



Overview

TMF Management and Administrative Services (Malta) Limited, Taxand Malta

TMF Management and Administrative Services (Malta) Limited is a licensed corporate services provider and a tax firm providing an array of services to multinationals, private equity and high net worth individuals "HNWI".

Taxand Malta's team may assist in various aspects of transfer pricing services including:

- ❖ Compliance – preparation of certain compliance documentation such as local file documentation,
- ❖ Reporting – assistance in local filings including Country-by-Country reporting "CbCR" requirements,
- ❖ Analysis – providing due diligence services or health checks, and assessment of risk areas to help management with their strategy and risk mitigation,
- ❖ Planning – establishing intercompany financial arrangements,
- ❖ Disputes and controversy – assistance in transfer pricing audits or investigations as well as preventing or resolving tax disputes by concluding APAs.

General: Transfer Pricing Framework

Malta is relatively new to transfer pricing since subsidiary legislation implementing formal Transfer Pricing Rules "TR Rules" were published in November 2022. The TP Rules became effective from 1 January 2024 and apply to cross-border related party arrangements entered into on or after such date, including any arrangements entered into before that date which would have been materially changed thereafter.

The TP Rules apply to arrangements between related parties or associated entities defined as having 50% or more common direct or indirect participation rights in multinational groups in scope for CbCR, or 75% in the case of multinationals excluded from such reporting. SMEs as defined by the EU State Aid Regulations fall outside the scope.

Accepted Transfer Pricing Methodologies

The preferred methodology to be applied are those outlined in Chapter II of the OECD Transfer Pricing Guidelines. Other methods may be accepted in accordance with Paragraph 2.9 of the OECD Transfer Pricing Guidelines

Transfer Pricing Documentation Requirements

The transfer pricing documentation requirements to be held by taxpayers shall be in line with Chapter V of the OECD Transfer Pricing Guidelines which include the need to have a Master File containing the information outlined in Annex I to Chapter V of the OECD Transfer Pricing Guidelines and a Local file containing the information outlined in Annex II to Chapter V of the OECD Transfer Pricing Guidelines.

Local Jurisdiction Benchmarks

The TP Rules and guidelines do not contain benchmarks or benchmarking requirements, but the guiding principle is the arm's length principle.

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

The TP Rules provide for the issuance of unilateral transfer pricing arrangements (referred to as unilateral transfer pricing rulings) as well as bilateral or multilateral APAs against a fee of €3,000 for APAs and a fee of €5,000 for a BAPA or a multilateral APA. An APA or BAPA is valid for a period of 5 years but a directly interested party must notify the tax authorities of any relevant material changes within 30 days from the latter of the date of its occurrence or the date from when such party becomes aware thereof. Also, a unilateral transfer pricing ruling shall have no effect as from the date on which the Maltese tax authorities notify the directly interested party that a relevant material change (as defined in the TP Rules) has taken place.

APAs and BAPAs may be renewed provided the application for renewal is made during the 6 months preceding the expiry and against a fee of €1,000 in the case of APAs and a fee of €2,000 for a BAPA or a multilateral APA.

A request for an APA may be made in connection with the tax treatment of a cross-border arrangement commencing on or after the date that the request was made. However, if the relevant arrangement has already commenced, the scope of the request may be extended to transactions, agreements and dealings that took place within 3 years and that form part of that arrangement.

The tax authorities may withhold the issuing of an APA where the interested party is not up-to-date in its filing obligations with respect to tax returns.

Transfer Pricing Audits

The TP Rules do not contain any specific provisions with respect to transfer pricing audits but these may be carried out by virtue of the powers contained in the income tax legislation.

The Burden of Proof in Transfer Pricing: Theory versus Practice

Given that Transfer Pricing is still in its infancy in Malta, it is yet to be understood how the authorities will administer the burden of proof for Transfer pricing. However, the Maltese Tax Department has indicated its intention to give due attention to the application of Transfer Pricing and has indeed launched a new Large Taxpayers Office which will deal with Transfer Pricing. We still need to wait to see how this will impact the assessment of transfer pricing rules in the coming years.



Transfer Pricing Penalties

The TP Rules do not contain any specific provisions for transfer pricing penalties.

Local Hot Topics and Recent Updates

Following the introduction of the TP Rules many taxpayers are seeking guidance to ensure that local entities are in compliance with such rules. The grandfathering provisions (where applicable) provides some additional time for entities engaged in cross border activities to adhere to the rules whilst taking the necessary actions to ensure adherence to the rules.

Documentation threshold

Master file	De-minimis threshold for total related party cross-border transactions of €6 million and €20 million revenue and capital respectively measured in the preceding financial year.
Local file	De-minimis threshold for total related party cross-border transactions of €6 million and €20 million revenue and capital respectively measured in the preceding financial year.
CbCR	Turnover €750 million

Submission deadline

Master file	Not Applicable – only if requested by the local tax authorities.
Local file	Not Applicable – only if requested by the local tax authorities.
CbCR	CbCR is to be made within 12 months from the last day of the fiscal year of the MNE Group. CbCR notifications by members of the MNE group is to be made by no later than the last day for filing of a tax return of that Constituent Entity for the preceding fiscal year (usually nine months from year-end).

Penalty Provisions

Documentation – late filing provision	Not Applicable
Tax return disclosure – late/incomplete/no filing	Fines up to a maximum of €1,500 may be imposed.
CbCR – late/incomplete/no filing	CbCR not reported within the deadline - €200 and €100 for every day during which the default existed with a maximum penalty of €20,000. Failure to submit notification by a member of MNE (who is not responsible for the CbCR submission) - penalty of €200 and €50 for every day during which the default existed with a maximum penalty €5,000. Penalty for minor errors – €200 + €50 per day with a maximum penalty of €5,000. Penalty for significant non-compliance – €50,000. Penalty for failure to comply with a request of information from the CbCR - €100 for every day during which the default existed with a maximum penalty of €30,000.



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