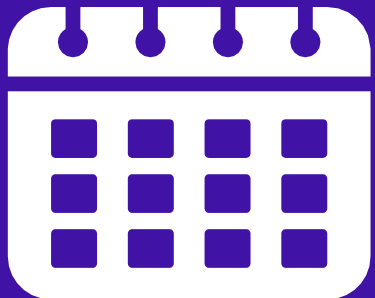
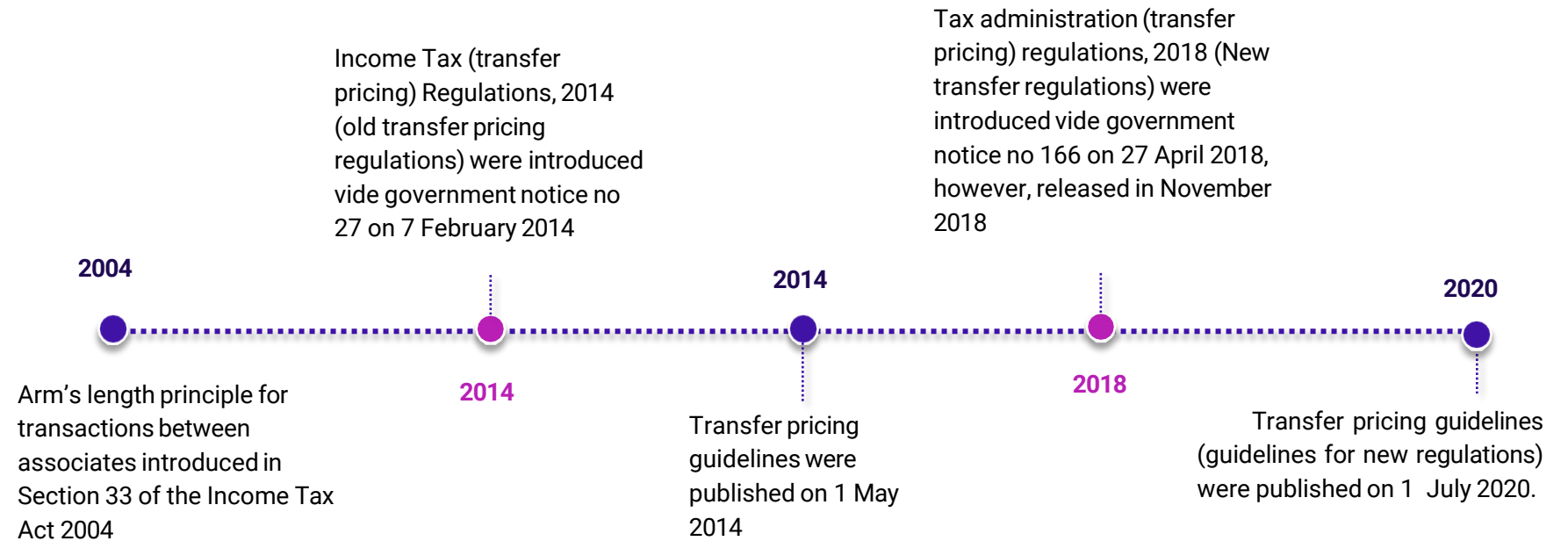


Global Transfer Pricing Landscape

Tanzania



Highlights



Introduction

- Income Tax (transfer pricing) Regulations, 2014 have been revoked from immediate effect.
- Any person entering into related party transactions (either domestic or international) with its associates is required to undertake a transaction that is consistent with the arm's length principle.
- If a person fails to comply with the arm's length principle, the Commissioner of Income Tax (Commissioner) has the power to make necessary adjustments and may impose a tax liability on such person.
- New transfer pricing regulations also recognize the OECD transfer pricing guidelines and the UN transfer pricing manual for applying the arm's length principle. However, the domestic Income Tax Act and transfer pricing regulations shall prevail in case of any inconsistencies between them.

Associates

- Meaning of the term 'Associate' is provided in Section 3 of the Income Tax Act and transfer pricing guidelines issued earlier in 2014.
- Following persons are termed as Associates:
 - Individual and his/her relative; unless it is not reasonable to expect that either individual will act in accordance with the intentions of the other;
 - Partners in the same partnership; unless it is not reasonable to expect that either individual will act in accordance with the intentions of the other;

- In case of an entity, any person, who is either alone or together with an associate(s), whether directly or through one or more interposed entities, controls or benefits from 50 percent or more of the rights to income or capital or voting power of the entity;
- Any other persons, other than an employee, such that one may reasonably be expected to act in accordance with the intentions of the other;
- Branch and headquarter shall be deemed to be a separate person and deemed to be associates for this purpose.

Arm's Length Principle

- Arm's length price means the price charged between the associates as if the parties were unrelated.
- Any transactions with the related parties shall satisfy the arm's length principle.

Transfer Pricing Methods

New transfer pricing regulations follow a hierarchy of methods as stated under

A. Traditional Transaction Method

- Comparable Uncontrolled Price (CUP) Method
- Resale Price Method
- Cost Plus Method

B. Transaction Profit Method

- Profit Split Method
- Transactional Net Margin Method

C. Other Method

- Any other method as may be prescribed by the Commissioner
- Despite the explicit hierarchy of methods provided,
- New transfer pricing regulations also state that the most appropriate method should be selected having regard to the nature of transactions;
- While applying any other method as the most appropriate method, transfer pricing documentation should provide robust reasons for the inapplicability of traditional transaction methods and transaction profit methods;
- If the most appropriate method requires the selection of a tested party outside Tanzania, it can be done only when all the 'relevant information' is available from such a party. The information may include audited financial reports, employees' profiles, registration as evidence of intangibles, organization chart, certification of incorporation, etc.

Transfer Pricing Documentation

- A taxpayer who has entered into controlled transactions with related parties is required to prepare contemporaneous transfer pricing documentation annually.

- Following information/details should form part of the transfer pricing documentation:
 - Organization structure, including group and operations structure, role, and shareholding percentage;
 - Worldwide ownership structure of the group, percentage ownership, and operational structure;
 - Nature of the business or industry and market conditions;
 - Description of controlled transactions, including volumes and values involved;
 - Strategies, assumptions, and working factors that influenced the setting of any pricing policies;
 - All commercial agreements setting forth the terms and conditions of the transactions with associates and third parties wherever applicable;
 - The actual computational workings carried out in determining the transfer prices;
 - Details of the functions performed, assets employed, and risks assumed by each person in relation to the controlled transaction;Further, functions performed and risks assumed to be summarized in a tabular form indicating the responsible entity, significance, and performance score of the function or risk.

While concluding functional analysis, an entity characterization is to be provided, such as a fully-fledged manufacturer, fully-fledged distributor, limited risk distributor, or service provider based on the functional analysis;

- Comparability analysis;
 - Selection and application of the transfer pricing method, tested party, and the financial indicator; financial statements for the parties to the controlled transaction including in cases where the tested party has been selected outside of the country;
 - Documentation that provides the foundation for, or otherwise supports, or was referred to in developing the transfer pricing analysis;
 - Index to the document;
 - Any other information, data, or document considered relevant by the person submitting the document.
- For taxpayers with related party transactions exceeding TZS 10 billion (i.e., approximately US\$4.3 million) in a taxable year, the new regulations require them to file the transfer pricing documentation with the final return of income;
 - Taxpayers not meeting the threshold of TZS10 billion do not have to submit contemporaneous transfer pricing documentation to the TRA but must have it in place by the due date for filing the corporate income tax return for that year. Upon request, the transfer pricing documentation should be submitted to the TRA within 30 days of the request.
 - The revised guidelines provide that such taxpayers, falling within the threshold of TZS10 billion, may request an extension of time to submit the transfer pricing documentation. CG may grant such extension upon extension period for filing an income tax return, i.e., 30 days. Further, the guidelines confirm that no extension shall be granted to persons with related party transactions that fall below the threshold of TZS10 billion upon

issuance of a notice to submit the transfer pricing document.

Maintenance/Submission of Documents

- Transfer pricing documents are required to be submitted at the time of filing income tax returns, where the transactions with associates amount to or are above TZS10 billion;
- For those persons whose transactions with an associate fall below the stipulated threshold, they have an obligation to prepare and keep the documentation before the due date of filing the returns. The Commissioner may require a person to submit the document, whether or not liable for tax, as per the time specified in the notice (generally 30 days);
- The revised guidelines recommend the submission of transfer pricing documentation in electronic form. However, documentation may be filed in hard copy as well.

Comparability Analysis

- New transfer pricing regulations place special emphasis on the following comparability factors:
 - Characteristic of properties and services;
 - Functional analysis;
 - Contractual terms and conditions;
 - Economic circumstances;
 - Business strategies.

- It is specifically provided that external data may be used for comparability purpose when comparable domestic data are not available.
 - New transfer pricing regulations specify the use of arm's length range of 35th to 60th percentile for more than four comparable data. If the transaction price between the related party falls outside the arm's length range, adjustment shall be made for the difference between the median of the arm's length range and the price of a controlled transaction;
 - However, if comparable data are four or less, the average of data shall be arm's length price.
 - Regulation requires that the arm's length price be determined by comparing the results of a controlled transaction with that of the uncontrolled transactions which were undertaken or carried out during the same year as the year of undertaking the controlled transaction;
 - If data in a particular financial year does not provide the most reliable comparison or comparable companies are not readily available depending on the industry concerned, then comparable information closer to the year under examination or the average of the most contemporary years not exceeding three years prior to the financial year may be considered.
- Intragroup services have been actually rendered
 - Provision of such services has conferred an economic benefit or commercial value to the business
 - Charge for the intragroup services is justifiable and at arm's length
- Following services shall be excluded from intragroup services:
 - Shareholder or custodial activities
 - Duplicative services
 - Services that provide incidental benefits or passive association profits
 - On-call services
 - When services are rendered jointly to more than one associate, the total service charge shall be allocated based on "reasonable allocation criteria" such as a number of computers, license, employee, net sales, etc.
 - The revised guidelines provide that appropriate allocation keys should be used for centralized functions. An appropriate mark-up is to be determined and applied to the actual costs of rendering the services;
 - The charging mechanism for such services is to be based on actual costs of providing these services, i.e., charges based on a percentage of revenue will not be accepted;
 - Cost plus method has been designated as the preferred method to test intragroup services. This is in line with best practice, although in many cases, the application of gross margins is difficult due to differences in accounting treatment, and therefore, a net margin approach is applied;

Certain Specific Transactions

Intragroup services and intragroup financing

- The taxpayer is required to demonstrate that

- The taxpayer is required to determine the arm's length interest rate for intragroup financing activity;
- Further, as per the guidelines issued, an accurate delineation and recognition of the actual transaction should be conducted. The size of the loan and the nature and extent of interest deduction that is allowable should also be determined;
- CUP method is considered as the preferred method for determining the arm's length consideration;
- There are also additional confirmatory tests, including actual delivery, size, and utilization of the loan consistent with the purpose of the stated loan.
- A detailed guidance has been provided in the guidelines on such transactions.

Intangible property

- The taxpayer is required to determine the arm's length consideration for any transfer or licensing of intangible property commensurate with the future expected benefit;
- While determining arm's length consideration, due regard shall be given to functional analysis carried out by the associate (whether or not the legal owner) in relation to development, enhancement, maintenance, protection, and exploitation (DEMPE) of intangible property;
- Furthermore, the taxpayer who is not the owner of the intangible property,

but undertakes marketing activities (in excess of a comparable independent person) shall receive arm's length consideration for its activities;

- The owner of a locally developed intangible property shall receive appropriate consideration for the transfer of intangible outside Tanzania. Furthermore, no royalty shall be paid if the same intangible is subsequently licensed back for use in Tanzania. The revised guidelines emphasize on functional analysis of the parties involved in the intangible transaction with respect to functions performed, assets utilized, and risks assumed in connection with the development, enhancement, maintenance, protection, and exploitation of the intangibles and are summarized as DEMPE functions;
- DEMPE analysis forms the basis of determination of appropriate remuneration for intangible transactions;
- The regulations also stipulate that when the controlled transaction involves the sale or licensing of intangible property, the arm's length price should be determined by applying the CUP method, or if the property is highly valuable or unique, the residual profit method may be applied;
- A detailed guidance has been provided in the guidelines on such transactions.

Commodity transactions

- CUP method is the most appropriate method to benchmark commodity transactions.
- Quoted spot prices may be used as CUP to determine arm's length price (except where the actual price is higher than the spot price).
- The date of shipment as evidenced by the bill of lading or an equivalent document depending on the means of transport, is considered as the transaction date.
- A detailed guidance has been provided in the guidelines on such transactions.

Reporting and Compliance

Tax Return Disclosures/Due date

- Presently, there is no separate transfer pricing return to be submitted;
- The taxpayer is required to submit the transfer pricing documentation along with an annual income tax return if the quantum of transactions with related parties exceeds TZS10 billion for a tax year;
- Presently, the due date for filing a tax return is six months from the end of the year. Hence, for the year ending in December, the due date to file a tax return would be 30 June of the next year.

Transfer pricing assessment

There are no separate transfer pricing assessments conducted. It is conducted as a part of a regular tax assessment for a tax year. The statute of limitation to complete the tax assessment is generally five years in Tanzania.

Penalties

- Penalty for non-maintenance of transfer pricing documentation shall be not less than 3,500 currency points (presently, one currency point is equivalent to TZS 15,000);
- Penalty for transfer pricing adjustment made during tax audit is 100% of the adjusted amount;
- Penalty for non-compliance may be levied where the document is not submitted within the specified time limit of 30 days upon CG's request;
- Criminal measures will also be initiated if a person does not respond to the CG's notice regarding contravention to Regulation 7 of the transfer pricing regulations on submission of the transfer pricing documentation.

Corresponding adjustments

Where an adjustment is made by the competent authority of another country with whom Tanzania has a treaty in existence, and the adjustment results in taxation in another country for the income or profits that are also taxable in Tanzania, the Commissioner (upon request by the taxpayer) may make the corresponding adjustment to the amount of tax charged in Tanzania to avoid double taxation.

A request for consideration of a corresponding adjustment must be made to the CG within one month from the date of the adjustment being made, or within such time allowable under an existing tax treaty for the case to be resolved by way of agreement procedure. The request should be accompanied by the necessary information to examine consistency with the arm's length principle.

Advance Pricing Agreement (APA)

- New transfer pricing regulations provide an option to the taxpayer to determine, in advance, the appropriate arm's length price for their future controlled transactions with related parties by entering APA;
- Any person with related party transaction(s) may apply for an APA where those transactions are between:
 - Related separate legal entities,
 - A Permanent Establishment (PE) and its head office, or
 - Two PEs of the same entity or group.
- APA shall be effective for not more than five years;

- The taxpayer is required to make a written request to the Commissioner and can enter either unilateral APA or bilateral/multilateral APA;
- Furthermore, the taxpayer is required to file an annual APA compliance report on the date of filing an annual income tax return;
- For the application of APA person needs to contact the Commissioner seeking a pre-filing engagement to discuss the requirements of the proposed APA;
- The regulations empower the Commissioner to cancel an APA by way of notice if the taxpayer fails to materially comply with fundamental terms of the agreement, or if there is a change in tax law or a breach in one or more critical assumptions.

BEPS/ CbCR applicability

- Base Erosion and Profit Shifting issues and CbCR are expected to be more remote. For the time being, transfer pricing regulations in the country still need to be more matured.

Summary of Transfer Pricing Requirements

Effective from

2014

Compliance Requirements

No specific transfer pricing return to be file. However, transfer pricing documentation needs to be accompanied by an annual tax return if the quantum of the transaction exceeds TZS 10 billion.

Penalties

Specific penalties have been introduced for transfer pricing non-compliance.

Method and Preference for comparable

Five methods as provided in OECD Guidelines. Reasonable justification to be provided for using any other method.

Peculiar Features

Branch and headquarter are considered a separate person for this regulation.

Commissioner has the power to make the corresponding adjustment to the amount of tax charged in Tanzania to avoid double taxation.

APA Regulations

APA regulations have been prescribed.

BEPS/CbCR Applicability

Not yet introduced



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