



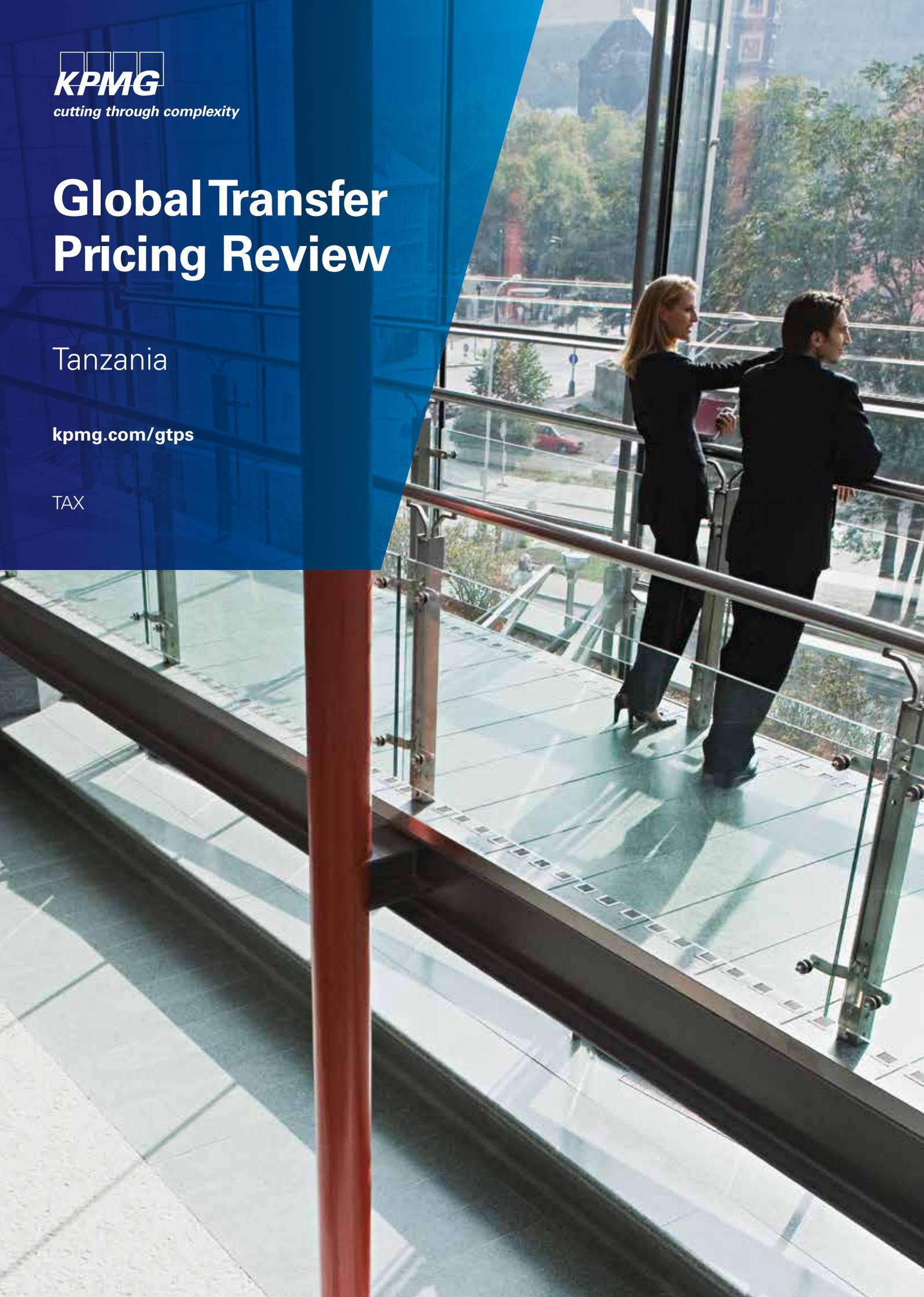
*cutting through complexity*

# Global Transfer Pricing Review

Tanzania

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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 Tanzanian tax authority is aggressively challenging transactions between Tanzanian operations and their non-resident related parties.

In 2014, Income Tax (Transfer Pricing) Regulations were published and became effective on 2 February 2014 (even though the Regulations only became available on 23 May 2014). The Regulations apply to controlled transactions between Tanzania resident entities and non-resident entities. The Regulations also apply for controlled transactions between two Tanzania entities. With the publication of these Regulations, Tanzania now joins Kenya, Uganda and Rwanda as countries in the region which have transfer pricing rules in place.

It is important for taxpayers with related party transactions, whether cross-border or in-country to maintain contemporaneous transfer pricing documentation as required by the Regulations. The penalty for not having the transfer pricing documentation in place is imprisonment for a term not exceeding six months, a fine not less than TShs 50 million (approx. 25,000 US dollars (USD) at the exchange rate of 1 USD = 2000 TShs), or both. Violation of the Regulations attracts a penalty of 100% of the underpaid tax and resulting interest thereon.

## Transfer pricing study snapshot

### The purpose of a transfer pricing study

	Applicable	Required to be contemporaneous	Submission to tax authority required	Thresholds apply/exist
Legal requirements	●	●	●	●
Protection from penalties	●			
Reduce risk of adjustment	●			
Shifts burden of proof	●			

## Basic information

### Tax authority name

Tanzania Revenue Authority (TRA).

### Citation for transfer pricing rules

- Section 33 of the Income Tax Act (ITA) requires that any arrangement

between related parties must be conducted at arm's length

- The Income Tax (Transfer Pricing) Regulations, 2014 (TP Regulations)
- Tanzania Revenue Authority (TRA) Transfer Pricing Guidelines (TP Guidelines).

### Effective date of transfer pricing rules

- 2004 — Section 33 of ITA
- 2014 — TP Regulations were published and came to force on 2 February 2014, even though the Regulations became available to public on 23 May 2014.

## What is the relationship threshold for transfer pricing rules 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; and
- 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 three year limitation can be ignored.

## 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)?

Yes. Details of related party transaction must be disclosed in the tax return.

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

Description and amounts of related party transactions must be disclosed in the tax returns.

### What are the consequences of failure to 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

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

Yes, English.

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, for all transactions. The TP Regulations are broadly based on OECD Guidelines.

A contemporaneous transfer pricing documentation is required to be prepared and maintained before the due date of filing the final tax return. The transfer pricing documentation needs to be maintained and updated on a year on year basis.

The transfer pricing documentation needs to be submitted to the revenue authority only after receipt of request from Commissioner within 30 days of receipt of such request.

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.

No. The TP Regulations provide for a hierarchy of transfer pricing methods with traditional methods ranking higher than other methods. The first three methods (CUP, RPM, CPM) are considered as traditional methods.

However, the TP Regulations also lay down application of most appropriate method having regard to the nature of the transaction, or class of transaction, or class of associated persons or functions performed by such person in relation to the transaction.

Hence, there seems to be an inconsistency with the TP Regulations which also provide for application of OECD and UN model Tax Conventions which have themselves scrapped hierarchy of transfer pricing methods.

## 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?

Yes, 30 days.

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

Yes. 30 days from date of such request.

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

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?

The penalty for not having the transfer pricing documentation in place is imprisonment for a term not exceeding six months or a fine not less than TZS50 million (approx. SD25,000 at the exchange rate of 1 USD = TZS2000) or both. Contravention of the TP Regulations attracts a penalty of 100 percent of the underpaid tax and resulting interest thereon.

Further, 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 are computed and assessed where a taxpayer is deemed to have failed to pay tax by the date on which it was due.

#### What defenses 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.

#### 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. Priority is given to the availability of sufficient and verifiable information on both tested party and comparables.

TRA will not accept foreign tested parties where information is neither available nor verifiable.

#### 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?

Yes, always.

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

None.

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

Yes, some. For management fee to be deductible, in addition to arm's length principle they should be incurred for business purposes.

#### Are management fees subject to withholding?

Yes.

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

Yes. For royalties to be deductible, in addition to arm's length principle they should be incurred for business purposes.

#### Are royalties subject to withholding?

Yes.

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

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 arm's length.

#### Other unique attributes?

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 APA options are available, if any?

Unilateral, bilateral, multilateral.

Is there a filing fee for APAs?

No formal rules exists in this area.

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?

Yes. 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.

### KPMG in Tanzania

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