

# UAE CT Law – TP updates

## Conditions for maintenance of TP documentation

May 2023



### Summary of recent developments

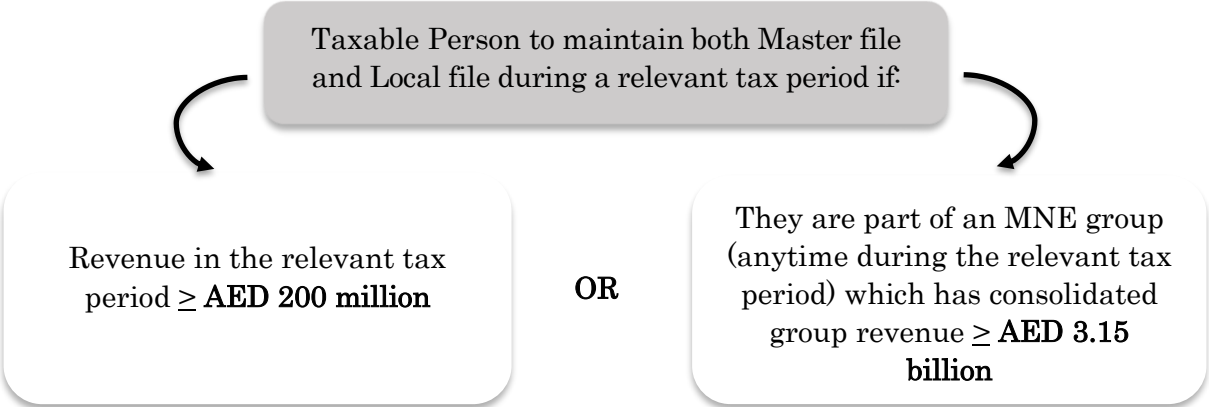
#### A. Ministerial decision no. 97 of 2023 on conditions for maintenance of Transfer Pricing documentation

The UAE Ministry of Finance on 11 May 2023 has issued the much-awaited clarification regarding the conditions for maintenance of transfer pricing documentation (Local file and Master file) in the form of Ministerial decision no. 97 of 2023. It has prescribed certain quantitative thresholds as well as listed the transactions and arrangements which would need to be included and excluded in the Local file. In this alert, we have summarized the key aspects in relation to the decision.

#### B. Explanatory guide on CT law issued

An explanatory guide on the CT law was published by the Ministry on 12 May 2023. It provides a summary of the meaning and intended effect of each Article of the CT Law. The guide has specifically mentioned that the UAE’s transfer pricing rules are intended to be aligned with the OECD’s internationally accepted transfer pricing standard, and allow Taxable Persons to use relevant guidance as a reference in the application of the arm’s length principle.

### Quantitative thresholds



It is to be noted that revenue-based thresholds have been prescribed and the quantum of the transactions with Related Parties and Connected Persons is not relevant.



### Local file inclusions

Transactions / arrangements with the following Related Parties and Connected Persons are to be included in the Local file:

Related Party / Connected Person	Description
1. A Non-resident person	Eg: Foreign fellow subsidiaries, PE of foreign related parties in UAE.
2. An Exempt person	Eg: Government entities, Persons engaged in Extractive business who meet the prescribed conditions, Qualifying Public Benefit entities etc., who are exempt from Corporate Tax
3. A Resident Person that has elected for Article 21 of the CT law and meets the conditions prescribed.	This refers to Taxable Persons opting for <b>Small Business Relief</b> , who are treated as not having any Taxable income during a tax period
4. A Resident Person who is taxed at a different Corporate Tax rate from that of the Taxable Person	Eg: <b>Qualifying Free Zone Persons</b> which are charged 0% on Qualifying income. Similarly, where one of the Taxable Persons pays tax and the Related Party is subject to 0% tax where his taxable income is less than the threshold of AED 375,000.



### Local file exclusions

Transactions / arrangements with the following Related Parties and Connected Persons shall not be included in the Local file:

- a) **Resident Persons** other than those specifically included in points 2, 3, 4 above
- b) A **Natural person** (Individual), provided that the parties to the transaction / arrangement are acting independently (Also refer below table).
- c) A juridical person that is a **partner in an Unincorporated Partnership**, provided that the parties to the transaction / arrangement are acting independently (Also refer below table).
- d) A **Permanent Establishment of a Non-Resident Person** in the State who is taxed at the same Corporate Tax rate applicable to the Taxable Person.

Other specific conditions mentioned are:

Related Party / Connected Person	Conditions for excluding transactions with these parties in the Local file
<ul style="list-style-type: none"> <li>• Individuals</li> <li>• Juridical Person who is a partner in an Unincorporated Partnership</li> </ul>	<ol style="list-style-type: none"> <li>1) Parties will be considered as acting independently where:               <ul style="list-style-type: none"> <li>• The transaction / arrangement is undertaken in the ordinary course of business <b>AND</b></li> <li>• The parties are not exclusively / almost exclusively transacting with each other.</li> </ul> <p>Eg: If the connected person is a natural person i.e., the major shareholder and provides management services only to the Company, then such services will have to form part of local file.</p> </li> <li>2) Where one Party is subject to detailed instruction or comprehensive control of the other Party, they will not be regarded as acting independently.</li> </ol>

The Tax Authority will consider all relevant facts and circumstances to determine whether the Persons are acting as if they were independent of each other.



### Key Takeaways

The quantitative limits prescribed are aimed at reducing compliance burden for small or micro businesses while ensuring transparency in the intercompany dealings of larger MNE Groups. Common limits have been prescribed for Local file and Master File and they seem to be on the higher side. The threshold of AED 3.15 billion is also aligned with the existing threshold for applicability of Country-by-Country reporting in the UAE.

Though the Ministry has been considerate in fixing high thresholds as well as specifically excluding certain tax neutral transactions from the Local file, the following aspects would need to be taken into consideration:

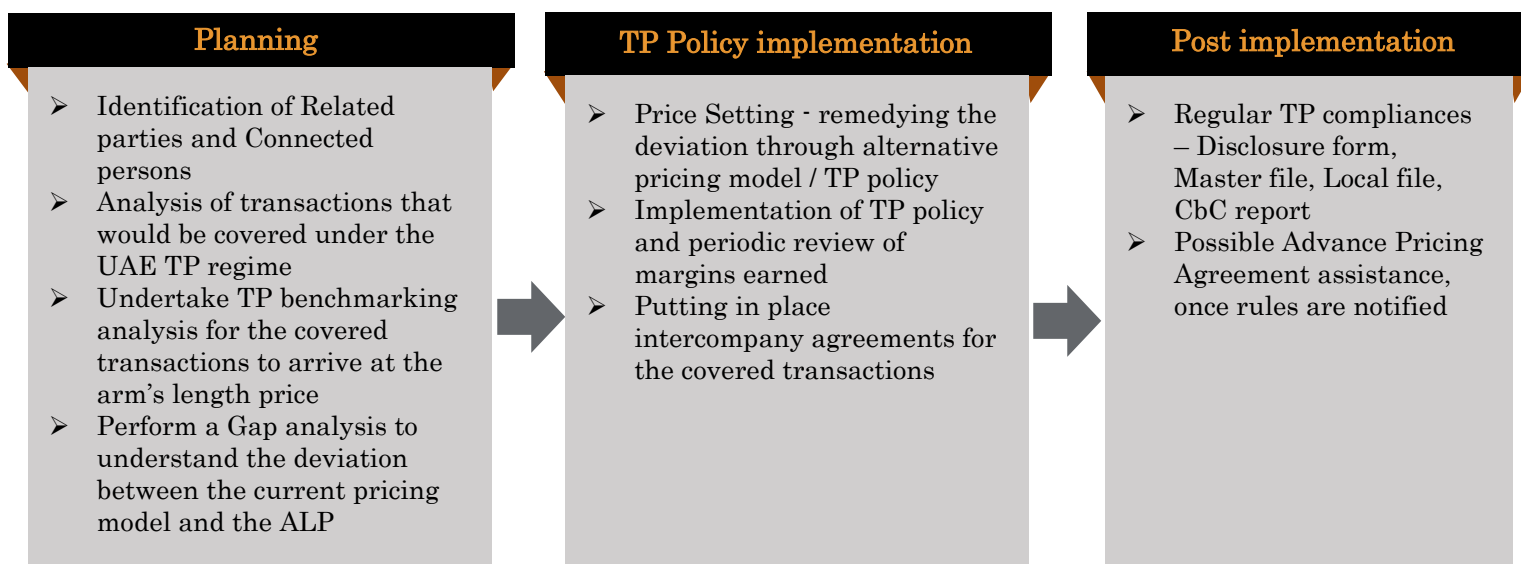
- ▶ **Arm's length principle** - The above thresholds and inclusions/exclusions are specifically in connection with Master file / Local file. The requirement to comply with arm's length principle (Article 34) would still apply irrespective of these thresholds and would apply to transactions between Taxable Persons and all its Related Parties and Connected Persons (including tax neutral transactions), unless any further guidance is issued by the Ministry. Hence it becomes the Taxable Person's responsibility to maintain a sufficient level of supporting documents (e.g benchmarking, policy setting documents, agreements, etc.) to substantiate the arm's length nature of its transactions, even where the Local file is not required to be maintained.
- ▶ **Disclosure form** - No specific thresholds have been prescribed yet for filing of the Disclosure form. Further as the afore-mentioned exclusions are specifically in connection with Local file, the Disclosure form may possibly require a Taxable Person to provide details of its transactions / arrangements with **all of its Related Parties and Connected Persons**. More clarity may be achieved once the Authority prescribes the format for the disclosure form.

- ▶ **Qualifying Free Zones** - Compliance with transfer pricing rules and maintenance of TP documentation is a precursor for Qualifying Free Zones (QFZ) to claim 0% CT. The Definition of Taxable Person (Article 11) includes QFZ and the compliance of maintenance of Local and Master file is applicable for Taxable Persons. Hence, in our view the thresholds and conditions for Local and Master file will be equally applicable to QFZ. However, the QFZ may need to comply with the arm's length principle (Article 34) irrespective of the thresholds in order to claim the benefits.
- ▶ **Natural persons** - As per the exclusions to Local file, Taxable Persons having transactions with Natural persons need not form part of the Local file subject to conditions. In our view, where the Taxable Person is itself a Natural person, Local file will have to be prepared, subject to the thresholds and conditions mentioned above.
- ▶ **Arm's length principle in other aspects of CT law** - In our earlier alert on the UAE TP regulations, we had highlighted the various other sections of the CT law where the arm's length principle would be applicable (eg: GAAR, Investment Manager Exemption, transfers with a foreign PE etc). Sufficient supporting documentation should be maintained to substantiate the arm's length nature of these transactions.
- ▶ **TP documentation guidelines** - Further guidance regarding maintenance of TP documentation including specific formats for Local file and Master file are expected from the Authority. This guidance may also need to address where there are multiple entities of the same Group in UAE and whether filing and maintenance of single Master File for the Group would suffice, in order to avoid duplicity / redundancy of filings. The formats are expected to be consistent with the requirement prescribed under OECD guidelines.



### Way forward

As per the Decree law, TP requirements will apply for the financial years starting on or after 1 June 2023. With the date fast approaching, it is essential for entities to align their policies as per the arm's length principle and be equipped to deal with the required compliances.



## About us



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Our offering spans the end-to-end Transfer Pricing value chain, including design of intercompany policy and drafting of Interco agreement, ensuring effective implementation of the Transfer Pricing policy, year-end documentation and certification, BEPS related compliances (including advisory, Masterfile, Country by Country report), safe harbour filing, audit defense before all forums and dispute prevention mechanisms such as Advance Pricing agreement.

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Being a specialized firm, we offer advice that is independent of an audit practice, and deliver it with an uncompromising integrity.

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