

# Introduction to **Transfer Pricing rules**

The latest documentation obligations in Cyprus



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### BRIEFLY

The Cyprus House of Representatives, on Thursday, 30 June, voted for and approved the amendments to the Cyprus Income Tax Law, introducing detailed Transfer Pricing rules and documentation obligations.

The new legislation, which is effective from 1 January 2022, comes into place to align the Cyprus Transfer Pricing landscape with the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (OECD TP Guidelines).

**The Law is effective as of 1 January 2022.**

### THE LAW IN DETAIL

Transfer Pricing notion is, in practice, the Tax Law application of arm's length principle, applied for determining a reliable and fair allocation and taxation of profits within multinational enterprises.

Before the full enactment of the detailed OECD TP Guidelines into Cyprus Law, the relevant article of the Cyprus Income Tax Law governing the arm's length principle was article 33.

The new law introduces the latest interpretation of the arm's length principle to be applied in article 33 in accordance with the OECD TP Guidelines. In addition, the amendment incorporates new TP documentation compliance obligations and a formal procedure for obtaining Advance Pricing Arrangements (APA).

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*Transfer pricing is the principle applied to tax law to determine a reliable and equitable method for allocating and taxing profits within multinational corporations.*  
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25%



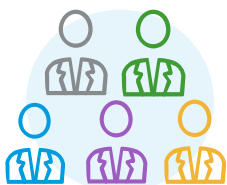
*Minimum, voting right or share capital or income share of both companies*

25%



*Minimum, voting right or share capital or income share of both companies*

25%



*Minimum, voting right or share capital or income share of each company*

### *Minimum threshold for defining control over legal entities*

The law aims to define 'control' over legal entities by providing detailed rules with respect to the relationship between a Cypriot legal entity, with another entity for the purposes of transfer pricing.

In particular, a company is related to another company based on the below conditions:

- If, directly or indirectly, the same person holds at least 25% of the voting rights or share capital or is entitled to at least 25% share of the income of both companies.
- If, directly or indirectly, the same person and persons related to that person, hold at least 25% of the voting rights or share capital or is entitled to at least 25% share of the income of both companies.
- If, directly or indirectly, a group of two or more persons hold at least 25% of the voting rights or share capital or are entitled to at least 25% share of the income of each company and the groups either consist of the same persons or could be considered 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 related.

Additionally, a company is considered to be related to 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.





<sup>1</sup>A transaction or transfer which is carried out between two or more members of the same MNE.

## Requirements for Transfer Pricing Documentation compliance obligations

As previously mentioned, from the tax year 2022, Cyprus tax resident companies and permanent establishments of non-Cyprus tax resident companies that are situated in Cyprus are obliged to prepare a Transfer Pricing documentation file and a Summary Information Table (SIT) on an annual basis, provided they are engaged in Controlled Transactions<sup>1</sup> with related companies. The preparation and submission of the Transfer Pricing documentation file, though, is subject to exemptions that are explained below.

It is mentioned that as per the new law, the Transfer Pricing documentation file consists of the below:

- **Master file:** as per OECD, the master file "should provide an overview of the MNE group business, including the nature of its global business operations, its overall transfer pricing policies, and its global allocation of income and economic activity in order to assist tax administrations in evaluating the presence of significant transfer pricing risk. In general, the master file is intended to provide a high-level overview in order to place the MNE group's transfer pricing practices in their global economic, legal, financial and tax context." (OECD, 2014).
- **Cyprus local file:** as per OECD, the local file "provides more detailed information relating to specific intercompany transactions. The information required in the local file supplements the master file and helps to meet the objective of assuring that the taxpayer has complied with the arm's length principle in its material transfer pricing positions affecting a specific jurisdiction. The local file focuses on information relevant to the transfer pricing analysis related to transactions taking place between a local country affiliate and associated enterprises in different countries and which are material in the context of the local country's tax system. Such information would include relevant financial information regarding those specific transactions, a comparability analysis, and the selection and application of the most appropriate transfer pricing method." (OECD, 2014)

## EXEMPTIONS FROM THE OBLIGATION TO PREPARE A TRANSFER PRICING DOCUMENTATION FILE

- **Master file:** the obligation to prepare a master file lies only on Cyprus tax resident companies that are positioned as Ultimate Parent Entities (UPEs) or Surrogate Parent Entities (SPEs) for Country-by-Country Reporting (CbCR) purposes. All other persons are considered exempt from this obligation.

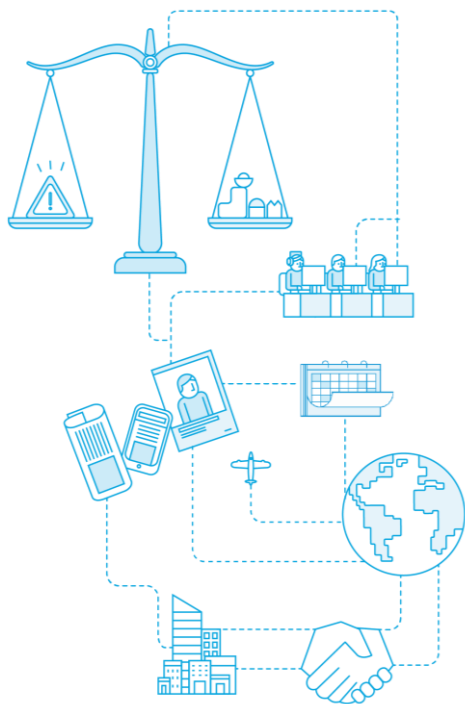
Particularly, the obligation will arise on those UPEs or SPEs if the two conditions below apply:

- i. If the relevant taxpayer is part of a MNE group with CbCR reporting obligations. Consolidated revenue of more than €750 million is a determining factor.
  - ii. If the relevant taxpayer is either the UPE or the SPE.
- **Local file:** the obligation to prepare a Cyprus local file lies only to Cyprus tax resident companies if the controlled transactions with related companies, exceed or should exceed, based on the arm's length principle, the amount of €750,000 in aggregate per transaction category per tax year.

Transaction categories may be, among others, sale or purchase of goods, provision or receipt of services, receipt or payment of royalties etc.

## SUMMARY INFORMATION TABLE (SIT)

SIT is an additional table that must be prepared by the relevant taxpayers engaged in Controlled Transactions, containing brief information of such transactions, their value, the name and other details of their intercompany counterparties and the transaction category of each Controlled Transaction. The relevant taxpayers are obliged to file this table annually, along with their corporate income tax return.



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## REPORTING DEADLINES

The Transfer Pricing documentation file (Master file, if relevant, and Cyprus local file) should be prepared annually, by the deadline of submission of the corporate income tax return (T.D. 4) of the relevant taxpayer. Currently, the T.D. 4 should be submitted no later than 15 months after the end of each tax year.

However, the Transfer Pricing documentation file should be available, upon request, to the Tax Department by the relevant taxpayers, within 60 days from the end of the preparation deadline (as described above).

## QUALITY ASSURANCE REVIEW

The Cyprus local file must be subject to Quality Assurance Review (sign-off) by a person holding the Practicing Certificate from the Institute of Certified Public Accountants of Cyprus, or any other recognized body approved by the Council of Ministers. This must take place on an annual basis before the end of the preparation deadline.

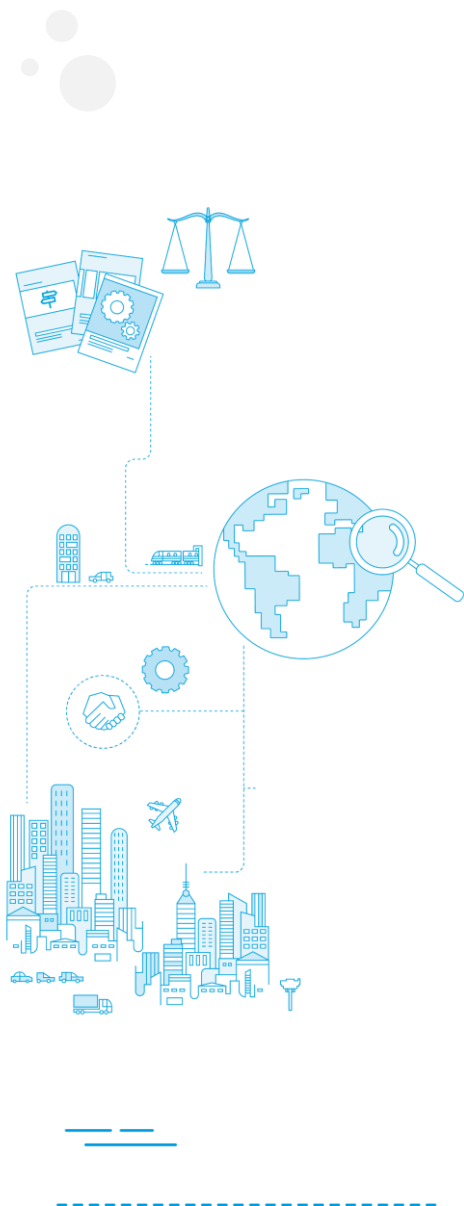
## NON-COMPLIANCE FINES

The Assessment and Collection of Taxes Law, as amended, provide new administrative fines for taxpayers who fail to comply with the new Law requirements.

- Failure to submit the Transfer Pricing documentation file within 60 days from the Tax Department's request, the following fines apply:

Length of delay	Monetary fine
Submission after the 60 <sup>th</sup> day but before the 91 <sup>st</sup> day	€5,000
Submission after the 90 <sup>th</sup> day but before the 121 <sup>st</sup> day	€10,000
Submission after the 121 <sup>st</sup> day	€20,000

- Failure to submit the SIT electronically by the submission deadline, a monetary fine of €500 applies.



<sup>2</sup> 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.

## Procedure for Advance Pricing Arrangements<sup>2</sup> (APAs)

The new Law provides the taxpayers with the right to apply for an Advance Pricing Arrangement (APA) for Controlled Transactions with related parties. An APA can assist taxpayers by eliminating uncertainty through enhancing the predictability of tax treatment in cross-border Controlled Transactions. The relevant taxpayers are eligible to apply for all types of APAs. These are briefly explained below:

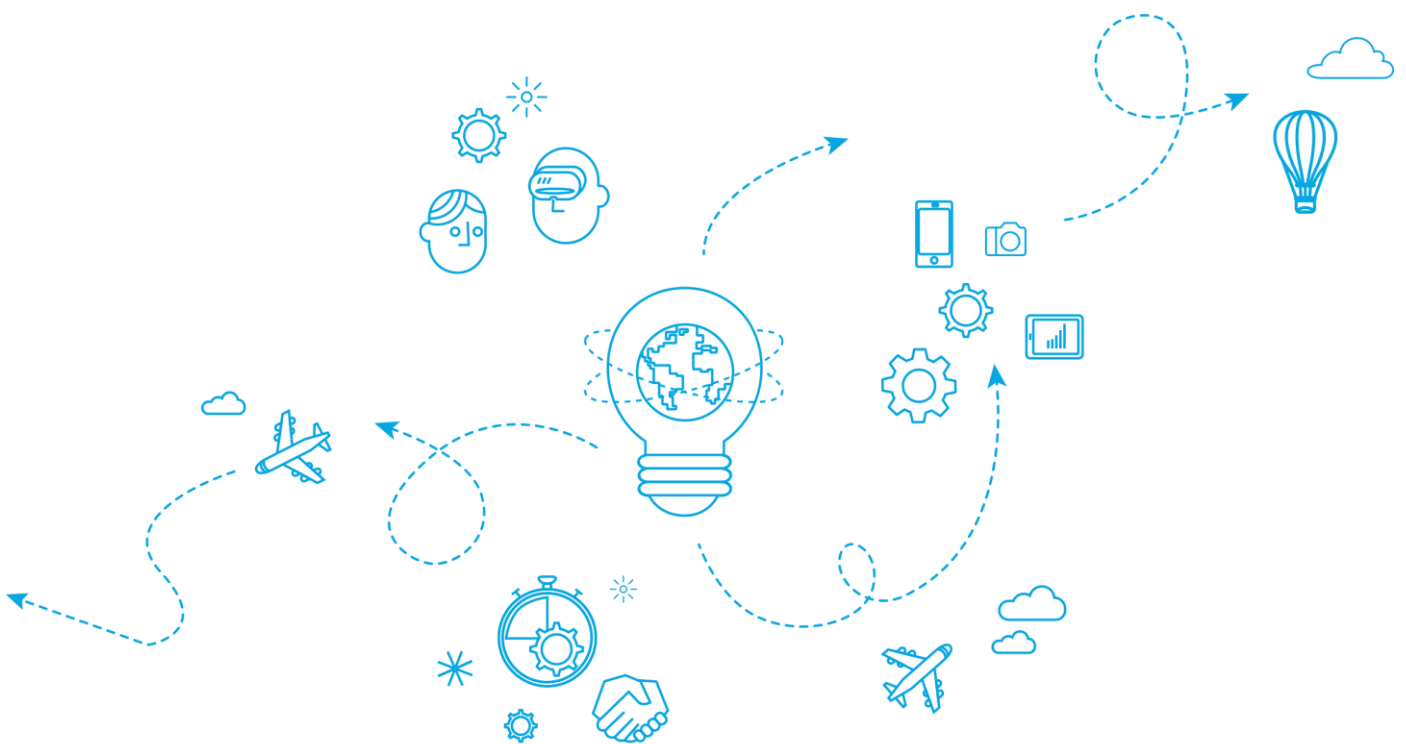
- **Unilateral APA:** The relevant Cyprus taxpayer and the Cyprus Tax Department establish an arrangement without the involvement of other interested tax authorities abroad.
- **Bilateral and Multilateral APA:** The relevant Cyprus taxpayer and the Cyprus Tax Department establish an arrangement with one or more foreign-related counterparties and their respective tax jurisdictions. It is vital that for the bilateral or multilateral APAs, Cyprus has a double tax treaty with the counterparties' jurisdiction. In this regard, the relevant taxpayer submits a corresponding request for APA to the foreign jurisdictions' tax authorities.

## TIMELINE FOR APA ISSUANCE

The decision issued by the Tax Department may be issued within a period of 10 months from the date of APA request. There is a possibility, though, the Tax Department may extend the timeframe up to 24 months.

Upon issuance, the APA is valid for a period of up to 4 years, and the decision is binding. It, however, can be revised, revoked or cancelled, subject to conditions. Such conditions may involve, among others, material changes in critical assumptions on which the APA was based, failure of the taxpayer to comply with one or more terms or conditions included in the APA, or there are any substantial changes in the applicable tax laws which are significantly affecting the application of APA.





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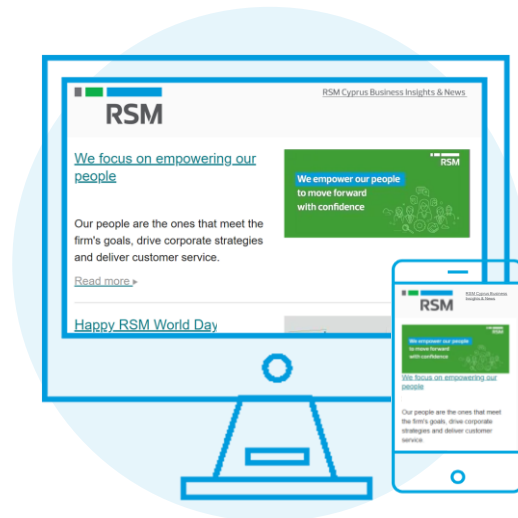
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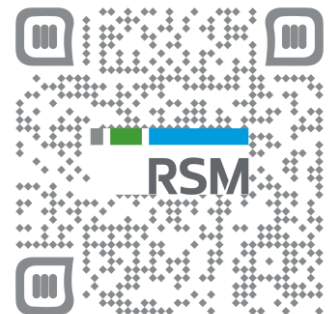
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