

# **Transfer Pricing Country Summary**

## **Cyprus**

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## 1. Introduction

Cyprus is an interesting country when examining its TP regulations. Many countries have adopted the OECD TP Guidelines in their national legislation, but Cyprus is the last country to introduce Transfer Pricing in its income Tax law. Up until now, Cyprus did not have detailed TP legislation in its national income tax law. However, as of this year (2021), detailed Transfer pricing rules are expected. The new legislation will include the requirement to file a Master and/or Local file that are compliant with the OECD. Benchmark reports for intercompany transactions will also be introduced, when the amount is more than 750k per category. This amount will most certainly be calculated on an annually aggregated level. This new piece of legislation will have a retroactive effective date that applies to fiscal years beginning on or after January 1, 2020.

## 2. Laws & Regulations

### a) References to OECD/EU/Local Rules

Cyprus does not have detailed TP documentation in accordance with the OECD rules. Nonetheless, the arm's length principle is enshrined in article 33 of the Cypriot Income Tax Law Code (CITLC), since 2002. The wording of this article is highly similar to that of article 9 of the OECD Model Tax Convention and therefore Cypriot Tax Authorities follow the arm's length principle. In essence, the Cypriot TP rules stipulate that those transactions between undertakings shall be conducted in accordance with the arm's length principle.

In 2017, the Cypriot Tax Authorities issued a new set of rules regarding the taxation of intra-group financing arrangements. These rules are limited only to intra-group financing activities, which are financed by debt. It does not matter whether related or 3<sup>rd</sup> parties are the funding source. In practice, such financial arrangements are usually loan facilities.

In 2019, the CAT implemented article 33A into the CITLC, which governs TP adjustments. Subsequently, the article articulates that a deduction of Cypriot Tax resulting from any arrangement or series of arrangements, put in place for the purpose of eliminating the tax base and which have as a purpose the acquisition of a tax advantage, is disallowed. The aforementioned article is invoked in intra-group transactions that may look to be arm's length but do not have a practical, commercial application.

### b) Definition of Related Party

Article 33 of the Income Tax Law (L. 31(I)/2021) articulates a definition of related parties. Accordingly, it is stated that two companies are considered to be associated when the following conditions are satisfied:

- One company participates directly or indirectly in management or control or share capital of another company;
- The same persons/legal entities/individuals participate directly or indirectly in the control, or management, or shared capital of another company.

It is necessary to mention that two companies can be seen as associated enterprises when they are controlled or operated by close relatives or spouses. With respect to the relatives, the Tax Authorities have not specified the degree of relativity between the two persons. Rather, it is examined in a case-by-case basis.

### c) Nature of Transfer Pricing Documentation

Currently, there is not a TP Documentation required in Cyprus. However, the current regime will change as of 1/1/2022. The taxpayers will be required to provide TP documentation when they are engaged in transactions exceeding an annual amount of 750K euros, per year and category.

#### d) Tax Havens & Blacklists

Cyprus has a preferential tax regime because it has a particularly low Corporate Income Tax rate of 12.5%. It is not considered to be a tax haven since 2012. It is important to note that Cyprus does not have a blacklist of uncooperative countries in its national legislation.

#### e) Advance Pricing Agreement (APA)

APA is not currently used in Cyprus to solve tax-related conflicts. The only requirement is that the financial and commercial relations between Cypriot companies and their related parties must meet the arm's length principle.

#### f) Audit Practice

MNEs as well as other smaller companies are obligated by law to file audited accounts. A company's accounting books are investigated by 3<sup>rd</sup> party auditors, and are then submitted to the Tax authorities. Nonetheless, TP adjustments are not illegal per se, and they fall within the tax avoidance scope, unless the Tax Authorities can prove that there has been fraud by default.

### 3. Transfer Pricing Documentation

#### a) Level of Documentation

As previously mentioned, as of 1/1/2022 the taxpayers will have to submit the following documents:

- Master file
- Local file
- Benchmark study
- Country-by-Country report

#### 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 at paragraph 1.51.

e) Choice of Transfer Pricing Method

The methods that are accepted are the same as the ones described in the OECD Guidelines.

f) Economic Analysis – Benchmark Study

Benchmark studies are required in order to perform a Benchmark analysis. Local and European comparables are usually preferred.

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

Taxpayers are required to submit their financial statements when filling TP documentation.

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)
<b>Corporate Income Tax</b>	File	Online format	31 March	N.A.	N.A.	Yes
<b>Master File</b>	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
<b>Local File</b>	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
<b>CbCR</b>	File	template CBC report included in EU Directive 2016/881	No later than 12 months after the last day of the reporting	N.A.	N.A.	Yes

			fiscal year of the MNE group			
* Cyprus has signed the MCAA agreement for the filing of CBCR.						
* Cyprus does not request as much and detailed information from smaller and less complex enterprises (SMEs included) than it does from large and complex enterprises.						

j) **Mandatory Language**

The official legislation governing the mandatory language of TP documentation has not entered into force yet.

k) **Notification Requirement**

There is no legislation that covers the notification requirement for TP documentation in Cyprus yet.

l) **Record Keeping**

There is no legislation that covers Record Keeping for TP documentation in Cyprus yet.

m) **Penalties and Interest Charges**

The CAT can impose penalties that involve not only reassessing the tax but also imposing a penalty and interest for late payment. The legal interest rate in Cyprus stands at 3.5%. The taxpayers can be reviewed and examined on a case-by-case basis on the basis of risk. High risk indicators can involve transactions with tax havens, related entities with tax losses and companies that have tax losses, which they use within a group structure.