

Cyprus Tax Alert

March 2023

TRANSFER PRICING GUIDELINES

The Cyprus Income Tax Law has been amended and new Regulations implemented in relation to new Transfer Pricing (“TP”) documentation compliance obligations (Master File, Cyprus Local File, Summary Table) for Cyprus tax resident persons and permanent establishments of non Cyprus tax resident persons situated in Cyprus, that engage in transactions with related parties (“Controlled Transactions”).

The Amendments clarify that the arm’s length principle (as per Article 33 of the Law) may be applied and interpreted in accordance with the TP Guidelines issued by the OECD.

In addition, new TP documentation compliance obligations have been introduced

Timeframe

The law amendments and Regulations are effective from the tax year 2022 onwards.

Specifics

Definition of related parties:

Two companies are considered as related if the same person (and its related persons) or group(s) of persons (under certain conditions) directly or indirectly:

- hold 25% of the voting rights or share capital of both companies, or
- have the right to at least 25% of both companies’ income.

A company is also considered related to a person (and its related persons) that directly or indirectly:

- hold 25% of its voting rights or share capital, or
- have the right to at least 25% of its income.

Two or more persons are considered related if they act together (or take directions) to directly or indirectly:

- hold 25% of the voting rights or share capital, or
- have the right to at least 25% of the profit of a company.

TP Documentation compliance obligations

In accordance with the new provisions, connected persons which are tax residents in Cyprus, or permanent establishments in Cyprus of non-tax resident persons (Liable Taxpayers) have the obligation to prepare a TP documentation file as detailed below.

The TP documentation file is to consist of the:

Master file

Cypriot local file (local file)

Contents:

The required contents of the Master File and Cyprus Local File closely follow the definition and suggested contents of Master File and Local File as per the OECD TP Guidelines and BEPS Action 13 Report.

Exemptions:

The following exemptions shall apply:

- **Master File**

Only Cyprus tax resident entities that are the ultimate parent or surrogate parent entity of an MNE group falling under the scope of Country by Country reporting have an obligation to prepare and maintain a Master File. All other persons are exempt from this obligation.

In accordance with OECD TP Guidelines, the master file contains standardized information relevant for all group members of a multinational enterprise (MNE).

More specifically, the Master File should provide an overview of the MNE group business, including the nature of its global business operations, its overall transfer pricing policies, and its global allocation of income and economic activity in order to assist tax administrations in evaluating the presence of significant transfer pricing risk.

In general, the master file is intended to provide a high-level overview in order to place the MNE group's transfer pricing practices in their global economic, legal, financial and tax context.

• **Local File**

Persons that engage in Controlled Transactions with arm's length value less than EUR 750,000 p.a. in aggregate per transaction category (e.g. sale/purchase of goods, provision/receipt of services, financing transactions, receipt/payment of IP licencing/royalties, others) are exempt from the obligation to prepare a Cyprus Local File.

In accordance with OECD TP Guidelines, the local file refers specifically to material transactions of the local taxpayer. In contrast to the master file, which provides a high-level overview as described above, the local file provides more detailed information relating to specific intercompany transactions and helps to meet the objective of assuring that the taxpayer has complied with the arm's-length principle for its material transfer pricing positions.

The local file focuses on information relevant to the transfer pricing analysis related to transactions taking place between connected parties (as defined in Section 33 of the ITL). Such information would include relevant financial information regarding those specific transactions, a comparability analysis, and the selection and application of the most appropriate transfer pricing method.

Quality Review:

A person who holds a Practising Certificate from the Institute of Certified Public Accountants of Cyprus (ICPAC) or another approved by the Council of Ministers body of certified auditors in Cyprus is expected to perform a Quality Review of the Cyprus Local File.

Format and Language:

The TP Documentation File should be maintained by the taxpayer in electronic or paper format and may be prepared in a generally acceptable language, preferably in English, however, the Cyprus tax office may request its translation in Greek if necessary.

Relevant Deadlines:

The TP Documentation File must be prepared and be subject to Quality Review (to the extent applicable as mentioned above) on an annual basis, by the deadline of filing the Income Tax Return for the relevant tax year.

The TP Documentation File needs to be retained in compliance with the general document retention obligations for tax purposes, however it should be submitted to the Cyprus tax office upon request within 60 days from the notification of such request.

Updates:

The master file is to be updated annually, and specific reference made to any significant changes of the market conditions that may impact the information and data included in the master file.

The Summary Table disclosure requirement

A Summary Table must be prepared by all taxpayers that engage in Controlled Transactions on an annual basis, disclosing details regarding such transactions, including the names and tax identification codes of the related counterparties, and the respective values per transaction category (sale/purchase of goods, provision/receipt of services, financing transactions, receipt/payment of IP licences/royalties, others).

The Summary Table must be submitted electronically together with the Income Tax return for the relevant tax year.

Penalties

Penalties shall be imposed for late or non filing of the TP Documentation File in the case of late submission of the TP Documentation File following the notification by the Cyprus tax office ranging from EUR 5,000 to EUR20,000 In the case of non submission of the TP Documentation File following the notification by the CTD of a request for submission, a penalty of EUR 20,000 will apply.

In the case of non submission of the Summary Table a penalty of EUR 500 will apply

FREQUENT ASKED QUESTIONS

The Cyprus tax office has published a very useful FAQ section in its website which can be found here ([Τμήμα Φορολογίας | Συνήθειες Ερωτήσεις \(mof.gov.cy\)](#))

We have copied below the FAQs:

1. If the controlled transactions in Category "A" cumulatively exceed €750.000 or shall exceed €750.000 on the basis of the arm's length principle as described in article 33(9)(a) of the ITL and at the same time the controlled transactions in Category "B" cumulatively do not exceed the €750.000 threshold in a tax year, is there an obligation to include the controlled transactions of Category "B" in the Cyprus Local File?

No, there is no obligation to include Category's "B" controlled transactions in the Cyprus Local File.

Only, the controlled transactions of a category which cumulatively exceed or shall exceed €750.000 on the basis of the arm's length principle during a tax year must be documented and analyzed in the Cyprus Local File.

In this specific example, it will be Category's "A" controlled transactions only.

2. How is the €750.000 threshold being determined in the context of rental income activities during each tax year?

The threshold is determined by reference to the total rental income on the basis of the arm's length principle in a tax year.

3. Do purchases and sales need to be aggregated for the purposes of assessing whether the threshold has been exceeded?

Yes, the threshold is based by reference to the absolute values of the controlled transactions for each category occurring in a tax year.

For example, if total purchases and total sales amount to €400.000 and €500.000 respectively, the cumulative amount in this category is € 900.000. Thus the threshold in this category has been exceeded.

4. Is the Cyprus Local File and Summary Information Table prepared using the tax year or the accounting year of the company?

The Cyprus Local File and Summary Information Table are prepared with respect to the tax year.

5. Under which category of the Summary Information Table should Financial Guarantees be reported?

Financial Guarantees should be reported under the category "Financial Transactions".

6. Should a Benchmarking study be prepared every tax year or only if something changes with regards to the intra group loans?

A Benchmarking study should be prepared when an intra group loan is initiated and updated when:

(i) new loans are provided or received by the company, or

(ii) significant terms of the existing loans change or amended, or

(iii) the functional profile of the company changes, or

(iv) the market and economic conditions change significantly (if applicable).

The above list is indicative and not exhaustive. Further guidance is provided in the OECD TP Guidelines.

Please note that in accordance to article 33(10) of the ITL, the master file (where applicable) and the local file shall be updated every tax year.

7. Who is responsible for the completion and the submission of the Summary Information Table?

It is the responsibility of the taxpayer to complete the Summary Information Table. The Summary Information Table shall be submitted by the Statutory Auditor or Tax Consultant.

8. Is the circular dated 30/06/2017 with title "Tax treatment of intra group back to back financing transactions" still applicable following the enactment of the new TP Legislation and Regulations?

The Back to Back circular was abolished as from 01/01/2022.

For any assistance, please feel free to contact us.

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