Kuwait: Introduction of Transfer Pricing rules under the new DMTT law

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Introduction

On June 30, 2025, the Ministry of Finance ("MoF") published the "Executive Regulations" for the Domestic Minimum Top-Up Tax ("DMTT") for Multinational Enterprises (MNEs) under Ministerial Resolution No. (55) of 2025 ("Bylaws").

The Executive Regulations supplement the DMTT Law (Decree by Law No. 157) released on 30 December 2024. As a general overview, the DMTT Law applies a 15% tax to Kuwait profits of MNEs with global consolidated revenues of at least EUR 750 million in at least two of the previous four fiscal years. This includes MNEs headquartered in Kuwait as well as foreign MNEs with operations in Kuwait. However, the DMTT Law does not apply to local businesses with operations limited to Kuwait or that do not meet the revenue test. The DMTT Law is effective from 1 January 2025.

As anticipated, the Executive Regulations closely align with the GloBE Model Rules and mandate adherence to transfer pricing rules. Consequently, all transactions between related persons must be conducted at arm's length, similar to the terms and conditions that would apply between independent third parties. Companies subject to the DMTT will, therefore, be obliged to prepare comprehensive transfer pricing documentation in accordance with the relevant rules and methodologies.

Accordingly, affected taxpayers need to assess their transfer pricing policies and framework to ensure timely compliance, even if you qualify for any Safe Harbours or exclusions.

Key Transfer Pricing highlights

The Executive Regulations adopt transfer pricing concepts and definitions broadly aligned with the OECD Transfer Pricing Guidelines. Key requirements are set out in Article 22 (Arm's Length Principle) and Chapter 10 (Articles 69–74) on transfer pricing between related persons. A high-level overview of the regulations is provided below:

- **Scope of applicability:** The transfer pricing rules apply to MNEs headquartered in Kuwait as well as foreign MNEs with operations in Kuwait, with global consolidated revenues of at least EUR 750 million in at least two of the previous four fiscal years.
- **Arm's length principle:** All intercompany transactions, whether domestic or international, must be carried out on terms that would be agreed upon by independent parties in similar situations.
- **Definition of related persons:** Persons are considered related if they are connected with each other or with a third person through ownership, control, or significant influence.
- **Transfer pricing methods:** the regulations have introduced methods that are consistent with the OECD Guidelines, i.e. - 1) Comparable Uncontrolled Price method, 2) Resale Price method, 3) Cost Plus method, 4) Transactional Net Margin method and 5) Profit Split method.
- **Documentation requirements:**
    - **Master file:** To be submitted within 30 days upon request of the tax authority
    - **Local file:** To be submitted within 30 days upon request of the tax authority
    - **Disclosure form:** Audited by an approved firm and submitted with the annual tax return.
- **Transfer pricing adjustment:** The tax authorities have the right to adjust prices of related party transactions if the arm's length principle is not followed.

PwC Observations: The inclusion of transfer pricing considerations in the Executive Regulations introduces the need for Groups to assess their related-party transactions and overall transfer pricing positions in Kuwait for the first time. MNE Groups will need to reassess their current global and domestic transfer pricing policies considering these changes. This new requirement will need to be incorporated into their global transfer pricing compliance strategy. Importantly, for DMTT purposes, Groups will also potentially need to consider the transfer pricing implications of domestic transactions, where those transactions are with members of the Group that have separate ETR calculations (e.g. MOCEs).

Arm’s Length Principle (Article 22)

The Executive Regulations mandate adjustments to the amounts recorded in the financial statements of a constituent entity, if the result of transactions with another constituent entity in the State or another jurisdiction within the same MNE Group (including minority-owned constituent entities) are not recorded at the same value by both parties or are inconsistent with the arm’s length principle.

This principle also extends to:

- sale or transfer of assets transactions between two constituent entities;
- transactions between investment entities and other constituent entities in the same MNE Group; and
- transactions or income/loss allocations between main entities and their permanent establishments (in accordance with Article 31 of the Executive Regulations).

Should related party transactions not adhere to the arm’s length principle, the Tax Administration has the right to adjust the transaction price using the transfer pricing methods outlined in the Regulations.

Related Persons (Article 69 and 70)

Per **Article 69**, Persons are considered related if they are connected with each other or with a third person through **ownership, control, or significant influence,** including the following cases:

- A natural person and an entity if the natural person, alone or together with related persons, directly or indirectly owns or controls 50% or more of the entity’s ownership interest.
- Two entities where one, alone or together with related persons, directly or indirectly owns or controls 50% or more of the other.
- Two entities under common control by a person, alone or with related persons, who owns or controls 50% or more of both.

Further, **Article 70** clarifies that “Control” is established if a person, alone or together with related persons, directly or indirectly, has the ability to exercise effective influence over the decisions or operations of another person, including:

- The ability to exercise 50% or more of the voting rights in the other person.
- The ability to appoint or remove 50% or more of the board members or to appoint or remove directors of the other person.
- The right to receive 50% or more of the capital or profits of the other person.
- The ability to manage the other person, make decisions, or exert effective influence over their business operations and affairs.
- The provision of 50% or more of the loans to the other person (excluding loans from financial institutions).
- The provision of 25% or more of guarantees to the other person (excluding guarantees from financial institutions).

Comparable Transactions (Article 71)

Application of the arm's length principle is based on a comparison of the conditions in a controlled transaction with the conditions that would have been made had the parties been independent and undertaking a comparable transaction under comparable circumstances. Therefore, comparability analysis is at the heart of the application of the arm's length principle.

The Executive Regulations outline the following comparability factors, in line with the OECD Transfer Pricing Guidelines:

1. The **contractual terms** of the transactions.
2. The **characteristics** of the transactions.
3. The **economic conditions** in which the transactions occurred.
4. The **economic activities**, assets used, and risks assumed in the transaction.
5. The **business strategies** associated with the transactions.
6. Any other factors specified by the **Tax Administration**.

Transfer Pricing Methods (Article 72)

The Executive Regulations internalise the five internationally accepted Transfer Pricing methods to apply the arm's length principle, as detailed in the OECD Transfer Pricing Guidelines. These methods utilise the outcomes of the comparability analysis to assess whether the transfer prices or profits reported by related parties in a controlled transaction align with those observed in comparable uncontrolled transactions. The five methods include the following:

1. Comparable Uncontrolled Price ("CUP") Method.
2. Resale Price Method.
3. Cost Plus Method.
4. Transactional Net Margin Method ("TNMM").
5. Profit Split Method.

The taxpayer may use more than one method, or an alternative method not listed in this Article, provided that it is demonstrated that none of the listed methods can be reliably applied to determine the arm's length price, and that the alternative method results in adherence to the arm's length principle.

In all cases, the taxpayer must explain the reasons and assumptions relied upon in selecting the chosen transfer pricing method.

Application of the Arm's Length Principle (Article 73)

Article 73 of the Executive Regulations specifies that elated persons must comply with the arm's length principle. If not, the Tax Administration has the right to adjust the transaction price using the methods outlined in Article 72 of these Regulations.

Transfer Pricing Documentation (Article 74)

Article 74 of the Executive Regulations specifies the Transfer Pricing documentation obligations for taxpayers that enter into transactions with related parties. These are listed below:

1. Master file

A Master File is a standardised document defined by the OECD Transfer Pricing Guidelines, detailing the global business operations of the MNE Group, including supply chains, organisational structures, intangible assets, financing arrangements, and transfer pricing policies. The Master File presents general group-wide information and is typically prepared at the group level to provide tax authorities with a comprehensive understanding of the group's global operations and transfer pricing policies.

<u>Submission Deadline</u>: to be submitted within 30 days upon Tax Administration request.

2. Local file

A standardised document defined by the OECD Transfer Pricing Guidelines, that provides detailed information on the controlled transactions of the subject taxpayer, including a comparability analysis and the selection and application of the most appropriate transfer pricing method. The Local File complements the Master File and contributes to ensuring that the taxable entity complies with the arm's length principle

<u>Submission Deadline</u>: to be submitted within 30 days upon Tax Administration request.

3. Disclosure form

A Disclosure form provides detailed information about the related party transactions during the year and their pricing policy between related parties within the same corporate group. The form is required to be audited by a Ministry-approved audit firm and should include the following in particular:

a) The **value and nature** of related party transactions.
b) The **method used** for transfer pricing.
c) Any **other information** specified by the Tax Administration.

<u>Submission Deadline:</u> to be submitted to the Tax Administration along with the tax return.

Next steps

To ensure compliance with the transfer pricing requirements set out in the DMTT Law and its Executive Regulations, MNE Groups should undertake a thorough review and assessment of their existing transfer pricing framework and policies. This process involves evaluating current practices, identifying any gaps or areas requiring adjustment, and implementing necessary changes to align with the new legal requirements. It is essential to incorporate appropriate transfer pricing policies and benchmarking analyses, ensuring that all intra-group transactions are conducted at arm's length and are properly documented.

In addition, MNE groups should proactively prepare for year-end compliance obligations, which may include the preparation and submission of transfer pricing documentation, disclosure forms, and supporting analyses as required by the DMTT Law.

It is also important for affected MNE Groups to remain vigilant for further developments. The MoF may issue additional guidance, clarifications, and illustrative examples to facilitate the practical application of the DMTT Law and its Executive Regulations. These updates are likely to be consistent with the OECD Transfer Pricing Guidelines, GloBE Model Rules, Administrative Guidance, and related Commentary. Staying informed of such updates will be crucial for maintaining ongoing compliance and effectively managing transfer pricing risks.

We have outlined some of the immediate steps that must be taken to ensure transfer pricing compliance with the DMTT Law and its Executive Regulations:

✓Initial transfer pricing impact assessment

✓Detailed analysis based on legislation

✓Implementation

✓Transfer pricing compliance

High level impact assessment

Mapping of the related party transactions and understanding any TP risks and exposure related to the pricing of such transactions

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Detailed analysis based on legislations

Confirm the initial impact assessment, once detailed requirements are published and undertake an optimisation exercise to align existing TP policies with the OECD principles, the Executive Regulations and the DMTT Law

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Implementation

Implement the TP policies by amending contracts, policy documents, undertaking benchmarking analysis, etc.

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Compliance

Prepare the TP Master file/ Local files/ returns, where applicable.

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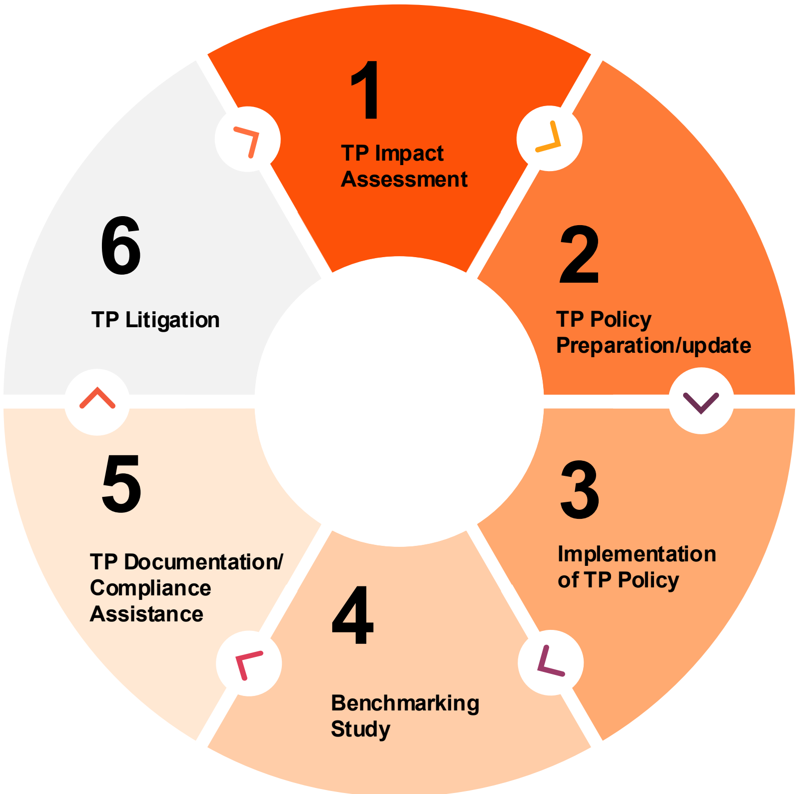
TP Litigation

Assistance in TP litigation by providing strategic guidance and robust documentation support, to help resolve any disputes with tax authorities.

How can PwC help you with Transfer Pricing compliance and documentation requirements

We can assist you to manage your TP compliance risks and identify opportunities for improving the efficiency of your TP pricing policies with our professional knowledge.



We can develop a unified methodology for determining the prices for related party transactions, as well as developing tax efficient and globally defensible TP models, in line with commercial business activities and international TP practices. We can also provide advisory services on improvements to pricing policies, in particular, by value chain transformation.

We can assist businesses with practical implementation of TP models and provide dispute resolution.

For the purpose of determining arm's length range of margins, we can help prepare benchmarking studies by involving formulation of benchmarking strategy, undertaking an in-depth analysis of comparable companies and reviewing identified companies to assess that related party transactions are in line with local requirements.

We can support your TP policies by preparing and filing the required TP documentation, including Master File and Local File in compliance with local TP requirements. We can also provide the review services to analyse the prepared documents and make modifications, as necessary. We can also assist you in efficiently gather the relevant data required for TP return preparation

We can assist you in navigating TP disputes by leveraging our technical expertise to support your position and help mitigate potential tax risks during litigation processes.

Contact us

MNE Groups operating in Kuwait should plan and prepare for the upcoming compliance requirements. Our team is working on impact assessments, readiness, and implementation and compliance support, such as systems and process updates for a variety of businesses in the region, including Kuwait, in the context of the Pillar Two rules including DMTTs, and will be happy to support you. Please contact us for further assistance.

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Thank you

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