

Malta

Transfer Pricing Country Profile

Updated October 2017

	SUMMARY	REFERENCE
The Arm's Length Principle		
1	<p>Does your domestic legislation or regulation make reference to the Arm's Length Principle?</p> <p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Article 5(6) of the Income Tax Management Act and Articles 2 and 12(1)(u)(2) of the Income Tax Act make reference to the Arm's Length Principle.</p>	<p>Article 5(6) of the Income Tax Management Act (Cap 372 of the Laws of Malta) http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8841</p> <p>Articles 2 and 12(1)(u)(2) of the Income Tax Act (Cap 123 of the Laws of Malta) http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8658</p>
2	<p>What is the role of the OECD Transfer Pricing Guidelines under your domestic legislation?</p> <p>In the absence of specific domestic legislation regarding transfer pricing guidelines, reference is made to the OECD Transfer Pricing Guidelines. These however are not binding.</p>	
3	<p>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.</p> <p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>While our 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	<p>Does your domestic legislation provide for transfer pricing methods to be used in respect of transactions between related parties?</p>	<p><input type="checkbox"/> Yes</p> <p><input checked="" type="checkbox"/> No</p> <p>If affirmative, please check those provided for in your legislation:</p> <table border="1" style="width: 100%; border-collapse: collapse; text-align: center;"> <thead> <tr> <th style="padding: 5px;">CUP</th> <th style="padding: 5px;">Resale Price</th> <th style="padding: 5px;">Cost Plus</th> <th style="padding: 5px;">TNMM</th> <th style="padding: 5px;">Profit Split</th> <th style="padding: 5px;">Other (If so, please describe)</th> </tr> </thead> <tbody> <tr> <td style="padding: 5px;"><input type="checkbox"/></td> <td style="padding: 5px;"><input type="checkbox"/></td> <td style="padding: 5px;"><input type="checkbox"/></td> <td style="padding: 5px;"><input type="checkbox"/></td> <td style="padding: 5px;"><input type="checkbox"/></td> <td style="padding: 5px;"><input type="checkbox"/></td> </tr> </tbody> </table> <p>Our domestic legislation does not provide for TP methods. However, reference is made to the TP Guidelines.</p>	CUP	Resale Price	Cost Plus	TNMM	Profit Split	Other (If so, please describe)	<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 (If so, please describe)										
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>										
5	<p>Which criterion is used in your jurisdiction for the application of transfer pricing methods?</p>	<p>Please check all that apply:</p> <p><input type="checkbox"/> Hierarchy of methods</p> <p><input type="checkbox"/> Most appropriate method</p> <p><input type="checkbox"/> Other (if so, please explain)</p> <p>As per reply to Question 4, TP methods are not enshrined in our domestic legislation. However, reference is made to the TP Guidelines.</p>													
6	<p>If your domestic legislation or regulations contain specific guidance on commodity transactions, indicate which of the following approaches is followed.</p>	<p><input type="checkbox"/> For controlled transactions involving commodities, the guidance contained in paragraphs 2.18-2.22 of the TPG is followed.</p> <p><input type="checkbox"/> Domestic legislation mandates the use of a specific method for controlled transactions involving commodities (if so, please explain)</p> <p><input type="checkbox"/> Other (if so, please explain)</p> <p>Our domestic legislation does not contain specific guidance on commodity transactions.</p>													

Comparability Analysis

7	<p>Does your jurisdiction follow (or largely follow) the guidance on comparability analysis outlined in Chapter III of the TPG?</p>	<p><input checked="" type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p>	
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		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 TP Guidelines.	
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 However, as explained above, Malta follows TP Guidelines.	
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	
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	Income Tax Act (Cap 123 of the Laws of Malta) http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8658

		<p>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:</p> <ol style="list-style-type: none"> 1. Taxable capital gains or profits arising from intellectual property (Article 5(1); 2. The re-domiciliation of a company (Article 4A); 3. Deductible expenses on scientific research and on patents/patent rights (Article 14(1)(h) and (m)) <p>In addition, Article 8 (3)(a) of the Malta Enterprise Act (Cap 463 of the Laws of Malta) provide for investment tax credits.</p>	<p>Article 8 (3)(a) of the Malta Enterprise Act (Cap 463 of the Laws of Malta)</p> <p>http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8929&l=1</p>
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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>Article 14(4) & Article 26(h) of the Income Tax Act (Cap 123 of the Laws of Malta)</p> <p>http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8658</p>
		<p>Yes, but in limited circumstances.</p> <p>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.</p> <p>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.</p>	
16	Do you have any simplified approach for low value-adding intra-group services?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
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	
		See reply to question 15.	

Cost Contribution Agreements

18	Does your jurisdiction have legislation or regulations on cost contribution agreements?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
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Transfer Pricing Documentation

19	<p>Does your legislation or regulations require the taxpayer to prepare transfer pricing documentation?</p>	<p><input checked="" type="checkbox"/> Yes</p> <p><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</p> <p><input type="checkbox"/> Local file consistent with Annex II to Chapter V of the TPG</p> <p><input checked="" type="checkbox"/> Country-by-country report consistent with Annex III to Chapter V of the TPG</p> <p><input type="checkbox"/> Specific transfer pricing returns (separate or annexed to the tax return)</p> <p><input type="checkbox"/> Other (specify):</p>	
20	<p>Please briefly explain the relevant requirements related to filing of transfer pricing documentation (i.e. timing for preparation or submission, languages, etc.)</p>	<p>The Cooperation with Other Jurisdictions on Tax Matters (Amendment) Regulations, 2016 (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 9 months from the last day of the fiscal year of the MNE Group.</p> <p>The CFR shall automatically exchange information gathered from the CbCRs to any other EU Member State in which one or more CE of the MNE group is either tax resident or by virtue of a permanent establishment created therein at prescribed intervals.</p>	<p>The Cooperation with Other Jurisdictions on Tax Matters (Amendment) Regulations, 2016</p> <p>http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=11696&l=1</p>
21	<p>Does your legislation provide for specific transfer pricing penalties and/or compliance incentives regarding transfer pricing documentation?</p>	<p><input checked="" type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p>	<p>Article 52 of the Income Tax Management Act</p> <p>http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8841</p>

		Certain penalties are contemplated when the reporting Maltese UPE, SPE or CE fail to comply with, inter alia, due diligence, 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.	The Cooperation with Other Jurisdictions on Tax Matters (Amendment) Regulations, 2016 http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=119696&l=1 -
22	If your legislation provides for exemption from transfer pricing documentation obligations, please explain.	N/A	
Administrative Approaches to Avoiding and Resolving Disputes			
23	Which mechanisms are available in your jurisdiction to prevent and/or resolve transfer pricing disputes?	Please check those that apply: <input checked="" type="checkbox"/> Rulings <input type="checkbox"/> Enhanced engagement programs <input checked="" type="checkbox"/> Advance Pricing Agreements (APA) <input checked="" type="checkbox"/> Unilateral APAs <input checked="" type="checkbox"/> Bilateral APAs <input checked="" type="checkbox"/> Multilateral APAs <input checked="" type="checkbox"/> Mutual Agreement Procedures <input type="checkbox"/> Other (<i>please specify</i>):	
Safe Harbours and Other Simplification Measures			
24	Does your jurisdiction have rules on safe harbours in respect of certain industries, types of taxpayers, or types of transactions?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
25	Does your jurisdiction have any other simplification measures not listed in this questionnaire? If so, please provide a brief explanation.	No.	

Other Legislative Aspects or Administrative Procedures

26	Does your jurisdiction allow/require taxpayers to make year-end adjustments?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
27	Does your jurisdiction make secondary adjustments?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

Other Relevant Information

28	Other legislative aspects or administrative procedures regarding transfer pricing	Malta's current legislation in relation to CbCR relates solely to EU Member States, as contemplated in Council Directive (EU) 2016/881. Such exchange of CbC Reports will be extended to Non-EU Jurisdictions during 2017, with an amendment to the existing Cooperation Regulations and work on this is currently underway. The necessary legislation is expected to be in place by the end of 2017.	
29	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>)	Currently, no changes in legislation are envisaged. However, due to the fact that reference is made to the OECD Transfer Pricing Guidelines, we are following the changes closely.	