



## Cyprus Tax News

# Introduction of new Transfer Pricing Documentation Requirements and Provisions for APAs

On 30 June 2022, a package of measures containing comprehensive transfer pricing (“TP”) requirements for businesses has been voted into law by the Cyprus House of Representatives. The measures are in line with the recommendations of the Organisation for Economic Co-operation and Development (OECD) within the framework of Action 13 of the Base Erosion and Profit Shifting (BEPS) project. The new rules have been implemented via amendments to the Cyprus Income Tax Law (ITL) and the issuance of Regulations. The Assessment and Collection of Taxes Law has also been amended to introduce penalties for non-compliance with the new TP documentation requirements.

The rules introduce new TP documentation requirements as from 1 January 2022, including:

- the maintaining of a Local File for all taxpayers with related party transactions that exceed €750.000 per category of transaction;
- the maintaining of a Master File for taxpayers that are the Ultimate Parent Entity or the Surrogate Parent Entity of an MNE Group with consolidated group revenues exceeding €750M for CbCR purposes;
- the preparation and submission of a Summary Information Table (SIT) by the taxpayer that will include information regarding related party transactions.

In addition, the legislation now also includes a framework for taxpayers to apply for Advance Pricing Agreements.

## Amendments to Section 33 of the Income Tax Law and issuance of TP Regulations

The provisions of Section 33 of the ITL have been amended to specify that the arm's length principle should be applied and interpreted in accordance with the OECD Transfer Pricing Guidelines for MNEs and Tax Administrations.

Amendments have also been made to the definition of connected parties in Section 33(3) of the ITL, which introduces a 25% relationship test (see Appendix below for more details). Where taxpayers meet the conditions under this 25% relationship test, TP documentation requirements will arise assuming the relevant thresholds for the value of transactions with related parties ("controlled transactions") have been exceeded (see below comments for further details).

The amendments to Section 33 also provide for taxpayers to be able to apply for an Advance Pricing Agreement (APA) and the relevant details and process are set out in the Regulations that have been issued.

The new rules provide that Cyprus tax resident companies, as well as permanent establishments of non-resident companies, are obliged to maintain TP documentation supporting their controlled transactions with related parties as defined in Section 33(3) of the ITL.

The TP documentation will need to be maintained in the form of a Local File. In certain limited cases a Master File may also be required if the taxpayer is not exempt from this requirement (see below). Whilst the legislation provides for guidance to be issued by the tax authorities on the required contents of Local Files and Master Files, these are expected to be broadly aligned to the model contents in the BEPS Action 13 Report and the OECD Transfer Pricing Guidelines for MNEs and Tax Administrations.

Furthermore, the legislation provides for exemptions to these Local File and Master File requirements as follows:

- Taxpayers will be exempted from maintaining a Local File if the aggregated value of the controlled transactions per particular category (e.g. goods, services, IP related income, financial transactions) total (or should total based on the arm's length principle) an amount which does not exceed €750.000 per tax year.
- A taxpayer which is not part of an MNE Group subject to Country-by-Country Reporting (CbCR), i.e. is not part of a group which has consolidated group revenues exceeding €750M, will not be required to maintain a Master File. Even where a taxpayer is a member of such an MNE group subject to CbCR, it will be exempted from the obligation to maintain a Master File if it is not the Ultimate Parent Entity (UPE) or the Surrogate Parent Entity (SPE) of the group for CbCR purposes.

### Summary Information Table (SIT)

In addition, taxpayers will be required to complete a Summary Information Table ("SIT") containing high level information on related party transactions, such as the identity of the counterparties, their jurisdiction of tax residency and the value of the transactions.

### Reporting Deadlines and Record Keeping

The Regulations provide that the Local File (and Master File, if relevant) for a particular year should be prepared no later than the due date for submitting

the taxpayer's Income Tax Return for that year. Based on the current deadlines for filing corporate income tax returns, this would mean companies would have 15 months after the end of the tax year to put in place the Local File (and Master File, if relevant).

The SIT should be prepared for each separate tax year and be submitted to the Cyprus Tax Department (CTD), along with the taxpayer's corporate income tax return for that tax year.

The Regulations also require that a person who holds a professional practicing certificate from the Institute of Certified Public Accountants of Cyprus, or from any other similar recognised body in the Republic, to undertake an assurance quality review of the Local File no later than the due date for submitting the taxpayer's Income Tax Return for the year which the Local File relates to.

Upon request by the CTD the legislation stipulates that the Local File (and Master File if applicable) should be made available within 60 days from the receipt of the relevant request by the taxpayer or by a person authorised to act as a representative of the taxpayer.

### **Penalties for non-compliance**

The amended Assessment and Collection of Taxes Law introduces penalties for non-compliance with the new Local File, Master File and SIT requirements as follows:

#### *Failure to provide TP documentation upon request*

Where a taxpayer has received a notice from the CTD to provide TP documentation (i.e. Local File, or Master File where applicable) and fails to do so within the required timeframe of 60 days, penalties of between €5.000 and €20.000 will apply depending on the length of the delay.

#### *Non-submission of SIT*

In cases where a taxpayer fails to submit a SIT, a penalty of €500 will be imposed.

### **Advance Pricing Agreements**

The new legislation and regulations also put in place provisions whereby a taxpayer may apply for an Advance Pricing Agreement (APA) for transactions with related parties. An APA is an arrangement that determines, in advance of controlled transactions, an appropriate set of criteria (e.g. method, comparables and appropriate adjustments thereto, critical assumptions as to future events) for the determination of the transfer pricing for those transactions over a fixed period of time.

According to the Regulations issued, the CTD will examine the application and reach a decision to be communicated to the taxpayer within 10 months from the date of the application. Notwithstanding this, by decision of the Commissioner of Taxation, a longer time period of up to 24 months may be set for the CTD to reply.

When the application for an APA will be on a bilateral basis and will involve consultations between the CTD and the authorities of other jurisdictions, with which a tax treaty exists, the Regulations state that the applicant will in parallel need to contact the tax authorities of the other jurisdictions involved and furnish such authorities with the same information.

The Regulations state that the validity of an APA may not exceed 4 years. Nevertheless, under certain circumstances, the APA can be revised, either following application by the taxpayer or at the sole discretion of the

Commissioner of Taxation. In addition, the Regulations provide that the CTD has the authority to revoke or cancel an APA under certain circumstances.

## **Comments**

The introduction of TP documentation requirements based on the OECD/G20 BEPS recommendations enhances the enforceability of the arm's length requirements of the Cyprus tax legislation and affirms Cyprus' position as a jurisdiction with a modern and internationally compliant tax regime.

The new rules provide a clear framework to taxpayers as to how they should be documenting their controlled transactions to support that they are adhering to the arm's length principle. In view of the new requirements coming into effect from 1 January 2022, taxpayers should begin planning with respect to their TP practices and methods which will be documented under the new rules.

Deloitte's TP team is at the disposal of clients to assist them to navigate through the new rules and comply with their TP obligations.

## **Appendix**

### **Section 33**

The revised definition for assessing whether two companies are connected under the amended Section 33(3) is now as follows:

One company is connected with another company where:

- a. The same person holds directly or indirectly a participation in at least 25% of the voting rights or share capital or has a right to a share of at least 25% of the income of both companies;
- b. The same person and persons connected with that person hold directly or indirectly a participation in at least 25% of the voting rights or share capital or have a right to a share of at least 25% of the income of both companies;
- c. A group of two or more persons hold directly or indirectly a participation in at least 25% of the voting rights or share capital or have a right to a share of at least 25% of the income of each company and the groups either consist of the same persons or could be regarded as consisting of the same persons by treating (in one or more cases) a member of either group as replaced by a person with whom they are connected;

The legislation has also been amended such that a company is connected with another person if:

- That person holds directly or indirectly a participation in at least 25% of the voting rights or share capital or has a right to a share of at least 25% of the income of that company or, that person and persons connected with him hold directly or indirectly a participation in at least 25% of the voting rights or share capital or have a right in at least 25% of the income of that company.

The amended legislation now also provides that any two or more persons acting together to secure directly or indirectly, at least 25% of the voting rights or share capital or a right to a share of at least 25% of the income of a company, shall be treated in relation to that company as connected with one another and with any person acting on the directions of any of them to secure directly or indirectly 25% of the voting rights or share capital or a right to a share of at least 25% of the income of that company.



**Get in touch**



**Harris Kleanthous**

Director, Tax & Legal | Transfer Pricing Services

**Phone:** +357 22 360 615

**Email:** [hkleanthous@deloitte.com](mailto:hkleanthous@deloitte.com)



**Alexis Avakian**

Director, Tax & Legal | Transfer Pricing Services

**Phone:** +357 25 868 884

**Email:** [aavakian@deloitte.com](mailto:aavakian@deloitte.com)



© 2022 Deloitte Limited

This communication contains information, which is confidential. It is exclusively to the intended recipient(s). If you are not the intended recipient(s), please: (1) notify the sender by forwarding this email and delete all copies from your system and (2) note that disclosure, distribution, copying or use of this communication is strictly prohibited. Any erroneous disclosure, distribution or copying of this email communications cannot be guaranteed to be secure or free from error or viruses.

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, its global network of member firms, and their related entities (collectively, the “Deloitte organisation”). DTTL (also referred to as “Deloitte Global”) and each of its member firms and related entities are legally separate and independent entities, which cannot obligate or bind each other in respect of third parties. DTTL and each DTTL member firm and related entity is liable only for its own acts and omissions, and not those of each other. DTTL does not provide services to clients. Please see [www.deloitte.com/about](http://www.deloitte.com/about) to learn more.

Deloitte & Touche (M.E.) LLP (DME) is the affiliate for the territories of the Middle East and Cyprus of Deloitte NSE LLP (“NSE”), a UK limited liability partnership and member firm of DTTL.

Deloitte Limited, a private limited liability company registered in Cyprus (Reg. No. 162812) is the sub-licensed affiliate of Deloitte NSE for Cyprus. Deloitte Limited is among the leading professional services firms in Cyprus, providing audit & assurance, consulting, financial advisory, risk advisory, tax and related services as well as a complete range of services to international business through over 750 people in Nicosia and Limassol. For more information, please visit [www.deloitte.com/cy](http://www.deloitte.com/cy).

Offices: Nicosia, Limassol

To no longer receive emails about this topic please send a return email to the sender with the word “Unsubscribe” in the subject line.