



Transfer Pricing Update

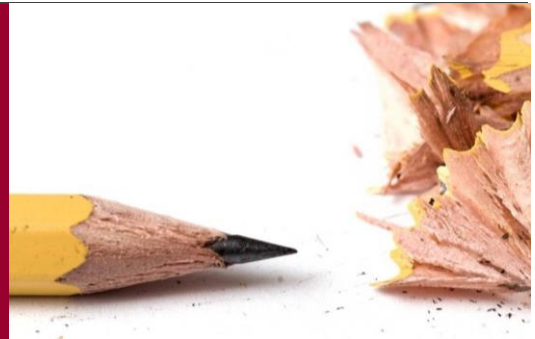
INSIGHTS INTO THE DRAFT TRANSFER PRICING REGULATIONS OF SAUDI ARABIA

APRIL 2019



BDO Tax Alert

Saudi Arabia finalizes Transfer Pricing Bylaws



Executive Summary

The introduction of Transfer Pricing Regulations in Saudi Arabia is a significant milestone in the Gulf region. We have tabulated below an executive summary providing a snapshot of the most relevant points and timelines as per the final approved Transfer Pricing Bylaws of Saudi Arabia.

Regulatory requirement	Legislative direction	Comments
Date of applicability of TP Bylaws	February 15, 2019	
Date of applicability of provisions for maintaining documentation	December 31, 2018	
Filing of Disclosure Form for related party transactions (for the fiscal year ending 31 December 2018) along with an affidavit from a licensed auditor in KSA	April 30, 2019	<p>Generally, this will apply to the following:</p> <ul style="list-style-type: none"> • Entities subject to corporate income tax ("CIT"); and • Entities subject to CIT and ZAKAT <p>A template of the Disclosure Form was notified in TP guidelines issued by GAZT in early March 2019.</p> <p>An affidavit from a licensed auditor in KSA must be filed to certify the consistent application of the taxpayer's TP policy.</p>
Country by County Reporting Notification , if applicable (for the fiscal year ending 31 December 2018)	April 30, 2019	<p>This will apply to the following if the annual group revenue exceeds SAR 3.2B (approx. USD 850m):</p> <ul style="list-style-type: none"> • Entities subject to Corporate Income tax ("CIT") • Entities subject to CIT and Zakat • Entities subject to Zakat only.

Regulatory requirement	Legislative direction	Comments
Other documentation to be maintained by taxpayers (unless exemptions apply)	<ul style="list-style-type: none"> - Master File - Local File 	<p>This will apply to the following, if annual value of related party transactions exceed SAR 6M (USD 1.6m):</p> <ul style="list-style-type: none"> • Entities subject to CIT • Entities subject to CIT and Zakat <p>The documentation should be submitted upon the request of GAZT.</p>
Submission of documentation relating to controlled transactions or Local File or Master File upon request of GAZT	<ul style="list-style-type: none"> - To be submitted on request. - Time limit to provide the documentation can be no less than 30 days from the date of such request. - Automatic extension of 60 days provided for documentation for year ending on 31 December 2018. 	
Exceptions to maintain documentation	<ul style="list-style-type: none"> - Natural persons - Small Size Enterprises [total Arm's Length value of transactions does not exceed SAR 6 million (but filing of Disclosure Form is still required)] - Corporates not entering into "Controlled Transactions" 	

On 15 February 2019 the Transfer Pricing Bylaws (“TP Bylaws” or “the law”) were published in the official gazette, *Um Al-Qura*, bringing them into force with effect from that date

In addition to the above, the GAZT has issued some helpful Frequently Asked Questions (“FAQs”) providing clarifications on certain basic and important facets of the concept of transfer pricing and the law itself. In early March 2019, GAZT issued detailed guidelines to further clarify certain aspect of the TP Bylaws. The guidelines included a template of the Disclosure Form which is available in the GAZT portal.

Background

The GAZT published the Draft Transfer Pricing Bylaws (“Draft TP Bylaws”) on 10 December 2018 for public consideration. Our alert on the same can be accessed by clicking [here](#).

Pursuant to representations made by the public, the GAZT has made various changes to the scope and mechanics of the law.

This alert discusses important changes incorporated in the TP Bylaws, discusses the important FAQs and highlights important milestones during the course of 2019 for taxpayers impacted by the law.

1. Persons subject to the TP Bylaws

Article 2 has been amended to clarify that while Zakat only paying entities will not be subject to the TP Bylaws, they will be required to comply with Article 18 [pertaining to Country by Country Reporting (“CBCR”)] subject to satisfaction of prescribed conditions.

2. Power of GAZT widened

Pursuant to the Law, the GAZT will now have the power to **completely disregard the result** of a controlled transaction not carried out at arm’s length so as to make adjustments to the result (implying both, income and expenses).

3. Content disclosure form to be filed along with an affidavit from a licensed auditor

- New requirement to submit an affidavit from a licensed auditor together with the disclosure form. GAZT, at a workshop conducted recently, clarified that the licensed auditor is not required to be the statutory auditor of the taxpayer.

- The auditor is required to certify that the transfer pricing policy of the Multinational Enterprise (“MNE”) is *consistently applied* by and in relation to the tax payer.
- The requirement appears to be vague since the contents of a “transfer pricing policy of an MNE” is not defined and *consistent application* of the same may be open to interpretation.
- The Content Disclosure Form was issued by GAZT recently.

4. Method of calling for information and streamlining of timelines

Article 15(D) pertaining to powers granted to the GAZT to call for information has been amended. Now, it is not mandatory for GAZT to call for information/documents in writing.

Further, the time allowed for submitting information / documents (Master file / local file) has been brought up to a minimum of 30 days. In the draft TP law, the time given by GAZT to submit the local file was 7 days.

5. Amendments to certain definitions

The TP Bylaws have revised certain definitions, some expanding the effective scope of the definition and some providing clarity.

Effective control

The definition of effective control has been amended to make it more specific while expanding the scope of the term “effective control” on the whole.

Control through loans - Financial Institutions providing loans have been excluded and there has been a clarificatory amendment

- a. for the “control” condition to be triggered in case the total outstanding balance of “short term and long term debt and capital excluding retained earnings” as of the year-end balance of the reporting year is 50% or more.
- b. *Control through guarantees* - Financial Institutions have been excluded from the scope. For the condition to be triggered 25% or more of the value of the person’s total borrowings as of year-end balance would have to be guaranteed.

- c. Based on business transactions - The revised definition has laid a condition of 50% or more of the **absolute aggregated value** of business activities to be dependent on the other person. The term absolute aggregate value has not been defined and thus could cover both income and expenses. It'll be interesting to see whether transactions of capital nature would be fall under the purview of absolute aggregate value of business activities since no clarification has been provided in this regard.

Financial Institution

The definition of the term financial institution has been included in Article 1 to mean a juridical person whose substantial and primary business is to conduct banking or financing or both and is regulated by central government agencies.

International Agreement

The definition of the term international agreement has been included in Article 1 to mean any multilateral convention for mutual administrative assistance in tax matters or any bilateral or multilateral tax convention or any information exchange agreement.

Related persons

While the instance of the relationship between a parent entity and its subsidiary has been eliminated from the definition of related persons, it does not narrow the scope of the definition since such a relationship should still be covered under the definition of the phrase "persons under common control" as per Article 1(23) of the law.

Taxable person

The definition has been amended to clarify that even if a person is not a person subject to tax but is required to comply with the Law, such person will be deemed to be a taxable person.

While this was understood as to be the intent of GAZT even under the draft Bylaws, the GAZT has provided this clarification to eliminate any confusion, especially given that pure Zakat companies have certain CBCR requirement under Article 18 of the TP Bylaw.

Transfer Pricing

The definition of the term transfer pricing has undergone a substantial change since the word "international transfer" has been eliminated. This has resulted in domestic transactions between related parties within the Kingdom also being covered within the scope of transfer pricing.

This is also clear from the clarification issued by GAZT vide FAQ No. 7 as a part of the FAQ document.

6. Changes in contents of master file

- New requirement to disclose the legal and de facto owner of "material" list of intangibles / group of intangibles.

"Material" has not been defined and may be interpreted in different ways. Also, the absence of the definition of the term "intangibles" may lead to confusion, specifically whether it will include self-generated and recognized intangibles or only such intangibles for which a consideration has been paid.

7. Changes in contents of local file

- New requirement to disclose whether the taxable person has been involved or affected by business restructurings or transfer of intangible property in the reportable year and in the year immediately preceding.

8. Quick snapshot of FAQs

- Zakat only paying entities will be subject to CBCR requirements.
- GAZT encourages the maintenance and submission of documents in Arabic, to the extent possible.
- Domestic transactions will be within the purview of transfer pricing
- Transfer pricing documentation requirements shall be applicable for years ending on 31 December 2018 and all subsequent years. However, the GAZT has the right to call for any information pertaining to previous years as well.
- GAZT can call for master file / local file after 30 April 2018 (minimum time of 30 days to be provided to taxpayer for submission of documentation). Automatic extension of 120 days provided. Therefore, in effect, taxpayer will have a minimum time of 210 days (from 31 December 2018) to prepare and submit the documentation called for.
- TP Bylaws to apply to permanent establishments with respect to its related person transactions.
- Other methods to determine arm's length nature of transactions may be used only if Approved Methods are unreliable.

- Aggregation / combination of transactions carried out under the same or similar circumstances is allowed.
- Only data available to both GAZT and the public may be used by both GAZT and taxpayers.
- Local comparable data preferred over international data. International comparables may be used only in the absence of local comparables. International comparable data to be adjusted for geographic differences and other important factors.
- Tested party is the party to which a transfer pricing method can be applied in the most reliable manner and for which the most reliable comparable can be found - in most cases the party with the least complex functional analysis profile.
- Comparability analysis may be performed once in three years if there is no change in the conditions or circumstances of the taxpayer and the controlled transactions.
- No extension provided for submission of Disclosure Form. To be submitted within 120 days from the end of the year.
- Disclosure Form to be submitted by even those taxpayers whose aggregate value of controlled transactions is less than SAR 6 million.
- The transactional value that should be disclosed in the Disclosure Form would be the actual price or value of the controlled transaction (which is required to be based on Arm's length principle)
- The taxpayer is responsible for determining whether all information contained in Master File reflects the most recent information pertaining to the group.
- For listed entities, taxpayer is required list only those shareholders who directly own 5% or more of the listed shares of the taxpayer.
- The threshold limits stipulated for the TP documentation applies on an annual basis and any entity falling below the threshold (SAR 6 million) for a particular year is not required to maintain documentation for that year.
- Small enterprises must maintain and present to the authority once requested, sufficient and adequate documents that prove that all the related persons' transactions are done at arm's length as defined in the TP Bylaws.
- CBCR will be an electronic filing to be filed on a portal, details of which will be made available in due course.

- The statutory limitations to income tax assessments will also apply to transfer pricing assessments.
- All penalties and fines under the Income Tax Law shall be applicable to the TP Bylaws as well.

What should taxpayers do

- Conduct an initial impact assessment to determine the applicability and impact of the TP Bylaws.
- Understand the requirements under the TP Bylaws.
- Identify Controlled Transactions.
- If applicable, extract information and prepare documentation (master file, local file and CbCR) as required by the TP Bylaws for the fiscal year ending 31 December 2018.
- Establish an internal TP framework / include Saudi business in existing TP framework to ensure compliance 2019 onwards.
- **Immediate action point will be to prepare for transaction data for the fiscal year ending 31 December 2018 required to be submitted through the "Disclosure Form", at the latest by 30 April 2019.**

Our comments

The legislation of the TP Bylaws marks a landmark moment in Saudi Arabia's tax landscape, which is the first country in the GCC to formally implement a transfer pricing law.

Though the changes made and FAQs provided by GAZT clarify certain matters, there are still a few matters that are left wanting for clarity. GAZT has already begun conducting workshops to provide clarity on the TP Bylaws and this displays progressive intent of on GAZT's side.

Similarly, while automatic extension of 60 days provided by the GAZT to taxpayers to prepare its transfer pricing documentation is a welcome step, the same may not prove to be too useful to taxpayers since the Disclosure Form requires taxpayers to certify whether it maintains the prescribed transfer pricing documentation - A form that is required to be filed by 30 April 2018 for which no extension has been granted.

With the introduction of TP in Saudi Arabia, we expect more foreign companies to re-examine how their business arrangements are structured in order to determine whether a PE exists in Saudi and / or the applicability of the TP Bylaws.

WHY BDO?

Experienced global team

BDO is amongst the largest global professional firms with accessible transfer pricing professionals worldwide. This places BDO in a position to provide transfer pricing support to our clients wherever their business takes them.

Exceptional client service

At BDO, our experienced professionals adopt a hands-on approach in delivering transfer pricing and value chain solutions. This enables BDO to:

- Understand our clients' priorities
- Provide senior level contact to address client concerns
- Address key issues proactively and efficiently

BDO takes a phased approach to managing transfer pricing projects to maximise efficiency and transparency of our engagement.

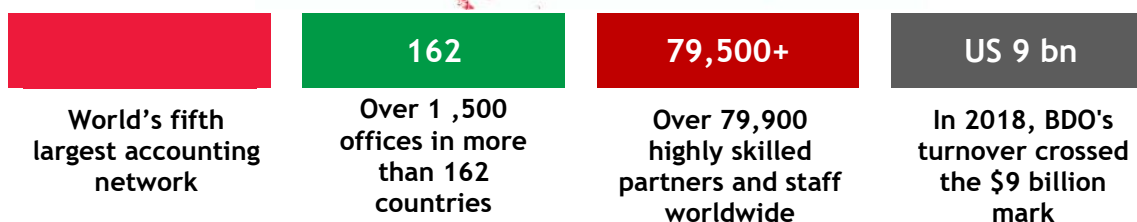
Practical solutions

We pride ourselves on our ability to work with our clients to develop creative, practical and robust transfer pricing solutions that are 'fit for purpose.' However simple or complex the solutions, we provide pragmatic, practical and clear advice that identifies any tax risks and opportunities to better enable our clients to make informed transfer pricing decisions.

At BDO, the people working with you will be directly overseeing the analysis supporting your transfer pricing. This is essential given local legislation in many jurisdictions is based on the OECD Transfer Pricing Guidelines which have heightened the emphasis placed on the importance of identifying quality third party comparables.

Scalable support

We are able to deliver transfer pricing and value chain projects on a scale tailored to our clients' needs. This ranges from delivering the entire global project, to situations where we work with in-house tax and transfer pricing teams to deliver more discrete support.



How BDO can help

At BDO, our experienced transfer pricing professionals adopt a hands-on approach with clients in delivering comprehensive TP solutions.

Our team can assist you with the following:

- Conducting an initial impact assessment
- Reviewing business arrangements and related party transactions from a TP perspective
- Assisting with the selection of approved TP methods
- Assisting with TP policy
- TP implementation
- Assisting with TP documentation
- TP advisory services
- Assisting with TP audit
- Training



Contact us for a discussion



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