



# UAE Transfer Pricing Regulations - A Comparative Snapshot IV

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## UAE Snapshot IV – Arm’s Length Range

### Background

UAE introduced federal decree-law on corporate tax, called the Federal Corporation Tax (‘CT’) on 9th December, 2022. In the previous three editions of UAE Transfer Pricing (‘TP’) bulletin we had provided a comparative overview of the salient features of UAE and Indian TP regulations. In this edition, we dive into some key aspects and practical guidance provided to the taxpayers on TP regulations via the Corporate Tax Guide (‘CT Guide’) issued on October 23, 2023. Below is a comparative snapshot on the concept of arm’s length range and selection of comparable companies:

PARTICULARS	UAE	INDIA
<p><b>Arm's Length Range</b></p>	<ul style="list-style-type: none"> <li>- Any point in the range is acceptable, but Federal Tax Authority (‘FTA’) to take into consideration the functional profile of the Taxpayer/Controlled Transaction when assessing the most appropriate point within the range.</li> <li>- Further, FTA endorses the use of the interquartile range for AL range determination in case of sizeable number of observations/comparable companies. Mentions that point closer to lower quartile for a company depicts very simple functional profile and complicated for closer to upper quartile.</li> </ul>	<p>An arm's length range beginning from the thirty-fifth percentile of the dataset and ending on the sixty-fifth percentile of the dataset is acceptable.</p>
	<p>Silent on whether FTA to make adjustment to any specific point in arm's length range (whether Interquartile or Full range) when results are not within range.</p>	<p>If the price at which the international transaction or the specified domestic transaction has actually been undertaken is outside the arm's length range, the arm's length price shall be taken to be the median of the dataset.</p>
<p><b>Multiple Year Data</b></p>	<p>Allows the use of multiple year data in order to align the transfer pricing practices to the transfer pricing practices followed in the other developed economies.</p>	<p>Allows the concept of multiple year data specifically, three years (including the current year).</p>

Particulars	UAE	India
<p><b>Extreme Results</b></p>	<p>FTA highlights the importance of reviewing extreme results in comparability analysis, which might consist of losses or unusually high profits which can affect the financial indicators. Mentions that a loss-making company should trigger further investigation in order to establish whether or not it can be comparable to the Controlled Transaction.</p>	<p>Persistent loss making (at least 3 continuous years of losses) are normally rejected by tax authorities – the presumption is that such companies are facing abnormal circumstances.</p>
<p><b>Local vs Regional Comparables</b></p>	<p>As far as possible, taxable persons should use domestic comparables in their comparability analysis. Where insufficient data is available at the domestic level, taxable persons can consider regional or global comparables.</p>	<p>Where tested party is in India, Indian comparables must be selected. If tested party is overseas then overseas comparables can be used provided comprehensive data on overseas comparables (business descriptions, annual reports etc) is available. Generally, acceptance of foreign comparables has been highly litigative in India.</p>

## AMICUS COMMENTS

The UAE Corporate Tax Guide provides immense clarity and signals a significant advancement in UAE's TP framework, aligning it more closely with international standards. The preference of a full range over other statistical measures (such as mean/median) provides taxpayers with greater flexibility in setting arm's length price. In this aspect, UAE regulations are fully aligned with Organization for Economic Cooperation and Development ('OECD') which advocates reliance on full range. Similarly, use of multiple year data and treatment of extreme results are other areas of congruence with OECD that prescribes a similar stand.

However, the CT Guide is silent on whether the FTA will make an adjustment to a specific point in the arm's length range should results not lie within the range. OECD for instance, mentions the use of measures of central tendency to determine this point such as median, mean, weighted averages, etc. depending on the specific characteristics of the data set. Indian regulations, require adjustment up to the median.

Taxpayers will have to wait to see what position is taken by FTA in this regard. Given the evolving status of the UAE TP Regulations, it is important for taxpayers to stay informed and make necessary adjustments to their compliance procedures and seek expert advice, if required.

## ABOUT AMICUS

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