



T.P. Alfa Services

Maltese Transfer Pricing Rules

“The consultation period”

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Marios Palesis

Director

Stelios Lympouras

Associate



INTRODUCTION

As a part of Malta’s Recover and Resilience Plan as agreed with EU Commission and approved by ECOFIN in 2021, Malta introduced Article 51A in its domestic Income Tax Act aiming to enable the country to make rules relating to Transfer Pricing (“TP”) as well as Advanced Pricing Arrangements (“APAs”) which will be in line with the global standards related to the arm’s length principle supported by OECD.

Due to the above attempt, the Commissioner for Revenue (“CoR”) issued draft rules which will be described below in order to receive public consultation which can be provided until **28 February 2022**.

A. BRIEF DESCRIPTION OF THE RULES INCLUDED IN CONSULTATION DOCUMENT

As a general description of the rules, the main points to be kept in mind are:

1. TP rules shall be applicable to **cross-border arrangements** concluded between associated enterprises.
2. **Associated enterprises definition** will include:
 - Bodies of persons with direct or indirect control through a holding of at least 50% of voting rights or ordinary share capital or by virtue of any powers conferred by the articles of association or other document regulating the controlled body of persons.
 - Bodies of persons that are subject to common control by virtue of the above threshold.
3. Cross-border arrangements between a company (or body of persons) and its Permanent establishment should also be subject to the provision of the TP rules.
4. Micro, small or medium sized entities shall be excluded.
5. In case where all cross-border arrangements of an enterprise do not exceed a *de minimis* threshold (*to be determined*), the rules will not apply.
6. Methodologies for determination of the arm’s length amount will be designed by CoR, with OECD TP guidelines to be an important source of reference.
7. The computation of the chargeable income subject to taxation will be in accordance with the arm’s length amounts of income and expenses. A corresponding adjustment will be on the chargeable income of the other involved party in the controlled transaction provided that such income is subject to Maltese taxation.
8. Enterprises subject to the provisions of TP rules must prepare and maintain records for the pricing imposed on the controlled arrangement supporting following the



arm’s length principle. Details for the documentation will be included in the TP guidelines.

9. Formal framework will be introduced as to the request and issue of Unilateral Transfer Pricing Rulings as well as APAs (both bilateral and multilateral) which will provide certainty to the taxpayers as to the application of these rules to a transaction or a series of transactions.

The TP rules will come into force in the financial year commencing **on or after** 01 January 2024.

For the detailed consultation document which included the draft TP rules please refer to the [link](#).

We shall remain to see what suggestions will be provided at the end of the consultation period and what are the next steps the CoR will decide to follow.

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Authors

Marios Palesis

Director

tp@tpalfa.com

Stelios Lympouras

Associate

tp@tpalfa.com