Kuwait Tax Alert - 2019

Transfer pricing regime is gaining good momentum in Gulf Cooperation Council (GCC) region

The tax and regulatory landscape within the Gulf Cooperation Council (GCC) region is changing with few countries joining the Base Erosion and Profit Shifting (BEPS) Inclusive Framework (IF) and committing to adopt the BEPS minimum standards. The minimum standards are elements contained in Action 5 (i.e. harmful tax practices), Action 6 (i.e. tax treaty abuse), Action 13 (i.e. transfer pricing documentation and country-by-country reporting) and Action 14 (i.e. dispute resolution).

The transfer pricing (TP) documentation and country-by-country reporting (CbC) is gaining good momentum within the GCC region. Let's take a quick look at the status of countries within the GCC region as of July 2019

Countries	BEPS commitment	TP landscape	CbC	Master File	Local File
Bahrain	Signed IF	No rules for documentation	×	×	×
Kuwait	Signed MLI	Arm's length principle applied as anti-avoidance measure, no specific documentation requirements	×	×	×
Oman	Signed IF and MLI		×	×	×
Qatar	Signed IF and MLI	Rules published	✓	×	×
Saudi Arabia	Signed IF and MLI	Rules published	✓	✓	✓
United Arab Emirates	Signed IF and MCAA	No rules for documentation	×	×	×

TP audits are going to increase

Transfer pricing audits will increase in the GCC countries and tax authorities will start questioning regarding the TP policies for intragroup transactions

With increase in the tax audits, it will be interesting to see how the tax authorities will use the information documented in these reports to make the transfer pricing risk assessments

What's next for multinational enterprise in GCC

For countries with documentation requirements

- **Qatar :** Resident entities that are members of multinational groups having annual consolidated revenues exceeding QAR 3 billion (approximately USD $800 million) in the previous year are required to comply with the CbC report filing requirements for fiscal years commencing on or after 1 January 2017

  Exception: Qatar-resident entities not being the ultimate parent entity of multinational entities group will not be required to file notifications of CbC reports for the years 2017 and 2018

- **Saudi Arabia** : Three-tiered TP documentation would be applicable (i.e. master file, local file and CbC report) subject to certain conditions. The following key features should be remembered:
  - Definition of controlled transactions
  - Filing disclosure form of the controlled transactions along with income tax return
  - Certification from a licensed auditor for consistent application of TP policy
  - Zakat payers need not comply (except for CbC provisions)

Note : [a] Controlled transactions means any transaction involving related persons or persons under common control. Controlled transactions shall include any notional transactions or consideration exchanged between a person and its PE, to the extent that such transactions are recognized for the purpose of Law [b] Multilateral Instrument (MLI) [c] Multilateral Competent Authorities Agreement (MCAA)

- Exception: There is an exception for controlled transactions not exceeding SAR 6 million (approximately USD $1.6 million) in a 12-month period
- Effective beginning 31 December 2018

For countries without documentation requirements

Countries like Bahrain, Kuwait, Oman, Qatar and UAE should ideally start preparing for the upcoming TP legislation. Being prepared would in fact give a good opportunity for MNEs in GCC to focus on the following:

- Aligning the business models with the international business principles
- Efficient control over global tax costs (i.e. compliance costs)
- Creating a level playing field in terms of operational or financial model
- Allocation of group resources to address the latest developments in GCC region
- Adopt the change and transform with the effective advise from headquarters and specialists in the TP regime

The tax authorities in Kuwait, Oman and Qatar are applying TP principles as anti-avoidance measures within the existing tax law and regulations. During tax audits, if the taxable income is understated due to related party transactions, the tax authorities have started requesting supporting documents or the evidence to support the arm's length nature of such transactions.

Next steps to be considered by MNEs in GCC

- Discussions with the headquarters on the latest developments in the GCC region
- Analyze on whether you have right resources and infrastructure to meet the new reporting requirements
- Consider obtaining advice from the experts within the transfer pricing regime
- Deploy resources at the right time to comply with the TP regulations

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