Egypt: The Egyptian Government issues the Executive Regulation No. 286 for the Unified Tax Procedures Law No. 206 of 2020

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In brief

Following issuance of the Unified Tax Procedures Law No. 206 of 2020 ("The Law") on the 19th of October 2020, the Ministerial Decree No. 286 has been published in the Official Gazette on the 3rd of June 2021 to issue the Executive Regulation ("The Regulations") of the law.

The Executive Regulation, which shall be effective on the 4th of June onwards, has provided explanatory guidelines to the application of the Unified Tax Procedures Law articles.

In this alert, we summarize the key provisions of the Regulation, as stipulated in Egypt's Official Gazette on 3rd of June 2021.

In summary, the recently issued Executive Regulation set forth the procedures to be followed by taxpayers in order to comply with the provisions of the Unified Tax Procedures Law.

The Regulation covered several key issues that has been recently changing the tax landscape in Egypt, such as Transfer Pricing and Electronic Invoicing.

Additionally, the Regulation has included a set of forms to be used in the formal correspondence between taxpayers and the ETA.

In detail

Advance payments – New method of calculating interests

- The Regulation has introduced a new equation to calculate the interests of the advance payments made by taxpayers, according to which:
  - The deduction of 2% from the CBE rate is no longer applicable.
  - The interest calculation is now associated with the tax period, which implies that such interests will be calculated until the end of the taxpayer's financial year and not until the date of submitting the corporate tax return.

Tax Returns Validity

- Failing to complete the required fields/information in all types of tax returns might lead the ETA to consider such returns as invalid.

Electronic Invoicing

- Considering the government's tendency to the full digitization of the tax cycle in Egypt, a set of standards and conditions have been introduced in the Executive Regulations to join the electronic invoicing system.
- Such standards and conditions included, issuance of an electronic signature certificate, using the unified coding system for goods/services as instructed by the Head of the ETA, contracting with a service provider to execute the transition in addition to integrating the electronic invoicing system with the taxpayer's ERP system.
- The Regulation has also introduced the definition of the electronic receipts as well as the data and information it should contain.
- In addition to the details that should be included in the invoice, which were introduced by the Unified Tax Procedures Law, the Executive Regulation has set forth additional details that must be included in the invoice as well as the electronic receipt such as:
  - The unified code of the goods and services according to the ETA's decree.
  - The exchange rate as announced by the CBE in case of issuing an invoice in a foreign currency.
  - The activity code of the company as well as the issuing branch code.
- Issuing electronic payments for suppliers, contractors, service providers or any other juridical or natural person shall be prohibited unless they are registered in the electronic invoicing system.

Transfer Pricing

Related Persons

- Article (1) of the Regulation revises the definition of a ‘related person’ to include each person related to the taxpayer in a way that affects the tax base in a direct or an indirect manner, whether through management, control or ownership.

  In general, two persons are considered related for transfer pricing purposes, in case the relationship between them enables each or both to act according to the directives, requests, suggestions or the will of one another or that of a third party.

  The definition of related parties under the Regulation provides a more comprehensive framework and brings more clarification as to the definition of related parties for transfer pricing purposes, more in particular, in cases pertaining to factual control.

Threshold Assessment

- Article (14) of the Regulation specifies that the exemption threshold referred to in Article (12) of the Law (i.e. threshold for transfer pricing documentation) is calculated as per the aggregate amount of transactions with related parties, whether these are revenues or expenses, during the financial year concerned, and not the net amount of the respective transactions.

Related Party Transactions

- Under Article (14) of the Regulation, “Related Party Transactions” are defined to be all transactions that a taxpayer enters into with related persons, including but not limited to the following:
  - Purchase or sale of products and services in all their types;
  - Purchase or sale of assets;
  - Reimbursement of costs;
  - Royalties;
  - Loans in all its types and names, including credit facilities;
  - Purchase or sale of securities;
  - Purchase, sale or waiver of contracts; and
  - Purchase or sale of intangible assets.

Egyptian Free Zone Entities and Permanent Establishments

- Article (14) of the Regulation stipulates that Egyptian Free Zone Companies and Permanent Establishments fall under the requirement to file County-by-country Reports / Country-by-country Report Notifications as per the conditions and instructions set out in the Egyptian Transfer Pricing Guidelines.

Master File Filing Deadline

- According to Article (15) of the Regulation, the specific deadlines for filing the Master File are as follows:
  - If the Parent Entity is resident outside Egypt: the Master File submission deadline in Egypt should be in accordance with the Master File submission deadline in the Parent Entity’s jurisdiction of residence.

    Even in cases where the jurisdiction of residence of the Parent Entity does not require the submission of the Master File, the Egyptian subsidiary must submit the Master File by Local File submission deadline.
  - If the Parent Entity is resident in Egypt: the Master File should be submitted by the same filing deadline as for the Local File filing.

Disregarding Documentation Provided

- The filing of Local File, Master File and Country-by-Country Report / Country-by-Country Report Notification is disregarded both technically and legally, should the data, sections, information and principles, that are part of the Egyptian Transfer Pricing Guidelines issued by the Minister of Finance, be not adhered to in the taxpayer's documentation.

Penalties and Adjustments

- Article (16) of the Regulations, in applying the provisions of Article (13) of the Law, the taxpayer is entitled to pay 1% of the value of the related party transactions that were not disclosed in the CITR, and this cannot be overridden even if the taxpayer discloses such transactions in the Local File or the Master File.

- In case the taxpayer does not submit the documentation, as per the deadline in Article (12) of the Law, the ETA has the right to apply any adjustments in prices it sees appropriate according to the information available. The taxpayer has the right to appeal and object to the decision of the ETA, and in that case the burden of proof lies with the taxpayer according to Article (40) of the Law.

- As for Article (17), it states that in case the Egyptian taxpayer fails to submit the Master File, Local File or Country-by-country Report / Country-by-country Report Notification, the ETA will request the taxpayer to pay a (lump sum) amount as a result of the failure of submission.

Bookkeeping

- Electronic accounting books shall be accepted by the ETA as a substitute for traditional books based on the rules and instructions to be issued by the Minister of Finance.

VAT Registration Certificate

- VAT registration certificates will be valid for five years and the issuance and expiration date will be mentioned in the certificate details.

Disputes Resolution

- New procedures and forms have been introduced by the Regulations, according to which, taxpayers will be able to resolve their tax disputes within the ETA rather than the appeal committee.

- However, certain forms and notifications need to be submitted in order for the process to complete.

Key takeaways

The Executive Regulation of the Unified Tax Procedures Law has been issued on the 3rd of June 2021 to provide the guidelines, instructions and forms needed to comply with the Unified Tax Procedures Law No.206 of 2020. The main points to note are as follows:

- New method of calculating interests on advance payments.
- Validity of the tax returns will be associated to attaching all the required data and information of the tax return.
- Additional requirements in the electronic invoice's details (product code, exchange rate, company code..etc).
- No electronic payments shall be made to juridical or natural persons unless they are registered in the electronic invoices system.
- The definition of related persons has been expanded to any person affecting the tax base of the taxpayer in a direct or an indirect manner.
- The Regulation has provided a broadened list of what stands as a related party transaction.
- The 1% penalty on non-disclosure of a transaction in corporate tax returns applies even if the undisclosed transaction is mentioned in the Local File or the Master File.
- It is imperative that Egyptian Free Zone Companies and Permanent Establishments to file Country-by-country Reports / Country-by-country Report Notifications, as applicable.
- The Master File filing deadline is now in tandem with Local File filing deadline for Egyptian-parented entities. For Egyptian subsidiaries of foreign-parented entities, the Master File submission shall be in accordance with the submission deadline in the parent entity's jurisdiction (in case the Master File is not required to be filed in the parent entity's jurisdiction, then it must be submitted in Egypt along with local file deadline).
- A submitted Transfer Pricing documentation is disregarded, if the Egyptian Transfer Pricing Guidelines' instructions on the data, sections and information to be included is not adhered to.
- Electronic accounting books will be acceptable by the ETA according to certain rules.
- VAT registration certificate shall be valid for five years.
- New forms and procedures have been introduced to communicate with the ETA in connection to dispute resolutions.

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Let us talk

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