

Japan Tax Bulletin

Revised Transfer Pricing Documentation requirements

June 2017

The major reform of Transfer pricing documentation rules was made in 2016 and the relevant law and legislation were changed. This reform was made as a response to Organisation for Economic Co-operation and Development (OECD) Base erosion and profit shifting (BEPS) Action Plan 13. The National Tax Agency issued four guidelines, as shown below, that provide concrete explanations and practical examples related to this reform for the members of multinational enterprise in Japan.

- *Outline of the Revision of the Transfer Pricing Documentation rules in Japan*
- *References of preparing the documents (Local File) considered as necessary to calculate Arm's Length Prices*
- *Frequently asked questions (FAQ)*
- *Manual for e-Tax*

The summary of the first document is as follows.

1. *Outline of the Transfer Pricing Documentations in Japan*

Multinational enterprise (MNE) Groups with a consolidated total revenue for the Ultimate Parent Entity's preceding fiscal year of less than 100 billion yen" are not required to file Notification for Ultimate Parent Entity, Country by Country (CbC) report and Master file. The 100 billion yen threshold is decided based on BEPS 13's 750 million EURO. These thresholds are fixed and do not change with exchange rates fluctuation until the next reform.

In principle, if their Ultimate and Surrogate Parent Entities are located in a foreign country, Japanese corporations and foreign corporations with Permanent Establishment (PE) that is a Constituent Entity of a Specified MNE Group do not have the duty to submit a CbC Report because the information equivalent to the CbC Report submitted by the Ultimate or Surrogate Parent Entity to the tax authorities in the country where it resides is transmitted by the tax authorities to the national tax authorities in Japan.

Notification for Ultimate Parent Entity and Master file should be submitted by at least one constituent entity in Japan.

For local file, constituent entities are exempted from the duty of preparing local transfer pricing contemporaneous documentation:

- 1) if the amount of transactions (total of receipts and payments) with the foreign-related party during the previous business year (the current business year if there was not the previous one) was less than 5 billion yen, and;
- 2) if the amount of transactions of intangibles (total of receipts and payments) with the foreign-related party during the previous business year (the current business year if there was not the previous one) was less than 300 million yen.

Constituent entities outside of the scope of contemporaneous documentation are only required to prepare "documents considered as important to calculate ALP (Documents equivalent to the local file)", however, this documentation is not necessary every year.

2. *The Notification for Ultimate Parent Entity*

At least one of the constituent entities in Japan has to submit The Notification for Ultimate Parent Entity. Yet, in principle, all constituent entity must submit Master File but if one of the constituent entities has submitted "information on the corporations it represents when submitting Master File" along with the Notification for Ultimate Parent Entity via e-tax, then other entities in Japan are not required to submit the Master File.

3. *The CbC Report*

If the Ultimate Parent Entity is located in countries outside of Japan, then Japanese corporations and foreign corporations with PEs in Japan that are considered as Constituent Entities are not required to submit a CbC Report The reason behind is that, the information equivalent to the CbC Report submitted by the Ultimate Entity to the tax authorities in the country where it resides is also available to the national tax authorities in Japan.



If, however, the automatic exchange of CbC Report does is not implemented between authorities in which the MNE operates, then Constituent Entities are required to submit CbC Report to the District Director of a Tax Office via e-Tax.

Failure to submit CbC Report will result in a fine of 300 thousand yen.

4. *The Master File*

Strictly speaking, all of the Japanese corporations that have at least two constituent entities at different countries and its total consolidated revenue are 100billion yen or more or foreign corporations with PE in Japan, all of which are considered as Constituent Entities, have the obligation to submit a Master File. However, if one of the corporations submits “information on the corporations it represents when submitting Master File” along with the Master File via e-tax, then the rest of the entities in Japan are not required to submit a Master File.

It should be noted that automatic exchange of Master File does not work between tax authorities. A representing Entity in Japan must submit a Master File. Master file has to be prepared in Japanese or English.

Failure to submit Master File will result in a fine of 300 thousand yen.

5. *The Local File*

Constituent entities are required to prepare Local File if they have foreign affiliated transactions (or the equivalent to the Local File). However, the preparation period and due date is different from other documentation.

In the cases listed below, corporations are exempted from the duty of contemporaneous documentation for Controlled Transactions:

- 1) If the amount of transactions (total of receipts and payments) with the foreign-related party during the previous business year (the current business year if there was not the previous one) was less than five billion yen, and;
- 2) If the amount of transactions of intangibles (total of receipts and payments) with the foreign-related party during the previous business year (the current business year if there was not the previous one) was less than 300 million yen

The entity that requires contemporaneous documentation has to prepare Local Files by the deadline of submitting its final tax return every year. The deadline for submitting the prepared contemporaneous documentation of Local File is within 45 days from the day designated by tax examiners.

Entities with no requirements to prepare contemporaneous documentation are not obligated to prepare Local File by the deadline of submitting its final tax return every year. However, tax payers have to submit a Local File or the equivalent of it when requested by tax examiners. The deadline is within 60 days from the date designated by tax examiners.

Failure to submit Local File is not punishable by any fine. However, if the Local File is not presented or submitted by the appointed date, the tax authorities can impose tax by estimation. Secret comparables in which they have gathered from corporations with similar business activities can be used to calculate the imposing tax estimate.

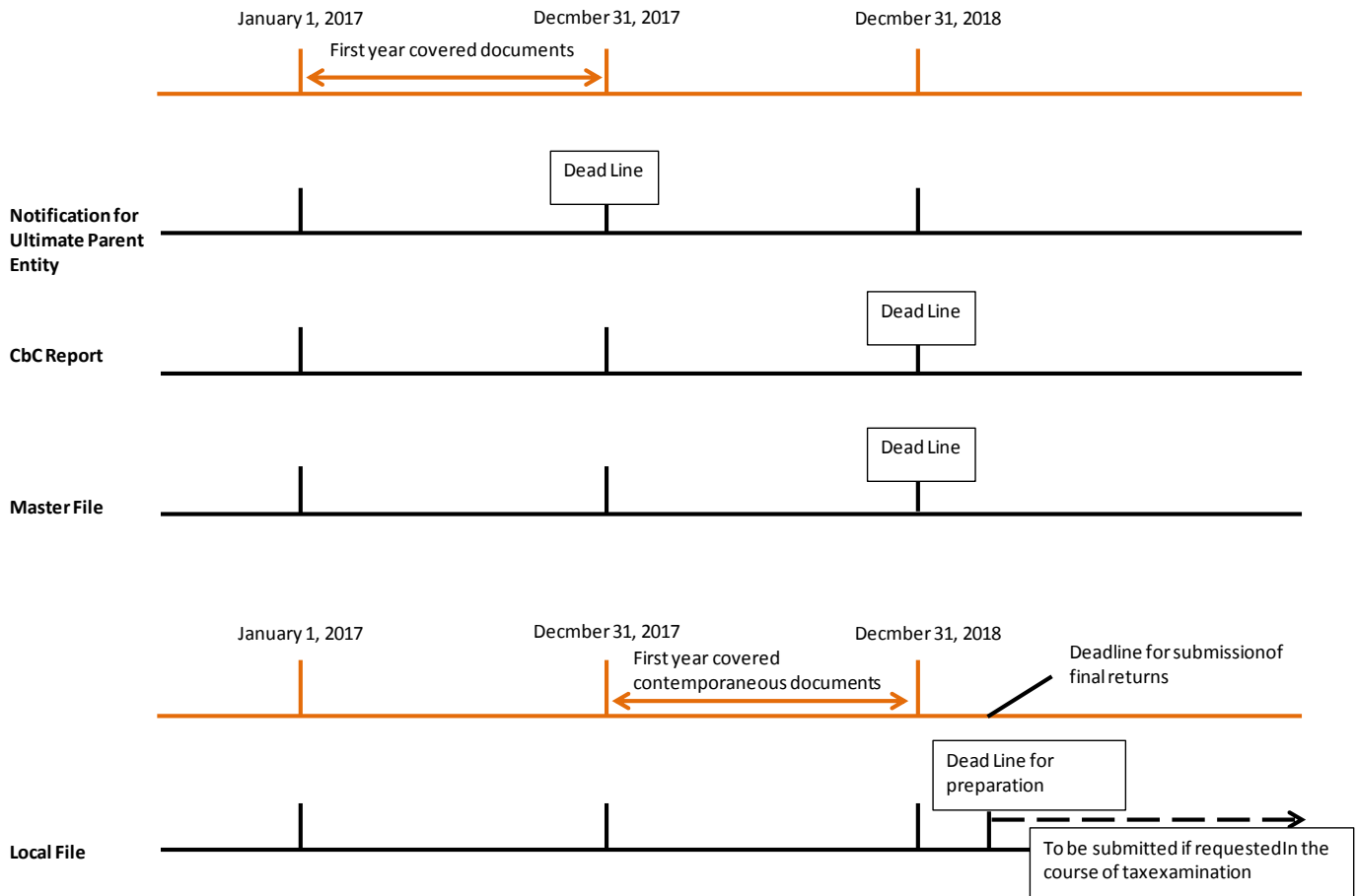
6. *The deadline for submitting Transfer Pricing Documentations*

The chart shown below illustrates the submission deadline of each document for Ultimate Parent Entity that has its FYE in December 31.

The link to the English document is as below.

https://www.nta.go.jp/shiraberu/ippanjoho/pamph/pdf/h28iten-kakaku_en.pdf

The English translation of the other three document is not available.



7. Documentation for Permanent Establishment (PE)

Starting from the fiscal year of April 1 2016 or after, a tax payer that files tax returns for its PE in Japan has to adopt the Authorised OECD Approach (AOA). Tax payer has to prepare the following four documentations.

- 1) Documents describing the external transaction
 - Description of the external transaction
 - Details of how assets were used for the external transaction
 - Descriptions of the functions performed in the external transaction by Head office and PE, as well as the risks associated with these functions.
 - Descriptions of the divisions that carry out functions performed for the external transaction, as well as the how each division operates.
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- 2) Documents describing the internal transaction
 - Documents that are an equivalent of Agreement, Invoice, Receipt.
 - Details of how assets were used for the external transaction.
 - Descriptions of the functions performed in the internal transaction by Head office and PE, as well as the risks associated with these functions.
 - Descriptions of the divisions that carry out functions performed for the internal transaction, as well as the how each division operates.
 - Documents that show evidence of the transaction performed.
- 3) Documents describing the allocation of costs
 - Documents that are an equivalent of Agreement, Invoice, Receipt.
 - Documents that shows the cost allocation is appropriate.
- 4) Documents for calculating the arm's length price
 - Documents that are an equivalent of Local File.



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