

### **CORPORATE TAX 2023**

- Tax Grouping
- Transfer Pricing



## "Death, taxes and childbirth!

There's never any convenient time for any of them."

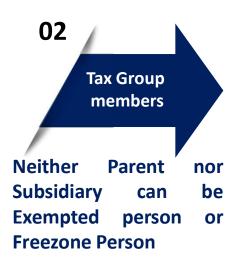


#### **TAX GROUPING - CONDITIONS**





Parent company must hold 95% of share capital and Voting rights of its subsidiary

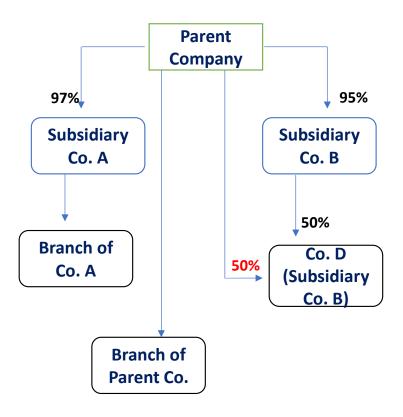




same financial year and Notice must be signed by Parent and Subsidiary to be submitted with FTA.

#### **TAX GROUPING - MEMBERS**





- > UAE Resident group of companies can form Tax Group
- ➤ Parent Co. must hold at least 95% of share capital and voting right
- ➤ Indirectly owned by Parent Co. and another Subsidiary is allowed
- > Branch of Parent co. or its subsidiary is allowed
- Administration and CT payment is the responsibility of Parent Company
- Parent co. and subsidiary will be jointly and severally liable for CT

#### **TAX GROUPING – OTHER POINTS**



- ➤ Intra-group transactions (Revenue-Expenses) between Parent co. and Subsidiary group member must be Eliminated
- > Tax effective for the group of profit making and loss-making entities only
- Group loss relief: UAE group companies, at least 75% commonly owned
  - Loss of FZP and Exempt company not allowed
  - ➤ Maximum 75% of taxable income of the receiving company
- > Inter-group transfer relief: Transfer of Assets and Liabilities between UAE group companies
  - > Are at least 75% commonly owned
  - ➤ No gain or loss booked for tax calculation
  - > Retain for three year within same group



## **Transfer Pricing**

- Transfer Pricing Impact
- Related Party
- Connected Person
- TP Method
- Methodology
- Compliances
- Issues & Challenges

## TRANSFER PRICING IMPACT – FOREIGN AND DOMESTIC



UAE businesses undertaking intra-group transactions and/or with connected person, need to comply with Transfer Pricing rules and documentation requirements set with reference to the OECD Transfer Pricing guidelines

The Transfer Pricing rules will certainly impact the businesses with <u>foreign</u> and <u>domestic</u> related party transactions covering but not limited to

- Sale & Purchase of Material
- > Sale & Purchase of Fixed Assets and Intangibles
- Reimbursement of Expenses
- > IT enables Services, Technical and Management Services
- > Royalty
- Loan received and paid

Taxpayer would be required to submit the disclosure and maintain a master and local file as prescribed under OECD BEPS Action 13.

#### TRANSFER PRICING IMPACT – FOREIGN



#### A. Value of Intra-group Reported transaction (Expense) is less than Arm's Length Price (ALP)



- > Sale of good from India to UAE at USD 4 million for further sell to European client at 5.5 million
- > ALP of import by UAE entity from India group co. is USD 5 million
- > since the reported purchase cost by UAE entity from RP is lower than the ALP, So the transaction is at ALP

#### B. Value of Intra-group Reported transaction (Expense) is more than Arm's Length Price (ALP)

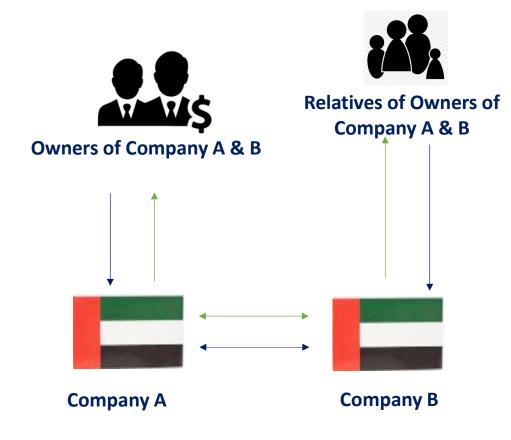


- > Sale of Technical/Management Services from Bahamas/Cayman Island (No Tax Jurisdictions) to UAE RP at USD 5 million
- > ALP of expenses transaction is USD 3 million (which is less than reported cost, so this is not at ALP)
- > Since its is transfer of excess expenses leads to transfer of profit from tax jurisdiction to No tax jurisdiction

In case of Intra-group revenue transactions, above situation will be Vice-versa.

#### TRANSFER PRICING IMPACT – DOMESTIC





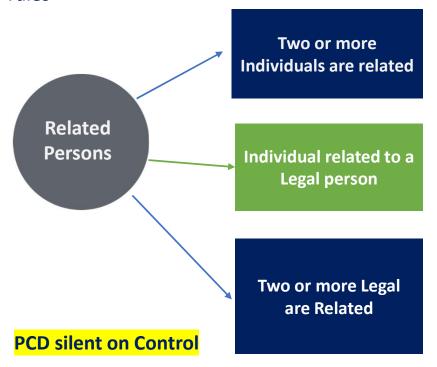
#### **Domestic Related Party Transactions**

- ➤ The salary, management remuneration benefits and management fee provided to the owners, partners and shareholders from businesses
- ➤ Loan and other intercompany arrangement qualify as Debt would be covered under the ambit of Transfer pricing rules.
- ➤ Allocation of Management and Resource sharing cost
- Business transactions (Sales and Purchase) between legal entities

#### **RELATED PERSONS**



The PCD envisages the principle of 'Arm's Length Price' which means the transaction or arrangement between Related parties or with Connected persons must be consistent with the results if same transaction would have done between independent parties. Hence, the concept of Related Persons is an essential backbone of the transfer pricing rules



- Relatives through birth, marriage or are otherwise relatives to the fourth degree;
- Partners in a partnership
- In <u>Partnership Firm</u>: Individual together with a Related Persons owns 50% or more of share capital or control
- ➤ In <u>Corporate</u>: Individual together with a Related Persons owns 50% or more of share capital or control
- One Legal entity together with related parties owns 50% or more of shares in other entity or its controls
- ➤ Legal entities with related parties, owns 50% of share in each other and controls them
- Branch or Permanent Establishment (PE)

#### **RELATED PERSONS – Control Definition**



#### **Control as per OECD guidelines**

- Capacity of one person to ensure that another person acts in accordance with the first person wish
- Exercise of control by one person over another to avoid or reduce their tax liability

Definition vary according to country and situation

#### **General Understanding of control with reference to KSA TP regulation**

Control over related person or Control by related person

Common Control

Control via
Governance
Control
Control via Funding
Control via Business

A nonresident or resident company that owns directly or indirectly 50% or more in a subsidiary or Subsidiary is owned by the company

Sister companies, where 50% or more of each is owned by the same Parent, directly or indirectly

Power to influence the decisions of the business through a management agreement, trust arrangement or control on the board of directors

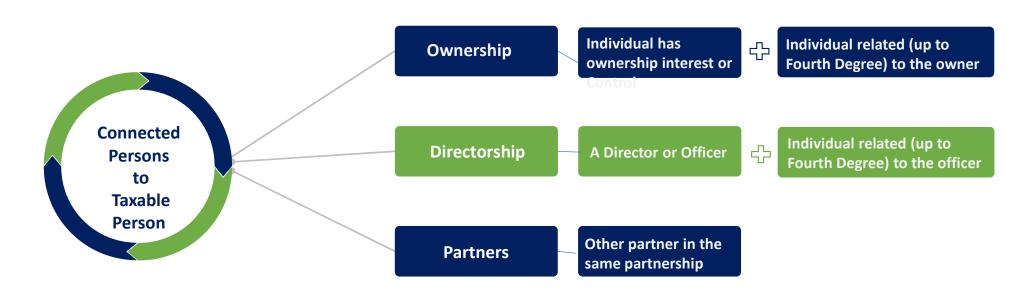
Control over the decision making of business via funding from an economic point of view

Dependency upon a major customer or distributor for business

#### **CONNECTED PERSONS**



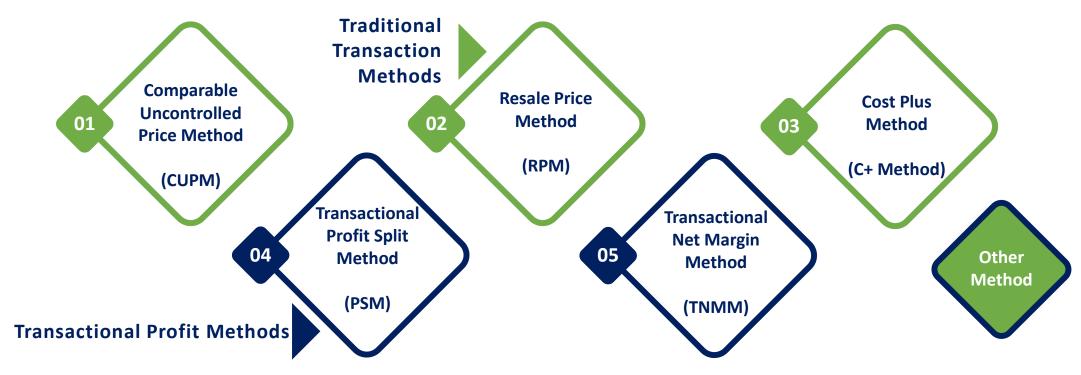
In the absence of personal income tax, payments to individual owners of taxable business can allow the leakage by allowing excess payments. To overcome with the such situation, the concept of Connected Person have been proposed in PCD.



<sup>\*</sup> Related Party of any of the above

#### APPROVED TRANSFER PRICING METHODS





The above methods are duly in line with the principles outlined in the 'OECD Transfer Pricing Guidelines

#### TRANSFER PRICING METHODS: BRIEF SUMMARY



Comparable
Uncontrolled Price
Method
(CUPM)

Comparison is made in prices charged in controlled vis-à-vis comparable uncontrolled transaction

Peculiar transaction
like direct
remuneration/shareho
lder, interest on
borrowing, Royalty, FTS
and other transactions
with strict product
similarity
(Pure documentation)

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Resale Price Method (RPM)

Analysis of resale margin earned in controlled vis-à-vis comparable uncontrolled transaction

Pure Trading
transaction (without
any value addition)
and GP margin is
checked as an
indicator, , mainly used
for distributors and
resellers

Cost
Plus Method
(C+M)

Analysis of direct and indirect cost markup earned in controlled vis-à-vis comparable uncontrolled transaction

Mainly used for manufacturing transaction and for providing services where cost of providing the services are calculated as an indicator

Transactional
Profit Split Method
(PSM)

Analysis of Allocation of profit margin to each participant in controlled vis-à-vis comparable uncontrolled

Transaction

This method is used for creation of intangible assets
(NP arising out of transaction)

Transactional
Net Margin
Method
(TNMM)

Analysis of net profit margin earned relative to an appropriate base earned in controlled vis-à-vis comparable uncontrolled Transaction

Indicator is operating profit to justify the reported profit. manufacturing, Royalty, FTS are covered under this method

#### **METHODOLOGY & PROCEDURAL FLOW**



# Identification of controlled transaction

Following aspects need to be considered **post** identification of controlled transactions:

- Understanding of the industry sector;
- ➤ Analysis of the **Economic role** that each RP performs
- Contractual terms of the Transaction;
- Carrying out Functional and Risk Analysis of Controlled Transaction;

#### Selection of Transfer Pricing Method

#### **Key Considerations:**

- ➤ Economic Analysis for selection of most appropriate
- > Availability of reliable information
- Degree of comparability between Controlled and Uncontrolled Transactions,
- Use of statistical approach to determine Arm's Length price based on Interquartile range

#### **Selection of Comparable**

- Selection of appropriate database
- ➤ Multiple year data
- > Selection of a relevant profit level indicator
- Determination of interquartile Arm's Length Range
- ➤ Identification of reasons for deviation

#### **Financial Analysis**

- Any deviation of Transfer Price from Arm's length range should be adequately demonstrated by Taxpayer.
- Analysis of each transaction on isolation basis, other than for Portfolio approach
- Reasons for losses incurred by related party in controlled transaction should be justified;

#### FOUR-TIER DOCUMENTATION



Disclosure Form

- Form to identify all related parties to controlled transactions
- **▶** All Business, Financial and Transactional Information
- ➤ Transfer Pricing Method applied

**Local File** 

- > Detailed information on all controlled transactions
- Comparability parameters applied by Taxpayer to justify arm's length price

**Master File** 

- > Information about global business operations and
- > TP policies of Multinational Enterprise(MNE)Group

Country by Country Report (CbCR) High-level blue print of MNE group's global operations with summary data and economic activity in each country



#### **MINIMUM DOCUMENTATION REQUIREMENTS: LOCAL FILE**

Latest Transfer Pricing guidelines prescribe some of the minimum requirements to be covered in Local File Transfer Pricing documentation to be maintained by Taxpayers

## Taxable person's information

- Description of Management structure and detailed organizational chart
- ➤ Detailed Business
  description and strategy
  including an indication
  whether the Taxable Person
  has been involved in or
  affected by business
  restructurings or transfer of
  Intangible property;
- > Key competitors

#### Material Controlled Transactions

- Description of Controlled Transactions and Identification of Related Party transactions
- Copies of all intercompany agreements
- ➤ Detailed Functions, Assets and Risk (FAR) analysis
- Detailed Economic analysis indicating method applied to test arm's length price of controlled transactions

#### Industry Analysis

- ➤ Through analysis of taxpayer's industry
- > SWOT Analysis
- ➤ Power of suppliers / buyers
- ➤ Availability of substitutes
- Market share and access to international markets
- Demand and supply trends

## Financial Information

- Annual Financial statements of taxpayer
- Information and allocation schedules showing how the financial data used in applying the transfer pricing method
- Summary of schedules of relevant financial data for comparables used in the analysis and the sources from which that data was obtained



#### MINIMUM DOCUMENTATION REQUIREMENTS: MASTER FILE

#### **Organizational Chart**

- Blue print of Organizational Structure of the (MNE) Group
- MNE's legal and beneficial ownership structure
- Geographical location of operating entities

## Business Description of MNE Group

- ➤ Description of Supply chain and important service arrangements between group members
- Description of main geographical markets of the group
- Brief Description of functional analysis of principal group members

# Description of MNE Group's Intangibles

- Description of MNE's overall strategy for development, ownership & exploitation of Intangibles
- List of Intangibles of MNE Group of which it is legal owner
- ➤ A list of important agreements
- General TP policy regarding intangibles

# MNE Group's Intercompany financial activities

- ➤ General description of how the group is financed, including material financing arrangements with independent lenders
- ➤ Identification of central financing function
- MNE Group's TP policies regarding financing arrangements

# MNE Group's financial and tax positions

- MNE Group's annual consolidated financial statement for fiscal year, prepared for regulatory, reporting and tax purposes
- Description of the Multinational Enterprise Group's any tax rulings relating to the allocation of income among countries

The aforesaid requirements are as per Transfer Pricing Guidelines issued by OECD

An independent member of UHY International

#### ISSUES AND CHALLENGES UNDER TRANSFER PRICING



#### **Data Availability**

Although Transfer Pricing guidelines permit the usage of multiple year data, however availability of data source from public domain is an essential consideration.

#### Losses

Guidelines are silent on adjustments to be made in case of losses suffered by taxpayer, whereas loss making comparable to be excluded from selection process.

#### **Audit Approach**

Approach of Tax Authority towards Transfer Pricing audit and expectations from taxpayers is a key area for consideration in undertaking effective compliance.

#### Onus

Entire Transfer Pricing law places onus on taxpayer for adherence of transfer price to the arm's length range. Hence, it is essential for taxpayer for clear understanding of the law.

#### **Database**

Transfer Pricing guidelines
do not specify any
particular database for
carrying out benchmarking. Accordingly, onus
is on taxpayer for the
reliability of benchmark
results

#### Margins

Guidance on safe harbour margins to be maintained by taxpayer is not provided by the guidelines. Hence, availability of reliable and comparable uncontrolled data is a key aspect.



## **Thank You**