



Grant Thornton



Tax



Regulation



Global

# Transfer Pricing and Arm's Length

Grant Thornton Bahrain  
2021



# Concept of Transfer Pricing and Arm's Length

The subject of transfer pricing (TP) has gained a great deal of momentum globally over the past couple of years. Most of the OECD and G20 countries had implemented TP legislation even before the BEPS initiative, and have issued further regulations following the finalisation of the BEPS Action Plan reports.

## Transfer Pricing

Transfer Pricing ('TP') is a regulated mechanism for pricing of goods/services between related parties to ensure that the transfer price between related parties is not affected by the relationship of related parties.

TP concept ensures that the transaction entered by related parties must meet the arm's length pricing arrangement. To ensure the global standardisation, the TP models are based on the methodologies set out in the guidelines issued by the Organization for Economic Cooperation and Development.

## Arm's Length Price

Arm's Length Price means a price that is applied or proposed to be applied in a transaction between persons other than related parties, in uncontrolled conditions.

## Uncontrolled transaction

Uncontrolled transaction means transactions between enterprises other than related parties, whether resident or non-resident

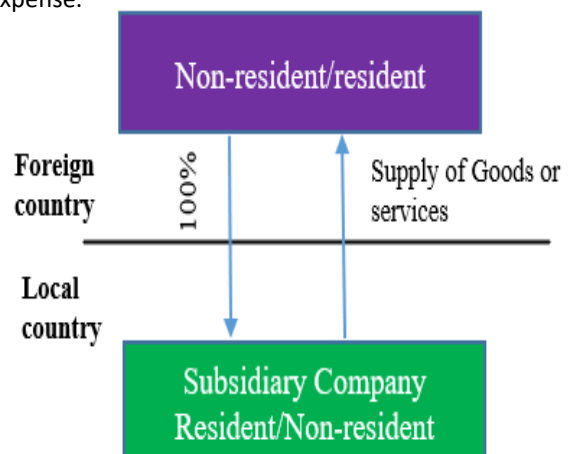
## Main components of Arm's Length Price

- The price should be applied or proposed to be applied in a transaction.
- A transaction will be between two unrelated or persons; and
- The transaction should be in uncontrolled conditions

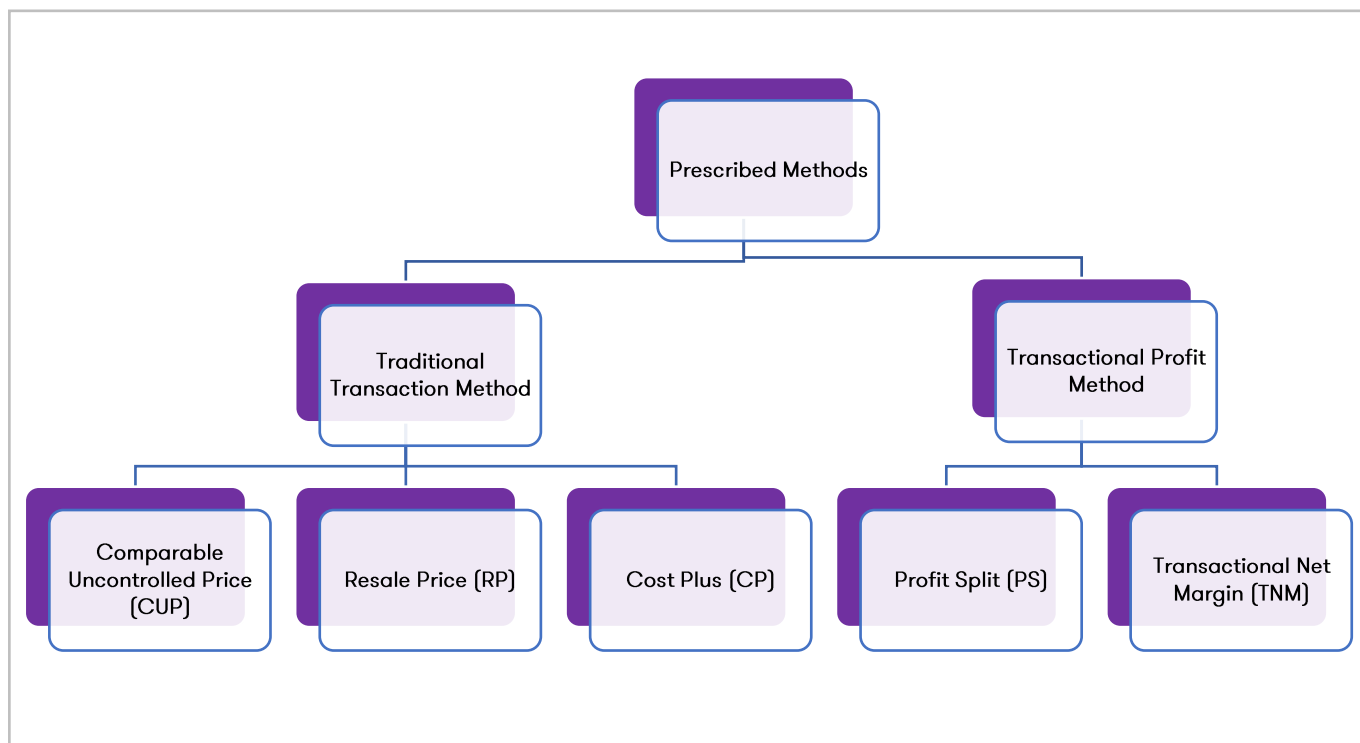
## Concept of International/Domestic Related Party Transaction

The transaction between two or more associated enterprises, either or both of whom are non-residents - like:

- Purchase, sale, or lease of tangible or intangible property, or
- Provision of services, or
- Lending or borrowing money, or
- Any other transaction having bearings on the profits, income, losses, or assets of such enterprises,
- Any mutual agreement or arrangement on allocation or apportionment or any contribution of cost or expense.



# Transfer Pricing Methods



## Transfer Pricing Methods

To determine Arm's Length Price of an international transaction, the OECD guidelines have prescribed "Traditional Transaction Method" and "Transactional Profit Methods".

The selection of the method depends on the Best suited to the facts and circumstances of each particular international transaction and Provides the most reliable measure of an arm's length price about the international transaction termed as the "Most Appropriate Method"

## Transfer Pricing Method and Comparability

Methods	Comparability Requirement	Approach	Practical Applicability
CUP	Very High	Prices are benchmarked	Medium
RP	High	Gross margins are benchmarked	Low
CP	High	Gross margins are benchmarked	Low
PS	Medium	Operating Margins are benchmarked Medium	Medium
TNM	Medium	Operating Margins are benchmarked Medium	High

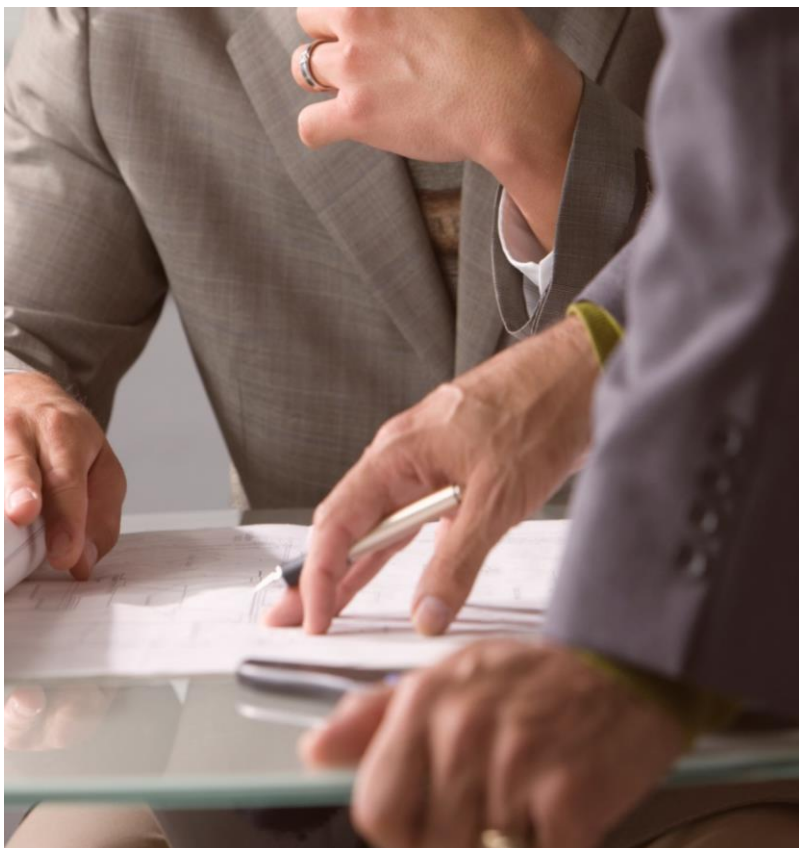
# Transfer Pricing in the GCC

## Summary of the existing TP legislative framework

The Gulf Cooperation Council (GCC) countries – Bahrain, Kuwait, Oman, Qatar, Saudi Arabia (KSA), and the United Arab Emirates (UAE) – have not been immune to global TP developments. Additionally, while Kuwait, Oman, Qatar, and KSA contain provisions in their respective income tax laws providing for related party transactions to be at arm's length, TP arrangements were not being challenged by tax authorities in much detail until recently.

The following table summarises the existing TP legislation/compliance requirements in these countries:

Country	CbC	Master File	Local file/ TP documentation
<b>Bahrain</b>	X	X	X
<b>Kuwait</b>	X	X	X
<b>Oman</b>	X	X	X
<b>Qatar</b>	✓	X	X
<b>KSA</b>	✓	✓	✓
<b>UAE</b>	✓	X	X



Bahrain and UAE do not have any TP legislation at present due to a lack of corporation tax regimes in these countries to form the basis for any TP legislation.

Bahrain has unveiled its reliance on TP procedures in respect of the VAT legislation in a recent guideline.

# Transfer Pricing in the Kingdom of Bahrain

## Legislative adaption

Bahrain has joined the BEPS inclusive framework and accordingly, must adopt the four minimum BEPS standards, one of which relates to TP documentation and CbC reporting – i.e. Action point 13. Other countries are also expected to follow suit in due course and CbC provisions are expected to be announced soon.

The VAT in Bahrain has been implemented since 2019 and covers the implication on domestic and cross-border transactions. As per the VAT law, VAT should be calculated based on the Market Value for supplies between related persons where both of the following conditions are met:

- If the value of the supply is lower than the market value
- If the customer is not entitled to deduct the input VAT in full

The market value is the fair price tradeable in the open market between two independent parties under similar circumstances at the same date as the date of the supply and by the following free competition conditions:

- Neither the supplier nor the customer is subject to any kind of commercial pressure
- Both the supplier and the customer independently work to achieve what is in their best interest
- The transaction is made within a reasonable period of time (i.e., no time pressure)

Where the market value cannot be determined in accordance with the fair price tradeable, the tax authority in Bahrain expects this to be determined based on the methodologies set out in the guidelines issued by the Organization for Economic Cooperation and Development.

## Powers of the Regulators in Bahrain

The VAT-registered persons must keep records and details of the method used to determine the market value of supplies made between related persons to provide to the tax authority upon request.

If the tax authority finds that the related parties used a value lower than the market value, then the tax authority shall have the right to replace the value used with the market value and shall calculate the VAT on this basis.

The adjustments made by the tax authority may attract additional VAT, additional surcharge, and penalties.

# Transfer pricing services

## Advisory

- Assistance in setting up business/operational model
- Restructuring of existing business model to build tax/commercial efficiencies
- Assistance in designing new transfer pricing policies and pricing arrangements
- Assistance in conducting a health check to identify potential gaps in the transfer pricing arrangements
- Due diligence report (DDR) assistance from transfer pricing perspective in order to ensure that business model and pricing arrangements of target acquisition are defensible
- Review of deemed international transactions
- Assistance in preparing profit attribution (PE) attribution studies
- Assistance in preparing global transfer pricing policy document
- Supply chain restructuring
- Review of agreements from a transfer pricing perspective
- Structuring of cost sharing arrangements for inter-company transactions
- Structuring management fee payments, royalty payments, inter-company financing arrangements

## Dispute Avoidance

- Reviewing tax exposure from regulatory changes, pending litigation and jurisprudence and advising on risk management in respect thereof
- Tax briefings and supplying external support to external counsels for representation before the appropriate forums.
- Advisory on high-end litigation strategy

## Advance Pricing Agreements (APA)

- Assistance in identifying transactions to take to the APA
- Assistance in APA strategy
- Pre-APA planning – structure to be taken to the APA, preparation of transactional documents, reviewing intercompany agreements, etc
- Assistance in relation to pre-filing consultation
- Assistance with preparation and filing of application
- Assistance with responding to queries/questions sought post filing of application
- Assistance on negotiations with APA authorities
- Assisting client obtain draft and final APA agreements
- Assistance in compliance audits, revision, renewal and cancellation of APAs

## Safe Harbour

- Review of related party transactions for the applicability of Safe Harbour provisions
- Preparation of Safe Harbour application and submission with prescribed authorities post review and discussions with the Company
- Representation and filing of submissions before the prescribed authorities.

## Mutual Agreement Procedure (MAP)

Assistance and representation for Mutual Agreement Procedure (MAP):

- Evaluation of all the facts
- Reviewing all TP documents and TP adjustment
- Preparation of request for Competent Authority ('CA') and discussion with CA
- Negotiation and closure of MAP



# Transfer pricing services

## Potential Businesses

- International Distribution and service centre activities
- Banking Activities of head office
- Financing Companies
- Holding company activities
- Insurance Licensees
- Leasing activities Investment Business Firms (Category 1, 2 and 3)
- Shipping activities
- Intellectual Property activities
- Fund Administrators
- Distribution and service centre activities
- Intellectual property
- Oil and Gas

## Grant Thornton relevant experience

Grant Thornton Bahrain recently completed a Transfer Pricing project for a large exchange house in Bahrain. Wherein, we reviewed the present operating structure/ pricing model and assisted in placing an appropriate pricing model - consistent with the arm's length principle for 3 different tax jurisdictions.



# Contact Us



## Jassim Abdulaal

Managing Partner  
T +973 39605262  
E jassim.abdulaal@bh.gt.com



## Jatin Karia

Senior Partner  
T +973 39575562  
E jatin.karia@bh.gt.com



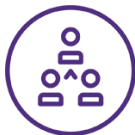
## Muhammad Naveed Rashid

Senior Manager, Tax Advisory – VAT  
T +973 33920943  
E muhammad.naveed@bh.gt.com



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PARTNERS AND DIRECTORS



120+

PEOPLE



1300+

CLIENTS



25%

AVERAGE ANNUAL GROWTH  
OVER THE LAST 10 YEARS

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PO Box 11175  
12th Floor, Al Nakheel Tower  
Seef District  
Kingdom of Bahrain  
T: (973) 17500188 | F: (973) 17500199

Suite No. 2143  
Bahrain Financial Harbour, Harbour Gate  
Manama  
Kingdom of Bahrain



@gtbahrain



Grant Thornton Bahrain



Grantthornton\_bahrain



@GTBahrain

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