MALTA

RETURN TO CONTENTS PAGE

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 has introduced formal Transfer Pricing Rules 'TP Rules' through subsidiary legislation published in in November 2022. These rules became effective for basis years commencing on or after 1 January 2024 and apply to cross-border related party arrangements entered into on or after that date, as well as to arrangements entered into prior to that date which are subsequently materially altered.

The TP Rules apply to cross-border arrangements between associated enterprises, broadly defined to include entities that are under common control or participation, whether direct or indirect. Small and medium-sized enterprises (SMEs), as defined under the relevant EU regulations, fall outside the scope of the rules.

Accepted Transfer Pricing Methodologies

The preferred TP methodologies 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 prescribe benchmarks or benchmarking requirements, however,the guiding principle is the arm's length principle.

Focus on Financial Transactions'.

'In Malta, the transfer pricing analysis of financial transactions is primarily driven by the Maltese transfer pricing rules and their reliance on the arm's length principle, with reference to the OECD Transfer Pricing Guidelines. Accordingly, where a related-party financial transaction falls within the scope of the Maltese transfer pricing rules, the analysis would generally need to be supported by an OECD-style assessment of the commercial and financial terms of the arrangement.

In practice, this means that the focus should be on whether the transaction is commercially supportable from the perspective of the Maltese entity and whether the terms are consistent with those which would have been agreed between independent parties. For intragroup loans or similar financing arrangements, this would typically include considering the borrower's credit profile, repayment capacity, the amount of debt advanced, the interest rate applied, maturity, security and any other relevant terms. The analysis should not be limited to benchmarking the interest rate, but should also consider whether the level and terms of the funding are commercially justifiable.

Where treasury or financing functions are performed within the group, the Maltese analysis would also need to consider the actual functions, risks and substance of the entities involved. However, in the absence of detailed Malta-specific rules on treasury centres or cash pooling, the practical reference point is likely to be the OECD guidance, including the principle that entities performing limited coordination or administrative functions should generally earn a return commensurate with those functions, while the assumption of financing risks should be supported by appropriate control over those risks and financial capacity to bear them.

Separately, even where the relevant financing arrangement is supportable from a transfer pricing perspective, the Maltese tax deductibility position should be considered independently. In particular, interest or other financing costs would still need to satisfy the general Maltese tax requirement that expenses be incurred wholly and exclusively in the production of income, and any other applicable Maltese tax limitations should be assessed based on the facts of the case.'

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

The TP Rules provide for the issuance of unilateral transfer pricing rulings, as well as unilateral, bilateral and multilateral advance pricing agreements ("APAs"). An application for an APA is subject to a fee of €3,000, while a fee of €5,000 applies in the case of a bilateral or multilateral APA.

An APA is generally valid for a period of up to five years. A directly interested party is required to notify the tax authorities of any relevant material changes within 30 days from the later of the date of occurrence of such change or the date on which the party becomes aware thereof. In the case of unilateral transfer pricing rulings, such rulings cease to have effect from the date on which the tax authorities notify the relevant party that a material change has occurred.

APAs may be renewed, provided that an application for renewal is submitted within the six months preceding their expiry. Reduced fees of €1,000 and €2,000 apply for the renewal of unilateral APAs and bilateral or multilateral APAs, respectively.

An APA request may be made in respect of cross-border arrangements commencing on or after the date of the application. Where the arrangement has already commenced, the scope of the request may extend to transactions, agreements and dealings forming part of that arrangement for a period of up to three years preceding the application.

The tax authorities may refrain from issuing an APA where the applicant is not fully compliant with its tax filing obligations.

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

Following the introduction of TP Rules in Malta, effective for periods commencing on or after 1 January 2024, the practical application of the burden of proof remains an evolving area. The framework adopts a self-assessment approach, requiring taxpayers to demonstrate that intra-group transactions comply with the arm's length principle and to maintain adequate supporting documentation. While, in theory, tax authorities are expected to substantiate any adjustments in line with OECD principles, in practice the evidentiary burden is likely to fall largely on taxpayers, particularly given the increased disclosure requirements and growing scrutiny by the Maltese tax authorities. The manner in which these principles will be applied in practice is expected to become clearer as the regime continues to develop.

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 sought guidance to ensure that local entities are compliant with these requirements. In this regard, the Malta Tax and Customs Administration has issued transfer pricing guidelines to provide further clarification on the application of the rules. While the grandfathering provisions (where applicable) continue to apply to certain pre-existing arrangements, entities engaged in cross-border transactions are expected to ensure that their transfer pricing policies and documentation are aligned with the current framework.

Documentation threshold

Master file	De-minimis threshold for total cross-border related party transactions of €6 million (revenue items) and €20 million (capital items), measured based on the preceding financial year.
Local file	De-minimis threshold for total cross-border related party transactions of €6 million (revenue items) and €20 million (capital items), measured based on the preceding financial year.
CbCR	Applies to multinational enterprise groups with consolidated group revenue of €750 million or more.
Public CbCR	Applies to multinational enterprise groups with consolidated group revenue of €750 million or more.

Submission deadline

Master file	No annual submission requirement – to be made available to the Malta Tax and Customs Administration upon request.
Local file	No annual submission requirement – to be made available to the Malta Tax and Customs Administration upon request.
CbCR	The CbCR is to be filed within 12 months from the end of the fiscal year of the MNE Group. CbCR notification by Maltese constituent entities is to be made by the deadline for filing the relevant income tax return (generally nine months from the end of the financial year).
Public CbCR	To be published and filed within 12 months from the end of the relevant financial year.

Penalty Provisions

Documentation – late filing provision	Not Applicable, as no submission requirement exists; however, penalties may arise where documentation is not provided upon request.
Tax return disclosure – late/incomplete/no filing	Administrative penalties may be imposed, generally up to a maximum of €1,500.
CbCR – late/incomplete/no filing	Failure to submit the CbCR within the prescribed deadline: Penalty of €200 plus €100 for each day during which the default continues, capped at €20,000. Failure by a constituent entity to submit a notification: Penalty of €200 plus €50 per day during which the default continues, capped at €5,000. Errors in reporting: Minor errors – €200 plus €50 per day, capped at €5,000. Significant non-compliance – penalties of up to €50,000. Failure to comply with a request for information by the Commissioner: €100 per day during which the default continues, capped at €30,000.
Public CbCR – late/incomplete/no filing	Failure to comply with Public CbCR reporting obligations under Articles 213B–213D and Part II of the Fourth Schedule of the Companies Act: Default penalty of €2,329 and a daily penalty of €46 for continued non-compliance.

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