



The Institute of Chartered Accountants of India
(Dubai) Chapter NPIO



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Brief Profile: CA Janak B. Panjuani



- Qualified Chartered Accountant (ICAI)
- In Dubai since 32 years
- Currently a Director in Puthran Chartered Accountants, Dubai (since 2000)
- Possesses knowledge, technical skills and professional know-how in the field of Auditing, VAT, ESR, Transfer pricing & International Taxation.
- Keen understanding of subtle aspects of International Financial Reporting Standards (IFRS)
- Served as :
 - Treasurer of Indian Business Professional Council (IBPC) Dubai
 - Committee Member of Dubai Chapter of ICAI
 - Office bearer of various committees' of BCAS
 - Joint Convener of Study Circle Committee of the Chapter
 - Election officer of Dubai Chapter of ICAI
- Speaker at many professional conferences and written articles in professional journals



Management Remuneration

Importance of Management Remuneration from Corporate Tax Perspective

It is applicable to most of the companies operating in UAE.

Para 7.5. of Public Consultation Document states that, **the absence of a personal income taxation in the UAE** can generate incentives for individual owners of taxable businesses **to erode the UAE CT base by making excessive payments to themselves or persons connected with them.**

In LLC companies , management remuneration is extensively used for appropriation of profit.

Managerial Remuneration

Shareholder and
Management

Management
Related party

Management
Independent
party



Management Remuneration

Management Remuneration refers to any amount paid by the company to its

1. Owner
2. Shareholders
3. Directors
4. Officers (Chief Executive Officer (CEO), Chief Financial Officer (CFO), President, Vice President, Division Heads)
5. Related parties of persons covered above.

Officers are not defined in the CT Law.

Officers

From a legal perspective, an "officer" of a company refers **to a high-ranking individual who holds a position of authority within the organization**, typically entrusted with managing its day-to-day operations and **making significant decisions on behalf of the company.**

Officers are usually appointed by the company's board of directors and may include positions such as:

- Chief Executive Officer (CEO)
- Chief Financial Officer (CFO)
- Chief Operating Officer (COO)
- President
- Vice President
- Division heads

Their role is distinct from that of directors (who set strategic policy and oversee management) and employees (who carry out tasks at various levels without executive authority). **Officers are considered part of the company's executive management team and can be held liable under certain legal frameworks for actions that lead to company losses or violations of law.**

Federal Decree-Law no. (32) of 2021. On Commercial Companies

Article 6- Corporate Governance

1. Notwithstanding the requirements of the Central Bank with regard to the financial institutions subject to its control and supervision, the Minister shall issue the decision regulating Governance for companies with the exception of Public Joint Stock Companies, in respect of which the Board of Directors of the Authority shall issue such decision. The Governance decision shall include the rules, controls, and provisions that the companies shall comply with.
2. The Company's **board of directors or managers**, as the case may be, **shall be responsible for implementing the Governance rules and standards.**

Limited Liability Company

Article 83- Managers of the Company

1. The management of a Limited Liability Company shall be undertaken by one or more managers as determined by the partners in the Memorandum of Association. Such managers shall be elected from among the partners or third parties. If the managers are not appointed in the Memorandum of Association of the Company or under an independent contract, the General Assembly of Partners shall appoint such managers. If there is more than one manager, the partners may appoint a board of managers. Such board shall have the powers and functions set out in the Memorandum of Association.
2. Unless the contract appointing the manager of the Company or its Memorandum of Association or Statute provides for the powers granted to the manager, such **manager shall be authorized to exercise full powers to manage the Company** and his acts shall be binding on the Company, provided that the capacity of manager is stated upon doing such acts.

Limited Liability Company

Article 84- Liability of the managers of the Company

1. **Every manager in a Limited Liability Company shall be liable** towards the Company, the partners, and the third parties **for any fraudulent acts** committed by such manager and shall also be liable for any losses or expenses it incurs due to abuse of power or violation of the provisions of any applicable law, the Memorandum of Association of the Company or the contract of his appointment or **for any gross error made by the manager**. Any provision in the Memorandum of Association or the contract appointing the manager in conflict with the provisions of this clause shall be deemed null and void.
2. Subject to the provisions of the Limited Liability Company in accordance with this Decree-Law, **the provisions applicable to the Board Members of Joint Stock Companies as set forth in this Decree-Law shall apply to the managers of Limited Liability Companies**

Federal Decree-Law no. (32) of 2021. On Commercial Companies (Continued)

Article 162- Liability of the board of directors and the executive management

The Board Members and the executive management shall be liable towards the Company, the shareholders, and the third parties for all acts of fraud, abuse of power, and violation of the provisions of this Decree-Law or the Company's Statute. Any provision to the contrary shall be deemed null and void. **The executive management shall be represented by the general manager, the executive manager, or the chief executive officer of the Company and their deputies, each at the level of senior executive positions, as well as officials of the executive management who have been personally appointed in their positions by the board of directors.**

Officers (Continued)

De facto officers: individuals who act as officers (even without formal appointment) are considered officers under the law.

Shadow directors: Individuals who influence or control company directors without being formally appointed may still be considered officers.

Focus on role, not title: What matters legally is the role and responsibilities an individual performs, not necessarily their official title.

What is important to be considered is person's actual involvement in the management and control of the company, rather than their formal title, when determining whether they should be treated as an officer.

UAE: Case Concerning Directors' Liability for Fraudulent Activities

Dubai Court of Cassation Case :

Facts

This case involved a general manager of a company who was not formally appointed as a director but was involved in the day-to-day management of the company. The company became insolvent, and creditors pursued claims against the manager, alleging mismanagement and fraud.

Issue

Whether the general manager, despite not being a formally appointed director, could be held liable as an officer for the company's financial losses and insolvency due to mismanagement and fraudulent activities.

UAE: Case Concerning Directors' Liability for Fraudulent Activities (Continued)

Dubai Court of Cassation Case : (Continued)

Judgment

The Dubai Court of Cassation ruled that the general manager could be held personally liable as an officer of the company. The court emphasized that, although the individual was not a director, his role as the general manager placed him in a position of authority and control over the company's affairs. Therefore, he owed fiduciary duties to the company and its creditors.

Significance

This case demonstrated that in the UAE, individuals who take on key managerial roles and act as officers of the company, even without formal titles, can be held liable for breaches of duty, especially in cases of fraud or insolvency.

International Accounting Standard 24 - Related Party Disclosures

Definitions

A person or a close member of that person's family is related to a reporting entity if that person:

- (i) has control or joint control of the reporting entity;
- (ii) has significant influence over the reporting entity; or
- (iii) is a member of the key management personnel of the reporting entity or of a parent of the reporting entity.

Close members of the family of a person are those family members who may be expected to influence, or be influenced by, that person in their dealings with the entity and include:

- (a) that person's children and spouse or domestic partner;
- (b) children of that person's spouse or domestic partner; and
- (c) dependants of that person or that person's spouse or domestic partner.

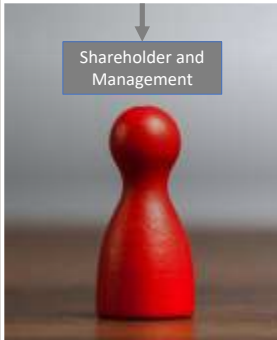
Key management personnel are those persons having authority and responsibility for **planning, directing and controlling the activities of the entity**, directly or indirectly, including any director (whether executive or otherwise) of that entity.

International Accounting Standard 24 - Related Party Disclosures

PARA 23 OF IAS 24

Disclosures that related party transactions were made on terms equivalent to those that prevail in arm's length transactions are made **only if such terms can be substantiated.**

Article 33 – Non-deductible Expenditure



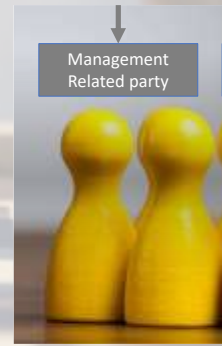
1. Donations, grants or gifts made to an entity that is not a Qualifying Public Benefit Entity.
2. Fines and penalties, other than amounts awarded as compensation for damages or breach of contract.
3. Bribes or other illicit payments.
4. Dividends, profit distributions or benefits of a similar nature paid to an owner of the Taxable Person.
5. Amounts withdrawn from the Business by a natural person who is a Taxable Person under paragraph (c) of Clause 3 of Article 11 of this Decree-Law or a partner in an Unincorporated Partnership.
6. Corporate Tax imposed on a Taxable Person under this Decree-Law.
7. Input Value Added Tax incurred by a Taxable Person that is recoverable under Federal Decree-Law No. (8) of 2017 referred to in the preamble and what replaces it.
8. Tax on income imposed on the Taxable Person outside the State.
9. Such other expenditure as specified in a decision issued by the Cabinet at the suggestion of the Minister.

Management
Related Party

Article 36 – Payments to
Connected Persons

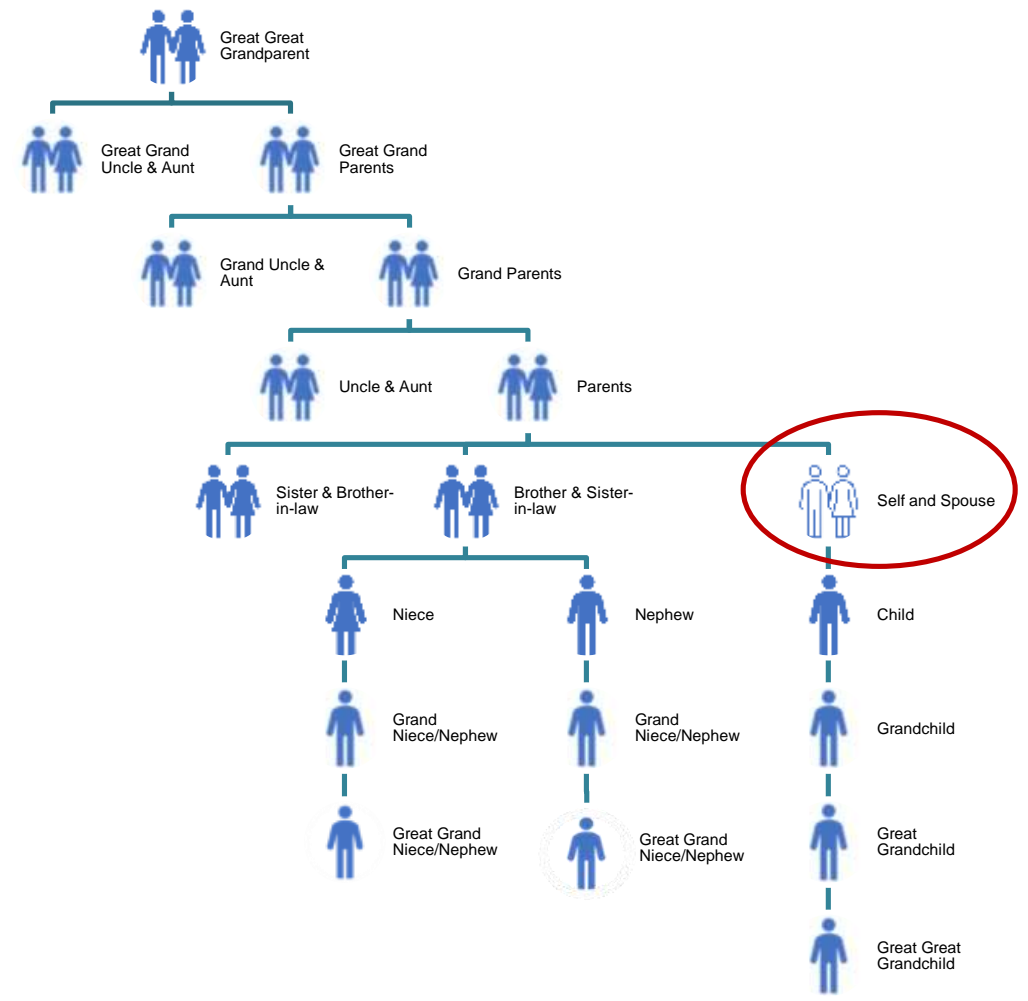
Article 35 – Related Parties
and Control

Article 34 – Arm's Length
Principle



Family

related within the fourth degree of kinship or affiliation, including by way of adoption or guardianship.



Brain Tickle



- **Whether KMP per IAS 24 will cover all related parties and connected persons per Article 35 and article 36 of Corporate Tax Law?**
- **Whether amounts of transactions with related party included in Related party notes to financial statements will always be at arm's length prices?**
- **Whether closed members of the family per IAS 24 are same as individual's related parties per CT?**

Management Remuneration – Arm’s Length

- **Payments or benefits provided by a Taxable Person to its Related Parties and/or Connected Persons** would be deductible only to the extent that the **payment or benefit corresponds with the Market Value of the service or benefit provided by the Related Parties and/or Connected Person**, and where the payment or benefit is incurred wholly and exclusively for the purposes of the Taxable Person’s Business.
- For example, **the salary or bonus paid to directors or officers of a company or an owner of the Taxable Person** would be deductible when determining Taxable Income, but only insofar as this salary corresponds with the Market Value rates for such services rendered. In order to determine if the value of a service or benefit provided matches its Market Value, **the arm’s length standard should be applied**

Reference: Determination of Taxable Income, Corporate Tax Guide , Paragraph 4.5.5 (July 2024)

Conditions for Deduction of Management Remuneration under Corporate Tax

VERY IMPORTANT THINGS MENTIONED IN THE LAW ARE –

1. **Need for service**
2. **Receipt of service**
3. **Benefit from receipt of service**
4. **Expenditure incurred wholly and exclusively** for the purposes of the business
5. Amount paid as **Management Remuneration corresponds with market value of services received**

All above conditions needs to be satisfied to claim deduction of Management Remuneration as business expenditure.

Is there any regulation in U.A.E. which provides guidance on managerial remuneration.



UAE Federal Law no. (32) of 2021 on Commercial Companies

Article 104- Application of the provisions of the Joint Stock Companies

- 1- For all that is not specifically provided for in this Decree-Law, the provisions concerning Joint Stock Companies shall apply to the Limited Liability Company to the extent that they are consistent with its nature. The expression "Competent Authority" shall substitute the term "Authority" wherever it appears.
- 2- The Council of Ministers, based on the proposal of the Minister, shall issue a decision that includes the provisions to be applied to Limited Liability Companies *in cases where the provisions of the Joint Stock Company are not consistent with the nature of the Limited Liability Company* and provided that they do not contravene or contradict the provisions of this Decree-Law, so long as the decision defines the related parties and transactions in respect of Limited Liability Companies

Article 171- Remuneration of the Board Members

- 1- The Company's Statute shall state the method for calculating the remuneration of the Board Members provided that it does not exceed (10%) of the net profits of the fiscal year after deducting all the depreciations and reserves.
- 2- As an exception to clause (1) of this article, and subject to the regulations issued by the Authority in this regard, a Board Member may be paid a lump sum fee not exceeding (200,000) two hundred thousand dirhams at the end of the fiscal year, whenever the Company's Statute permits so, and subject to the general assembly's approval of payment of these fees, in the following cases:
 - a- The Company's failure to achieve profits.
 - b- If the Company makes profits and the Board Member's share in those profits is less than (200,000) two hundred thousand dirhams, and in this case the remuneration and fees may not be combined.

This applies to Board of Directors only

Determination of the market value of Management Remuneration

Market value is determined having regards to **amount that would have been paid to any third party for services received in similar circumstances.**

For e.g.

Payment to owner or independent person

Below is definition of Arm's Length Transaction (ALP)

A transaction or arrangement between Related Parties meets the arm's length standard if the **results of the transaction or arrangement are consistent** with the results that would have been realized if Persons who were not Related Parties **had engaged in a similar transaction or arrangement under similar circumstances.**

Management Remuneration – ALP methods

- Identification of **Comparable Uncontrolled transactions**
- Considering the specific nature of such payments and relationship between the taxable person and the connected person **it might be difficult to identify such a comparable uncontrolled transaction in real life scenario.**

As contemplated under CTGTP1 of Oct 2023 (Corporate Tax Guide on Transfer Pricing) there aren't any commercial databases that provide such comparable uncontrolled transactions (on the salary). Hence, **the approach devised to address such requirements are based on the available sources and the guidance interpreted in the overall context of the UAE CT law using Indirect TNMM.**

Management Remuneration – ALP methods (Continued)

- Given the unique nature of the transactions (specifically in relation to managerial remuneration), payment and relationship including contribution to the taxable person's business made by the connected person, **internal comparable could be challenging.**

Hence, for all practical purposes, arm's length pricing would have to be derived/demonstrated based **on a search of commercial / publicly available databases / sources to determine a typical range of margins or appropriate comparable matrices earned/derived by other similar/comparable third parties - i.e. through an external comparability study.**

Management Remuneration – ALP methods (Continued)

- The overall payments made by the taxpayer to all the connected person can also be **tested against the industry average (determined through standard HR Firm's report or other platform depending on the availability of data and feasibility of comparison)**
- All in all, it's a dual approach, which includes **indirect TNMM and HR Industry Report based benchmarking** that will help assist in satisfying the arm's length price of the remuneration.

Documentation should be maintained in relation to the Owners & Senior Management for Management Remuneration

Comprehensive documentation of

1. Their **key experience**
2. Their **detailed career profile**
3. **Linkage to the company's operations** *during the year* and *future*
4. The **roles and responsibilities** of directors, CFO, CEO, etc.
5. **Individual remuneration may be relevant in situations where functions relating to the skills and experience of person are the primary factor in generating the relevant profits.**

For example, Doctor running a clinic or polyclinic OR visiting Doctor in Hospital, etc.

6. **The economic circumstances in which the transaction or arrangement is conducted** – importance of owner or shareholder himself running the business in comparison to anybody else running the business – **his skill sets may be the major value driver for the business.**
7. This will satisfy **functions performed**, tests to be satisfied while determining market value.

Contracts for Management Remuneration

Signed agreement will be required giving details of:

- **Role, Responsibilities;**
- **Remuneration (fixed and variable)** including gratuity and other retirement benefits (if any);
- **Procedural and administrative action of non-performance of duties** along with termination clause.
- It should mention appropriately, **in scenario of loss during the financial year what will be the remuneration.**

This will satisfy **contractual terms tests** to be determined while determining market value.

- Any compensation payable to direct or indirect owners,
- which is not fixed and determinable
- but is contingent on the financial performance of the Taxable Person

a deduction for CT purposes will not be allowed for payments that are in substance a distribution of profits.

(Explanatory Guide on Federal Decree-Law No. 47 of 2022 on the Taxation of Corporations and Businesses)

Will this be applicable now?

HR Policies

- **Internal policies that are in place for fixing the person's remuneration** - be it policies of the **remuneration committee** or of an **HR department** for listed companies or private companies.
- These policies would show that the person did not in any way influence his remuneration, which is based on independent guidelines.
- **OECD TRANSFER PRICING GUIDELINES © OECD 2022 - PARA 2.181**

Employee remuneration may be relevant in situations **where functions relating to the skills and experience of staff are the primary factor in generating the relevant profits.**

Article 34 – Arm's Length Principle

4. The Taxable Person may apply any transfer pricing method other than the methods listed in Clause 3 of this Article **where the Taxable Person can demonstrate that none of the above methods can be reasonably applied to determine an arm's length result** and that any such other transfer pricing method used satisfies the condition of Clause 2 of this Article.
5. The choice and application of a transfer pricing method or combination of transfer pricing methods under Clause 3 or 4 of this Article must be made having regard to the most reliable transfer pricing method and taking into account following factors:
 - a) The **contractual terms** of the transaction or arrangement.
 - b) The **characteristics of the transaction** or arrangement.
 - c) The **economic circumstances** in which the transaction or arrangement is conducted.
 - d) The **functions performed, assets employed, and risks assumed** by the Related Parties entering into the transaction or arrangement.
 - e) The **business strategies employed** by the Related Parties entering into the transaction or arrangement.

Why detailed documentation needs to be maintained?

- As per article 55 (4) upon request by FTA company **will have to submit information in support of management remuneration paid at arm's length price.**
- Further FTA can ask any such information any time **within 7 years** after end of the financial year. |
- It will **not be possible** to prepare such detailed documentation later on with in such short time.

Disclosure form

- As per Article 55 (1) FTA can request taxable person to file together with their tax return a disclosure containing information regarding the taxable person's transactions and arrangement with related parties and connected persons in the form prescribed by the Authority (maybe like form 3CEB in India)
- Information provided in the disclosure form includes
 - the **nature of** the Controlled Transaction(s),
 - the **value of** the Controlled Transaction(s),
 - **details of** the Related Party(ies) and
 - the **Transfer Pricing method(s) used to determine the arm's length value** of the Controlled Transactions.
- The Transfer Pricing disclosure form is to be submitted alongside the Tax return within 9 months from the end of the relevant Tax Period.
- It is worth noting that the **Transfer Pricing disclosure form is based on the self-assessment model** and as such the burden will be on the Taxable Person to ensure that the **all related party and connected person transactions undertaken in the Fiscal year are properly disclosed and are aligned with the Arm's Length Principle.**

Reference – Transfer Pricing Guide, October 2023

Case Study

A Dubai LLC, ID LLC, involved in designing and set-up of doors, frames and similar structure for the business in UAE. ID LLC doesn't have any other related parties / connected person as described under article 35 & 36 of the UAE CT Law, except,

Managerial remuneration being paid to Mr. A (Founder and Managing Director), Mr. B (Shareholder and Business Development Officer) & Mr. K & Ms. T (son and daughter of Mr A)

Key financial number for 2024 (excerpts from ID LLC financial statement)

- Sales – AED 15 M
- Remuneration paid to Directors & relatives
 - Mr. A – AED 1 M (includes all the values of perks as well)
 - Mr. B – AED 0.8 M (--“--)
 - Mr. K – AED 0.5 M (--“--)
 - Ms. T – AED 0.45 M (--“--)
- Net Profit (after all expenses including Remuneration as above) = AED 1.5 M (10% of Sales)

Approach & Solution

- ✓ Ensure that company has actually received and benefitted from the services provided by directors and relatives.
- ✓ Proper documentation such as contracts etc. are in place.
- ✓ Identify comparable companies similar to ID LLC from the database.
- ✓ Determine the inter-quartile range , assuming its 8% to 12%.
- ✓ Conclude basis the **Indirect TNMM** that the remuneration paid by ID LLC to its directors etc is at ALP (since the NP of 10% is within the ALP of 8% to 12%, even after making the payment of Managerial Remuneration).
- ✓ Further, **based on HR Reports** etc also identify industry, designation of all the Managerial Person and identify the range or band of salary similar profile of people are drawing and compare as a corroborative analysis

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

Ministerial Decision No. 97 of 2023 requires a **local or master file** to be maintained in the following instances:

- Taxable person's taxable revenue exceeds AED 200 million; or
- Taxable person being a part of Multinational Group, as defined in the Cabinet Decision No. 44 of 2022, whose consolidated revenue exceeds AED 3.15 billion

OBSERVATIONS

- Exceptions are provided for documentation and maintenance of local file in specific and **do not extend to information to be contained in a disclosure form** [Article 55 (1)]. Guidelines with respect to TP disclosure form and its applicability is awaited.
- **All transactions with related parties and connected persons are covered from a TP applicability point of view** per UAE CT Law unless specific regulations are released in this respect.
- An **arm's length evaluation of all transactions may still be required** to be performed unless specific regulations are released in this respect.

“You cannot discover new oceans unless
you have the courage to lose sight of the shore”

~ Unknown

Thank You!

Janak B. Panjuani

Mobile: +97150 6568307

Email: janak@janakpanjuani.com