



Newsletter I Issue No 4/2020

BEPS: Integration of Transfer Pricing rules into Greek legislation

1. OECD Guidelines

Under the Framework of Tax Base Erosion and Profit Shifting (OECD / BEPS Project), OECD developed 15 actions targeting to provide the appropriate tools to the Governments for addressing Tax Evasion. Actions 8 to 10 and 13 focus on Transfer Pricing (TP) matters. In particular, Actions 8-10 scrutinize transactions of intangible assets and transactions that are classified as of high risk for tax evasion. Action 13 refers to the compliance and documentation for transfer pricing purposes.

2. Integration of the guidelines into Greek legislation

Greek legislation has integrated most of the OECD's Transfer Pricing guidelines, adopting the so-called 3-pillar strategy, i.e.:

2.1 The 1st pillar refers to Country-by-Country Reporting, which is filed by ultimate parent companies registered in Greece. The revenue threshold of Euros 750 million applies for the determination of the liable entities. The relevant report includes aggregate information on the amount of revenue, the earnings (losses) before tax, the income tax, the shareholder's status, the retained earnings, the number of employees and the book value of assets (except for cash or cash equivalents) for each jurisdiction where a Group operates. Furthermore, the a tax residence certificate or the incorporation documents for each related company are required for cross-checking and inspection purposes.

2.2 The 2nd and the third pillar refer to the preparation of the Master and Local TP File respectively. In most cases, the Master File is the same for all companies of a group. This document provides information on the group



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operating and legal structure, the nature of the controlled transactions and the pricing policy implemented. The Local File focuses on figures for each associated company deepening in the analysis of the intra-group transactions and the review of the arm's length principle.

It should be also noted that the obligation for Country by Country reporting has been introduced in Greece since Law 4490/2017 got in force covering transactions that were carried out in 2017. Furthermore, the obligation to draft a Master and Local File is provided by article 21 of the Law 4174/2013.

3. Intra-group financial facilities

The concept of intra-group loans includes both loan agreements and cash facilities between related companies. In these cases, the transaction under review is the interest charged and not the loan principal.

Therefore, the agreed or the actual interest rate, as calculated from the accounting records of the company, is examined from the arm's length perspective. The analysis of intra-group loans usually takes place at three levels:

- The deduction of the interest expense is compared with the nominal interest expense, based on the interest rate on the current accounts of Bank of Greece.
- In terms of comparable interest rates for similar loan agreements
- In terms of thin capitalization rules.

4. Recent progress on OECD guidelines

4.1 CbC Report in Greece applies to MNEs with annual consolidated group revenue equal to or exceeding €750 million in the previous year. Furthermore, regulations extend to subsidiary entities. The Report applies for fiscal years commencing on or after 1 January 2016 and must be filed within 12 months of the last day of the reporting fiscal year of the MNE. CbCR may be filed in Greek and in any other official language of the EU. According to guidance issued by the Public Revenues Independent Authority, CbCR and notification must be submitted in Greek whereas the business name of the Groups should be stated



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using the Latin alphabet while table 3 of the CbCR must be submitted in both Greek and English. Greece has adopted the OECD's XML Schema standardized electronic format and Greek entities are allowed to act as a surrogate. Penalty of €20,000 for failing to file the report and a penalty of €10,000 for late filing or inaccurate filing. There are no penalties for CbC notifications.

4.2 *New Disclosure Rules (BEPS Action 12)*

Firstly, Directive 2018/822 (DAC 6) must be integrated. Mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements if they meet certain hallmarks. We are looking forward to see how the Directive affects transfer pricing.

Specific transfer pricing hallmarks include:

- **the transfer of hard-to-value intangibles** and
- **business restructurings**, if profits, before interest and taxes, fall below 50% of the projections when evaluated after three years. This implies that a mere change in financial results could constitute a business restructuring within the meaning of DAC 6.

4.3 *Main proceedings*

Cross-border arrangements must be notified to tax authorities from intermediaries (lawyers, accountants, tax consultants) or from taxpayer himself (under certain circumstances).

Tax authorities of all EU members will exchange these information every 3 months. First deadline extends on 31/08/2020 and refers to arrangements taken place from 25/6/2018 to 30/6/2020.

Deadline for each disclosure is 30 days starting from the day the arrangement is available for application. First automatic exchange of information between tax authorities begins on 31st October 2020.

The main idea for 2020 and the future is that the compliance burden will not decrease; The number of transfer pricing audits will increase in many countries;



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In Greece, there are recent cases referring to intra-group transactions realized by Greek entities with associated companies (ΔΕΔ 1109/2018, ΔΕΔ 1780/2019).

Thank you.

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