

TP Insights

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Updating the list of "offshore" jurisdictions in terms of Russian TP legislation

From July 1, 2023, Order No. 86n "On Approving the List of States and Territories Providing a Preferential Tax Regime and/or Not Stipulating the Disclosure and Provision of Information when Performing Financial Operations (Offshore Zones)" (hereinafter the "List") entered into force. The updated List of states and territories providing a preferential tax regime and/or not stipulating the provision of information on financial transactions (offshore zones) has been expanded more than twofold to include the EU, UK, Switzerland, USA, Canada, Japan, South Korea, Singapore, Taiwan, Australia, New Zealand.

In accordance with the provisions of article 105.14 of the Tax Code of the Russian Federation, cross-border transactions with the countries included in the List are recognized as controlled if the income threshold of RUB 120 million for all transactions with a counterparty is reached during the reporting period.

Overview of the latest TP clarifications in the UAE

1. Requirements on maintenance of transfer pricing documentation in accordance with the UAE corporate tax regime

On May 11, 2023, the UAE Ministry of Finance issued Ministerial Decision No. 97 of 2023 (the "Decision"), which states that a Taxable Person must prepare a Local File and a Master File if the Taxable Person meets one of the following conditions during the Tax Period:

- The Taxable Person is a mainland or free zone subsidiary, branch or permanent establishment ("Constituent Entity") of a Multinational Enterprise Group, with annual consolidated group revenues exceeding AED 3.15 billion);
- The Taxable Person's revenues exceed AED 200 million.

The above thresholds apply only to the preparation of a Master File and a Local File. Thus, regardless of the Taxable Person's total or separate revenue, the Taxable Person may still need to submit the form of disclosure of information together with the tax return.

The Taxable Person shall include transactions or understandings with all of the following Related Parties and Connected Persons in the Local File pursuant to the Ministerial Decision:

- A Non-Resident Person (a person who either has a permanent establishment in the UAE or receives state income or has a nexus in the UAE);
- An Exempt Person (a Government Entity, a Government Controlled entity or a Person engaged in the extractive business);
- A UAE Resident Person that has elected to avail of Small Business Relief;

- A Resident Person whose income is subject to Corporate Tax, the rate on which differs from the Corporate Tax of the Taxable Person (i.e. a Free Zone Person subject to 0% tax on its Qualifying Income).

2. Corporate Tax Rules for Free Zones

On June 1, 2023, the UAE Ministry of Finance announced the publication of two new decisions:

- The UAE Cabinet Decision "On the Qualifying Income Definition"
- The UAE Ministry of Finance Decision "On Qualifying and Excluded Activities",

hereinafter – "The Decisions".

The Decisions disclose the concept of qualifying income and contain a list of qualifying activities, as well as activities that do not qualify for the 0% tax rate.

The definition of "Qualifying Income" has been explained as follows:

- Income from transactions with other Free Zone Persons, except for income from "Excluded Activities"

- Income received from transactions with a Non-Free Zone Person, but only in respect of "Qualifying Activities" which are not Excluded Activities.
- Any other income provided that QFZP meets the de minimis requirements.

Qualifying activities include, for example, production, holding activities, logistics and distribution of goods.

The receipt of non-qualifying income over and above the limit (conditions de minimis), as well as the absence of audited financial statements, deprives the Free Trade Zone resident of the right to apply the preferential rate.

In order to maintain sufficient substance, a Qualified Free Zone Person shall:

- perform the main activity aimed at generating income in a Free Zone.
- maintain an adequate level of assets, a sufficient number of qualified employees and bear an adequate amount of operating expenses related to the level of activity in the Free Zone.

The activity may be outsourced to a Related Party or a third party controlled by a Qualifying Free Zone Person.

Public country-by-country reporting

In April 2023, the Australian Government, as part of transparency measures, published a draft law requiring parent entities preparing Country-by-Country (CbC) reporting to publicly disclose information in their Country-by-Country Reports, broken down by jurisdiction, and to disclose other new tax and financial information not currently disclosed in confidential CbC reports. The list and carrying amounts of tangible and intangible assets belonging to the group in each jurisdiction, expenses paid to related parties in other jurisdictions, and effective tax rates for each jurisdiction will also be subject to disclosure.

At the time of publication of the draft legislation there were no countries where public disclosure of the CbC Report by jurisdiction was mandatory. If the draft legislation enters into force, the preparation of public Country-by-Country reporting will be required in 2023-2024 and in subsequent years.

Shortly thereafter, in June 2023, the Danish Parliament passed a law on the mandatory publication of the Country-by-Country Report by parent companies of multinational groups whose revenue for two consecutive financial years exceeded DKK 5.6 billion (about EUR 750 million).

In Denmark, the following information will be published in the Country-by-Country report: nature of operations, turnover, profit/loss, taxes paid, accumulated profits, employees. However, companies may choose not to include certain commercially relevant information for up to five years. In this case, the company must provide explanations regarding the absence of information in the report, and information that has not been disclosed should be disclosed within five years in a later report.

The law came into force on June 22, 2023, and applies to financial years beginning on or after June 22, 2024.

Local legislation on transfer pricing

In Brazil, Law No. 14,596/2023 was published on June 15, 2023, as a conversion of Provisional Measure (MP) 1,142, of December 29, 2022, which determines the new transfer pricing rules in line with the standards of the Organization for Economic Cooperation and Development (OECD). The new law incorporates the arm's length principle, an internationally adopted standard for transfer pricing control in transactions between related parties instead of historical local formula-based transfer pricing rules.

The rules apply to transactions between (i) related parties, (ii) parties resident or domiciled in countries that do not have an income tax (or taxes income at a rate lower than 17%); or (iii) that benefit from a privileged tax regime (offshore jurisdictions).

The new transfer pricing rules create an immediate need for companies that have operations with related parties and/or tax havens and privileged tax regimes (controlled transactions) to review the existing pricing mechanisms and analyze appropriate terms of contracting based on new legislative realties.

The adoption of the new transfer pricing rules is mandatory as of January 2024 and optional for 2023. The Brazilian IRS (RFB) Normative Instruction No. 2,132/23 currently regulates the option for adopting the new rules – to be formalized in September 2023 by initiating a digital process through its internet portal (E-CAC). Please note that further details on the transition period may be posted soon.

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