

FAQ to the New Transfer Pricing Legislation

Transfer Pricing alert

April 2024

On 3 April 2024, the Cyprus Tax Department released additional **frequently asked questions (FAQs)**, i.e., 17 – 24, with the purpose of clarifying certain provisions of the **Articles 33 and 33C of the Income Tax Law (ITL)**, 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 (FAQs)

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 (SIT) prepared using the tax year or the accounting year of the company?

The Cyprus Local File and SIT are prepared with respect to the tax year.

Q5

Under which category of the SIT should Financial Guarantees be reported?

Financial Guarantees should be reported under the category “Financial Transactions”.



Frequently Asked Questions (FAQs)

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 SIT?

It is the responsibility of the taxpayer to complete the SIT. The SIT 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.

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.

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 SIT.



Frequently Asked Questions (FAQs)

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 SIT. No documentation with respect to these specific transactions in the Local File is required.

Q12

Company A borrows from a related Company B or a related individual B, the amount of €1,000,000 to buy shares of the same amount.

The shares with acquisition cost of the amount of €1,000,000 fall under the definition of “titles” as per Article 2 of the Income Tax Law L. 118(I)/2002 and circular 2008/13.

Should the transaction as described above:

- 1. Be documented in the Cyprus Local File?**
- 2. Be excluded from the SIT?**

In the case of Company A only (i.e., the Borrower), the transaction shall not be documented in the Cyprus Local File, and it shall be excluded from the SIT to the extent that the interest incurred does not constitute a tax deductible expense in accordance to the provisions of Articles 11(15) and 11(16) of the Income Tax Law L. 118 (I)/ 2002 and any other related Tax Circular that is in force.



Frequently Asked Questions (FAQs)

Q13

A taxpayer has controlled transactions in Category “A” which cumulatively exceed €750,000 in a tax year, or should exceed €750,000 on the basis of the arm’s length principle as stipulated in Article 33(9)(a) of the Income Tax Law L. 118(I)/2022, as amended, such that the said transactions in Category “A” need to be documented in a Local File and at the same time the taxpayer in that tax year has controlled transactions in Category “B” which cumulatively do not exceed or should not exceed the €750,000 threshold on the basis of the arm’s length principle.

Does Circular 06/2023 apply to the Transactions in Category “B” in that tax year?

Yes, Circular 06/2023 is applicable to the transactions in Category “B” in that tax year and thus the taxpayer should either:

- a) prepare simplified Transfer Pricing documentation with the contents as described in the Circular 06/2023 or
- b) opt for a safe harbor and maintain the prescribed supporting documentation in respect of the use of the safe harbor provided that the controlled transactions in Category “B” belong to one of the subcategories of transactions for which a safe harbor is available under the circumstances permitted in the Circular 06/2023.

Please refer to Circular 06/2023 which was published on 6 July 2023 for further details.

Q14

Do all persons as defined in Article 33(7) of the ITL need to complete the SIT of Controlled transactions and submit it electronically every tax year together with the Income Tax Return as per Article 33(10) of the ITL?

Yes.

All persons as defined in Article 33(7) of the Income Tax Law need to complete and submit the SIT of Controlled Transactions as long as controlled transaction(s) arise within a tax year and irrespective of the value of the said controlled transaction(s).

Q15

When is the submission deadline of the SIT for the year 2022?

The deadline for the submission of the 2022 SIT is 30 November 2024 at 23:59.

Q16

How can the SIT be submitted to the Tax Department?

The SIT shall be submitted electronically only through the taxpayer’s gate Tax For All.

NEW

Q17

What is the format of the SIT?

The format of the SIT can be viewed via the taxpayer’s gate Tax For All.



Frequently Asked Questions (FAQs)

NEW

Q18

Should the sale of shares or other securities between related persons that fall under the definition of “titles” as per Article 2 of the ITL and Circular 2008/13 be reported in the SIT and be taken into account for the purposes of assessing whether the applicable Local File threshold is exceeded?

No.

In this specific case only, such transactions shall **NOT**:

- (a) be taken into account for the purposes of assessing whether the threshold of Article 33(7) of the ITL has been exceeded or
- (b) be reported in the SIT or
- (c) be documented in the Local File / or satisfy the minimum TP documentation (if applicable).

For the treatment of Trade Receivables and Other Receivables arising from such transactions, please refer to Questions 19, 20 and 21.

NEW

Q19

Should balances of trading nature (i.e., Trade Receivables and Trade Payables) between related persons be reported in the SIT and be taken into account for the purposes of assessing whether the applicable Local File threshold is exceeded?

No.

Such balances should not be reported in the SIT provided that the terms of such Trade Receivables and Trade Payables between two related parties do NOT differ from those which would be made between two independent parties and as such they are not considered to be of financing nature.

Trade Receivable or Trade Payable balances of trading nature (but not of financing nature) shall **NOT**:

- (a) be taken into account for the purposes of assessing whether the Local File threshold of Article 33(7) of the ITL is exceeded or
- (b) be reported in the SIT or be documented in the Local File / or meet the minimum TP documentation (if applicable).



Frequently Asked Questions (FAQs)

NEW

Q20

Do Trade Receivables or Other Receivable balances (for example long outstanding balances) between related persons that are considered to be balances of financing nature (i.e., not of trading nature) have to be reported in the SIT and be taken into account for the purposes of assessing whether the applicable Local File threshold is exceeded?

Yes.

Trade Receivable balances or Other Receivable balances of a financing nature shall:

(a) be taken into account for the purposes of assessing whether the Local File threshold of Article 33(7) of the ITL is exceeded, and

(b) be reported in the SIT and be documented in the Local File / meet the minimum TP documentation (if applicable).

NEW

Q21

What amount needs to be reported in the SIT in relation to Trade Receivable or Other Receivable balances between related persons which are considered to be balances of financing nature?

The maximum balance during the reported year of such Trade Receivable or Other Receivable balances shall be included in the SIT for the purposes of assessing whether the applicable Local File threshold of Article 33(7) of the ITL is exceeded.

NEW

Q22

Qualifying Owners, Qualifying Charterers and Qualifying Ship Managers as per section 6, 18 and 28 of the Merchant Shipping (Fees and Taxing Provisions) Law 44(I)/2010, as amended, engage in Qualifying Shipping Activities which are subject to tonnage tax.

Should controlled transactions arising from a Qualifying Shipping Activity that is subject to tonnage tax be reported in the SIT and be taken into account for the purposes of assessing whether the applicable Local File threshold is exceeded?

No.

The taxable Income arising from a qualifying shipping activity between two related persons who are both subject to tonnage tax shall **NOT**:

(a) be taken into account for the purposes of assessing whether the applicable Local File threshold of Article 33(7) of the ITL is exceeded or

(b) be reported in the SIT or

(c) be documented in the Local File / meet the minimum TP documentation (if applicable).



Frequently Asked Questions (FAQs)

NEW

Q23

Party A (Qualifying Owner, Qualifying Charterer and Qualifying Ship Manager as per section 6, 18 and 28 of the Merchant Shipping (Fees and Taxing Provisions) Law 44(I)/2010, as amended) engage in Qualifying Shipping Activity which is subject to tonnage tax.

Party B's activities are subject to Income Tax.

Should controlled transaction arising from a Qualifying Shipping Activity between Party A and Party B (the latter business income is subject to Income Tax) be reported in the SIT and be taken into account for the purpose of assessing whether the applicable Local File threshold is exceeded?

Only Party B's income which is subject to Income Tax shall:

(a) be taken into account for the purposes of assessing whether the applicable Local File threshold of Article 33(7) of the ITL is exceeded or

(b) be reported in the SIT or

(c) be documented in the Local File / meet the minimum TP documentation (if applicable).

NEW

Q24

Qualifying Owners, Qualifying Charterers and Qualifying Ship Managers as per section 6, 18 and 28 of the Merchant Shipping (Fees and Taxing Provisions) Law 44(I)/2010, as amended, earned income from a Non-Qualifying Shipping Activity which is subject to Income tax.

Should controlled transactions arising from a Non-Qualifying Shipping Activity which is subject to Income tax be reported in the SIT and be taken into account for the purposes of assessing whether the applicable Local File threshold is exceeded?

Yes. Any income generated from a controlled transaction in relation to a non-qualifying shipping activity by the Qualifying Owners, Qualifying Charterers and Qualifying Ship Managers as per the provisions of the Merchant Shipping Law 44(I)/2010, as amended shall:

(a) be taken into account for the purposes of assessing whether the applicable Local File threshold of Article 33(7) of the ITL is exceeded and

(b) be reported in the SIT and

(c) be documented in the Local File / meet the minimum TP documentation (if applicable).

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

Costas Markides
Board Member
International Tax Services

E: cmarkides@kpmg.com

Michael Halios
Board Member
International Tax Services

E: mhalios@kpmg.com

Michalis Loizides
Board Member
Tax & Legal Services

E: mloizides@kpmg.com

Volodymyr Serdechniuk
Senior Manager
Transfer Pricing Services

E: serdechniukv@kpmg.com

Michalis Fiakkou
Senior Manager
Transfer Pricing Services

E: mfiakkou@kpmg.com

kpmg.com.cy



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