



Transfer Pricing  
**Country Summary**

**Philippines**

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## 1. Introduction

The Philippines is not a member of the OECD and neither participates in the OECD/G20 Inclusive Framework. The Philippines does not have formal transfer pricing documentation requirements to submit the master file, local file, country-by-country reporting and the notification of country-by-country reporting for qualifying multinational groups. Taxpayers are not under a statutory obligation to prepare transfer pricing documents, although it is recommended. It is obligatory to submit BIR Form 1709 for all taxpayers engaged in related party transactions.

## 2. Laws & Regulations

### a) References to OECD/EU/Local Rules

The legal framework for transfer pricing is set out at Section 50 of the National Internal Revenue Code (Tax Code) of 1997. Section 50 provides the arm's length principle to domestic and international related party transactions, and is based on the OECD transfer pricing guidelines.

### b) Definition of Related Party

Related party is defined as:

- Enterprises that participate directly or indirectly in the management, control or capital of another enterprise; or
- The same person that participates directly or indirectly in the management, control or capital of two enterprises.

Furthermore, control will be assumed to exist if "one entity holds not less than 30% of the outstanding shares entitled to vote of a corporation, in addition to other situations putting the parties in a controlled environment or relationship"

### c) Nature of Transfer Pricing Documentation

In the Philippines the tax authorities accept and rely on the OECD Guidelines. Also, certain transfer pricing regulations (RMO 63-99, RR 2-13) are largely based on the OECD Commentaries.

### d) Tax Havens & Blacklists

The Philippines does not have a blacklist provision.

### e) Advance Pricing Agreement (APA)

Unilateral, bilateral and multilateral APAs are available. The Bureau of Internal Revenue (BIR) has not agreed any APAs to date. The proposed regulations provide general guidance on APAs, which will be administered by the BIR once finalized. According to the draft regulations APAs would be applicable for up to 3 years from the date of agreement. APA application fee is not yet determined.

### f) Audit Practice

The transfer pricing audit is carried out by local tax authorities. Companies are audited on a discretionary basis. Transfer pricing scrutiny is most likely applied to (i) companies with consistent losses and increasing assets, (ii) management and other inter-company services, (iii) royalties and intercompany financing. In addition, domestic transfer pricing issues such as (iv) expenses of related companies with tax privileges are transferred to related companies that are subject to regular income tax rate, (v) income and/or expenses are transferred to a related company in order to minimize tax liabilities are also targeted for transfer pricing scrutiny.

### 3. Transfer Pricing Documentation

#### a) Level of Documentation

There is no statutory obligation to prepare transfer pricing documentation but taxpayers are recommended to do so in order to be able to respond to BIR queries. The proposed legislation provides an indication of the type of documentation that would be helpful in an enquiry, however, the BIR leaves the decision to the taxpayer on the depth of detail that is provided, which should be commensurate with the level and complexity of the related party dealings.

Examples of information indicated in the proposed regulations as being helpful in an analysis of the arm's length nature of related party transactions include:

1. a worldwide organizational structure, showing the location and ownership linkages amongst all related parties;
2. the group's line of business, industry dynamics, market, regulatory and economic conditions in which it operates;
3. the group's business models and strategies (past, present and future);
4. information on the principal business activities and functions of each party in the group, as well as the business relationships (services provided, goods sold, intangible use, etc.) amongst all related parties;
5. consolidated financial statements for the last 3 years must also be provided, if applicable;
6. the company registration number, address, etc, for each related party operating in the Philippines;
7. detailed information on the entity's line of business, business models and strategies, and financial information, including detailed profit and loss statements, for the last 3 years must be provided;
8. details of transactions between the Philippine entity and all related parties and the contracts or agreements (if any) to show the terms of the transactions must be provided;
9. segmented financial accounts with respect to the transactions, for the last 3 years including any allocation keys used in segmenting the financial accounts;
10. a functional analysis, including the assets employed and risks assumed by the relevant enterprise; and
11. an economic analysis documenting the choice of the transfer pricing method, the choice of the tested party and reasons supporting the choice, details on comparables and the screening criteria for choosing the comparables, comparability analysis of the related party transactions and the comparables, as well as the adjustments made to achieve comparability, and the determination of the arm's length price/margin.

All taxpayers engaged in related party transactions are under an obligation to file the BIR Form 1709 (BIR No. 1709 December 2020 "Information Return on Transactions with Related Party). Apart from disclosing such related transactions, the following additional information should be included:

#### Part II of the form

1. the registered name of the related party, its address in the country of tax residence and Taxpayer Identification Number;
2. a summary of RPTs per nature of transaction;
3. the amount of tax paid in the foreign country on all types of income received abroad, and the amount of tax withheld on income payments to foreign related parties; and
4. a declaration whether or not the taxpayer availed of benefits under the treaty to justify the application of tax exemption or preferential tax treatment.

#### Part III of the form

1. the aggregate amount per transaction type and per relationship type;
2. the outstanding balance if payment was made on installment basis;
3. terms (interest or non-interest bearing, etc.) and conditions (secured or unsecured, etc.); and
4. provisions for doubtful debts and bad debt expense recognized during the taxable year.

## b) Industry Analysis

By identifying value drivers for the relevant industry, a first indication of the level of profitability common in the industry is being given.

## c) Company Analysis

A description of the management structure of the local entity, a local organisation 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.

## d) Functional Analysis

In conducting a functional analysis, an assessment is made of the significant activities and responsibilities that are performed by the related parties relevant to the Intercompany Transactions under review, the tangible and intangible assets that are employed and the risks that are borne in undertaking the business activities. Such an assessment is consistent with the recommendations that have been made in the OECD Guidelines at paragraph 1.51.

## e) Choice of Transfer Pricing Method

The Philippines relies on the 2010 OECD Transfer Pricing Guidelines for transfer pricing methods. In particular, the following methods are accepted:

- Comparable uncontrolled price (CUP) method
- Resale price method
- Cost plus method
- Profit split method
- Transactional net margin (TNMM) method

The choice of transfer pricing method depends on circumstances, but generally should be the most appropriate method.

## f) Economic Analysis - Benchmark Study

Local comparables are preferred. In case local data are insufficient, foreign comparables can be accepted. In the absence of such, regional comparables are generally accepted. Foreign comparables will not be accepted without scrutiny.

Secret comparables will be rejected.

## g) Inter-company (IC) Legal Agreement

Although an Inter-company legal agreement formalizes the business and financial relationship between group entities, the legal agreements have a lower ranking since the OECD 2017 Guidelines made the "conduct of parties" the prevailing concept.

## h) Financial Statements

It is obligatory to make related party disclosures and submit such disclosure together with the annual income tax return (*BIR Revenue Regulation No.34 of 2020*).

### i) Production Process for TP Relevant Returns, Documents, Forms and Financials

In the chart below, the existence of the filing requirements with the details of which format is used, the latest filing date, notification requirement and its deadline, thresholds to be applied in case it exists, and the required languages are demonstrated. These information can be seen respectively for CIT, master file, local file, CbCR, local forms, annual accounts and segmented P&L documentations.

	Prepare or File?	Format	Deadline	Notification Deadline*	Threshold* (Yes/No)	Local Language (Yes/No)*(If "No", it can be filed in English)
<b>Corporate Income Tax</b>	File	Local GAAP	April, 15 <sup>th</sup> .	No	No	No
<b>Master File</b>	N/A	N/A	N/A	N/A	N/A	N/A
<b>Local File</b>	N/A	N/A	N/A	N/A	N/A	N/A
<b>CbCR</b>	N/A	N/A	N/A	N/A	N/A	N/A
<b>Local Form</b>	File	TP documentation BIR Form No. 1709 (Information Return on Transactions with Related Party (Domestic and/or Foreign))	April, 15 <sup>th</sup> .	No	No	No
<b>Annual Accounts</b>	File	Local IFRS	April, 15 <sup>th</sup> .	N/A	No	No
<b>Segmented P&amp;L</b>	N/A	N/A	N/A	N/A	N/A	N/A

\* Philippines has signed the MCAA agreement for the filing of CbCR.

\* Philippines does not request as much and detailed information from smaller and less complex enterprises (SME's included) than it does from large and complex enterprises.

### j) Mandatory Language

Filipino and English languages are permitted.

### k) Notification Requirement

The Philippines does not have a CbC notification requirement.

#### l) Record Keeping

Documentation should be kept for three years after the last day prescribed by law for the filing of the return to which the documentation relates.

#### m) Penalties and Interest Charges

If transfer pricing adjustment leads to additional income tax, a penalty of 25 percent is charged on the extra tax amount. An interest of 20 percent (50 percent in case of fraud) per year is charge on penalties. Interest is imposed on the deficiency tax (but not on the surtax) at 20% per annum. A compromise penalty up to PHP 50,000 may also be imposed.