



*cutting through complexity*

GLOBAL TRANSFER PRICING SERVICES

# Global Transfer Pricing Review

Tanzania

[kpmg.com/gtps](https://kpmg.com/gtps)

TAX



# Tanzania

## KPMG observation

Most companies operating in Tanzania are subsidiaries of multinational enterprises that have engaged in foreign direct investment in Tanzania. The tax authority is generally of the view that these multinationals are focused on repatriating as much profit out of Tanzania as possible, while suffering the least possible tax costs. For this reason, the tax authority is aggressively challenging transactions between Tanzanian operations and their non-resident related parties. However, tax law relating to transfer pricing and related party transactions remains considerably under-developed. There are no specific rules and regulations for transfer pricing in Tanzania and the expectations of the tax authorities with regard to related party transactions are different from one case to the other. This creates quite a degree of unpredictability with regard to potential tax costs relating to an investment in Tanzania.

## Basic information

### Tax authority name

Tanzania Revenue Authority (TRA).

### Citation for transfer pricing section of the Act

Section 33 of the Income Tax Act (ITA) requires that any arrangement between related parties must be conducted at arm's length.

### Effective date of transfer pricing provision

2004.

### What is the relationship threshold for transfer pricing section of the ITA to apply between parties?

The relationship threshold is as follows:

- a company which controls or may benefit from 50 percent or more of the rights to income or capital or voting power of 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 an individual and a

relative of the individual, unless the Commissioner is satisfied that it is not reasonable to expect that either individual will act in accordance with the intentions of the other.

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

Three years from the date of filing the tax return. However, in cases where the tax authorities suspect fraud or intent to evade payment of tax, the 3 year limitation can be ignored.

## 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)?

Disclosures are required to be prepared and a summary thereof is required to be submitted/noted in the tax return. The detailed information and supporting documents are only presented to the revenue authority when the authority requests such information, for example under a tax audit.

### What types of transfer pricing information must be disclosed?

Description and amounts of related party transactions need to be submitted with tax returns. A transfer pricing study should be prepared but is not required to be submitted to the tax authorities unless requested.

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

The taxpayer could be deemed either to have failed to maintain proper documents for a year of income, or to have misled the tax authorities in a material manner by omitting to disclose certain matters. The first offence is punishable by a monthly penalty of 2.5 percent of any outstanding income tax at the time of filing the return (a penalty that runs until the proper documents are prepared), or 100,000 Tanzanian shillings (TZS), whichever is higher. The second offence is punishable by a penalty of either 50 percent or 100 percent of tax that the authorities believe would have been underpaid if the omission went undetected, depending on whether the omission was made with reasonable excuse (50 percent) or made knowingly or recklessly (100 percent).

## 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?

Mitigate the risk of the tax authority by making adjustments using comparables that might not be appropriate/relevant to the situation at hand. Other benefits obtained would be penalty protection and shifting of the burden of proof to the tax authorities. The authorities also generally expect companies engaging in related party transactions to have prepared transfer pricing studies.

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

None. It is, however, expected that the study is in place before the related party transactions are conducted or entered into.

When a transfer pricing study is prepared, should its content follow Chapter V of the Organisation for Economic Co-operation and Development (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. In Tanzanian law there is no requirement for a transfer pricing study to be prepared by a tax advisor/practitioner. However, the tax law requires that tax advisors/practitioners who assist taxpayers in preparing tax returns are certified public accountants in public practice (CPA-PP), registered with the National Board of Accountants and Auditors, and also approved tax consultants (registered with the Tanzania Revenue Authority).

## Transfer pricing methods

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

Yes. No guidance has been given by the TRA. In the absence of such guidance, it has become the norm to apply arm's length principles as set out by the OECD Guidelines.

Is there a priority among the acceptable methods?

Not applicable.

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?

See transfer pricing disclosure overview section.

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

Yes, the tax authority first attempts to resolve the dispute, and if this fails, dispute resolution is progressed to the Tax Revenue Appeals Board. If the taxpayer remains aggrieved by the decision of the Appeals Board, an appeal can be lodged with the Tax Revenue Appeals Tribunal, and eventually with the Court of Appeal.

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

Yes. Interest can be assessed where the sustained adjustment creates a situation where tax is deemed to have been paid later than its due date. Interest rates are amended annually, based on the Bank of Tanzania discount rate at the beginning of the year. In 2014, the applicable rate is 21 percent per annum, compounded on a monthly basis.

To what extent are transfer pricing penalties enforced?

Without fail, penalties (in this case interest for late payment) are computed and assessed where a taxpayer is deemed to have failed to pay tax by the date on which it was due.

What defences are available with respect to penalties?

Documentation and reasonable cause. The tax authority has legislative power to reduce or remove penalties where the taxpayer submits justifiable reasons for the reduction or removal to be considered. One such reason could be the lack of clear legislative guidance on how to prepare documentation with respect to related party transactions.

What trends are being observed currently?

Generally, all transactions between local companies and their related parties who are Tanzanian non-resident are coming under immense scrutiny. The tax authority is asking for evidence that services were rendered (where the transactions relate to payment by the Tanzanian company for services provided by related persons); together with documentation proving that the prices were at arm's length. Where the authorities remain dissatisfied, the consequence is for the service fees/related party payments to be disallowed as expenses for the Tanzanian company, thus increasing taxable profits.

## Special considerations

Are secret comparables used by tax authorities?

The tax authority may use comparables that will not be disclosed to the taxpayer due to the confidentiality of the information collected by the authority from other taxpayers.

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

No. Reasonability of comparables is what is important, irrespective of whether these are local or foreign.

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

No.

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

Significant. The customs authorities are actually a facet/department of the larger tax authority.

**Are management fees deductible?**

To the extent that management fees are justifiable (relating to services actually rendered and priced at arm's length), the management fees are deductible.

**Are management fees subject to withholding?**

A withholding tax rate of 15 percent and 5 percent applies on payments to non-residents and residents respectively where the services for which the fees are paid were rendered in Tanzania.

**Are year-end transfer pricing adjustments permitted?**

Yes, with an approval from the Commissioner. As per section 33 of the Income Tax Act, 2004, the Commissioner is empowered to make corrective adjustments should he think that the transactions between related parties are not at an arm's length.

**Other unique attributes?**

None.

## Other recent developments

None.

## Tax treaty/double tax resolution

**What is the extent of the double tax treaty network?**

Minimal.

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

Not applicable.

**When may a taxpayer submit an adjustment to competent authority?**

Where the taxpayer essentially feels that the adjustment is creating double taxation (taxation of the same income in Tanzania and in another jurisdiction), and the two countries share a double tax relief treaty that provides for competent authority intervention.

**May a taxpayer go to competent authority before paying tax?**

Yes, provided that negotiations with the tax authority have failed and the tax authority has either made a final decision to proceed with the adjustment or has raised an assessment for tax that the taxpayer disagrees with.

## Advance pricing agreements

**What Advance Pricing Agreement (APA) options are available, if any?**

No APAs. However, a company may apply in writing to the Commissioner for a private ruling. The company is required to make a full and true disclosure of all aspects of the arrangement relevant to the ruling application. Subject to this, the Commissioner may, by notice in writing served on the company, issue a private ruling setting out his position regarding the application of the Act to the company with regard to the arrangement proposed.

**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?**

No.

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

The APA program is provided for in the income tax regulations, but the tax authority has been hesitant to conclude any APAs with taxpayers, and we suppose that the reason for this would be the lack of skilled expertise in the tax authority in so far as transfer pricing is concerned.

## Language

**In which language or languages can documentation be filed?**

English.

### KPMG in Tanzania

**David Gachewa**

Tel: +255 22 2122003

Email: dgachewa@kpmg.com

As email addresses and phone numbers change frequently, please email us at [transferpricing@kpmg.com](mailto:transferpricing@kpmg.com) if you are unable to contact us via the information noted above.

[kpmg.com/socialmedia](http://kpmg.com/socialmedia)



[kpmg.com/app](http://kpmg.com/app)



The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

© 2014 KPMG International Cooperative ("KPMG International"), a Swiss entity. Member firms of the KPMG network of independent firms are affiliated with KPMG International. KPMG International provides no client services. No member firm has any authority to obligate or bind KPMG International or any other member firm vis-à-vis third parties, nor does KPMG International have any such authority to obligate or bind any member firm. All rights reserved.

The KPMG name, logo and "cutting through complexity" are registered trademarks or trademarks of KPMG International.

Designed by Evalueserve.

Publication name: Global Transfer Pricing Review

Publication number: 133196

Publication date: June 2014