



TRANSFER PRICING MASTERCLASS

PRESENTATION BY
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Your global tax partner



Cyprus Introducing Transfer Pricing Law

New Transfer Pricing Rules (1)



- ❖ Effective as of **1 January 2022**
- ❖ The OECD Transfer Pricing Guidelines have been **legislatively incorporated** in Cyprus
- ❖ Applicable for transactions between **related parties**. When one legal entity participates in the share capital of another legal entity through the direct or indirect holding of share of **at least 25 per cent**

New Transfer Pricing Rules (2)



- ❖ **What is-scope:** Filing obligations of the controlled transactions on an annual basis:
 - ❖ **Cyprus Local File** (submitted within 60 days upon request);*
 - ❖ **Master File** (if relevant); and
 - ❖ **Summary Information Table** (submitted together with the tax return).

- ❖ * Small size exemption applies when the controlled transactions **cumulatively**, per **category** (e.g. Services, Goods, Financial transactions, IP related, Other) do not exceed **€750,000** per **tax year** (1st January to 31st December).

New Transfer Pricing Rules (3)



- ❖ **Quality Review:** A person who holds a Practicing Certificate from the Institute of Certified Public Accountants of Cyprus
- ❖ Advance Pricing Agreement procedure (The APA decision may be applicable for a maximum term of **four years**)
- ❖ **Deadlines:** The Transfer Pricing Study and the summary information table for a particular year should be prepared no later than the **due date** for submitting the taxpayer's **Income Tax Return** (IR4) for that year.

New Transfer Pricing Rules (4)



❖ Penalties:

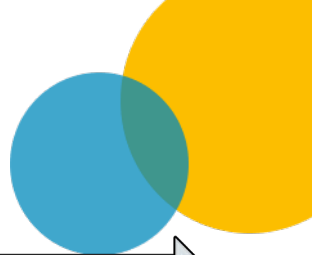
- ❖ In the event of late submission of the **summary information table** a five hundred euros (**€500**) fine is imposed.
- ❖ In case the documentation is not made available to the Tax Commissioner within **60 days** from the notification of a request, a fine of five thousand euros (**€5,000**) is imposed,
- ❖ If it is not made available from the sixty-first (61st) day until the ninetieth (**90th**) day a fine of ten thousand euros (**€10,000**) is imposed.
- ❖ if it is not made available at all or made available **after the ninetieth (90th)** day a fine equal to twenty thousand euros (**€20,000**) is imposed.



**Financial
Transactions**

**Costas
Savva**

Purpose of the FT Report



Loans

- Cash rich companies with lack of substance
- Unusual contractual terms leading to high interest rates

Cash pools

- High returns to cash pool leaders but little activity
- Participants leaving balances in the pool long term

Treasury centres

- Interest income in treasury centres with limited substance

Captives

- Typically used to shift profits to low or no tax jurisdictions, but not truly insurers

Guarantees

- High guarantee fees and enhancement of debt quantum

FT Report Overview



FT Report

Treasury functions:

(1) Intra-group loans; (2) Cash pooling; and
(3) Hedging.

Financial guarantees

Captive insurance

Risk-free and risk-adjusted rates of return

Components of an Intercompany loans



- ❖ Lender/Creditor and Borrower/Debtor
- ❖ Term of the Loan (time period during which the loan is extended)
- ❖ Credit rating (risk) of the debtor
- ❖ Credit rating (seniority) of the loan instrument;
- ❖ Conditions of the Loan
- ❖ Interest rate (price) of the loan and time of payment
- ❖ Principal amount repayment obligation

General considerations on determining the arm's length interest rate of intra-group loans



- ❖ Both the lender's and borrower's perspectives should be taken into account, acknowledging that these perspectives may not align in every case (10.51.)
- ❖ A thorough credit assessment of the potential borrower including analysis of the borrower's cash flow forecasts and the strength of the borrower's balance sheet (10.54.)
- ❖ The same commercial considerations such as creditworthiness, credit risk and economic circumstances are relevant (10.55.)

General considerations on determining the arm's length interest rate of intra-group loans



- ❖ Credit risk for the lender is the potential that the borrower will fail to meet its payment obligations in accordance with the terms of the loan (10.57.)
- ❖ The creditworthiness of the borrower is one of the main factors that independent investors take into account in determining an interest rate to charge (10.62.)
- ❖ The credit rating of an MNE is effectively a form of relative ranking of the creditworthiness in comparison to other borrowers. A lower credit rating will indicate a greater risk of default and be expected to result in a higher rate of return for lenders (10.64.)



**Intra-group
Services**

**Christos
Theophilou**

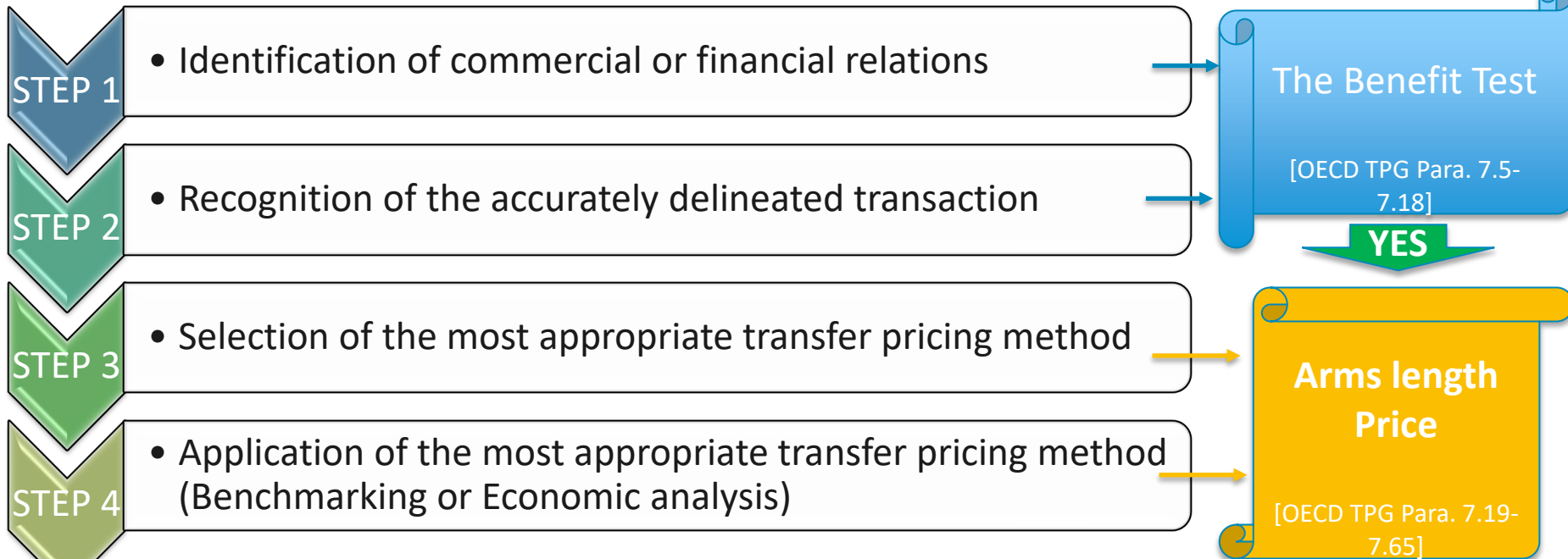
What is an intra-group service?



- ❖ Nearly every MNE group must arrange for a wide scope of services to be available to its members, in particular administrative, technical, financial and commercial services.
- ❖ Such services may include management, coordination and control functions for the whole group. [OECD TPG Para. 7.2]
- ❖ Annex 1: List of intra-group services based on the guidance of the EU JTFP

Pricing Intra-Group Services: 4 Step Approach

OECD TPG Chapters I,II,III and VII.



Determining Whether Intra-group Services Have Been Rendered



Does the activity provides a respective group member with economic or commercial value to enhance or maintain its business position? [OECD TPG 7.6 - 7.8]



Non
Chargeable
Service

YES

An independent enterprise in comparable circumstances would have been: willing to pay for the activity if performed for it by an independent enterprise or would have performed the activity in-house for itself.



Not
recognised
i.e.
Disallowed

YES

Are the in-scope controlled transactions not any of the following [OECD TPG 7.9 - 7.13]:
shareholder activities or mere duplication of services or provision of incidental benefit.



YES

Chargeable Service

Is the activity related to the transfer of goods or intangible property (or the licensing thereof)?

Markup? No markup? Safe harbour (i.e. Low Value-Adding Services)?



**Intra-group
Royalties**

**Demis
Ioannou**

Transfer Pricing Challenges for Intangibles



Transfer pricing

- Something which is not a physical asset or a financial asset, which is capable of being owned or controlled for use in commercial activities, and whose use or transfer would be compensated had it occurred in a transaction between independent parties in comparable circumstances
- Patents; Know-how and trade secret; Trademark, trade names and brand; Rights under contracts and government licences; Licences and similar limited rights in intangibles; and Goodwill and ongoing concern value.
- Specific local market advantages, group synergies and assembled workforce are not classified as intangibles.

IAS 38

- An identifiable non-monetary asset without physical substance, controlled by the entity and held for use in the production or supply of goods or services, for rental to others, or for administration purposes.
- IAS 38 may require that intangible development be recorded as an expense and not capitalized and shown as an asset on the balance sheet. Yet, for TP purposes, there may be a valuable IP asset

Legal

- Patent law generally requires the registration of the intangibles, while such registration is not needed for an intangible to be recognized as such for TP purposes

Framework for analysing transactions involving intangibles: Six-step process



The allocation of returns from the exploitation of intangibles should especially be based on which parties perform the DEMPE functions, assume the risks and provide funds or other assets [OECD TPG 6.34]

- 1 • **Identify** the **intangibles used** or transferred in the transaction with specificity, and the **economically significant risks** associated with the **Development, Enhancement, Maintenance, Protection and Exploitation (DEMPE)** of intangibles
- 2 • **Identify** the full contractual arrangements, with special emphasis on determining **legal ownership** of intangibles
- 3 • **Identify** the **parties** performing functions, using assets and managing **risks** related to the **DEMPE** of intangibles
- 4 • **Confirm consistency** between the terms of the contractual arrangements and the conduct of the parties (allocation of risks)
- 5 • **Delineate** the **actual** controlled transactions related to the DEMPE of intangibles
- 6 • **Determine** arm's length prices for transactions consistent with each party's contribution of functions, assets and risks

Going forward Legal Ownership becomes less important

How is income allocated between related parties from exploiting the intangible?

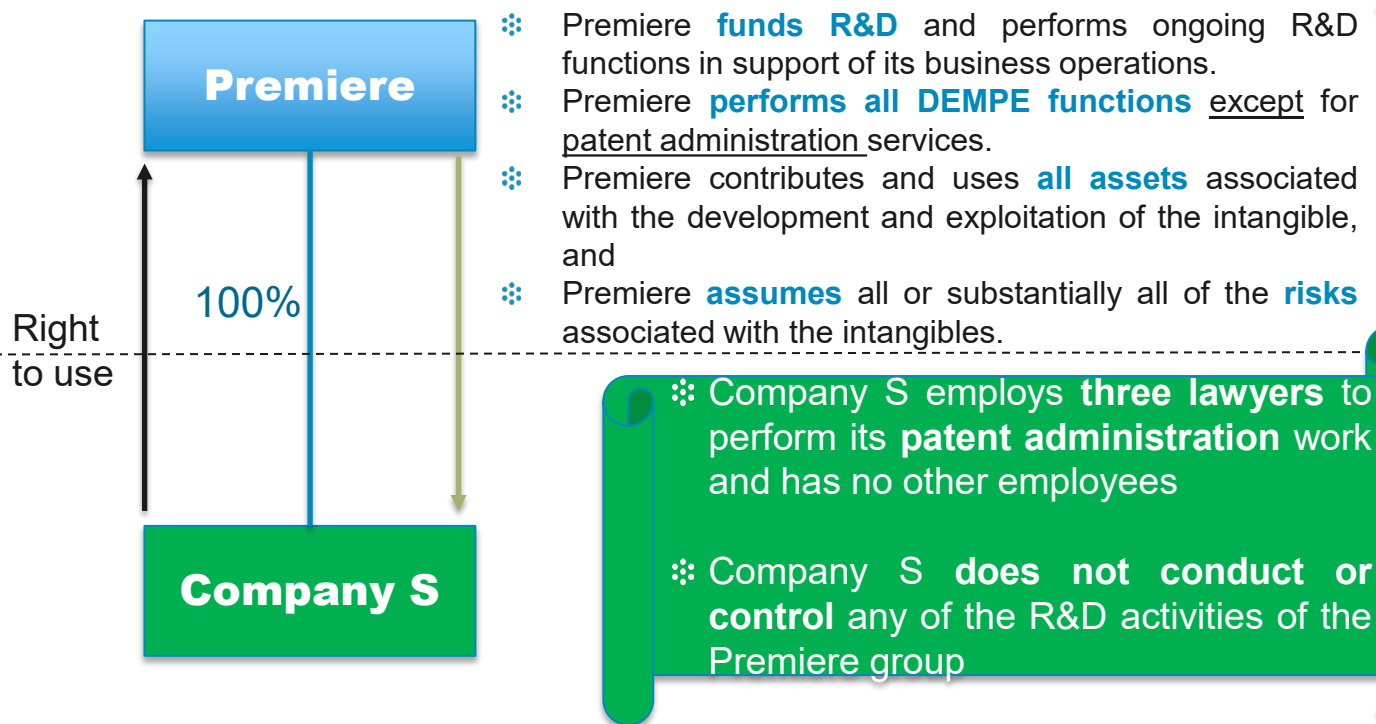


The legal owner of intangibles does not, in and of itself, necessarily imply that the legal owner is entitled to any income generated by the business after compensating other members of the MNE group for their contributions in the form of functions performed, assets used, and risks assumed [TPG 6.47].

All members of the group receive appropriate compensation for any functions they perform, assets they use, and risks they assume in connection with the development, enhancement, maintenance, protection, and exploitation of intangibles [TPG 6.48].

- Which member(s) perform and exercise **control** over **DEMPE**;
- Which member(s) provide **funding** and other assets; and
- Which member(s) **assume the various risks** associated with the intangible.

Practical Example: Holding intangible and simply performing a patent administration function is not entitled to intangible related returns



OECD Conclusion

S is entitled to an arm's length price for the patent administration services and is **not entitled to any intangible related returns**



Intra-group trading and Business Restructuring

Gaspar
Lopes
Dias

Business Restructurings: cross-border transfer of something of value



❖ OECD TP Guidelines – Chapter IX – Arm's length analysis of:

- ❖ FAR before restructuring
- ❖ Business reasons and ORAs for the restructuring itself
- ❖ FAR after the restructuring

❖ Common reasons for restructuring:

- ❖ Business control – centralisation, regional centres
- ❖ Cost management (including tax optimisation)
- ❖ Business integration – e.g. following M&As

❖ Important to ensure that the reality matches the paperwork and the location of key decision makers

❖ **As functions, assets and risk move to the principal so will profit (at arm's length)**

Business Restructurings: Typical Models

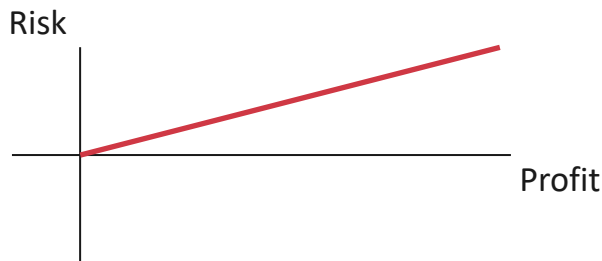


- ❖ **Converting fully-fledged manufacturers into limited risk manufacturers**
 - ❖ Key decision making processes are moved to the principal
 - ❖ Manufacturing operations become contract or toll
- ❖ **Centralisation of Treasury / Purchasing / Services:**
 - ❖ Centralisation of activities to achieve cost savings
 - ❖ A more strategic approach can be adopted leading to further savings
 - ❖ Emphasis on key decision makers (control-over-risk functions)
- ❖ **Converting fully-fledged distributors into limited risk distributors**
 - ❖ Functions are centralised
 - ❖ Distributors become low risk (LRD)
 - ❖ Local selling operations may lose responsibility for customer contracting and become sales agents
- ❖ **Centralisation of Intangibles (IP):**
 - ❖ Movement of existing IP or IP development to the principal
 - ❖ Future development may be in the principal or within related parties on a contract R&D basis
 - ❖ Principal needs to manage and control IP development; will need adequate staff
 - ❖ Existing IP ownership is moved. Emphasis on key decision makers (DEMPE functions)

Business Restructurings: Typical Models



❖ Risk allocation at arm's length?



???

- ❖ Exit charges can be levied on an arm's length compensation for forgone future profits
- ❖ Need to consider whether the restructured enterprise would be prepared to accept giving up material profit potential or incurring restructuring costs without an additional payment, if it was a stand alone enterprise?
- ❖ Group members contributing to synergies should be rewarded

Business Restructurings: Typical Models



- ❖ **Restructurings should be documented in the Master File and relevant Local Files**
- ❖ Must document decisions regarding the assumption or transfer of risk
- ❖ Accurate delineation and commercial rationality
- ❖ Apart from TP there are other ways to challenge the business restructuring (PE, WHT, CFC rules, GAAR, etc)



**MEET TAXAND
TEAM**



TAXAND CYPRUS

Taxand Cyprus is based in Nicosia. They are a high-end, independent tax advisory firm offering a comprehensive and integrated range of services.

Their team of seasoned tax professionals is focused on providing practical solutions based on a strong technical foundation, as well as being dedicated to offering clients a choice in tax advisors free from audit or legal based conflicts of interest. They are partner-led, working in dedicated teams, to actively lead each engagement from start to finish.

Their tax department specialises in international taxation and delivers a full advisory service across all aspects of corporate tax, individual tax, value added tax and customs, tax litigation, tax accounting, advance tax rulings, tax audits and tax compliance. They also advise their corporate clients on mergers, spin-offs, acquisitions (including due diligence), pre- and post-acquisition restructuring, reorganisations, (distressed) debt restructurings, joint ventures, structured finance, private equity, domestic and cross-border tax-planning and employee incentives.

Your Team



Dr. Richard Collier

Academic Consultant | Taxand Cyprus

Richard Collier* specialises in the taxation of MNEs with particular reference to the financial sector and the rules for the cross border allocation of income relating to transfer pricing and permanent establishments. He has also worked on a range of issues concerning international tax treaties. He is the co author of a book on the Arm's Length Principle and a more recent book relating to tax policy and financial markets. Both have been published by Oxford University Press.

Richard has worked as an expert in several cases including a high profile European Commission state aid case. He has previously been asked to present on tax policy matters to the House of Lords Select Committee on Economic Affairs and the European Parliament's TAXE Committee. Prior to his role as Associate Fellow at the University of Oxford's Saïd Business School (working at the Centre for Business Taxation), he worked for the OECD in the role of head of the transfer pricing, treaties and financial transactions teams. He was previously a Partner in one of the UK's 'Big 4 consulting firms where his dual role was to lead the global banking tax practice and to lead the Firm's global engagement with the OECD on international tax matters.

*This information is provided in relation to and for the purpose of work undertaken at Taxand Cyprus Limited

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Gaspar has experience in a broad range of transfer pricing and international tax matters including financial operations, business reorganisations and IP structuring, advising multinationals in various industries and investment funds.

He joined Taxand Cyprus in 2021 from the tax practice of Baker & McKenzie in London, having previously worked at Loyens & Loeff in Luxembourg, and KPMG Belgium. Gaspar holds an LL.B civil law (Nova University Lisbon), LL.M International Tax (Tilburg University), MSc Taxation (University of Oxford), ADIT member UK CIOT, and is an IFA member (UK Branch).

Some of his titles include:

- ❖ LOPES DIAS, Gaspar, Chapter 22: Luxembourg in Implementing Key BEPS Actions: Where Do We Stand? – peer reviewed book following the 2017 Rust Conference, IBFD, WU Tax Law and Policy Series, vol. 12, Dec. 2019.
- ❖ LOPES DIAS, Gaspar, The concept of Debt-Claim as the Key Distinguishing Factor between Dividend and Interest Income in the OECD MC, IBFD Vol. 17 Deriv. & Fin. Inst., Issue 2, Feb. 2015.
- ❖ [BOOK] LOPES DIAS, Gaspar, Tax Arbitrage through Cross-Border Financial Engineering, Kluwer Law International, Series on International Taxation No. 50, Feb. 2015.

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Demis specialises in corporate income tax law, transfer pricing and international tax (treaty) law. He has a strong track record with clients in advising on transfer pricing issues and in complex corporate tax law issues. His extensive interest on comparative income tax law (US, UK, Canada and Australia) offers him a unique advantage in solving complex tax issues in Cyprus.

Demis received his Master of Laws (MSc) in Tax Law from Oxford University. He was trained from a Big4 company and holds a first-class Bachelor's degree in Accounting and Finance from the UK, as well as being a qualified Chartered Accountant in England & Wales. He also holds an LLB from Frederick University Cyprus.

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Costas has considerable experience in advising on international tax law and corporate tax issues. He focuses his practice on the tax aspects of inbound and outbound business operations with a strong track record in cross-border investment structures and structured finance. Costas also specializes in Transfer Pricing, with experience in a broad range of transfer pricing matters.

Costas holds an LL.B. from Frederick University and a Master of Laws (LL.M.) in International Taxation from the Vienna University of Economics and Business (WU) in Austria. He is also a qualified fellow member of the Association of Certified Chartered Accountants (ACCA).

BIO / CONTACT



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Christos specialises in private clients and corporate tax issues (including transfer pricing) with an international dimension, such as private equity structuring, cross-border investments, structured finance, IP structuring and international trade.

Christos received his Master of Laws (MSc) in Tax Law from Oxford University. He holds an LLB Law, a Bachelor's degree in Economics, the Advanced Diploma in International Taxation (ADIT) of the UK Chartered Institute of Taxation, as well as being a qualified Chartered Accountant in England & Wales. Christos is a contributor to international tax publications such as IBFD, Tax Notes International, Bloomberg BNA, International Tax Review and IFA as a national reporter. Furthermore, Christos is currently a member of the Tax Policy and Strategy committee of Institute of Certified Public Accountants of Cyprus.

Christos is also a freelance lecturer for Tolley's (LexisNexis) in Greece, Cyprus and Ukraine, where his main areas are ADIT Paper 1 Principles of International Tax.

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Senior Transfer Pricing Economist

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Dr. Alexander Apostolides is a senior transfer pricing economist of Taxand Cyprus. He is an economist with a ten-year experience in market research, capacity building, and policy advisory. Alexander received his PhD and MSc from the London School of Economics. He is currently the Acting Regulatory Research Lead for Financial Technology for the Cambridge Centre for Alternative Finance, at the Judge Business School, University of Cambridge. He also lectures at the University of Cyprus and the European University Cyprus (EUC).

He was previously a head of the Department of Accounting, Finance and Economics in EUC. He served in the National Economic Council of the President of Cyprus from 2013-2017. In the period 2018-2020, he worked at the British High Commission-Nicosia as an Economist, also leading projects on combating money laundering, and leading prosperity funding and delivery at post.

ABOUT TAXAND

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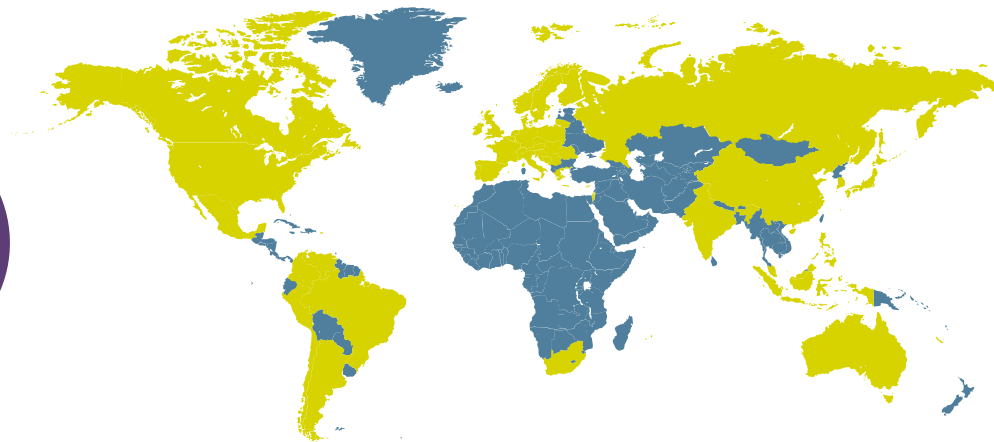
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GLOBAL COVERAGE

FROM 9 TO
OVER 50
COUNTRIES IN
13 YEARS

90%
RECOMMENDED IN
WORLD TAX 2017

96 ITR
AWARDS
WON SINCE
2009



Argentina	Cyprus	Ireland	Norway	Slovakia
Australia	Czech Republic	Israel	Peru	Slovenia
Austria	Denmark	Italy	Philippines	South Africa
Belgium	Finland	Japan	Poland	South Korea
Brazil	France	Luxembourg	Portugal	Spain
Canada	Germany	Malaysia	Puerto Rico	Sweden
Chile	Greece	Malta	Romania	Switzerland
China	Hungary	Mauritius	Russia	UK
Colombia	India	Mexico	Serbia	USA
Croatia	Indonesia	Netherlands	Singapore	Venezuela

ABOUT TAXAND



Taxand is a global organisation comprising top tier local independent tax advisory firms who together provide high quality, integrated tax advice to clients worldwide. Overall there are more than 550 tax partners and over 2,500 tax advisors across 50 countries, focussed on understanding you and your business needs; collaborating to deliver tailored, practical local and international tax advice, in consideration of your strategic goals.

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services tax

Indirect
tax

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Private client
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tax

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resolution

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business
restructuring

- ❖ Providing high quality advice that addresses your strategic concerns and improves your bottom line by:
 - Understanding and managing the tax consequences of cross-border tax transactions
 - Considering organisational (re)structuring options in full awareness of the tax implications
 - Realising tax, supply chain and overall operational efficiencies
 - Interpreting technical tax provisions
 - Lowering effective tax rates
 - Addressing and preventing tax leakages
 - Ensuring tax compliance
 - Managing relationships with tax authorities

❖ TAXAND

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