

Transfer Pricing Country Summary Tanzania

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Legislation

Existence of Transfer Pricing Laws/Guidelines

Section 33 of the Income Tax Act, Chapter 332 (“The Act”) sets out Tanzanian transfer pricing legislation. In addition to section 33, specific transfer pricing regulations were introduced by virtue of section 129 of the Act, which took effect 7 February 2014 (“The Regulations”).

The Regulations, which to a large degree are consistent with the OECD Transfer Pricing Guidelines and the UN Transfer Pricing Manual, apply to controlled transactions, where a person who is a party to the transaction is located in, and is subject to tax in the United Republic of Tanzania (“Tanzania”) and the other person who is a party to the transaction is located in or outside Tanzania. A “controlled transaction” is defined as a transaction between associates.

By virtue of Section 4 of the Regulations, where a person has entered into a transaction or series of transactions to which the Regulations applies (i.e. transactions entered into between associates), the income and expenditures resulting from the transactions between related parties needs to be determined in a manner which is consistent with the arm’s length principle. Accordingly, where a person fails to ensure that the income and expenditures resulting from the above mentioned transaction(s) are determined in a manner which is consistent with the arm’s length principle, the Commissioner of the Tanzania Revenue Authority (“TRA”) (“Commissioner”) may employ the necessary adjustments to ensure that the income and expenditures resulting from the transactions are consistent with the arm’s length principle. The Commissioner’s authority in this regard includes re-characterizing the source and type of income or loss and apportioning or allocating the expenditure.

The Regulations also provides for a certain hierarchy of methods, stating that the traditional transaction methods should first be applied. However, the Regulation further provides that, notwithstanding the hierarchy, a person shall apply the most appropriate method, having regard to the nature of the transaction, persons involved or functions performed by the persons involved.

Additional guidance is provided in respect of the application of the arm’s length principle in the context of intra-group services, intangible property and intra-group financing in Section 10 of the Regulations, as well a requirement to prepare contemporaneous transfer pricing documentation (including guidance on the expected content of such documentation) in section 7 of the Regulations.

The Regulations also provide for the imposition of strict penalties for non-compliance.

Definition of Related Parties

The Regulations apply to “controlled transactions”. A “controlled transaction” is defined as a transaction between “Associates”. An “Associate” is in turn defined in the Act; in relation to a person, this means another person where the relationship between the two is, *inter alia*, that of an entity and a person who:

- (a) Either alone or together with an associate or associates under another application of this definition; and
- (b) Whether directly or through one or more interposed entities, controls or may benefit from 50 percent or more of the rights to income or capital or voting power of the entity; or

In summary, in order for the Regulations to apply, the relationship threshold for connected transactions includes:

- 50% or more of the rights to income or capital or voting power of the other entity, whether directly or indirectly;
- Partners in the same partnership, unless the Commissioner is satisfied that it is not reasonable to expect that either person will act in accordance with the intentions of the other; and,
- In other cases, such that one may reasonably be expected to act in accordance with the intentions of the other, other than as employee.

Branches or permanent establishments (“PE”) are also characterized as ‘Associates’ of the entity they form a part of.

Transfer Pricing Scrutiny

Special considerations apply with regard to intra-group services, intangible properties and to intra-group financing. For intra-group services, the TRA requires proof that the services were actually provided by the non-resident party and conferred an economic benefit or commercial value to the recipient, as well as documentation proving that charge for the intra-group services is justifiable and at arm’s length. Where the TRA is dissatisfied with the proof, it may re-allocate the excess payment as taxable profit to the local company and tax it accordingly. In line with the OECD Transfer Pricing Guidelines, the Regulations provides that intra-group services shall be disregarded if it involves shareholder activities, duplicative services, services that provide incidental services or any other service deemed inappropriate by the Commissioner.

Transfer Pricing Penalties

By virtue of Section 98 – 103 of the Act, the TRA has discretionary powers to penalize non-compliant taxpayers, which includes non-compliance on transfer pricing matters.

Entities that are non-compliant with the arm’s length principle are considered committing an offence and are liable to a penalty equal to 100% of the underpayment of the tax. Furthermore, non-compliance with the documentation requirements is seen as an offence and is liable on conviction to imprisonment for at least 6 (six) months or to a fine of at least TZS 50 million or both.

Advance Pricing Agreement (“APA”)

Section 12 of the Regulations provides for the conclusion of APAs in order to establish an appropriate set of criteria for determining whether the person complied with the arm’s length principle. A taxpayer’s request for the conclusion of an APA is accompanied by:

- a description of the person’s activities, controlled transactions and the proposed scope and duration of the APA;
- a proposal for the determination of the transfer prices for the transactions to be covered by the APA, setting out comparability factors, the selection of the most appropriate transfer pricing method and the critical assumptions as to future events, under which the determination is proposed;
- the identification of any other countries that the taxpayer wishes to participate in the APA; and
- Any other information, which the Commissioner may require as specified in a practice note on transfer pricing.

The Commissioner shall accept, reject or modify the APA request proposal. If accepted or modified, the APA shall apply to the controlled transactions specified in the agreement at a date clearly indicating the years of income for which the agreement applies. Once an APA is accepted, it will be in force for a period of maximum 5 years. Unilateral, bilateral and multilateral APA agreements are available.

Safe Harbors

By virtue of Section 12 of the Income tax Act of 2004 as amended by the Finance Act 2010, Tanzania applies a thin capitalization rule based on a 7:3 debt-to-equity ratio.

Documentation And Disclosure Requirements

Tax Return Disclosures

Contemporaneous Transfer Pricing Documentation with the content as outlined in section 7(2) of the Regulations needs to be prepared prior to the due date for filing the income tax return and kept by the taxpayer. This documentation is not to be submitted at the time of filing the income tax returns, but should be made available to the Commissioner within 30 days of request.

Level of Documentation

The level of documentation to be included in the Contemporaneous Transfer Pricing Documentation is outlined in section 7(2) of the Regulations and includes the following:

- Organization structure, including the organization chart covering persons involved in a controlled transaction;
- Nature of the business or industry and market conditions;

- The controlled transactions;
- strategies and assumptions regarding factors that influenced the setting of any pricing policy;
- comparability, functional and risk analysis;
- the selection of transfer pricing method;
- the manner of application of the transfer pricing method;
- documents that provide the foundation for or otherwise support or were referred to in developing the transfer pricing analysis;
- index to document; and
- Any other information, data or document considered relevant by the Commissioner.

Record Keeping

Taxpayers need to retain the necessary documents to enable accurate determination of tax returns or any other documents as prescribed by the Commissioner for at least 5 years from the end of the relevant income tax year.

Language of Documentation

The language for Contemporaneous Transfer Pricing Documentation needs to be one of the official languages of Tanzania. The official languages of Tanzania are the English language and Kiswahili. If not in one of these languages, the Commissioner may require a sworn translation of the documents.

Small and Medium Sized Enterprises (SMEs)

There is no specific transfer pricing provision or relief for small and medium sized enterprises in the Regulations.

Deadline to Prepare Documentation

By virtue of the Regulations, Contemporaneous Transfer Pricing Documentation should be in place prior to the due date for filling the income tax return for that year. A taxpayer must file a final tax return to the TRA within 6 months after the end of each tax year. The taxpayer must file return in the period between 1 January and 30 June.

Deadline to Submit Documentation

Adequate and complete Transfer Pricing Documentation must be submitted within 30 days from the date of the Commissioner's request.

Statute Of Limitations

According to the Act, the statute of limitation on transfer pricing assessments is limited to 3 years from the date of filing the tax return. However, in cases where the tax authorities suspect fraud or intent to evade payment of taxes, the three-year limitation is not applicable.

Transfer Pricing Methods

Since the TRA follows the OECD Transfer Pricing Guidelines, it applies the five OECD transfer-pricing methods in practice. These methods constitute:

- Comparable Uncontrolled Price method (“CUP”);
- The Cost Plus Method (“CPM”);
- The Resale Price Method (“RPM”);
- The Transactional Net Margin Method (“TNMM”);
- The Profit Split Method (“PSM”).

As stated above, there is a preference for the traditional transactional methods (the first three methods mentioned above), must first be applied. The TNMM and PSM methods are used if the traditional transactional methods cannot be reliably applied or cannot be applied at all. Nonetheless, the most appropriate method should be applied, having regard to the nature of the transaction, persons involved or functions performed by the persons involved.

Transactions involving intangible properties, like licenses, are also subject to arm’s length principle and the Regulation requires the use of the CUP method or, if in the case that the intangible is unique or has a high value, the residual profit split method.

Comparables

When applying the comparability factors in determining if transactions are at arm’s length, the results of a controlled transaction shall be compared with the results of uncontrolled transactions for the same basis year for the year of income.

The TRA understands the limitations when it comes to the identification of local Tanzanian comparables (or any African comparables) due to lack of financial information available for private companies in Africa. Non-Tanzanian comparables are thus generally accepted. The TRA currently uses Bureau van Dijk’s Amadeus database, however, with no particular preference regarding use of databases for benchmarking purposes.