



UAE Transfer Pricing Disclosure

What You Need to Know

The FTA has updated the format of the UAE Corporate Tax return, which now has a specific portion on Transfer Pricing (TP) related disclosure. This article gives an overview and highlights critical items in the said portion.

The Origin

The requirement of the TP disclosure form was initially announced in the Federal Decree-Law No. 47 of 2022. Article 56 of the said Decree provides for furnishing along with the tax return *'disclosure containing information regarding the Taxable Person's transactions and arrangements with its Related Parties and Connected Persons in the form prescribed by the Authority.'*

The Blueprint

Subsequently, in October 2023, the FTA issued a comprehensive TP guide, including a blueprint of the TP disclosure form. The guide indicated that the key contents of the TP disclosure form would include the nature of controlled transactions, value of controlled transactions, details of related parties, TP methods, etc. The timeline for furnishing the form was the same as the tax return, i.e., within nine months from the end of the tax period.

The guide indicated that the disclosure form would be required when exceeding the materiality threshold.

Furthermore, the guide also indicated that the disclosure form would include information on 'transactions' and 'arrangements' with related parties and connected persons.

The Contents

The tax return format has been updated to include the TP disclosure form, which has the below highlights:

Separate schedule for related party and connected persons

The disclosure form has a separate schedule for transactions with 'related parties' and transactions with 'connected persons.' Payment to connected person, especially salary and other employment benefits' remain one of the contentious issue in meeting the arm's length test, given the comparability challenges.



Suo-moto adjustments

The form requires disclosure of adjustments made to the transaction value(s) to meet the arm's length value. Presumably, these would be suo-moto adjustments made by the taxpayer to adjust the non-arm's length transaction. For example, the taxpayer has TP policy to charge cost + 5% mark-up, whereas the arm's length study suggests cost + 8% mark-up (median). The taxpayer would offer 3% (incremental) to tax via suo-moto adjustment. Notably, the form also requires reporting the adjustments made due to transitional provisions.

Gross income

The income from the related party(parties) needs to be reported at a gross level. For example, the taxpayer supplied goods to a distributor (related party) at USD 100 and later rewarded the distributor with an incentive/rebate of USD 5 for achieving the targeted volume during the tax period. The form requires disclosure of USD 100 as the value of the transaction.

Tax residence of related party

The taxpayers are required to disclose the tax residence of the related party. Now, this could become challenging where the tax residence of the related party is (say UAE) different from its incorporation address (say Mauritius). This level of information requires careful consideration on the taxpayer's part while finalizing the TP disclosure form.

Reporting of transaction type

The form requires each transaction to be categorized into one of the following: Goods, Services, Intellectual Property, Interest, Assets, Liabilities, and Others. However, this kind of compartmentalization may not be always easy. For example, the taxpayer is an authorized Tally solutions provider in the UAE who does not acquire the right to the underlying IP rights of the software. Should the taxpayer disclose the sale value under the Intellectual Property category? The core objective of compartmentalization could be an appropriate risk assessment for audit selection. Therefore, incorrect category selection could lead to different perceptions of the risk in the assessor's mind.

Attachments

The current format of the TP disclosure form requires attaching the Local File and Master File. Meanwhile, Article 55 of the Decree-Law No. 47 of 2022 recommends maintaining (not furnishing) the Local File and Master File by the covered persons. Notably, subsequent announcements in Ministerial Decision 97 and TP Guide also mention the requirement to maintain rather than furnish with the tax return. The authority can request the documentation, i.e., Local file and Master File, upon issuance of notice (30 days).

Concluding Remarks

TP disclosure forms are a common phenomenon in any TP regime. Most of the countries have this kind of requirement to furnish the TP-related disclosure alongside tax returns. It may not be out of context to mention that the data collected through TP disclosure form becomes an important tool in risk assessment and eventually becomes a basis for audit selection. Accordingly, taxpayers are advised to exercise caution and ensure accuracy while filling up the TP disclosure form.

The content of TP disclosure form includes furnishing details such as the Most Appropriate Method adopted to justify arm's length nature and the arm's length value. Accordingly, the taxpayers should have a comprehensive TP policy and local file (as the case may be) ready before furnishing the TP disclosure form.

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