

Tax alert | GAZT issues second edition of TP guide

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keypoint

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In May 2020, the General Authority of Zakat and Tax (GAZT) issued a second edition of its transfer pricing (TP) guidelines. The lengthy document – 12 sections and 16 appendices spread across 345 pages – covers much of the same ground as the first edition but includes some new additions and some new sections, the most notable of which include:

Definitions

Authorised OECD approach – how profits must be allocated to permanent establishments.

De facto owner of intangibles – the person who controls development, enhancement, maintenance, protection and enhancement (DEMPE) functions, takes significant decisions and can manage risks. The legal and *de facto* owners may not be the same person.

Business owner – As well as persons who exercise ultimate effective control over a legal person or arrangement, the natural person(s) who ultimately own(s) or control(s) the taxpayer or on whose behalf a transaction or activity is conducted.

Group – Two or more enterprises that are related and prepare consolidated financial statements for financial reporting purposes or would be required to do so if their equity interests were traded on a public securities exchange.

Updated sections

3.2.2.3 Control through business dealings

When sales from a single customer equal or exceed 50% of the total sales of the business, that customer is generally considered to have control over the business. If, however, there is no direct or indirect ownership or influence on pricing terms, taxpayers can argue that there is in fact no effective control.

4.3.4 Selection of comparable data

The appropriateness of potential comparable persons identified through a database search must be assessed – which means assessing functions performed, risk profiles, the industry in which they operate and any other relevant factors. Information on uncontrolled transactions within a similar industry and a country similar to Saudi Arabia should also be obtained.

5.2 General documentation

The taxpayer has 30 calendar days (not business days) to submit its transfer pricing documentation upon a request from GAZT.

5.6.3 Chartered accountant's certificate

A SOCPA-licensed auditor must certify - with limited or reasonable assurance - that the MNE group's TP policy has been applied consistently.

Additional appendices

Appendix 11 GAZT's AEOI portal

In accordance with the OECD's multilateral competent authority agreement ratified by Saudi Arabia, reporting entities are required to register with GAZT's AEOI portal, enabling them to file their FATCA, CRS and CbC reports online.

Disclaimer: This tax alert is based on a review of the second edition of GAZT's transfer pricing guidelines released in May 2020 and is for general information. Seek professional advice in relation to your particular circumstances.