Highlights of the UAE Transfer Pricing Guide

Preface

The UAE Federal Tax Authority (FTA) has systematically provided guidance on various aspects of the UAE Corporate Tax Law (CT Law). In its latest release on October 23, 2023, the FTA introduced a 140-page Transfer Pricing Guide (Guide) offering insights and examples on aspects of the UAE Transfer Pricing (TP) regime. The Guide covers key topics such as the arm's length principle, TP Documentation, and specific transactions. It aligns with the 2022 OECD TP Guidelines.

Taxpayers are advised to rely on the CT Law, Ministerial Decision No. 97 of 2023, Cabinet Resolution No. 44 of 2020, and the Guide for TP matters in the UAE.

The Guide, while not legally binding, is expected to be a primary source for TP guidance, indicating the FTA's approach to the regime.

This publication offers a comprehensive review of the Guide within the framework of the UAE TP rules, highlighting key insights and takeaways crucial for UAE businesses as they navigate and enhance their TP framework moving forward.

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Highlights of the TP Guide

1. Arm’s Length Principle and Controlled Transactions

The publication outlines the arm's length principle, as per the OECD Transfer Pricing Guidelines, within the context of the UAE. This principle dictates that prices set by taxpayers for Controlled Transactions between Related or Connected Parties should mirror those of unrelated, independent entities under similar economic circumstances.

The typical transaction categories include tangible goods, services, financial transactions, and intangible assets. The key impact for taxpayers is the universal application of the arm's length principle to both domestic and cross-border Controlled Transactions, regardless of specific thresholds or conditions.

Key implication for taxpayers:

The arm’s length principle mandates application to both domestic transactions (encompassing mainland and free zones) and cross-border Controlled Transactions, without regard to specific thresholds or conditions.

2. Related Parties and Connected Persons

The Guide aligns the definitions of Related Parties and Connected Persons with those specified in Articles 35 and 36 of the CT Law. To illustrate the practical application of these definitions, the Guide furnishes numerous examples, to illustrate on how taxpayers can apply them to their operations in the UAE. A key insight from the provided illustrations is that the determination of 'Control' goes beyond a rigid 50% ownership threshold. Instead, 'Control' can be substantiated when one person exerts 'significant influence' over another entity, emphasizing a nuanced understanding of the relationship dynamics.

Key implication for taxpayers:

Taxpayers bear the responsibility of actively monitoring and evaluating their associations with other individuals or entities, as defined under Article 1 of the CT Law, to ascertain the relevance of related party or connected persons definitions. This determination can be based on factors related to kinship, ownership, control, and the exercise of significant influence.

It is incumbent upon taxpayers to perform a thorough self-assessment to identify whether a Person holds 'significant influence,' potentially categorizing them as a related party. This assessment necessitates a nuanced consideration of various factors and circumstances unique to the specific scenario or relationship under examination.

3. Application of the arm’s length principle

This section provides direction on navigating the three essential steps involved in implementing the arm's length principle for Controlled Transactions.

3.1 Comparability analysis

A comparability analysis entails evaluating a Controlled Transaction against comparable uncontrolled transactions. Transactions are considered comparable if differences between them do not materially affect the examined factors, or if accurate adjustments can neutralize such differences.

The Guide emphasizes the importance of accurately delineating Controlled Transactions, emphasizing the recognition of actual transactions based on conduct rather than contractual form, involving an analysis of functions, risks, and assets.

3.1.1 Identification of commercial and financial relations

In the initial phase of the comparability analysis, assessing the economically relevant characteristics and circumstances becomes imperative as they can influence the conditions of a transaction between independent parties.

The following key comparability factors must be evaluated:

- The contractual terms of the transaction or arrangement.
- The inherent characteristics of the transaction or arrangement.
- The economic context in which the transaction or arrangement transpires.
- The functions undertaken, assets utilized, and risks assumed by the related parties involved in the transaction or arrangement.
- The business strategies adopted by the related parties engaged in the transaction or arrangement.

All these factors align seamlessly with the guidance outlined in the OECD Transfer Pricing Guidelines.

3.1.2 Functional analysis

The Guide highlights the critical aspect of functional analysis, emphasizing its significance in determining the arm's length price of Controlled Transactions.

The Guide provides detailed guidelines and introduces a six-step framework aligned with the OECD Transfer Pricing Guidelines for analyzing risks under the functional analysis. The functional analysis aims to identify economically significant activities, assets, and risks, while highlighting the importance of understanding the relative value and contributions of each party in the overall business value chain. The FTA expects taxpayers to conduct thorough functional analyses regarding risk, considering financial consequences and fair remuneration for risk management.

Practical guidance, including sample questionnaires and documentation advice, is illustrated in the Guide to assist taxpayers in documenting the functional analysis.

3.1.3 Other Considerations

In addition to the core elements of the comparability analysis it is imperative for the taxpayer to consider the following additional key factors when undertaking the comparability analysis:

Market Comparability: Evaluating the market's comparability by assessing factors such as geographic location, size, and the competitive landscape in terms of supply and demand.

Economic Factors: Broader economic considerations, encompassing government policies, cost savings derived from operating in a specific market, a uniquely skilled workforce, the impact of customs valuations, and synergies within the Multinational Enterprise (MNE) group, should be taken into account when evaluating the comparability of Controlled Transactions.

Loss Incurrence: Special attention is required when a taxpayer consistently experiences losses while the MNE Group remains profitable. The Guide stipulates that, upon request from the FTA, the taxpayer must provide documentation demonstrating that these losses do not stem from non-arm's length Controlled Transactions. In instances where losses occur at an entity level while the group registers profits, comprehensive supporting documents and workings should be maintained to substantiate the arm's length price of the Controlled Transactions.

3.2 Transfer Pricing methods

The Transfer Pricing (TP) methodologies outlined in the Guide adhere to the standards set forth by the OECD TP Guidelines and Article 34(3) of the CT Law. These methodologies offer transparent directives for both taxpayers and the tax authority, aiding in the precise determination of pricing for Controlled Transactions. Leveraging insights from the comparability analysis, these methods assess the arm's length nature of the transactions in question.

A description of the methods is outlined below:

3.2.1 Traditional transaction methods

(i) Comparable Uncontrolled Price ('CUP') Method

The CUP method directly compares the price of property or services in a Controlled Transaction with that in a comparable uncontrolled transaction under similar circumstances. This approach involves scrutinizing prices in both types of transactions and is considered the most direct application of the arm's length principle, particularly when relevant data is accessible.

(ii) Resale Price Method ('RPM')

The RPM involves determining the arm's length price for a product purchased from a related party and then resold to an independent party. This is achieved by subtracting the gross 'Resale Price Margin' and other associated transaction costs from the resale price. The RPM is commonly employed when evaluating the pricing of transactions that entail the resale of products acquired from related parties.

(iii) Cost Plus Method ('CPM')

The CPM involves considering the direct and indirect costs incurred by a supplier in a Controlled Transaction. It applies a mark-up to these costs based on the functions performed by the supplier and the expected profit in an arm's length transaction under similar market conditions.

3.2.2 Transactional profit methods

(i) Transactional Net Margin Method ('TNMM')

The TNMM assesses the net profit from a Controlled Transaction relative to a relevant base, like costs, sales, or assets. It involves comparing the net profit margin in the Controlled Transaction with that of comparable uncontrolled transactions, either internal or external, depending on the circumstances.

(ii) Profit Split Method ('PSM')

The PSM is applied to establish the allocation of profits among independent parties involved in comparable transactions. This method is particularly useful in situations where related parties engage in highly integrated business operations, making a one-sided method unsuitable. PSM is also applicable when each party in a Controlled Transaction brings unique and valuable contributions, utilizes distinct intangibles, or shares the assumption of economically significant risks related to the transaction.

3.2.3 Other Methods

When the standard five methods for determining arm's length price are not applicable, the Guide allows for the consideration of other methods in line with Article 34(4) of the CT Law. If an alternative TP method is chosen, comprehensive documentation must be provided, explaining the rationale behind the method selection, including economically and commercially valid justifications. This documentation should also disclose the analysis conducted during the application of the chosen method to ensure a thorough and defensible determination of the arm's length price.

3.2.4 Other considerations

The arm's length result for a Controlled Transaction should be determined using one or a combination of TP methods.

The Guide advises taxpayers to consider transaction nature, functional analysis, reliable comparable information availability, and the degree of comparability between controlled and uncontrolled transactions when selecting the most appropriate method. This ensures a tailored approach to method selection based on the specific characteristics of the transactions.

The Guide suggests that the preferred approach by the FTA is to apply TP methods at the specific transaction level. However, it allows flexibility for taxpayers to use the TNMM or other methods on a company-wide basis to support individual transactional analyses.

Additionally, in cases where activities or transactions are closely interlinked from commercial and economic perspectives, a company-wide analysis is permissible, offering a holistic examination of the arm's length nature of Controlled Transactions. This approach recognizes the need for adaptability in Transfer Pricing analysis based on the complexity and interdependence of business structures and transactions.

3.3 Determination of the arm's length price/ range

The Guide outlines a series of steps to determine the arm's length price in accordance with the OECD Transfer Pricing Guidelines. The following summarizes the key takeaways:

3.3.1 Selection of the tested party

The selection of which party to apply certain TP methods is crucial and should align with the Functional Analysis of the Controlled Transaction. The party with the least complex Functional Analysis, involving a smaller scope of functions and less intricate operations, should be used as the tested party.

3.3.2 Identifying comparable uncontrolled transactions

Key factors for identifying potentially comparable transactions to the Controlled Transaction encompass the following considerations:

(i) Internal comparables:

When reliable internal comparables are present, the taxpayer may rely on them instead of seeking external comparables. Internal comparables may offer a more direct and relevant basis for comparison with the Controlled Transaction.

(ii) Database for external comparables search:

The FTA does not favor a specific commercial database but underscores the importance of reliability in the data it provides. When using commercial databases for comparability analysis, it's crucial to refine and review the information to enhance overall reliability.

The taxpayer should adequately document the results of their comparability analysis, regardless of the chosen database for selecting comparables. If a private database is used, the FTA may request access in accordance with the CT Law to review the taxpayer's results and gain a better understanding of the conclusions drawn.

(iii) Domestic/ foreign comparables:

Taxpayers are advised to use domestic comparables whenever possible in their comparability analysis. If there's insufficient data domestically, regional or global comparables can be considered. The suggested geographical order for seeking external comparables is local market, regional (Middle East) markets, and then markets in other regions.

(iv) Selection of potential comparables:

Taxpayers should use a consistent and analytical process to identify potential comparables. They must maintain thorough documentation outlining the criteria for selection and reasons for exclusion. This documentation aids the FTA in evaluating the reliability of the comparables used.

3.3.3 Undertaking comparability adjustments (if required)

Adjustments to potential comparables may be required to account for differences in capital, functions, assets, and risks. The consideration of comparability adjustments becomes crucial to enhance result reliability. An example is adjusting working capital to align levels of accounts receivable, payable, and inventory.

3.3.4 Determining the arm's length price/ range

Establishing an arm's length price or margin for a Controlled Transaction is typically difficult. Taxpayers must the following guidance to derive a range of results for determining the arm's length result of the transaction.

(i) The interquartile range is a recommended method for determining an arm's length range of financial results for external comparables. The FTA will take into consideration the functional profile of the taxpayer/Controlled Transaction when assessing the most appropriate point within the range. Companies with limited functions may align with the lower interquartile, while those with high-value functions may be closer to the upper quartile.

(ii) When comparable companies show extreme results, further examination is needed to understand the reasons behind such outliers. Exclusion of a comparable with extreme results should be based on a significant difference in comparability, such as when the level of risks associated with a comparable is not comparable to those assumed by the taxpayer in its Controlled Transaction. Exclusion should not solely be due to differences in results but should be tied to meaningful distinctions in comparability factors.

(iii) A loss-making uncontrolled transaction or company requires a detailed review to assess its comparability with the Controlled Transaction. If the losses are not reflective of normal business conditions or if the risks borne by the third-party comparable are significantly high, exclusion from the list of comparable companies is warranted.

(iv) Examining data over several years enhances understanding of long-term arrangements and provides insights into business and product life cycles of comparables. Taxpayers may choose a 3-year period, including the transaction year, requiring a minimum of 2 years of available data to consider a comparable company valid.

(v) **Frequency of updating the external comparables search:**

Comparables should undergo a full update every three years, with annual financial reviews in between. If there is a change in circumstances related to the Controlled Transaction or transacting parties, a detailed analysis for selecting comparables is required in the year of the change.

Key implication for taxpayers:

Taxpayers are obligated to apply the arm's length principle to all Controlled Transactions (cross border and domestic) irrespective of any threshold or conditions, following a three-step process outlined in the Guide.

A comprehensive analysis is crucial, considering factors like contractual terms, characteristics, market conditions, economic circumstances, and business strategies.
Additionally, a detailed examination of functions, risks, and assets in each party's Controlled Transaction be undertaken.

A thorough and consistent approach to economic and benchmarking analysis is crucial and must be well-documented to justify the arm's length price for Controlled Transactions, incorporating necessary comparability adjustments wherever required.

4. TP documentation

The purpose of TP documentation is to provide tax authorities with a clear understanding of the taxpayer's TP policies and their application to test the TP outcome. Taxpayers must adhere to five documentation requirements for each tax period, based on prescribed thresholds and conditions.

4.1 TP disclosure Form

All taxpayers engaged in Controlled Transactions surpassing a materiality threshold (yet to be prescribed) must complete and submit this form concurrently with their Tax Return, within 9 months from end of the relevant tax period. The form which will be accessible on the FTA's website, is expected to encompass details such as the nature and value of Controlled Transactions, particulars of related parties or connected persons, and the transfer pricing method employed to establish the arm's length price.

4.2 Master File ('MF')

The Master File (MF) provides a detailed look at the Group's business, covering aspects like organizational structure, business details, finances, and more. It aligns with requirements under Annex I to Chapter V of the OECD TP Guidelines.

The Ministry of Finance ('MoF') published Ministerial Decision No. 97 of 2023 providing the threshold conditions and other details with respect to the preparation and maintenance of the MF and Local File ('LF') by taxpayers. It provides that a taxpayer that meets either of the following two conditions is required to maintain an MF, as well as an LF, for the relevant tax period:

- Where the taxpayer, for any time during the relevant tax period, is a Constituent Company of a MNE as defined in the Cabinet Decision No. 44 of 2020 that has total consolidated group Revenue of AED 3.15 billion or more in the relevant tax period; or

- Where the taxpayer's revenue in the relevant tax period is AED 200 million or more.

The Guide provides an exemption to taxpayers within a UAE-based group that is not considered a Multinational Enterprise (MNE) Group, meaning a group with no business operations outside the UAE, relieving them from the requirement to maintain a Master File (MF).

4.3 Local File

The Local File (LF) furnishes in-depth insights into the local entity's operations, along with TP analysis and outcomes of Controlled Transactions, all in adherence to the arm's length principle. The LF content, as outlined in the Guide, aligns with the specifications in Annex II to Chapter V of the OECD TP Guidelines.
Compliance with LF requirements is applicable to large businesses, as defined by Ministerial Decision No. 97 of 2023. Additionally, taxpayers have the option to cross-reference information contained in the Master File (MF).

4.4 Country-by-country report ('CbCR')

The UAE introduced CbCR requirements through the Cabinet Resolution No. 44 of 2020. The CbCR follows the Standard Template attached in Annex (3) to Chapter (V) of the OECD TP Guidelines. The The Guide has highlighted the key provisions contained in the Cabinet Resolution No. 44 of 2020.

4.5 Additional supporting information

According to Article 55(4) of the CT Law, the FTA can request additional information from taxpayers beyond what is covered in the LF and MF. This includes data necessary for assessing the arm's length nature of Controlled Transactions and information used in applying Transfer Pricing methods.

Taxpayers, including those exempts from maintaining LF and MF, are obligated to provide additional supporting documents. These include intercompany agreements, meeting minutes, decision evidence, emails, invoices, and transfer price workpapers.

Key implication for taxpayers:

Taxpayers which are part of a UAE headquartered group, not classified as a Multinational Enterprise (MNE) Group, are exempt from maintaining a Master File (MF). Nevertheless, they must still adhere to the prescribed threshold for maintaining the Local File (LF).

Certain transaction categories are exempted from Local File (LF) documentation requirements. Nonetheless, it is crucial to ensure that these Controlled Transactions adhere to the arm's length principle.

Taxpayers are required to retain relevant supporting documents to justify the arm's length nature of Controlled Transactions, even if they do not meet the prescribed thresholds or conditions for maintaining Transfer Pricing documentation.

The FTA may request the taxpayers to provide additional supporting documentation, including information related to the arm's length nature of transactions and the application of Transfer Pricing methods, as deemed necessary to support the arm's length nature of the Controlled Transactions.

The FTA requires documentation to be in place either at the time of the Controlled Transaction or, at the latest, when taxpayers submit their Tax Return for the relevant tax period.

5. Special considerations for specific cases

The Guide, recognizing the UAE's position as a finance and investment hub, offers valuable insights into common Transfer Pricing areas for businesses operating in the country. It broadly aligns with the OECD TP Guidelines, reflecting an internationally recognized approach.

Here are the key highlights from some of these areas.

5.1 Financial transactions

Taxpayers must adhere to the arm's length principle in financial Controlled Transactions. The Guide emphasizes key areas such as arm's length remuneration for the treasury function, intra-group loans, cash pooling, hedging, financial guarantees, and captive insurance. The guidance broadly aligns with Chapter X of the OECD Transfer Pricing Guidelines.

Highlighted below are key considerations for specific financial transactions:

Treasury functions:

To determine the arm's length remuneration for the central treasury function, taxpayers must accurately characterize the transaction and assess the nature of the service, taking into account factors like currency and contingent liability risks. For routine services, guidance from the intra-group services section (refer to section 5.3 below) can be utilized. The appropriate arm's length remuneration should be based on the functional and risk profile of the taxpayer, considering activities such as arranging hedging contracts or functioning as an in-house bank.

Intra-group loans:

The Guide recommends determining the arm's length interest rate for intra-group loans by benchmarking against publicly available data using the Comparable Uncontrolled Price (CUP) method. Factors such as loan terms, currency, tenor, borrower's country, credit rating, and implicit group support should be considered. Taxpayers are allowed to make comparability adjustments to enhance the reliability and comparability of third-party loans.

Cash pooling:

The Guide emphasizes that remuneration for a cash pool arrangement, whether physical or notional, must be closely tied to the functional profile of the cash pool leader. The calculation of remuneration for cash pool members is based on determining arm's length interest rates for debit and credit positions within the pool.

Financial guarantees:

The Guide suggests that it's important to understand the economic benefits received by the borrower, not just from potential implicit support and accordingly determine the remuneration with appropriate approach.

Key implication for taxpayers:

Taxpayers are encouraged to review and align their existing financial transactions with the guidance in the Guide. They should also incorporate this guidance into their approach when entering into new transactions.

Furthermore, it is crucial to promptly establish an effective pricing mechanism that adheres to the arm's length principles for both current and prospective financial transactions.

5.2 Settlement for the Controlled Transactions

Outstanding amounts from controlled transactions should be settled within a reasonable period. If the actual settlement period is longer than agreed upon regularly, it might be seen as a loan, requiring compensation such as a fee or interest.

Key implication for taxpayers:

Taxpayers should promptly settle outstanding balances from Controlled Transactions, aligning with third-party contract credit policies. They should take steps to settle any outstanding balances with related parties or connected persons.

5.3 Intra-group services

When examining Transfer Pricing for intra-group services, two key areas are analyzed:

- Whether intra-group services have been provided; and
- Whether the charge for the intra-group service is in accordance with the arm's length principle

The Guide provides detailed guidance, following Chapter VII of the OECD Transfer Pricing Guidelines.

In the context of UAE businesses, the Guide identifies two distinct types of intra-group services:

(i) Intra-group services arising from multiple tiers of management

This occurs when an MNE Group allocates costs from its global and regional business leadership teams to all operating countries. The FTA emphasizes the avoidance of cost duplication and requires a clear rationale for any duplicative costs in intra-group services.

(ii) Centralized services

These relate to services centralized in the parent entity or one or more Group service centers, like a regional headquarters. They typically include administrative services, shared support services, and more.

The Guide stresses the importance of the "benefits test" for intra-group services, ensuring that activities contribute economic value. Payment obligations arise only if the benefits test is satisfied, evaluated by comparing with how independent parties would handle similar services.

The Guide details considerations like shareholder activities, cost treatment, avoiding duplication, recognizing benefits, and using proper allocation keys to determine the cost base.

Finally, to establish an arm's length charge, a markup should be applied to non-pass-through costs using comparable data.

To ease the compliance burden, the Guide simplifies by adopting the approach from Chapter VII of the OECD TP Guidelines. This allows certain low value-adding intra-group services to be charged at a safe harbor cost-plus 5%, eliminating the need for a detailed benchmarking analysis.

Typically, low value-adding intra-group services are supportive and not central to the MNE Group's core business. These services don't generate profits or contribute significantly to the group's economic activities.

Key implication for taxpayers:

MNEs in the UAE engage in service transactions with their foreign affiliates, and similarly, UAE-based companies provide services to their affiliates. The FTA expects taxpayers to create and keep supporting documentation, including details on benefits, service beneficiaries, cost pool workings, allocation keys used, and support for any applied mark-up. This documentation should be included in the Transfer Pricing documentation for each relevant Tax Period.

Taxpayers should establish internal mechanisms/systems to ensure the timely preparation of required information and maintain evidence for the benefit test in real-time, making it readily available.

5.4 Intangibles

Understanding Transfer Pricing for intangibles is complicated due to their unique features and challenges in comparing them. The guidance largely follows Chapter VI of the OECD TP Guidelines.

The Guide provides detailed instructions on identifying and determining the arm's length price for intangibles. In summary:

(i) The person who legally owns the intangible receives fair compensation, if any, solely for holding the title.

(ii) On the other hand, group members involved in Development, Enhancement, Maintenance, Protection, and Exploitation (DEMPE) functions are entitled to receive a fair share of payment for their contributions to the intangibles.

The FTA expects that the Transfer Pricing analysis will pinpoint the pertinent intangibles and establish fair conditions in accordance with the Guide.

Key implication for taxpayers:

Taxpayers should conduct a DEMPE analysis to identify any intangibles within the group that require fair compensation. Given the distinctive nature of intangibles and the complexities in valuing them and understanding their economic benefits, it is advisable to maintain appropriate supporting documentation.

5.5 Business restructuring

Business restructuring means rearranging the financial or commercial relationships among related parties, usually involving a shift in profit potential within the MNE Group. Taxpayers have flexibility in structuring their business operations, as long as pricing adheres to the arm's length principle.

The guidance in the Guide aligns with Chapter IX of the OECD TP Guidelines, providing detailed advice on applying the arm's length principle to business restructuring transactions.

Key implication for taxpayers:

When considering group restructuring, taxpayers must carefully assess Transfer Pricing implications. It's crucial for them to take necessary steps and maintain proper documentation to support the arm's length remuneration of these transactions.

5.6 Permanent Establishment ('PE')

Article 14 of the CT Law explains when a Non-Resident person is considered to have a PE in the UAE. Similar conditions may apply in the tax laws of other foreign jurisdictions to qualify as a PE.

When determining the income and related expenses of a Permanent Establishment ('PE'), a Resident person/Non-Resident person and its respective PEs should be treated as separate entities. This is known as the 'separate entity approach.'

Additionally, under Article 35 of the CT Law, the Resident or Non-Resident person and its PEs are recognized as related parties. The FTA requires taxpayers to allocate profits and related costs to PEs in line with the arm's length principle.

The Guide provides detailed steps for determining how to fairly allocate profits and associated costs to a PE.

First, conduct a functional analysis, assets, and risks using the "separate entity" approach to identify the PE's activities and those of the Resident or Non-Resident person.

Next, to determine the compensation for transactions between the Resident or Non-Resident person and the PE, which should be in line with the arm's length principle. This method follows the OECD's 'Additional Guidance on the Attribution of Profits to Permanent Establishments.'

Taxpayers are expected to follow this approach, maintaining documentation to support it, which should be part of TP documentation, as per the FTA's expectations.

The Guide gives detailed steps for determining how to fairly allocate profits and associated costs to a Permanent Establishment (PE). First, analyze the functions, assets, and risks using the "separate entity" approach to identify the PE's activities and those of the Resident or Non-Resident person.

Next, set the compensation for transactions between the Resident or Non-Resident person and the PE, ensuring it aligns with the arm's length principle. This method follows the OECD's 'Additional Guidance on the Attribution of Profits to Permanent Establishments.'

Taxpayers are expected to follow this approach, maintaining documentation to support it, which should be part of TP documentation, as per the FTA's expectations.

The Guide also mentions that profits can be attributed to a PE, even if the entire business hasn't made profits, and vice versa. The separate entity approach might result in nil profits for the PE, even if the head office is profitable.

Key implication for taxpayers:

A Resident or Non-Resident person should view their branch or Permanent Establishment (PE) in the UAE as an independent legal entity, not just an extension of the head office. It's essential to conduct a thorough Transfer Pricing TP analysis and a PE attribution exercise to ascertain the proper compensation for the PE or branch.

5.7 Reliance on global TP policy

A taxpayer may rely on the global TP policy established by their Group for standard transactions in the UAE, considering the relevant parameters from UAE's perspective.

Key implication for taxpayers:

A taxpayer that utilizes the Group's TP policy must ensure that it complies with the arm's length principle in the CT Law. This involves checking if the policy is supported by local or regional comparables and keeping a record for any delay or unavailability of comparable data.

6. TP audit and risk assessment

The FTA will carefully review the filings and submissions made by taxpayers and conduct tax audits as per the Tax Procedures Law. The Guide outlines essential points for TP audits and risk assessment.

6.1 Burden of proof

Taxpayers are tasked with the responsibility of maintaining and submitting thorough supporting documentation. This documentation should effectively showcase the arm's length nature of Controlled Transactions and must be readily provided to the FTA upon request.

6.2 TP adjustments

As the TP analysis relies on the taxpayer's self-assessment, situations may arise where TP adjustments are necessary if a Controlled Transaction deviates from the arm's length principle. These adjustments can be initiated either by the FTA or voluntarily by the taxpayer.

6.2.1 TP adjustments by the FTA

Article 34 of the CT Law empowers the FTA to adjust taxable income in Tax Returns for Controlled Transactions that deviate from the arm's length range. The FTA will reflect the adjustments made in the taxable income for a taxpayer for any other UAE entity that is party to the relevant transaction or arrangement.

If a foreign competent authority makes a TP adjustment, the taxpayer can request the FTA to align its taxable income accordingly under the relevant Double Taxation Agreement provisions. The FTA will assess the foreign tax authority's position and, if deemed suitable, may implement a corresponding adjustment.

6.2.2 TP adjustment by the taxpayer

Taxpayers are encouraged to monitor the arm's length price of Controlled Transactions and make real-time adjustments before submitting Tax Returns. If adjustments are not made at that point, the taxpayer can still make TP adjustments, influencing taxable profits or allowable losses. However, decreases in taxable profits or increases in allowable losses must follow FTA procedures.

6.2.3 Other considerations

International agreements to alleviate the issue of double taxation

The Guide emphasizes that in case of conflicts between UAE Transfer Pricing regulations and an international agreement (such as a double tax agreement or treaty) in the UAE, the provisions of the international agreement will supersede.

Double taxation arising from Transfer Pricing adjustments.

The Guide mentioned that a separate guidance will detail the Mutual Agreement Procedure (MAP). This procedure, found in Double Tax Agreements, facilitates collaboration between competent authorities of partner jurisdictions to resolve international tax disputes. Such disputes often arise from double taxation due to Transfer Pricing adjustments made by tax administrations in both jurisdictions on the same profits.

The MAP article in Double Tax Agreements enables competent authorities in partner jurisdictions to collaborate, aiming to resolve international tax disputes. These disputes typically involve instances of double taxation resulting from Transfer Pricing adjustments made by tax administrations in both jurisdictions on the same profits.

6.3 Non-recognition

The CT Law grants the FTA the power to alter the outcome of a Controlled Transaction if it identifies that the transaction's main purpose is to gain a tax advantage inconsistent with the CT Law's intent. Furthermore, if the arrangements differ from what independent parties would typically agree upon, the FTA can, if necessary, adjust or disregard the Controlled Transaction, replacing it with an alternative arrangement.

Key implication for taxpayers:

It is imperative for taxpayers to diligently preserve ample and relevant supporting documents related to Controlled Transactions. These documents should not only validate the commercial nature of the transactions but also encompass the economically significant characteristics. Additionally, in adherence to Article 56 of the CT Law, taxpayers are obligated to maintain these records for a period of 7 years following the conclusion of the tax period.

Taxpayers should vigilantly monitor the arm's length price of their Controlled Transactions, supported by comprehensive documentation, to prevent potential Transfer Pricing adjustments. Additionally, taxpayers will have the option to seek clarifications on a point of law from the FTA.

Planning ahead

It is crucial for taxpayers to reassess their current TP policies and make necessary adjustments to ensure alignment with the arm's length principle.

In situations where taxpayers lack a TP policy for Controlled Transactions, it is essential to conduct an analysis to establish an appropriate TP policy.

Moreover, it is advisable for taxpayers to establish a system for creating and maintaining thorough TP documentation, supported by additional information to demonstrate the arm's length nature of Controlled Transactions.

How we can help

SW Singapore offers a dedicated team of experienced Transfer Pricing professionals with in-depth knowledge of various industries and regional legal frameworks.

Their expertise can assist in navigating Transfer Pricing provisions outlined in the CT Law and OECD Guidelines.

For personalized support, please contact the specified tax professionals mentioned below.

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