TAX ALERT
October 25, 2024

GCC Transfer Pricing Developments in 2024

Introduction

In light of the significant developments in the transfer pricing (TP) regulations across the Gulf Cooperation Council (GCC), it's time to revisit the evolving landscape discussed in our earlier article, "The Evolving Terrain of GCC Transfer Pricing." If you haven't had the chance to explore that piece, we encourage you to review it for a foundational overview of the topic[1].

Since its publication, several key regulatory updates have emerged in 2024, particularly in the United Arab Emirates (UAE) and Saudi Arabia (KSA). These changes underscore the continually evolving frameworks and an increased emphasis on TP compliance across the region. Let's explore these recent developments and their potential impact.

UAE specifics – A Recap and What's New?

In October 2023, the UAE's Federal Tax Authority (FTA) published the TP Guide, which offers detailed guidance for taxpayers and addresses common questions related to the UAE TP Regulations. This comprehensive document clarifies various operational aspects of TP, enhancing the understanding of compliance requirements. Following the release of this TP Guide, here are some additional points to note, along with a brief recap[2]:

Particulars	Recap	What's New?
Transaction Covered	TP rules apply to transactions and arrangements with related parties (≥50% control) and connected persons, regardless of business form (corporations, partnerships, trusts, mainland entities, free zones, etc.). TP methods are also used to compute profits attributable to Permanent Establishments (PE). Relief is available for tax groups and qualifying groups.	The TP Guide details the scope of transfer pricing, i.e., transactions and persons covered under the ambit of the UAE TP regulations. It has been clarified that TP rules not only apply to MNE groups but also to domestic groups (including free zone entities) with no presence outside the UAE.

[1]https://www.linkedin.com/posts/dhruvagcc_gcc-transfer-pricing-activity-7091711443451965440-7aeo?utm_source=share&utm_medium=member_desktop
[2]https://www.linkedin.com/posts/dhruvagcc_uae-tp-guide-activity-7123654947191107587-_yUud?utm_source=share&utm_medium=member_desktop

Particulars	Recap	What's New?
		With respect to the additional clarification in identifying the relationship between entities, the TP Guide cites examples of 'control through significant influence,' such as when debt constitutes 50% of a borrower's capital, a royalty agreement entitles a party to 50% of profits, or a shareholder with less than 50% ownership, which play a key role in decision-making. The examples of 'control through significant influence' show that the law's intent goes beyond voting rights, profit shares, or board composition, requiring a broader, case-by-case analysis.
Application of the arm's length principle (ALP)	The UAE follows the OECD TP Guidelines for Multinational Enterprises and Tax Administrations 2022 (OECD TP Guidelines), using methods like the comparable uncontrolled price (CUP) method, resale price method (RPM), cost plus method (CPM), profit split method (PSM), and transactional net margin method (TNMM). Taxpayers have the flexibility in choosing the most appropriate method or combination of methods to determine the appropriate pricing in line with the Arm's Length Principle (ALP).	The TP Guide emphasizes the importance of conducting a detailed Functions, Assets, and Risk (FAR) analysis to delineate controlled transactions and also provides practical steps for applying the TP methods. Taxpayers should follow an order of comparable (domestic, regional, and then foreign) and may use multiple-year data and statistical tools such as interquartile ranges to determine the pricing in line with the ALP. While there is no strict hierarchy of methods, certain methods are preferred for specific transactions (e.g., CUP for commodities), and deviations require justified reasoning. Annual financial updates in respect to benchmarking studies are also pivotal to ensure compliance with local and international regulations. The TP Guide provides detailed guidance on determining the arm's length price for specific transactions, including financial transactions (e.g., intra-group loans, cash pooling), intra-group services, intangibles etc.

Particulars	Recap	What's New?
TP Documentation/ Reporting	Entities with revenue ≥ AED 200 million or part of a multinational group with consolidated revenue of AED 3.15 billion must maintain a transfer pricing local and master file and submit a disclosure form with the Corporate Tax return.	TP Guide has clarified that taxable persons not meeting the prescribed threshold for maintenance of TP documentation i.e., local file or master file, or entities exempt from TP documentation i.e., entities claiming small business relief, are required to maintain records to support the arm's length nature of the transaction/s and are required to produce the same information within 30 days of request from the FTA. The TP Guide provides in detail the contents to be covered under the master file and local file, which are in line with requirements under Annexure I and II to Chapter V of the OECD TP Guidelines, respectively.
TP Adjustments	The FTA can adjust pricing and taxable income for transactions, not at arm's length and make corresponding adjustments for related parties. An Advance Pricing Agreement (APA) mechanism is available for certainty, and corresponding adjustments can be requested to avoid double taxation in case of foreign TP adjustments.	TP Guide clarifies that inter-company balances outstanding beyond a reasonable period may be re-characterized as loans and would be subject to notional interest under the TP provisions. Taxpayers can adjust their transfer prices up to the tax return filing date, with post-filing adjustments allowed only where there is an increase in taxable income. The burden of proving the arm's length nature of transactions rests on the taxpayer, and the FTA can make TP adjustments or disregard non-compliant transactions. This pre-filing adjustment flexibility will potentially assist in reducing TP disputes.

KSA specifics – A recap and What's New?

The third edition of the KSA TP Guidelines, released by the KSA tax authority, Zakat, Tax, and Customs Authority (ZATCA) in June 2024, provides important updates on several aspects, including the expanded scope of applicability, revised documentation requirements, and specific guidance on financial transactions. Additionally, it introduces details on APAs, offering taxpayers a clearer framework for future tax compliance and dispute resolution. We have summarized the key updates below.

Particulars	Recap	What's New?
Transactions Covered	TP regulations apply to all taxpayers (including PE's) and cover transactions between related persons or persons under common control (≥50% ownership)/effective control (control via governance/funding/business. TP bylaws apply to international and domestic transactions, including transactions between taxpayers. For FYs beginning on or after January 1, 2024, the TP provisions will extend to Zakat paying entities.	The third edition of the TP Guidelines specifies that the rules outlined in the TP bylaws shall apply to anyone who is considered a taxpayer under the Income Tax system and Zakat Regulations, or both.
TP Adjustments	ZATCA can review and adjust transfer prices that are not in accordance with the ALP. Taxpayers can apply for the corresponding adjustment in the case of foreign country TP adjustments to avoid a double tax burden. As part of the update to the TP bylaws, ZATCA has announced that they will create an APA program for both Taxpayers and Zakat payers for financial years beginning on or after January 1 , 2024.	A new section covering APAs has been added in the new guidelines. APAs are crucial for managing transfer pricing risks, providing certainty, and minimizing disputes and double taxation. APAs are available for transactions valued at no less than SAR 100 million. Multinational groups must submit a complete application at least 12 months before the financial year begins. The application should include details about the group structure, transaction descriptions, financial statements, functional analyses, competitor studies, and relevant research. Once approved, the APA is effective for three financial years, ensuring that the tax authority cannot challenge the agreed-upon transfer pricing policy during this period, provided that taxpayers notify the authority of any significant changes that could affect the agreement.

Particulars	Recap	What's New?
ALP Determination	The ALP computation methods are consistent with the OECD TP guidelines, i.e. CUP, RPM, CPM, PSM, TNMM.	Chapter 8 provides comprehensive guidance on financial transactions, particularly loan arrangements. The updated guidelines emphasize the need to define the characteristics of transactions and to assess whether they should be classified as loans or equity. Below is a summary of the key considerations for adhering to the Arm's Length Principle (ALP) in financial transactions between related parties: To adhere to the ALP in financial transactions between related parties, especially in loan agreements, it's crucial to consider all transaction conditions, including risks and pricing. The nature of the transaction must be defined as per the guidelines. To determine the appropriate pricing under the ALP, the transaction's characteristics should be clearly defined to capture all significant economic attributes. This analysis should encompass several elements: • **Study of Contractual Terms**: Review the written terms between the parties; if insufficient, other documents may need to be examined. • **Functional Analysis:** Identify tasks performed, assets used, and risks assumed by the parties. • **Analysis of Financial Instrument Characteristics**: Focus on the distinct features of various financial instruments involved in the transaction. • **Economic Conditions Analysis:** Assess market differences affecting pricing between related and unrelated parties. • **Business Strategy Analysis**: Understand how the business strategies of the related parties influence transaction terms, including the loan's purpose. Further, it is crucial to consider the debt-to-equity ratio. Third parties might not be able or willing to borrow excessive amounts due to high debt and interest burdens relative to their equity. Therefore, assessing compliance with the ALP requires more than just examining the interest rate; it also involves evaluating the borrowing

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		company's capacity to manage the proposed debt. This analysis would be critical to assess whether the transaction should be classified as a capital contribution rather than a loan, which may have an impact on the Zakat Base in the case of Zakat payers. When pricing transactions involving intangible assets, it's essential to identify who within a multinational group benefits from the returns generated by these assets. This consideration applies to two key types of transactions: those involving the transfer of intangible assets or the granting of rights in such assets, and those concerning the use of intangible assets in relation to the sale of goods or the provision of services. Ensuring that pricing aligns with market standards requires careful assessment of these unique asset characteristics.
TP Documentation/ Reporting	Taxpayers with related party transactions of an annual value above 6 million Saudi Arabian riyals (SAR) must prepare and maintain master and local files (exempt for small businesses and natural persons). The disclosure form is to be filed with the annual income tax /Zakat declaration. Along with the Disclosure Form, the taxpayer must upload the Affidavit (Chartered Accountant Certificate) declaring that the TP policy of the MNE Group is consistently applied to the taxpayer in the KSA. Zakat payers with aggregated related party transactions less than SAR 100 million and investment funds are exempted from the Master File/Local File requirement for FY 2024 to 2026 (Phase 1).	The updated TP Guidelines now include new documentation requirements that apply to Zakat payers, starting from January 1, 2024. Additionally, certain exemptions have been established, meaning that wholly state-owned companies exempt from Zakat and investment funds do not need to comply with specific documentation requirements. The updated TP Guidelines clarify that Group companies filing a consolidated Zakat return are exempt from TP reporting for internal transactions, if they disclose transactions with entities where they hold less than 100% ownership. However, they are still obligated to disclose relevant transactions with companies outside their Zakat consolidation. The authority retains the right to request transfer pricing documentation within a minimum of 30 days from the date of such a request.

Particulars	Recap	What's New?
	From FY 2027 onwards, Zakat payers with aggregated related party transactions of more than SAR 48 million would be required to comply with the TP regulations (Phase 2).	**Phase 1:** From 2024 to 2026, Local File and Master File Requirements: • Transactions with related parties valued at SAR 48 million or less: local file and master file are not required. • Transactions over SAR 48 million but less than SAR 100 million: The local file and master file are optional but will become mandatory three years after the first phase, starting on or after January 1, 2024, and include financing funds. • Transactions of SAR 100 million or more: Required. **Phase Two:** From 2027 onwards If the total value of related party transactions is less than SAR 48 million: not applicable; if it is SAR 48 million or more: mandatory.

Concluding remarks

The UAE's TP Guide and KSA's recent TP Guidelines enhance certainty and aim to mitigate dispute risks. Companies part of a multinational group must stay informed about these regulations and adapt accordingly to ensure compliance and effectively manage TP risks.

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