Transfer Pricing Country Summary
Namibia

August 2018

Legislation

Existence of Transfer Pricing Laws/Guidelines

Namibian TP regulation is enshrined in Section 95A of the Namibian Income Tax Act (ITA) on determination of taxable profit with respect to international transactions. Largely in line with the OECD Transfer Pricing Guidelines, the Namibian Transfer pricing regulations took effect 14 May 2005.

According to its provisions, the Minister of Finance may adjust the consideration in respect of a transaction between connected persons to reflect an arm's length price for goods and services between an acquirer and a supplier in an International transaction. Practice Note (PN) 2/2006 of Namibia further interprets Section 95A by providing guidelines on the procedure to follow in determining the arm's length price, the nature of the documentation required and solving other practical transfer pricing issues, taking into account the Namibian business environment.

Definition of Related Party

A 'connected person' as defined by PN 2/2006 in relation to a Namibian company, constitutes its Holding Company; its subsidiary; the subsidiaries of the same Holding Company; holding 20% of the resident companies equity share and any other company that manages and controls a connected party. The Transfer Pricing rules also apply to transactions between a Head office and its branch; and in branches of the same legal person dealing with each other.

Transfer Pricing Scrutiny

As transfer pricing cases are fact-sensitive and may involve difficult evaluations of comparability, markets, and financial or other industry information, the Namibian Minister of Finance has set up a special unit to deal with Transfer pricing cases. The country equally seeks technical assistance from the OECD and the South African Revenue Services (SARS) to better apply its transfer pricing provisions.

Transfer Pricing Penalties

There are no specific Transfer Pricing penalties in the Act, as supplemented by the Practice Note 2/2006. However, general tax penalty provisions found in the Act applies to Transfer Pricing cases. These penalties comprise:

- Underpayment of taxes is penalized by up to 200% of the initial amount and interest also accrues to the unpaid amount at a 20% rate or part thereof;

- An additional tax equal to 100% of an unpaid provisional tax arises where the first provisional payment is not at least 40% of the years' taxable income;
- An additional tax equal to 100% of the unpaid tax arises where the second provisional payment is not at least 80% of the taxpayer's taxable income;
- And, a late payment of the second provisional return is subject to additional tax of N$100 for each day during which the returns remain outstanding.

Advance Pricing Agreement (APA)

There is currently no provision on Advanced Pricing Agreements (APA) in the Namibian Transfer pricing rules.

Safe Harbors

There is currently no thin cap ratio in Namibian. However, if the Minister of Taxes is of the opinion that the value of a financial assistance granted to a Namibian company by a non-resident connected party and or a non-resident that holds more than 25% of the shares in the Namibian entity is excessive in relation to the Namibian company' fixed capital, the tax administration will disallow interest deduction.

Documentation And Disclosure Requirements

Tax Return Disclosures

PN 2/2006 supplementing the Tax Act does not prescribe a list of documentation to be prepared for TP purposes nor disclosure requirements.

As guidance on the required TP documentation during audit, the Income Tax Act stipulates taxpayer must justify the transfer pricing policy; why the transfer prices are considered; the methods used in determining the transfer price and its consistency with the arm's length principle. The taxpayer must therefore create and retained transfer pricing documentation with the same prudence, and management principles that would govern evaluation of her business decisions.

Level of Documentation

In Namibia, tax returns lodged in the form prescribed by the minister must be signed by the taxpayer or his duly authorized agent, including a computation of the taxable income of the person and the amount of tax payable on the income.

The Minister may thus require any taxpayer to submit, in support of any return, a financial statement certified by an accountant registered with the 'Institute of Chartered Accountants of Namibia' or any other professional involved in the performance of functions in accounting and related fields approved by the Minister. Any doubtful balance sheet, statement of account, assets and liabilities prepared by any other person must be clarified to the minister.

In practice, it is up to the taxpayer to judge and determine the level of documentation required for transfer pricing purposes. Thus, the level of documentation required depends on the facts and circumstance of the case.

Record Keeping

There is no specific time limit for transfer pricing records keeping in Namibia. The Act stipulates the Minister has the right to retain tax returns documentation for such period as necessary, after a consultation with the Auditor-General. The taxpayer on her part must preserve tax documentation with the same prudence, management principles that would govern evaluation of her business decisions.

Language for Documentation

The Act stipulates that he minister may require tax return documentation to be produced on oath. Deeds, plans, instruments, books, accounts, trade lists, stock lists or documents which the Minister may deem necessary for tax purpose must be produced in the English language; otherwise the Minister by notice in writing may, require the taxpayer to produce at his or her own expense and at such time and place as may be appointed, a translation in the English language prepared and certified by a sworn translator or a person approved by the Minister.

Small and Medium Sized Enterprises (SMEs)

There is currently no provision in the Act for 'small and medium sized companies'.

Deadline to Prepare Documentation

There is no specific deadline for preparing Transfer pricing documentation.

Deadline to Submit Documentation

There is no specific deadline for submitting Transfer pricing documentation in the Act, and per supplemental PN 2/2006. However, the Act stipulates a deadline for filing general tax returns, being:

- For Persons, the last day of June following the end of the year of assessment; and;
- For Companies, the last day of the 7th month after the end of the year of assessment.

It should be noted that the Namibian tax year runs from 1 March to 28 February. The Minister may also on good reasons shown by the taxpayer extend the due date for submission of returns and payments of the tax due.

Statute Of Limitations

There is currently no statute of limitation in the Act.

The Tax commissioner may at any time issue additional tax assessment. Any objection to a notice of assessment by the taxpayer must be lodged within 90 days, specifying the reasons for such objections. The taxpayer may further appeal the Minister's decision within 30 days after notice on the objection.

Transfer Pricing Methods

The PN 2/2006 empowers the minister to use any methods outlined in the OECD in determining the arm's length transfer price.

Practically, the most reliable TP method is the one that requires fewer analyses and where more reliable adjustments can be made. However, taxpayers are not required to undertake an intricate analysis of all the methodologies, but must have sound basis for using the selected methodology. Thus, the nature of the activities being examined; the availability, quality and reliability of the data used; the nature and extent of any assumptions, and the degree of comparability that exists between the controlled and uncontrolled transactions and where the difference affecting conditions in the arm's-length dealings, must be considered.

The Namibia Minister of Finance has therefore, in line with the OECD, endorsed the CUP, RPM, CP, TNMM and the Profit Split methods as acceptable transfer pricing methods. The most appropriate of these methods depends on the particular situation, and the extent and reliability of the data to enable its proper application.

Comparables

On the choice of comparables to substantiate the transfer price, taxpayers are generally not required to undertake an intricate analysis of all the TP methodologies, but must have a sound base for applying a chosen Transfer Price method and the accompanying comparables used. The use of comparables therefore depends on the facts and circumstance of the case. Thus, the provision of reliable data and comparables to substantiate the company' Transfer Pricing policy and the transaction' arm's length nature is the onus of the taxpayer.