



Transfer Pricing Documentation Requirements in 5 Questions

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Transfer pricing rules set forth in Article 13 of Corporate Income Tax Law No. 5520, effective as of 01 January 2007, were prepared considering international guidelines, in particular OECD Transfer Pricing Guidelines. Transfer pricing legislation requires the prices of all types of related party transactions to be determined in line with the arm's length principle. Transfer pricing documentation is defined as all the documents that taxpayers are obliged to prepare in order to prove their related party transactions were performed under arm's length conditions and at arm's length prices.

In addition to being a legal requirement, TP documentation is a proactive instrument of defence in a tax inspection, and keeps taxpayers prepared for retrospective examinations of related party transactions that could create time and cost burdens, and supports the transfer pricing policy being applied consistently.

As a result of the analysis carried out during the transfer pricing documentation process, corporations gain high-level perspective regarding their own businesses and operational models as well as their competitors and the industry they operate in. Therefore, they can take the necessary action if there is a need to change their commercial or operational models.

Due to increased transparency requirements in the post BEPS are many countries adopted new and more comprehensive transfer pricing documentation requirements. The threetiered approach that was adopted in many countries after OECD BEPS Project was included into the **the legislation with Presidential Decree No.2151 issued on February 25th, 2020, outlining changes to Cabinet Decree on Disguised Profit Distribution Through Transfer Pricing.**

In this leaflet, we include answers to the 5 most-asked questions about the transfer pricing documentation requirements with regard to the current legislation and the new developments introduced by the Presidential Decree. Our team of transfer pricing experts would be happy to provide you with support if you would like to get further information.

Kind regards,

Özlem Güç Alioğlu,
Transfer Pricing Services
Partner



1. What are the documentation requirements related to transfer pricing?

With the new Decree published in February 2020, 3-tier documentation approach is adopted in Turkey.

1. Country by Country Report - CbCR
2. Master File
3. Local File which was a requirement since 2007 and which has two components:
 - Annual Transfer Pricing Report
 - The Transfer Pricing, Controlled Foreign Corporations and Thin Capitalisation Form (“Appendix-3 Form”)

Master File



Master File is a group level documentation which should be prepared based on main activities of the MNE group, covering five main categories including;

- a. Organizational structure
- b. Description of business activities of the Group
- c. Intangibles owned by the Group
- d. Intercompany financial transactions
- e. Financial and tax position of the Group

Country by Country Report (CbCR)



CbCR is a report covering revenues, profit/loss before tax, income/corporate taxes paid, income/corporate taxes accrued, stated capital, accumulated earnings, number of employees and tangible assets other than cash and cash equivalents as per countries where the MNE group operates.

Annual Transfer Pricing Report



According to the Transfer Pricing General Communiqué, an annual transfer pricing report should cover the following:

- Overview of the company and the company's parent group,
- Overview of the industry the company operates in,
- Function, risk and asset analyses of the company,
- Information on related parties with which the company carries out transactions,
- Information on related party transactions, sample agreements relating to related party transactions,
- Transfer pricing analyses (applied transfer pricing methods and benchmark analyses).
- Reasons for multi year analyses*
- Sample advance pricing agreements*
- Tables indicating the connection between the financial data used when applying the transfer pricing methods and the annual financial statements.

CbCR Notification



Turkish taxpayers that are part of an MNE group which meet the CbCR requirements should notify the Tax Authorities with a specific notification form regarding whether they are the ultimate parent entity (UPE) or Surrogate Parent Entity (SPE) and regarding which country the CbCR will be submitted in and by which entity on behalf of the MNE group.

Appendix-3 Form



The Appendix-3 Form discloses related parties and related party transactions, volumes and transfer pricing methods used in these transactions.

2. Who should prepare the transfer pricing documentation?

Master File



The Turkish corporate taxpayers with at least TRY 500 million in both net sales and assets as per the Corporate tax return of previous accounting period are required to prepare a Master File a Master File is prepared by a group entity on behalf of the MNE group, Turkish translation of the existing Masterfile would be sufficient.

Country by Country Report (CbCR)



- Turkish UPE of a MNE Group with at least EUR 750 million consolidated revenue in previous fiscal year, based on its consolidated financial tables, should file a CbCR.
- In cases where the MNE Group's consolidated revenue exceeds EUR 750 million and the UPE of a MNE group or the SPE (in case it is a reporting entity) is not a tax resident in Turkey then the Turkish tax resident of the MNE should file a CbCR in Turkey, if at least one of the conditions below is met. (in cases where there are multiple entities in Turkey, a single entity will file a CbCR on behalf of the others).
 - a. The UPE or the Surrogate Parent Entity is not obligated to file a CbCR in its jurisdiction of tax residence;
 - b. The jurisdiction in which the UPE or the SPE is a resident for tax purposes does not have a current International Agreement to which Turkey is a party
 - c. Absence of a Qualifying Competent Authority Agreement in effect to which Turkey is a party, related to CbCR information sharing;
 - d. There has been a Systemic Failure of the information exchange mechanism.

Annual Transfer Pricing Report



Taxpayers who are obliged to prepare annual transfer pricing reports are stated below:

- Corporate income taxpayers registered with the Large Taxpayers Tax Office that perform transactions with resident and/ or non-resident related parties and/ or related parties in Turkish free trade zones,
- Other corporate income taxpayers that perform transactions with non-resident related parties and/or related parties in Turkish free trade zones,
- Corporate taxpayers that operate in Turkish free trade zones and perform transactions with resident related party transactions.

CbCR Notification



Turkish taxpayers that are a part of a domestic or a foreign MNE group which meets the CbCR requirements are required to file an electronic notification regarding CbCR filing.

Appendix-3 Form



Corporate income taxpayers that perform domestic, foreign or Turkish free trade zone related party transactions within an accounting period must prepare annual transfer pricing documentation.

3. How should the transfer pricing documentation be filed/submitted?

Master File



Master File must be prepared by the end of the following accounting period and must be submitted to the Tax Authorities upon request within 15 days.

The master file and its appendices should be presented in Turkish.

Country by Country Report (CbCR)



Submission is required to be done electronically within 12 months after the end of the reporting period.

Annual Transfer Pricing Report



The report must be prepared and retained until the corporate income tax return submission deadline. If requested after this deadline, it is obligatory to submit this report to the tax authority or those in charge of performing a tax inspection within 15 days.

Annual TP Report and its appendices should be presented in Turkish.

CbCR Notification



CbCR notification: Notifications for FY2019 will be submitted by the end of August 2020 whereas for the following periods, notifications will be submitted annually by the end of June of the relevant year. CbCR notification will be submitted with "CbCR notification form" electronically.

Appendix-3 Form

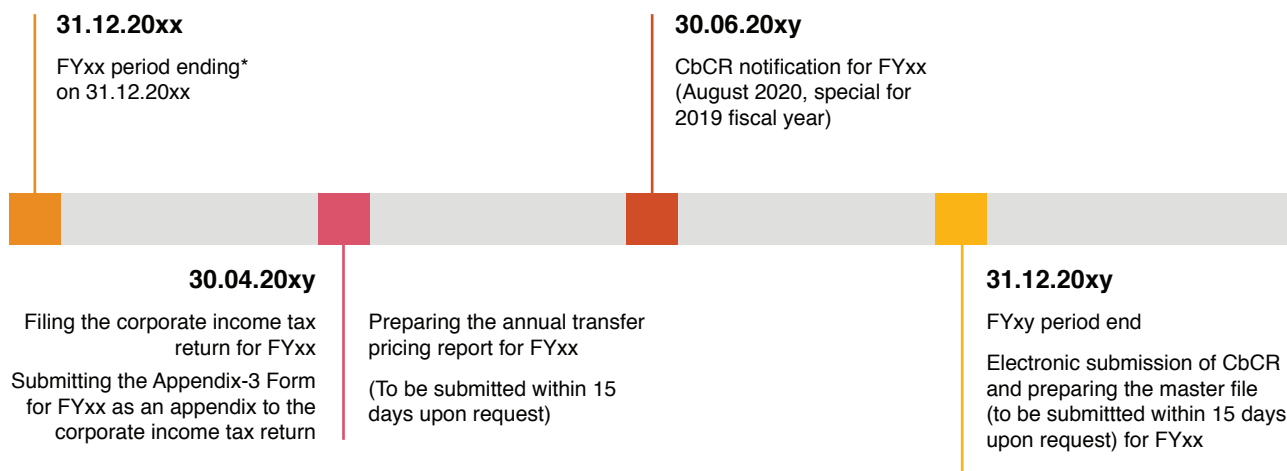


It should be submitted electronically to the affiliated tax office as an appendix to the corporate income tax return.



4. What is the deadline for filing transfer pricing documentation?

The first reporting period for Masterfile and CbCR/CbCR notification will be the accounting period starting after January 1st, 2019.



* Sample for (FYxx), the accounting period ending on 31 December 20xx. 20xy must be considered as the year following 20xx.



5. What are the consequences of failing to prepare the transfer pricing documentation properly and in a timely manner?

Special irregularity fine as per Tax Procedural Law, is applicable if transfer pricing documentation is missing or has misleading information or is not prepared within the deadline. A draft regulation under Tax Procedural Law stipulates a more serious fine for not complying annual TP documentation requirements.

If the documentation requirements are fulfilled in a timely manner, the tax loss penalty applied related to transfer pricing will be reduced by 50% in case of a tax inspection. Taxpayers who do not prepare documentation properly and in a timely manner shall not benefit from the 50% tax loss penalty reduction that is granted to taxpayers who do so.

What is more important than these consequences is the fact that the company shall not be able to use the documentation as a defence argument and be exposed to all types of potential claims by the tax inspector, if the documentation is not prepared properly and in a timely manner and shall have the burden of proof against any tax claims.

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Contact



Özlem Güç Alioğlu

Transfer Pricing Services,
Partner
+90 212 326 6462
ozlem.guc@pwc.com



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