

UAE Transfer Pricing Regulations - A Comparative Snapshot

December 21, 2022

Background

UAE introduced federal decree-law on corporate tax, called the Federal Corporation Tax ('CT') on 9th December, 2022 which will come into force on or after 1st June 2023.

UAE businesses will need to comply with Transfer Pricing ('TP') rules and documentation requirements as set forth in the newly introduced Federal Corporation Tax. The Transfer Pricing rules in the UAE will be applicable to intra-group transactions for entities subject to CT. Below is a comparative snapshot of the key aspects of Transfer Pricing Regulations between UAE and India.

COMPARISON: INDIA AND UAE

Particulars	INDIA	UAE
Corporate Tax		
Tax Rate	30%+ Surcharge	0%- In case 'taxable business profit' is between AED 0-375,000 9%- In case 'taxable business profit' is more than AED 375,000
Timeline for filing Tax Return	30 th November (Annually)	Not later than nine months from the end of the relevant Tax Period, or by such other date as directed by the Authority.

I. Transfer Pricing Regulations

Applicability

TP Rules	Yes	Yes
Arm Length's Principle	Yes	Yes

Definitions

Related Parties-whether defined?	Yes	Yes
Remarks	<p>Not less 26% ownership is required to constitute Associated Enterprise.</p> <p>Association shall result only if one of the 13 conditions as specified in TP regulations is satisfied</p>	<p>More than 50% ownership is required to constitute related party.</p> <p>'Control' can also create related party relationship.</p> <p>The inclusion of the control condition makes the related party definition broad and open-ended</p>

Covered Transactions

International Transactions	Yes	Yes
Domestic Transactions	Yes	Yes
Remarks	Applicable between Tax-holiday and non-tax holiday units	Applicable between free-zone and non-free zone units

Particulars	INDIA	UAE
<i>Compliances</i>		
TP Certification	Yes	Disclosure containing information on related parties may be required to be filed along with tax return (not clear as of now whether it would require a qualified accountant's certificate)
TP Documentation	Yes	Yes (format yet to be prescribed)
Master File	Yes	Yes (format yet to be prescribed)
CBCR	Yes	Not specified
<i>Threshold</i>		
TP Documentation	Yes – INR 1 Crore	Yes – AED 375,000
<i>Due Dates</i>		
Arm's Length Range	35th to 65th percentile	The term Arm's Length Range is used in the Decree. However, no definition of Arm's Length Range is provided yet.
Maintenance of TP Study	Along with filing TP certificate; 31st October	To be filed within 30 days of request

Particulars	INDIA	UAE
Master File	31st March (Annually)	To be filed within 30 days of request
<i>Broad Requirements – TP Study</i>		
Whether a Format prescribed	Yes	No Format specified in Decree
Methods Prescribed	Yes – 6 Methods – CUP /RPM / TNMM /CPM/PSM/Other Method	Yes - 6 Methods - CUP/RPM/ TNMM/CPM/PSM/Other Method
Applicability on Choice of TP Method	Yes (Most Appropriate method)	Yes (Most Appropriate method)
II. Penalties		
Is there any provision related to penalty?	Penalties levied for: 1. Non-filing of form 3CEB 2. Late/incorrect filing of form 3CEB 3. Non-maintenance of TP Documentation 4. Non-filing of TP Documentation	Yes (To be prescribed by the concerned authority)
III. Dispute Resolution Mechanism		
Safe Harbour Provisions	Yes	Not yet prescribed

Particulars	INDIA	UAE
Corresponding Adjustment	Possible under Article 9 of Tax Treaty	The decree expressly provides for corresponding adjustments in case of a transfer pricing adjustment
Advance Pricing Agreement Procedures ('APA')	Yes	Yes (detailed rules to follow)
Provision of General anti abuse Rules	Present	Present in Article 50 of the decree

AMICUS COMMENTS

Overall, the skeletal details of the promulgated Transfer Pricing Policy appear simple and in line with OECD and global best practices. Availability of APA mechanism and corresponding adjustment provisions are a major positive. However, one concern can be the open-ended nature of related party definition which could open the flood gates for litigation. However, these are early stages of the Transfer Pricing regime in UAE and the gaps/ambiguities may be plugged through detailed rules to follow before the regime becomes effective in June 2023.

Multinational groups doing business in the UAE are well advised to re-look at intra-group pricing at the earliest and certainly before the UAE CT comes into force to ensure compliance with the new regulations.

ABOUT AMICUS

Amicus is legal and tax consulting firm with focus on corporate finance, re- structuring, private equity, international taxation, transfer pricing and goods and services tax. The Firm's tax team also represents clients in assessments and litigation including Tax Tribunal and Higher Courts.

The Firm focuses on providing efficient, effective, solution- oriented advice and representation based on specialist knowledge and experience. Amicus' boutique tax practice has been consistently ranked as a leading practice by Legal 500, Asia Law and World Tax (ITR).



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