



## Transfer Pricing

14/07/2023



### Introduction

The Cyprus Tax Department (“CTD”) issued a Circular on 6 July 2023 (the “Circular”), with retrospective effect as of 1 January 2022, introducing **Minimum TP Documentation** requirements and simplification measures regarding intra-group transactions which are below the threshold of €750,000 in aggregate per category of transaction per tax year.

Furthermore, **Optional Simplification Measures** allowing the application of Safe Harbours have been introduced with regards to specific sub-categories of intra-group transactions, i.e., certain types of financing activity and low value-adding services, provided that adequate level of documentation is maintained.



## Scope

The Circular applies to all taxpayers with intra-group transactions (“Controlled Transactions”) which are exempted from the obligation to be documented in a Cyprus Local File, i.e. Controlled Transactions below the threshold of €750,000 in aggregate per category of transaction per tax year.

It worth noting that according to the provisions of Article 33 of the Cyprus Income Tax Law (the “ITL”), N.118(I)/2022 (as amended), 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 analyzed in the Cyprus Local File (i.e., goods, services, IP related income, financial transactions and other).

## Executive summary

The main provisions of the circular are briefly analyzed below:

### **A. Simplified Transfer Pricing documentation requirements**

According to the provisions of Article 33 of the Cyprus income tax legislation, controlled transactions shall be at arm's length, otherwise the company undertakes a tax assessment risk (Transfer Pricing upwards adjustment) upon an inspection by the Tax Authorities.

Therefore, taxpayers that are not obliged to maintain “Local File” based on the above, will be required to keep the following **Minimum TP Documentation**, to support the arm's length nature of their Controlled Transactions:

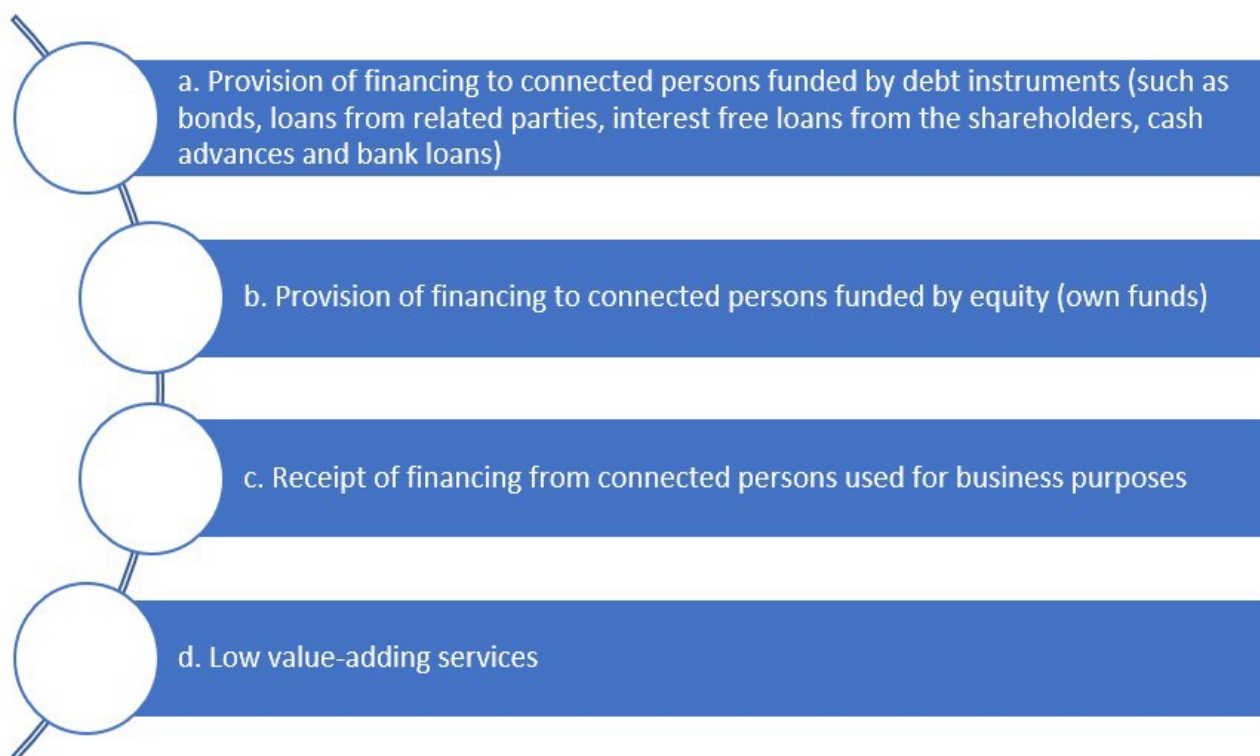
- a Brief description of the functional analysis (functions undertaken, assets used and risks assumed).
- b A description of the characterisation of the entity, based on the results of the functional analysis.
- c The reasons for the chosen TP method being considered the most appropriate one.
- d Determination of the arm's length price/remuneration based on the benchmarking analysis undertaken, using either external or internal comparables.

The Minimum TP Documentation should be available for submission to the CTD upon request (within 60 days).



## **B. Optional Simplification Measures (Safe harbour rules) for certain types of Controlled Transactions**

The Circular introduces safe harbour rules for the following four sub-categories of Controlled Transactions provided that adequate level of documentation is maintained. Taxpayers that are not obliged to prepare a Cyprus Local File for Controlled Transactions, may opt to apply the Simplification Measures for the pricing of the following types of Controlled Transactions:





The circular highlights that the Safe harbour rules cannot be applied, if the (arm's length) value of all the financial transactions (for application of measures (a)-(c)) or all services transactions (for application of measure (d)) of the taxable person exceed €750,000 p.a. in aggregate.

In addition, the Simplification Measures cannot be applied if reliable internal comparables (i.e., comparable transactions with unrelated parties) can be used to determine the arm's length price.

The table below summarizes the **Simplification Measures (Safe Harbours)**:

A/A	Transactions eligible for safe harbour	Safe harbour rule
a.	Provision of financing to connected persons funded by debt instruments.	Minimum pre-tax return of 2.5% on the average outstanding receivable balances.
b.	Provision of financing to connected persons funded by equity (own funds)	Minimum return should be equal to the yield rate (as at 31 December of the prior tax year) of the 10 year government bond of the country in which the borrower operates, increased by 3.5%.
c.	Receipt of financing from connected persons used for business purposes	Allowable cost of borrowing (interest expense) must not exceed the yield rate (as at 31 December of the prior tax year) of the ten-year government bond of the Republic of Cyprus, increased by 1.5%.
d.	Low value-adding services	5% mark-up on the relevant costs.

The persons that opt to apply any of the Simplification Measures described above, should disclose such election to the CTD, by completing electronically the relevant part in their Income Tax Return / Summary Information Table for Controlled Transactions, by the relevant applicable deadline.

The required documentation supporting the application of any of the Simplification Measures should be submitted to the CTD upon request (within 60 days).

Finally, it worth noting that the use of the above safe harbours will be subject to the DAC6 provisions of the Administrative Cooperation in The Field of Taxation Law and accompanying Regulations, under the automatic hallmark (E1) on the use of unilateral safe harbours.



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### How can we help?

**MILIMAR** can assist clients with understanding the potential impact of the newly issued Circular on their Controlled Transactions and support with the compliance obligations that may arise.

**MILIMAR** can also assist with the preparation and maintenance of the appropriate TP analysis and required documentation.

If your company is established in Cyprus and it carries out intra-group transactions then you need to have a new assessment of your company's Transfer Pricing reporting obligations.

For further information relating to the 2022 Transfer Pricing changes implementation in Cyprus, please contact our specialized team.

It is noted that since the new provisions specifically refer to OECD Guidelines, any TP study has to cross-reference those Guidelines. This effectively requires highly qualified professionals on TP matters.

**We are committed to delivering high-quality solutions tailored to your specific needs.**

Want to start a new era to the way you manage your tax issues?

It's as easy as emailing us [mariosm@milimar.eu](mailto:mariosm@milimar.eu) at to get a tailored made consultation and get covered with your Tax and Transfer Pricing needs.

### Contact us

Feel free to contact us if you wish to have a discussion or advise on how this development might affect you or your business.

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