

## Overview

**Zepos & Yannopoulos Law firm (Taxand Greece)** has a top-tier tax practice—consisting of a team of over 40 experts with academic backgrounds in law, economics and accounting—which is ideally positioned to help clients address the challenges created by this environment. Combining the transactional expertise of a leading, internationally-oriented, law firm with the experience in tax and accountancy services, Zepos & Yannopoulos Law firm offers its clients comprehensive solutions for complying, creating added value through managing tax impact, and understanding the critical tax considerations of innovative transactions.

Regarding the transfer pricing field, the services span the following areas:

- ❖ Preparation and review of the full scope of the transfer pricing documentation files for Greek compliance purposes. Further, assistance with the preparation and submission to the tax authorities of the Summary Information Table ("SIT") and the CbCR notification.
- ❖ Planning and optimization of intra-group transactions and transfer pricing models, with a particular focus on business restructurings and related concerns.
- ❖ Negotiation of Advance Pricing Agreements ("APAs"), including rulings for local service centers (formerly known as Law 89 entities)
- ❖ Assistance during tax and transfer pricing audits
- ❖ Representation in domestic or cross-border dispute resolution procedures
- ❖ Valuation of Intellectual Property ("IP") and companies for transfer pricing and transactional purposes

## General : Transfer Pricing Framework

Greek transfer pricing legislation is aligned with article 9 of the OECD Model Tax Convention and the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (OECD Guidelines) currently in force. The OECD Guidelines mainly revolve around the application of the "arm's length principle", which is the international consensus on the valuation of transactions between associated enterprises for tax purposes.

The arm's length principle is captured in the context of article 50 of the Greek Income Tax Code (GITC - L. 4172/2013), according to which, in the event that a transaction between a Greek entity and its affiliated persons is deemed to have been concluded at economic or commercial terms which differ from those that would have been concluded between independent parties (i.e. at arm's length), then the taxable profits of such entity will have to be adjusted in order to reflect under arm's length terms. Furthermore, the above adjustments are applicable only to the extent that the taxable results of the taxpayer are not decreased from the application of the arm's length principle i.e. downward adjustments are not commonplace.

Further to the above, a recent addition to the Greek Income Tax Code enabled Greek entities to apply for a reverse adjustment to their taxable results in cases where the taxable profits of a Greek related entity were adjusted (i.e. increased) within the context of a tax audit and deriving from an inter-company arrangement between said enterprises.

## Accepted Transfer Pricing Methodologies

The OECD Guidelines are incorporated in Greek legislation. Ministerial Decision 1097/2014, as further amended by Ministerial Decision 1144/2014, also makes reference to the acceptable TP documentation methods used in the economic analysis to support and substantiate the arm's length nature of the pricing policies in place.

In line with the OECD Guidelines, the traditional transaction methods are preferred, where especially CUP is considered to be the most accurate method.

The selection of the most appropriate TP documentation method for each transaction under scope should be accompanied by a detailed description of the evaluation process carried out which led to the proper justification of such selection.

The Greek TP legislation does not provide any safe harbor rules for the documentation of any type of transaction. Therefore, reference to a profit margin determined within the context of a simplified approach (e.g. low value-adding intra-group services profit markup) are not generally acceptable in a potential tax audit.

## Transfer Pricing Documentation Requirements

According to article 21 of the Greek Code of Tax Procedures (GCTP - L. 4987/2022, which was set out on 4 November 2022 replacing L. 4174/2013), entities operating in Greece, are required to prepare transfer pricing documentation to support the arm's length nature of their transactions with both domestic and foreign affiliated entities & foreign permanent establishments. The above obligation is also applicable for Greek permanent establishments of foreign entities regarding their transactions with affiliated persons, as well as with their head office.

Certain thresholds are in place, i.e., for entities with a total annual turnover which is equal or lower than € 5,000,000, a TP documentation requirement is in place in the event that the total value of their annual inter-company transactions exceeds the amount of € 100,000 for the year under review. For entities with an annual turnover exceeding € 5,000,000, the relevant threshold is increased to € 200,000 of total inter-company transactions.

For each fiscal year, taxpayers falling within the above annual thresholds are required to prepare the following:

- ❖ A TP documentation file including the content instructed by the OECD TP Guidelines, and
- ❖ A Summary Information Table (SIT) which contains core information regarding the company and the group in which it belongs, transaction amounts, applicable TP methods, contracting parties, functions performed etc.

Both the TP file and the SIT are prepared within the lawful deadline for the filing of the entity's annual Corporate Income Tax (CIT) return for the year under review, which normally expires on the last day of the sixth month following the end of the fiscal year. In case than an extension to the above CIT deadline is granted by the tax authorities, the TP documentation timeframe is also extended accordingly.

The TP documentation file may be prepared and kept by the taxpayer in an internationally acceptable language (e.g. in English). However, in the event of a tax audit, a translation into Greek should be performed and provided to the auditing authority within 30 days upon an official request.

Information included in the SIT is compiled using specific application tools developed by the Greek Ministry of Finance. Data is submitted electronically to the General Secretariat of Informational Systems of the Ministry of Finance through a separate application interface within the Greek tax authorities' electronic platform (TaxisNet).

Pursuant to L. 4484/2017, Greece transposed EU Directive (EU) 2016/881, introducing the automatic exchange of Country-by-Country (CbC) reports within the EU, into its domestic legislation. In addition, according to L. 4490/2017, Greece ratified the OECD Multilateral Competent Authority Arrangement, facilitating the exchange of financial information in tax matters among a total of 61 jurisdictions.

Multinational groups realizing total annual consolidated revenues exceeding € 750 million are required to submit a CbC report on an annual basis, providing tax authorities with information on revenue, profit before income tax, income tax paid and other details regarding the allocation of the group profits in different jurisdictions. The CbC report also provides information on which group entity is operating in a particular tax jurisdiction and the business activities in which each entity is engaged in.

A Greek entity may be designated to prepare and submit a CbC Report for the group in Greece (i.e. act as the group's reporting entity) under certain conditions; e.g., if it is the ultimate parent entity or a surrogate parent entity of the group. If acting as the reporting entity, the Greek entity should file the report before the Greek tax authorities ("GTA") within 12 months from the end of the reporting fiscal year.

A Greek entity of a multinational group which is not obliged to file the CbC report for the group, should still notify the GTA of the identity of the group's reporting entity and its tax jurisdiction by the end of the reporting fiscal year.

## Local Jurisdiction Benchmarks

The selection of comparables for the purposes of the economic analysis is subject to specific comparability criteria, mainly set out in Ministerial Decisions 1142/2015 and 1227/2015.

In particular, the use of external databases is allowable, provided that specific reference of the database name & version is made in the TP file. Comparability search studies should be performed using versions made available not earlier than two months before the end of the relevant fiscal year and not later than the deadline for the submission of the SIT. In practice, this implies a timeframe typically of 8 months. Two months before the year-end until six months after the year-end which is the initial deadline for the submission of the SIT. However, if an extension is granted for the submission of the SIT, this timeframe is extended as well. For example, if year-end is 31/12/2023, the acceptable releases are from November 2023 to June 2024. If the deadline for the SIT is extended to July 2024, then the timeframe for the benchmarking studies is also extended.

Greek taxpayers may use the benchmarking studies for a total of 2 consecutive years after the year that the original benchmarking study has been prepared, by updating the financial results of the initial study to the last 3-year period. The use of updated benchmarking studies is acceptable only if the taxpayer's operations & functional profile has remained unchanged and the original study sample is verified to remain comparable and reflect uncontrolled transactions. In every case, a new full search for comparables should be performed at least once every three years.

## Advance Pricing Agreement "APA"/Bilateral Advance Pricing Agreement "BAPA" Overview

The Tax Procedures Code (Law 4174/2013) includes the possibility of an advance pricing agreement (APA) with the tax authorities. This agreement is made in advance and determines the transfer pricing methodology to be used in setting the prices for cross-border intercompany transactions along with the critical assumptions, under which such methodology will remain valid. An APA term cannot exceed four (4) years. The option of a preliminary cycle of discussions with tax authorities, with a view to obtaining their input on the possible outcome of an intended APA application, is provided to the taxpayer.

Greece now provides for the roll-back of bilateral or multilateral APAs in cases where the relevant facts and circumstances in the earlier fiscal years are the same. Taxpayers filing for an APA may submit a relevant roll-back request, provided that the earlier fiscal years have not been time-barred and that there is no tax audit mandate communicated to the taxpayer with respect to the relevant fiscal years. It should be noted that, as set out by the legislature, the roll-back request shall not impair the tax auditors from performing a tax audit on such fiscal years, and the APA may not be rolled back to the extent that a final assessment is issued in this respect.

The APA may be revised, revoked or cancelled in the case where the taxpayer does not comply with the terms or responsibilities arising therefrom or the critical assumptions change or are proved incorrect or in the case of a different outcome arising in the context of the mutual agreement procedure pursuant to the relevant bilateral tax treaty or in the context of the convention of the member states of the European Union on the correction of profits of associated enterprises.

Finally, Ministerial Decision 1107/2023 by the General Secretariat of Public Revenue provides clarifications and guidance for the application of the APA procedure.

## Transfer Pricing Audits

The GTA conduct audit examinations at random and all companies are subject to audit for any open period. Starting from tax year 2014 onwards, the provisions of L. 4174/2013 apply in relation to Statute of Limitation period ("SoL"). Said rules provide in principle for a SoL of 5 years following the end of the year within which the CIT return of the FY concerned must be filed, resulting to 6 years following each fiscal year-end (standard SoL).

The TP file is prepared and kept within the company's premises along with its accounting books & records. In the event of a tax audit, the TP file should be provided to the tax auditors within 30 days from the date of receiving the relevant request in written form.

## The Burden of Proof in Transfer Pricing: Theory versus Practice

The Greek Income Tax Code (Law No. 4172/2013) in conjunction with the Tax Procedure Code (Law No. 5104/2024) provide that the taxpayer must maintain sufficient documentation to substantiate that the prices of its intra-group transactions are at arm's length. The Greek administration has issued detailed guidelines on the substantiation of the intra-group transaction in line with the OECD guidelines (Circular POL. 1097/9.4.2014 and POL. 1142/2.7.2015). As long as the taxpayer maintains a TP documentation (master file and local file) that has been produced in line with the above guidelines, the tax authorities bear the responsibility of demonstrating that the prices set by a taxpayer are not at arm's length. The rejection of the TP documentation by the audit tax authority should be based on specific and well-founded justifications. In addition, the tax audit authority should prove that the prices determined on the basis of its own assessment are at arm's length too. If the taxpayer does not maintain adequate TP documentation, the burden of proof will shift in essence to the taxpayer.

Where a corrective tax assessment has been issued and the taxpayer files an appeal against it (in tax litigation proceedings before the administrative courts), each party has the burden to prove any facts it has invoked and support the argumentation it has raised, unless otherwise provided by law. The other party shall have the right to submit evidence in rebuttal. If the court does not have enough evidence, it may issue a preliminary ruling ordering a re-audit or supplementary audit with a limited scope, which is carried out by the tax authority.

In practice, the Greek tax authorities often rely on general and unfounded allegations thereby shifting the practical burden of proof onto the taxpayer. However, the Greek administrative courts have repeatedly adjudicated that where the taxpayer maintains adequate TP documentation, the audit tax authority has the obligation to provide full and adequate justification for its findings with respect to rejection of the taxpayer's documentation, whereas it also bears the burden of proving its own analysis. As an example, the Greek administrative courts have multiple times annulled corrective tax assessments issued by a Greek audit authority on the basis that the rejection of the comparables chosen by the taxpayer is generic and inconclusive (lack of reasoning).

Based on the above, the burden of proof lies primarily with the taxpayers. In that regard, it is of imperative importance that the Greek taxpayers ensure that their TP documentation is not only in line with the formal requirements prescribed by the law and the relevant administrative guidelines, but also robust, comprehensive and reasonable.

## Transfer Pricing Penalties

The penalties for non-compliance with domestic TP documentation & CbC Reporting requirements are summarized in the following table, as set out in the Greek tax legislation:

### TP File

In the case of failure to provide the transfer pricing file to the tax authorities within 30 days upon an official request, a penalty of EUR 5,000 applies, which is increased to EUR 10,000 if the file is provided after 60 days, and to EUR 20,000 if the file is provided after 90 days or if it is not provided at all.

## Summary Information Table

- ❖ In case of late filing of Summary Information Table, a penalty of € 500 to € 2,000 applies, calculated as 1/1,000 of the company's inter-company transactions.
- ❖ • In case of late filing of an amended Summary Information Table, a penalty of € 500 to € 2,000 applies, calculated as 1/1,000 of the company's inter-company transactions, imposed only if the total revisions exceed the amount of € 200,000.
- ❖ In case of non-filing of a Summary Information Table, a penalty of € 2,500 to € 10,000 applies.
- ❖ In case of filing of an inaccurate Summary Information Table, a penalty of € 500 to € 2,000 applies, calculated as 1/1,000 of the company's inter-company transactions, imposed only if the total inaccurate information exceeds 10% of the company's total inter-company transactions.

## Country by Country report

In case of late or non-accurate filing of CbC Report, a penalty of € 10,000 is imposed, whereas in case of non-filing the penalty is increased to € 20,000.

## Local Hot Topics and Recent Updates

Ministerial Decision A. 1107/2023 issued and in force as of 28 July 2023 abolished the previous Ministerial Decision governing the APA process that was issued back in 2013 (i.e. POL 1284/2013). However, there are no specific case studies or recent updates of note.

## Documentation threshold

Master file	Total value of annual intragroup transactions exceeding the amount of € 100,000 for entities with a total annual turnover which is equal or lower than € 5,000,000. For entities with an annual turnover exceeding € 5,000,000, the relevant threshold is increased to € 200,000 of total value of annual intra-group transactions.
Local file	Total value of annual intragroup transactions exceeding the amount of € 100,000 for entities with a total annual turnover which is equal or lower than € 5,000,000. For entities with an annual turnover exceeding € 5,000,000, the relevant threshold is increased to € 200,000 of total value of annual intra-group transactions.
CbCR	Turnover EUR 750 million

## Submission deadline

Master file	N/A – there is no requirement to submit transfer pricing documentation in the ordinary course.
Local file	N/A – there is no requirement to submit transfer pricing documentation in the ordinary course.
Summary Information Table	Submission until the deadline for the Corporate Income Tax returns, normally until the last day of the sixth month following the end of the fiscal year
CbCR & CbCR notification	Submission of the CbCR within 12 months after the end of the tax year under review. Notification must be submitted by the end of the reporting fiscal year.

## Penalty Provisions

Please see the above remarks.



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