



Japan Tax Bulletin

Proposed change to the transfer pricing documentation rules

February 2016

In the 2016 tax reform proposal, an amendment to the transfer pricing documentation rules was introduced. The proposal is to make the transfer pricing documentation rules consistent with BEPS Action Plan 13.

1. Country by Country report

A domestic company that is the ultimate parent of a multinational enterprise group, is required to file electronically a country by country report in English, within one year of the day following the end of a business year. A multinational enterprise group is a corporate group which is required to prepare consolidated financial statements under its applicable accounting standards, and includes enterprises in two or more tax jurisdictions. A multinational enterprise group whose gross consolidated revenue is less than JPY 100 billion is exempt from filing a country by country report. The proposed change is scheduled to apply from reporting periods commencing after March 31, 2016.

2. Master file

A domestic company or a permanent establishment of a foreign corporation, which is a member of a multinational enterprise group is required to prepare and file electronically a master file in Japanese or English, within one year of the day following the end of a business year. Where there are two or more domestic companies or permanent establishments in a multinational enterprise group, one company representing the group is supposed to file the master file. A multinational enterprise group whose gross consolidated revenue is less than JPY 100 billion is exempt from filing a master file. The proposed change is scheduled to apply from reporting periods commencing after March 31, 2016.

3. Local file

A company which had transactions with foreign related persons is required to prepare documents necessary to calculate an arm's length price by its tax return filing date and maintain them for 7 years. The documents included in a local file are to be clarified, but will include documents provided for in Article 22-10① of the enforcement regulation of the Special Taxation Measures Law and Annex 2 to the proposed OECD Transfer Pricing Guidelines.

The contemporaneous documentation requirement will be exempted where the total amount of transactions with a foreign related person is less than JPY 5 billion and the amount of intangible asset transactions is less than JPY 300 million. Where documents requested by tax auditors are not duly submitted, the tax authorities are allowed to levy tax by estimating amounts as follows:

Foreign related person transactions subject to the contemporaneous documentation requirement

Where documents for foreign related person transactions subject to the contemporaneous documentation requirement are not submitted by the day specified by tax auditors within 45 days from a request, the tax auditors may correct the taxable income of the company by estimating an arm's length price for transactions with foreign related persons.

Where documents related to or supporting the contemporaneous documentation above are not submitted by the day specified by tax auditors within 60 days from a request, the tax auditors may correct the taxable income of the company by estimating an arm's length price for transactions with foreign related persons.

Foreign related person transactions not subject to the contemporaneous documentation requirement

Where documents for foreign related person transactions which are not subject to the contemporaneous documentation requirement, but are important to calculate an arm's length price, are not submitted by the day specified by tax auditors within 60 days from a request, the tax auditors may correct the taxable income of the company by estimating an arm's length price for transactions with foreign related persons.

The documents provided for in the enforcement regulations and Annex 2 to the proposed OECD Transfer Pricing Guidelines are as follows:

Documents required under Article 22-10(1)①

- Documents describing details of assets and services in the foreign related person transactions.
- Documents describing the functions performed and risks assumed by the company and the foreign related persons.
- Documents describing the intangible assets and tangible assets utilized in the foreign related person transactions.
- Contracts or equivalent documents for the foreign related person transactions.
- Documents describing the method of determining the foreign related person transaction price as well as the negotiation process on how the price was reached.
- Documents describing the profit/loss on the foreign related person transactions for the company and the foreign related persons.
- Documents describing the market analysis of the foreign related person transactions.
- Documents describing the business policy of the company and the foreign related persons.
- Documents describing other transactions that are closely connected to the foreign related person transactions, along with the contents of the transaction.

Documents required under Article 22-10(1)②

- Documents for selecting the transfer pricing method and reasons for the selection.
- Details of the selection of comparable transactions employed by the company.
- Documents for calculating the amounts attributed to the company and the foreign related when profit split methods are utilized.
- Reasons for combining multiple transactions into a single transaction and a description of each transaction.

Reasons and methods for adjusting differences between foreign related person transactions and comparable transactions where adjustments are made.

Annex II to Chapter V
Transfer pricing documentation –
Local file

The following information should be included in the local file:

Local entity

- A description of the management structure of the local entity, a local organization chart, and a description of the individuals to whom local management reports and the country(ies) in which such individuals maintain their principal offices.
- A detailed description of the business and business strategy pursued by the local entity including an indication whether the local entity has been involved in or affected by business restructurings or intangibles transfers in the present or immediately past year and an explanation of those aspects of such transactions affecting the local entity.
- Key competitors.

Controlled transactions

For each material category of controlled transactions in which the entity is involved, provide the following information:

- A description of the material controlled transactions (e.g. procurement of manufacturing services, purchase of goods, provision of services, loans, financial and performance guarantees, licences of intangibles, etc.) and the context in which such transactions take place.
- The amount of intra-group payments and receipts for each category of controlled transactions involving the local entity (i.e. payments and receipts for products, services, royalties, interest, etc.) broken down by tax jurisdiction of the foreign payer or recipient.
- An identification of associated enterprises involved in each category of controlled transactions, and the relationship amongst them.
- Copies of all material intercompany agreements concluded by the local entity.
- A detailed comparability and functional analysis of the taxpayer and relevant associated enterprises with respect to each documented category of controlled transactions, including any changes compared to prior years.¹
- An indication of the most appropriate transfer pricing method with regard to the category of transaction and the reasons for selecting that method.
- An indication of which associated

enterprise is selected as the tested party, if applicable, and an explanation of the reasons for this selection.

- A summary of the important assumptions made in applying the transfer pricing methodology.
- If relevant, an explanation of the reasons for performing a multi-year analysis.
- A list and description of selected comparable uncontrolled transactions (internal or external), if any, and information on relevant financial indicators for independent enterprises relied on in the transfer pricing analysis, including a description of the comparable search methodology and the source of such information.
- A description of any comparability adjustments performed, and an indication of whether adjustments have been made to the results of the tested party, the comparable uncontrolled transactions, or both.
- A description of the reasons for concluding that relevant transactions were priced on an arm's length basis based on the application of the selected transfer pricing method.
- A summary of financial information used in applying the transfer pricing methodology.
- A copy of existing unilateral and bilateral/multilateral APAs and other tax rulings to which the local tax jurisdiction is not a party and which are related to controlled transactions described above.

Financial information

- Annual local entity financial accounts for the fiscal year concerned. If audited statements exist they should be supplied and if not, existing unaudited statements should be supplied.
- Information and allocation schedules showing how the financial data used in applying the transfer pricing method may be tied to the annual financial statements.
- Summary schedules of relevant financial data for comparables used in the analysis and the sources from which that data was obtained.

Note

1. To the extent this functional analysis duplicates information in the master file, a cross-reference to the master file is sufficient.



Grant Thornton

An instinct for growth™

Contacts

Contact us for any enquiry on our services:

tax-news@jp.gt.com

Disclaimer

The aim of this newsletter is to provide information relating to recent Japanese tax and business. The information is general in nature and it is not to be taken as a substitute for specific advice. Accordingly, Grant Thornton Japan accepts no responsibility for any loss that occurs to any party who acts on information contained herein.

太陽グラントソントン税理士法人
Grant Thornton Taiyo Tax Corporation

© 2016 Grant Thornton Taiyo Tax Corporation. All rights reserved.

"Grant Thornton" refers to the brand under which the Grant Thornton member firms provide assurance, tax and advisory services to their clients and/or refers to one or more member firms, as the context requires. Grant Thornton Taiyo Human Capital Corporation is member firm of Grant Thornton International Ltd (GTIL). GTIL and the member firms are not a worldwide partnership. GTIL and each member firm is a separate legal entity. Services are delivered by the member firms. GTIL does not provide services to clients. GTIL and its member firms are not agents of, and do not obligate, one another and are not liable for one another's acts or omissions.

www.grantthornton.jp