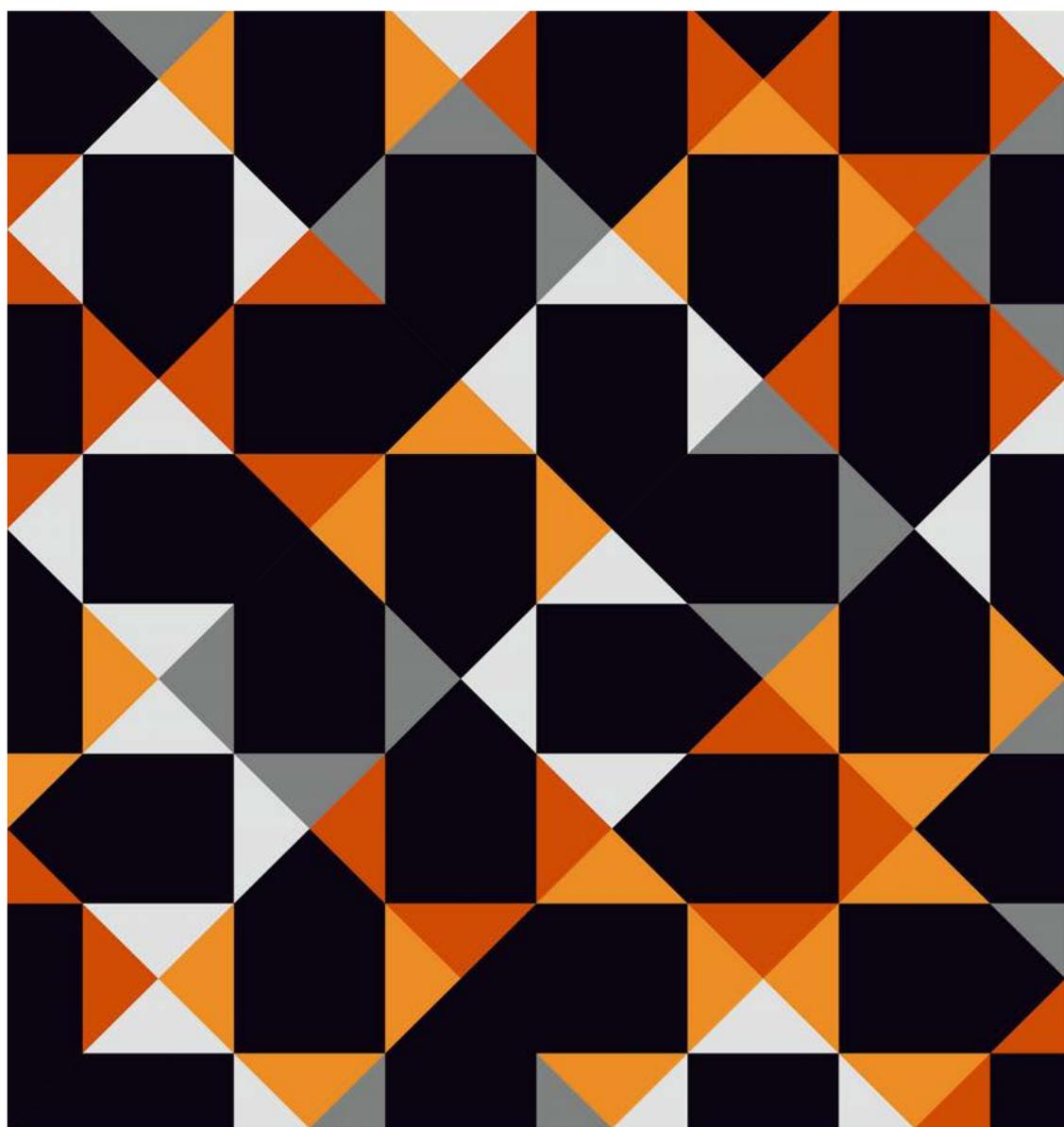


Jordan issues Executive Instructions for Transfer Pricing regulations

September 2021





In brief

The Hashemite Kingdom of Jordan (Jordan) published Regulation No. 40 for the year 2021 in its Official Gazette on June 7, 2021 (the regulation). The regulation introduced formal transfer pricing (TP) requirements in accordance with the provisions of Article 77/A of the Income Tax Law No. 34 of 2014 (the Income Tax Law) and came into effect 30 days after the date of publication in the Official Gazette.

On 16 September 2021, Jordan issued the Executive Instructions No. 3 of the year 2021 (the instructions), providing additional implementation considerations related to the regulation published earlier. The key considerations for taxpayers in Jordan include:

Considerations related to TP documentation

1. Format of the TP disclosure form to be completed and filed by the qualifying taxpayers with the tax return
2. Additional requirement to submit an affidavit to be issued by a chartered accountant confirming the taxpayers' compliance with the Group TP policy and its impact on the financial statements
3. Format of the Country by Country Reporting (CbCR), Local file and Master file (broadly aligned to the OECD² TP Guidelines) and the requirement to submit these documents to the Jordan Tax Authorities within 12 months following the end of the financial year concerned

Other key considerations

1. Concept of the 'Surrogate filing entity' with respect to CbCR
2. Requirement to use the selected TP method consistently for each subsequent tax year

These considerations are discussed in further detail in the subsequent sections.

¹ Country by Country Reporting

² Organization for Economic Cooperation and Development



Considerations related to TP documentation

Disclosure Form for Controlled Transactions (“TP Form”)

Article 3 of the instructions states that taxpayers are required to submit a TP Form if the total value of controlled transactions within a period of 12 consecutive months exceeds the threshold of JOD 500,000. As per Article 4, the TP Form shall include detailed information, including:

1. Information related to intercompany transactions, including the names of related persons and their respective jurisdictions
2. Type and nature of relation with the transacting entity (including ownership percentage, country of residency, country of incorporation, ultimate owner, beneficial owner, revenues, expenses, and income/loss)
3. Any business restructuring undertaken within the Group or by the taxpayer
4. Information about the actual and the beneficial owners
5. Total revenues, total expenditures and the value of net profit or loss mentioned in the tax return
6. The nature of intercompany transactions (purchase/sale of goods, purchase/sale of fixed assets, services, agency services, rent/lease services, R&D, royalty and license and financial transactions)
7. The TP method considered
8. Details of any free of charge transactions or transactions with non-cash consideration
9. A declaration if the required TP documents are maintained (i.e. the master file and the local file)

Taxpayers are required to submit the TP Form based on the template provided in the instructions, which includes two sections - (i) Section 1 includes information on related parties and (ii) Section 2 includes information on related party transactions.

Deadline - Aligned with the tax return submission date, i.e. to be submitted within four months from the end of the financial year concerned.

TP Affidavit (new requirement)

An additional requirement is introduced as per Article 10 of the instructions, whereby taxpayers are required to submit an Affidavit issued by a chartered accountant confirming taxpayers' compliance with Group TP policy and its impact on the financial statements.

Deadline - Not specified.

CbCR, Master file and Local File

The content of the CbCR, Local file and Master file is provided in Article 6, 7 and 8 of the instructions respectively, which is broadly aligned to the OECD TP Guidelines. The key difference relates to the Industry analysis section in the Local file, where specific requirements are provided on the expected content of the analysis (i.e. major competitors, power of suppliers and buyers, availability of substitutes, size, demand and supply trends, etc.).

Deadline (new requirement) - To be submitted within 12 months from the end of the financial year concerned.



Other key considerations

Concept of 'Surrogate filing entity' for CbCR (new clarification)

The regulations published earlier mentioned that the 'Surrogate filing entity' concept will be addressed through the instructions. The instructions have now provided guidance on such concept, which is aligned with the OECD TP Guidelines.

Based on the regulations published earlier, the CbCR requirements apply to Jordan tax resident entities that are part of a Multinational Group with consolidated revenues exceeding JOD 600 million (approx. EUR 695 million / USD 845 million) in the financial year preceding the reporting year concerned.

Based on the regulations published earlier, the Jordan resident Ultimate Parent Entities (UPE) of the Group are primarily required to submit the CbCR (i.e. primary CbCR filing requirement). Additionally, the regulations prescribed that, under the secondary filing requirement, Jordan resident entities of Groups headquartered outside of Jordan may also be required to submit the CbCR in Jordan, in certain cases.

Based on the 'Surrogate filing entity' concept, as newly clarified through the instructions, Jordan resident entities of Groups headquartered outside Jordan will not be required to submit the CbCR in Jordan, in case the CbCR is filed by the 'Surrogate filing entity' of the Group, where the jurisdiction of tax residence of such 'Surrogate filing entity':

1. Requires the filing of CbCR
2. Has a qualifying competent authority agreement in effect with Jordan that allows for automatic exchange of CbCR
3. Has not notified the Jordan Competent Authority of any systemic failure in exchange of CbCR
4. Has been notified of the identity of the 'Surrogate filing entity'
5. A notification has been provided to the Jordan Competent Authority including the name and jurisdiction of tax residence of the 'Surrogate filing entity' and its tax identification number

Consistent use of selected TP method (new requirement)

Based on Article 10 of the instructions, where a TP method, amongst the approved TP methods³, has been adopted by the taxpayer, the tax authorities expect the same TP method to be used by the taxpayer on a consistent basis for subsequent tax years.

³ The approved TP methods are consistent with OECD TP Guidelines i.e. Comparable Uncontrolled Price Method, Resale Price Method, Cost Plus Method, Profit Split Method or Transactional Net Margin Method



PwC observations and next steps

PwC observations

Deadline and format of the TP Affidavit

TP Affidavit is a new requirement specified in the instructions, which was not included in the regulations issued earlier. Further, the deadline and format for submission of the TP Affidavit is not specified in the instructions which only mention that the TP Affidavit is required to be issued by a chartered accountant confirming the taxpayers' compliance with the Group TP policy and its impact on financial statements.

Additional clarifications are expected on this requirement around the deadline and the format of the TP affidavit, since the subject matter of the TP Affidavit appears to be broad.

Based on our experience with similar TP Affidavit requirements in neighbouring GCC countries, we believe the deadline of TP Affidavit submission is likely to be linked to TP form submissions i.e. along with tax returns.

Information required for the TP Form

Taxpayers are required to submit the TP Form based on the template provided in the instructions, which includes two sections - (i) Section 1 includes information on related parties and (ii) Section 2 includes information on related party transactions.

Section 1, which includes information on related parties with which the taxpayer undertakes transactions, is very comprehensive. You need to include information on the relationship with each related party, ownership details of related party, the revenue, expenses and profitability of each related party, etc. In our experience, this level of detail about the related parties information/identification, is not seen/required for purposes of the TP forms of the neighbouring GCC countries or other countries outside the GCC.

Thresholds for the TP form, Master file and Local file

Based on the regulations published earlier, an exemption is provided from preparation of Master file and Local file for natural persons and small establishments with an arm's length value of related party transactions not exceeding JOD 500,000 for a period of 12 consecutive months. As per the instructions, the same threshold is applicable for the TP form. However, no further specification was provided as to the calculation of the JOD 500,000 threshold, i.e. clarification on whether the 12 consecutive months should coincide with the calendar/financial year concerned, indication on whether the threshold covers both balance sheet and profit and loss account items, etc.

Next steps for taxpayers

The regulation and executive instructions introduce TP requirements which require compliance with the arm's length principle and mandatory annual documentation. In this regard, taxpayers should:

- Proactively evaluate the applicability of these requirements
- Take a detailed look at their TP policies to identify any TP risks for the open tax years and on a forward looking basis
- Implement any required corrective actions to align with the arm's length principle going forward
- Document the TP policies (e.g. TP policy manual, intercompany agreements, etc.)
- Prepare for the compliance requirements by putting in place internal processes to gather the required information on an annual basis

The takeaway

The publication of the Executive Instructions within a short duration of publishing the TP regulations demonstrated the intention of the tax authorities in Jordan to implement the TP requirements effectively.

These additional instructions provide further direction to taxpayers and represent a welcome step. However, certain areas are yet to be clarified by the tax authorities in order to ensure consistent application by taxpayers. Further, the expectation from the instructions was to aid in executing the clauses of the existing regulations, however, a few new key requirements have also been introduced through these instructions such as TP Affidavit, consistent use of TP method and mandatory filing of Local file/ Master file within 12 months of year end.

For taxpayers in Jordan, the regulation introduces additional documentation requirements which include TP disclosure form, TP Affidavit (new requirement), Local file, Master file, CbCR and CbCR notifications. Taxpayers are suggested to proactively evaluate the applicability of these requirements. Given the wide application of the rules under the regulation, taxpayers are also recommended to take a detailed look at their business operations and current TP policies to identify any TP risks for the open tax years and on a forward looking basis.

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Let's talk

For a deeper discussion of how this issue might affect your business, please contact:

Mohammed Yaghmour

Middle East Tax & Legal Services Leader

mohammed.yaghmour@pwc.com

Jochem Rossel

Middle East M&A / International Tax Services Leader

jochem.rossel@pwc.com

Safae Guennoun

Middle East Transfer Pricing Leader

safae.guennoun@pwc.com

Suhaib Asa'd

Tax Partner

suhaib.asad@pwc.com

Wael Saadi

Tax Partner

wael.h.saadi@pwc.com

Mohammad Al-Akhras

Tax Director

mohammad.al-akhras@pwc.com

Thank you

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