

United Arab Emirates Transfer Pricing Guide 2024

wts global

United Arab Emirates

1. Legal Basis

Is there a legal requirement to prepare TP documentation?

Yes.

Since when does a TP documentation requirement exist in your country?

Master file ("MF"), Local file ("LF") and TP Disclosure Form: Tax Periods commenced on or after 1 June 2023; Country by Country Report ("CbCR"): 1 January 2019.

Adoption of the OECD or UN legislation in your country?

OECD.

Is your country a member of the OECD, Inclusive Framework, or other OECD groups (e.g. BEPS)?

Yes.

Are TP policies of multinational enterprises in principle accepted by the tax authorities, if they are in line with the OECD TP Guidelines?

The UAE TP rules has been introduced for Tax Periods commencing on or after 1 June 2023 and no compliance has been undertaken by Taxpayers to date. Therefore, no TP audits have been initiated by the Federal Tax Authority ("FTA") thus far.

The UAE TP regulations are intended to be aligned with the OECD TP Guidelines and TP policies aligned with OECD TP Guidelines are likely to be acceptable to the FTA. However, given the early stages of TP implementation in the UAE, further clarity will be available in due course.

Which TP methods may be applied?

The TP methods to be applied, include

Comparable Uncontrolled Price ("**CUP**"); Resale Price method ("**RPM**"); Cost Plus method ("**CPM**"), Transaction Net Margin Method ("**TNMM**"), Transactional Profit Split; and any other method.

A combination of two or more TP methods is also permissible.

Is there a stated preference for any particular TP methods?

There is no general hierarchy for the application of TP methods.

Have the documentation requirements of OECD BEPS Action 13 already been implemented (i.e. the LF, MF, and CbCR concepts)?

LF, MF and CbCR are implemented. Additionally, a TP Disclosure Form is also required to be filed along with the Tax Return.

Reference to documentation and statements of local government or tax authorities regarding OECD BEPS implementation status

CbCR:

CbCR requirements are covered under Cabinet Resolution No. 44 of 2020 regulating the reports submitted by multinational companies issued on 04 June 2020. The CbCR related compliances are effective from 1 Jan 2019.

LF and MF:

LF and MF requirements are covered under Federal Decree-Law No. 47 of 2022 read with Ministerial Decision 97 of 2023. The compliances

United Arab Emirates

are effective for Tax Periods commencing on or after 1 June 2023.

Is there any statute of limitation period?

The statute of limitation is five years from the end of the relevant Tax Period as prescribed in Federal Decree-Law No. 28 of 2022. In certain specified instances, the period can extend beyond five years.

Reference to relevant articles of law, legislative regulation, or applicable administrative guidance that are in place for TP documentation in general.

Cabinet Resolution No. 44 of 2020 regulating the reports submitted by multinational companies released on 04 June 2020.

Articles 34, 35, 36 and 55 of the Federal Decree-Law No. 47 of 2022.

Ministerial Decision No. 97 of 2023 issued on 27 April 2023.

Explanatory Guide on Federal Decree-Law No. 47 of 2022 released in May 2023.

Transfer Pricing Guide (CTGTP1) released on 23 October 2023.

2. Master File (MF)

What is the (consolidated revenue) threshold requirement for the obligation to prepare a MF?

A Taxpayer is required to maintain a MF if either of the following conditions are fulfilled:

- › Where the Taxpayer, for any time during the relevant tax period, is a constituent company of an MNE group having a 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.

From which year does this obligation exist?

The MF is to be maintained for the financial year in which the specified revenue threshold is met (for tax periods commencing on or after 1 June 2023).

When does the MF need to be available?

The MF is to be prepared and maintained on a contemporaneous basis by the Taxpayers upon meeting the specified threshold.

When does it need to be submitted?

The MF is to be submitted within 30 days following a request from the FTA, or by such later date as directed by the FTA.

Does the MF have to be prepared in the relevant local language?

Not specified.

Is documentation in English permissible?

Yes.

What are the possible consequences of not having the MF available?

There are no specific penalty provisions relating to the MF.

To what extent do the local rules differ from the OECD standard regarding the OECD content requirements for the MF as shown in the BEPS implementation overview chart?

In general, consistent with OECD requirements.

3. Local File (LF)

What is the threshold requirement for the obligation to prepare a LF?

A Taxpayer is to maintain a LF if either of the following conditions are fulfilled:

- › Where the Taxpayer, for any time during the relevant tax period, is a constituent company of an MNE group having total consolidated group revenue of AED 3.15

United Arab Emirates

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.

Euro Equivalent

Not prescribed in the local regulations.

From which year does this obligation exist?

The LF is to be maintained for the financial year in which the specified revenue threshold is met (for tax periods commencing on or after 1 June 2023).

When does the LF need to be available?

The LF is to be prepared and maintained on a contemporaneous basis by the Taxpayers upon meeting the specified threshold.

When does the LF need to be submitted?

The LF is to be submitted within 30 days following a request from the FTA, or by such later date as directed by the FTA.

Does the LF have to be prepared in the relevant local language?

Not specified.

Or is documentation in English permissible?

Yes.

What are the possible consequences of not having the LF available?

Not prescribed yet.

To what extent do local rules differ from the OECD standard regarding the OECD content requirements for the LF as shown in the 2017 OECD TP Guidelines?

In general, consistent with OECD requirements.

4. Country-by-Country Reporting (CbCR)

What is the threshold requirement for the obligation to prepare Country-by-Country Reporting?

The UAE CbCR requirements apply to MNE Groups headquartered in the UAE with consolidated Group revenue equal to or above AED 3.15 billion during the Fiscal Year immediately preceding the reporting Fiscal Year.

Euro Equivalent

EUR 800 million.

From which year does this CbCR obligation exist?

For the financial year following the year in which the threshold is met or exceeded.

Are Taxpayers required to notify of CbCR filing in your country?

Yes, the Ultimate Parent Entity ("UPE") of the MNE group will be required to submit a CbCR notification to the Competent Authority, no later than the last day of the Group's Reporting Fiscal Year. This requirement applies only to UAE headquartered MNE groups. Groups headquartered outside the UAE are not required to notify the authorities in the UAE.

If yes, when and how do the tax authorities need to be notified?

CbCR notification is to be submitted electronically on the UAE Automatic Exchange of Information ("AEOI") Portal.

If the reporting entity (ultimate parent or surrogate parent) is in your country, what is the CbCR submission deadline?

The UPE is required to file the CbCR no later than 12 months after the last day of the Reporting Fiscal Year of the MNE Group.

Are there any deviating submission deadlines for the secondary mechanism?

Not applicable.

United Arab Emirates

Does your country have a requirement that the financial figures of the group need to be aligned?

All amounts should be translated to the stated functional currency of the MNE Group at the average exchange rate for the year, which should be stated in Table 3, along with the source of exchange rates.

Does your country have a requirement that the financial figures of the group need to be aligned?

For Constituent Entities, at the discretion of the MNE Group, the information should reflect consistently either:

- (i) information for the fiscal year of the relevant Constituent Entities ending on the same date as the fiscal year of the MNE Group, or ending within the 12 months preceding such date; or
- (ii) information for all the relevant Constituent Entities reported for the fiscal year of the MNE Group.

A note should be included in Table 3 explaining the period of the information reported.

Where is the CbCR to be submitted?

CbCR is to be submitted electronically on the UAE AEOI Portal.

How is the CbCR to be submitted, specifically, is there any prescribed standard?

CbCR are submitted on the UAE AEOI portal. The filing should be in an "XML" format compliant with the OECD XML Schema 2.0.

What are the possible consequences of not having the CbCR available?

Penalties?

Yes, Failure to comply with the CbCR obligations may result in penalties on the Reporting Entity as follows:

- › Penalty of AED 100,000 for failure to maintain and retain supporting

documentation and information for five years after the date of reporting;

- › Penalty of AED 100,000 for failure to provide the competent authority with requested information;
- › Initial penalty of AED 1 million and an additional AED 10,000 to be applied daily until a maximum of AED 250,000 for failure to file the CbCR notification or CbCR within the specified deadline; or
- › Minimum penalty of AED 50,000 to a maximum of AED 500,000 for failure to report complete and accurate information.

Except for the additional penalty provided under the third point above, total penalties levied shall not exceed AED 1 million.

Imprisonment?

No.

Shifting of the burden of proof?

No.

Other?

No.

To what extent do your local rules differ from the OECD standard regarding the content requirements for the CbCR as shown in the 2017 OECD TP Guidelines?

In general, consistent with OECD requirements. Two additional items – "Tax identification number" and "Address" are also required in Table 2, which are not required under the OECD standard.

Did your country sign the Multilateral Competent Authority Agreement on the Exchange of CbCR ("CbCR MCAA")?

Yes.

Did your country enter into other information exchange agreements, such as on a bilateral basis?

No.

United Arab Emirates

Can a Taxpayer in your country fulfil his CbCR requirement by referring to the reporting entity in the same or another country?

No, the burden of filing CbCR notification and CbCR lies upon the Ultimate Parent Entity of the MNE group resident in UAE. None of the other constituent entities in UAE, forming part of the MNE group are required to undertake CbCR compliance.

5. TP disclosure in the tax return or TP specific returns

Is there a threshold for Related Party Transactions?

This is not specified. Further guidance from the FTA is awaited in this regard.

Does a Taxpayer need to disclose information regarding TP documentation in his tax return?

This is not specified. Further guidance from the FTA is awaited in this regard.

When a Taxpayer files a tax return for which he understands or should understand that the result reported in that tax return is too low due to incorrect TP, what could be the legal consequences?

This is not specified. Further guidance from the FTA is awaited in this regard.

What could be the consequences for the tax advisor/accountant/administrator drafting and filing the tax return of a client where that advisor/accountant/administrator understands or should understand that the result reported is too low due to incorrect TP?

This is not specified. Further guidance from the FTA is awaited in this regard.

Does a Taxpayer need to file TP specific returns?

Yes, a TP Disclosure Form has to be filed together with the corporate tax return. Further guidance from the FTA is awaited about the format and threshold for applicability.

Please state the filing form number and name.

This is not specified. Further guidance from the FTA is awaited in this regard.

What would be the filing deadline?

The TP Disclosure Form has to be filed together with the corporate tax return, which should be filed no later than nine months from the end of the relevant tax period.

What would be the penalties for non-compliance?

This is not specified. Further guidance from the FTA is awaited in this regard.

6. Benchmarking

Is there any local guidance or requirement about the preparation of a benchmark study?

It is recommended to perform the comparability analysis on a three-year recurring basis if there is no change in conditions and circumstances of the Taxpayer and its controlled transactions.

However, a financial update of the comparability analysis would have to be performed on an annual basis.

Is there any stated preference for local benchmarks?

Yes, an order for identifying comparables must be followed by the Taxpayer [i.e., Domestic, Regional (Middle East) and then Foreign comparables], subject to necessary adjustments to account for geographic and other differences.

Are there any materiality thresholds that apply to the requirement to have a benchmark study available?

No.

United Arab Emirates

7. Year-end, secondary, and corresponding adjustments

Are year-end/ secondary/ corresponding adjustments permissible?

Yes. However, there is no specific guidance regarding secondary adjustments.

Does the Taxpayer have to comply with any specific features or guidance?

While undertaking the TP analysis, the Taxpayers have the option to adjust their Transfer Price throughout the Tax period up to the date of filing the Tax return. After submitting the tax return, only adjustments increasing the profit of the Taxpayer are allowed by the FTA. Any adjustment resulting in a decrease in the profit of the Taxpayer may be affected through the operation of the FTA procedures.

Where a foreign competent authority adjusts a transaction or arrangement involving a Taxpayer to meet the arm's length standard, such Taxpayer can make an application to the Authority to make a corresponding adjustment to its Taxable Income.

8. TP Audit and Dispute Resolution Mechanisms

What are currently the main TP areas of scrutiny by the tax authorities in your country?

As the implementation of the UAE TP rules has been introduced for Tax Periods commencing on or after 01 June 2023, no compliance has been undertaken by Taxpayers to date. Thus, no TP audit has been initiated by the FTA thus far.

Based on your experience, are joint or multilateral audits initiated and carried out?

No.

Does the Taxpayer have the option to apply for bilateral or multilateral APAs?

Article 59 of the Law provides for the possibility of applying for an Advanced Pricing Agreement. However, more details in this regard are expected in due course.

Are there any restrictions?

This is not specified.

About WTS Global

We are the leading independent non-audit tax practice worldwide with representation in more than 100 countries. WTS Global deliberately refrains from conducting annual audits in order to avoid any conflicts of interest and to be the long-term trusted advisor for its international clients. Clients of WTS Global include multinational companies, international mid-size companies as well as private clients and family offices.

The member firms of WTS Global are carefully selected through stringent quality reviews. They are strong local players in their home market who are united by the ambition of building a truly global practice that develops the tax leaders of the future and anticipates the new digital tax world.

WTS Global effectively combines senior tax expertise from different cultures and backgrounds and offers world-class skills in advisory, in-house, regulatory and digital, coupled with the ability to think like experienced businesspeople in a constantly changing world.

For more information please visit:
<https://wts.com>

Contacts

United Arab Emirates

Dhruva Consultants

Sweta Madhavan
Manager

sweta.madhvan@dhruvaadvisors.com

WTS Asia Pacific Transfer Pricing leader

WTS Taxise (Taxise Asia LLC)

Christine Schwarzl
Associate Principal

T: +65 6304 7972

E: christine.schwarzl@taxiseasia.com

wts.com