

The new Transfer Pricing (TP) legislation in Cyprus & its expected impact.

Introduction

On 30 June 2022, Cyprus has introduced provisions for implementation of transfer pricing regulations in Cyprus by amending the current Cypriot Income Tax & Assessment and Collection laws. The effective date of the TP legislation is the 1 January 2022.

The main purpose of the introduction of the TP legislation is the alignment of the Cypriot Tax laws with OECD guidelines against Base Erosion and Profit Shifting (BEPS project). The amendments introduce guidelines on assessment of transactions between related parties for arm's length purposes and provide the legal basis for the conclusion of Advance Pricing Agreements (APAs).

Amendments of the Income Tax Law

The changes mainly affect the article 33 of the Income Tax Law, which is the article dealing with transactions between related parties.

The amendments and our interpretation/assessment for their expected impact are summarized below:

	Change	Expected impact
1.	Change of Related parties' definition As per the proposed legislation "related parties" will be considered companies with a 25% direct or indirect relationship. Relationship is assessed based on share ownership, voting rights, or profit participation. Previously related parties' relationship was assessed based on share ownership (>50%) or through voting rights, only.	Expected impact: High The scope of related party transactions broadens since the % for share ownership, voting rights is reduced (from 50% to 25%) and profit participation is introduced.

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Change	Expected impact
<p>2. Assessment of pricing based on OECD Transfer Pricing guidelines</p> <p>Introduction of a new paragraph (par.6), that states that pricing between related parties might be assessed (and hence adjustments to apply), based on the OECD Transfer Pricing guidelines (as issued and amended from time to time).</p>	<p>Expected impact: High</p> <p>The proposed amendment introduces the OECD TP guidelines as a tool for assessing pricing for related parties' transactions. Previously there was not any provision other than the general "arm's length" principle. The use of the word might instead of should or must, indicates that there would be cases where the OECD TP Guidelines might not be necessarily applied. (i.e., based on the value of the transactions – see below).</p>
<p>3. Introduction of Filing requirements</p> <p>a) Related parties need to prepare and submit an informative table with their related party transactions, prepare, and keep in their records a Master File, and a Local File, subject to the exemptions below:</p> <p>Exemptions:</p> <p>a) Related parties are not subject to Local file documentation requirements if their transactions in aggregate, per category, are (or should be, based on OECD TP Guidelines) less than €750.000.</p> <p>b) Related parties are not subject to Master File requirements if they are not the Ultimate Parent Entity or the Surrogate Parent Entity of a Multinational Enterprise Group (MNE) as per the definitions of the law for the Automatic Exchange of Information in the field of taxation.</p> <p>Filing The informative table needs to be submitted with the company's tax form for the year.</p>	<p>Expected impact High – Local Files. Low – Master Files</p> <p>It is expected that for most of the cases Local files will be needed to be prepared for Cypriot taxpayers. Note that, transactions between Cypriot entities only, are not excluded from the filing/reporting requirements.</p> <p>The impact for Master files is expected to be low given the fact that Ultimate or Surrogate parent entities of MNEs covered by the Automatic Exchange of Information directive should probably have such documentation already in place in case of request from other jurisdictions that have operations.</p> <p>The informative table needs to be submitted in case that there are transactions with related parties, irrespective of their value (the €750.000 cap does not apply for the informative table).</p>

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Change	Expected impact
<p>Update of documentation: Local files/Master files need to be updated on a yearly basis.</p> <p>Transfer Pricing Audits: In case of a transfer pricing audit request the relevant documentation should be submitted to the tax authorities within 60 days.</p>	
<p>4 Regulations</p> <p>Introduction of Regulations for the implementation of the OECD TP Guidelines and the related filing requirements.</p> <p>The main provisions as per the Regulations are presented below:</p> <ul style="list-style-type: none"> c) The filing requirements (informative table, Master File, Local file) need to be ready by the date of submission of the tax form (currently 15 months from the yearend). d) The Local File needs to be quality reviewed by a Cypriot Registered Audit Firm/Person. 	<p>Expected impact High – Local Files. Low – Master Files</p>
<p>5. APAs</p> <p>Introduction of article 33Γ, which gives the possibility to taxpayers to apply for pre-approval to the Tax Department of the methodology for the pricing of cross border transactions with related parties. This is what is known as Advance Pricing Arrangements (APAs)</p> <p>The procedure for application for an APA is based on the Regulations.</p>	<p>Expected impact: Low</p> <p>Advance Pricing Arrangements are introduced for cross border transactions. The APAs are giving certainty to taxpayers for the pricing of the transactions. However, given the timing requirements for the application's examination and the requirement for communication and agreement with the competent authorities of the other countries involved, will keep the number of applications at low levels. This is also observed</p>

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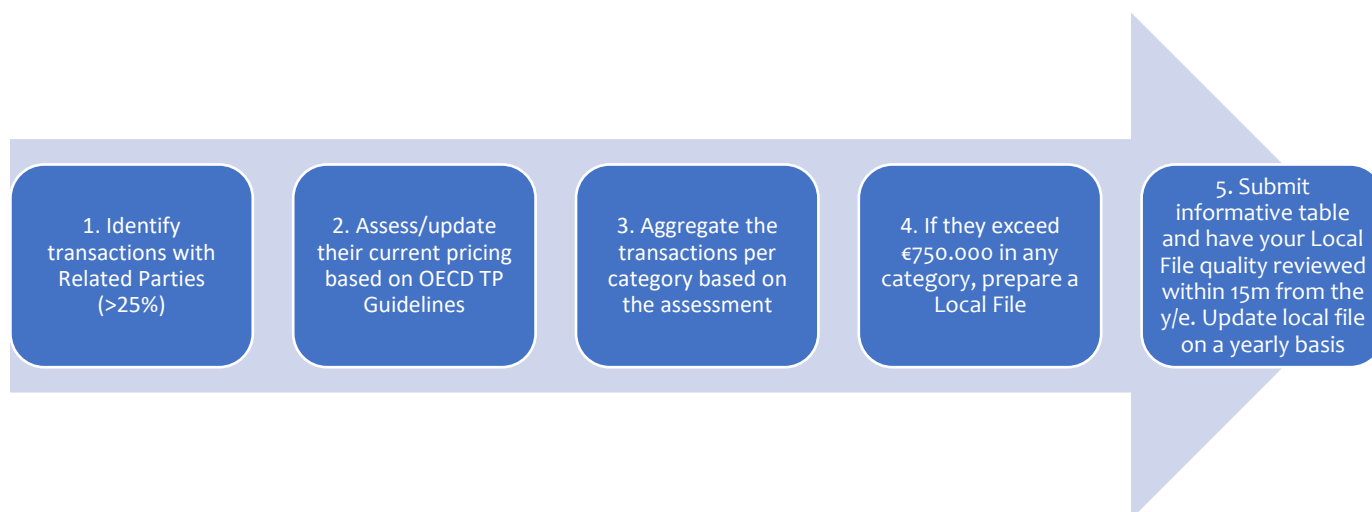
Change	Expected impact
<p>As per the Regulations:</p> <ul style="list-style-type: none"> a) The Tax commissioner issues a decision within 10 months from the application. In certain cases, the timing for the issue of a decision can be extended to 24 months. The APA can be valid for a period of 4 years maximum from the date of application. b) In case that the application involves parties that are tax residents in countries where a double tax treaty with Cyprus exists then a similar application needs to be made to the other countries as well. In case that the application in CY includes a request to deal with the foreign tax authorities the Commissioner may conduct the competent authorities of the other countries based on the Mutual Agreement Procedure of the respective double tax treaty. <p>The APA may be revoked by the Commissioner in certain cases such as when there is a material breach of one or more of the critical assumptions; or when there was a change in tax law, including a treaty provision materially relevant to the APA or due to provision of wrong information, data etc.</p>	<p>internationally. As per EU statistics for 2020 (Statistics on APAs and MAPs in the EU (europa.eu)) there have been a total of 1.753 new APAs requests within EU for 2020, 1125 involving only EU members and 628 involving third countries as well. The 60% of these applications relate to requests to Belgian Tax authorities.</p>

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Action required

The taxpayers should review their related party transactions considering the above and take actions where necessary. A review process should include, at least, the following:



Amendments of Assessment and Collection Law

Further to the above the Assessment and Collection Law has also been amended to include penalties provisions for non-compliance with the new TP requirements. The penalties introduced are summarized as below:

- a. In case of no submission of the informative table, there will be a penalty of €500.
- b. In case that the Local File is not submitted to Tax office in case of request (within 60 days), the following penalties apply:
 - i. If submitted within 61-90 days, there will be a penalty of €5.000
 - ii. If submitted within 91-120 days, there will be a penalty of €10.000
 - iii. If submitted in more than 121 days, (or in case of no submission) there will be a penalty of €20.000

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How we can help:

Our transfer pricing team has an in-depth knowledge of transfer pricing and can help you to assess the potential impact of the new legislation to your business and assist in the preparation of the relevant documentation for compliance. Further we can help you develop your group transfer pricing policies in line with your business structure and strategy.

Our contact details

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The content of this information sheet is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances. Our tax specialists are at your disposal should you require any further information or clarifications and for further advice on the subject matter.

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