

Ministerial Decision No. 97 of 2023 Release: Requirements for Maintaining Transfer Pricing Documentation

Key Takeaways



May 2023



UAE Ministerial Decision Release

On 11 May 2023, the Ministry of Finance (“MoF”) published the Ministerial Decision No. 97 of 2023 Requirements for Maintaining Transfer Pricing Documentation (“the Ministerial Decision”) for the Purposes of the Federal Decree-Law No. (47) of 2022 on the Taxation of Corporations and Businesses (hereinafter referred to as the ‘CT Law’). This Decision shall come into effect the day following the day of its publication.

Article 55 Clause 2 of the CT Law requires that Taxable Persons transacting with their Related Parties and Connected Persons maintain a Local File and Master File as prescribed by the Authority and must be submitted within (30) thirty days following a request from the Authority. Clarity was awaited on specific conditions and thresholds, which have now been addressed in the Ministerial Decision. The Authority shall issue further guidelines for the application of the provisions of this Decision and maintaining transfer pricing documentation.

The Ministerial Decision has provided clarity on the following aspects regarding Transfer Pricing Documentation requirements:

1. Conditions and thresholds for maintaining a Master File and Local File;
2. Transactions or arrangements to be specifically included in the Local File; and
3. Transactions or arrangements that shall not be included in the Local File.

In this document, we highlight the key considerations of the Ministerial Decision and provide our insights on certain areas that taxpayers need to consider.

Key highlights

Conditions and thresholds for maintaining a Master File and Local File

A Taxable Person that meets **either** of the following two conditions shall maintain both a Master File and a Local File in the relevant Tax Period:

1. Where the Taxable Person, for any time during the relevant Tax Period, is a Constituent Company of a Multinational Enterprises (“MNE”) Group as defined in the Cabinet Decision No. 44 of 2020 referred to above that has a total consolidated group Revenue of AED 3.15 bn or more in the relevant Tax Period¹.
2. Where the Taxable Person’s Revenue in the relevant Tax Period is AED 200 mn or more.

The above mentioned thresholds are merely applicable to Clause (2) of Article (55) of the CT Law which specifically relates to the preparation of a Master File and Local File requirement. Hence, irrespective of the Taxable Person’s global or standalone revenues, a Taxable Person may still be required to submit a disclosure form along with the tax return.

Furthermore, for the same reason, even if above mentioned thresholds have not been met, the arm’s length principle and the provisions of Article 34 of the CT Law, will still be applicable to Taxable Persons transacting with Related Parties or Connected Persons and upon request by the Authority, a Taxable Person will need to provide the necessary information to support the arm’s length nature of its Related Party and Connected Person transactions, e.g. benchmarking studies.

¹ While this threshold is similar to the threshold for Country-by-Country reporting (“CbCR”) purposes, the threshold for CbCR purposes should be met during the fiscal year immediately preceding the reporting fiscal year, whereas here a threshold assessment is done based on the relevant (current) Tax Period.



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Transactions or arrangements specifically included in the Local File

The Ministerial Decision provides clarity on what transactions or arrangements should be included in the Local File. A Taxable Person shall include transactions or arrangements with all of the following Related Parties and Connected Persons in the Local File:

- a. **A Non-Resident Person** - Non-Resident Person is defined under the CT Law as a Person who either has a Permanent Establishment (“PE”) in the UAE, or derives State Sourced Income, or has a nexus in the UAE. However, it is unclear if transactions or arrangements with foreign entities who do not meet these conditions will be included in the Local file. In our view, the specific inclusions provided should not be considered as an exhaustive list. Hence, any other transactions (e.g. with foreign entities or with natural persons not conducting a Business or Business Activity in the UAE), which are not specifically covered by the exclusions below, should be covered as a part of the Local File.
- b. **An Exempt Person** - meaning that a transaction with any Exempt Person shall be included in the Local File, e.g. transactions with a Government Entity, a Government Controlled entity or a Person engaged in the extractive business shall all be included. Therefore, while an Exempt Person is not required to maintain a Local File, its transactions and arrangements with Related Parties and Connected Persons may still have to be documented in a Local File prepared by such Related Party/ Connected Person, and hence appropriate transfer pricing policies should be implemented.
- c. **A Resident Person that has elected to be treated as a Small Business** - i.e. to be treated as not having derived any taxable income for a tax period and meets the conditions of such election.
- d. **A Resident Person whose income is subject to a different Corporate Tax rate from that applicable to the income of the Taxable Person** - with this addition, Related Party and Connected Person transactions and arrangements between Qualifying Free Zone Person (i.e. Freezone person subject to 0% tax on its Qualifying Income) and other Taxable Persons, have specifically been covered and shall be included in the Local File.

Transactions or arrangements that shall not be included in the Local File

The Ministerial Decision also specifically provides for a list of transactions or arrangements that shall not be included in the Local File. As such, transactions or arrangements with the following Related Parties and Connected Persons shall not be included in the Local File:

- a. Transactions/ arrangements with a **Resident Person** - except if the Resident Person specifically falls in one of the categories listed above (either is exempt, has elected for the small business relief or whose income is subject to a different Corporate Tax rate). Based on this, it can be concluded that Related Party transactions and arrangements between two Resident Persons subject to the same rate of tax, shall not be covered in the Local File, even if such Persons do not form part of the same Tax Group.
- b. Transactions/ arrangements with a **natural person** - provided that the parties to the transaction or arrangement are acting as if they were independent of each other.
- c. Transactions/ arrangements with a **juridical person that is considered to be a Related Party or a Connected Person solely by virtue of being a partner in an Unincorporated Partnership** - provided that the parties to the transaction or arrangement are acting as if they were independent of each other.
- d. Transactions/ arrangements with a **Permanent Establishment of a Non-Resident Person in the State** whose income is subject to the same Corporate Tax rate as that applicable to the income of the Taxable Person.



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Key highlights

Transactions or arrangements that shall not be included in the Local File (cont'd)

For the exclusions under (b) and (c), an “independence” requirement has been introduced. In order to determine whether parties are acting as if they were independent of each other, two conditions must be met as follows:

1. The relevant transaction or arrangement is undertaken in the ordinary course of business; and
2. These parties are not exclusively or almost exclusively transacting with each other.

Furthermore, if the activities of one Person in the transaction or arrangement are subject to detailed instruction or to comprehensive control of the other Person, the independence requirement is not considered to be met and as such the transaction or arrangement shall not be excluded from the Local File.

Since the Authority shall take into account all relevant facts and circumstances to determine whether the Persons shall be regarded as acting as if they were independent of each other, a detailed assessment of the business and operating model, along with a detailed functional analysis will provide the basis to determine whether the above conditions and as such the independence requirement is met.

Key takeaway and next steps

The threshold limits provide clarity on which Taxable Persons should maintain a Local File and Master File. With respect to the domestic Related Party transactions the Taxable Persons are required to include only such transactions in the Local File where there is a possibility of tax arbitrage.

The introduction of new conditions like 'ordinary course of business', 'exclusivity', 'comprehensive control' etc provides deeper guidance on inclusion/exclusion of transactions and arrangements in the Local File. A concrete and detailed analysis of the operations and functions will be necessary to identify and determine transactions and arrangements to be included and excluded from the Local File.

It is important to note that while the Taxable Persons not meeting the conditional threshold do not need to maintain the Local File and Master File, they would still need to adhere to the arm's length principle with respect to their transactions and arrangements with Related Parties and Connected Persons and provide documentation / details supporting for the same upon request from the Authority.

Additional guidance is awaited on other important pieces such as contents/format of the Local File and Master File, specific penalties/fines in case of non-maintenance or non-compliance and benchmarking studies.

We are expecting additional Decisions to be released to expand on many key provisions of the CT Law so stay tuned. For further assistance, you can reach us by emailing CT.UAE@pwc.com.



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The PwC UAE Transfer Pricing team



Zachary Noteman
Partner
Transfer Pricing



Eric Vroemen
Specialist
Transfer Pricing



Andrew Joshi
Partner
Transfer Pricing



Zeeshan Humayun
Director
Transfer Pricing



Jorge Daniel Simoes
Director
Transfer Pricing



Sevgi Özdemir
Senior Manager
Transfer Pricing



Thank you



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