

Transfer Pricing studies documentation compliance requirements

On 30th June 2022 the Cyprus Parliament approved the amendments to the Cyprus Income Tax Law with immediate effect for the year 2022, introducing Transfer Pricing ("TP") studies documentation compliance requirements, in line to the OECD Guidelines as amended from time to time.

The amendments are summarised as follows:

A. Definition of Related Parties

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

- i. hold 25% of the voting rights or share capital of both companies, or
- ii. 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:

- i. hold 25% of its voting rights or share capital, or
- ii. 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:

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

B. TP Documentation Obligations

The requirements for transfer pricing documentation compliance relate to Cyprus tax resident persons and permanent establishments of non-Cyprus tax resident persons situated in Cyprus that engage in domestic and/or cross-border Controlled Transactions, subject to exemptions mentioned further below and include:

- i. transactions between Cyprus tax resident companies,
- ii. transactions between permanent establishments in Cyprus of non - tax resident companies and their head office or related companies of the head office established outside Cyprus and
- iii. transactions between Cyprus tax resident companies and their foreign permanent establishments

The Transfer Pricing Documentation to be prepared on annual basis by the deadline of filing the Income Tax Return for the relevant tax year, will include the Master Transfer Pricing File (applicable where the ultimate parent is in Cyprus) and the Cyprus Local Transfer Pricing File, as well as the Summary Information table. The content of those files will be clarified by the Cyprus Tax Department in due course but is anticipated to follow the OECD TP Guidelines and BEPS Action 13 Report.

Exemptions: There will be no requirement for the following cases:

- i. Companies that the value of transactions with related parties is below Euro750.000 per annum per type of activity (financing transactions sale/purchase of goods, provision/receipt of services, etc) are exempted from preparing the Local file
- ii. 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.

C. Administrative Penalties

In the case of late submission of the TP Documentation File following the notification by the CTD to the tax payer of a request for submission, the following penalties will apply:

after the 60th day but before the 91st day from the notification of the submission request	EUR5,000
after the 90th day but before the 121st day from the notification of the submission request	EUR10,000
after the 120th day from the notification of the submission request	EUR20,000

D. Advanced Pricing Agreement ("APA") Procedure

Cyprus tax resident persons and non-Cyprus tax resident persons that have a permanent establishment situated in Cyprus can file to the Cyprus Tax Department an APA Request with respect to current or future domestic or cross border Controlled Transactions.

The Cyprus Tax Department will examine the APA request and either approve or reject it within 10 months from the date of submission of the APA request by the taxpayer. The CTD may request an extension of this deadline up to 24 months. The APA decision may be applicable for a maximum term of four years, however, it cannot apply for any tax year prior to the tax year in which the request is submitted.

The APA request may be bilateral or multilateral, involving the tax authorities in other jurisdiction(s) with which Cyprus has concluded a Double Tax Treaty. In such cases, a corresponding request needs to be filed by the taxpayer with the authorities in the other jurisdiction(s) and the CTD may consult in writing with such authorities under the relevant mutual agreement and exchange of information procedures and applicable EU legal framework, for the purpose of issuing the APA decision.

An approved APA decision is considered binding; however, it can be revised during its agreed term upon request of the taxpayer or at the discretion of the CTA, only if:

- i. the conditions or critical assumptions on which the APA decision was based have substantially changed so that it is impossible to apply the APA decision; or
- ii. the critical assumptions on which the APA decision was based are proven incorrect; or
- iii. if an arbitration process is followed for transactions covered by the APA decision, under an effective Double Tax Treaty or the EU Arbitration Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises.

In case you are involved any intra group transaction whether that is financing, trading, provision of services, royalties or any other activity exceeding the threshold of EUR750K per activity then you need to talk to us and arrange a meeting for the steps forward. Our team of experts are ready to assist you to act proactively.

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