



# Saudi Arabia

## Transfer Pricing Guidelines issued

### 1. Introduction

- 1.1. Following the issue of the Final Transfer Pricing bylaws ('TP Bylaws') on 15 February 2019, the General Authority of Zakat and Tax ('GAZT') of the Kingdom of Saudi Arabia ('KSA') has, on 7 March 2019, issued (in English) the much-awaited [Transfer Pricing Guidelines](#) ('the Guidelines') which provide detailed guidance on application of the TP Bylaws and the GAZT's views thereon. Along with the TP Bylaws, the GAZT had also released a set of Frequently Asked Questions ('FAQs') to address certain specific queries relating to transfer pricing. Our alert on the TP Bylaws and the FAQs can be accessed [here](#).
- 1.2. The Guidelines are comprehensive (187 pages) and explain procedural and practical considerations for taxpayers while undertaking transfer pricing compliances including a step-by-step comparability and functional analysis along with specific guidance on financial transactions, intangibles, business restructuring, valuation approaches and permanent establishments. The Guidelines also include a detailed description of the transfer pricing methods and situations in which each method may be used, along with illustrations in respect of the same. The clarifications and guidance contained in the Guidelines are largely based on the OECD TP Guidelines<sup>1</sup>.
- 1.3. This alert summarizes some of the important clarifications provided in the Guidelines which were not covered in the TP Bylaws and the FAQs, and the steps involved in determination of the arm's length nature of controlled transactions and related documentation thereof.

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<sup>1</sup> OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations



## 2. Guidelines - What's new

The following table summarises some of the unanswered questions and issues emerging from the TP Bylaws which have been discussed in the Guidelines:

S.No.	Issue	Clarification as per the Guidelines	Guidelines Reference
<b><u>Regarding computation of arm's length</u></b>			
1.	What range of values will constitute the appropriate arm's length range?	The Interquartile range.	Para 4.2, Page 57
2.	What value within a range should be used for determining the TP policy and serve as the basis for any TP adjustments to be made to the income tax base?	The Median.	Para 4.2, Page 58 and Para 4.4.1, Page 83
3.	For how many years is the data of comparables to be taken for economic analysis?	Three years; Arm's length range is to be calculated using the weighted average of these three years.	Para 4.3.3, Page 79
4.	Can loss-making comparables be considered for computing arm's length range?	No	Para 4.3.3, Page 79
<b><u>Regarding TP documentation</u></b>			
5.	What is the meaning of 'sufficient documentation' required to be maintained by taxpayers (even in case exempted from preparation of Local File and Master File)?	Generally, most information listed in the Bylaws under the Master File and Local File should be documented, including, in particular, a functional analysis and an economic analysis.	Para 5.2, Page 89
6.	How will the Disclosure Form of Controlled Transactions ('DFCT'), CbC notification and auditor's affidavit be filed?	User manual provided on filing the same; Affidavit from the auditor to be attached along with the same (format not provided).	Appendix 11, Page 171
7.	If there are multiple taxpayers in KSA belonging to the same MNE group, do they have to maintain separate Local File for each entity?	No. The GAZT may accept one combined Local File if it includes a similar level of detail with respect to the individual Taxpayers.	Para 5.3.2, Page 91
8.	What is the format for Country-by-Country ('CbC') Report?	Given in Appendix 10 – This is in line with the OECD BEPS Action plan 13 report.	Appendix 10, Page 168
9.	Where a KSA entity files a CbC report on behalf of other group entities in KSA, how will it inform the GAZT regarding the same?	Currently, there is no form for such notification and accordingly, such notification must be made manually <sup>2</sup> .	Para 5.6.2, Page 105
<b><u>Others</u></b>			
10.	Are the Guidelines binding on the taxpayer/ GAZT? Further, can reliance be placed on OECD TP Guidelines?	While the Guidelines are not binding, they provide insight into the GAZT's interpretation and views on the TP Bylaws. For issues not addressed by the TP Bylaws/ FAQs/ Guidelines, taxpayers may refer the OECD TP guidelines <sup>3</sup> .	Para 1.4, Page 23

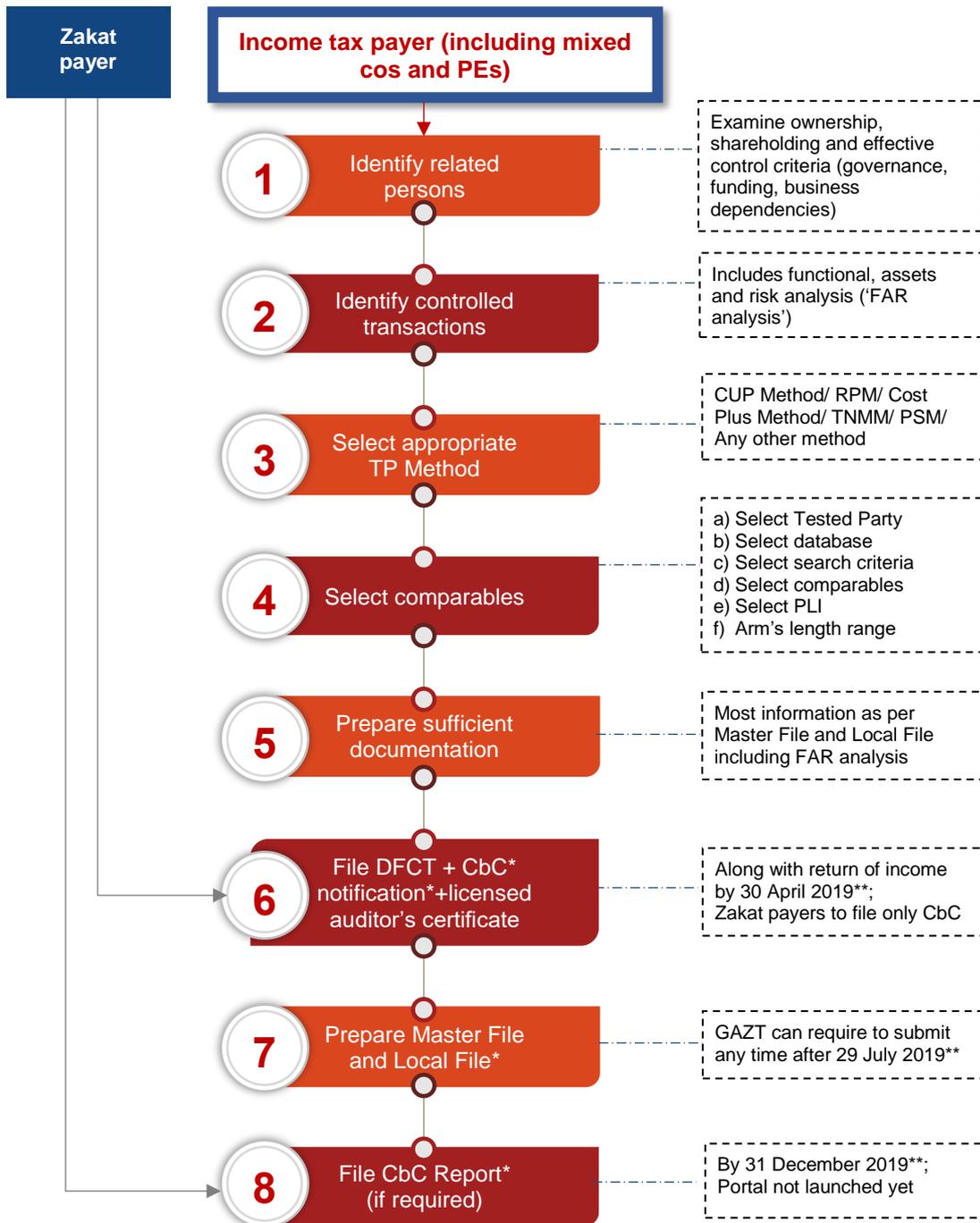
<sup>2</sup> Each entity will notify the GAZT regarding the details of KSA entity filing the CbC report on its behalf in the DFCT.

<sup>3</sup> It has been clarified that the Bylaws, FAQs and Guidelines will supersede the OECD TP guidelines, while addressing any issue/ matter.



### 3. Steps to be followed in undertaking Transfer pricing compliances

The flowchart below shows the steps to be followed by taxpayers in order to ensure compliance with the TP Bylaws. The same have been detailed in the Guidelines.



\*CbC provisions are applicable only in cases where the taxpayer is part of an MNE group with consolidated group revenues exceeding SAR 3.2 bn during the year ending 31 December 2017. Master File and Local File are required to be prepared only where arm's length value of transactions exceed SAR 6 mn. These thresholds need to be examined each year for determining applicability of the relevant provisions.

\*\*These dates are for the controlled transactions undertaken during the year ended 31 December 2018. For subsequent years, the GAZT may require submission of the Master File and Local File anytime after 30 days of filing the DFCT (30 May 2020 for the year ending on 31 December 2019).



#### 4. What next for businesses with KSA operations

While the arm's length concept is not new to KSA (similar provisions are embedded in its income tax law), detailed TP Regulations (i.e. TP Bylaws read with the Guidelines) have been issued in KSA for the first time. Given that this will be the first year of compliance under the TP Bylaws, taxpayers may face some challenges especially where clear guidance is not available in the TP Regulations. However, the Guidelines allow taxpayers to rely on the principles contained in the OECD guidelines which contain even more detailed guidance on application of TP principles (like undertaking appropriate adjustments to transfer prices) and in respect of non-routine transactions (for instance, hard-to-value intangibles).

Also, the TP Bylaws allow using "any other method" which gives flexibility to the taxpayers to apply transfer pricing methodology other than the given five methods in cases where it may not be possible to use such methods. There are many databases/ information available in the public domain for benchmarking such transactions as well (for e.g. remuneration to managerial personnel as transactions with natural persons also included in the definition of controlled transactions).

Given the limited timeframe for first compliances (only **50 days** left for submission of DFCT) and considering that the information provided in the DFCT will set the tone for any transfer pricing assessments by the GAZT, businesses in KSA should commence their transfer pricing analyses as early as possible. This will include but is not limited to collation, examination and validation of relevant details and information, determination the arm's length value, preparation of TP documentation for filing before the authorities and designing TP policies (including necessary inter-company policies and agreements) for future years.

We will publish our detailed report on the TP Bylaws, FAQs and the Guidelines soon.

#### 5. Contact us

If you would like our assistance in understanding the specific implications of the transfer pricing bylaws to your business, planning ahead from a litigation risk mitigation perspective and undertaking requisite compliances, please feel free to get in touch with us at [nilesh.ashar@dhruvaadvisors.com](mailto:nilesh.ashar@dhruvaadvisors.com) or [varnika.jain@dhruvaadvisors.com](mailto:varnika.jain@dhruvaadvisors.com).



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