

# FAQ to the new Transfer Pricing Legislation

## Transfer Pricing alert

March 2023

On 10 February 2023, the Cyprus Tax Department released a set of **frequently asked questions (FAQs)** with the purpose of clarifying certain provisions of the **Articles 33 and 33C of the Income Tax Law**, which relate to the adoption of the transfer pricing legislation by Cyprus as from 1 January 2022.

This informational leaflet presents the questions and corresponding answers as published in the Tax Department website. The FAQs are expected to be expanded with additional questions in the future.



## Frequently Asked Questions (FAQ)

Q1

**If the controlled transactions in Category “A” cumulatively exceed €750.000 or shall exceed €750.000 on the basis of the arm’s length principle as described in Article 33(9)(a) of the ITL and at the same time the controlled transactions in Category “B” cumulatively do not exceed the €750.000 threshold in a tax year, is there an obligation to include the controlled transactions of Category “B” in the Cyprus Local File?**

No, there is no obligation to include Category’s “B” controlled transactions in the Cyprus Local File. Only the controlled transactions of a category which cumulatively exceed or shall exceed €750.000 on the basis of the arm’s length principle during a tax year must be documented and analysed in the Cyprus Local File. In this specific example, it will be Category’s “A” controlled transactions only.

Q2

**How is the €750.000 threshold being determined in the context of rental income activities during each tax year?**

The threshold is determined by reference to the total rental income on the basis of the arm’s length principle in a tax year.

Q3

**Do purchases and sales need to be aggregated for the purposes of assessing whether the threshold has been exceeded?**

Yes, the threshold is based by reference to the absolute values of the controlled transactions for each category occurring in a tax year. For example, if total purchases and total sales amount to €400.000 and €500.000 respectively, the cumulative amount in this category is €900.000. Thus the threshold in this category has been exceeded.

Q4

**Is the Cyprus Local File and Summary Information Table prepared using the tax year or the accounting year of the company?**

The Cyprus Local File and Summary Information Table are prepared with respect to the tax year.

Q5

**Under which category of the Summary Information Table should Financial Guarantees be reported?**

Financial Guarantees should be reported under the category "Financial Transactions".



## Frequently Asked Questions (FAQ)

Q6

**Should a Transfer Pricing study be prepared every tax year or only if something changes with regards to the intra group loans?**

A Transfer Pricing study should be prepared when an intra group loan is initiated and updated when:

- i. new loans are provided or received by the company, or
- ii. significant terms of the existing loans change or amended, or
- iii. the functional profile of the company changes, or
- iv. the market and economic conditions change significantly (if applicable).

The above list is indicative and not exhaustive. Further guidance is provided in the OECD TP Guidelines.

Please note that in accordance to Article 33(10) of the ITL, the master file (where applicable) and the local file shall be updated every tax year.

Q7

**Who is responsible for the completion and the submission of the Summary Information Table?**

It is the responsibility of the taxpayer to complete the Summary Information Table. The Summary Information Table shall be submitted by the Statutory Auditor or Tax Consultant.

Q8

**Is the Circular dated 30/06/2017 with title "Tax treatment of intra group back to back financing transactions" still applicable following the enactment of the new TP Legislation and Regulations?**

The Back to Back Circular was abolished as from 01/01/2022.

### KPMG Cyprus observation

The Back to Back Circular was abolished by the Circular 1/2023 dated 5/1/2023 with application as from 01/01/2022.

NEW

Q9

**How is the €750.000 threshold in the context of loan financing activities being determined in a tax year?**

The threshold in the category of loan financing transactions is determined only by reference to the loan principal including interest charged but not paid.

NEW

Q10

**Continuing from Q9 above, which balance is relevant in the case of loan financing activities (e.g. year end, average balance for the year, facility amount)?**

The maximum loan balance (i.e. only the loan principal including interest charged but not paid) during the tax year should be used to determine the threshold in the respective tax year and be reported in the Summary Information Table.



## Frequently Asked Questions (FAQ)

NEW

Q11

Should the loans or any other monetary facilities including cash withdrawals (but excluding any balances arising from commercial transactions) granted by companies to the persons described in Article 5(1) & 5(2)(z) of the Income Tax Law L. 118(I)/ 2002 be taken into account for the purposes of assessing whether the threshold of €750.000 has been exceeded in the category of financing activities?

No, provided the company which is granting the loans or any other monetary facilities including cash withdrawals to its directors or to its shareholders who are individuals or their spouses or to their relatives up to and including the second degree of kinship does not have as a taxable activity the provision of financing.

In the specific case only, such balances should not be taken into account for the purposes of assessing whether the threshold of €750.000 has been exceeded in the category of financing activities and as such not be reported in the Summary Information Table. No documentation with respect to these specific transactions in the Local File is required.

## How KPMG Cyprus can assist?

Should you like to further discuss the content of the legislation and potential impact to your business, please contact one of our trusted advisors from the Tax department at KPMG in Cyprus.

**George Markides**  
Board Member  
Head of Tax Services

E: [gmarkides@kpmg.com](mailto:gmarkides@kpmg.com)

**Michalis Loizides**  
Board Member  
Tax & Legal Services

E: [mloizides@kpmg.com](mailto:mloizides@kpmg.com)

**Costas Markides**  
Board Member  
International Tax Services

E: [cmarkides@kpmg.com](mailto:cmarkides@kpmg.com)

**Volodymyr Serdechniuk**  
Senior Manager  
Transfer Pricing Services

E: [serdechniukv@kpmg.com](mailto:serdechniukv@kpmg.com)

**Michael Halios**  
Board Member  
International Tax Services

E: [mhalios@kpmg.com](mailto:mhalios@kpmg.com)

**Michalis Fiakkou**  
Manager  
Transfer Pricing Services

E: [mfiakkou@kpmg.com](mailto:mfiakkou@kpmg.com)

[kpmg.com.cy](http://kpmg.com.cy)



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