Managing Intra-group Services in the UAE and KSA: A Transfer Pricing Guide to the Benefit Test and Documentation requirements

This article examines what constitutes intra-group services and highlights the significance of applying the arm's length principle when such services are rendered, as outlined in the:

- Federal Tax Authority Transfer Pricing Guide (Guide) of United Arab Emirates (UAE) and
- ZATCA Transfer Pricing Guidelines (ZATCA Guidelines) of the Kingdom of Saudi Arabia (KSA).

It further discusses the advantages of utilizing these services within a group of companies and sets out the documentation obligations prescribed by tax laws in the UAE and KSA.

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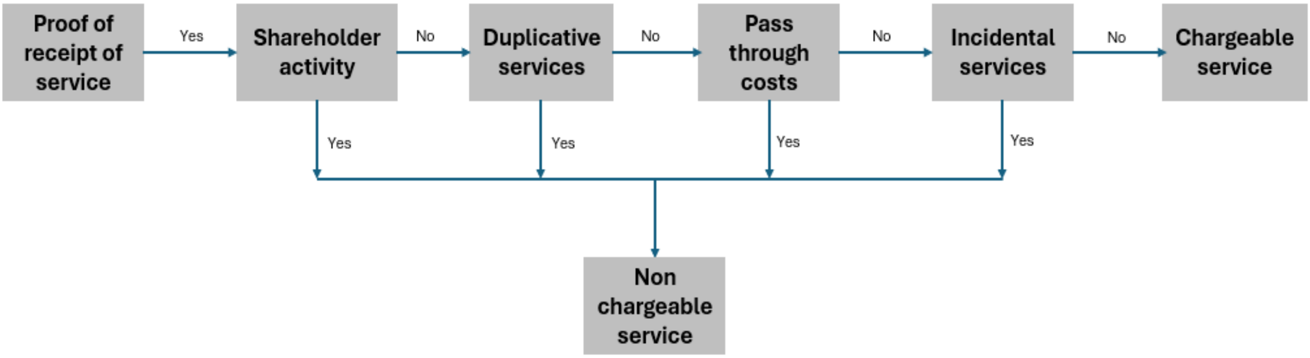
INTRODUCTION

The Organisation for Economic Co-operation and Development Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (OECD TP Guidelines) defines intra-group services as *"an activity (e.g. administrative, technical, financial, commercial, etc.) for which an independent enterprise would have been willing to pay or perform for itself.“*

As per section 7.2.1. of the Guide, intra-group services include those services that are typically available externally from third parties (such as legal and accounting services), in addition to those that are ordinarily performed internally (for example, by an enterprise itself, such as auditing or human resources).

However, services in the nature of shareholder activities, duplicative services, pass through costs or services that have only incidental benefits, do not qualify as intra-group services. For example, the MNE group might carry out group wide studies to reorganize its structure, conduct studies to assess the benefits of starting new lines of business, or terminate a division. These are not treated as chargeable intra-group services since they do not involve a deliberate provision of value.

The flow chart below helps to establish whether an intra-group services transaction should be charged:



SIGNIFICANT ISSUES

There are two main issues in the analysis of transfer pricing for intra-group services.

I. Benefit Test

According to OECD TP Guidelines and the Guide, it must be determined that when an activity is performed by one or more group members of an MNE for another member, whether such activity provides the group member with economic or commercial value to enhance or maintain its business position, and whether an independent entity in the same or similar circumstances would have paid for the services or perform the services itself. These two conditions together form the basis of the benefit test, and both must be satisfied for the activity to qualify as an intra-group service. The OECD TP Guidelines also clarify that the facts and circumstances of each case may be different, and reliable documentation must be presented to tax administrations to verify that the costs have been incurred by the service provider. A similar statement is articulated in Chapter 5 of the ZATCA Guidelines For Zakat payers, the pricing of intra-group services also directly impacts the Zakat base. ZATCA Guidelines clarify that commercial transactions, such as the provision of administrative, technical, or support services, must be priced as if they were between independent parties. Additionally, Section 7.2.4. of the Guide expects the taxpayer to prepare and maintain supporting documentation which is to be provided to the FTA upon request.

The transfer pricing documentation should include:

1. a clear explanation of the intra-group services provided
2. the identity of the beneficiaries
3. a summary of the benefits received
4. the approach adopted to determine and calculate the charges together with the justification for the choice of allocation key(s) used
5. an explanation of how the underlying costs relate to the service provided, and the support for any markup applied

II. Determining an arm’s length charge

Once the legitimacy of the service is established, the next step is to determine an appropriate charge for it. This charge should reflect what independent entities would agree upon for a comparable service under similar conditions. As per Chapter 5.3.2 of the ZATCA Guidelines, taxpayer must justify the pricing method selected and explain why it produces the most reliable arm’s length result for the service.

The OECD TP Guidelines and the Guide discuss two methods for determining an arm's length charge.

Direct charge: Where the mechanism for charging intra-group services can be readily identified, the MNE group may use a direct charge method.

Indirect charge: In situations where services are delivered to multiple recipient entities, applying a direct charge mechanism may not always be feasible. In such cases, cost allocation becomes necessary. Under this method, the service provider entity may aggregate costs of providing services and allocate the costs using appropriate allocation keys, as a basis for calculating an arm's length charge.

Section 7.2.3.4. of the Guide provides a summary of the process involved in determining the cost base. To give an example, let’s say an MNE group consists of 3 entities: **Company A** as the parent company providing centralised administration services to **Company B** and **Company C,** its subsidiaries.

Step 1: Calculate the total cost pool- Company A identifies all annual expenses for its shared services department, including all indirect expenses,

Step 2: Company A removes costs that only benefit itself, such as the cost of preparing its own statutory financial statements or shareholder costs,

Step 3: Company A identifies services performed exclusively for one member. If Company A spent a certain amount specifically for Company B, then such cost is removed from the shared pool and would be billed directly to Company B,

Step 4: The remaining cost is split between Company B and Company C using an allocation key (e.g., total headcount or number of license users).

LOW VALUE ADDING SERVICES

In addition to the guidance on intra-group services, OECD TP Guidelines and the Guide contain a segment on low value-adding intra-group services. This section specifies a wide category of common intra-group services which command very limited profit markup on costs. To qualify as low value-adding intra-group services, the activities must meet the criteria as listed in the Guide:

- Supportive in nature: not part of the group's core business or profit-generating activities.
- No Intangibles: They neither use nor create unique, valuable intangible assets.
- Low Risk: They do not involve the assumption, control, or creation of significant risk for the provider.
- Further activities as explicitly listed in section 7.2.3.5 of the Guide would not qualify for the safe harbour.

The OECD TP Guidelines and section 7.2.3.5 of the Guide, proposes a simplified, elective methodology to determine an arm's length charge which includes the following steps:

- determination of the cost incurred.
- allocation of low value-adding service costs by using an appropriate allocation key
- profit markup – a profit markup shall be applied to all costs at five percent of relevant cost in the pool with the exception of any pass-through costs.
- total charge for low value-adding services which comprises of costs incurred by another group member in providing services and the share of pooled costs allocated to the member using a selected allocation key along with profit markup.
- a simplified benefit test - Tax administrations using the simplified approach for low value-adding intra-group services may set thresholds to monitor its application.

LOW VALUE ADDING SERVICES

The Guide has provided an example intended to clarify the application of low value-adding service

Services	Conclusion	Policy
Technical service – includes guidance on testing and inspection techniques to be applied when servicing clients	This service is related to core business activity of the entities and contributes to economic value of the group	Detailed comparability analysis to be conducted and cannot be classified as low value-adding service
Support service- includes keeping books and records, processing invoices	This service is supportive in nature and does not result in direct revenue generation	Five percent markup can be applied.

POTENTIAL CHALLENGES

Across jurisdictions, tax authorities continue to face significant challenges in auditing intra-group services transactions. As highlighted in Chapter 4.1.2.1 and 5.3.2 of the ZATCA Guidelines, merely submitting a contract and an invoice is not considered adequate. Transactions should be analysed based on the actual activities performed, regardless of contractual naming or legal form. Taxpayers are required to provide comprehensive evidence of the services received, demonstrating their relevance and utility to the business, as well as confirming that such services are neither duplicative nor shareholder in nature. These elements are subject to rigorous scrutiny by revenue authorities. Consistently, courts have placed the burden of proof on the taxpayer to substantiate the legitimacy and arm's length nature of the charges.

WHAT SHOULD COMPANIES DO

Intra-group services play a pivotal role in driving the overall efficiency of the MNE group. However, it remains one of the most litigated areas in transfer pricing globally. Given their importance, MNEs should **establish clear and streamlined policies** and processes to monitor the provision of intra-group services and to determine appropriate charges.

To ensure fairness and transparency, **robust documentation** should be maintained highlighting the need-benefit test, evidence of services rendered, the cost allocation methodology, and the appropriateness of any applied markup, thereby mitigating the risk of non-deductibility of service costs and cross-border tax leakage.

In practice, companies should adopt a proactive approach by **periodically reviewing** intercompany service arrangements, aligning contractual terms with actual conduct, and maintaining documentation to justify the need-benefit test to ensure ongoing compliance with transfer pricing requirements.