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Sector Spotlight:
TRANSFER PRICING & ITS IMPACT ON M&A TRANSACTIONS

M&A Transfer Pricing in the GCC

Matthew Moriarty, Consultant at The Cragus Group Limited: "Transfer pricing is a risk management issue for M&A transactions and often a key value driver. In Bahrain and the United Arab Emirates (which in general both impose no corporate tax), along with Kuwait, Oman, Qatar, and Saudi Arabia, which together form the Gulf Co-Operation Countries (GCC); the view is usually taken that transfer pricing is a post deal issue. This lack of due diligence and planning however can often lead to unexpected and substantial post deal costs and liabilities.

"The GCC countries have either specific transfer pricing legislation or it is subsumed within their double tax treaties. In general the transfer pricing requirements follow the OECD Guidelines. Nearly all countries with which the GCC trade, have transfer pricing legislation and annual compliance requirements.

M&A transactions involving the GCC that result in intragroup charges (i.e. management, intellectual property or financing fees) need to demonstrate and document that these business value drivers have substance locally i.e. key management decisions and the assumption of business risk is actually taken locally. Challenges to charges out of the GCC are almost certain from revenue authorities in the receiving country.
M&A transactions into the GCC often involve a degree of profit sharing with local entities, and possibly significant with holding taxes imposed from the outbound territory. Group wide tax policies such as tax efficient supply structures may be at odds with allocating significant profit to the GCC region. The economic rational and the valuation of the transactions need to be consistent with the group's tax and transfer policy. Many tax authorities will consider these transactions to be key comparables.

M&A transactions involving the GCC have, from a transfer pricing perspective, additional complications. First a lack of local comparable data makes supporting the price of transactions complicated; second, the structures of Islamic financial transactions are not well understood by tax authorities outside the GCC."