

FTA's transfer pricing disclosure forms: **the big picture.**

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The Federal Tax Authority (FTA) recently disclosed specific details on various elements of the transfer pricing disclosure form, which will need to be filed with the 2024 UAE Corporate Income Tax returns. This development should not come as a surprise.

Article 55 of Federal Decree-Law No. 47 of 2022 on the Taxation of Corporations and Businesses specifically grants the FTA the authority to require the submission of a transfer pricing disclosure form. The form is designed according to the FTA's needs to ensure effective compliance with transfer pricing laws.

While this recent development does not necessarily change the transfer pricing compliance requirements for UAE taxpayers, certain unique elements of the transfer pricing disclosure form provide an insight into how the FTA may enforce the new transfer pricing regime.

Specific Requirements

The FTA Transfer Pricing (TP) Disclosure Form requires the following details on Related Party and Connected Person transactions:

- Identification of the Related Parties
- Amounts of the Intercompany Transactions between Related Parties
- Expenses and Income related to Connected Persons
- Nature of the Transaction (e.g. services/sale of goods/loans)
- Transfer Pricing Method Applied for each Related Party and Connected Person Transaction

At the time of the release, the TP Disclosure Form did not provide *de minimis* exemptions. However, after this article was written, *de minimis* exemptions were specified by the FTA. If the UAE taxpayer has transactions with related parties of more than AED 40 million (~ USD 11 million), only then is the taxpayer required to file the TP Disclosure Form with the corporate tax return. Furthermore, the taxpayer does not need to provide details on individual intercompany transactions that have a value of less than AED 4 million (~ USD 1.1 million).

There is no distinction between the disclosure requirements for Free Zone and Mainland Companies. Nor is any clemency granted for disclosures within designated Corporate Tax Groups (i.e. when a related group of companies elect to file as a single unified tax group to reduce their compliance burden).

Comparison to Other Regimes

What can we discern from FTA's design of the TP Disclosure Form? It might be useful to draw a comparison to other tax regimes. In more established transfer pricing regimes such as the US, UK, and Canada, similar transfer pricing disclosures are required, and the elements are quite similar (i.e., related parties, amounts, and methods).

However, there are some important differences:

- **Domestic Transactions:** Domestic transactions (within the same jurisdiction) are not required to be disclosed.

- **Transfer Pricing Documentation:** Taxpayer are generally not required to attach transfer pricing documentation as part of the tax return. This is a unique feature of the UAE transfer pricing laws.

Implications

The FTA is demonstrating a clear commitment to ensuring rigorous compliance with the novel transfer pricing regime. Furthermore, the requirement to attach transfer pricing documentation as part of the tax return (through the TP Disclosure Form) indicates that the FTA will not adopt a lenient approach towards the taxpayers during the early years to get their house in order and prepare transfer pricing documentation **if and when** it is required on audit – which is typically several months or years after the filing of the corporate tax returns. ¹

The larger UAE taxpayers need to have **100 percent** compliance on transfer pricing documentation going into their first tax filing season. The bar is set quite high.

The Big Picture

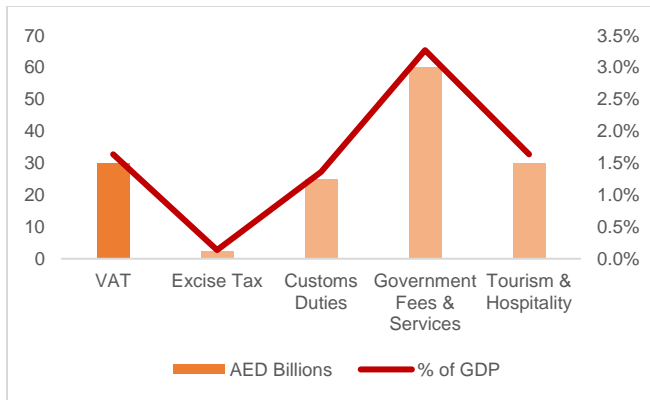
The UAE’s major sources of fiscal income (other than oil and gas revenues, sovereign wealth fund returns and dividends from SOEs) in order of magnitude are:

- **Government Fees and Charges**
- **VAT**
- **Tourism Related Taxes**
- **Custom Duties**
- **Excise Tax**



Since the introduction of the VAT in 2018, it has become one of the largest sources of non-oil related revenues amounting to roughly AED 30 billion annually (~ 1.5 % of GDP) behind Government Fees and Services at roughly AED 60 billion (~3.0 % of GDP). The other major sources of revenues are Custom Duties ~ AED 25 billion, Tourism and Hospitality Taxes ~ 30 billion and Excise Tax 2.5 billion.

Exhibit 1- UAE Fiscal Revenue Sources (Estimated for 2023)



As this article was being written, the UAE Cabinet approved the 2025 budget for the Emirates for AED 71.5 billion – an 11 percent increase over the 2024 budget of AED 64 billion (13 percent of GDP). The higher spending partially reflects the growing population of the Emirates but also a renewed focus on social development and

¹ Note that currently the requirement to submit transfer pricing documentation is only for taxpayers that are subject to Master and Local File requirements.

infrastructure. Intakes from the newly introduced corporate income tax regime will be a key enabler of the trend of higher government spending.

Exhibit 2 – Federal Budget over the Years

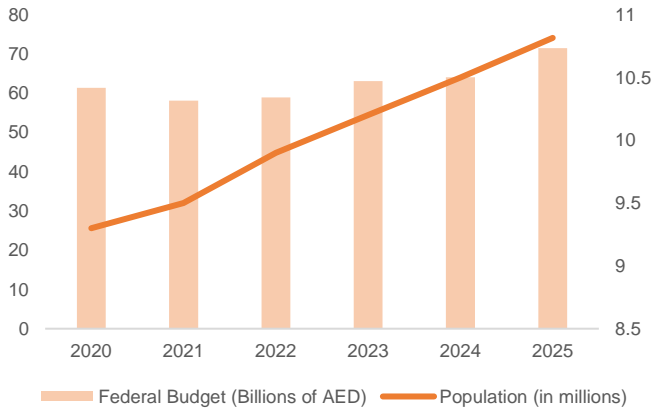


Exhibit 3 – Federal Budget Per Capita

Year	Federal Budget (Billions of AED)	Population (in millions)	Budget Per Capita (AED)
2021	58.11	9.5	6100
2022	58.93	9.9	6000
2023	63.07	10.2	6200
2024	64.06	10.5	6100
2025	71.50	10.8 [†]	6600

[†]BakerBanbury Estimate

During the first year of its implementation in 2018, VAT collections were AED 27 billion – a staggering achievement for the FTA given that it was the first instance of a domestic taxation that affected all corporations within the UAE. Current estimates of corporate income tax collections are varied because of the uncertainty related to potential tax planning in the wake of the corporate income taxes but it is widely anticipated that they will become a significant source of fiscal revenues – more so with the stringent transfer pricing disclosure requirements. The FTA will enforce the corporate tax regime with similar discipline and rigour as it did with the VAT.

The FTA’s enforcement approach has been informed by best practices of other tax authorities and think-tanks such as the Organization for Economic Co-operation and Development (OECD). The TP disclosure form is a critical element in the successful implementation of the corporate income tax regime, as there are incentives for companies to reduce tax liabilities by shifting taxable income to free zones or non-resident Related Parties.

A key lesson that the FTA has taken from the experience of more developed regimes is that successful implementation of a rigorous corporate income tax regime needs to be accompanied by a rigorous transfer pricing regime. This is more so the case for an economy such as the UAE’s which is highly integrated with global supply chains and opportunities to move domestic income outside are plentiful.

The requirement to submit transfer pricing documentation with the annual corporate tax disclosures will limit incentives for corporate income tax avoidance through synthetic transactions that lack any economic substance. It will also ensure the success of the broader corporate income tax regime.

Key Takeaways

In practical terms, what does all this mean? CFO's and Tax Directors need to understand the new paradigm and ensure the following to avoid penalties:

- **Get a basic understanding of the transfer pricing framework:** Transfer pricing can be a highly subjective topic so its critical for the company directors to understand at least at a high level how the various transfer pricing methods operate so any advice from a transfer pricing practitioner can be reviewed and critiqued and not accepted *prima facie*. Unfortunately, there are providers of “TP documentation” which specialize in preparing documents that look like TP documentation (words on paper with boilerplate language) but do not speak in any specific detail on the actual transactions that will be disclosed on the FTA TP Disclosure Form.

I would recommend reading our brief transfer pricing primer which gives a basic overview of the mechanics of each transfer pricing method: <https://www.bakerbanbury.com/tp-primer>.

- **Get your transfer pricing in order before the year end.** Transfer pricing is a novel concept, particularly for UAE domestic corporate groups. In our experience with advising even large local groups, there is still a lack of good understanding of what transfer pricing really is and what a transfer pricing analysis intends to accomplish.

Transfer pricing is not an “after thought”. It is not a concoction of an analysis to fit the facts. Rather, it should be part of the financial planning exercise at the start of the fiscal period. Simply having arbitrary compensation for certain transactions does not mean that they are arm's length and will be respected by the FTA as such –even if you provide them with some form of transfer pricing documentation. Penalties may still apply if the prices are deemed to be not arm's length when the conclusions presented in the transfer pricing report are unconvincing.

- **Don't forget about implementation and year-end adjustments.** Any transfer pricing analysis is unfruitful without the ability to implement the proposed TP policies accurately in the books. For example, after a careful transfer pricing analysis, an advisor recommends applying a trademark royalty of 2 percent to the gross sales of a specific product category. The accounting systems should have the ability to segment the gross sales for the specific product category to correctly implement the recommended transfer pricing policy. Failing to do so will create a disconnect between what is described in the TP Disclosure Form and the accompanying Transfer Pricing Documentation.

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