



T.P. Alfa Services



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Cyprus Tax Department

FAQ relating to Circular 3- "Tax treatment of intra group back to back financing transactions"

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A. INTRODUCTION

The Cyprus Tax department (TD) published in its official website frequently asked questions (FAQs) relating to the [Circular 3](#) on Back to Back intragroup transactions published on 30 June 2017.

B. THE ESSENTIAL TAKEOUTS OF THE PUBLISHED QUESTIONS

- a. There is no requirement to annually submit the Transfer Pricing study (TPS) of a company as part of the Annual Tax Filing process. The TPS is only submitted upon request from TD.
- b. The TPS must be prepared by a TP expert as per paragraph 29 of Circular 3. TP expert is a person who has sufficient practical experience, knowledge and competence to prepare a TPS that follows the OECD TP Guidelines, as amended as well as the domestic tax legislation on the matter.
- c. When a company opts for the simplification measures (2% margin after taxation), then only a functional analysis documents needs to be prepared instead of a full TPS.
- d. Where a company does not support its controlled transactions with a TPS, the TD may assess the company's taxable profit on the basis of the available information and at its own discretion proceed with the appropriate adjustment.
- e. The TPS should be prepared once an intragroup loan is initiated as well as where:
 - new loans are provided or received by the company, or;
 - significant terms of the existing loans have changed or amended, or;
 - the functional profile of the company changes; or
 - the market conditions change significantly

This list should not be considered exhaustive.

- f. Controlled transactions are the transactions concluded between related parties as these are defined in Article 33 (3) of Income Tax Law.
- g. "Specialized personnel" mentioned in paragraph 19 of Circular 3 are the personnel that have sufficient knowledge, competence and experience to perform decision making functions and control risks of the controlled transaction under consideration. An extract of OECD TP Guidelines is included in the FAQs describing what is "Control over risk". It should also be noted that the company is not required to hire specialized personnel if the company's Board of Directors has the knowledge, competence and experience to perform the decision-making functions and to control the risk of the controlled transaction.



- h. Contributions provided to the company by its shareholder who is a physical person are also considered an intragroup financing transaction regardless of whether those contributions bear interest or not. However, contributions that are of an equity rather than financing nature do not fall under the definition of financial means or instruments described in Circular 3.
- i. There is no obligation to amend the terms of a loan agreement after the application of arm's length principal or simplification measures.
- j. Circular 3 paragraph 25 states that in cases where the simplified measures are opt to be used, the minimum 2% margin after tax is applied on the value of company's assets. The "company's assets" term shall be interpreted as the assets related to the intragroup back-to-back financing transaction (e.g loans receivable). The value considered, is the value of the principal element of the loans. However, under specific facts and circumstances, accrued interest could also be included in the value of the "company's assets" if for example the loan agreement provides for interest capitalisation or the capitalisation is actually conducted by the parties regardless of the terms of the loan agreement.
- k. A company that carries out other activities in conjunction with intragroup back-to-back financing activities, also falls under the scope of the Circular but only for its intragroup back-to-back financing transactions.
- l. The Circular applied to both domestic and cross-border transactions.

For the FAQ publication of the Tax Department refer to the [link](#).

C. HOW CAN TP ALFA SERVICES LIMITED ASSIST

TP ALFA SERVICES LIMITED can assist to you to:

- Understanding the impact of the information included in this publication on your intragroup financing transactions.
- Perform and submit a transfer pricing study for your intragroup financing transactions.
- Prepare an APA and liaise with tax authorities to enable the client secure a pricing in advance;
- Assist in the formation of the internal transfer pricing policy
- Represent the you in a transfer pricing dispute with the tax authorities

DISCLAIMER



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This publication has been prepared as a general guide and for information purposes only. It is not a substitution for professional advice. One must not rely on it without receiving independent advice based on the particular facts of his/her own case. No responsibility can be accepted by the authors or the publishers for any loss occasioned by acting or refraining from acting on the basis of this publication.

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