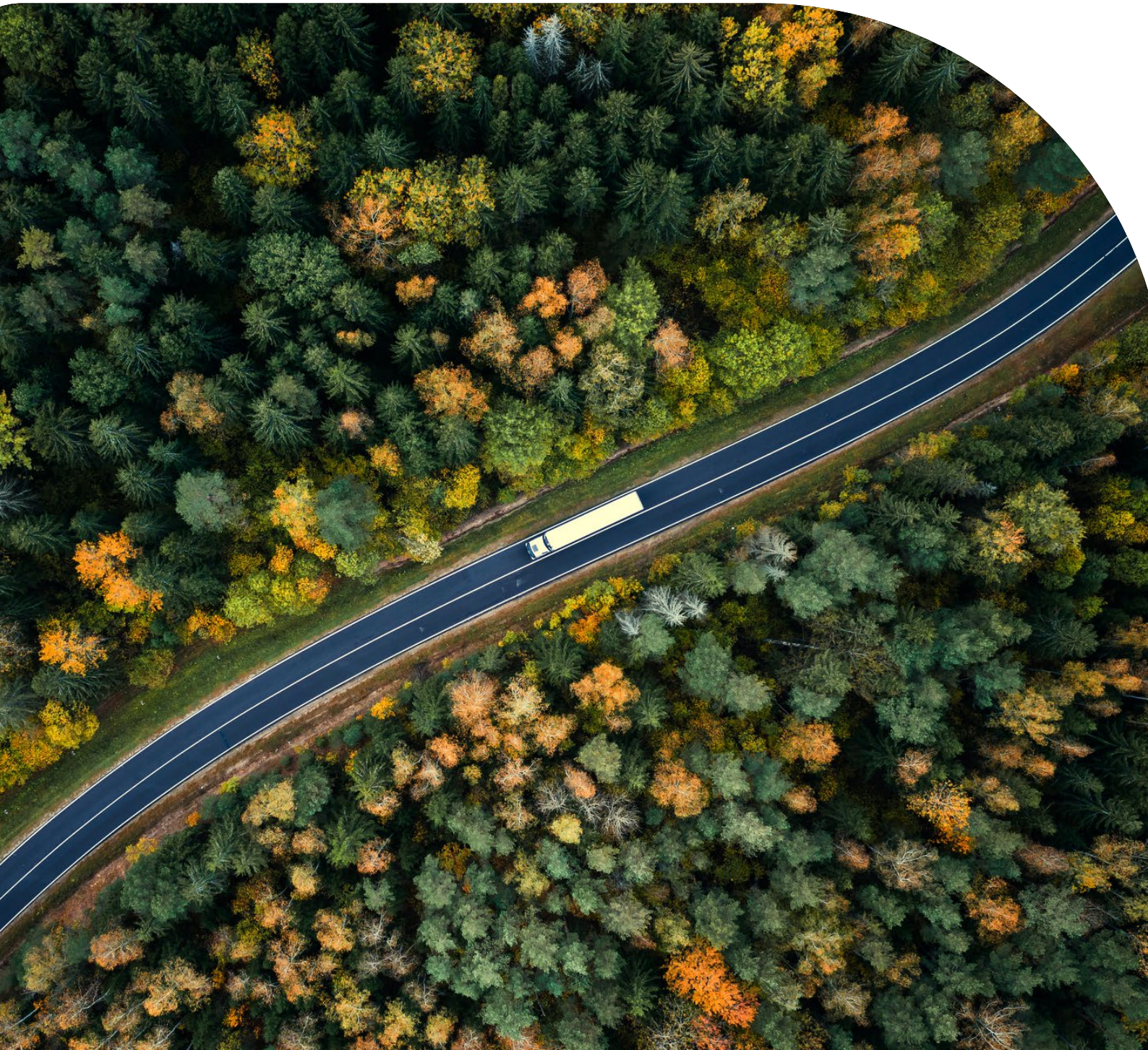


Africa Tax Desk Transfer Pricing Africa Landscape



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Abbreviations

APA	Advance Pricing Agreements
BEPS	Base Erosion and Profit Shifting
BURS	Botswana Unified Revenue Service
BWP	Botswanan Pula
CbC	Country by Country
CIT	Corporate income tax
CPM	Cost-Plus Method
CUP	comparable uncontrolled price
ETB	Ethiopian Birr
FACF	Central African CFA Franc
FIRS	Federal Inland Revenue Service
GNF	Guinean Franc
Income Tax Act	South African Income Tax Act of 58 of 1962
KES	Kenyan Shilling
KRA	Kenya Revenue Authority
MAD	Moroccan Dirham
MNE	Multi-National Enterprise
MTC	Moroccan Tax Code
OECD	Organization for Economic Co-operation and Development
PSM	Profit split method
RPM	Resale-price method
SA	South Africa
SARS	South African Revenue Service
TNMM	Transactional net margin method
TP	Transfer Pricing
UPE	Ultimate Parent Entity
Ushs	Ugandan shilling
ZAR	South African Rands
ZIMRA	Zimbabwe Revenue Authority
ZRA	Zambia Revenue Authority

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Algeria

Introduction to TP in Algeria

- Algeria's TP legislation is stated in the article 169bis of Tax Procedures Code which is introduced by the 2010 Supplementary Finance Law.
- The executive decree of November 17th, 2020 fixed the content of the initial documentation that must be submitted to the tax administration and the additional documentation which is only required in the event of a tax audit. The Associated enterprise concerned by the TP documentation are defined by article 141Bis of the Direct Tax Code.

TP documentation

Preparation of TP documentation

- In Algeria, there are two types of TP documentation to prepare: the initial documentation and additional documentation.
- The initial documentation, to be filed annually, is used to justify the transfer prices. It must include two categories of information, the first is related to general information of the group and the second concerns the company operating in Algeria.
- Additional documentation is required only in the event of a tax audit (Any other document or information requested by the tax administration in the event of a tax audit).

Master and local file

- The Local File and Master File (Initial Documentation) is an obligation for taxpayers concerned by the TP documentation.
- The TP documentation must be prepared in French or Arabic.

Penalties

- An additional penalty of 25% of the amount of the tax adjustment, if any, is applicable.

Risk factors for challenge

- Transactions conducted with related parties that operate in low tax jurisdictions (tax paradise).
- Persistent losses in any entity can be a reason of a full tax audit with a risk of potential significant tax adjustment.
- Tax deductions for intra-group head office charges and interest rates on intra-group loans are capped by tax regulations.

OECD Guidance

Algerian tax legislation provides, as a means of interpretation, the TP guidelines for multinational companies, approved by the OECD

Economic analysis and how to demonstrate an arm's length result

The Algerian tax regulations requires a presentation of the TP method applied for determining the prices and the justification of the method according to the arm's length principle and allowing a comparability analysis (market analysis, functional analysis, economic situation, contractual clauses).

Self-assessment

Algeria's TP legislation is placing the onus on taxpayers to self-assess their TP positions and to be able to demonstrate the arm's length price applied in the intragroup transactions.

Advance Pricing Agreements

The Algerian tax legislation does not provide for a specific APA procedure. However, a binding tax ruling procedure was introduced in the Algerian Tax Procedure Code.

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Botswana

Introduction to TP in Botswana

- The Minister of Finance introduced the TP legislation through section 36A of the Income Tax (Amendment) Act, 2018 which came into effect on 1 July 2019.
- The Botswana TP rules are applicable to transactions with non-resident 'connected persons'. Taxpayer may rely on the 'connected persons' definition in the Income Tax (Amendment) Act.
- The "connected persons" definition in the Income Tax (Amendment) Act mainly focuses on control which is determined based on the proportion of share capital or voting rights held or entitled to be held in the related party
- The TP regulations will be applied to domestic transactions only when the transaction relates to an International Financial Services Center (IFSC) company.

TP documentation

Preparation of TP documentation

- The BURS requires the taxpayer to prepare and retain TP documentation that is contemporaneous.
- TP documentation must be prepared on an annual basis.
- The content requirement of the TP documentation is broad and aligns to the requirements outlined to the OECD Guidelines.
- The TP documentation should be drafted in either English or Setswana.

Master and local file

- The law requires filing of the local file together with the Corporate Income Tax return within four months after the relevant financial year-end.
- There is no statutory threshold for filing a local file. However, Commissioner General issued a ruling on 8 July 2020 stating that only taxpayers with intra-group transactions exceeding BWP 5 millions should be required to file.

- The Master file is only required from for taxpayers that have transactions with connected persons the arm's length value of which exceeds BWP 5 million and it is to be filed only upon written notice of filing by the Commissioner General.
- There is no requirement to prepare or file a CbC report or notification.

Penalties

- In an instance where the taxpayer's transactions are not at arm's length, a penalty equivalent to the greater of 200% of the additional tax arising from a transfer pricing adjustment or BWP 10,000 may be imposed by the BURS.
- Failure to submit TP documentation may result in a penalty of at most BWP 500,000 which can be mitigated to not less than BWP 250 000.

Risk factors for challenge

- The BURS' audit activity indicates that taxpayers in the following categories are likely to undergo audits:
- MNEs; and
- Taxpayers in the mining, capital intensive or financial services industries.

OECD Guidance

- Botswana became a member of the OECD BEPS Inclusive Framework in June 2017.
- Although, Botswana is not a member of OECD, the OECD Guidelines are a relevant source of interpretation for TP legislation .
- The local regulations will prevail in case of any inconsistencies.

Economic analysis and how to demonstrate an arm's length result

- The Botswana regulations specify the following methods as the approved TP methods from which the most appropriate method can be chosen:
- Traditional methods:
- CUP method: price
- CPM: markup on costs
- RPM: resale margin
- Transactional methods:
- TNMM: net profit margin
- Transactional PSM: operating profit and loss split
- The approved TP methods are consistent with the OECD Guidelines.
- The TP regulations allow the taxpayer to select a combination of methods, or an unspecified method based on circumstances of the case.
- The taxpayer is required to also state why the five methods were regarded as less appropriate or non-workable, where an unspecified method is utilised and why the selected method is regarded as most appropriate.
- The BURS may consider comparables from the same geographic market as the controlled transaction as appropriate for benchmarking. However, in instances where such information is not available, the BURS may accept information from any other geographic markets.
- Taxpayers are required to justify the use of multiyear data in their economic analysis.
- The TP regulations allow the use of the full range as opposed to the interquartile.

Self -assessment

Botswana has a self-assessment regime. The duty of developing a TP policy solely lies with the taxpayer.

Advance Pricing Agreements

- The Botswana TP regulations allow taxpayers to enter into an APA with the Commissioner General.
- The APA would apply to a specific transaction over a fixed time period.
- APA regulations are still to be promulgated by the Minister.



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Cameroon

Introduction to TP in Cameroon

- The Cameroon TP documentation rules were introduced in the Cameroonian legislation through the 2014 Finance Law and later modified in the 2018 and 2020 Finance Laws.
- The TP documentation rules are under section 19 and section M19a of the General Tax Code.

TP documentation

Preparation of TP documentation

- Companies are required to prepare TP documentation for all intercompany transactions conducted.
- The taxpayer company was previously required to file the TP documentation, however, according the 2020 Finance Law, the obligation has been replaced with the obligation to file an annual TP declaration.
- TP documentation is submitted upon the GDT's request during an audit.
- The TP documentation must be submitted within one month from the date the notice from the GDT was received. However, the deadline can be extended by the GDT to two months upon application.

Master and local file

- The local file must at a minimum include the below:
 - Details on the transactions carried out;
 - The TP methodology used, and an explanation of the methods selected; and
 - The economic realities relating to market data.
- The master file and local file can be prepared according to the TP documentation recommended requirements that are in the OECD Guidelines.

Penalties

- The Tax code does not have any penalties that are particularly for TP. However, the general penalties may be applied.
- A penalty of 5% may be impose should the company fail to produce the TP documentation upon the GDT's issue of a notice.
- The 5% penalty will be charged based on the amount of each transaction that should have been documented and per financial year. The minimum amount of the penalty is FAF 50 million.
- Interest 1.5% will be charged for late submissions. The interest may not exceed 50% of the tax due per month for late filing or payment.
- In cases were there is an adjustment made by the GDT, a penalty of either 30%, 100% or 150% may be imposed in the cases of good faith, bad faith, and fraud, respectively.
- A penalty of 10% may be imposed for the late declaration or payment and the penalty may not exceed 30% of the tax due,

OECD guidance

- Cameroon is not a member of the OECD. However, there has been steps taken to comply with the OECD's international standards, such as BEPS and the Action Plan 13.
- The OECD Guidelines on TP may, however, be relied on to determine the arm's-length nature of intragroup transactions, and supporting documentation should be prepared

Economic analysis and how to demonstrate an arm's length result

- There is no specific TP methods provided by the legislation. However, the method chosen by the taxpayer should respect the arm's-length principle.
- Thus, the TNMM, CUP, RMP, PSM or CPM methods that are consistent with the methods recommended in the OECD Guidelines may be chosen.
- The tax code states that comparable may be used to substantiate the arm's length nature of a related party transaction.
- The taxpayer has the responsibility to prove the arm's length nature of a transaction.

Advance Pricing Agreements

- Currently Cameroon does not have any APA rules.
- However, a taxpayer may request a tax ruling from the GDT in terms of section M33 of the Manual of Tax Procedures.

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Côte d'Ivoire

Introduction to TP in Côte d'Ivoire

- The TP rules in Côte d'Ivoire are contained in the below legislations:
 - Articles 36, 36 Bis and 38 of the General Tax Code;
 - Article 50 Bis of the Tax Procedure Book;
 - Article 15 of the 2017 Finance Law; and Article 14 of the 2018 Finance Law.
- The TP return filing requirements are in Article 15 of the 2017 Finance Law.
- The CbC report filing rules are in Article 14 of the 2018 Finance Law which also introduced the thin capitalization.

TP documentation

Preparation of TP documentation

- The Côte d'Ivoire TP documentation rules requires the taxpayer to prepare and file the TP return and the CbC report.
- There is no specific requirement to prepare and file the TP master file and local file.
- However, the taxpayer may use the TP documentation to justify transactions with affiliate companies and the methods used in determining the pricing during audits with the tax authority.
- The TP documentation must be prepared annual, and a local file must be prepared for each entity.

Master and local file

- Although there is no requirement to prepare and file the TP documentation, the taxpayer may rely on the guidance provided in the OECD Guidelines for the preparation of a master file and local file.

- The CbC report is required to be prepared and submitted no later than 12 months after the end of the fiscal year.

Penalties

- There are no TP documentation penalties included in the regulations or legislations.
- A penalty of XOF5 million may be imposed for the failure to submit or late submission of the CbC report.
- A penalty of XOF2 million may be imposed for the omission or incorrect disclosures made in the CbC report.

OECD guidance

- Côte d'Ivoire is not a member of the OECD. However, it applies the OECD Guidelines.
- Côte d'Ivoire has also adopted the BEPS Action 13 for their TP documentation requirements, TP return and CbC reporting.

Economic analysis and how to demonstrate an arm's length result

- There is no specific TP methods provided by the legislation.
- Thus, the TNMM, CUP, RPM, PSM or CPM methods that are consistent with the methods recommended in the OECD Guidelines may be chosen.
- There is no specific guidance economic analysis in the legislations or regulations.
- The taxpayer may rely on the guidance provided in the OECD Guidelines in preparing the economic analysis and demonstrating the arm's length results.

Advance Pricing Agreements

- There is no APA program available in Côte d'Ivoire.

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Egypt

Introduction to TP in Egypt

- Transfer Pricing in Egypt is regulated by Article (30) of Income Tax Law No. 91 of 2005 and the Articles (38), (39) and (40) of the Executive Regulations, as well as the unified tax procedures law (UTLP), its amendments under Law No. 211 of 2020, and its executive regulations issued in June 2021.
- The transfer pricing rules apply to domestic and cross-border commercial or financial transactions between related parties. In the event where conditions agreed between related parties in their commercial or financial transactions differ from those that would be agreed between unrelated parties, in a way that results in the reduction of the tax base or the shifting of tax burden from a taxable person to a tax-exempt person, the ETA can determine taxable profits based on the arm's length price.
- The legal definition of a related party is complex and can be widely interpreted. It starts with relationships affecting the determination of the tax base based on at least 50% direct or indirect ownership, voting or management rights, dividend distribution rights, or capital rights, and extends to more general terms. The law indicates that two persons are generally related if the relationship between them reaches the extent that there is a possibility that one of the two persons/ or both persons would act in accordance with the directions, requests, suggestions or will of the other person or a third person.
- All commercial and financial transactions fall under the scope of controlled transactions, including but not limited to buying and selling all types of goods, services and assets; expense reimbursements; royalties; loans with all different types; buying or selling financial instruments, including the transfer of shares; buying or selling intangible assets; and, buying or selling contracts or relinquishing them.

TP documentation

Preparation of transfer pricing documentation

Egypt follows the three-tiered approach to transfer pricing documentation: (i) master file, (ii) local file, and (iii) CbCR and/ or CbCr notification.

All taxpayers with related party transactions exceeding EGP 8 million in overall value within a taxable year must submit a local file and a master file.

Transfer pricing documentation is accepted in English and translation is to be provided upon request.

- CbCRs must be filed with the ETA no later than 12 months after the last day of the fiscal year to which the CbCR relates. CbCR notifications must be filed by the end of each fiscal year to notify the ETA of where and when the CbCR for this fiscal year will be submitted.
- CbC Reporting requirements apply to MNE Groups differently depending on whether the Ultimate Parent Entity (UPE) is an Egyptian entity:
 1. Where the UPE of an MNE Group is tax resident in Egypt, the UPE is obliged to file a CbCR with ETA if the consolidated group revenue of the MNE Group is equal to or exceeding EGP 3 billion.
 2. Where the UPE of an MNE Group is tax resident in other jurisdictions, the threshold of Euro 750 million applies according to the BEPS Action 13 standard.

Master and Local File

Taxpayers with related party transactions exceeding EGP 8 million in overall value within a taxable year must submit their local file within two months following the filing of their income tax return. These taxpayers are also required to submit their master file prior to the submission deadline in the UPE country. In cases where there is no deadline in the UPE country the master file deadline becomes the submission deadline of the local file in Egypt.

The ETPG outline a four-step procedure for compiling the local file, as follows:

- Step 1: Identifying the controlled transactions and understanding the nature of such transactions;
- Step 2: Selecting the most appropriate transfer pricing method;

- Step 3: Applying the selected pricing method and
- Step 4: Determining the arm's-length amount and introducing a review process to reflect any future changes.

The contents of a local file as required under the four-step approach correspond to the standard OECD local file requirements as updated under the BEPS project and the 2022 OECD Guidelines.

The master file should provide a high-level overview of the business of the group of associated enterprises (GAE) - a term similar to "multinational enterprise group" under BEPS Action 13. The information provided should give relevant global economic, legal and financial context to the GAE's transfer pricing practices. The recommended information is similar to an OECD master file.

Penalties

Transfer pricing specific penalties have been introduced under the second clause of Article 13 of Law No. 211 of 2020 in case of non-submission or late submission of transfer pricing documentation at the specified deadlines.

- Failure to complete/declare all related party transactions within the taxpayer's Corporate Income Tax return, in accordance with the return's template, results in a penalty of 1% of the total value of the undeclared related party transactions in which the taxpayer has engaged during the respective taxable year;
- Failure to submit the Masterfile results in a penalty of 3% of the total value of related party transactions entered into by the taxpayer during the respective taxable year;
- Failure to submit the Local File results in a penalty of 3% of the total value of related party transactions entered into by the taxpayer during the respective taxable year; and
- Failure to submit the CbC Report (in case the Egyptian resident taxpayer is the Ultimate Parent Entity of a Multinational Group of Enterprises (MNE)) or corresponding CbC Reporting notification forms (in case the Egyptian resident taxpayer is a subsidiary of a foreign parented MNE) on the basis of the pre-determined thresholds, results in a penalty of 2% of the total value of related party transactions entered into by the taxpayer during the respective taxable year.

The penalties applicable, on an overall basis, should not exceed 3% of the total value of the related party transactions entered into by the taxpayer during a respective taxable year.

Some risk factors for challenge

- Significant payments to related parties in low-tax jurisdictions or tax havens.
- Material transactions - constituting a large portion of the company's revenues or costs, depending on the nature of the transaction. Examples include companies selling huge volumes of products or services to related parties that contribute a significant portion of the company's total revenues.

- Profitability trends - the level of profitability of a company could be compared to industry norms or comparable companies by the tax authorities. Where CbC reports are accessible, the profitability of local entities as opposed to wider group performance may be assessed. When a large deviation is found, this may be a strong indicator of a high transfer pricing risk. Likewise, an inconsistent profitability trend and/or consistent losses over a number of years raises another risk flag.
- Excessive debt - that exceeds the amount which a company could borrow if it were an independent entity, or excessive interest expenses may be an indicator of transfer pricing risk.
- Transfer pricing policies - involving significant year-end adjustments, particularly those involving true-down adjustments at a local entity level.
- Business restructurings - involving the internal reallocation of functions, assets or risks among the group.
- Low quality of contemporaneous transfer pricing documentation.

Economic analysis and how to demonstrate an arm's length result

- According to the ETPG, the ETA will expect to see that a search for potential internal comparable transactions has taken place before defaulting to an external database search for comparable companies. With that said, the ETA verifies and conducts searches on Bureau Van Dijk's Orbis and the accompanying loan and royalty modules.
- The ETPG recommends that the taxpayer first considers the search for comparables in the local market. When this data is not available, the taxpayer is advised to expand the geographic location in which the search is being performed gradually to initially consider comparables operating within the same geographic region. When this data is not available, the taxpayer may then search for comparables globally, or within those regional markets in which the taxpayer industry's operating conditions are deemed to be comparable.
- The ETA recommends a new benchmarking study to be conducted every three years, with an annual financial update.
- Independence criteria are strict in Egypt, the ETA rejects family businesses, comparables with shareholders or subsidiaries with ownership exceeding 49.9%, and often rejects comparables with insufficient information regarding ownership percentages.

Advance Pricing Agreements

- Advanced Pricing Agreements (APAs) are available under local transfer pricing laws, but no APAs have yet been negotiated locally in practice.

- Only unilateral APAs are available in Egypt and the option to apply for an APA is open to all taxpayers who are subject to the provisions of law, including Permanent Establishments (PEs).
- Requests for APAs should be made at least six months prior to the first date of the proposed covered period.

Exemption

The only exception to the submission of documentation in Egypt would be for taxpayers that do not exceed EGP 8 million in overall related party transaction value within a taxable year. These taxpayers are not required to prepare and submit a Masterfile and local file. However, the submission of CbCR notifications is still required for these taxpayers where applicable.

Related developments

- Over the past few years, the ETA has made significant investments into transfer pricing, focusing on capacity building and the upskilling of auditors, as well as on the continuous development of the legislative framework. The boost in transfer pricing capabilities has driven a high increase in the number of transfer pricing audits.
- A transfer pricing audit can take place on a standalone basis or through the corporate income tax audit. This means the probability of an audit is quite high, especially for large taxpayers.
- Based on a risk assessment, intercompany transactions are generally highly challenged within the corporate income tax audit process, and usually results in an adjustment. Taxpayers will either settle or object to the transfer pricing adjustments through the normal controversy routes leading to a specialized transfer pricing audit.
- In response to the recent legislative changes involving penalties, taxpayers are now fully committed to the contemporaneous documentation requirement. Companies are also running transfer pricing health checks to assess the efficiency of their overall documentation process, as well as considering whether their transfer pricing policies are up to date and fit for purpose.

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Ethiopia

Introduction to TP in Ethiopia

- Transfer pricing in Ethiopia is governed by Article 79 of the Federal Income tax proclamation 979/2016 and directive number 43/2015.
- Directive number 43/2015 is broadly based on OECD transfer pricing guidelines.
- The core rule of the policy is based on the arm's length principle which generally requires cross-border transactions to be conducted as if they were between unrelated parties under similar circumstances.

The transfer pricing policy of Ethiopia is only applicable for entities whose annual turnover exceeds ETB 500,000.

TP documentation

- A taxpayer should have a current relevant documentation that verifies that the conditions in the intercompany transactions were indeed consistent with the arm's length principle.
- This documentation should consist of the following items:
 - An overview of the taxpayer's business,
 - A description of the corporate organizational and operational structure of the group that the taxpayer is a member of,
 - Description of the transaction, including the analysis of the comparability factors,
 - Explanation on the basis of selection of the most appropriate transfer pricing method,
 - Comparability analysis – description of the steps undertaken to identify comparable transactions and details and explanation of any comparability adjustments made,
 - Details of industry and economy analysis, budgets or projections relied upon,

- Details of any advance pricing agreements or similar arrangements in other countries that are applicable to the transaction under question,
- A conclusion statement on the consistency with the arm's length principle,
- Any other information of material value to the determination of compliance with the transfer pricing policy.

Penalties

A taxpayer who fails to provide details of transactions with related persons as required will be liable for a penalty of Birr 100,000

Economic analysis and how to demonstrate an arm's length result

The transfer pricing directive states the approved transfer pricing methods similar to the OECD guidelines. These are:

- Comparable uncontrolled price method: this is a method of comparing the price charged to a related party for goods or services transferred to the price charged to unrelated parties for a comparable good or services in an unrelated transaction.
 - RPM: this is a method of comparing the resale margin that a purchaser in a related party transaction earns from reselling that property in a comparable unrelated purchase and resale transaction.
 - CPM: this method uses a comparison of the mark up on the costs directly or indirectly incurred in supply of goods or services in both related and comparable unrelated party transactions.
 - TNMM: this consists of comparison of the net profit margin (relative to the relevant base i.e. sales or costs) that one party in the transaction achieves in a related party transactions to the same base achieved by one party involved in one or more comparable unrelated party transaction.

- o Transactional PSM: this method involves allocating the portion of common profit or loss derived from such transaction an unrelated person would expect to earn, from engaging in similar comparable unrelated transaction, to related parties participating in a related party transaction.

- During comparison of a related party transaction to a comparable unrelated party transaction, comparability adjustments can be made if the adjustment is expected to increase the reliability of the expected result.

Selecting the most appropriate transfer pricing method

- Before selecting the appropriate transfer pricing method, the directive suggests considering the strength and weaknesses, availability of reliable information, degree of comparability and the appropriateness of the method in light of the nature of the related party transaction.
- This will aid in selecting the most relevant method of transfer pricing while complying with the tax regulations.

Current application

- The current application largely depends on demonstrating that the transaction is at an arm's length and is supported with sufficient documentation. However, the lack of relevant market data poses a significant challenge on organizing such transfer pricing documentation.
- Upon presentation of the related party transactions and documents, the tax authorities are likely to distribute, apportion, or allocate income, gains, deductions, losses, or tax credits between the parties to the transaction as the authority finds sensible with regards to these related party transactions, as stated on Article 79 of the Federal Income Tax Proclamation 979/2016.
- The application of transfer pricing directive is at early stage and the tax office is currently working to develop capacity on transfer pricing and it is expected to enforce the requirement on a consistent manner going forward.

Comparability analysis and adjustments

- The directive clearly states the factors which affect the comparability of two or more transactions which include the below:
 - o The characteristics of the service or the property,
 - o The function undertaken by each person with respect to the transactions, i.e. assets used and risks assumed,
 - o The contractual terms and conditions of the transactions,
 - o The economic and market circumstances in which the transactions take place, and
 - o The business strategies pursued by the parties to the transactions.
- o Therefore, when preparing a transfer pricing documentation, the above comparability analysis will be factored into the consideration of whether the transaction was made at an arms-length as compared to similar comparable transaction.

Advance Pricing Agreements

- APAs are available in Ethiopia. The legislation on the APAs is contained in article 12 of directive 43/2014.
- Taxpayers can enter into advance pricing agreements with the tax authority to determine the arm's length conditions for its future transactions over a fixed period.



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Gabon

Introduction to TP in Gabon

- TP documentation must be prepared in accordance with the following requirements:
 - The OECD TP Guidelines for Multinational Enterprises and Tax Administrations;
 - Articles P-831 Bis, P-831 Ter, P-860, P-866, P-878, P-1010Bis, P-1010 Ter of the General Tax Code; and
 - Instruction No. 001/MEPPD/SG/DGI/DLC of June 22, 2018 relating to documentation requirements with regard to TP.
- Filing of TP Tax Returns before Tax Administration Service is mandatory for companies with foreign intercompany transactions.

TP documentation

Preparation of TP documentation

- Composition of the documentation: Local file, Master file, tax forms (DPP01, PT01 and PT02).
- Tax form for CbC reporting (DPP02) is temporarily removed from the list of documentation required.
- Deadline for filling the TP documentation is April 30, N+1.

Master and local file

- Master file and Local file are to be provided by the taxpayer as part of the TP documentation. There is no threshold of volume of transactions that are required to be documented.
- CbC reporting is applicable for groups that achieve consolidated revenue of at least 700 million euros.

Penalties

- Failure to comply with the documentary obligations exposes the company concerned to a penalty equal to 5% of the total amount of the company's intragroup exchanges with a minimum of 65,000,000 FCFA per fiscal year.

- Failure to comply with the documentary obligations relating to the country-by-country declaration exposes the company concerned to a penalty equal to 0.5‰ of the consolidated turnover excluding tax, capped at 100,000,000 CFA francs per fiscal year. However, this declaration is currently suspended.
- Response time after formal notice to declare or complete the documentation is set by the Instruction at 60 days (2 months)

Some risk factors for challenge

- Persistent losses in any entity.
- Transactions with related parties that operate in low tax jurisdictions.
- Business restructurings, or changes in TP model, can also trigger a challenge but needless to say, businesses can evolve, and if the previous TP method no longer appears the most appropriate, it should always be reviewed, rather than being ignored for the sake of maintaining consistency.
- Payments made for global marketing (or administrative) services which are also rendered locally (duplication services).

OECD guidance

- Gabon has signed the Multilateral Convention on Mutual Administrative Assistance in Tax Matters. Gabon is the seventh African country to sign the Convention since it was opened for signature by all countries in June 2011. Gabon adopts the OECD TP guidelines.

Economic analysis and how to demonstrate an arm's length result

- The administration's expectations are provided for in instruction No. 001/MEPPD/SG/DGI/DLC of June 22, 2018 relating to documentary and reporting obligations with regard to TP.

- Methods accepted by the OECD are acceptable for demonstrating the arm's length nature of transactions.

Self-assessment

Gabon has a self-declaration system where the burden of proof is on the taxpayer to ensure that TP regulations are adhered to.

Advance Pricing Agreements

- Gabonese Tax administration can sign APAs.

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Guinea

Introduction to TP in Guinea

- There are no specific TP rules in Guinea however, Article 117 of the Tax Code requires taxpayers to reintegrate funds that have been “improperly deducted,”. Article 117 empowers the commissioner general to make TP adjustments.
- The government has recently introduced TP documentation requirements in both the Finance Act and the Tax Code.
- The documentation requirements do not stipulate how frequently are companies expected to update and prepare the TP documentation, nor do they set out the type of information that should be kept.
- The onus is on taxpayers to ensure that profits indirectly transferred to affiliates outside of Guinea, or to low tax jurisdictions, are included in their taxable income.

TP documentation

Preparation of TP documentation

- The current legislation prescribes documentation to be prepared for TP purposes. Furthermore, there is a requirement for taxpayers to submit a TP return.
- A TP return must be submitted with the annual corporate tax return by resident companies with annual turnover or total assets exceeding GNF 175 billion, which must include a summary of the company’s TP policy and details of the transactions and related pricing.
- TP documentation including a Master file and Local file should be prepared in French by:
 - Resident companies with annual turnover or total assets exceeding GNF 1000 billion;
 - Resident Companies that directly or indirectly hold more than 50% of the share capital or voting rights of companies with annual turnover or total assets exceeding GNF 1000 billion; and

- Resident companies that are directly or indirectly held by more than 50% of their share capital or voting rights by companies with annual turnover or total assets exceeding GNF 1000 billion.

The TP documentation must be submitted electronically to the tax authorities no later than 3 months following the deadlines for the corporate tax return and includes a Master file and local file.

Penalties

- There are no specific TP penalties in the legislation.
- However, Article 26 of the Finance Act of 2001 states that the corporate income tax due may be increased by 100 percent plus interest

OECD guidance

Guinea is not a member of the OECD and there is no guideline with regards to the application of the OECD guidance recommendations.

Economic analysis and how to demonstrate an arm’s length result

There is no specific method provided by the legislation.

Advance Pricing Agreement

The general Tax Code does not provide for APA’s.

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Kenya

Introduction to TP in Kenya

TP rules

- Section 18(3) of the Income Tax Act CAP 470 provides that,

‘Where a non-resident person carries on business with a related resident person or through its permanent establishment; and the course of that business is so arranged such that it produces to the resident person; or through its permanent establishment either no profits or less than the ordinary profits which might be expected to accrue from that business if there had been no such relationship, then the gains or profits of that resident person or through its permanent establishment from that business shall be deemed to be the amount that might have been expected to accrue if the course of that business had been conducted by independent persons dealing at arm’s length’. The TP rules empower the Commissioner of Domestic Taxes (KRA) to request for TP documentation to any Multinational enterprise operating in Kenya on transactions where TP is applicable.’

- Finance act 2022 amended section 18(A) of the Income Tax Act to increase the scope of transactions within the ambit of transfer pricing legislation in Kenya. Effective 1st January 2023, the act provides that an entity in Kenya having transactions with a *related person operating in a preferential tax regime, a non resident person located in a preferential tax regime, associated enterprises of a non resident person located in Preferential tax regime, and a PE of a non resident person operating in Kenya where the non resident person is located in a PTR* is required to demonstrate arm’s length principle.
- Thus, the definition of preferential tax regime was expanded to cover,
 - any Kenyan legislation, regulation, or administrative practice which provides a preferential rate of tax to such income or profit, including reductions in the tax rate or the tax base; or
 - A foreign jurisdiction which;
 - Does not tax income;

- Taxes income at a rate which is less than 20%;
- Does not have a framework for the exchange of information;
- Does not allow access to banking information; or
- Lacks transparency on corporate structure, ownership of legal entities located therein, beneficial owners of income or capital, financial disclosure or regulatory supervision

- Furthermore, the finance act 2022 introduced new definitions as follows.

Constituent entity

- any separate business unit of a multinational enterprise group that is included in the consolidated financial statements of the multinational enterprise group for financial reporting purposes, or which would be so included if equity interests in such business unit of a multinational enterprise group were traded on a public securities exchange;
- any such business unit that is excluded from the multinational enterprise group’s consolidated financial statements solely on size or materiality grounds;
- any permanent establishment of any separate business unit of the multinational enterprise group included in paragraphs (a) or (b) provided that the business unit prepares a separate financial statement for such permanent establishment for financial reporting, regulatory, tax reporting, or internal management control purposes.

Surrogate Parent Entity

- One constituent entity of the multinational enterprise group appointed by such group to file the country by-country report in that constituent entity’s jurisdiction of tax residence, on behalf of the group.

TP documentation

Preparation of TP documentation

- Kenya recognizes the OECD TP documentation model based on the Master File and Local File (BEPS Action 13) approach.

Master and local file

- The presence of the documentation assists tax authorities in filling of TP questionnaires and proving the application of the arm's length principle.
- The master and local file offer useful information to tax authorities on evaluation of the functions carried out by MNE's and their associated enterprises and provide comparability data of similar transactions worldwide.
- The Finance Act, 2022 introduced specific information requirements for each file prescribed in the section 18D of Income Tax Act, Cap 470. Additionally, the Commissioner issued guidance on the specific manner of filing for the master file and the local file.
- Transfer pricing documentation should be available within 30 days upon request by KRA.

Country by Country reporting

- A CbC report should be filed in Kenya within 12 months of MNE's financial year end, where the ultimate parent entity is resident in Kenya. The requirement to comply with CbC reporting took effect from FY 2022. Moreover, prior to the CBC reporting, a CBCR notification should be submitted before the financial year end indicating the UPE or SPE responsible for CBCR filing, as well as the jurisdiction for filing.
- There is also a requirement for MNE groups to prepare and file their master file and local file with the Commissioner annually within six months from the financial year end of the MNE group.
- An MNE is exempt from filing the CbC report if the below requirements are met:
 - The multinational enterprise group has a total consolidated group income of less than KES 95 Billion (in a financial year); or
 - Where the UPE is obligated to file a country-by-country report in its jurisdiction of tax residence outside Kenya; or
 - The tax authority in the jurisdiction where the non-resident surrogate parent is resident, has not notified KRA of a systematic failure; or
 - A non-resident parent entity files a CbC report of the group with the tax authority in its jurisdiction of residence, as a requirement; or
 - The non-resident parent entity notifies the tax authority in the jurisdiction of its tax residence, that it is the designated surrogate parent entity of the group.

- The resident UPE has an international agreement (bilateral or multilateral) and an exchange of information on CbC reports agreement in force.

Penalty

- The penalty for non-compliance with the CbC reporting requirement will be an offense subject to a fine not exceeding KES 1 million, a prison term not exceeding three years or both, upon conviction.
- This is in line with section 94 of the TPA, which provides that a person commits an offence if the person without reasonable cause fails to submit a tax return or other document required under a tax law by the due date.

OECD guidance

- The Income Tax (TP) rules offer the actual framework for MNE to adopt in relation to the intercompany transactions.
- Additionally, an MNE is allowed to apply these rules hand in hand with OECD TP guidelines which offer a more procedural or formulaic expression on the application of the Arm's length principle and the methods of TP.

Economic analysis and how to demonstrate an arm's length result

- Paragraph 4 of the TP regulations grants the taxpayer the liberty of choice of the method to apply in valuation of the arms-length price of intercompany transactions.
- The Income Tax TP Regulations 2006 recognizes five methods to apply in determination of the arm's length price of transactions as outlined below:
 - CUP method
 - RPM
 - CPM
 - PSM
 - TNMM
- Other methods may be prescribed by the Commissioner from time to time, where in his opinion and in view of the nature of the transactions, the arm's length price cannot be determined using any of the methods contained in these guidelines.
- Economic analysis involves searching and selecting comparable transactions or companies considering the quality of data, assumptions and comparability factors and selection of the appropriate economic and statistical data related to a transaction.
- Paragraph 10(c) of the Income Tax Act (TP Regulations) states that 'where a person avers the application of arm's length pricing, such person shall avail documentation to evidence their analysis upon request by the Commissioner's.

- In absence of guidance from the local TP rules, the tax authorities, in our experience, heavily rely on the OECD TP Guidelines as supplementary guidance but not as a legally binding instrument.

Self-assessment

- Kenya operates a self-assessment regime. The duty of developing a TP policy solely lies on the taxpayer. Currently, there is no penalty for not maintaining a policy, however, failure to have a document in place sets the stage for scrutiny from the Commissioner of Domestic Taxes.
- A company that fails to maintain TP documentation would be in a disadvantaged position when defending its intercompany pricing with related parties.
- For this reason, it is highly advisable to have a TP policy should a KRA audit take place, then there is minimal risk of wrongful estimation of the value of intercompany transactions.

Advancing Pricing Agreement

- There is no APAs in Kenya, however, the Law allows for taxpayers to seek a private ruling with respect to transactions needing clarification
- Mutual Agreement Procedure (MAP) is available in Kenya for a resident taxpayer if he/she establishes that an action of KRA or one of Kenya's tax treaty partners, or both, will result in taxation not in accordance with a tax treaty in force between the two jurisdictions.

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Malawi

Introduction to TP in Malawi

- Malawi's TP rules are sanctioned by Section 127A of the Taxation Act which provides for the general principles applicable in the administration of related party transactions.
- Malawi's TP rules apply to multinationals as well as group of companies that are locally incorporated a departure from the OECD model.
- In the stipulated Regulations, unless the context otherwise requires "arm's length price" means the price payable in a transaction between independent enterprises;
- "comparable transactions", means transactions that are comparable in accordance with regulation 4;
- "controlled transaction" means any transaction between related persons;
- "financial indicator" means-
 - a) in relation to the comparable uncontrolled price method, the price;
 - b) in relation to the cost-plus method, the mark up on costs;
 - c) in relation to the resale price method, the resale margin
 - d) in relation to the transaction net margin method, the net profit margin; or
 - e) in relation to the transactional profit split method, the division of the operating profit and loss;
- "related persons" shall have the meaning ascribed to that term in section 127A of the Act; and
- "uncontrolled transaction" means any transaction between independent persons.
- The determination of whether the conditions of a controlled transaction are consistent with the arm's length principle

under section 127 A of the Act and of the quantum of any adjustment made under section 127A (1), shall be made in accordance with the provisions of regulation 5.

- Among other issues, the Malawi TP Rules provides for
 - i. Transfer pricing methods
 - ii. Evaluation of taxpayer's combined controlled transactions
 - iii. Arm's length range
 - iv. Sources of information on comparable uncontrolled transactions
 - v. Services between related persons
 - vi. Transactions involving intangible property
 - vii. Disregarding a controlled transaction for tax purposes
 - viii. Corresponding adjustments for international transactions
 - ix. Relevance of OECD transfer pricing guidelines
 - x. Beneficial tax regimes
 - xi. Threshold for application of section 127 a of the act to domestic transactions

TP documentation

Preparation of TP documentation

The documentation rules require that:

- Taxpayer shall have in place contemporaneous documentation that verifies that the conditions in its controlled transactions for the relevant tax year are consistent with the arm's length principle. {
- Documentation under these Regulations shall include—
 - a) an overview of the taxpayer's business operations (history, recent evolution and general overview of the relevant

markets of reference) and organizational chart (details of business units or departments and organizational structure);

- b) a description of the corporate organizational structure of the group that the taxpayer is a member (including details of all group members, their legal form, and their shareholding percentages) and the group's operational structure (including a general description of the role that each of the group members carries out with respect to the group's activities, as relevant to the controlled transaction);
 - c) a description of the controlled transaction(s), including analysis of the comparability factors specified in regulation 4 of the Taxation (Transfer Pricing) Regulations, 2017
 - d) details of the functions undertaken by the connected parties in relation to the controlled transaction, which shall include details of assets in relation to the controlled transaction as well as risk assumed by each party; {
 - e) an explanation of the selection of most appropriate transfer pricing method, and, where relevant, the selection of the tested party and the financial indicator;
 - f) financial statements for the parties to the controlled transaction including where the tested party has been selected as a party outside the country;-
 - g) comparability analysis, including-
 - i. description of the process undertaken . to identify comparable uncontrolled transactions;
 - ii. explanation of the basis for the rejection of any potential internal comparable uncontrolled transactions (where applicable);
 - iii. description of the comparable uncontrolled transactions;
 - iv. analysis of comparability of the controlled transaction(s) and the comparable uncontrolled transactions, taking into account regulation 4 of the Taxation (Transfer Pricing) Regulations, 2017; and
 - v. details and explanation of any comparability adjustments made;
 - h) details of any industry analysis, economic analysis, budgets or projections relied on;
 - i) details of any advance pricing arrangements or similar arrangements in other countries that are applicable to the controlled transaction.
- a conclusion as to consistency of the conditions of the controlled transactions with the arm's length principle, including, details of any adjustment made to ensure compliance; and any other documentation or information that is necessary for determination of the Taxpayer's compliance with arm's length principle with respect to the controlled transactions.

Penalties

- Where the Malawi Revenue Authority has requested for documentation, the documentation rules stipulates that "Any person who fails to comply with a notice served on him by the Commissioner General under regulation 5 shall be liable to
 - a) an initial penalty not exceeding the Malawi Kwacha equivalent of 1,400 United States Dollars at the prevailing exchange rate; and
 - b) further penalties not exceeding the Kwacha amount equivalent of 2100 United States Dollars at the prevailing exchange rate to for each period of one month where the failure continues.

OECD guidance

- The Malawi TP rules stipulates that the regulations will be interpreted according to the OECD Guidelines.
- However, where there is any inconsistency between the Regulations and the OECD Guidelines the Regulations will prevail.

Economic analysis and how to demonstrate an arm's length result

- a) The Malawi TP regulations stipulates that:
 - The arm's length remuneration of a controlled transaction shall be determined by applying the most appropriate transfer pricing method to the circumstances of the case.
 - The most appropriate transfer pricing method shall be selected from among the approved transfer pricing methods set out in regulation 5(3), taking into consideration the following criteria-
 - a) the respective strengths and weaknesses of the approved methods; .
 - b) the appropriateness of an approved method in view of the nature of the controlled transaction, determined in particular, through an analysis of the functions undertaken by each person in the controlled transaction, taking into account assets used and risks assumed;
 - c) the availability of reliable information needed to apply the selected transfer pricing method; and
 - d) the degree of comparability between the controlled and uncontrolled transactions, including the reliability of comparability adjustments, if any, that may be required to eliminate differences between them.
 - o The following shall be the approved transfer pricing methods for the purposes of regulation 5 (1)-

- a) the comparable uncontrolled price method, which consists of comparing the price charged for property or services transferred in a controlled transaction with the price charged for property or services transferred in a comparable uncontrolled transaction;
- b) the resale price method, which consists of comparing the resale margin that a purchaser of property in a controlled transaction earns from reselling that property in an uncontrolled transaction with the resale margin that is earned in comparable uncontrolled purchase and resale transactions;
- c) the cost-plus method, which consists of comparing the mark up on those costs directly and indirectly incurred in the supply of property or services in a controlled transaction with the mark up on those costs directly and indirectly incurred in the supply of property or services in a comparable uncontrolled transaction;
- d) the transactional net margin method, which consists of comparing the net profit margin relative to an appropriate base, such as costs, sales or assets, that a person achieves in a controlled transaction with the net profit margin relative to the same base achieved in comparable uncontrolled transactions; and
- e) the transactional profit split method, which consists of allocating to each associated person participating in a controlled transaction the portion of common operating profit (or loss) derived from such transaction that an independent person would expect to earn from engaging in a comparable uncontrolled transaction. When it is possible to determine an arm's length remuneration for some of the functions performed by the associated persons in connection with the transaction using one of the approved methods described in paragraphs (a) to (d), the transactional profit split method shall be applied based on the common residual profit that results once such functions are so remunerated.
- A transfer pricing method other than the approved methods contained in sub regulation (3) may be applied where the Commissioner General is satisfied that-
- a) none of the approved methods can be reasonably applied to determine arm's length conditions for the controlled transaction; and
- b) such other method yields a result consistent with that which would be achieved by independent persons engaging in comparable uncontrolled transactions under comparable circumstances.
- In cases where other methods are used, their selection shall be supported by an explanation of why methods in regulation 5(3) were regarded as less appropriate or non-workable in the circumstances of the case, and of the reasons why the selected other method was regarded as providing a better arm's length price.
 - As regards transactions involving the acquisition of new or used assets by taxpayers from related persons not resident in Malawi-
- a) the application of the Comparable Uncontrolled Price method shall require the invoice for the acquisition of the asset and proof of payment when it was purchased from an independent third party and in case of a used asset, the subsequent application of the decline in value already amortized since the asset was purchased, as allowed under accounting principles generally accepted in Malawi.
- Comparable data is sought to benchmark the prices charged in a controlled transaction to the uncontrolled transaction in an effort to achieve the arm's length price. In determining comparable data, one needs to consider the comparability of the transactions in accordance with the contents of regulation 4 (2) which stipulates that "For purposes of determining whether two or more transactions are comparable, the following factors shall be considered to the extent that they are economically relevant to the facts and circumstances of the transactions-
- i) the characteristics of the property or services transferred;
 - ii) the functions undertaken by each person with respect to the transactions considering assets used and risks assumed;
 - iii) the contractual terms of the transactions;
 - iv) the economic circumstances in which the transactions take place and
 - v) the business strategies pursued by each of the related persons in relation to the transactions.

Self-assessment

Under the documentation rules, it is a requirement that the documentation be filed together with the annual statutory tax return (self-Assessment return) as a declaration that all related party transactions in that particular period have been carried out at arm's length. Otherwise the documentation is not considered to be contemporaneous.

Advancing Pricing Agreements

There is currently no provision on APAs in the Malawian TP rules.



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Mauritius

Introduction to TP in Mauritius

- There are no specific TP rules in Mauritius however, the Mauritius Income Tax Act Section 75 requires transactions between related parties to be priced at arm's length.

TP documentation

Preparation of TP documentation

- The current legislation does not prescribe documentation to be prepared for TP purposes nor does it prescribe disclosure requirements.
- CbC reporting is applicable to MNE groups whose consolidated group revenue is at least EUR 750 million (approx. MUR 30 billion).

Master and local file

- There is no legislation that requires the preparation of a master file or local file.
- CbC reporting is applicable to MNE groups whose consolidated group revenue is at least EUR 750 million (approx. MUR 30 billion).

Penalties

- There are no specific TP penalties in the Act.
- However, general tax penalty provisions found in the Act equally apply to TP cases.
- Further, any person who fails to comply with any provision of CbC report shall commit an offence and shall, on conviction, be liable to a fine not exceeding MUR 5,000 and to imprisonment for a term not exceeding six months

OECD guidance

- Mauritius is not a member of the OECD. However, there have been steps taken to comply with the OECD's international standards, such as BEPS and the Action Plan 13

Economic analysis and how to demonstrate an arm's length result

- b) There is no specific TP method provided by the legislation. However, the method chosen by the company should respect the arm's-length principle.
- c) Thus, the TNMM, CUP, RPM, PSM or CPM methods that are consistent with the methods recommended in the OECD Guidelines may be chosen.

Advancing Pricing Agreements

- d) There is currently no provision on Advanced Pricing Agreements (APA) in the Mauritian TP rules.

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Morocco

Introduction to TP in Morocco

- The 2019 Moroccan Finance Bill introduced the obligation for companies with related (whether direct or indirect) foreign companies, to provide tax authorities with documentation supporting the arm's length nature of their transfer pricing policy.

TP documentation

Preparation of TP documentation

- The TP documentation must contain the following elements:
- Information on all related companies' activities, the overall transfer pricing policy of the group and the worldwide repartition of profits and activities.
- Specific information about transactions that the company subjected to tax control carries out with related companies.
- The transfer pricing documentation should be provided, within 30 days of a request by a tax inspector during a tax audit.
- The 2021 Moroccan Finance Bill completed the tax provisions applicable to transfer pricing documentation by instituting the following measures:
- Limitation of the scope of application of the TP obligation to large companies with a declared turnover or an amount of gross assets appearing on the balance sheet greater than or equal to 50 Million MAD (MMAD).
- Institution of a sanction, in case of failure to produce a TP documentation, of 0,5% of the amount of the transactions concerned by the documentation, with a minimum amount of 200 000 MAD per concerned financial year.

CBC reporting

- Also, the 2020 Finance Bill introduced the CbCR obligations starting from 2021.
- The CbCR reporting obligation has entered in force for financial years beginning on or after 1st January 2021.

- In that respect, the taxpayer has to file the CbCR within 12 months after the tax year-end.
- For example, the CbCR notification for FY's ending December 31st 2021, should have been submitted before 31st December 2022.
- Moreover, the CbCR obligation applies to Moroccan companies that have met some of the conditions set out by the MTC including, without limitation, companies subject to CIT in Morocco fulfilling one of the following conditions:
- If it is owned directly or indirectly by a company located in a country which does not require the filing of CbCR and which would be required to file such reports if it were in Morocco pursuant to the condition set by the MTC.
- If it is owned directly or indirectly by a company located in a country with which Morocco has not concluded a tax information exchange agreement.
- Or, if it has been designated for this purpose by the group and has informed the tax administration of such designation.

Master file and local file

- Article 210 of the MTC related to transfer pricing documentation requirements provides that only companies carrying out cross-border intra-group transactions would be required to submit a transfer pricing documentation to justify their transfer pricing policy.
- In this respect, domestic transactions should not be covered by the local TP documentation.
- In Morocco, there are 2 types of TP documentation:
 - Master file: and
 - local file.

- Large companies with a declared turnover or an amount of gross assets appearing on the balance sheet greater than or equal to 50 million (MMAD) are obliged to prepare a TP documentation containing the following elements:
 - A master file containing information on all activities of affiliated entities, the overall transfer pricing policy applied and the distribution of profits and activities worldwide; and;
 - A local file containing specific information on the transactions that the audited company carries out with the above-mentioned companies.
- The transfer pricing documentation must be provided, in electronic format, upon request by a tax auditor during a tax audit.
- The detailed content of the documentation will be specified by a decree. However, it is likely that it will be broadly consistent with the content required by international standards.
- In case of failure to produce the TP documentation, a penalty of 0,5% of the amount of the transactions disclosed in the documentation may be imposed, with a minimum amount of 200.000 MAD per concerned financial year.

OECD guidance

- The detailed content of the documentation will be specified by a decree which should be published before the end of FY 2023.
- In addition, Morocco has recently joined the OECD, BEPS inclusive framework, which requires member countries to comply with certain minimum standards on transparency and information exchange, including BEPS Action 13 which covers transfer pricing documentation and CbCR.
- Therefore, it is likely that the content of the Moroccan transfer pricing documentation will be aligned with that of the documentation provided for in BEPS Action 13. Morocco is also likely to implement the CbCR declaration.
- In this sense, the documentation content requirements would be relatively broad, and in line with the elements usually required in other countries.

Economic analysis and how to demonstrate an arm's length result

- Pursuant to the article 213-II of the MTC, when a company has ties of dependence with companies located in or outside Morocco, the profits indirectly transferred, either by way of increases or decreases in the purchase or sale prices or by any other means, shall be included in the corporate results.
- This arm's length range is obtained following a comparability study to identify the prices applied by independent companies operating in similar sector.

Advance Pricing Agreements

- The APA program was introduced in 2015 covering unilateral, bilateral and multilateral agreements, for countries which have double tax treaty with Morocco.
- The APA aims to avoid any transfer pricing disputes by determining in advance a set of criteria to apply, within a specified period, for specific cross-border controlled transactions, to ensure their compliance with the arm's length principle.
- The APA application should be filed at least six months before the beginning of the fiscal year of the period covered by the APA.
- In addition, companies subject to CIT in Morocco and having directly or indirectly dependencies with companies located outside Morocco may request the tax authorities to enter into an Advanced Pricing Agreements (APAs) valid for four fiscal years.
- The agreement on the transfer pricing method allows the company concerned to benefit from the following guarantees:
 - The guarantee that the prices charged in its intra-group industrial, commercial or financial relations would not be subject to an adjustment for indirectly transferred profits.
 - The guarantee that the agreement applies to all future transactions carried out during the period of the agreement.
- The tax authorities can only question the transfer pricing method agreed upon with a company in accordance with the provisions of Article 234 bis of the Moroccan Tax Code in the following cases:
 - The misrepresentation of facts, concealment of information, errors or omissions attributable to the company.

Non-compliance with the agreed method and the obligations contained in the agreement by the company or the use of fraudulent maneuvers.

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Namibia

Introduction to TP in Namibia

- The Namibian TP regulations were introduced through section 95A of the Namibian Income Tax Act in May 2005.
- The Section mainly deals with the determination of taxable income with respect to international transactions and, when interpreting this section, the OECD Guidelines will apply.

TP documentation

Preparation of TP documentation

- The current legislation does not prescribe a list of documentation to be prepared for TP purposes nor does it prescribe disclosure requirements.
- The Income Tax Act stipulates that the taxpayer must justify the TP policy based on:
 1. why the transfer prices are considered to be fair, also with regard to the functions performed;
 2. the methods used in determining the transfer price; and
 3. its consistency with the arm's length principle.
- The Minister may require information necessary to substantiate the pricing methodologies adopted and this may differ on a case-by-case basis. The documentation must be in submitted in English.

Master file and local file

- There is no legislation that requires the preparation of a master file, local file or CbC reporting.

Penalties

- There are no specific TP penalties in the Act. However, general tax penalty provisions found in the Act equally apply to TP cases.
- Deliberate understatement of income tax by applying transfer pricing mechanism, is likely to result in severe penalties being applied, which could amount to additional tax of 200% being levied.

OECD guidance

- Namibia is not a member of the OECD. However, the 2005 legislation is largely based on the OECD Guidelines.
- As such, the OECD Guidelines on TP may be relied on to determine the arm's-length basis of intragroup transactions and supporting documentation should be prepared.

Economic analysis and how to demonstrate an arm's length result

- There is no specific TP method provided by the legislation. However, the method chosen by the company should respect the arm's-length principle.
- Thus, the TNMM, CUP, RP, CP and profit split methods that are consistent with the methods recommended in the OECD Guidelines may be chosen.
- The use of comparables depends on the facts and circumstance of the case and the support provided to substantiate the reliability of the applied method.
- The onus to prove the arm's length basis of transaction(s) lies with the taxpayer.

Self-assessment

- The taxpayer is required to compute his tax liability for the year of assessment and make the final tax payment based thereon. It appears that the taxpayer is not required to make adjustments in respect of the transfer pricing rules, rather it is the Minister who must initiate an investigation into possible transfer pricing concerns the Namibia Revenue Agency may have.

- If the financial assistance granted by a non-resident investor who owns not less than 25% of the issued capital of the resident company exceeds the ratio of 3:1 in relation to the fixed capital of the resident company, the deduction of any interest paid to the non-resident investor and any realized currency exchange loss is not allowed in respect of that part of the financial assistance which exceeds the 3:1 ratio.
- On application, the Minister may allow the taxpayer to exceed the 3:1 ratio if the circumstances justify such a concession.

Advance Pricing Agreements

- There is currently no provision on APA in the Namibian TP rules.

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Nigeria

Introduction to TP in Nigeria

- Nigeria's FIRS released TP regulations in 2018 which replaced the 2012 regulations.
- The new regulations were issued to align with related changes introduced to the 2017 OECD guidelines and the UN TP Manual.

TP documentation

Preparation of TP documentation

- The regulations state that taxpayers ought to prepare contemporaneous documentation substantiating the arm's length nature of transactions in a format consistent with the OECD guidelines, this includes the Masterfile, Local file and CbC.
- In addition to documentation the taxpayer should submit annually, a TP declaration and specific TP disclosures as required by the regulations.

TP declaration

- The TP declaration shall be made and submitted to FIRS not later than eighteen months after the date of incorporation or within six months after the end of the financial year, whichever is earlier.
- Any updates to the declaration shall be made and submitted to the FIRS within six months of the end of the accounting year in which the event occurred.
- A TP disclosure of transactions is to be made by a connected person to FIRS without notice or demand, not later than six months after the end of each financial year or eighteen months after the date of incorporation, whichever is earlier.

TP Documentation

- A connected person shall record, in writing or on any other electronic device or medium, sufficient information or data with an analysis of such information and data to verify that

the pricing of controlled transactions is consistent with the arm's length principle (documentation) and shall make such documentation available to the FIRS upon written request.

- TP documentation shall be in place prior to the due date for filing the income tax return for the year in which the documented transactions occurred (contemporaneous documentation). The documentation is expected to be submitted to the FIRS within 21 days of receiving a request.
- A connected person whose total value of controlled transactions is less than three hundred million naira may choose not to maintain contemporaneous documentation; provided that, where the FIRS deems it necessary, it may demand that relevant documentation shall be prepared and submitted not later than 90 days from the date of receipt of a notice from the Service.

Country-by-Country Report

- The CbC Report should be filed not later than 12 months after the last day of the Reporting Accounting Year of the MNE Group.
- The official language for purposes of documentation is the English language.

Penalties

- **Transfer Pricing Declaration:** a connected person who fails to submit a declaration or notification shall be liable to an administrative penalty of N 25 000 for each day in which the failure continues.
- **Transfer Pricing Disclosure:** where any person fails to make disclosures of transactions within the period specified in the regulation, an administrative penalty of N 10 000 000 or one percent of the value of controlled transaction not disclosed, whichever is higher would be imposed and ten thousand naira for every day in which the failure continues.

- **Transfer Pricing Documentation:** failure to submit to the Service TP documentation within 21 days of receiving a request shall attract an administrative penalty of a sum equal to N 10 000 000 or one percent of the total value of all controlled transactions, whichever is higher and ten thousand naira for every day in which the failure continues
- **Late Filing of CbC Report:** Where a Reporting Entity fails to file the Country-by-Country Report on or before the date specified in Regulation FIRS shall impose an administrative penalty of N 10 000 000 in the first instance and N1 000 000.00 for every month in which the default continues.
- **Filing an incorrect or false CbC Report:** Where a reporting entity files an incorrect or false CbC Report, FIRS shall impose an administrative penalty of N 10 000 000.

OECD guidance

- Nigeria signed the Convention in 2013 and ratified it in April 2015. Further, the application of the provisions of the domestic TP rules is in a manner consistent with the OECD TP Guidelines.
- However, Part V Regulation 18 states that where there are any inconsistency exists between the provisions of any applicable laws, rules, regulations, the UN practical manual on TP and the OECD documents referred to in Regulation 18, the provisions of the relevant tax laws shall prevail.

Economic analysis and how to demonstrate an arm's length result

- Part II of the regulations considers the TNMM, CUP, RMP, PSM or CPM methods as relevant for determining the arm's length nature of transactions which is consistent with the methods recommended in the OECD Guidelines.
- In each case, the most appropriate TP method shall be used taking into account the below factors:
 - a) respective strengths and weaknesses of the TP method in the circumstances of the case.

- b) appropriateness of a TP method having regard to the nature of the controlled transaction determined through an analysis of the functions performed, assets employed, and risks assumed by each person that is a party to the controlled transaction.
- c) availability of reliable information needed to apply the TP method; and
- d) degree of comparability between controlled and uncontrolled transactions, including the reliability of adjustments, if any, that may be required to eliminate any differences between comparable transactions.”

The use of comparables depends on the facts and circumstance of the case and the related support of the reliability of the application of the method selected. The onus to prove the arm's length nature of transaction(s) lies with the taxpayer.

Economic analysis and how to demonstrate an arm's length result

The use of comparables depends on the facts and circumstance of the case and the related support of the reliability of the application of the method selected.

The onus to prove the arm's length nature of transaction(s) lies with the taxpayer.

Advance Pricing Agreements

- The regulations allow FIRS to enter into an AP with a taxable person either alone or together with the competent authority of countries of the connected person. This is subject to the publication of guidelines for its implementation.
- An Advance Pricing Agreement entered into with FIRS shall apply to the controlled transactions for a period not exceeding three years. Nigeria is currently drafting its APA guidelines.

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South Africa

Introduction to South Africa TP

- SA TP regulations are contained in Section 31 of the Income Tax Act and are supported by Practice Note 7, which provides additional guidance to taxpayers on determining an arm's length consideration in relation to cross border related party transactions. SA TP rules follow the OECD Guidelines.
- The TP regulations are applicable to SA taxpayers, including SA branches of foreign companies, that have cross-border related party transactions.
- Section 31 of the Income Tax Act is applicable to transactions between 'connected persons' with cross-border related party transactions. 'Connected persons' are defined in section 1 of Income Tax Act and generally included companies that form part of the same group of companies. However, the definition is complex and can be widely interpreted.
- However, with effect from years of assessment commencing on or after 1 January 2023, the TP regulations were amended to also include 'associated enterprises' as contemplated in Article 9 of the Model Tax Convention on Income and on Capital of the OECD.
- The reference to 'associated enterprises' in the SA TP regulations has broadened the TP scope to include transactions conducted with foreign persons that directly or indirectly participate in the management, control or capital of the SA entity or vis versa.
- Interpretation note 128 was released by SARS which provides SARS interpretation of the 'associated enterprises' definition.
- In 2023, SARS issued Interpretation note 127 which provide taxpayers with guidance on the application of the arm's length principle in the context of pricing intra-group loans, and the consequences for a taxpayer if the amount of debt, the cost of debt or both are not arm's length.

TP documentation

Master file and local file

- SA has adopted certain minimum standards proposed under the OECD's BEPS Action 13 with respect to TP documentation.
- Mandatory filing of a BEPS Action 13 compliant master file and local file for a particular year is required by taxpayers that have aggregated cross border related party transactions (without offsetting) exceeding or reasonably expected to exceed ZAR100 million for that year. If this threshold is met, a master file and local file should be prepared and filed with SARS together with the corporate income tax return. The mandatory filing (submission) is effective for years of assessment commencing on or after 1 October 2016.
- In determining whether the ZAR100 million mandatory filing threshold has been met, besides the usual cross border related party transactions (for example sales, purchases, service fees, royalties and interest), regard must also be given to balance sheet items including (but not limited to) the capital balances of loans, long-outstanding trade balances that could be construed to be financial assistance, and certain types of dividends paid or received.
- A taxpayer meeting the threshold must also prepare and retain certain TP related documentation. There are specific additional documentation requirements set out for individual cross border related party transactions exceeding, or reasonably expected to exceed, ZAR5 million.
- Finally, taxpayers that do not meet the ZAR100 million threshold should still be able to support their cross border related party transactions via documentary evidence or a basic TP document.
- TP documentation should be prepared in English.

CbC Report

- The CbC Report must be submitted by the ultimate parent company of a MNE (or the Reporting Entity if not the same as the ultimate parent) that has consolidated turnover of ZAR10 billion or more.
- If the SA taxpayer is the ultimate parent that meets the CbC Report threshold requirements, the CbC Report, master file and local file filing requirements are applicable for years of assessment commencing after 1 January 2016. The documents must be prepared and filed with SARS within 12 months from the end of the relevant year of assessment.

Master and local file

Master file

- The master file is prepared by the ultimate parent company of the multinational group and includes key information about the Group's global operations including an overview of the business operations and important information on global TP policies.
- If the SA taxpayer is not the ultimate parent company of an MNE and the ultimate parent is not obligated in their own jurisdiction to prepare a master file, the SA taxpayer may be obligated to prepare and submit the master file.

Local file

- The local file has detailed information and support on the intercompany transactions that the local company engages in with its foreign related parties.
- The local file is required per legal entity and the information included is in line with the OECD Guidelines prescribed requirements for a local file.
- Over and above the local file, SA taxpayers with cross border related party transactions exceeding ZAR100 million per year (whether these are charged out or not) are required to keep significant additional records to support those individual categories of transactions which exceed ZAR5 million.
- Where an SA MNE is required to file a CbC Report, they will also be required to file a local file as part of the CbC Report submission regardless of the value of the cross border related party transactions for a particular year.

Some risk factors for challenge

- Business restructurings, or changes in TP model.
- Persistent losses in an entity that has been characterised as 'limited risk'.
- Limited risk manufacturing / distribution models with profit-sharing arrangements.
- Intellectual property owned by offshore entities that have DEMPE functions situated in SA.
- Thin capitalisation of SA entity.

- Licensing payments to low tax jurisdictions.
- Inbound service fees that may not pass the benefit test.
- Margins decreasing with no explanation.
- No formal agreements for services/finance provision with no recharge of costs.

Penalties

- If SARS is of the view that a taxpayer's TP arrangement is not commensurate with an arm's length consideration, SARS may make a primary TP adjustment in the taxpayer's tax return to reflect the arm's length consideration. This will give rise to company tax at 28% on the primary TP adjustment.
- As a further consequence SARS will make a secondary adjustment in the form of a deemed dividend in specie equal to the primary TP adjustment, which is subject to dividend withholding tax at 20%. Since the deemed dividend is punitive by nature, any Double Tax Agreement relief that would normally be applicable to dividends will not be applicable to the secondary TP adjustment.
- Understatement penalties may be applicable to the under-declaration of tax payable as a result of the primary and secondary TP adjustments. Understatement penalties are levied in terms of Section 223 of the TAA at a rate of between 0% and 200%. The applicable rate is dependent on the circumstances that gave rise to the understatement, such as fault, omission, incorrect disclosure or misrepresentation, and also whether the taxpayer has previously been guilty of any of the above.
- An administrative penalty of up to ZAR16,000 can be levied for every month that the documentation remains outstanding. The administrative penalty is based on the assessed loss or taxable income for the preceding year

OECD guidance

- Although, SA is only an observing member country of the OECD, SA's TP regulations follow the OECD Guidelines. The Guidelines should be used for interpretation of the arm's length principle together with local legislation.
- SA has adopted certain minimum standards proposed under the OECD's BEPS recommendations, most notably the documentary requirements proposed by the OECD in BEPS Action 13.

Economic analysis and how to demonstrate an arm's length result

- SARS accepts the traditional and transactional methods prescribed by the OECD Guidelines.
- The most appropriate pricing method should be selected on a transaction-by-transaction basis, providing the most reliable measure of an arm's length result in each case.
- All methods as recommended by the OECD Guidelines are

considered accepted methods, however the method used must be in line with the functional and risk profile of the connected parties to the transaction under review. Other methods can also be used if justifiable and appropriate.

- With regards to any preference of method there is no set hierarchy, as SA legislation currently refers to the OECD Guidelines. In practice, however, a ‘natural hierarchy’ may be said to favour the comparable uncontrolled price method.
- SARS will expect to see that a search for potential internal comparables has taken place before defaulting to an external database search for comparables.
- There is no legal requirement for local country comparables, however it is preferable to have comparables that operate in a jurisdiction with a similar risk profile to that of SA.
- Note that where databases are used, the interquartile range is used, and a multiple year analysis is performed. There is also a preference for the weighted average arm’s length analysis.
- There is no need to conduct a new benchmarking study every year. A new benchmarking study is to be conducted every three years, with an annual financial update.

Self-assessment

- Section 31 of the ITA essentially requires a self-assessment by the taxpayer where the onus is on the taxpayer to ensure that TP rules are adhered to.
- Certain document retention requirements also apply to taxpayers conducting cross border related party transactions. These are onerous and go beyond the requirements proposed by the OECD under Action 13 relating to master file and local file requirements.
- The annual income tax return for corporates (form ITR14) includes a number of TP related questions that need to be responded to by a taxpayer that has entered into cross border related party transactions. The purpose of these questions is to assist SARS with its TP risk assessment and therefore they need to be considered thoroughly and answered correctly. The annual corporate income tax return must be submitted within 12 months from the end of the relevant year of assessment.

Advance Pricing Agreements

- In 2021, SARS published a discussion paper titled “Proposed Model for Establishing an Advance Pricing Agreement Programme and Release of the Draft Legislation, 2021” to introduce the advance pricing agreement programme in South Africa and provide a model draft legislative framework for the advance pricing agreement unit as well as associated processes at a high level

- In July 2023, SARS published the proposed draft legislation on the APA programme through the Tax Administration Laws Amendment Bill, 2023 (“TALAB”). The TALAB sets out the draft legislation in clause 10 which outlines the proposed APA regulations and procedures.
- The APA program is aimed at providing guidance to taxpayers on their TP obligations. This program is still in the early stages and will only be implemented by SARS once all constructive comments and suggestions in relation to the draft APA regulations are incorporated.
- A does have mutual agreement procedure (MAP) options available to taxpayers. Guidance in this regard can be found in SARS’ Guide on Mutual Agreement Procedures (Issue 3).

Exemptions

- Generally, no exemptions from a TP perspective.

SARS and taxpayer behaviour

- TP has been a focus area of SARS for the last few years. The likelihood of a general annual tax audit is assessed as medium while the TP forming part of such an audit is high.
- TP methodology is assessed on a case-by-case basis but is generally challenged within the audit process. Should SARS challenge the methodology, an adjustment is likely.



Key Contacts

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Senegal

Introduction to TP in Senegal

The Senegal TP rules are covered under the below articles in the General Tax Code:

- o Articles 17 on the arm's-length principle.
- o Article 31bis on the annual declaration of foreign related-party transactions.
- o Article 31ter on CbC reporting and Article 667-III.b on the CbC report fine.
- o Article 638 and 639 on the TP documentation obligation.
- o Article 9-2 on thin-capitalization in the context of certain intragroup financing arrangements such as intragroup interest payments on debt.
- o Article 667-III.a on the annual TP return fines.
- o Article 667-III.c on the TP documentation fine.
- o Attained a turnover, excluding taxes or gross assets, of at least XOF5 billion, or
- o Directly or indirectly holds more than 50% of the share capital or voting rights of a company, located in Senegal or abroad, which generates a turnover, excluding taxes or holds gross assets, of at least XOF5 billion.

TP documentation

Preparation of TP documentation

- Article 638 and 639 of the General Tax Code outlines the TP documentation obligation of the taxpayer.
- Taxpayer are required to prepare a master file, local file, CbC report and a TP return on an annual basis.
- The master file, local file and CbC report must be prepared in accordance to the guidance provided in the OECD Guidelines and BEPS Action 13.

Master and local file

- The master file and local file must be prepared from financial years opened after 1 January 2018.
- Taxpayers that meet at least one of the following conditions are required to prepare TP documentation:

- The content of the master file and local file must be in line with BEPS Action 13.
- The master file and local file must be filed within 20 days following the tax auditor's request of TP documentation.
- CbC reporting must be prepared and filed annually for the below taxpayers:
 - o Senegalese tax-resident company has been elected by the multinational group to file a CbC report.
 - o The Senegalese tax-resident company that fails to provide evidence that another company of the multinational group has been designated as the company filing the CbC report; or
 - o The Senegalese jurisdiction has been notified regarding a systematic failure to exchange the information.

Penalties

- A penalty of XOF10 million may be imposed for the failure to submit or late submission of the TP return.
- The TP return is used as a risk assessment by the tax authority, therefore, a penalty of XOF200,000 may be imposed in terms of Article 667-II of the General Tax Code for the omission of information or incorrect disclosure.
- A penalty of XOF25 million may be imposed for the failure or delay in submitting the CbC report.
- The SRA may impose a penalty of 0.5% on the volume of the transactions that were not documented or are missing for TP documentation that is not provided within the 20-day period upon the tax authorities' request.

- In a case where there is an adjustment made by the SRA in the TP reassessment, the profit indirectly transferred qualifies as a deemed distribution of a benefit and is subjected to withholding tax at 50%.

OECD guidance

- Senegal is not a member of the OECD. However, it is a member of the inclusive framework.
- As a member of the inclusive framework, Senegal is required to adopt the minimum BEPS standard (Actions 5, 6, 13 and 14).
- The guides published in Togo also refer to the OECD Guidelines.
- However, in practice the tax authorities do indicate in some audits that it is not bound by the OECD Guidelines in assessing the arm's length nature of the intragroup transactions.

Economic analysis and how to demonstrate an arm's length result

- The TNMM, CUP, RPM, PSM or CPM methods that are consistent with the methods recommended in the OECD Guidelines may be applied.
- Senegal follows the guidance on comparability analysis that is outlined in Chapter III of the OECD Guidelines.
- The SRA prefers the use of domestic comparables as they have a better illustrate the relevance of the comparability analysis due to their direct and close link to the controlled transaction.
- The Senegal legislation allows the use of an arm's length range and/or statistical measure for determining arm's length remuneration.

Advance Pricing Agreements

- The SRA allows taxpayers to apply for APA's which could either a unilateral or a bilateral APA.
- The APA application must be filled within six months before the beginning of the first fiscal year indicated in the APA request.

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Tanzania

Introduction to TP in Tanzania

- The TP rules in Tanzania are in section 33 of the Income Tax Act (ITA) 2004 that refers to the arm's-length principle of transactions between associates.
- The TP regulations were issued on 7 February 2014 and published in May 2014.
- The regulations were later updated and published on the 27 April 2018 in the Tax Administration (TP) Regulations, 2018.

TP documentation

Preparation of TP documentation

- The Tanzania regulations require contemporaneous TP documentation to be prepared "for the year of income" in terms of Regulation 7(3).
- The TP local file is required to be prepared for each entity
- TP documentation is required to be filled for entities that have related-party transaction(s) that exceed TZS10 billion in aggregate.
- The TP documentation is normally prepared in English.
- Taxpayers are required to disclose the amount of sales, purchases and loans made or received from associates in and outside Tanzania in its tax return.

Master and local file

- The master file and local file may be prepared in line with the guidance provided in the OECD guidelines with consideration of the Tanzanian TP regulations.
- The master file and local file must be submitted with the tax return. However, the taxpayer may apply in writing to the TRA for an extension of time.

- The extension of time is limited to 30 days from the due date of filing the return.

Penalties

- The TRA may impose a penalty that ranges from TZS15,000 to TZS52.5 million, depending on the currency points, if the taxpayer fails to comply with the TP regulations.
- The TRA may impose a penalty of 100% of the tax shortfall where there is an adjustment based on the TRA's TP reassessment.

OECD guidance

- Tanzania is not a member of the OECD. However, the TRA recognize the OECD Guidelines and the UN manual).
- The ITA 2004 and the 2018 TP regulations will however prevail if there are any inconsistencies between the regulations and the OECD/UN manual guidance.

Economic analysis and how to demonstrate an arm's length result

- The transactional profit methods may be applied if traditional transactional methods cannot be reliably applied.
- However, the TP regulations reiterate that the most appropriate method should be applied regarding the nature and specific features of the transaction in question.
- In applying the comparability factors when determining the arm's-length price, the regulations require the results of a controlled transaction to be compared with the results of an uncontrolled transaction in the same year of income.
- Therefore, the economic analysis and benchmarking study must be performed on an annual basis.
- The regulations stipulate that where four or less comparable data points are considered the average is the arm's-length result.

- The arm's result is to be the data points that are between the 35th percentile and 60th percentile.
- The price should be adjusted to the median of the range if the result falls outside the arm's-length range.

Advance Pricing Agreements

- The Tanzanian TP regulations provides taxpayers with an opportunity to enter into unilateral, bilateral or multilateral APAs.
- However, the TRA has indicated that taxpayers will only be able enter into APA's until local expertise have been built.

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Togo

Introduction to TP in Togo

- The Togo TP rules are covered in the below articles of the General Tax Code:
 - Article 106 of the General Tax Code which covers the TP form/declaration obligation (Finance Bill 2020)
 - Article 106 of the General Tax Code which covers the TP documentation obligation (Finance Bill 2020)
 - Article 106 (Updated Finance Bill 2022) and Article 125 provides rules about TP documentation in case of closure of the company or suspension of activities.
- The Tax Book Procedure provides the TP documentation obligation rules in Article 206 (Finance Bill 2020) and the rules applied where there is a failure for the submit the TP return in Article 206 (Updated Finance Bill 2022) and Article 113.

TP documentation

Preparation of TP documentation

- The below companies are required to maintain complete documentation in French to justify their TP policy:
 - Companies established in Togo whose annual turnover excluding taxes or gross assets on the balance sheet exceeds 20,000,000,000 FCFA.
 - Companies established in Togo that own or control, or are owned or controlled, at the end of the fiscal year, directly or indirectly, more than half of the capital or voting rights of a company whose annual turnover before tax or gross assets shown on the balance sheet is greater than 20,000,000,000 FCFA.
- In addition, any company carrying out transactions with companies of the same group must provide, at the same time as its income tax return, a simplified declaration summarizing its TP policy and indicating the nature, the

exact amount of the transactions, the company name, and the address of the registered office of the related companies.

- The TP documentation is required to be prepared within three months from the date when the annual financial statements were submitted to the tax authorities.
- The TP documentation must be available for the Office Togolaise des Recettes (Togolease Revenue Office) at the start of the audit.
- The Togolease Revenue Office may request TP information such as the nature of relationship between companies, the relevant TP method, the activities carried out by the companies, etc. during an audit.
- The TP documentation and return must be submitted in French.

Master and local file

The content of the master file and local file must be in line with BEPS Action 13.

Penalties

- In respect of the TP documentation, a penalty of 1% based on the value of the unjustified transactions will be imposed after the formal notice from the Togolease Revenue Office for the failure to submit, late submission or incorrect disclosures.
- For reassessed amounts, a penalty of 10% based on the value of the unjustified transactions may be imposed for the lack of reply or a partial reply and may also trigger the application of the automatic taxation procedure.
- A penalty of XOF500,000 may be imposed for the failure to submit the TP return.
- In cases where there is an adjustment made by the Togolease Revenue Office, the penalties may be assessed based on rates that range from 10%, 40% or 80% of tax due, the percentage will depend on whether the taxpayer's return was accidentally, mistakenly or fraudulently in error.

OECD guidance

- Togo is not a member of both the OECD.
- However, Togo joined the inclusive framework for the global implementation of the BEPS project in 2021.
- As a member of the inclusive framework, Togo is required to adopt the minimum BEPS standard (Actions 5, 6, 13 and 14).

Economic analysis and how to demonstrate an arm's length result

- The TNMM, CUP, RPM, PSM or CPM methods that are consistent with the methods recommended in the OECD Guidelines may be applied by the taxpayer. .
- Togo follows the guidance on comparability analysis that is outlined in Chapter III of the OECD Guidelines.
- There is no specific requirement to use local comparables. However, local or west African comparables would be preferred.
- There is no guidance on the arm's length range and the use of statistical methods.

Advance Pricing Agreements

- There is no APA program available in Togo.



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Tunisia

Introduction to TP in Mauritius

Introduction to TP in Tunisia

- Tunisia's TP legislation was instituted in article 29 of law n°2018-56 of December 27, 2018, on the finance law for the year 2019 and it was applied to the 2020 financial year declared in 2021 (Article 59 §II bis and 38 bis of tax rights and obligations) and was based on the arm's length and follows the OECD Guidelines.
- TP Tax Returns are required to be filled with the Tax Administration Service (DGI: Direction Générale des Impôts) for companies with cross border intercompany transactions achieving a turnover that exceeds 200 Million Dinars (E 62,5m) and for transactions greater than 100,000 Dinars (E 31,250).

TP documentation

Preparation of TP documentation

- In Tunisia there are 3 types of TP documentation:

TP declaration:

- The TP declaration is only compulsory for companies with cross-border inter-company transactions achieving a turnover of more than 200 million dinars (62.5 million euros) and for transactions greater than 100,000 dinars (€31,250).
- The TP Declaration has to be submitted no later than the same deadline of the CIT declaration i.e., 25 mars.
- TP documentation (local file and master file) :
- TP documentation is only compulsory for companies with cross-border inter-company transactions achieving a turnover of more than 200 million dinars (62.5 million euros) and for transactions greater than 100,000 dinars (€31,250).

Country-by-country reporting:

- The principle is that the obligation to submit a CbC report is incumbent on any company established in Tunisia and having the quality of the ultimate parent entity of a group of multinational companies when it is required to draw up consolidated financial statements, in accordance with the company accounting legislation in force, or would be required to do so if its holdings were listed on the Tunis Stock Exchange and it achieved, for the financial year preceding the declarable financial year, a consolidated annual turnover, excluding taxes, greater than or equal to 1.636 million dinars. The country-by-country report must be filed within 12 months of the closing date of the reportable financial year, by electronic means.
- The country-by-country declaration filed with the Tunisian tax authorities is subject to automatic exchange with the States linked to Tunisia by an agreement and the list of which is fixed by a decision of the Minister of Finance of June 15, 2022 (JORT N° 69 of June 17, 2022).
- The country-by-country report applies to accounting years beginning on or after January 1, 2020.

Master and local file

- The TP documentation (master file and local file) have the same content as those of the OECD. The local file must be presented in Arabic or French. However, the Master file can be presented in English

Penalties

- Penalty in case of failure to file the Annual PT Statement:
 - The failure to file the annual TP report will result in the application of an administrative tax penalty equal to:
 - 10,000 dinars in the event of failure to file the said declaration within the time limit

- o in addition to 50 dinars per information not provided or provided in an incomplete or inaccurate manner, without this fine exceeding, in this case, 5,000 dinars.
- Penalty in case of failure to file CbC Report:
 - o Any company that has not filed the country-by-country declaration, within the deadline, is sanctioned with an administrative tax fine equal to 50,000 dinars (from article 84 decies of the tax rights and procedures code) and any information not provided in the country-by-country declaration or provided in an incomplete or inaccurate manner is punished by an administrative tax fine equal to 100 dinars per piece of information, without this fine exceeding 10,000 dinars.
- Penalty in case of failure to present the TP Documentation (Master file and local file)
 - o In the event of non-presentation by the company subject to an in-depth tax audit of the documents justifying its TP policy, on the date of the start of the audit, the tax administration notifies a formal notice to the company to present them within 40 days (38 bis of the code of tax rights and procedures).
 - o If the company does not comply within the aforementioned 40-day period, The tax authorities apply an administrative tax fine equal to 0.5% of the amount of the transactions concerned by the documents not presented with a minimum of 50,000 dinars per audited year (article 84 undecies of the tax rights and procedures code).
- o Traditional methods, based on the transactions the comparable uncontrolled price, the cost plus, and the resale price;
- o Transactional profit methods: the transactional net margin method and the profit split method.
 - Any method adopted by a company may be considered admissible by the tax authority provided that it is justified, consistent with the functions, the risks assumed and the assets employed, and that the prices charged by the company comply with the arm's length principle.
 - It is specified that the aforementioned methods are recommended and applied by companies to determine their transfer price and by the tax authorities to check the corresponding price.
 - However, companies may use other methods if it turns out that the aforementioned methods are not suitable for the transaction concerned or that the methods used are more applicable to the circumstances of the case, provided that the prices set meet the arm's length principle.
 - The application of the arm's length principle is based on a comparison of the terms of a transaction between affiliated enterprises and those of a transaction between independent enterprises. For such a comparison to be meaningful, the economic characteristics of the situations considered must be sufficiently comparable. This means that none of the differences, if any, between the situations being compared can significantly affect the item under review (e.g., price or margin) or that reasonably reliable comparability adjustments can be made to eliminate the impact of such differences.
 - Determining the degree of effective comparability and then making the comparability adjustments necessary to establish arm's length terms requires a comparison of the characteristics of the transactions or businesses that would affect the terms of the arm's length transactions.
 - The comparability factors that may be significant in assessing comparability are as follows:
 - o Characteristics of the goods or services
 - o Functional analysis
 - o Contractual terms
 - o Economic circumstances
 - o Business strategies
 - o The use of interquartile range is required and there is a methodology in ITL to perform this calculation.
 - Business databases, which are developed by publishers who compile company accounts and present them in an electronic format suitable for research and statistical analysis, can be a source of information for identifying external comparables. These databases must be used objectively, reflecting a genuine desire to identify information on reliable comparables.

Some risk factors for challenge

- Limited risk distributor or industrial contractors.
- Low net margin or continuous losses in any entity.
- Transactions with low tax jurisdictions resident related parties.
- Business restructurings.

OECD guidance

- In its guidance note n° 13 of the year 2020, the Tunisian tax Authority specified that within the framework of the implementation of the recommendations of the BEPS project which aims to fight against the erosion of the tax base and the transfer of profits, and more particularly the action 13 of the said project, the provisions of articles 30 to 32 and 34 of the finance law for the year 2019 have made declarative and documentary obligations for resident companies fulfilling certain conditions.

Economic analysis and how to demonstrate an arm's length result

- In its guidance note No. 11 of June 17, 2020, tax Authority specified that the most frequently used TP methods are as follows:

- The search for comparables is carried out using relevant selection criteria such as geographical area, economic activity, company size, degree of independence, availability of financial data, etc.
- When commercial databases are used, the quantity of comparables should not take precedence over quality. The search for comparables can therefore be refined by means of other public information, depending on the facts and circumstances.
- The company should be able to justify all the stages of the search for external comparables, specifying in particular the criteria used to carry out the search (search strategy) and providing a list of potential comparable companies selected, explaining for each potential comparable the reasons why it has been retained or excluded.
- The APA lapses, as of the date of its application, when it is established that the company concerned :
 - has misrepresented or withheld information, or has engaged in fraudulent conduct; or
 - failed to meet its obligations under the agreement.

Self-assessment

- The burden of proof is on the taxpayer to ensure that TP regulations are complied with.

Exemptions

- Exempted from compliance with TP reporting obligations are:
 - Companies belonging to local groups that do not have cross-border transactions
 - Companies belonging to international groups that have cross-border transactions but do not exceed the thresholds provided for by the law.

Advance Pricing Agreements

- Any company resident in Tunisia belonging to a group of multinational enterprises may apply to the tax authorities for an APA in respect of its future transactions with companies.
- The company must submit an APA application to the DGI at least six months before the beginning of the first fiscal year concerned by the application.
- This application must be made in writing, specify its purpose and be sufficiently motivated and justified by the necessary documents.
- The company is invited to request preliminary meetings with the competent departments of the tax administration in charge of the said agreements, prior to submitting its application.
- The Order of the Minister of Finance of August 6, 2019, issued in application of the said provisions, has set the terms and conditions for the conclusion of such agreements and their effects.
- Notwithstanding the fact that the tax administration is not legally bound by any time limit for ruling on APA applications, nor is it required to give reasons for any refusal to grant an APA application, it will nevertheless endeavour to process reasoned applications supported by the necessary supporting documents with due diligence. The prior approval procedure presupposes close and regular cooperation between the company and the administration [Guidance note no. 12 of 17 June 2020].
- Any company benefiting from an APA must file with the tax authorities, during the first half of each year following the year covered by the agreement, an annual report relating to all the transactions covered by the agreement and carried out during the previous year, as well as information relating to the changes that have occurred affecting the agreed assumptions referred to above.

Related developments

Tax authorities and taxpayer behaviour

- The tax authorities have issued guidance notes 11; 12; 13 and 14 in 2020 to explain the reporting obligations and the analysis that must be done to demonstrate that the prices charged are at arm's length and have also published the contents of the TP.



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Uganda

Introduction to TP in Uganda

- The legal framework for TP in Uganda is the Income Tax Act (TP) Regulation 2011 issued under sections 90 and 164 of the Income Tax Act. These regulations are applied in a manner consistent with:
 - the arm's length principle in Article 9 of the OECD Model Tax Convention on Income and Capital; and
 - the OECD TP Guidelines for Multi-national Enterprises and Tax Administrations approved by the Council of the OECD for publication on 13 July 1995 (C(95)126/FINAL) as supplemented and updated from time to time.
- The regulations apply to Ugandan taxpayers and the responsibility is on the taxpayer to confirm its transfer prices meet the standard or to adjust its tax return accordingly. The filing of TP documentation with tax return forms to the Uganda Revenue Authority (URA) is not mandatory, but because it is the taxpayer's responsibility, TP analysis and documentation is prepared to help protect against penalties.
- TP documentation should be finalized prior to the due date of filing the income tax returns in a given financial year.

TP documentation

- The TP regulation states that an entity shall record, in writing, sufficient information and analysis to verify that the controlled transactions are consistent with the arm's length principle. The documentation should be finalised prior to the due date of filing the income tax returns in the given financial year.
- The URA may, by notice, specify the items of documentation that a person is required to maintain. Any documentation should be prepared in English and be available prior to the due date of filing the income tax returns in a given financial year.

Penalties

- An entity that contravenes the TP regulation is liable on conviction to imprisonment for a term not exceeding six months or to a fine not exceeding Ushs 500,000 (25 currency points) or both.
- In addition, the Tax procedures code (Section 49A) states that failure to provide requested TP documentation will result in a penalty not exceeding Ushs 50,000,000.

OECD guidance

- Although Uganda is not an OECD country, Uganda's TP regulations are consistent with the OECD TP Guidelines for Multinational Enterprises and Tax Administrations. The Guidelines, updated in July 2017, are stated in the Income Tax (TP) Regulations, and are applied in the interpretation and determination of the arm's length price.
- However, where the OECD guidelines conflict with the Income Tax Act, the Income Tax Act prevails.

Economic analysis and how to demonstrate an arm's length result

- Acceptable TP methods include comparable uncontrolled price method, resale price method, cost plus method, transactional net margin method, transaction profit split method and any other method which the taxpayer can apply to reliably measure the arm's length price in each associated entity transaction. An evaluation of the functions performed, assets owned, and risks undertaken by each entity involved in the inter-company transaction is undertaken to determine which of the above methods, is most applicable.
- Selection of the most appropriate TP method depends on several factors such as:
 - the availability of complete and reliable data;

- o the degree of comparability between controlled and uncontrolled companies (or transactions); and
- o the number, magnitude, and accuracy of adjustments necessary to apply a method.
- There is no set hierarchy for the TP methods as Uganda's regulations are applied consistent with the OECD guidelines. However, the comparable uncontrolled price method is preferred when compared to other methods.
- URA does not require an entity to document that a search for potential internal comparables was undertaken before defaulting to an external database search for comparables.
- Local and regional comparables are preferred, whilst global comparable companies can be accepted.
- URA is, however, not obliged to rely on an entity's benchmarking studies and may conduct its own study and reach its own range of results.

Self-assessment

- The responsibility is on the taxpayer to ensure that the TP regulations are adhered to and to confirm its transfer prices meet the standard.

Advance Pricing Agreements

- APAs are written agreements between a business and URA to govern the appropriate TP method for a forward-looking period. Applications for multi-lateral APAs are allowed.
- TP regulations Section 9 – Advance Pricing Agreements, states that a person may request that the Commissioner enter into an APA to establish an appropriate set of criteria for determining whether the taxpayer has complied with the arm's length principle for certain future controlled transactions undertaken by the person over a fixed period of time.
- The URA may enter an APA with the entity either alone or together with competent authorities of the country or countries of the entity's associate or associates.

Exemptions

- There are exemptions for local entities whose controlled transactions with associated entities do not exceed Ushs 500,000,000 (25,000 currency points).

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Zambia

Introduction to TP in Zambia

- The Zambia TP rules are in Section 97A and 97D of the Income Tax Act (ITA).
- The Zambia TP rules are applicable to controlled transactions between a person that is liable for tax in Zambia and another associated person who may or may not be liable to tax in Zambia. Therefore, the Zambia TP rules are applicable to domestic transactions.
- The definition of a person in Section 2 of the Income Tax Act excludes a partnership. However, it should be noted that Section 97C (1) (d) includes a partnership for TP purposes.

TP documentation

Preparation of TP documentation

- and retain TP documentation that is contemporaneous. This documentation must be in place at the time that the income tax return is filed and must be submitted to the Commissioner General (CG) within 30 days of written request by the CG.
- TP documentation must be prepared on an annual basis and maintained for 10 years.
- MNE's with multiple entities in the jurisdiction are required to have stand-alone TP reports for each entity.
- Local entities with an annual net turnover equal to or exceeding ZMW50 million are required to prepare documentation.
- An ultimate parent entity that is tax resident in Zambia, with consolidated group revenue of Zambian Kwacha (ZMW)4,795 million, approx. (EUR750 million) in the previous accounting year must file a CbC report with the Commissioner General, 12 months after the last day of the reporting year of the multinational enterprise with respect to that reporting accounting year.

- Where no entity in the group files a CbC report, the Zambian resident entity must file as long as the group revenue exceeds the EUR750m threshold.
- The TP reports are to be prepared in the local language (English)

Master and local file

- The TP documentation (master file and local file) have the same content as those of the OECD. The TP reports are to be prepared in the local language (English).

Penalties

- In an instance where the TP documentation requested for by the ZRA is found to not align to the guidelines as per the Regulations, the penalties that relate to non-compliance of TP regulations of ZMW24 million may apply.
- Failure to submit, late submission or incorrect disclosures may result in an offence and liability on conviction to penalties specified under the ITA (i.e., from 1 January 2018 to 31 December 2018, penalty is ZMW3,000, and with effect from 1 January 2019, penalty of ZMW24 million).

Some risk factors for challenge

- The audit program is risk-based, concentrating on thinly capitalized MNEs and specific sectors of the economy, such as mining-related companies and distributors.
- The ZRA will usually challenge the characterization of the entity. The methodology is not often challenged.
- The ZRA will implement a TP adjustment if methodology applied is challenged.
- Publication, the mining industry (mining companies and suppliers) and distributors seemed to be the revenue authorities' main focus.

OECD guidance

- Zambia has adopted OECD TP Guidelines July 2017 recommendations per the amendment to the TP regulations that were affected through government gazette dated 6 April 2018, ns.
- The amendment seeks to enhance the existing TP regulations by providing detailed guidance on application of arm's-length principle and Zambia's TP documentation requirement.
- However, the local regulations will prevail in case of any inconsistencies.

Zambia has not explicitly adopted BEPS Action 13 for TP documentation in their local regulations.

Economic analysis and how to demonstrate an arm's length result

- The Zambia regulations state the following methods as the approved TP methods from which an appropriate method can be chosen from:
 - CUP
 - Resale price
 - Cost-plus
 - TNMM
 - Transactional profit-split
- The TP methods are consistent with the OECD Guidelines and the UN Practical Manual on TP for Developing Countries.
- The Zambia legislation permits the use of a different method from those listed above, however, the ZRA must be satisfied that:
 - none of the approved method can be reasonably applied; and
 - the method applied yields a result that is consistent with the arm's length principle.
- The taxpayer is required to also state why the five methods were regarded as less appropriate or non-workable and why the selected method is regarded as most appropriate.
- There is no legal requirement to only consider local comparables in performing a benchmarking study, local comparables are rarely used as it may be challenging to find information locally.
- Benchmarking studies are not required to be conducted every year. In practice, a new benchmarking study is conducted in one year and subsequently updated in the next two years.
- The interquartile range calculation using spreadsheet quartile formulas is acceptable.
- The weighted average result is preferred, as per common practice.
- The full range is considered the 'arm's length range' where the comparability analysis identifies a number of comparables that are equally reliable. However, where the highest point of the full range exceeds 25% of the lowest point in the range the ZRA requires the interquartile range to be used as the 'arm's length range'.

Self-assessment

- Zambia has a self-assessment regime. The duty of developing a TP policy solely lies on the taxpayer.

Advance Pricing Agreements

- Zambia does not have a formal APA program.

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Zimbabwe

Introduction to TP in Zimbabwe

- TP in Zimbabwe is regulated by section 98 of the Zimbabwean Income Tax Act (the Act), with supporting guidance provided by the 35th Schedule to the Act, the OECD Guidelines, the UN Manual and the UN Practical Manual. The rules require those liable to tax in Zimbabwe to follow arm's-length principles in their dealings with inter alia associated persons, whether residents of Zimbabwe or not.
- The filing of TP Tax Returns before the Tax Authority (ZIMRA). The tax return is required to be completed by taxpayers with international and/or domestic transactions for the following types of aspects: -
 - Controlled Transactions with related or associated persons/parties;
 - Activities of a branch or a permanent establishment within Zimbabwe; and
 - Transactions with countries as set out below:

Country	Country	Country	Country
Andorra	Anguilla	Antigua & Barbuda	Aruba
British Virgin Islands	Belize	Bermuda	Bahrain
Bahamas	Barbados	Cayman	Cook Islands
Isle of Man	Jersey	Liechtenstein	Luxembourg
Maldives	Malta	Mauritius	Monaco
Montserrat	Nauru	Liberia	Gibraltar
Marshall Islands	Netherlands Antilles	Niue	Panama
Cyprus	Dominica	Grenada	Guernsey/Sark/Alderney
Samoa	San Marino	Seychelles	Singapore
St Lucia	St Christopher (St Kitts) & Nevis	Country	Tonga
Turks & Caicos	US Virgin	Vanuatu	Other

TP documentation

Preparation of TP documentation

- In Zimbabwe there is a required to have TP documentation which include: (i) transfer pricing report, (ii) Service Level

Agreements (SLAs), (iii) Group Policies on treatment of related party transactions, etc.

- The TP documentation is mandatory for all taxpayers with related party transactions.
- A taxpayer must have in place contemporaneous documentation that verifies that the conditions in its controlled transactions for the relevant year are consistent with the 'arm's length' principle.
- Documentation for a relevant tax year is considered to be contemporaneous where it is updated and in place at the statutory tax return's filing date.
- The following are some of the documents which the tax authority expects taxpayers to keep:
 - Agreements entered into between associated enterprises.
 - Information pertaining to discussions which led to the signed agreements.
 - Transfer pricing policy of the organisation.
 - Any documentation supporting the transfer pricing policy of the organisation such as research information on comparables.
- Documentation must be submitted in English.
- Documentation must be provided to the Commissioner within seven days of receipt of written request.
- Taxpayers are required to have documentation in place at the time the statutory return is filed, which return must be filed annually. At a minimum, the documentation must contain information about the transaction, however, taxpayers are also required to:
 - have in place an overview of their business operations;
 - provide a full description of any group of companies that the taxpayer is a member of; and
 - if the taxpayer is a member of a group of companies,

details of shareholding and the role that each member of the group plays in the operations of the group.

- The role that each member of the group plays is important because considerations such as how much value addition a member of a group contributed to a product/ service is a factor in transfer pricing, so the documentation must reflect this.

Penalties

- It's important to mention that where the tax authority has effected transfer pricing adjustments, penalties and interest may be levied on additional amounts raised.
- Failure to abide by the transfer pricing laws and regulations may result in the following penalties:
 - a) A 100% penalty on any disallowed amounts leading to a transfer pricing adjustment if the non-compliance is due to tax evasion or fraud;
 - b) 30% penalty on any disallowed amounts where contemporaneous documentation does not exist; or
 - c) A 10% penalty on any disallowed amounts where contemporaneous documentation does exist but the controlled transactions are not at arm's length.
- Penalty is based on the assessed loss or taxable income for the preceding year.

Some risk factors for challenge

- Business restructurings, or changes in TP model.
- Persistent losses in an entity that has been characterised as 'limited risk' or 'service provider'.
- Limited risk manufacturing / distribution models with profit-sharing arrangements.
- Intellectual property owned by offshore entities that have DEMPE functions situated in ZIM.
- Thin capitalisation of ZIM entity.
- Licensing payments to low tax jurisdictions.
- Inbound service fees that may not pass the benefit test.
- Margins decreasing with no explanation.
- No formal agreements for services/finance provision with no recharge of costs.

OECD guidance

- Section 98B as read with the 35th Schedule to the Income Tax Act [Cap 23:06] (The Act) broadly adopts the internationally accepted "Arm's Length Principle" for the purposes of determining the income and associated expenditure for transactions between associated persons. Zimbabwe has also prepared transfer pricing notes regulate intercompany transactions for related entities.

- The African Tax Administration Forum (ATAF) Practice Notes, OECD Transfer Pricing Guidelines and UN Practical Manual on Transfer Pricing are relevant sources of interpretation for purposes of The Act and the Zimbabwe Transfer Pricing Practice Notes.
- Where there is inconsistency between the Zimbabwe Practice Notes and The ATAF Practice Notes, OECD Transfer Pricing Guidelines and UN Practical Manual on Transfer Pricing, the local Practice Notes, together with the relevant legislation and regulations enshrined in Zimbabwe's law, shall prevail.

Economic analysis and how to demonstrate an arm's length result

- Taxpayers must first apply the Comparable Uncontrolled Price Method (CUPM), and may only use the Resale Price Method (RPM), Cost Plus Method (CPM), Profit Split Method (PSM), Residual Profit Split Method (RPSM) and the Transactional Operating Profit Margin Method (TOPMM), when the CUPM is not the appropriate one to determine the arm's length principle of the transactions performed in accordance with the TPG.
- Considering that the TPG establish that the order of application of the methods includes first the traditional methods (CUPM, RPM and CPM) and then the transactional methods (PSM and TOPMM), in Mexico this is the hierarchy of methods: (i) CUPM, (ii) RPM and CPM and (iii) PSM, RPSM and TPMM.
- The full range is considered the 'arm's length range' where the comparability analysis identifies a number of comparables that are equally reliable. However, where the highest point of the full range exceeds 25% of the lowest point in the range the ZRA requires the interquartile range to be used as the 'arm's length range'.
- ZIMRA will expect to see that a search for potential internal or external comparable transactions has taken place before defaulting to an external database search for comparable companies.
- In the case of using comparable companies from a region, the SAT would like to see an adjustment applied for differences in the markets where the comparable companies operate vs. the analyzed taxpayer.
- Usually the use worldwide comparable companies search is employed.
- The use of interquartile range is required and there is a methodology in ITL to perform this calculation.
- ZIMRA is allowed to use "secret comparables."

Self-assessment

- Section 37A of the Act [Chapter 23:06] essentially requires a self-assessment by the taxpayer where the onus is on the taxpayer to ensure that TP rules are adhered to.

- Certain document retention requirements also apply to taxpayers conducting cross border related party transactions. These are onerous and go beyond the requirements proposed by the OECD under Action 13 relating to master file and local file requirements.
- The annual income tax return for corporates (form ITF 12C2) includes a number of TP related questions that need to be responded to by a taxpayer that has entered into cross border related party transactions. The purpose of these questions is to assist SARS with its TP risk assessment and therefore they need to be considered thoroughly and answered correctly. The annual corporate income tax return must be submitted four months after the end of the relevant year of assessment.

Advance Pricing Agreements

- Zimbabwe does not have an APA program. However, section 34D of the Revenue Authority Act (Chapter 23:11) provides for Advanced Tax Rulings (ATRs) which are written agreements between a taxpayer and ZIMRA to govern the appropriate transfer pricing method for a forward-looking period.
- ATRs are common in transactions where the taxpayer and the Tax Authority differ in terms of interpretation of the tax legislation.
 - ATRs agreed between a particular taxpayer and the tax authority are not binding on the other taxpayers.
 - ATRs agreed between a particular taxpayer and the tax authority are not binding on the other taxpayer.

ZIMRA and taxpayer behaviour

- TP has been a focus area of ZIMRA for the last few years. The likelihood of a general annual tax audit is assessed as medium while the TP forming part of such an audit is high.
- TP methodology is assessed on a case-by-case basis but is generally challenged within the audit process. Should ZIMRA challenge the methodology, an adjustment is likely.



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