

Cyprus Transfer Pricing: Simplification Measures

February 2024

Introduction

The Cyprus Tax Department issued a Circular in July 2023 regarding the simplification measures for Transfer Pricing (TP), with retroactive effect as of 1 January 2022. This provides guidance regarding the documentation of intercompany transactions in cases where the taxpayers are not obliged to prepare a Cyprus Local File (i.e. not obliged to follow the full TP rules – [click here](#) for our detailed Information Sheet).

The Circular introduces simplified TP documentation requirements regarding transactions with related parties ('controlled transactions') for which there is no obligation to prepare a Cyprus Local File, due to the fact that these transactions do **not** exceed (or would not have exceeded, based on the arm's length principle) the thresholds of €5,000,000 in the category of financing transactions and €1,000,000 in all other categories (i.e. trade of goods/services/intellectual property/other) per year in aggregate per transaction category. Up to 31 December 2023 this exemption was granted below the threshold of €750,000 for all categories per year in aggregate per transaction category.

In addition, for certain types of transactions, the Circular provides for simplification measures in the form of minimum/ maximum acceptable profit margins ('safe harbours'), provided that they fall below the above aggregate thresholds per category per year and assuming that adequate minimum TP documentation is maintained.

Simplified TP documentation

Taxpayers who engage in controlled transactions below the above thresholds (and are thus exempt from the obligation to prepare a Cyprus Local File) should maintain the following minimum documentation on file, in order to support their compliance with the arm's length principle in respect of these controlled transactions:

1. Brief functional analysis (summary of functions undertaken, assets used, risks assumed)
2. Description of the entity's characterisation (functional profile), based on the results of the functional analysis
3. Reasons for the selected TP method being considered as the most appropriate one
4. Determination of the arm's length price, supported by relevant benchmarking analysis using external or internal comparables depending on the case (or any other method as per the OECD TP guidelines).

Such minimum TP documentation should be provided to the Tax Department upon request, within 60 days from receipt of such request.

*NOTE: Taxpayers who are eligible to maintain simplified TP documentation and who, at the same time, opt for one of the **safe harbour** margins (explained below), are not required to maintain documentation with regards to points (c) or (d) above.*

Simplification measures (safe harbour margins) - OPTIONAL

Taxpayers who are exempt from the obligation to prepare a Cyprus Local File (not exceeding the specified thresholds per category per year) and who engage in any of the following types of controlled transactions are assumed to comply with the arm's length principle, if they opt for the following corresponding simplification measures (safe harbour margins):

Transaction/ category	Safe harbour margin	Notes
Provision of finance to related parties funded through 'debt'	Minimum pre-tax return of 2.5%, after deduction of allowable expenses (*)	'Debt' includes bonds, loans from related parties, interest-free loans from shareholders, cash advances and bank loans
Provision of finance to related parties funded through 'equity'	Minimum return equal to the yield rate (as at 31 December of the previous year) of the 10-year government bond (**) of the country in which the borrower operates increased by 3.5% (*)	'Equity' includes issue of share capital and share premium, non-return capital contributions, and retained earnings
'Loans payable' to related parties, to the extent that the funds obtained are used in the business	Cost of borrowing should not exceed the yield rate (as at 31 December of the previous year) of the 10-year Cyprus government bond (**) increased by 1.5% (*)	'Loans payable' include borrowings, bonds or other instruments obtained from related parties and that carry interest
Provision and receipt of 'low value-adding services' to related parties	For provision of services, minimum 5% markup on the relevant costs. For receipt of services, maximum 5% markup on the relevant costs	'Low value-adding services' include services that are of a supportive nature, are not part of the group's core business, do not involve unique and valuable intangibles, and do not involve significant risk for the service provider

(*) Calculated on the average yearly outstanding loan (principal plus accrued interest). These margins are subject to review and may be amended from time to time, based on prevailing market conditions and other relevant factors

(**) In case where the 10-year government bond yield is negative, it will not be considered in calculating the minimum return/ maximum cost, and the rate of 3.5% or 1.5% (as the case may be) will apply.

The use of a simplification measure needs to be declared in the company's Income Tax Return, in the relevant section of the Summary Information Table.

Noting that the simplification measures cannot be used if the company has in its possession reliable internal comparables (i.e. comparable transactions with unrelated parties) which can be used for the determination of the arm's length price of the controlled transactions.

The Circular clarifies that no deviations from the safe harbour margins will be allowed, unless such deviations are fully supported by the preparation of minimum TP documentation as described above.

It is also clarified that the Cyprus Tax Department will not make any downward adjustments to the taxable income, in case where the accounting profit from the controlled transactions is higher than the profit resulting from the application of the simplification measures or the results of a TP study.

- **Additional documentation requirements**

Apart from the simplified TP documentation requirements for taxpayers that are not obliged to prepare a Cyprus Local File, the use of any of the simplification measures (safe harbour margins) imposes additional minimum documentation requirements, including (among others) lists of relevant loans, reasons why they meet the criteria for use of the safe harbour, workings and reconciliations for the purpose of arriving at the taxable income, etc.

- **DAC6 reporting obligations for safe harbour**

The use of the aforementioned simplification measures constitutes a 'unilateral safe harbour' rule for purposes of the DAC6 Directive for mandatory exchange of information regarding cross-border transactions. As such, any cross-border arrangements making use of the simplification measures should be considered as reportable for DAC6 purposes. [Click here](#) for more details on DAC6.

NOTES

The above is intended to provide a brief guide only. It is essential that appropriate professional advice is obtained. Totalserve Management Ltd will be glad to assist you in this respect. Please do not hesitate to contact us.