

# **Transfer Pricing Country Summary**

## **Malta**

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## 1. Introduction

Action 13 of the BEPS Action Plan has been implemented into Maltese legislation by virtue of Legal Notice 400 of 2016, entitled “the Cooperation with Other Jurisdictions on Tax Matters (Amendment) Regulations, 2016” amending the Cooperation with Other Jurisdictions on Tax Matters Regulations with effect from 1 January 2017. Out of the three-tiered transfer pricing documentation under Action 13 (country-by-country reporting, Master File and Local File), Malta has only adopted country-by-country (CbC) reporting. Furthermore, Malta has issued guidelines in terms of article 96(2) of the ITA (chapter 123 of the Laws of Malta), which are to be read in conjunction with Legal Notice 400 of 2016. These guidelines are regularly reviewed and, if necessary, updated to reflect any changes or other clarifications that the Commissioner deems necessary for the purposes of a more correct application of the CbC reporting requirements as developed under Action 13 of the BEPS Action Plan.

Maltese law has made specific mention to Transfer Pricing laws in recent years, particularly under its Special Tax Regime - The Patent Box. Malta's 2019 amended Patent Box Regime included provisions for the application of Transfer Pricing laws, based on suggestions from the BEPS initiative and EU Rules. The amended system not only included the substantial activity requirement, but also allowed for the assessment of intellectual property income and gains in accordance with the OECD Transfer Pricing Guidelines.<sup>1</sup>

## 2. Laws & Regulations

### a) References to OECD/EU/Local Rules

Malta is not a member of the Organization for Economic Cooperation and Development (OECD). Despite the fact that Malta lacks comprehensive TP regulations, agreements between connected businesses must nevertheless be kept at arm's length. In the lack of detailed domestic TP guidelines, the OECD Transfer Pricing Guidelines are frequently referred to.

In Malta, there are no formal TP regulations or guidelines, however a number of sections in the Income Tax Act (ITA) and Income Tax Management Act (ITMA), particularly Articles 2(1), 12(1)(u)(2), and 51(1) of the ITA, and Article 5(6) of the ITMA, present a concept similar to the arm's-length principle.<sup>2</sup>

### b) Definition of Related Party

The definition section of the Maltese listing rules provides that “parties are considered to be related if one party has the ability to directly or indirectly control the other party or exercise significant influence over the other party in making financial and operating decisions”.<sup>3</sup>

### c) Nature of Transfer Pricing Documentation

The implementation of Transfer Pricing (“TP”) Guidelines, which was recommended through Action 8-10 of the BEPS project, is one of the OECD's most important initiatives.

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<sup>1</sup> [Transfer Pricing - KPMG Malta \(home.kpmg\)](#)

<sup>2</sup> [ey-worldwide-transfer-pricing-guide-10-september-2020 \(2\).pdf](#), p. 403.

<sup>3</sup> [Listing rules on related party transactions in Malta \(timesofmalta.com\)](#)

While Malta has not yet formally adopted this advice, current international practice and recent developments, including the enabling provision in the Budget Implementation Measures Act 2021, suggest that Transfer Pricing rules will be implemented under Maltese tax legislation in the near future.<sup>4</sup>

#### d) Tax Havens & Blacklists

According to an Oxfam International review of European Union member states' tax policies, Malta is the fourth most facilitative to corporate tax avoidance in the EU.

#### e) Advance Pricing Agreement (APA)

The Maltese tax code does not provide a structured APA program.

However, an APA may be requested under the provisions of Article 52 of the ITA, which allows entities that are parties to a transaction to request an advance revenue determination (ARR).<sup>5</sup>

#### f) Audit Practice

The Revenue Department has the authority to open an investigation and notify the taxpayer in writing that a tax investigation is being opened.

A Revenue officer is usually assigned to the case and will perform the investigation/audit. The Revenue officer would send the taxpayer a notification of inquiry advising them of the investigation/audit. During the investigation, the taxpayer would be needed to collect all essential information and documents.<sup>6</sup>

### 3. Transfer Pricing Documentation

#### a) Level of Documentation

Maltese tax legislation does not have precise documentation rules for transfer pricing; it merely applies high-level transfer pricing principles. It should, however, be a country-by-country report in accordance with Annex III to Chapter V of the TPG. Although the annual creation of transfer pricing documentation is not required, it is strongly encouraged. 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) that have been appointed as the Surrogate Parent Entity (SPE) to file a Country-by-Country report (CbCR) with the Commissioner for Revenue (CFR) for Reporting Fiscal Years beginning on January 1, 2016, for Reporting Fiscal Years.

The Regulations also purport to address the so-called "secondary mechanism," in which a CE that is not the UPE and is tax resident in Malta is compelled to submit the CbCR itself if certain requirements are met. Unless the CE has been nominated as the SPE, this secondary mechanism will apply to periods commencing on or after January 1, 2017. The CbCR must be submitted by the reporting Maltese UPE, SPE, or CE within nine months of the end of the MNE Group's fiscal year. At predetermined periods, the CFR will automatically transmit information acquired from the CbCRs with any other EU Member State in which one or more CEs of the MNE group are either tax residents or have a permanent establishment there.

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<sup>4</sup> [Transfer Pricing - KPMG Malta \(home.kpmg\)](#)

<sup>5</sup> [ey-worldwide-transfer-pricing-guide-10-september-2020 \(2\).pdf](#), p. 407.

<sup>6</sup> [Document - Malta - Transfer Pricing - 14. Compliance - Tax Research Platform - IBFD](#), para. 14.4.3.

Malta's existing CbCR legislation only applies to EU Member States, as stipulated by Council Directive (EU) 2016/881. With an amendment to the existing Cooperation Regulations, such sharing of CbC Reports will be extended to Non-EU Jurisdictions in 2017. Work on this is now underway. There are currently no plans to modify the law. However, due to the fact that the OECD Transfer Pricing Guidelines are mentioned.<sup>7</sup>

#### b) Industry Analysis

By identifying value drivers for the relevant industry, a first indication of the level of profitability common in the industry is being given.

#### c) Company Analysis

A description of the management structure of the local entity, a local organisation chart, and a description of the individuals to whom local management reports and the country(ies) in which such individuals maintain their principal offices.

A detailed description of the business and business strategy pursued by the local entity including an indication whether the local entity has been involved in or affected by business restructurings or intangibles transfers in the present or immediately past year and an explanation of those aspects of such transactions affecting the local entity.

#### d) Functional Analysis

In conducting a functional analysis, an assessment is made of the significant activities and responsibilities that are performed by the related parties relevant to the Intercompany Transactions under review, the tangible and intangible assets that are employed and the risks that are borne in undertaking the business activities. Such an assessment is consistent with the recommendations that have been made in the OECD Guidelines at paragraph 1.51.

#### e) Choice of Transfer Pricing Method

There are no defined methods for determining an arm's length price in Malta's tax laws or any official Revenue Guidance because there is no formal transfer pricing legislation. As a result, for transfer pricing reasons, neither the standard transaction procedures alluded to in the OECD Guidelines nor other approaches are available for determining an arm's length price. The authors have never seen the Revenue use transfer pricing concepts in the past. As a result, the authors anticipate that the Revenue will not challenge a transfer price between related parties if it is financially reasonable.<sup>8</sup>

#### f) Economic Analysis – Benchmark Study

In view of the absence of any specific tax legislation or specific tax rules that regulate transfer pricing in Malta, the Maltese tax authorities do not make use of comparables, both internal and external, and there is no

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<sup>7</sup> [Transfer Pricing in Malta: A review on Maltese corporate taxation - TransferPricing](#)

<sup>8</sup> Document - Malta - Transfer Pricing - 4. Transfer Pricing Methods - Tax Research Platform - IBFD., para. 4.1.

guidance in this regard. The Maltese tax authorities may refer to the OECD Guidelines to assist them in interpreting certain provisions of Maltese tax law; however, these guidelines do not have legal force.

#### g) Inter-company (IC) Legal Agreement

Although an Inter-company legal agreement formalizes the business and financial relationship between group entities, the legal agreements have a lower ranking since the OECD 2017 Guidelines made the "conduct of parties" the prevailing concept.

#### h) Financial Statements

The legislation makes no reference to the use of certain accounting standards. International Financial Reporting Standards as adopted by the European Union (IFRSs as adopted by the EU) should be the default accounting framework with which financial statements of companies (which do not qualify as small and medium-sized enterprises) must comply, according to the Maltese Companies Act and the Accountancy Profession Act.<sup>9</sup>

#### i) Production Process for TP Relevant Returns, Documents, Forms and Financials

In the chart below, the existence of the filing requirements with the details of which format is used, the latest filing date, notification requirement and its deadline, thresholds to be applied in case it exists, and the required languages are demonstrated. This information can be seen respectively for CIT, master file, local file, CbCR, local forms, annual accounts and segmented P&L documentations.

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<sup>9</sup> [Document - Malta - Transfer Pricing - 13. Documentation Requirements - Tax Research Platform - IBFD](#), para. 13.2.3.

	Prepare or File?	Format	Deadline	Notification Deadline*	Threshold* (Yes/No)	Local Language (Yes/No)*(If "No", it can be filed in English)
<b>Corporate Income Tax</b>	File	Electronic	Within nine months following the end of the constituent entity's financial year or by 31 March following the year of assessment	No	No	No
<b>Master File</b>	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
<b>Local File</b>	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
<b>CbCR</b>	Prepare	Electronic	Within twelve months of the last day of the fiscal year of the MNE group	No later than the last day for filing a tax return of the constituent entity for the preceding fiscal year	Yes	No
<b>Local form</b>	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
<b>Annual Accounts</b>	File	Electronic	Within 10 months plus 42 days from the accounting year end	No	No	No
<b>Segmented P&amp;L</b>	Prepare	Excel/Other	Ready upon filing CIT/TP documentation	No	No	No
* Malta has signed the MCAA agreement for the filing of CbCR.						
* Malta does not request as much and detailed information from smaller and less complex enterprises (SME's included) than it does from large and complex enterprises.						

#### j) Mandatory Language

The documentation may be prepared in either English or Maltese (both being official languages of Malta).<sup>10</sup>

#### k) Notification Requirement

There are no notification templates available. The tax authorities, on the other hand, accept notification letters from local entity directors.

Articles 3 and 4 of section II of Annex III of Subsidiary law 123.127 state that notification must be given to the Commissioner of Revenue by the final day for filing a constituent entity's tax return for the previous fiscal year. Late notice may be construed as a failure to report required information under the applicable rules, with a maximum penalty of EUR 5,000.<sup>11</sup>

#### l) Record Keeping

A Maltese company is required to keep accounting records for the following items under the Companies Act, Chapter 386 of the Laws of Malta: (i) a register of members; (ii) a register of debentures; (iii) minutes of proceedings of general meetings; and (iv) minutes of proceedings of board meetings.

Accounting records are kept for a minimum of ten years at the company's registered office or at such other location as the directors deem appropriate, and are open to view by the company's officers at all times.<sup>12</sup>

#### m) Penalties and Interest Charges

Failure to comply with documentation requirements would result in fines for those who fail to comply with the requirements of an ITA notification, intimation, request, or demand note. In such situations, the fine will be no less than EUR 23 but no more than EUR 10,000, plus a further charge of no more than EUR 200 for each day of non-compliance under article 50 of the ITMA.

Non-compliance will result in sanctions.<sup>13</sup>

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<sup>10</sup> [Document - Malta - Transfer Pricing - 13. Documentation Requirements - Tax Research Platform - IBFD](#), para. 13.5.1.

<sup>11</sup> [Document - Malta - Transfer Pricing - 13. Documentation Requirements - Tax Research Platform - IBFD](#) . Para, 13.2.4.

<sup>12</sup> [Malta Companies – Record-keeping | Be.Legal \(belegal.com.mt\)](#)

<sup>13</sup> [Document - Malta - Transfer Pricing - 13. Documentation Requirements - Tax Research Platform - IBFD](#), para. 13.5.5.