

Transfer Pricing in the UAE - What lies ahead?

March 2022



In brief

On 31 January 2022, the UAE Ministry of Finance (MoF) announced the introduction of a federal corporate tax (CT) in the UAE that will be effective for financial years starting on or after 1 June 2023.

High level details on the proposed CT regime are set out in the [press release](#) and the [Frequently Asked Questions \(FAQs\)](#) published on the website of the MoF and the Federal Tax Authority.

MoF's announcement and the FAQs have been discussed in detail in our [news alert](#) dated 31 January 2022.

Based on the FAQs, the proposed UAE CT regime will cover the introduction of formal transfer pricing (TP) rules and TP documentation requirements in line with the TP Guidelines issued by the Organisation for Economic Cooperation and Development (OECD TP Guidelines). In addition, other CT aspects (e.g. tax grouping, freezone regime, etc.) could have an impact on the applicability of the TP requirements to the businesses.

We have provided our preliminary thoughts on the expected TP impact on businesses and the recommended next steps based on the current available information.



Expected TP impact on businesses

We have provided our preliminary thoughts from a TP perspective with respect to the relevant aspects discussed in the FAQs of the proposed UAE CT regime:

A. TP documentation

Based on the FAQs, the UAE CT regime is expected to introduce TP rules and TP documentation requirements in line with the OECD TP Guidelines.

The documentation as per the OECD TP Guidelines includes Master file, Local file and Country by Country Report (CbCR). The UAE has already introduced CbCR requirements in the past, applicable from FY 2019.

Other key areas expected to be addressed under the final regulations could include TP documentation applicability thresholds, requirement for any TP returns, criteria to determine related parties, applicability of TP rules to domestic related party transactions, etc.

B. Impact of other CT aspects on TP

Free zone regimes

Based on the FAQs, free zone businesses are expected to be subject to UAE CT, but the UAE CT regime will continue to honor the CT incentives currently being offered to free zone businesses that comply with all regulatory requirements and that do not conduct business with mainland UAE.

Considering that the applicable free zone businesses will continue to benefit from CT incentives, there could be certain TP considerations which may need to be assessed. However, the applicability of the arm's length principle to such free zone businesses would need to be analyzed once the detailed TP rules would be released. Further, the expected TP rules may also need to address situations where the Free Zones based entities conduct business with mainland UAE related ones.

Withholding tax

Based on the FAQs, no withholding tax is expected to be applicable on domestic and cross-border payments of any nature.

In view of this, payments by UAE businesses to related parties/unrelated parties in the nature of dividends, interest, royalties and other similar payments may not be subject to withholding tax, which would be a relief from a double taxation perspective. The impact/considerations of no withholding tax on material related party transactions would need to be assessed from a TP perspective.

Tax Grouping

Based on the FAQs, UAE Group companies are expected to be allowed to form a tax group ('fiscal unity') and file a single (consolidated) tax return provided certain conditions are met.

It is to be seen if the concept of fiscal unity is also replicated in the TP rules and whether the UAE Group companies filing a consolidated tax return will be allowed to maintain a consolidated TP documentation as well. In such a case, it would be important to understand if there would be any additional insights or clarifications in the TP rules on whether any transactions undertaken among the Group companies filing a single return would be required to be analyzed separately or not as a part of the consolidated TP documentation.

Qualifying intra-group transactions

Qualifying intra-group transactions and reorganizations will not be subject to UAE CT provided the necessary conditions are met.

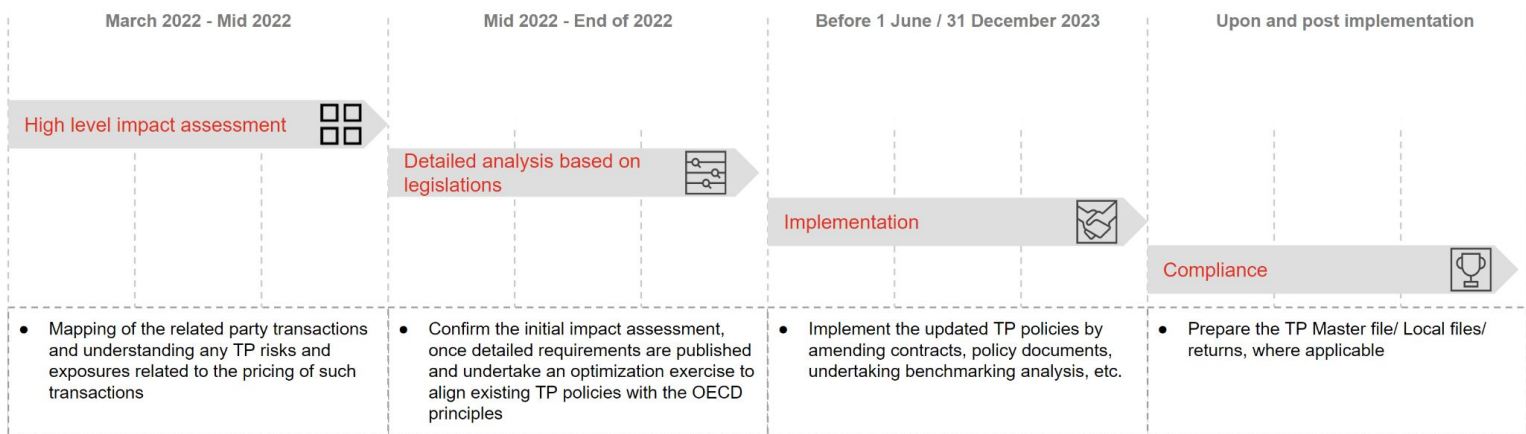
It is to be seen as to which category of transactions will fall under the definition of 'Qualifying intra-group transactions and reorganizations' and the applicability of arm's length principle for the same.



Next Steps

The introduction of TP documentation requirements will have an impact on most of the Groups and Companies having presence in the UAE. Businesses will require clear identification of the TP implications, exposures, related tax implications and available optimisation / mitigation strategies to ensure compliance and minimise the cost burden in the long run with the new UAE TP regime.

Lastly, it is important that businesses evaluate the impact of the introduction of UAE CT and TP regime early on and proactively plan for a smooth implementation as depicted in the below diagram:



The takeaway

Whilst the press release and FAQs provide helpful information on the expected key features of the proposed UAE CT and TP regime, further specifics and technical details will be essential for businesses to assess the impact and readiness for the new UAE CT and TP rules. We understand that further information is expected to be made available by mid 2022, which would give UAE businesses at least 12 months to evaluate the impact and be ready



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Let's talk

For a deeper discussion of how this issue might affect your business, please contact:

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