

Overview

Al Tamimi & Company, Taxand UAE

Al Tamimi & Company has a top tier tax practice consisting of experts with academic background in law, economics and accounting who gained strong tax experience from established jurisdictions in UK, Europe and Asia. The regional transfer pricing ("TP") team based in the United Arab Emirates ("UAE") is dedicated to providing sophisticated and pragmatic solutions tailored to the needs of multinational enterprises ("MNEs"). Our TP team offers deep expertise in navigating the complex regional regulatory environment, ensuring compliance with local and international standards while optimizing tax efficiencies. We assist clients in the following areas:

- ❖ Assess TP risks and identify opportunities to mitigate these risks.
- ❖ Develop tax efficient and globally defensible TP policies in line with business reality.
- ❖ Assist with the practical implementation of the TP policies.
- ❖ Support TP policies by preparing TP documentation in line with the TP requirements.
- ❖ Provide dispute resolution support as well as TP litigation assistance.

Transfer Pricing Framework

The UAE has incorporated TP rules within the Federal Decree-Law No.47 of 2022 on the Taxation of Corporations and Businesses ("Corporate Tax Law"). The TP Guide, issued by the Federal Tax Authority ("FTA") on 23 October 2023, provides general guidance on the TP regime in the UAE and practical examples on the application of the UAE TP rules. Broadly, the UAE TP rules are aligned with the TP guidance from the Organisation for Economic Co-operation ("OECD").

The arm's length principle is the cornerstone of UAE's TP rules, ensuring that transactions between related entities are conducted as if they were between independent parties. Under the Corporate Tax Law, notable articles in relation to TP include Article 34 (arm's length principle), Article 35 (related parties and control), Article 36 (payments to connected persons), and Article 55 (transfer pricing documentation).

The FTA mandates comprehensive TP documentation, including the preparation and submission of a TP Disclosure Form, a Master File, a Local File and as well as Country-by-Country Reporting ("CbCR") requirements for entities meeting specific thresholds.

Accepted Transfer Pricing Methodologies

The transfer pricing rules define the methodologies that are to be used to analyze related party transactions. There are five internationally accepted transfer pricing methods detailed in

the OECD TP Guidelines and internalised under Article 34(3) of the Corporate Tax Law. These are the following:

- ❖ Comparable Uncontrolled Price Method.
- ❖ Resale Price Method.
- ❖ Cost-Plus Method.
- ❖ Transactional Net Margin Method.
- ❖ Profit Split Method.

The Corporate Tax Law also allows the application of other generally accepted pricing methods where it is not possible to apply the aforementioned methodologies, as long as they are consistent with the arm's length principle. There is no specific priority of methods. The most appropriate method must be chosen, considering the characteristics of the transactions and the availability of reliable information.

Transfer Pricing Documentation Requirements

As stipulated under Article 55 of the Corporate Tax law, and to maintain compliance with TP requirements and safeguard the integrity of their corporate tax positions, taxable persons must compile contemporaneous TP documentation in relation to their controlled transactions. Furthermore, the TP Guide details the approach to TP documentation, including:

TP disclosure form

All taxable persons who conduct transactions with related parties or connected persons (domestic or international) are required to prepare and submit a TP disclosure form alongside the tax return (i.e. within 9 months from the end of the relevant tax period). The TP Guide has now proposed a materiality threshold for this TP disclosure form, however the threshold is yet to be prescribed.

As per the TP disclosure form, a taxable person should submit information such as the nature of the controlled transaction(s), the gross value of the controlled transaction(s), details of the related party(ies)/ connected persons and the transfer pricing method(s) used to determine the arm's length value of the controlled transactions, amongst others.

Master File and Local File

Taxable Persons who are a Constituent Company of an MNE Group with a total consolidated group of United Arab Emirates dirham ("AED") 3.15 billion or more; or where the taxable person's revenue in the relevant tax year is AED 200 million or more, must keep both a Master File and a Local File. The requirements prescribed by the FTA align with the requirements under Chapter V of the OECD TP Guidelines.

Any taxable person who is part of a UAE-headquartered organisation that is not an MNE organisation (i.e. a group with no commercial premises outside the UAE) is exempt from maintaining a Master File. However, they must keep a Local File in accordance with the prescribed thresholds (even when only domestic controlled transactions exist).

The Master File should provide an overview of the multinational group business, including the nature of its global business operations, its overall transfer pricing policies, and its global allocation of income and economic activity. On the other hand, the Local file focuses on information relevant to the related party transactions that the taxable person undertakes and evaluates the arm's length nature of these transactions.

A Taxable Person who does not fulfil the requirements for a Master File or Local File is nonetheless required to keep records demonstrating the arm's length character of their dealings with related parties/ connected persons, and the FTA may seek supporting documentation from all taxpayers. Functional analysis, benchmarking studies, intercompany agreements, meeting minutes, documentation of decisions taken, emails, invoices, workpapers estimating transfer prices, and so on are examples of such information.

This information can be requested by the FTA within 30 days or as ordered by the FTA.

It is crucial to mention that the FTA expects that documentation is maintained in English language either at the time of the controlled transaction or, by the time the taxable person submits its tax return for the tax period in which the controlled transaction is undertaken.

Country-by-Country Reporting ("CbCR")

The CbCR is a standardised report that provides information regarding the MNE Group's global income allocation, taxes paid, and economic activity indicators across tax jurisdictions. It also identifies the MNE Group's constituent entities for which financial information is disclosed, including the tax jurisdiction of incorporation and details of the constituent entity's major economic operations. The CbCR rules apply to multinational groups headquartered in the UAE that have a total consolidated group revenue of AED 3.15 billion or above. The CbC report should be filed within 12 months from the end of the financial year of the Group.

The CbCR notification provides information with respect to the filing entity. The CbCR notification should be submitted no later than the last day of the financial year that of the multinational group.

The CbCR requirements were introduced through the Cabinet Resolution No. 44 of 2020. It should be noted that the CbCR follows the Standard Template attached in Chapter V of the OECD TP Guidelines.

Local Jurisdiction Benchmarks

In the UAE, TP documentation practices adhere to international norms, including those outlined by the OECD. Taxable entities must prepare benchmarking studies to demonstrate that their intra-group transactions comply with the arm's length standard. These studies should be contemporaneous, with a comprehensive review every three years, and the financial data of comparable companies should be updated annually, where applicable.

It is recommended to first consider internal comparables when available, and if they are not used, a clear explanation should be provided. Adjustments to comparables are allowed if they enhance the accuracy and relevance of the data for the transaction in question.

Taxable entities should use domestic comparables in their comparability analysis as these comparables generally have a higher degree of comparability in terms of their market and economic circumstances compared to foreign comparables. Where insufficient data is available at the domestic level, taxable entities can consider regional or global comparables.

Advance Pricing Agreement "APA"/Bilateral Advance Pricing Agreement "BAPA" Overview

The UAE's Corporate Tax Law incorporates the notion of APA under Article 59, whereby a person may make an application to the FTA for a clarification regarding the conclusion of an Advance Pricing Agreement ("APA"). More notably, in the summer of 2024, the FTA announced that the start date for receiving applications for APAs and procedures related to the submission of applications and the issuance of agreements will be announced in the fourth quarter of 2024.

While there is no formal APA process established, MNEs can engage with the FTA to discuss their TP arrangements through the Clarification process.

Transfer Pricing Audits

The FTA is empowered to conduct TP audits to ensure compliance with the arm's length principle. Although random audits are not explicitly mentioned, the FTA may use risk assessment tools, including the mandatory Transfer Pricing Disclosure Form, to select taxpayers for audits. It is expected that TP audits will focus on the accuracy and appropriateness of the TP methods applied, the reliability of benchmarks, and the consistency of the TP documentation. Companies found to have non-compliant TP practices may face adjustments to their taxable income and potentially significant penalties.

Transfer Pricing Penalties

While the Corporate Tax Law does not specify distinct penalties for non-compliance with TP requirements, it is expected that penalties will follow the framework established under the UAE Tax Procedures Law of 2022 (Article 60, Corporate Tax Law). This includes penalties for late submissions, inaccurate documentation, and failure to maintain books and records. The FTA may impose additional taxes, interest on overdue payments, and fines for any discrepancies identified during an audit. The introduction of these rules underscores the UAE's commitment to preventing tax avoidance and ensuring that all related-party transactions comply with the arm's length standard.

When related-party transactions do not meet the arm's length standard, the FTA has the authority to adjust the taxable income to reflect an arm's length result. This adjustment ensures that the transaction or arrangement accurately reflects the economic reality and the facts and circumstances involved. Additionally, if an adjustment is made to one party's taxable income, a corresponding adjustment will be made to the related party involved in the transaction.

Local Hot Topics and Recent Updates

With the introduction of Corporate Tax and TP rules in the UAE being a recent development, the FTA is expected to adopt stringent measures to ensure these rules are properly enforced. The introduction of these rules marks a significant shift in the UAE's tax landscape, and the FTA's proactive stance is crucial for maintaining the integrity of the new system.

Given the novelty of these rules, the UAE is likely to see an increase in TP auditing activities, particularly focusing on high-risk areas such as financial transactions, intra-group services and intangibles. The FTA will likely utilise the Transfer Pricing Disclosure Form as a starting point together with the TP documentation to scrutinise intra-group arrangements.

Documentation threshold

Master file	Companies that are part of an MNE Group with a total consolidated revenue of AED 3.15 billion or above, or where the taxable person's revenue for the relevant tax period is at least AED 200 million.
Local file	Companies that are part of an MNE Group with a total consolidated revenue of AED 3.15 billion or above, or where the taxable person's revenue for the relevant tax period is at least AED 200 million.
CbCR	MNEs with an Ultimate Parent Entity that is resident in the UAE, with consolidated revenues equal to or exceeding AED 3.15 billion.

Submission deadline

TP disclosure form	To be submitted alongside the tax return (within 9 months from the end of the relevant tax period)
Master file	To be maintained and submitted within 30 days upon request by the FTA.
Local file	To be maintained and submitted within 30 days upon request by the FTA
CbCR	Within 12 months from the end of the reporting fiscal year of the Group
CbCR notification	Notification must be submitted by the end of the reporting fiscal year

Penalty Provisions

Documentation – late filing provision	Fines as determined by the Corporate Tax Law and relevant Decisions
Tax return disclosure – late/incomplete/no filing	Fines as determined by the Corporate Tax Law and relevant Decisions
CbCR – late/incomplete/no filing	Under the Cabinet Resolution No. 44 of 2020 on CbCR, four types of administrative penalties are imposed on eligible UAE taxable persons, ranging from AED 10,000 to AED 1,000,000. Specific penalties include: ❖ Late filing of CbCR: Up to AED 1,000,000 plus AED 10,000 for each day of delay, capped at AED 250,000. ❖ Inaccurate or incomplete CbCR: Fines range from AED 50,000 to AED 500,000. ❖ Failure to maintain required documentation for five years: AED 100,000. ❖ Failure to provide requested information: AED 100,000.



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