

MALTA

TRANSFER PRICING PROFILE

1. Reference to the Arm's Length Principle

In Malta we do not have transfer pricing rules and consequently our laws do not have a direct reference to the "arm's length principle". Nevertheless Article 5 (6) of the Income Tax Management Act has an underlying concept which is synonymous to this principle.

2. Reference to the OECD Transfer Pricing Guidelines

Given that Malta is not an OECD member state and as Malta does not have transfer pricing rules there is no reference to the OECD Transfer Pricing Guidelines in its legislation. Nevertheless in practice the OECD guidelines are still used as a reference

3. Definition of related parties

Article 5 (6) of the Income Tax Management Act uses the wording "*close connection between the resident person and the non-resident person and to the substantial control exercised by the non-resident person over the resident person*" to refer to related parties.

4. Transfer pricing methods

Since there is no transfer pricing legislation, no transfer pricing methods are present under Maltese law. Nevertheless, Article 5 (6) of the Income Tax Management Act gives the discretion to the Commissioner to determine the transfer price following the guidelines of the OECD.

5. Transfer pricing documentation requirements

There are no prescribed transfer pricing documentation requirements. However the Commissioner for Revenue has the power to request any documentation as he deems fit.

Implementation of the Code of Conduct on Transfer Pricing documentation for associated enterprises in the European Union (EU TPD) - summary of Member States' responses to the 2013 JTPF questionnaire on the implementation of the EU TPD:

http://ec.europa.eu/taxation_customs/resources/documents/taxation/company_tax/transfer_pricing/forum/jtpf/2013/summary-ms.pdf

Malta does not have any TP documentation legislation in place but if it will be adopted in the future, it will make reference to the EU TPD.

6. Specific transfer pricing audit procedures and / or specific transfer pricing penalties

Not applicable.

7. Information for Small and Medium Enterprises on TP

http://ec.europa.eu/taxation_customs/resources/documents/taxation/company_tax/transfer_pricing/forum/profiles/profile-mt.pdf

8. Information on dispute resolution

[...]

Dispute resolution under the Arbitration Convention does not need to be initiated and may be suspended if one of the enterprises involved is subject to a 'serious penalty' for the transactions giving rise to the profit adjustment (Article 8).

Declaration by the Republic of Malta (*Official Journal C 160, 30/06/2005 P. 0011 – 0022*)

"The term "serious penalty" means a penalty, whether administrative or criminal, imposed on a person who willfully with intent to evade tax or to assist any other person to evade tax:

- (a) omits from a return or any other document or statement made, prepared or submitted for the purposes of or under the Income Tax Acts, any income which should be included therein;
- or
- (b) makes any false statement or entry in any return or other document or statement prepared or submitted for the purposes of or under the Income Tax Acts;
- or
- (c) gives any false answer, whether verbally or in writing, to any question or request for information asked or made in accordance with the provisions of the Income Tax Acts;
- or
- (d) prepares or maintains or authorises the preparation or maintenance of any false books of account or other records or falsifies or authorises the falsification of any books of account or records;
- or
- (e) makes use of any fraud, art or contrivance whatever or authorises the use of any such fraud, art or contrivance."

9. Relevant regulations on Advance Pricing Arrangements

Not applicable.

10. Links to relevant government websites

www.ird.gov.mt

11. Other relevant information

Secondary and compensating year-end adjustments may result in double taxation. Two questionnaires launched by the EU Joint Transfer Pricing Forum (JTPF) in 2011 took stock of the situation prevailing in each EU Member State with respect to secondary and compensating year-end adjustments as on 1 July 2011.

[Secondary Adjustments - overview on the legal and administrative/practical aspects in the different Member States](#)

[Compensating/year-end Adjustments - overview on the legal and administrative/practical aspects in the different Member States](#)