Cyprus introduces new Transfer Pricing Documentation Requirements and Provisions for APAs

On 30 June 2022, the House of Representatives of Cyprus passed a new law introducing detailed transfer pricing legislation and incorporated the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (OECD TP Guidelines) into the Cypriot Income Tax Law of 2002.

The laws will enter into force once published into the Official Gazette of the Republic, which is expected to occur in the next couple of weeks. The TP legislation will be effective as of 1 January 2022.

The rules introduce new TP documentation requirements, subject to certain thresholds being exceeded. In addition, the legislation also includes a framework for taxpayers to apply for Advance Pricing Agreements.

Applicable legislation:

According to the Cypriot legislation, the new transfer pricing rules apply to transactions between related parties (legal persons and individuals). For legal entities, the new law provides detailed rules as to the meaning of the term “related parties” in an effort to capture different relations that there is a “control” situation.

The new law introduces a 25% relationship test. Where taxpayers meet the conditions under this 25% relationship test, TP documentation requirements will arise assuming the relevant thresholds for the value of transactions with related parties (“controlled transactions”) have been exceeded.

TP documentation requirements:

The law provides for two types of requirements for tax residents in Cyprus.

1. **Summary information table (SIT)** which includes high level information on related party transactions, such as the identity of the counterparties, their jurisdiction of tax residency and the value of the transactions.

2. **TP documentation file** consisted by the **local file** and the **Master file.** The master file applies when acting as the Ultimate Parent Entity (UPE) or Surrogate Parent Entity (SPE) for Country-by-Country Reporting purposes i.e.

   - The taxpayer is part of an MNE Group with consolidated revenue above €750 million, and
   - The taxpayer is either the Ultimate Parent Entity (UPE) or the Surrogate Parent Entity (SPE).

   local file: The local file refers specifically to material transactions of the local taxpayer. In contrast to the master file, which provides a high-level overview, the local file provides more detailed information relating to specific intercompany transactions and helps to meet the objective of assuring that the taxpayer has complied with the arm's-length principle for its material transfer pricing positions. The local file focuses on information relevant to the transfer pricing analysis related to transactions taking place between connected parties such as:

   - Accurate delineation of the transaction (industry analysis and value chain analysis);
   - Recognition of the transaction;
   - Comparability analysis and functional analysis;
   - Finding comparables;
   - Selection of the most appropriate transfer pricing method. Transfer pricing methods of the OECD TP Guidelines are: the comparable uncontrolled price method; the resale price method; the cost-plus method; the profit split method; and the transactional net margin method.
   - Comparability adjustments;
   - Arms-length range;
   - Special rules in intangibles, risks allocation, profit splits and financial transactions.

   The local File obligation is applicable for Liable Taxpayers if their transactions with connected persons either exceed (or should have exceeded based on the arm's-length principle) the amount of €750,000 in aggregate per category of transaction per tax year.

   Master File: The master file contains standardized information relevant to all group members of a multinational enterprise (MNE). More specifically, 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.

Deadlines:
The local file and the summary information table for a particular year should be prepared no later than the due date for submitting the taxpayer's Income Tax Return for that year.i.e 15 months after the year-end of the tax year to put in place.

Advance Pricing Agreements (APAs):
The new law provides also the possibility for a taxpayer to apply for an Advance Pricing Agreement (APA) for transactions with related parties. Through an APA the taxpayer can determine and agree with the tax authorities in advance an appropriate set of criteria for controlled transactions (e.g. method, comparables and appropriate adjustments thereto, critical assumptions as to future events) over a fixed period of time.

Penalties for non-compliance:
The new law provides specific penalty provisions. In the event of late submission of the summary information table, a five hundred euros (€500) fine is imposed.

Additionally, the TP documentation file should be submitted to the Tax Department upon request within 60 days. If the TP documentation file is submitted after the 60th day, the penalties vary as follows:

- If submitted between 61 and 90 days, the penalty is €5,000

- If submitted between 91 and 120 days, the penalty is €10,000

- If not submitted or submitted after the 120th day, the penalty is €20,000

Takeaway:
The above legislative developments aim to introduce transfer pricing rules and documentation requirements in accordance with recommendations of the Organisation for Economic Co-operation and Development on Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (OECD TP Guidelines).

The new rules provide a clear framework to taxpayers as to how they should be documenting their controlled transactions to support that they are adhering to the arm's length principle.

Following the above, taxpayers should start planning their TP practices and methods which will be documented under the new rules.

Our team of experts is at your disposal to assist you to understand what is the impact of the new rules on your company and complying with the TP regulations on time.

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