

Malta

Transfer Pricing Country Profile

Updated February 2022

		SUMMARY	REFERENCE
The Arm's Length Principle			
1	Does your domestic legislation or regulation make reference to the Arm's Length Principle?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<p>Article 5(6) of the Income Tax Management Act (Cap 372 of the Laws of Malta)</p> <p>Articles 2, 12(1)(u)(2) and 51A of the Income Tax Act (Cap 123 of the Laws of Malta)</p> <p>Rule 7(1)(c) of the Patent Box Regime (Deduction) Rules</p>
2	What is the role of the OECD Transfer Pricing Guidelines under your domestic legislation?	In the absence of specific domestic legislation regarding transfer pricing, reference is made to the OECD Transfer Pricing Guidelines. These, however, are not binding.	
3	Does your domestic legislation or regulation provide a definition of related parties? If so, please provide the definition contained under your domestic law or regulation.	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <p>While Malta's domestic legislation provides several definitions of 'related parties' in different circumstances, mainly in the context of anti-avoidance provisions, it does not specifically define 'related parties' for TP purposes, except where it is defined in Article 9 or its equivalent in the double taxation treaties.</p>	

Transfer Pricing Methods

4	Does your domestic legislation provide for transfer pricing methods to be used in respect of transactions between related parties?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If affirmative, please check those provided for in your legislation: <table border="1" style="width: 100%; border-collapse: collapse; margin-top: 5px;"> <tr> <td style="text-align: center;">CUP</td><td style="text-align: center;">Resale Price</td><td style="text-align: center;">Cost Plus</td><td style="text-align: center;">TNMM</td><td style="text-align: center;">Profit Split</td><td style="text-align: center;">Other (<i>If so, please describe</i>)</td></tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td><td style="text-align: center;"><input type="checkbox"/></td><td style="text-align: center;"><input type="checkbox"/></td><td style="text-align: center;"><input type="checkbox"/></td><td style="text-align: center;"><input type="checkbox"/></td><td style="text-align: center;"><input type="checkbox"/></td></tr> </table>	CUP	Resale Price	Cost Plus	TNMM	Profit Split	Other (<i>If so, please describe</i>)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
CUP	Resale Price	Cost Plus	TNMM	Profit Split	Other (<i>If so, please describe</i>)										
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>										
		Malta's domestic legislation does not provide for TP methods. However, reference is made to the OECD TPG.													
5	Which criterion is used in your jurisdiction for the application of transfer pricing methods?	Please check all that apply: <input type="checkbox"/> Hierarchy of methods <input type="checkbox"/> Most appropriate method <input type="checkbox"/> Other (<i>if so, please explain</i>)													
		As per the response to Question 4, TP methods are not enshrined in Malta's domestic legislation. However, reference is made to the OECD TPG.													
6	If your domestic legislation or regulations contain specific guidance on commodity transactions, indicate which of the following approaches is followed.	<input type="checkbox"/> For controlled transactions involving commodities, the guidance contained in paragraphs 2.18-2.22 of the TPG is followed. <input type="checkbox"/> Domestic legislation mandates the use of a specific method for controlled transactions involving commodities (<i>if so, please explain</i>) <input checked="" type="checkbox"/> Other (<i>if so, please explain</i>)													
		Malta's domestic legislation or regulations do not contain specific guidance on commodity transactions and tend to generally rely on the OECD TPG.													

Comparability Analysis

7	Does your jurisdiction follow (or largely follow) the guidance on comparability analysis outlined in Chapter III of the TPG?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
		In the absence of specific transfer pricing provisions, Malta refers to the OECD TPG.	

8	Is there a preference in your jurisdiction for domestic comparables over foreign comparables?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
9	Does your tax administration use secret comparables for transfer pricing assessment purposes?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
10	Does your legislation allow or require the use of an arm's length range and/or statistical measure for determining arm's length remuneration?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No However, as explained above, Malta refers to the OECD TPG.	
11	Are comparability adjustments required under your domestic legislation or regulations?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Intangible Property			
12	Does your domestic legislation or regulations contain guidance specific to the pricing of controlled transactions involving intangibles?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Malta's domestic legislation or regulations do not contain specific guidance on transactions involving intangibles and would generally tend to rely on the OECD TPG.	
13	Does your domestic legislation or regulation provide for transfer pricing rules or special measures regarding hard-to-value intangibles (HTVI)?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	HTVI Implementation Questionnaire
14	Are there any other rules outside transfer pricing rules that are relevant for the tax treatment of transactions involving intangibles?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No There are provisions in the Income Tax Act (Cap 123 of the Laws of Malta) that are relevant for the tax treatment of transactions involving certain categories of intangibles. These include provisions relating to: 1. Taxable capital gains or profits arising from intellectual property (Article 5(1) and relevant provisions in the Capital Gains Rules S.L. 123.27 related thereto; 2 The re-domiciliation of a company (Article 4A);	Income Tax Act (Cap 123 of the Laws of Malta) Legislation Malta Article 8 (3)(a) of the Malta Enterprise Act (Cap 463 of the Laws of Malta) Patent Box Regime (Deduction) Rules

		3 Amortisation in respect of intellectual property (Article 14(1) (m)); 4. Deductible expenses on Qualifying Intellectual Property – Patent Box Regime (Deduction) Rules.	
Intra-Group Services			
15	Does your domestic legislation or regulations provide guidance specific to intra-group services transactions?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <p>Malta's domestic legislation provides specific guidance on intra-group services in limited circumstances.</p> <p>Article 14(4) - Article 14(4) of the Income Tax Act (Cap 123 of the Laws of Malta) refers to services carried out on or in relation to immovable property where such property is owned by a related person. Income derived from such services should be deemed to be separate chargeable income to the party performing the services. Deductions are allowed against such income; however, such deductions cannot exceed the total consideration received or receivable for the provision of such services.</p> <p>Article 26(h) - Article 26(h) of the Income Tax Act (Cap 123 of the Laws of Malta) refers to certain interest, discount or premium paid to a related person in relation to immovable property. Article 26(h)(iii) states that if the payor is a person related to the person not resident in Malta, who receives interest, discount, or premium, such deduction is disallowed for tax purposes. A related person for this paragraph is defined as follows:</p> <p>(a) that person and the person not resident in Malta are, directly or indirectly, controlled or beneficially owned by more than 10% by the same persons; or</p> <p>(b) that person owns, directly or indirectly, more than 10% of the ordinary share capital or voting rights of the person not resident in Malta.</p>	Article 14(4) & Article 26(h) of the Income Tax Act (Cap 123 of the Laws of Malta)
16	Do you have any simplified approach for low value-adding intra-group services?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <p>Malta's domestic legislation or regulations do not contain specific guidance on the simplified approach for low value-adding intra-group services and would generally tend to rely on the OECD TPG.</p>	
17	Are there any other rules outside transfer pricing rules that are relevant for the tax treatment of transactions involving services?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

Financial Transactions		
18	<p>[NEW] Does your domestic legislation or regulations provide guidance specific to financial transactions?</p>	<p> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No </p> <p>Malta's domestic legislation or regulations do not contain specific guidance on financial transactions and would generally tend to rely on the OECD TPG.</p>
19	<p>[NEW] Are there any other rules outside transfer pricing rules that are relevant for the tax treatment of financial transactions?</p>	<p> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No </p> <p>With effect from 1 January 2019, an interest limitation is applicable on exceeding borrowing costs and the deduction is limited to 30% of EBITDA or EUR 3 million, whichever is the higher.</p> <p>With effect from 1 January 2020, if a payment under a hybrid financial instrument results in a deduction without inclusion, Malta will deny the deduction of the payment if Malta is the payer jurisdiction. Where Malta is the payee jurisdiction, the payment will be included in the income in Malta if the deduction is not denied in the payer jurisdiction.</p>
<p>Cost Contribution Agreements</p>		
20	<p>Does your jurisdiction have legislation or regulations on cost contribution agreements?</p>	<p> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No </p> <p>Malta's domestic legislation or regulations do not contain specific regulation on cost contribution agreements and would generally tend to rely on the OECD TPG.</p>
<p>Transfer Pricing Documentation</p>		
21	<p>Does your legislation or regulations require the taxpayer to prepare transfer pricing documentation?</p>	<p> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No </p> <p><i>If affirmative, please check all that apply:</i></p> <p> <input type="checkbox"/> Master file consistent with Annex I to Chapter V of the TPG <input type="checkbox"/> Local file consistent with Annex II to Chapter V of the TPG <input checked="" type="checkbox"/> Country-by-country report consistent with Annex III to Chapter V of the TPG </p>

		<input type="checkbox"/> Specific transfer pricing returns (separate or annexed to the tax return) <input type="checkbox"/> Other (specify):	
22	Please briefly explain the relevant requirements related to filing of transfer pricing documentation (i.e. timing for preparation or submission, languages, etc.)	<p>The Cooperation with Other Jurisdictions on Tax Matters (S.L. 123.127) (The Regulations) require Maltese tax resident ultimate parent entities (UPEs) of multinational entity groups (MNEs) and certain constituent entities (CE), which has been appointed as the Surrogate Parent Entity (SPE) to file with the Commissioner for Revenue (CFR) a Country-by-Country Report (CbCR) in respect of Reporting Fiscal Years starting from 1 January 2016.</p> <p>The Regulations also appear to cater for the so-called ‘secondary mechanism’, whereby a CE which is tax resident in Malta and which is not the UPE will be required to submit the CbCR itself subject to satisfying certain conditions. This secondary mechanism will apply as from periods beginning on or after 1 January 2017, unless the CE has been appointed as the SPE.</p> <p>The CbCR needs to be submitted by the reporting Maltese UPE, SPE or CE within 12 months from the last day of the fiscal year of the MNE Group.</p> <p>The CFR shall, at prescribed intervals, automatically exchange information gathered from the CbCRs to any other jurisdiction in which one or more CE of the MNE group is either tax resident or by virtue of a permanent establishment created therein.</p>	Cooperation with Other Jurisdictions on Tax Matters Regulations
23	Does your legislation provide for specific transfer pricing penalties and/or compliance incentives regarding transfer pricing documentation?	<div> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No </div> <p>Certain penalties are contemplated when the reporting Maltese UPE, SPE or CE fail to comply with, inter alia, data collection, retention and reporting obligations in accordance with the obligations set out in the EU Administrative Cooperation Directive. Also, Article 52 of the Income Tax Management Act includes general penalties.</p>	Article 52 of the Income Tax Management Act The Cooperation with Other Jurisdictions on Tax Matters (Amendment) Regulations, 2016
24	If your legislation provides for exemption from transfer pricing documentation obligations, please explain.	N/A	

Administrative Approaches to Avoiding and Resolving Disputes

25	Which mechanisms are available in your jurisdiction to prevent and/or resolve transfer pricing disputes?	<p>Please check those that apply:</p> <p><input checked="" type="checkbox"/> Rulings</p> <p><input type="checkbox"/> Enhanced engagement programs</p> <p><input checked="" type="checkbox"/> Advance Pricing Agreements (APA)</p> <p><input checked="" type="checkbox"/> Unilateral APAs</p> <p><input checked="" type="checkbox"/> Bilateral APAs</p> <p><input checked="" type="checkbox"/> Multilateral APAs</p> <p><input checked="" type="checkbox"/> Mutual Agreement Procedures</p> <p><input type="checkbox"/> Other (<i>please specify</i>):</p>	Malta's MAP Profile MAP Guidelines
<p>Malta does not have a formal APA programme. However, an APA may be filed in Malta and a roll back period is allowed. Malta has included the MAP article in its treaties, has adopted the EU Arbitration Convention and transposed the EU Dispute Resolution Mechanism Directive into its legislation. MAP guidance has also been published on the website of the Commissioner for Revenue.</p> <p>For further information, please refer to Malta's MAP Profile.</p>			

Safe Harbours and Other Simplification Measures

26	Does your jurisdiction have rules on safe harbours in respect of certain industries, types of taxpayers, or types of transactions?	<p><input type="checkbox"/> Yes</p> <p><input checked="" type="checkbox"/> No</p>	
27	Does your jurisdiction have any other simplification measures not listed in this questionnaire? If so, please provide a brief explanation.	<p><input type="checkbox"/> Yes</p> <p><input checked="" type="checkbox"/> No</p>	

Other Legislative Aspects or Administrative Procedures

28	Does your jurisdiction allow/require taxpayers to make year-end adjustments?	<p><input type="checkbox"/> Yes</p> <p><input checked="" type="checkbox"/> No</p>	
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29	Does your jurisdiction make secondary adjustments?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Attribution of Profits to Permanent Establishments			
30	[NEW] Does your jurisdiction follow the Authorised OECD Approaches for the attribution of profits to PEs (AOA)?	<input checked="" type="checkbox"/> Yes <i>In how many tax treaties?</i> 80 out of 81 of Malta's DTAs (including signed but not in force). <i>If yes, how do you implement it in cases, where the old tax treaties do not contain the new version of Article 7 (OECD MTC 2010 and later)</i> Reference is made to the OECD Commentary.	Malta's Tax Treaties
		<input checked="" type="checkbox"/> No <i>In how many tax treaties?</i> In 1 out of 81 of Malta's DTAs (including signed but not in force).	
31	[NEW] Does your jurisdiction follow also another approach?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Other Relevant Information			
32	Other legislative aspects or administrative procedures regarding transfer pricing	N/A	
33	Other relevant information (e.g. <i>whether your jurisdiction is preparing new transfer pricing regulations, or other relevant aspects not addressed in this questionnaire</i>)	Malta is currently preparing TP rules to provide for the determination of the arm's length pricing of a transaction or a series of transactions and any adjustments in relation thereto, as well as advance pricing agreements.	

For more information, please visit: <https://oe.cd/transfer-pricing-country-profiles>