**Transfer Pricing main guidelines**

Transfer Pricing Guidelines which were first issued in 2010, were recently updated by The ETA “Egyptian tax Authority “

**The ETA has issued new decree 547 dated October 21, 2018 including the new updated transfer pricing guidelines.**

The new guidelines will be the base for Egyptian Tax Authority (ETA) to rely when assessing the arm's length of financial or controlled commercial transactions which occur between associated enterprises.

These transactions can include, but not limited to:

* Exchange of commodities or services.
* Group cost allocation.
* Royalties.
* Interests.
* Other financial or commercial activities.

It is worth to be mentioned that it is not allowed not to follow the new transfer pricing guidelines unless it was requested by the taxpayer and accepted by the head of the ETA.

After Egypt became associate member of Base Erosion & Profit Shifting (BEPS), certain amendments in Egyptian tax legislation were supposed to follow in order to match with the new BEPS four minimum standards of actions including Action 5 (Harmful Tax Practices), Action 6 (Treaty Abuse), Action 13 (Country by Country Reporting) and Action 14 (Dispute Resolution).

Accordingly, the new transfer pricing guidelines were issued to cover the BEPS four minimum actions requirements.

The new guidelines to reflect changes made in the Organization for Economic Cooperation and Development (OECD) as a main source to rely on and to facilitate the implementation of BEPS actions specially Country by Country Reporting CbCR.

**Three-tiered TP documentation:**

* Introducing three-tiered level of transfer pricing reports for transparency to include **Master File**, for the ultimate holding company of the group, **Local File** for each subsidiary in the group and **CbCR** to be submitted in the specific deadline.
* Threshold for Egyptian parent group who has equal or more than EGP 3 billion (Euro 144 million) of consolidated revenue where the holding company/individual is **inside** Egypt will be required to maintain the filing for CbCR.
* Threshold for Egyptian group who has equal or more than Euro 750 million of consolidated revenue where the holding company/individual is **outside** Egypt will be required to maintain the filing for CbCR.

**TP Documentation Deadline:**

**1. It is now mandatory to file the above mentioned three tiered reports within the following deadlines:**

**–** Master file: Will depend on the country of the ultimate parent deadline submission. This has to be available to ETA when needed if the ultimate parent is in Egypt.

**–** Local file: Two months following the submission of the tax return deadline.

**–** CbCR: During one year after the concerned financial year end.

**2. The above-mentioned changes are to be followed and applied starting from financial year end of December 31, 2018.**

**Comparability Analysis:**

* All comparability analysis and benchmarking can be made every three years unless there was a change in the group functions or business that may need to maintain new comparability analysis and benchmarking before three years.
* Comparable figures included in the comparability analysis need to be within local market and if not available then it can be within the geographic region (Middle East). In case no comparability figures within the region then global comparable figure can be relied on

**Advance Pricing Agreement (APA)**

* Advance Pricing Agreements were introduced in the new transfer pricing guidelines update, this provide the taxpayer probability to agree in advance with ETA about his prices with associated enterprises in order to facilitate and save efforts, cost and reduce risk.
* There are many APA types as per the new TP guidelines which was derived from the OECD as a main reference.
* This APA is to be used and applied for some taxpayers who have unique complex TP issues.
* With regard to APA request, specific steps and procedures with documents were introduced to be followed.
* Specific forms were also presented to be used for APA official request.
* ETA has the right to accept or reject or adjust the scope of the submitted APA official request.

**Tax Risk:**

* As per article 129 of income tax law 91/2005, if the taxpayer complies with the law, it is supposed that the burden will be on the ETA side. However, according to article 90 and 130 of income tax law, if the taxpayer fails to comply with the above-mentioned TP requirements, especially when not submitting the data and documents supporting the tax return or submitting incorrect, inaccurate and inadequate documents will result in serious consequences for the taxpayer.
* The consequences of not submitting the TP requirements shall expose the taxpayer to let the ETA have the chance to estimate prices between associated enterprises and adjust these prices to asses additional taxes for Egyptian taxpayers.
* It is also assumed that the ETA will review TP documentation submitted by the taxpayer and may adjust prices from its own perspective.
* In all cases, if ETA will adjust prices, this will result late payment interest and delay fines as follows:

**\*** As per article 110 of income tax law, annual credit interest rate plus 2% for every year late, effectively it can reach around 19% for 2018 only per year.

**\*** As per article 87 BIS, progressive delay fines can be calculated as follows:

**–** 5% of the tax payable on the non-included amount if such amount is equivalent to 10% up to 20% of the legally payable tax;

**–** 15% of the tax payable on the non-included amount if such amount is equivalent to more than 20% up to 50% of the legally payable tax; and

**–** 40% of the tax payable on the non-included amount if such amount is equivalent to more than 50% of the legally payable tax.

* If not providing the TP documents needed, then, as per article 135 of income tax law, taxpayer will be entitled to a fine between EGP 20,000 and EGP 50,000.
* In addition, transfer pricing risk can be also triggered for Value Added Tax (VAT) purposes as it is stated in article 10 and article 54 of VAT law that transactions between associated enterprises should occur with similar prices compared to those transactions with non – associated enterprises. In addition, transactions between associated enterprises shall be disregarded in case it was made for tax avoidance by any mean.

**Associated risk in this regard shall include:**

**–** Payment of VAT differences plus late payment interest.

**–** Late payment interest shall be 1.5% for every month late.

**–** In case it is viewed as a tax evasion, then criminal act consideration and the minimum punishment is three to five years in prison along with fixed fine whichever or both. Compromise with ETA may be accepted and will expose to pay additional 50% of the original unpaid tax.

**source of information**

[**http://www.mof.gov.eg/MOFGallerySource/English/PDF/Egyptian-Transfer-Pricing-EN-Guidelines-2018.pdf**](http://www.mof.gov.eg/MOFGallerySource/English/PDF/Egyptian-Transfer-Pricing-EN-Guidelines-2018.pdf)

**&** resumed **by** Andersen Tax & Legal Egypt's tax team

**Copied , modified and published by Hisham Elkomy**