Transfer Pricing Country Summary

Egypt

May 2022

1. Introduction

Egypt is not a member of the OECD. However, the country closely follows the advises and guidelines published by the OECD and implements the necessary rules accordingly. Likewise, the BEPS Action 13 is successfully implemented in Egypt.

2. Laws & Regulations

a) References to OECD/EU/Local Rules

Transfer pricing legislation was introduced in Egypt in 2005, under Article 30 by Law 91/2005. Executive Regulations Articles 38, 39 and 40 detail the transfer pricing legislation. The articles state and clarify the arm's length principle, the documentation needed, the advance ruling, the transfer pricing methods accepted and the hierarchy of these methods. Moreover, on 19 October 2020, the government enacted Law No. 206 of 2020, which addresses the three-tiered requirements for the transfer pricing documentation process. These obligations include a master file, a local file, and a country-by-country (CbC) reporting, and it is effective for Reporting fiscal years starting on 1 January 2018.

According to the Egyptian transfer pricing guidelines, the tax authorities had determined the four-step process for taxpayers in order to price their controlled transactions according to the arm's length principle and/ or to assess the consistency of their pricing with the arm's length principle:

- Identifying any intra-group transactions and understanding the nature of such transactions;
- Selecting the most appropriate pricing method(s);
- Applying the selected pricing method(s);
- Determining the arm's length amount and introducing a review process to reflect any future changes.

b) Definition of Related Party

A related party is defined as any person who has a relationship with a taxpayer that affects the taxpayer's taxable profit. Such relationships include, among others:

- Family members: a spouse, ancestors, descendants;
- Corporations in which the related party owns, directly or indirectly, at least 50% of the stock or voting power;
- Partnerships and their partners (joint partners and silent partners); and
- Parent company and subsidiaries in which the parent company holds an ownership interest of at least 50%.

c) Nature of Transfer Pricing Documentation

Transfer pricing information should be annually filed together with the income tax return. There is a special section within the Annual Corporate Tax Return that requires information on transfer pricing, such as:

- Detailed related parties transactions (especially those companies in which the reporting company has 50% or more in its stake),
- The pricing method used (according to the Tax Laws and Regulations) and the reason(s) for selecting this method,
- Detailed documentation that supports the pricing of the different related parties' transactions (e.g., sale of goods, rendering of services, payment of royalties, etc.),
- A chart that shows the related parties, stake holdings, etc.
- Other information.

d) Tax Havens & Blacklists

Although the rich and powerful OECD countries have taken some steps against tax havens, EIPR (Egyptian Initiative for Personal Rights) urges Egypt and other developing countries to join the fight, possibly through existing structures such as the Non-Aligned Movement or the African Union.

EIPR discovered that well-known tax havens were a major source of investment in Egypt.

EIPR estimated that lost revenues from tax havens totaled LE5 billion per year, assuming that the offshore companies involved earned a 20 percent annual return and thus made LE20 billion in profits.

e) Advance Pricing Agreement (APA)

Under the current legislation, the Executive Regulations provide for the possibility of Advance Pricing Agreements between the tax authorities and the taxpayer. ETA has the right to agree in advance with a certain method to determine the arm's length range. Applications can be made for future transactions on a unilateral, bilateral or multilateral basis for a period to be determined with the tax authorities. Currently, the application for APA is free of charge.

f) Audit Practice

Transfer pricing is part of the general corporate tax audit. Since 2005, great attention has been given to related party transactions. ETA assigns companies with a low or high-risk tax audit rating. In general, taxpayers who provide sufficient transfer pricing documentation and intra-group transactions are assigned a low-risk rate. On the other hand, if companies do not prepare adequate documents or offer the proper attention to transfer pricing practices, they will be assigned as companies with high risk and are more likely to be in a tax audit. The tax authorities had issued the Egyptian transfer pricing guidelines in November 2010.

3. Transfer Pricing Documentation

a) Level of Documentation

High-level documentation must be available to support transactions between related parties. There is no specific regulation to determine the documentation required, but taxpayers can take OECD Chapter 5 of the transfer pricing guidelines as a suggestion when framing the transfer pricing file. However, the information needs to defend the levels of taxable profits as they appear in the financial statements.

Therefore, they can also vary from case to case. In particular, attention must be given to the choice of transfer pricing method and the related comparability analysis.

Under Article 13 of the Unified Procedures Law 206 and Ministerial Decree No. 547 of 2018, Egypt has enacted the CbC reporting requirement. Thereby, the reporting obligation is assigned to Egyptian parent firms of multinational corporations (MNEs) with yearly consolidated group sales of at least EGP 3 billion. Likewise, under the same article Master file and Local file requirements are also enacted. The threshold is EGP 8 M for these obligations. Moreover, if a taxpayer fails to submit the Local File or Master File, a penalty of up to 3% of the value of related party transactions is imposed through Law No. 211 for non-compliance with transfer pricing rules.

b) Industry Analysis

By identifying value drivers for the relevant industry, a first indication of the level of profitability common in the industry is being given.

c) Company Analysis

A description of the management structure of the local entity, a local organisation chart, and a description of the individuals to whom local management reports and the country(ies) in which such individuals maintain their principal offices.

A detailed description of the business and business strategy pursued by the local entity, including an indication of whether the local entity has been involved in or affected by business restructurings or intangibles transfers in the present or immediately past year and an explanation of those aspects of such transactions affecting the local entity.

d) Functional Analysis

In conducting a functional analysis, an assessment is made of the significant activities and responsibilities that are performed by the related parties relevant to the Intercompany Transactions under review, the tangible and intangible assets that are employed and the risks that are borne in undertaking the business activities. Such an assessment is consistent with the recommendations that have been made in the OECD Guidelines in paragraph 1.51.

e) Choice of Transfer Pricing Method

The Egyptian tax law follows the recommendation of the OECD Guidelines. The following methods are accepted:

- Comparable Uncontrolled Price Method
- Resale Price Method
- Cost Plus Method
- Transactional Net Margin Method
- Profit Split Method

If none of them is applicable, the taxpayer has the opportunity to define and use other approaches as per the OECD methods.

f) Economic Analysis – Benchmark Study

The comparability analysis is recommended to be carried out in line with the OECD Transfer Pricing Guidelines standards. The ETA's Transfer Pricing Guidelines place special emphasis on the following comparability factors:

- Functional analysis;
- Contractual terms and conditions;
- Economic circumstances;
- Business strategies;
- Governmental policies.

g) Inter-company (IC) Legal Agreement

Although an Inter-company legal agreement formalises the business and financial relationship between group entities, the legal agreements have a lower ranking since the OECD 2017 Guidelines made the "conduct of parties" the prevailing concept.

h) Financial Statements

All companies in Egypt (listed and unlisted) must prepare financial statements in accordance with Egyptian Accounting Standards, and those financial statements must be audited by a Certified Public Accountant in accordance with Egyptian Auditing Standards, according to Corporate Law No. 159 of 1981 and Capital Market Authority Law No. 95 of 1992. Banks and other financial institutions must conduct joint audits.

The Egyptian Society of Accountants and Auditors' Standards Committee develops Egyptian Accounting Standards (EAS). The standards are reviewed, approved, and issued by a committee chaired by the Minister of Investment. The current version of full EASs, issued in 2006 and effective for fiscal years beginning 1 January 2007, applies to all Egyptian entities established under the provisions of the aforementioned laws, regardless of their legal form (that is, joint stock, limited liability, or partnership limited by shares) or whether or not they are listed on the Egyptian Stock Exchange 'EGX.' Except in certain EASs, where the differences are significant due to the applicable Egyptian laws and regulations, EASs comply with IFRSs in all material respects. Some of the differences are also due to the most recent IFRS changes in connection with 2008 and 2009 improvements.

The Egyptian Society of Accountants and Auditors is currently working on an exposure draft of an Egyptian Accounting Standard for SMEs. The exposure draft is based on IFRS for SMEs, but it is expected to propose several differences, including differences in leases and profit distributions to employees. The Egyptian Society of Accountants and Auditors' Board anticipates releasing the proposed EAS for SMEs in 2010. However, the implementation date has not yet been determined.

i) Production Process for TP Relevant Returns, Documents, Forms and Financials

In the chart below, the existence of the filing requirements with the details of which format is used, the latest filing date, notification requirement and its deadline, thresholds to be applied in case it exists, and the required languages are demonstrated. This information can be seen respectively for CIT, master file, local file, CbCR, local forms, annual accounts and segmented P&L documentations.

	Prepare or File?	Format	Deadline	Notification Deadline*	Threshold * (Yes/No)	Local Language (Yes/No) (No means English is possible)
Corporate Income Tax	File	Local GAAP or IFRS	4 months after the FY end	N/A	N/A	No
Master File	File	No specific form	During the parent entity's CIT return	N/A	EGP 8 million	No
Local File	File	No specific form	2 months after the CIT return	N/A	EGP 8 million	No
CbCR	File	No specific form	Within 1 year from the end of FY	Last day of the FY	EGP 3 billion	No
Annual Accounts	File	EAS and local GAAP	one month after the fiscal year ends	N/A	N/A	Yes (Arabic)
Segmented P&L	N/A	N/A	N/A	N/A	N/A	N/A

* Egypt has signed the MCAA on the Exchange of Country-by-Country Reports on 1 August 2016.

* There is no statutory regulation regarding the small and medium sized enterprises in Egypt's legislation.

Transfer pricing documentation should be available upon submitting the annual corporate tax return. (The deadline is 4 months after the last day of the business year, e.g., 30 April following the business year if the business year is the calendar year). The documentation does not need to be filed with the tax authorities.

Transfer pricing documentation must be submitted upon request of the ETA. The Tax Authority's right to make adjustments can be summarised as follows:

- Five years from the date determined by the Law as a "deadline" for filing tax returns;
- Six years from the above date in cases where the Tax Authority determines strong evidence of "tax evasion" by the taxpayer.

In case the Tax Authority requests so, taxpayers have to submit the requested documents within 15 days after receiving the notice. However, the taxpayer can request an extension.

j) Mandatory Language

The Law and the Executive Regulations do not specify the use of a certain language. However, it is preferable (not a must) that documentation be prepared in Arabic, while English is also accepted. If the documentation is prepared in another language, it might be expected that ETA will require an official translation of the documents at the taxpayer's expense.

k) Notification Requirement

Whether it is the ultimate parent entity or not, a constituent entity of an MNE group tax resident in Egypt must inform the ETA. If the Egypt tax resident constituent entity is not serving as an ultimate parent entity, it must notify the ETA of the ultimate parent entity's identity and tax residence, as well as the group's reporting entity.

l) Record Keeping

Accounting books, supplementary analysis and other financial details must be kept.

m) Penalties and Interest Charges

If transfer pricing adjustments affect the taxable profits, the regular penalties apply. Therefore, the following penalties can result, depending on the quantum of the unpaid liability.

- If the range of adjustment is between 10% and 20% of the final corporate tax, an amount of 5% of the tax is due;
- If the range of adjustment is between 20% and 50% of the final corporate tax, an amount of 15% of the tax is due;
- If the range of adjustment is more than 50% of the final corporate tax, 80% of the tax is due.

If a taxpayer fails to file the CbC report or CbC notice, Law No. 211 imposes a penalty for transfer pricing non-compliance, including a penalty of 2% of the value of the related party transactions.