Transfer pricing has landed in the MENA region

Companies operating in the Middle East or North Africa need to be reviewing their TP obligations across the region now as an increasing number of countries implement new TP rules. Saudi Arabia is next.

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The tax regulatory landscape in the Middle East and North Africa (MENA) is changing with several countries in the region joining the BEPS Inclusive Framework (IF) and committing to adopting the BEPS minimum standards. Moreover, Egypt, Saudi Arabia, Kuwait, Tunisia and the UAE are recent signatories of the multilateral instrument (MLI), which demonstrates the clear shift in the Middle East towards aligning tax regimes with international leading practices. Lebanon has also expressed intent to sign the MLI.

One of the BEPS minimum standards referred to above relates to implementing a framework of transfer pricing regulations. In recent years, transfer pricing rules have been introduced in Egypt and Qatar and the other IF/MLI signatories in the region are expected to follow suit and implement some form of transfer pricing regulations in the near future. For example, Saudi Arabia's regulations are imminent.

As it stands today, the MENA region can be divided into:

- Countries with formal transfer pricing rules in place (e.g. Egypt, Qatar);
- Countries that recognise the arm's-length principle as part of their general anti-avoidance rules (e.g. Saudi Arabia and Oman); and
- Countries where transfer pricing is still not a relevant subject (e.g. Iraq and Iran).

This article summarises the current state of play on transfer pricing in MENA together with our short- and mid-term expectations and suggested actions for MENA headquartered MNEs as well as foreign MNEs operating in this region.

Global MNEs with operations in MENA

The majority of global MNEs have been grappling with transfer pricing for years and it is imperative to recognise new reporting obligations in MENA. However, tax reform occurring elsewhere in the business (e.g. US tax reform) also makes this an opportune time for global MNEs to revisit their current structures/business models/arrangements in MENA with a view to ensuring that its MENA entities are remunerated according to its contribution to value creation in the supply chain. In addition to groups aligning policies with transfer pricing guidelines, this may also result in cash flow savings.

Common issues/opportunities that global MNEs are facing in MENA are as follows:

- Corporate income taxation in the region ranges from 0%-25% (with an average of circa 15%). The UAE is now comparable to the UK in terms of foreign direct investment inflows according to the **UNCTAD 2018 World Investment Report** with 25% of the 500 largest MNEs in the world using the UAE as their regional hub for MENA;
- Safe harbours in the region exist with respect to thin capitalisation/interest deduction restrictions (debt: equity or earnings based restrictions) and opportunities may exist with the 'under/over' in the related jurisdiction of lender/borrower;
- On a similar vein, there are statutory limits on head office cost allocations in place in several countries in the region (e.g. Jordan, Qatar, Egypt);
- Withholding tax challenges are common place on technical services versus 'general and administrative costs';
- Foreign exchange controls exist that can create issues and transfer pricing may present an option based on economic substance in local operating companies versus regional and global principals;
- Joint ventures (JVs) are common due to foreign ownership restrictions and this can complicate transfer pricing groups (on occasion, transfer pricing and arm's length economic analysis has been helpful is settling disputes between JVs).

Transfer pricing implications for MENA headquartered groups

Many MENA headquartered MNEs are hearing about transfer pricing for the very first time, although some may have been exposed to transfer pricing matters due to the international footprint, but may have opted to deal with these obligations in a decentralised fashion and on a case-by-case basis.

It is a good time to assess the benefits of a centralised approach to transfer pricing whereby the head office has ownership over policy design, compliance and dispute resolution matters. This would allow for consistency across countries/group entities (of outmost importance in transfer pricing) and also may lead to compliance cost savings. Furthermore, MENA groups may choose to apply transfer pricing principles, such as alignment of remuneration and value creation, to boost cash earnings.

For MNEs and groups, the key issues and opportunities to consider include:

- Transfer pricing obligations outside MENA (e.g. country-by-country reporting, master/ local file requirements) and how these will interact with local regulations;
- Allocation of group resources to transfer pricing matters (central v local);
- Control over global tax spend (e.g. compliance costs) and the ability to use technology to control the process, optimise day-to-day operations and ease compliance burden;
- Level of operational/financial support provided by head office to overseas subsidiaries/branches;
- Disclosure requirements and cultural sensitivities for local MNEs; and
- Most of the issues/opportunities set out above for global MNEs will also be of relevance to local MNEs.

Final thoughts

Transfer pricing has landed in the MENA region with a plethora of new regulations anticipated in the coming months – if not weeks with Saudi Arabia's regulations anticipated at any moment and the Egyptian tax authorities issuing detailed guidance on the transfer pricing regulations this week.

However, whilst at first this may seem as an added compliance burden for MNEs, there is a significant opportunity to:

- Align business models with international leading practices and acceptable guidelines that may lead to cash savings; and
- Embrace technology based solutions to compliance reporting that will give MNEs more control over the process and greater visibility over risk management.

Country	BEPS committment	Transfer pricing landscape
Bahrain	Signatory to IF	No rules in place
Egypt	Signatory to IF and MLI	Detailed rules in place that include documentation requirements and thin capitalisation restrictions plus an advance pricing agreement framework
Iran	No BEPS commitment	No rules in place
Iraq	No BEPS commitment	No rules in place
Jordan	No BEPS commitment	No rules in place
Kuwait	Signatory to IF and MLI	No rules in place but arm's-length concept exists
Lebanon	Expressed intent to sign MLI	No rules in place but arm's-length concept exists
Libya	No BEPS	No rules in place but arm's-length concept exists

	commitment	
Oman	Signatory to IF and intentions to sign MLI	No rules in place but arm's-length concept exists along with thin capitalisation restrictions
Palestine	No BEPS commitment	No rules in place but arm's-length concept exists
Qatar	Signatory to IF	Detailed rules in place for the QFC regime that include documentation requirements and country-by-country reporting
Saudi Arabia	Signatory to IF and MLI	Detailed rules expected in Nov/Dec 2018 that include documentation requirements and thin capitalisation restrictions
Syria	No BEPS commitment	No rules in place
Tunisia	Signatory to IF and MLI	Arm's-length concept exists with thin capitalisation rules
UAE	Signatory to IF and MLI	No rules in place
Yemen	No BEPS commitment	No rules in place but arm's-length concept exists

This article was written for TP Week by ***Shiv Mahalingham****, Deloitte Middle East partner and the region's transfer pricing leader.*

TP Contributor

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