



Transfer Pricing
Country Summary

New Zealand

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1. Introduction

New Zealand is a member of the OECD and has implemented CbC reporting requirements (GC 6(1) of the ITA). The authorities of New Zealand seem to favour the OECD's Master File and Local File approach although it is not a statutory requirement to prepare or file such documentation. It is however expected to have master file and local file documentation ready in case of an audit, to support the position of the taxpayer.

2. Laws & Regulations

a) References to OECD/EU/Local Rules

New Zealand transfer pricing legislation is contained within Sections YD 5, GB 2, and GC 6-14 of the Income Tax Act 2007 (ITA)¹.

This legislation closely follows the OECD Transfer Pricing Guidelines, as well as the United States Section 482 Regulations. The Inland Revenue Department (IRD) Guidelines (2000)² also endorse the key Australian Tax Office (ATO) rulings to the degree to which they are not inconsistent with the OECD guidelines – specifically the 4-step process in 98/11 and the safe harbor methodology for services in 99/1.

There is no explicit statutory requirement in New Zealand to prepare and maintain transfer pricing documentation. However, it is considered prudent to do so in order to demonstrate and justify that the intercompany transactions are aligned with the arm's-length principle. New Zealand, being an OECD member, has stated express agreement with the OECD Transfer Pricing Guidelines. On 3 March 2017, the Government issued a discussion Document "*BEPS- Transfer Pricing and Permanent Establishment Avoidance*"³ which endorses the OECD recommendations on transfer pricing documentation as the Master File and Local File approach. Even though this documentation is not required in New Zealand, the discussion document states that it might be useful for taxpayers with material transfer pricing risks.

New Zealand introduced new legislation which addresses the OECD's BEPS initiative, effective from July 2018. In fact, New Zealand signed the Multilateral Competent Authority Agreement on exchanging Country by Country Report (CbCR) on 12 May 2016. Articles 17 and 35 of the Tax Administration Act ("TAA")⁴ enforce the requirements of the agreement.

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b) Definition of Related Party

Subparts YA and YB of the Income Tax Act 2007 state that any two companies are associated persons when there is a group of persons that:

- have a 50 per cent or more voting right, market value or income interest in the two companies;
- control the two companies by any other means.

There are also definitions of associated person for natural persons, partnerships and trusts.

¹ See <http://www.legislation.govt.nz/act/public/2007/0097/439.0/DLM1512301.html>.

² See *A guide to the application of section GD 13 of New Zealand's Income Tax Act 1994*, <https://taxpolicy.ird.govt.nz/sites/default/files/2000-other-transfer-pricing-guidelines.pdf>.

³ See <https://taxpolicy.ird.govt.nz/sites/default/files/2017-dd-transfer-pricing-pe.pdf>.

⁴ See <http://www.legislation.govt.nz/act/public/1994/0166/350.0/DLM348343.html>.

Note that section GB 2 can extend the application of sections GC 7-10 to non-associated parties where there is a collateral arrangement (such as a market sharing arrangement, an arrangement to enter into a particular market, a back-to-back supply arrangement, or an income-sharing arrangement).

c) Nature of Transfer Pricing Documentation

There is no explicit statutory requirement to keep and prepare transfer pricing documentation at the moment, but the IR has required taxpayers to keep and prepare documentation to support how their transfer price was determined and why it is consistent with the arm's-length principle.

d) Tax Havens & Blacklists

Although New Zealand is not considered a tax haven, there are certain characteristics that lead people to associate the country with tax havens. The availability of offshore services, such as offshore business entities and offshore trust formation, qualifies New Zealand as a tax haven.

As a tax haven, New Zealand has a business structure in place that allows clients to save money on corporate and income taxes. The limited partnership company in New Zealand can be set up to operate as an offshore business entity. If all of its earnings are accumulated outside of the country, an offshore corporation incorporated in New Zealand pays no local taxes. A New Zealander is not required to have partners who are also citizens of the country.

As a tax haven, New Zealand has certain laws in common with some of the world's top tax havens. For example, the names and information of limited partners in a limited partnership are not made public, ensuring their privacy. One of the fundamental characteristics of any tax haven is privacy. The New Zealand Limited Partnership Act does not require limited partnership companies to file annual audits with the tax authority in the tax haven. The laws require the limited partnership to prepare audits, but they are not required to be made public.

e) Advance Pricing Agreement (APA)

Section 91E of the TAA allows the IRD to issue unilateral APAs in the form of a binding ruling. Bi- or multilateral APAs may be entered into under the mutual agreement procedure in New Zealand double tax treaties.

The IRD is keen to see more taxpayers seeking APAs in order to avoid potentially costly and time-consuming audits, and therefore favors a flexible approach allowing APAs to be concluded in a six-month period. The IRD does not have formal APA guidelines. The IRD suggests a pre-application meeting to make the APA application procedure less time consuming.

f) Audit Practice

The tax authorities of New Zealand have indicated that they will focus on the following key areas:

- unexplained tax losses returned by foreign-owned groups;
- loans in excess of NZD 10 million (USD 6.4 million) principal and guarantee fees;
- payment of unsustainable levels of royalties and/or service charges;
- material associated-party transactions with no or low-tax jurisdictions;
- the use of offshore hubs for marketing, logistics and procurement services;
- appropriate booking of income arising from e-commerce transactions;
- supply chain restructures; and
- any unusual arrangements or outcomes that may be identified in controlled foreign company (CFC) disclosures.⁵

⁵ [Compliance programme for transfer pricing \(ird.govt.nz\)](https://www.ird.govt.nz/compliance-programme-for-transfer-pricing). See also IBFD.

3. Transfer Pricing Documentation

a) Level of Documentation

1. Contemporaneous Documentation: There are currently no regulations in New Zealand that requires taxpayers to use the Master File or the Local File OECD approach; however, the discussion document considers that such approach is useful for taxpayers with transfer pricing risks to comply with the arm's length principle. The discussion document proposed that a local File and Master File will be required on specific request or audit by the tax authority. Therefore, the IRD expects taxpayers to maintain contemporaneous transfer pricing documentation in the form of:

- Master file which provides an overview of the multinational's global business operations and transfer pricing policies;
- Local file which provides the detailed information on the operations of the New Zealand taxpayer and the corresponding associated party transactions. Transfer pricing analysis supporting the arm's length nature of the transactions from a New Zealand perspective is also required.

The IRD expects a taxpayer to make a sensible cost-benefit analysis of the preparation and maintenance of documentation before deciding whether a full or limited transfer pricing analysis is appropriate.

A limited transfer pricing analysis should contain the following minimum documentation:

- identification of the cross-border transactions which are subject to a transfer pricing exposure;
- a broad functional analysis of the taxpayer's operations to identify the critical functions being performed;
- an estimate of the business risk of not undertaking and documenting a more detailed transfer pricing analysis; and
- an estimate of the costs of complying with the transfer pricing rules.

A limited transfer pricing analysis does not preclude the IRD from substituting a more reliable measure of the arm's length price where a cost-benefit analysis indicates the need for a full transfer pricing analysis.

In case of the need of a full analysis, the IRD expects the following documentation:

- a functional analysis;
- an appraisal of potential comparables;
- an explanation of the process undertaken to select and apply the method(s) used to determine the transfer prices, and why it is considered to provide a result that is arm's length compliant; and
- Details of special circumstances that have influenced the price setting.

Taxpayers who prepare documentation on basis of a full analysis or limited analysis (sustained by a sensible cost benefit analysis) are more likely to ensure that the burden of proof shifts to the IRD.

2. Country by Country Report⁵: It applies to corporate groups headquartered in New Zealand with annual consolidated group revenue exceeding equivalent to EUR 750 million. The following data needs to be reported for each jurisdiction where the multinational operates:

- Gross revenues showing related and unrelated party categories;
- Profit (loss) before income tax;
- Income tax paid on cash basis;
- Stated capital;
- Accumulated earnings;
- Number of employees; and,

- Tangible assets other than cash and cash equivalents.

The report must be prepared in New Zealand Dollar ("NZD").

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 in paragraph 1.51.

e) Choice of Transfer Pricing Method

Consistent with the OECD Transfer Pricing Guidelines, the CUP method, the resale price method, the cost-plus method, the profit split method and the transactional net margin method (TNMM) are acceptable. Other methods may also apply, provided that the resulting pricing is in accordance with the arm's length principle. Taxpayers should seek to apply the most appropriate method in light of their facts and circumstances, and may apply secondary methods to strengthen their position, although there is no requirement to perform analysis under more than 1 method.

In terms of section GC13(3) of the ITA, the following factors may determine the method to be applied:⁶

- the degree of comparability between the transactions used for comparison and the transactions of the taxpayer under the transfer pricing arrangement:
- the completeness and accuracy of the data relied on:
- the reliability of all assumptions:
- the sensitivity of a result to possible deficiencies in the data and assumptions.

f) Economic Analysis – Benchmark Study

New Zealand follows the guidance on comparability analysis outlined in Chapter III of the OECD TP Guidelines. Given that New Zealand generally has insufficient data, the tax authorities generally accept foreign data such as Australia, Europe, the United Kingdom and North America.

⁶ [Income Tax Act 2007 No 97 \(as at 25 November 2021\), Public Act GC 13 Calculation of arm's length amounts – New Zealand Legislation.](#)

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

Since the OECD 2017 Guidelines made the “conduct of parties” the prevailing concept, parties need to also make sure their conduct is in line with what is reported in their accounts.

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. This 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)
Corporate Income Tax	File	Local GAAP	7 July/ 7 August	No	No	No
Master File	Prepare*** (not obligatory)	OECD Guidelines	March, 31 st .	No	No	No
Local File	Prepare*** (not obligatory)	OECD Guidelines	March, 31 st .	No	No	No
CbCR	File	OECD Guidelines	Within 12 months of the year end.	Yes	Yes	No
Local form	N/A	N/A	N/A	N/A	N/A	N/A
Annual Accounts	File	Local GAAP	Within 5 months after the accounting period ended.	No	Yes	No
Segmented P&L	N/A	N/A	N/A	N/A	N/A	N/A

* New Zealand has signed the MCAA agreement for the filing of CBCR.

** New Zealand does not request as much and detailed information from smaller and less complex enterprises (SMEs included) than it does from large and complex enterprises.

*** New Zealand has not adopted a compulsory Master File (MF) or Local File (LF) requirement. However, under audit, risk review, the Basic Compliance Package, or via a request for information, taxpayers are required to submit an MF or LF that is consistent with OECD Chapter V.

j) Mandatory Language

The IRD expects documentation to be in English and can ask for a translation into English if documentation is prepared in another language.

k) Notification Requirement

Every New Zealand group entity, which is obliged to file a country-by-country report, should file the country-by-country reporting notification form. It should specify whether the New Zealand entity is the ultimate parent entity, the surrogate parent entity, or if none of these, who will be the filing company within the group. The Country-by-Country reporting notification form must be filed ultimately before 1 July.

l) Record Keeping

There are no specific transfer pricing rules for record keeping. General tax rules apply whereby records should be retained for 7 years.

m) Penalties and Interest Charges

Specific penalties ranging from NZD 4000 to NZD 50000 apply in case of non-filing, incorrect or incomplete filing of CbC documentation. In addition, it may also result in a criminal offence.

Failure to provide information may result in a penalty of no more than \$100,000 and to be determined by the commissioner.