Transfer Pricing Alert

Saudi Arabia Transfer Pricing Guidelines: Second Edition

03 June 2020

Introduction

In February 2019, the General Authority of Zakat and Tax (GAZT) in the Kingdom of Saudi Arabia (KSA) formally released the final Transfer Pricing Bylaws (TP Bylaws). The GAZT also subsequently issued the First Edition of the Transfer Pricing Guidelines (TP Guidelines) in March 2019. The TP Guidelines serves to provide guidance on how the TP Bylaws are to be applied in KSA.

On 1 June 2020, the GAZT has issued the Second Edition of the TP Guidelines. The Second Edition does not usher in any significant changes / additions to the application of the TP Bylaws.

Key highlights

The key highlights of the Second Edition of the TP Guidelines are provided below;

- Definitions have been added for the following terms;

    1. "Beneficial Ownership" - Means a natural person(s) who ultimately own(s) or control(s) the funds of the clients or on whose behalf a transaction or activity is being conducted. It also incorporates those persons who exercise ultimate effective control over a legal person or arrangement.

    2. "De Facto Owner of Intangibles" - Means the Person that is in control of the DEMPE functions, making the significant decisions and able to manage and bear the respective risks, and thus can be regarded as the "economic owner" of the intangibles. It is possible that the legal owner and de facto owner are not the same Person.

    3. "Group" - Two or more enterprises who are Related Persons such that they are required to prepare Consolidated Financial Statements for financial reporting purposes under applicable accounting principles or would be so required if equity interests in any of the enterprises were traded on a public securities exchange.

- The TP Guidelines reinforces on the fact that there is no materiality threshold for the applicability of the arm's length principle on controlled transactions. Hence, the underlying principle is that all controlled transactions, irrespective of the value, should be at arm's length.

- The TP Guidelines state that when identifying Related Persons via Effective Control the facts and circumstances of the situation should also be carefully considered to determine if this results in Effective Control. Even though there is a presumption of control through governance, funding or business it would be up to the taxpayer to evaluate and demonstrate that there is in fact, no Effective Control.

- The TP Guidelines further reinforces the fact that for Audit Procedures and fines / penalties reference should be made to the respective Articles in the Income Tax Law.

- Further guidance is provided in respect of Country by Country Reporting (CbC Reporting), specifically in terms of the following instances;

    1. The exemption threshold for CbC Reporting was set at SAR 3.2Bn, which was the January 2015 equivalent of EUR 750 Mn. However, due to currency fluctuations if the SAR 3.2 Bn is no longer aligned with EUR 750 Mn, the TP Guidelines seems to refer to the fact that the exchange rate as of FY 2018 should be considered when identifying the exemption threshold for CbC Reporting. Further clarification may be required from GAZT on this point.

2. Under the First Edition of the TP Guidelines it was stated that even if the Ultimate Parent Entity (UPE) or Surrogate Parent Entity (SPE) of a Multi National Entity (MNE) does not file CbC Report as it does not meet the Statutory Consolidated Revenue Threshold (SCRT) set in its own jurisdiction, the MNE would be required to file a CbC Report in KSA provided it meets the SCRT of SAR 3.2 Bn.
   However, GAZT has revised its position in the Second Edition of the TP Guidelines as the Guidelines state that the MNE is not required to file CbC Report in KSA even if the SCRT of SAR 3.2 Bn is met, provided that the UPE or SPE is not required to file CbC Report due to the SCRT not being met in its own jurisdiction.

3. The registration process for GAZT's CbCR portal is explained in details in an appendix to the TP Guidelines. This content has been provided previously by GAZT when the CbCR portal was launched.

- Article 14 (B) of the TP Bylaws state that the Disclosure Form of Controlled Transactions (DFCT) is to be submitted within 120 days of the end of the financial year of the taxpayer. This would usually coincide with the deadline for filing of the Tax Declaration. However, the TP Guidelines state that the 120 days period would still apply for filing of DFCT even if there were exceptions to the deadline of filing of Tax Declarations.

- The TP Guidelines state that, in terms of the Chartered Accountant's Certificate (TP Affidavit), GAZT would accept both "limited" and "reasonable" assurance engagements provided the same is provided by a licensed auditor in KSA.

As mentioned earlier, most of the changes in this Second Edition are merely cosmetic in nature. However, the taxpayer has now the possibility to "opt out" of Transfer Pricing, if he can substantiate that no effective control relationship exists. It remains unclear how taxpayers are expected to demonstrate this and how GAZT would approach such cases.

How KPMG can help you?

Our qualified teams with a strong background and knowledge in transfer pricing and corporate tax combined with familiarity with related local and regional legal frameworks, can help you understand the GAZT's requirements and expectations. Furthermore, as part of KPMG's global network, our experts have good understanding of issues that generally arise with the introduction of Transfer Pricing regulations. We seek to localize our international experience for the benefit of our clients.

Contact us

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