonstrated in the figure below.[4]

Historic overview of issued TP rules



1.3. Application of the arm's length principle and of the OECD TP Guidelines

At the time this survey was prepared, **Brazil** was the one exception that did not apply the arm's length principle. Unlike in other countries, Brazil's transfer pricing rules are inspired by the arm's length principle, but do not necessarily result in its application. On 29 May 2017, Brazil presented a formal request to join the OECD. If approved, the accession of Brazil as a member of the OECD could have a significant impact on the Brazilian transfer pricing rules within a few years. Details regarding this can be read in the October 2017 issue of the WTS Global Transfer Pricing Newsletter.[5]

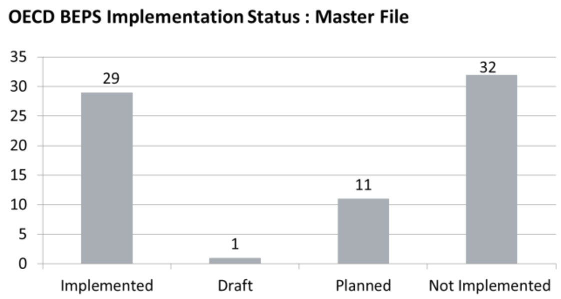
For over 80% of the covered countries, transfer pricing policies of multinational enterprises are, in principle, accepted by the tax authorities, if they are in line with the OECD TP Guidelines. With the exception of the US, all additional countries for which this does not apply are not (yet) OECD member countries. These countries are Argentina, Bolivia, Brazil, China, Ecuador, Kyrgyzstan, Laos, Madagascar, Paraguay, Taiwan, the United Arab Emirates and Uruguay.

[4] In addition to the 56 countries that have implemented mandatory transfer pricing documentation rules, this chart includes the provisions in Chile that legally require the preparation of transfer pricing returns.

[5] WTS Global TP Newsletter: https://www.wts.com/global/knowledge

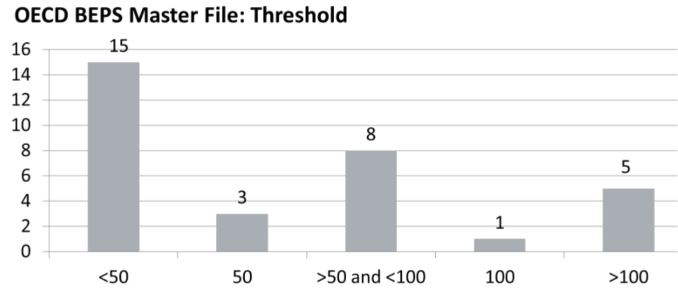
1.4. Implementation status of the MF

As at the date on which the specifications of this study were compiled, more than one third of the covered countries had either implemented local rules requiring the preparation of a MF or had draft provisions in place.[6] A further 11 countries plan on implementing the MF.



Certain countries allow or even welcome the submission of a MF even though there is no requirement to do so. In **Ireland**, for example, the preparation of a MF is not yet mandatory under domestic legislation but it is considered best practice to prepare a MF. Similarly, in the **UK**: whilst there was no requirement to prepare a MF or LF in line with OECD BEPS 13 at the time this study was compiled, HMRC may anticipate that MNEs will have prepared a MF given that many countries have already implemented Action 13 requirements. HMRC also issued guidance stating that documentation should be proportionate to the size and complexity of the transactions or business involved. Furthermore, in **New Zealand**, the Inland Revenue shall in practice expect a MF / LF documentation approach to be prepared by certain multinationals, even though there are no legislative requirements in place concerning the thresholds or requirements of the local or master file. Inland Revenue communicates directly with affected taxpayers to ensure that these taxpayers provide the required information.

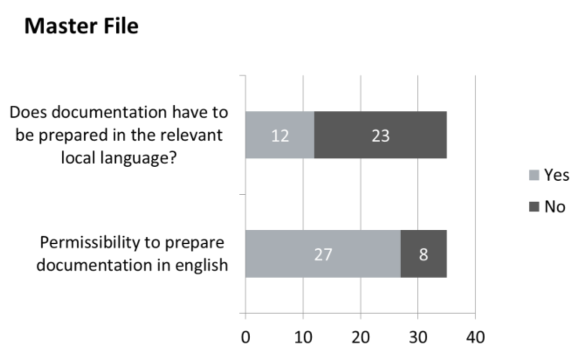
For almost half of the countries for which a threshold is provided for the local rules or draft rules, the applicable threshold triggering the preparation of a MF lies below EUR 50M.



Out of the 30 countries that implemented the MF or have draft provisions, Italy Romania and Uruguay, have no thresholds. The following countries have intentions for implementing the MF and already have information available on envisaged thresholds to be applied: Greece, Hong Kong, Malaysia and Norway. Ireland has not yet implemented the MF, but, given that it is considered best practice to prepare a MF, and Ireland provided information on thresholds. This equals a total of 32 countries.

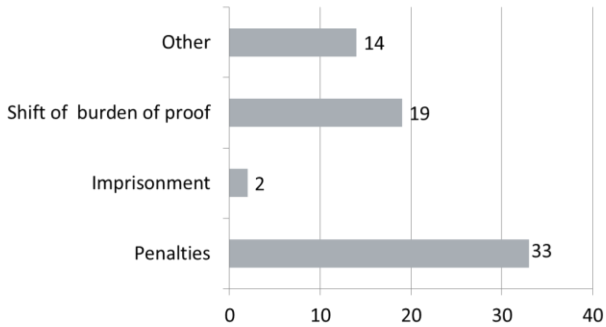
[6] Countries with a local variation of the MF in place largely consistent with the template of the OECD have been considered accordingly (e.g. Albania, Italy, France and Romania).

Over 40% of the covered countries in principle foresee that the MF should be prepared in the relevant local language. That said, most countries permit submission of the MF in English language. In some of these countries, a MF in the English language must be accompanied by a legal translation, following approved by the tax authorities or may be requested to be translated into English in an audit. Burkina Faso, China, Greece, Italy, Peru, Poland, Uruguay and Romania do not accept a MF in the English language. Italy provides an exception for submission in English, provided that the MF is prepared by an EU holding company and submitted by an Italian sub-holding company.[7]



Almost all covered countries apply penalties in the event of non-compliance. Approximately half of the covered countries foresee a shift of the burden of proof in certain cases. Interestingly, in the Netherlands and Singapore, non-compliance with the MF requirements could eventually result in imprisonment. In the case of the Netherlands, not having the MF available could lead to imprisonment for a maximum of 6 months.

If the MF is not available or does not meet the appropriate standard and if this fact leads to insufficient tax being levied, imprisonment of a maximum of 4 years is possible. In Singapore, a jail term not exceeding 6 months in lieu of payment may apply. Further possible consequences in the event of non-compliance with the relevant MF requirements relate, first and foremost to the estimation of income and/or adjustment of related party pricing.



[7] The chart on MF documentation language includes information on Greece, Hong Kong, Malaysia, Norway and the UK which only had intentions to implement the MF, in addition to Ireland, which had not yet implemented the MF at the time this survey was compiled. Uruguay has not yet determined the filing language for MF. Together with the 29 countries that have implemented the MF, this leads to a total of 35 countries under analysis.

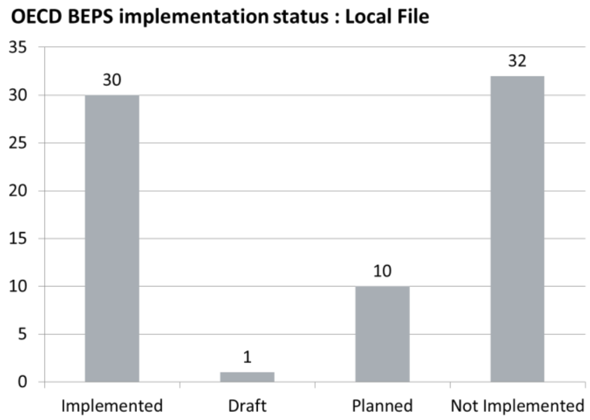
1.5. Implementation of the LF

The implementation status of the LF provides for an almost identical picture as for the MF. As at the date on which the specifications of this study were compiled, 40% of the covered countries had either implemented local rules requiring the preparation of a LF or had draft rulings in place.

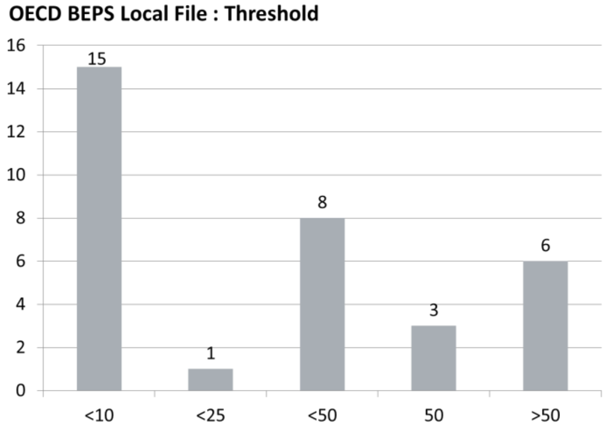
Out of the 31 countries that implemented LF or have draft provisions; Malaysia and Italy (currently) have no rules on thresholds.

The following countries have intentions for implementations and already information available on envisaged thresholds to be applied: Greece, Hong Kong and Norway. Ireland has not yet implemented the LF but it is considered best practice to prepare a LF and as such Ireland provided information on thresholds. This equals to a total of 33 countries being considered in the chart on the thresholds for the LF.

Further 10 countries plan on implementing the LF.



As expected, the threshold criteria for preparing a LF deviate from those applicable to the MF and are lower as shown in the following bar chart.



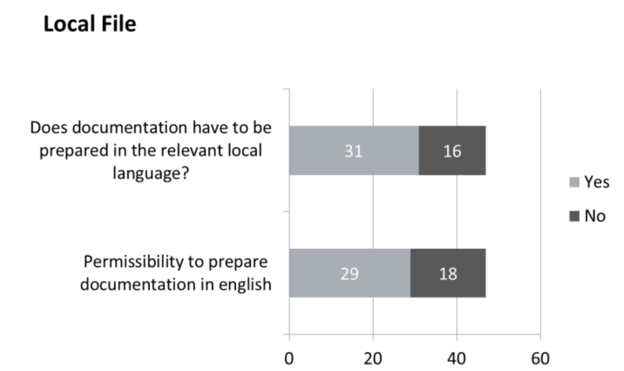
Given that the LF is the documentation of the relevant local country and as such primarily destined for the local tax authorities only, slightly more countries, eighteen in total, do not allow that the LF is prepared in English compared to the MF.

The countries that require that the MF is submitted in the local language (Burkina Faso, China, Greece, Italy, Peru, Poland, Uruguay and Romania) also require that the MF is prepared in the local language. In addition, Latvia, South Korea, Serbia, Nicaragua, Madagascar, Benin, Bolivia, Argentina, Albania and Ukraine also require that local transfer pricing documentation is prepared in the local language.

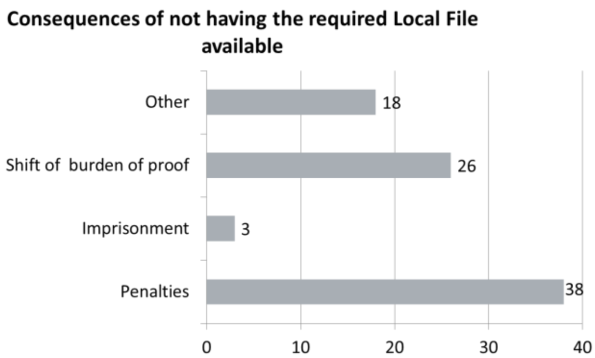
Some of these countries have implemented the LF in line with OECD BEPS 13 while others simply have local transfer pricing documentation rules in place.

A large proportion of the countries generally permit to prepare documentation in English. Several countries may request that at least certain parts of the documentation are translated into the local language during an audit.

In Vietnam and Taiwan, a submission in English is possible but has to be approved. In Russia and in Ireland, an English local transfer pricing documentation should be accompanied by a translated version of the documentation.

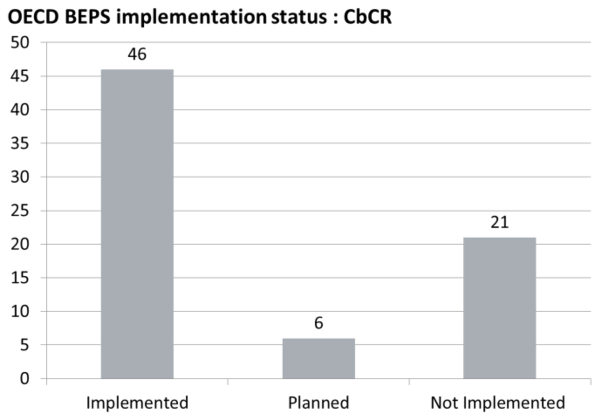


The consequences of not having local transfer pricing documentation in place overall provides a similar picture as for the MF with a greater focus on the shift of the burden of proof. For the Netherlands, Serbia and Singapore, non-compliance may lead to imprisonment based on the same rules that apply for the MF.

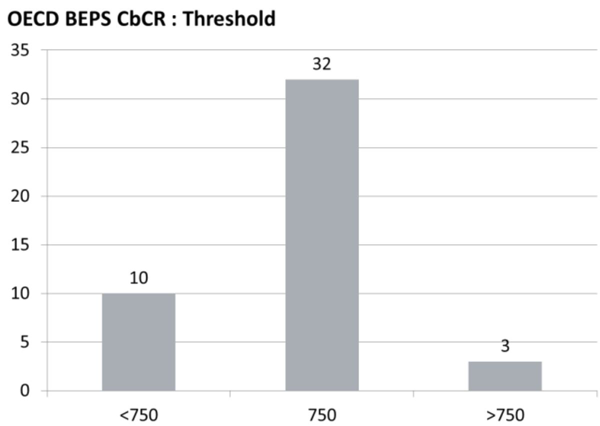


1.6. Implementation status of CbCR

A total of 46 countries have implemented CbCR, which are almost twice as many countries compared to those having implemented the MF or LF. An additional 6 countries plan on implementing CbCR as exemplified in the following bar chart:



For the majority of these countries, the threshold criterion for preparing the CbCR amounts to EUR 750M or the local currency equivalent in line with the suggestions of the OECD.[8] For the remaining countries, the threshold is (mostly slightly) below EUR 750M which might also partly be driven by exchange rate effects.

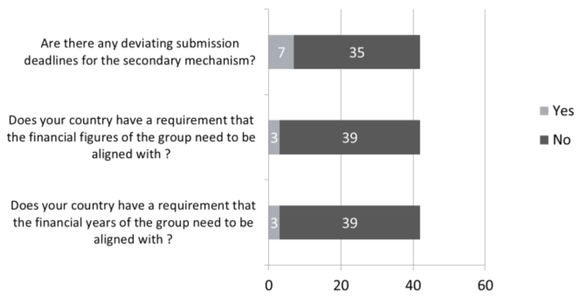


[8] Out of the 46 countries that implemented the CbCR or have draft provisions, Uruguay and Peru, have no thresholds. Hong Kong has intentions for implementations of the CbCR and already has information available on envisaged thresholds to be applied. This equals to a total of 45 countries being considered for the chart on the thresholds for CbCR.

Just over a handful of countries have implemented deviating submission deadlines for the secondary mechanism. This includes the mechanism provided in some countries where only the first submission deadline for secondary reporting is one year later than for primary reporting.

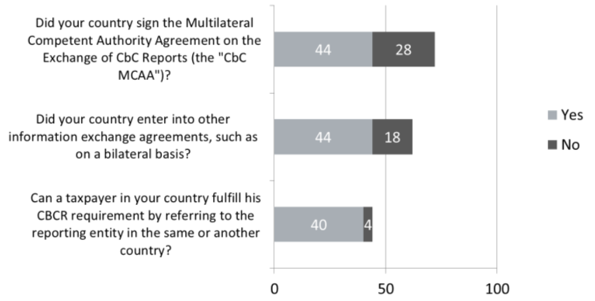
Very few countries have guidance in place on the alignment of the financial figures or financial years of the group. Brazil and Denmark, for instance, have rules or guidance requiring that the financial year of the group must be aligned with the fiscal year of the ultimate parent entity. Singapore requires that the financial information is compiled on a consistent basis.

CbCR (1)



The great majority of the countries signed the Multilateral Competent Authority Agreement on the Exchange of CbC Reports ("CbC MCAA"). Out of those countries having implemented CbCR or enacted draft provisions and/or intentions on CbCR, Benin, Kenya, Ukraine, the U.S., Hong Kong, Gibraltar, Peru, Taiwan and Vietnam are the few exceptions not having signed CbC MCAA as of 31 December 2017. The US for instance has signed various bilateral competent authority agreements to exchange companies' global tax and profit reports with foreign jurisdictions. Many of the countries that signed the CbC MCAA also entered into other exchange agreements. Practically all taxpayers having implemented CbCR can fulfill their CbCR requirement by referring to the reporting entity in the same or in another country, except for in Chile, China, New Zealand and the US.

CbCR (2)

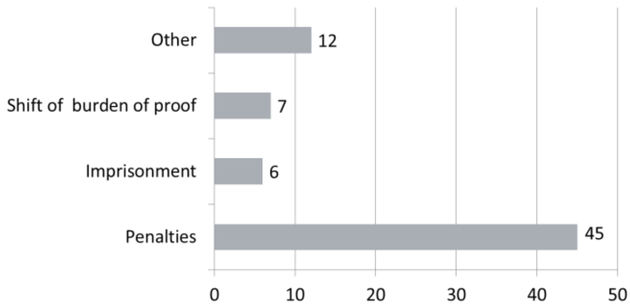


Almost all countries have penalties that apply for non-compliance with the CbCR requirements which vary substantially from one another. The Netherlands is one of the countries applying one of the highest penalties which may amount up to EUR 820,000.

In 6 countries non-compliance with the CbCR requirements may lead to imprisonment in the following countries: Chile, the Netherlands[9], New Zealand, Singapore, Lithuania and Malaysia.

In some countries, the burden of proof is shifted to the taxpayer. Other consequences are amongst others that the domestic subsidiary may be obliged to submit CbCR if the domestic tax office does not receive CbCR by the foreign tax office.

Consequences of not having the required CbCR available



[9] In case of gross negligence or wilful intent. This likely also applies to more countries.

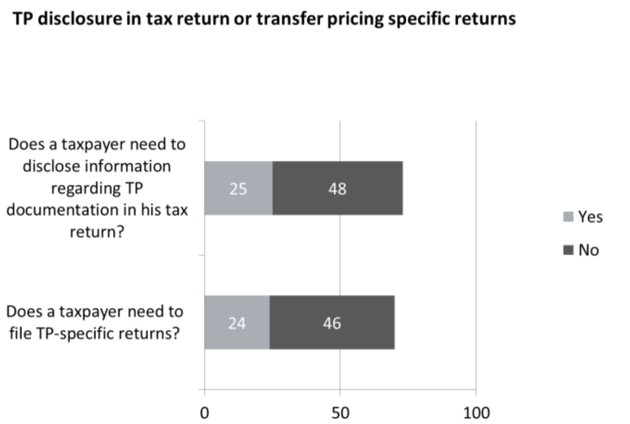
1.7. TP disclosure in tax and TP-specific returns and legal consequences for submitting incorrect information

About 40% of the covered countries require that the local taxpayer discloses transfer pricing information in the tax return and/or to file TP-specific return(s). This especially applies to Middle and Latin America but also selected European and Asian countries.

An overview of the legal consequences for filing a tax return that is too low due to incorrect transfer pricing is provided in the individual country sections.

Unintentionally submitting incorrect information where income is understated usually results in income adjustments, penalties and interest.

Intentionally submitting incorrect information where income is understated usually represents a tax crime which may lead to imprisonment.

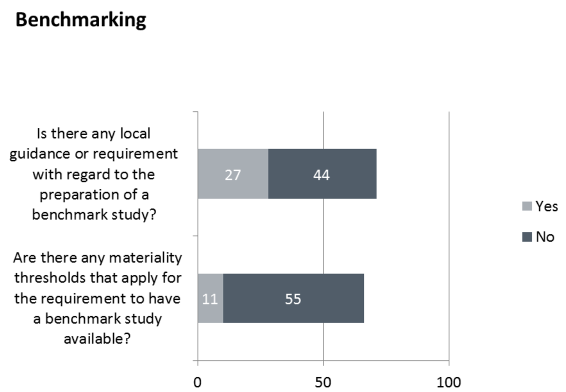


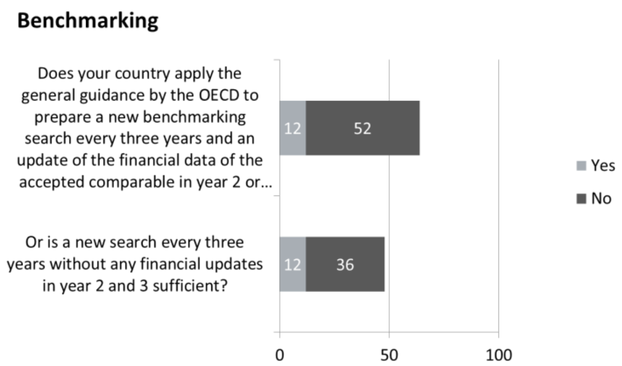
1.8. Benchmarking requirements

While there is general guidance at the level of the OECD on the preparation of benchmarking studies, only approximately 40% of the covered countries have issued local rules or guidance on the preparation of benchmarking studies. Few countries have materiality thresholds in place that apply for preparing benchmarking studies.

There is also a mixed picture on the guidance of the OECD to prepare a new study every three years and an update of the benchmarking study in year 2 and 3. Only about 15% of the covered countries follow this guidance while for about the same proportion it is sufficient to only prepare a benchmarking study every three years without any financial updates in the meantime.

This suggests that there is currently no homogenous guidance on benchmarking studies.

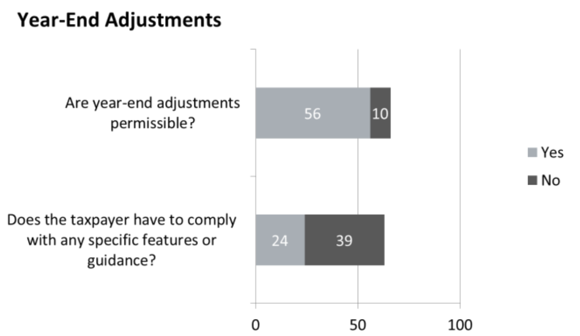




1.9. Permissibility of year-end adjustments

It can be summarized that while year-end adjustments tend to be scrutinized in several jurisdictions, year-end adjustments are permitted in over three quarters of the covered countries.

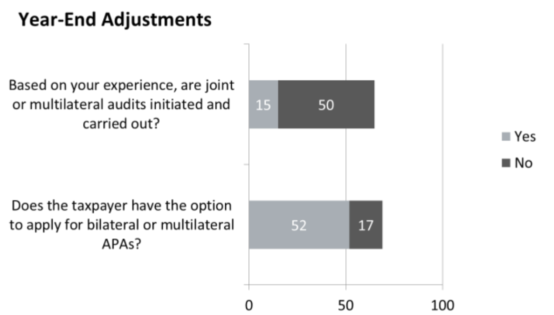
In about a third of these countries the taxpayer has to comply with certain guidance. Some countries require that year-end adjustments follow a pre-determined mechanism. Other countries have rules in place on the permissible timing of year-end adjustments. China, for instance, only allows upward adjustments as part of the annual filing that increase tax payable in China. Albania, Argentina, Lithuania, Angola, Estonia, Georgia, Belarus, Paraguay, and Taiwan are among the countries that do not accept year-end adjustments.



1.10. TP audits and APAs

Recurring topics of TP audits among the covered countries are I/C financing, losses, services, royalties and intangibles. At the time this report was compiled, joint audits have not been that prevalent yet but are overall expected to increase in the future. Countries with joint audit experience are concentrated in Europe based on the country feedback received.

Bilateral or multilateral APAs are permissible in approximately 70% of the covered countries. Argentina, Brazil, Bulgaria, Latvia, Serbia, Angola, Benin, Ecuador, Estonia, Ghana, Kyrgyzstan, Laos, Madagascar, Mauritius, Belarus, Panama and South Africa do not provide for the option to apply for a bilateral or multilateral APA (yet). No detailed APA rules are applicable in Kenya yet.



Please refer to the following country overview for detailed feedback on a jurisdictional basis.

2. Country Transfer Pricing Guide for 73 Countries

About WTS Global

With representation in over 100 countries, WTS Global has **already** grown to a leadership position as a global tax practice offering the full range of tax services **and aspires to become the preeminent non-audit tax practice worldwide.** 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 business people in a constantly changing world.

Acknowledgement

The authors would like to express their sincere gratitude towards all members of the WTS Global network who contributed towards the success of the WTS Global Country TP Guide.

We also would like to thank Heather Marwei and Anja Liske for their support and assistance as well as the business development team of WTS, specifically Alexa Wirtz, for compiling the information for the analysis.

Imprint

The above information is intended to provide general guidance with respect to the subject matter. This general guidance should not be relied on as a basis for undertaking any transaction or business decision, but rather the advice of a qualified tax consultant should be obtained based on a taxpayer's individual circumstances. Although our articles are carefully reviewed, we accept no responsibility in the event of any inaccuracy or omission. In case of questions with regard to the topics mentioned herein or any other professional topics, please refer to your WTS contact person or one of the other above-mentioned contact persons.

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