

**Saudi Arabia issues final
transfer pricing bylaws**
Summary of key considerations
February 18, 2019

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Saudi Arabia issues final transfer pricing bylaws

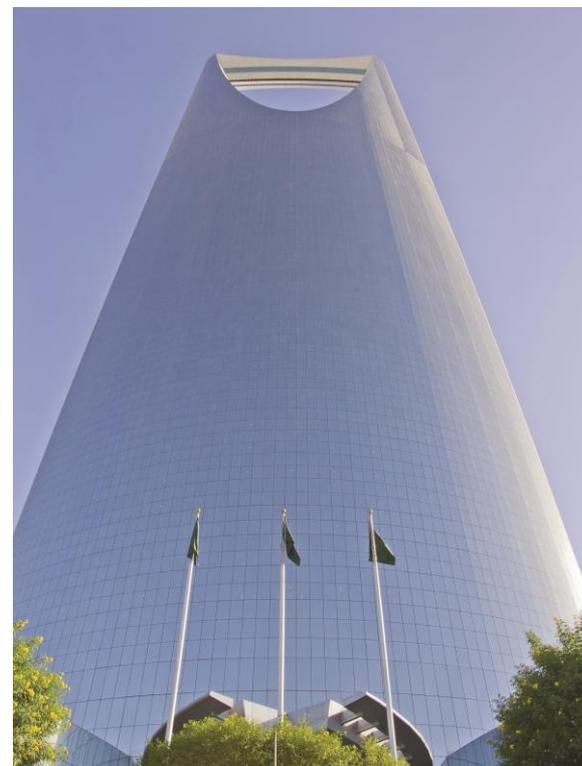
A snapshot of key requirements and deadlines

| Disclosure form | Country-by-Country Reporting ("CbCR") | Master file/Local file |
|---|--|---|
| <p>Who needs to submit?</p> <ul style="list-style-type: none">• All taxable persons (i.e., entities subject to corporate income tax ("CIT") only and entities subject to CIT and Zakat).• Must include all related party transactions, regardless of their value, as well as other business-related, financial and transactional information.• Part of the annual income tax return. <p>Deadline for submission</p> <ul style="list-style-type: none">• 120 days after the fiscal year-end. <p>What has changed vs. the draft bylaws?</p> <ul style="list-style-type: none">• Must include an affidavit from a licensed auditor based in KSA, to certify the consistent application of the taxpayer's TP policy (see slide 6). | <p>Who needs to submit?</p> <ul style="list-style-type: none">• All taxable persons (i.e., entities subject to CIT only and entities subject to CIT and Zakat), as well as pure Zakat-paying entities with annual group consolidated revenues > SAR3.2B (~USD850M).• CbCR notification to be submitted in KSA by KSA-based constituent entities incl. UPEs or SPEs.• CbC report to be submitted in KSA by:<ul style="list-style-type: none">• UPE of KSA-headquartered multinational enterprises ("MNEs").• SPE of non-KSA headquartered MNEs. <p>Deadline for submission</p> <ul style="list-style-type: none">• CbCR notification due 120 days after the fiscal year-end• CbC report due 12 months after the fiscal year-end <p>What has changed vs. the draft bylaws?</p> <ul style="list-style-type: none">• Additional guidance in relation to filing procedure for MNE groups in KSA (see slide 8). | <p>Who needs to submit?</p> <ul style="list-style-type: none">• All taxable persons (i.e., CIT only, CIT and Zakat-paying entities), if aggregate annual value of related party transactions exceeds SAR6M.• Does not apply to pure Zakat-paying entities.• May be requested any time, 120 days after the fiscal year-end by the GAZT. <p>Deadline for submission</p> <ul style="list-style-type: none">• Within 30 days upon request from the GAZT (see below) for both the Master file and Master file. <p>What has changed vs. the draft bylaws?</p> <ul style="list-style-type: none">• Additional 60-day extension for submission, if requested during 2019 (see slide 9).• Additional guidance on content for certain sections of the Master file and Local file (see slide 9). |

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Introduction

- On 15 February 2019, the Kingdom of Saudi Arabia's ("KSA") General Authority of Zakat and Tax ("GAZT") issued their final transfer pricing ("TP") bylaws ("final bylaws"), accompanied by frequently asked questions ("FAQs") to provide taxpayers with additional guidance on the application of the final bylaws.
- Deloitte had published a summary document, expressing initial views on the draft regulations issued on 10 December 2018. The final regulations are not a material departure from the draft bylaws, but offer additional guidance and certain welcome extensions in relation to the submission of the Local file and Master file.
- In this document, we have summarized critical aspects of the final bylaws, as well as key changes and clarifications relative to the draft bylaws.



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What has stayed the same?

Deadlines for submission

- The deadline for submission of the disclosure form, and the CbCR notification for KSA-based constituent entities incl. ultimate parent entities (“UPEs”) and surrogate parent entities (“SPEs”) is 120 days after the fiscal year-end.
- The CbC report should also be submitted 12 months after the fiscal year-end.

Penalty provisions

- The final bylaws provide no additional guidance on penalties and their application.
- Our view, which is also supported by the supporting FAQs, is that penalties shall apply in accordance with the provisions of KSA’s corporate income tax law¹.

¹ Please refer to Q52 under the Adjustments/penalties section of the FAQs.

Other guidance

Guidance around exemptions, penalties, definitions, the arm’s length principle, approved TP methods, and their application remains, and other articles in the final bylaws remains largely unchanged, and should not impact taxpayers’ overall compliance obligations.



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What has changed?

Definition of effective control

- The final bylaws provide an updated definition of effective control under Article 1 in certain cases.
- Specifically in respect of outstanding loans, guarantees and overall value of business activities, the determination of whether an effective control relationship exists, should be made using the **year-end balances** of the aforementioned transactions.

Definition of related persons

- Under Article 1, the final bylaws **exclude wording** pertaining to the relationship between juridical persons based on direct/indirect participation in the management, control, or capital of the other juridical person.
- Our view is that this does not significantly change the definition of a related person, which still be analyzed, depending on whether a common or effective control relationship exists.

Definition of taxable persons

- In the final bylaws, the definition of a taxable person has been **expanded to also include pure Zakat-paying entities**.
- Therefore, in addition to being applicable to all taxable persons (i.e., entities subject to CIT only and both CIT and Zakat) under KSA's CIT law², Article 2 now clarifies the applicability of certain provisions of the final bylaws to apply to pure Zakat-paying entities as well, specifically, referring to CbCR provisions under Article 18³.

² The Income Tax Law issued by Royal Decree No (M/1) dated 15/1/1425H and amendments thereafter.

³ Please refer to Q4 of the FAQs for additional guidance in relation to pure Zakat-paying entities.

Effective period and statutory limitations

- Whereas, the final bylaws still apply to reporting periods ended 31 December 2018 and after. The GAZT may, in accordance with provisions of KSA's CIT law initiate assessments for prior reporting periods as well.

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What has changed?

Disclosure form

- Guidance in the final bylaws in relation to the disclosure remains broadly unchanged. While the GAZT is yet to release details around the structure and format of the disclosure form, the supporting FAQs provide some helpful clarifications, as summarized below.

| Clarifications | Summary of GAZT comments |
|--|---|
| Due date | <ul style="list-style-type: none"> 120 days after the fiscal year end. |
| Language | <ul style="list-style-type: none"> Same as tax declaration (return). |
| Shareholding details | <ul style="list-style-type: none"> Must be declared incl. names, jurisdictions and ownership percentages. In case of publicly listed companies, shareholdings > 5% should be reported. |
| Disclosure of transactions with related parties | <ul style="list-style-type: none"> Covers both natural or juridical persons; must be declared regardless of transaction value (i.e., must be declared even if aggregate value < SAR6M). |
| Aggregation of transactions | <ul style="list-style-type: none"> Netting of transactions is not permitted. Transactions of a different nature (i.e., expense or revenue) should be discretely reported. Aggregation is permitted, if transactions are of a similar nature and type, and are concluded with the same related party. |

Disclosure form (cont'd)

| Clarifications | Summary of GAZT comments |
|--|---|
| Declaration of transaction value | <ul style="list-style-type: none"> Same value or price used for computation of tax base (i.e., the arm's length price). |
| Affidavit requirement | <ul style="list-style-type: none"> An affidavit from a licensed auditor in KSA required to certify the consistent application of TP policy. |
| Details of business restructurings | <ul style="list-style-type: none"> Internal reallocation of functions, assets and risks to the extent deemed material, should be disclosed. |
| Maintenance of Master file/Local file | <ul style="list-style-type: none"> May be checked as 'Not applicable' if annual value of annual related party transactions < SAR6M. |
| Non-monetary transactions | <ul style="list-style-type: none"> Should be declared, to the extent a similar transaction with an unrelated party may have warranted some level of consideration. |
| CbCR notification | <ul style="list-style-type: none"> CbCR notification to be included as part of the disclosure form (if applicable). Must include the full legal name and tax identification number of the group entity filing the group's CbC report. |

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What has changed?

Disclosure form (cont'd)

- As noted in the table above, a key new requirement for the disclosure form is a **mandatory affidavit from a licensed auditor** (i.e., licensed to operate within KSA) to certify the consistent application of the MNE's transfer pricing policy in relation to its intragroup transactions.
- According to Article 14(C):
'...Together with the Disclosure Form of Controlled Transactions the Tax Payer must submit an affidavit from a licensed auditor through which the auditor certifies that the Transfer Pricing policy of the MNE is consistently applied by and in relation to the Tax Payer...'
- Given the relatively tight deadline for submission of the disclosure form, our view on the above is that taxpayers should start gathering evidence to support the application of their transfer pricing policy, albeit we appreciate that the Local file will formally document this, as well as the arm's length nature of intragroup transactions undertaken, going forward.

Disclosure form (cont'd)

- It is important to note that the licensed auditor issuing the affidavit must certify the consistent application of the transfer pricing policy, but need not comment on the appropriateness or arm's length nature of the policy itself – the latter should be within the remit of the taxpayer to support and provide evidence for.

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What has changed?

CbCR

- As noted earlier, the key changes in relation to CbCR under the final bylaws relate to pure Zakat-paying entities.
- Amendments to Article 18 make it clear that pure Zakat-paying entities shall be subject to CbCR requirements, if they meet the consolidated group revenue threshold of SAR3.2B, notwithstanding whether they are a KSA-based UPE or a pure Zakat-paying constituent entity of a non-KSA based UPE.
- In our experience, several MNEs groups that have taken the position of excluding pure Zakat-paying constituent entities from their prior-year CbC reports should amend their reporting strategy going forward, to ensure they remain compliant with the final bylaws.

CbCR (cont'd)

- The supporting FAQs provide some welcome clarifications, as summarized below.

| Clarifications | Summary of GAZT comments |
|--|---|
| Who is required to file a CbC report in KSA? | <ul style="list-style-type: none"> • UPE of KSA-headquartered MNEs. • SPE of non-KSA headquartered MNEs. |
| Who is required to file a CbCR notification in KSA? | <ul style="list-style-type: none"> • Constituent entities incl. the UPE or SPE shall notify the GAZT of the identity and residence of the reporting entity (i.e., entity submitting the CbC report), included as part of the tax return. |
| CbCR filing mechanism for MNE groups in KSA | <ul style="list-style-type: none"> • Filing to be done via online portal. • Taxpayers to require a one-time registration. • More details to follow in the coming months. |

** In the event of multiple KSA-based constituent entities, only one entity should notify and file on behalf of the group.*

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What has changed?

Master file and Local file

Extension of submission timelines

- Whereas, the Master file was due to be submitted to the GAZT within 30 days upon request, the final bylaws now also allow taxpayers up to 30 days to furnish a Local file, upon request (a welcome extension from the seven days under the draft bylaws).
- Specifically, for the calendar year 2019 ("CY19"), taxpayers shall be granted an additional 60-day extension to furnish the Master file and/or Local file, upon request, providing taxpayers at a minimum, 210 days (i.e., after the fiscal year-end, to prepare and submit the aforementioned documentation (assuming documentation is requested by the GAZT).
- We note that the GAZT may request the Master file and/or Local file any time, 120 days after the fiscal year-end.

Master file and Local file (cont'd)

Content

- The final bylaws provide additional guidance on the content in certain sections of the Master file and Local file.
- For example, the Master file, in addition to listing the MNE group's intangibles, must also provide the identity of the legal and de facto (i.e., economic) owner of the intangibles.
- Information in the Local file pertaining to business strategy and business restructurings (if any) should relate to the current year, as well as the preceding year.

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What has been confirmed?

Language of documents

- The GAZT encourages all documentation to be maintained and submitted in Arabic, to the extent reasonably possible.

Use of local data and updates

- The final bylaws confirm that local comparable data is preferred. However, as per Article 13(C) of the final bylaws, the GAZT may allow the use of foreign comparable data in the absence of local comparables.
- In such a case, the taxpayer must be able to demonstrate that the foreign comparable data is consistent with the comparability factors set out in Article 5 of the final bylaws.
- The final bylaws also confirm (aligned with OECD guidance) that comparable data **should be updated every three years**, or earlier, only if warranted by material changes to the taxpayer's business circumstances.
- More broadly, the GAZT encourages TP documentation or specific sections therein to be updated only in the event of material changes to the taxpayer's business circumstances.

Treatment of pure Zakat-paying entities

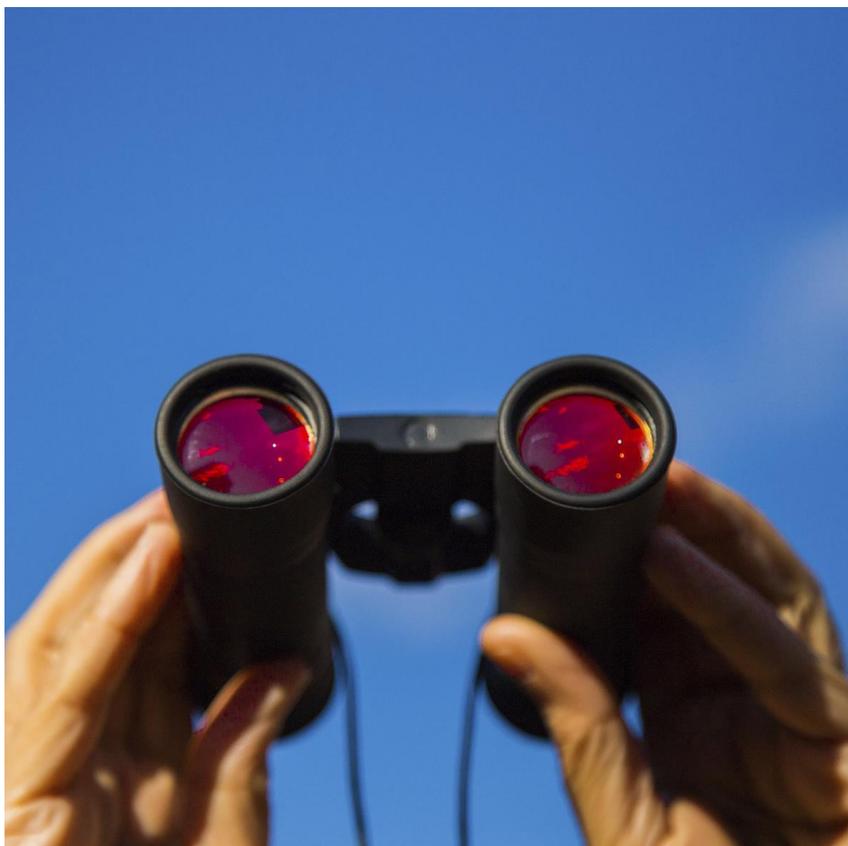
- The final bylaws confirm the treatment of pure Zakat-paying entities, that they are generally exempt from preparing a Master file and/or Local file.
- However, the requirement to file a CbCR notification (for non-KSA UPEs) and the requirement to prepare and file a CbC report (for KSA-based UPEs) still applies.

Domestic transactions

- The final bylaws confirm, that **unless expressly exempt** (e.g., for pure Zakat-paying entities), all related party transactions are within the scope of the final bylaws, regardless of the place of residence, nationality or domicile of the counterparty (i.e., such transactions must be declared on the disclosure form).
- The purpose of this requirement is to achieve visibility on domestic transactions between Zakat and non-Zakat paying taxpayers, that may potentially create an '**income advantage**' in KSA.
- We strongly recommend pure Zakat-paying entities to maintain adequate transfer pricing documentation to support the arm's length nature of their related party transactions, regardless of whether they are domestic or cross-border.

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Key takeaways



- The GAZT issuing final TP bylaws is a significant tax development, one which will have a material impact on the compliance obligations of KSA-headquartered, as well as businesses.
- The final bylaws and supporting FAQs provide taxpayers with certainty on their TP compliance obligations in KSA. The extended deadline for first-year Master file and Local file compliance is welcome, as it should allow taxpayers more time to respond in an informed manner.
- However, the requirement to provide an affidavit along with the disclosure form certainly introduces an additional burden on taxpayers to demonstrate a consistent application of their transfer pricing policy.
- We encourage taxpayers with a 31 December 2018 fiscal year-end to work back from the 30 April 2019 deadline, to ensure all information required for the disclosure form is gathered and validated.

Appendices

- Appendix A: Summary of key compliance obligations
- Appendix B: How should you assess your readiness?
- Appendix C: Key contacts

Appendix A

Summary of key compliance obligations*

| Obligation | Existing obligation for the UPE | Obligation for the KSA-based entity | Deadline | Comments |
|-------------------|---------------------------------|-------------------------------------|---|---|
| Disclosure form | X | ✓ | <ul style="list-style-type: none"> 120 days after the fiscal year-end. | <ul style="list-style-type: none"> Taxpayers must submit the Disclosure Form with an affidavit from a licensed auditor (i.e., licensed to operate within KSA) to certify the consistent application of the transfer pricing policy of the multinational enterprise. The purpose of the affidavit is to certify the consistent application of the multinational enterprise's ("MNE") transfer pricing policy in relation to its intragroup transactions. |
| Master file | ✓ | X | <ul style="list-style-type: none"> Not required to be submitted unless requested by GAZT. The deadline is 30 days upon request. | <ul style="list-style-type: none"> For calendar year 2019, taxpayers shall be granted an additional 60-day extension to furnish the Master file and/or Local file, upon request, providing taxpayers at a minimum, 210 days after the fiscal year-end, to prepare and submit the aforementioned documentation (assuming documentation is requested by the GAZT 120 days after the fiscal year-end). |
| Local file | X | ✓ | <ul style="list-style-type: none"> Not required to be submitted unless requested by GAZT. The deadline is 30 days upon request. | |
| CbC report | ✓ | X | <ul style="list-style-type: none"> CbC report due 12 months after fiscal year-end. | <ul style="list-style-type: none"> Must be submitted by UPE of KSA-headquartered MNEs; or KSA-based SPEs of non KSA-headquartered MNEs. |
| CbCR notification | X | ✓ | <ul style="list-style-type: none"> Part of the disclosure form. CbC notification 120 days after the last day of the fiscal year | <ul style="list-style-type: none"> Taxpayers must inform GAZT that the CbCR is being filed elsewhere. This applies to all KSA-based constituent entities, including UPEs or SPEs. |

(*): The GAZT encourages all documentation to be maintained and submitted in Arabic, to the extent reasonably possible.

Appendix B

How should you assess your readiness?

| Steps | Comments |
|--|---|
| <p>Know where you stand!</p> | <ul style="list-style-type: none"> The unique aspects of the final KSA TP bylaws (e.g., definitions controlled transactions and control, interaction between pure-Zakat, mixed and non-Zakat entities, etc.) mean that the first consideration in assessing the impact of the new rules is to determine the extent to which they apply to your group. Best practice would be to: <ul style="list-style-type: none"> Establish a file summarizing all related party transactions and agreements in place for reporting periods ending on or after 31 December 2018, which can be kept as a reference to identify and monitor what arrangements (controlled actual transactions and notional transactions) fall within or outside the scope of the final KSA TP bylaws. Review your current transfer pricing policy and the adequacy of your existing documentation. Plan how to meet your FY18 TP compliance obligations in consistent and systematic way. Undertake a health check on existing related party transactions/arrangements. |
| <p>Consider information already available and/or can be provided by the UPE</p> | <ul style="list-style-type: none"> We recommend requesting copy of the Master file, CbCR report, Local file(s) and TP policy, to the extent these exist. Master file and Local file(s) will need to be reviewed to ensure they comply with the final KSA TP bylaws. |
| <p>Consult with your advisers and agree action plan</p> | <ul style="list-style-type: none"> Taxpayers must submit an affidavit as part of the disclosure form from a licensed accountant, declaring that their TP policy is consistently applied in relation to their related party transactions in KSA. This is a new requirement as part of the final KSA TP bylaws, which will likely place a significant burden of proof on taxpayers. The above must be prepared and submitted along with the annual tax return. Therefore, MNEs with 31 December 2018 fiscal year-end have limited time to respond and undertake the necessary supporting analysis. |
| <p>Prepare documentation and keep on file</p> | <ul style="list-style-type: none"> Document related party transactions accurately; Implement a robust TP policy and supporting benchmarking; and Prepare the disclosure form, along with Master file and Local file (if applicable). |

Appendix C

Key contacts

Our transfer pricing experts listed below would be happy to support and address any questions you may have regarding the final KSA TP bylaws, their application, and impact on your business.



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