



China

WTS China TP Guide

Last Update: December 2017

1. Legal Basis	
Is there a legal requirement to prepare TP documentation?	Yes
Since when does a TP documentation requirement exist in your country?	2009
Are TP policies of multinational enterprises in principle accepted by the tax authorities, if they are in line with the OECD TP Guidelines?	No. China State Administration of Taxation ("SAT") has issued some of China's specific regulations on transfer pricing policies, referring to OECD TP Guidelines. Minor differences may occur under the two regulatory regimes.
Does your country apply the arm's length standard?	Yes
Which TP methods may be applied?	Comparable uncontrolled price method; Resale price method; Cost plus method; Transactional net margin method; Profit split method.
Have the documentation requirements of OECD BEPS Action 13 already been implemented (i.e. the LF, MF and CbCR concepts)?	CbCR/MF/LF implemented.
Reference to documentation and statements of local-government or tax authorities regarding OECD BEPS implementation status	Local file: article 13 of SAT Announcement [2016] No. 42; Master file: article 11 of SAT Announcement [2016] No. 42; CbCR: article 5 of SAT Announcement [2016] No. 42;
Reference to relevant articles of law, legislative regulation or applicable administrative guidance that are in place for TP documentation in general:	In addition to those mentioned above, there are some other regulations regarding transfer pricing as following: <ul style="list-style-type: none"> • Chapter 6 of Corporate Income Tax and Implementation (special tax adjustment); • SAT Announcement [2017] No. 6 (special tax adjustment); • SAT Announcement [2016] No. 64 (APAs); • Chapter 7 (cost sharing agreement), chapter 8 (controlled foreign enterprise), chapter 9 (thin capitalisation), chapter 10 (general anti-avoidance) of Guoshuifa [2009] No.2.

2. Master File (MF)	
What is the (consolidated revenue) threshold requirement for the obligation to prepare a MF?	Yes (I) Cross-border related party transactions have occurred in the year, and the ultimate holding enterprise which consolidates tested company's financial report already prepared the Masterfile; or (II) The total amount of the related party transactions in the year exceeds RMB1 billion.
Euro Equivalent	EUR 129,912,090
As from which year does this obligation exist?	Following the year that the threshold is met (so that the Master File is prepared for the year in which the threshold was met or exceeded). Applies for fiscal years starting from 2016.
When does the Master File need to be available?	The master files shall be completed within 12 months from the end of accounting year of the ultimate holding enterprise of the whole business group.
When does it need to be submitted?	The master files shall be submitted within 30 days based on the request by the tax authority.
Does the MF have to be prepared in the relevant local language ?	Yes. TP documentations should be prepared in Chinese.
Is documentation in English permissible?	No

What are the possible consequences of not having the MF available?	
Penalties?	Yes
Imprisonment?	No
Shifting of the burden of proof?	No
Other?	No
To which extent do the local rules differ from the OECD standard regarding the OECD content requirements for the MF as shown in the 2017 OECD TP Guidelines ?	<p>Most consistent with OECD requirements. In addition, China requires the provision of the following items:</p> <ul style="list-style-type: none"> • Industry structure adjustment, and shifting of enterprise functions, risks or assets within the group, which occurred in the accounting year; • The main functions, risks, assets and personnel of main R&D organisation; • The bilateral pre-agreed pricing arrangement entered into by each member entity in the enterprise group; • Name of the enterprise submitting the nationality report and its location.

3. Local File (LF)	Yes
What is the threshold requirement for the obligation to prepare a LF?	<p>Enterprises whose amount of yearly related party transactions satisfy any one of the following criteria shall prepare local files:</p> <p>(I) The amount of transfer of ownership of tangible assets (for processing of supplied materials, computed in accordance with Customs declaration prices in the year) exceeds RMB200 million.</p> <p>(II) The amount of transfer of financial assets exceeds RMB100 million.</p> <p>(III) The amount of transfer of ownership of intangible assets exceeds RMB100 million.</p> <p>(V) The total amount of other related party transactions exceeds RMB40 million.</p> <p>(VI) For enterprises with simple functions and limited risks and occurs continuous operating loss, even it does not meet the threshold of local files, the enterprise shall prepare the local file.</p>
Euro Equivalent	EUR 12,884,000
As from which year does this obligation exist?	The Local File is prepared for the year in which the threshold was met or exceeded).
When does the LF need to be available?	The local files shall be prepared before 30 June of the year following the year in which the related-party transactions occur.
When does the LF need to be submitted?	The local files shall be submitted within 30 days upon request by the tax authorities.
How and where should the LF be filed?	No
a. Does the LF have to be prepared in the relevant local language?	Yes
b. Or is documentation in English permissible?	No
What are the possible consequences of not having the LF available?	
Penalties?	Yes
Imprisonment?	No
Shifting of the burden of proof?	No
Other?	Yes

<p>To which 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?</p>	<p>Most consistent with OECD requirements. In addition, China requires to provide the following items:</p> <ul style="list-style-type: none"> • Value chain analysis; • Foreign investment; • Equity transfer by related parties; • Factors which influence transaction pricing, including intangible assets involved in related-party transactions and their impact, and special geographical factors such as cost savings, market premiums etc. • Pre-agreed pricing arrangements entered into with the tax authorities of any country other than China and tax rulings made by the tax authorities of any country other than China, which are directly related to related party transactions of the enterprise. • Explain the contribution of the enterprise towards the group's overall profits or remaining profits.
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4. Country-by-Country Reporting	Yes
<p>What is the threshold requirement for the obligation to prepare Country-by-Country Reporting?</p>	<p>Resident enterprises which fall under any of the following circumstances shall fill in a country-by-country report : Ultimate Parents of group with revenue of RMB 5.5 billion or greater; and Chinese subsidiary which is delegated by its ultimate parent to submit the CbC report.</p>
<p>Euro Equivalent</p>	<p>EUR 708,621,000</p>
<p>As from which year does this CbCR obligation exist?</p>	<p>CbCR is prepared for the year in which the threshold was met or exceeded). Applies for fiscal years as of 2016.</p>
<p>When and how do the tax authorities need to be notified who the reporting entity is?</p>	<p>To be filed together with the annual corporate income tax return (due 31 May). Possible to apply for an extension. For fiscal years starting in 2016. It should submit the CbCR simultaneously and notify the reporting entity.</p>
<p>If the reporting entity (ultimate parent or surrogate parent) is in your country, what is the CbCR submission deadline?</p>	<p>Before 31 May of the year following the year in which the entity has such obligation</p>
<p>Are there any deviating submission deadlines for the secondary mechanism?</p>	<p>Yes. OECD: CbCR filed no later than 12 months after the last day of the reporting fiscal year of the MNE group. China: Before 31 May of the year following the year in which the entity has such obligation</p>
<p>Does your country have a requirement that the financial figures of the group need to be aligned with?</p>	<p>No practical guidance so far</p>
<p>Where is the CbCR to be submitted ?</p>	<p>CbCR should be submitted to the tax authority in charge together with the annual CIT tax return.</p>
<p>How is the CbCR to be submitted, specifically, is there any prescribed standard?</p>	<p>The CbCR report is submitted in the annual CIT filing via tax tool.</p>
<p>What are the possible consequences of not having the CbCR available?</p>	
<p>Penalties?</p>	<p>Yes</p>
<p>Imprisonment?</p>	<p>No</p>
<p>Shifting of the burden of proof?</p>	<p>No</p>
<p>Other?</p>	<p>No</p>
<p>To which 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?</p>	<p>The threshold for CbCR is EUR 750 million according to OECD, whereas RMB 5.5 billion according to China's regulation.</p>
<p>Did your country sign the Multilateral Competent Authority Agreement on the Exchange of CbC Reports ("CbC MCAA")?</p>	<p>Yes</p>
<p>Did your country enter into other information exchange agreements, such as on a bilateral basis?</p>	<p>Yes</p>

Please specify the country involved and date the agreement came into force.	Upon China joining the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Information - CRS MCAA in 2018, China will gradually sign bilateral treaties with information exchanges countries in future.
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 tax return or transfer pricing specific returns

Does a taxpayer need to disclose information regarding TP documentation in his tax return?	Yes. Related-Party Transaction Form delivered in the annual CIT filings indicates TPD prepared or not
What would be the filing deadline?	Before 31 May of the year following the year in which the related-party transactions occur.
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 transfer pricing, what could be the legal consequences?	The tax authorities have the right to determine the taxable amount of income and impose a penalty pursuant to law.
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?	No practical guidance so far
Does a taxpayer need to file TP-specific returns?	Yes
Please state the filing form number and name.	Related-Party Transaction Form, 22 forms
What would be the filing deadline?	Before 31 May of the year following the year in which the related-party transactions occur.
What would be the penalties for non-compliance?	Penalties (no more than 10,000 RMB) should be imposed if the required tax return is not available.

6. Benchmarking

Is there any local guidance or requirement with regard to the preparation of a benchmark study?	<p>Yes. Article 14(4) of SAT Announcement [2016] No. 42 regulates comparable analysis should include the following factors:</p> <ul style="list-style-type: none"> • Factors taken into consideration in comparability analysis, including the characteristics of transaction assets or services, functions, risks and assets of the transaction parties, contract clauses, economic environment, business strategies etc. • The relevant information on functions performed, risks borne and assets used by comparable enterprises. • Method for searching, information source, selection criteria and reason for comparable targets. • Selected internal or external comparable uncontrolled transaction information, and financial information of comparable enterprises. • Adjustment of variance in comparable data and the reason.
Are there any materiality thresholds that apply for the requirement to have a benchmark study available?	No
Does your country apply the general guidance by the OECD to prepare a new benchmarking search every three years and an update of the financial data of the accepted comparable in year 2 or 3?	No

Or is a new search every three years without any financial updates in year 2 and 3 sufficient?	No
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7. Year-end adjustments

Does the taxpayer have to comply with any specific features or guidance?	No
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8. Transfer Pricing Audit and Dispute Resolution Mechanisms

What are currently the main TP areas of scrutiny by the tax authorities in your country?	<p>Tax authorities usually focus on enterprises with the following risk characteristics:</p> <ul style="list-style-type: none"> (1) involves related party transactions with large transaction amount, or varied types of related-party transactions; (2) incurs long-term losses, low profits or non-linear profits; (3) profit is lower than the industry's level; (4) the profit level does not match the functional risks borne, or the earnings shared do not match the costs shared; (5) carries out related party transactions with related parties located at low tax countries (regions); (6) fails to declare related party transactions or prepare contemporaneous documentation pursuant to the provisions; (7) the ratios of debt investments and equity investments accepted from the related parties exceed the stipulated standards; (8) an enterprise controlled by a resident enterprise or by a resident enterprise and a Chinese resident which is established in a country (region) with actual tax burden lower than 12.5% does not distribute profit or reduces profit distribution and such non-distribution or reduced distribution is not due to reasonable business needs; or (9) implements other tax planning or arrangements which do not have a reasonable business objective.
Based on your experience, are joint or multilateral audits initiated and carried out?	Yes
Does the taxpayer have the option to apply for bilateral or multilateral APAs?	Yes
Are there any restrictions?	<p>The enterprise whose related-party transactions exceed RMB 40 million for three consecutive years has opportunity to apply APA. Under any of the following circumstances, the tax authorities may decline the APA application;</p> <ul style="list-style-type: none"> (a) the tax authorities have implemented case investigation for special tax adjustment on the enterprise or other tax-related case investigation, and the case is yet to be closed; (b) the enterprise has not completed and submitted an report on annual related-party transactions pursuant to the relevant provisions; (c) the enterprise has not prepared, retained and provided contemporaneous documentation pursuant to the relevant provisions; <p>or</p> <ul style="list-style-type: none"> (d) the tax authorities and the enterprise are unable to arrive at a consensus during the preparatory meeting phase.

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