



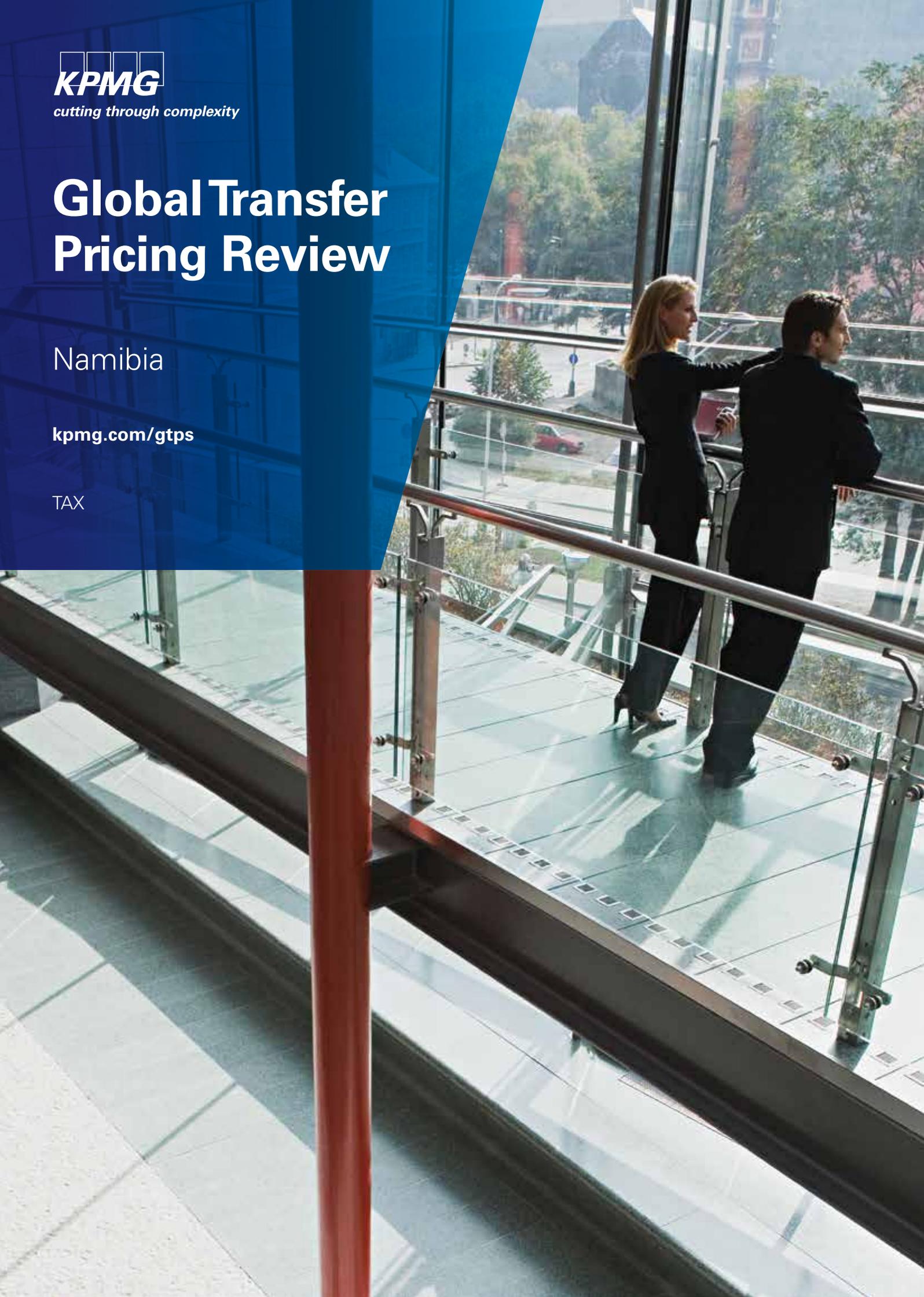
cutting through complexity

Global Transfer Pricing Review

Namibia

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TAX



Namibia

KPMG observation

Namibia introduced transfer pricing legislation on 14 May 2005. The legislation in the form of Section 95A to the Namibian Income Tax Act is aimed at enforcing the arm's length principle in cross-border transactions carried out between connected persons.

In September 2006, the Directorate of Inland Revenue issued Practice Note 2 of 2006 (PN 2/2006) containing guidance on the application of the transfer pricing legislation.

Transfer pricing study snapshot

The purpose of a transfer pricing study

	Applicable	Not applicable
Legal requirements		●
Protection from penalties	●	
Reduce risk of adjustment	●	
Shifts burden of proof	●	

Basic information

Tax authority name

Directorate: Inland Revenue (DIR).

Citation for transfer pricing rules

Section 95A of the Income Tax Act and Practice Note 2 of 2006.

Effective date of transfer pricing rules

14 May 2005.

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

In relation to a company, the following are regarded as connected persons:

- its holding company
- its subsidiary

- any other company, where both companies are subsidiaries of the same holding company
- any person (other than a company) that holds individually or jointly with any connected person in relation to that person at least 20 percent of the equity share capital or voting rights in the company
- any other company that holds at least 20 percent of the equity share capital, where no other shareholder holds the majority shares; and
- any other company if that other company is managed or controlled by a connected person in relation to the first company or a connected person in relation to the first connected person.

“Connected person” is also defined in relation to a natural person, trust, connected person in relation to a trust and a member of any partnership.

Additionally, Practice Note 2 also provides that the transfer pricing rules apply to transactions between a head office and a branch and branches of the same person dealing with each other.

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

In terms of section 69 of the Income Tax Act, the Commissioner may at any time issue additional assessments — there is no statute of limitations.

In practice, DIR allows for amended tax returns to be submitted by the taxpayer until the taxpayer is assessed.

In terms of section 71 of the Income Tax Act a taxpayer has only 90 days to object to a notice of assessment by the Commissioner.

Transfer pricing disclosure overview

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

No. The disclosures in the tax return are not specific to connected persons, except dividends to shareholders.

There is currently no statutory requirement that the transfer pricing policy should be submitted to the DIR as part of the Annual Income Tax Return.

What types of transfer pricing information must be disclosed?

Not applicable.

What are the consequences of failure to submit disclosures?

Not applicable.

Transfer pricing study overview

Can documentation be filed in a language other than the local language? If yes, which ones?

No. Documentation is filed in English which is the official language for Namibia.

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, with exceptions. Per Practice Note 2, the "Taxpayer needs to demonstrate that it has developed a sound transfer pricing policy in terms of which transfer prices are determined in accordance with the arm's length principle by documenting the policies and procedures for determining those prices."

The transfer pricing documentation should include the policies and procedures for determining the arm's length prices. However, the taxpayer is expected to use judgment in determining the level of documentation required. Practice Note 2 makes reference to (the old) paragraph 5.4 of the OECD Guidelines.

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

Does your country follow the transfer pricing methods outlined in Chapter II of the OECD Guidelines? If exceptions apply, please describe.

Yes.

Transfer pricing audit and penalties

When the tax authority requests a taxpayer's transfer pricing documentation, are there timing requirements for a taxpayer to submit its documentation? And if so, how many days?

No.

When the tax authority requests a taxpayer's transfer pricing documentation, are there timing requirements for a taxpayer to submit its documentation? Please explain.

The Income Tax Act does not specify a time period. However, Practice Note 2 says that the taxpayer must be in possession of transfer pricing documentation. Section 64 of the Income Tax Act allows for the Minister to require any person to produce documentation as required by the Minister.

If an adjustment is proposed by the tax authority, what dispute resolution options are available?

Objections to assessments may be made, in writing, within 90 days after the date of issue of the assessment. If the taxpayer is not happy with the Minister's response on the objection, the taxpayer may appeal to a special court for hearing income tax appeals or a tax tribunal if all the requirements are met. Such notice of appeal must be furnished to the Minister within 30 days after the notice issued by the Minister on the objection.

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

Yes.

On late payment:

- 10 percent penalty on tax outstanding on due date for each month or part thereof during which the amount remains unpaid; and

- interest at 20 percent per annum.

On underestimation of the provisional tax payments:

- first provisional payment: Additional tax of 40 percent of the annual tax liability less any payments made; and
- second provisional payment: Additional tax of 80 percent of the annual tax liability less any payments made.

To what extent are transfer pricing penalties enforced?

DIR generally always enforces penalties if errors are detected. Only recently have we seen DIR starting to question transfer pricing matters.

What defenses are available with respect to penalties?

Generally, one can request a waiver of penalties if it can be shown that the error was not a result of intent to evade tax or circumstances which the taxpayer was not aware at the time of payment of the provisional tax payments.

However, KPMG in Namibia has not yet seen objections specific to transfer pricing being raised in practice.

Where the taxpayer has transfer pricing documentation it would be easier to substantiate any connected person/transaction value queries by DIR.

What trends are being observed currently?

DIR has not raised transfer pricing queries in the past. However, DIR has made investments in this aspect and we expect transfer pricing queries to be raised in the future.

Special considerations

Are secret comparables used by tax authorities?

Not as far as KPMG in Namibia are aware.

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.

Does the tax authority generally focus on the interquartile range in a TNMM analysis?

No.

Does the tax authority have other preferences in benchmarking? If so, please describe.

DIR has raised few transfer pricing queries in the past. We are not aware of any preferences in this regard.

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

Unknown, but we expect minimal as regards to corporate tax matters (import VAT matters are handled with reference to customs documentation).

Are there limitations on deductibility of management fees beyond the arm's length principle?

Yes. In order to be deductible, fees charged for management services must be at arm's length and must meet the requirements of the general deduction formula.

Are management fees subject to withholding?

Yes.

Are there limitations on the deductibility of royalties beyond the arm's length principle?

Yes. In order to be deductible, royalties must be at arm's length and must meet the requirements of the general deduction formula.

Are royalties subject to withholding?

Yes.

Are taxpayers allowed to file tax return numbers that differ from book numbers?

No. The tax return does not make provision for year-end adjustments. The DIR has not provided any guidance surrounding year-end adjustments.

The underestimation of provisional payments penalties discussed above may apply.

Other unique attributes?

In practice a 3:1 debt-to-equity ratio is used for thin capitalization transactions.

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?

Not applicable.

May a taxpayer go to competent authority before paying tax?

Not applicable.

Advance pricing agreements

What APA options are available, if any?

None.

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.

Are there any difficulties or limitations on the availability or effectiveness of APAs?

Not applicable.

KPMG in Namibia

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