

UAE Transfer Pricing Regulations – A Comparative Snapshot II

February, 2023

Background

In the first edition 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 further into some key aspects of TP provisions in the UAE federal decree-law on corporate tax [Federal Corporation Tax ('CT')] contrasting the same with Indian TP Regulations. Below is a summary of scope and definition of 'related party' under the two TP regimes.

COMPARISON: INDIA AND UAE

Particulars	UAE	India
Related Party Provision	Includes both natural and juridical persons (Article 35 of CT).	Normally includes only juridical persons (unless natural person is also carrying on the business) (Section 92A).

Particulars	UAE	India
<p>Definition of Related Party</p>	<p>Related party results when:</p> <ul style="list-style-type: none"> - two or more natural persons are related to each other within fourth degree of kinship; or - two natural/juridical persons are related if: <ul style="list-style-type: none"> • one controls the other, or • has 50% or more ownership of the other, or • both are controlled or owned (50% or more) by the same person, or - a person and its permanent establishment <p>The definition of ‘<i>Control</i>’ also includes exercise of ‘significant influence’ over the other person.</p>	<p>Association results only if one of the 13 conditions as specified in Indian TP regulations is satisfied. These include equity investment (not less than 26% ownership), control of board of directors, providing loans/guarantees etc.</p>
<p>Applicability of TP rules to Connected Persons</p>	<p>TP Rules also apply on payments to ‘Connected Persons’. ‘Connected Person’ is defined to include owner of a business, a director or officer of the business or a related party of the either of the above. The definition aims to cover key management personnel.</p>	<p>TP Rules apply only to associated enterprises. Remuneration to key managerial personnel though covered earlier is now exempted from TP Regulations.</p>

Particulars	UAE	India
<p>Applicability to Domestic Transactions</p>	<p>TP rules apply to UAE businesses that have transactions with Related Parties and Connected Persons, irrespective of whether they are located in the UAE mainland, a Free Trade Zone or in a foreign jurisdiction.</p> <p>Scope of TP rules is broader and overlooks absence of tax arbitrage possibility in certain cases.</p>	<p>TP rules apply to specified domestic transactions only if one of the domestic entities is enjoying benefits of tax holiday / profit linked deduction and the aggregate of such transactions exceeds INR 200 million.</p> <p>Over time, scope of Domestic TP has been restricted to cases where possibility of tax arbitrage exists in domestic transactions.</p>

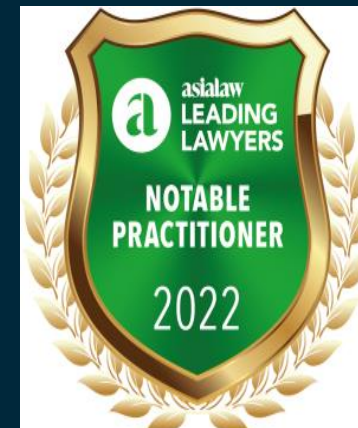
CONCLUDING THOUGHTS

While UAE TP regulations are broadly in consonance with OECD guidance, the definition of Related Parties and Connected Persons is broad relative to international standards. To tackle tax base erosion, TP Rules have been expanded to apply on payments to ‘Connected Persons’. The rationale being that UAE does not have personal income taxes which may incentivize excessive payments from businesses to connected persons. This may have far-reaching consequences for businesses in the UAE which has now become the hub for several family-owned businesses. UAE businesses should therefore begin to evaluate potential implications on their operations and closely follow any other developments or guidance in this regard.

ABOUT AMICUS

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