



cutting through complexity

GLOBAL TRANSFER PRICING SERVICES

Global Transfer Pricing Review

South Africa

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TAX



South Africa



KPMG observation

Transfer pricing in South Africa, and Africa as a whole, has taken on immense importance and is currently under the spotlight. The South African Revenue Authority is up-skilling its transfer pricing department to be able to cast its net wider in so far as audits are concerned.

The Action Plan on Base Erosion and Profit Shifting (BEPS) underscores the significance of transfer pricing developments that are under consideration by the Organisation for Economic Co-operation and Development (OECD). Both large and smaller international businesses are advised to keep an eye on this topic and be proactive.

KPMG anticipates that the South African Revenue Service will strongly support the BEPS Action Plan. South Africa was present and participated in the meeting of the Committee on Fiscal Affairs where the Action Plan was adopted.

Basic information

Tax authority name

South African Revenue Service (SARS).

Citation for transfer pricing rules

Section 31 of the Income Tax Act and Practice Note 7.

Effective date of transfer pricing rules

1995.

What is the relationship threshold for transfer pricing rules to apply between parties?

Ownership of greater than 20 percent of the share capital or under common management or control.

What is the statute of limitations on assessment of transfer pricing adjustments?

Three years from the date of assessments unless there has been fraud, misrepresentation and/or a material nondisclosure by the taxpayer.

Transfer pricing disclosure overview

Are disclosures related to transfer pricing required to be prepared or submitted to the revenue authority on an annual basis (e.g. with the tax return)?

Yes. Transfer pricing documentation, together with justification for the pricing of transactions, should be prepared and available to SARS on request.

What types of transfer pricing information must be disclosed?

The following information must be disclosed:

- disclosure of related party transactions
- disclosure as to whether the company has transfer pricing documentation
- disclosure of financial assistance to/from an offshore-related party
- disclosure of any Advanced Pricing Agreements (APAs) in a foreign jurisdiction.

What are the consequences of failure to prepare or submit disclosures?

The annual income tax return requires disclosure relating to transactions with related parties. Failure to provide accurate responses would lead to the prescription period not applying to the return, which would mean SARS could challenge the transfer pricing at any time and would not be limited to the prescription period of 3 years after assessment.

Transfer pricing study overview

Is preparation of a transfer pricing study required – i.e. can the taxpayer be penalized for mere failure to prepare a study?

No.

Other than complying with a requirement per the previous question, describe the benefits, if any, of preparing and maintaining a transfer pricing study?

The benefits are as follows:

- shifting burden of proof
- penalty protection
- if SARS requests documentation they expect the taxpayer to have documentation prepared for submission.

To satisfy the requirement and/or obtain the benefits, are there any requirements on when the transfer pricing study must be prepared and submitted?

Must be submitted on request and must be contemporaneous. SARS may grant a 30-day period for submission.

When a transfer pricing study is prepared, should its content follow Chapter V of the OECD Guidelines?

Yes.

Does the tax authority require an advisor/tax practitioner to have specific designation in order to prepare or submit a transfer pricing study?

No.

Transfer pricing methods

Are transfer pricing methods outlined in Chapter II of the OECD Guidelines acceptable?

Yes.

Is there a priority among the acceptable methods?

Yes, the Comparable Uncontrolled Price (CUP) method is preferred.

If there is no priority of methods, is there a “best method” rule?

Not applicable.

Transfer pricing audit and penalties

When the tax authority requests a taxpayer’s transfer pricing documentation, how long does the taxpayer have to submit its documentation?

No fixed time period. These may vary and applications for extended periods may be submitted to SARS.

If an adjustment is proposed by the tax authority, are dispute resolution options available to the taxpayer outside of competent authority?

The taxpayer may approach SARS and follow alternative dispute resolution (ADR) procedures. This procedure is between the taxpayer and SARS.

If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions?

Yes. Up to 200 percent of the adjusted tax amount.

To what extent are transfer pricing penalties enforced?

Depends largely on the intention of the taxpayer.

What defences are available with respect to penalties?

The maintenance of contemporaneous documentation evidencing the taxpayer’s intention and that consideration has been given to the transfer prices can be used as a defense against penalties.

What trends are being observed currently?

Extensive audits by SARS across all industries. SARS is focusing on distribution entities, particularly where these have been classified as low-risk distributors. Companies that have effected true-up payments at year-end are also being looked at.

Special considerations

Are secret comparables used by tax authorities?

Not to our knowledge.

Is there a preference, or requirement, by the tax authorities for local comparables in a benchmarking set?

No.

Do tax authorities have requirements or preferences regarding databases for comparables?

No, but it is common practice that the Bureau van Dijk Orbis database is used.

What level of interaction do tax authorities have with customs authorities?

High.

Are management fees deductible?

Yes.

Are management fees subject to withholding?

No.

Are year-end transfer pricing adjustments permitted?

Yes, but these need to be supported by the transfer pricing policy and methodology applied and may lead to queries from SARS.

Other unique attributes?

SARS works closely with the South African Reserve Bank to monitor the inflow and outflow of money from and to South Africa.

Other recent developments

New legislation (which came into force from financial years commencing on or after April 2012) has been promulgated to provide a uniform set of transfer pricing rules to deal with artificial pricing or the misallocation of prices within the various

components of a single transaction. The new legislation puts the onus to make any transfer pricing adjustment on the taxpayer. SARS is yet to issue a practice note clarifying these amendments.

Tax treaty/double tax resolution

What is the extent of the double tax treaty network?

Extensive.

If extensive, is the competent authority effective in obtaining double tax relief?

No experience

When may a taxpayer submit an adjustment to competent authority?

No formal rules.

May a taxpayer go to competent authority before paying tax?

No formal rules.

Advance pricing agreements

What APAs options are available, if any?

No. APAs or advance rulings in respect of transfer pricing of any kind.

Is there a filing fee for APAs?

Not applicable.

Does the tax authority publish APA data either in the form of an annual report or through the disclosure of data in public forums?

Not applicable.

Please provide some information on how successful the APA program is and whether there are any known difficulties?

Not applicable.

Language

In which language or languages can documentation be filed?

Documentation can be submitted in any of South Africa's 11 official languages. However, on a practical level, English is preferable.

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