



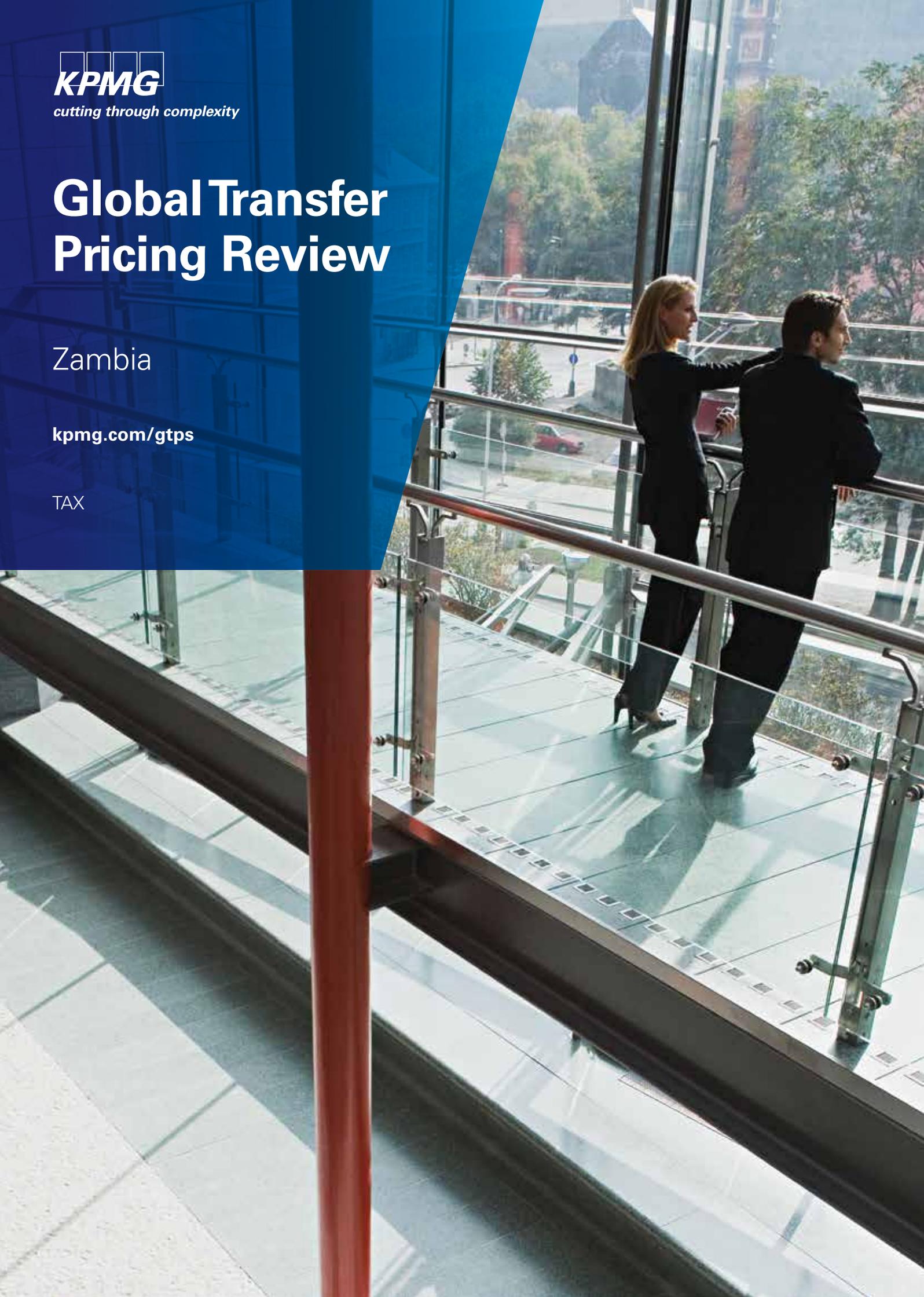
*cutting through complexity*

# Global Transfer Pricing Review

Zambia

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TAX



# Zambia



## KPMG observation

Transfer pricing provisions were written into the Income Tax Act (ITA) in 1999 in the form of Sections 97A, 97B, 97C and 97D. Together, these sections permit the Commissioner General to compute income from transactions between associated parties to reflect arm's length conditions, and to assess the taxpayer a corresponding amount of tax. While these broad provisions exist, currently, there are no detailed rules on transfer pricing in Zambia.

The ITA was amended, effective 1 January 2014, to allow the Minister of Finance (MOF), by way of a statutory instrument, to prescribe documentation rules. The documentation rules will specify the information and documents required to be kept by a taxpayer, and prescribe penalties for non-compliance with the rules. As of the time of this publication, the MOF has not yet formally issued the rules.

## Transfer pricing study snapshot

### The purpose of a transfer pricing study

	Applicable
Legal requirements	●
Protection from penalties	●
Reduce risk of adjustment	●
Shifts burden of proof	●

## Basic information

### Tax authority name

The Zambia Revenue Authority (ZRA) is mandated to enforce the provisions of the ITA, Value Added Tax Chapter 331, Customs and Excise Act Chapter 322 and the Property Transfer Tax Act Chapter 340 of the laws of Zambia.

### Citation for transfer pricing rules

There are no detailed rules on transfer pricing. However, the ITA sections 97A, 97B, 97C and 97D make provisions relating to transfer pricing. The Central Bank of Zambia (BOZ) introduced gazette notice No. 7171 of 2014 applicable to companies falling under the Banking and Financial Services act.

### Effective date of transfer pricing rules

The transfer pricing legislation was initially enacted in 1999 and came into force on 1 April 1999. The BOZ administered provisions took effect on 5 December 2014.

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

Two persons are associated if one of them participates, directly or indirectly, in the management, control or capital of the other, or if another person participates, directly or indirectly, in the management, control or capital of both of them. Further, the MOF may issue a statutory instrument spelling

out documentation requirements and the definition of control. Specifically, the MOF may prescribe the direct and indirect participation in the management, control or capital of a person, and different provision that may be made in relation to different cases or different classes of each case. The BOZ provisions apply to related parties in a "group" or "conglomerate".

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

The ZRA is not limited by law as to how many revised assessments it can issue. The only limitation is that the revised assessments, in non-fraud cases, must be issued within six years after the tax return due date.

## 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. Parts five, six and seven of the tax return require disclosure to be made of shareholding and shareholder emoluments, advances to shareholders and associated companies, and interests in other businesses. Apart from the disclosures as per tax return, there is no additional requirement to make any transfer pricing disclosures together with the tax return except for what is provided for under International Accounting Standards (IAS) and International Financial Reporting Standards (IFRS). The tax authorities require tax returns to be accompanied by financial statements.

Please note that with effect from 1 January 2014, the MOF is now empowered to specify, by way of statutory instrument, information and documents to be kept by a taxpayer. BOZ regulations require its regulated entities to clearly articulate and demonstrate evidence of its arm's length pricing methodologies when seeking approvals for the outsource.

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

ZRA introduced a new return which is submitted electronically. The return requires disclosure of related party transactions and disclosure of basis of pricing and confirmation whether functional analysis was performed to arrive at the price and relevant documentation kept.

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

ZRA officials periodically carry out audits and review whether transactions between related parties are at arm's length. If transactions are not at arm's length, adjustments are made and penalties and interest levied accordingly. Further, the MOF may prescribe penalties for non-compliance, by statutory instrument. With regard to BOZ, approval would not be granted to outsource the services. Any breach could lead to sanctions.

## 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. ZRA generally accepts studies based on OECD Guidelines. There is no requirement to submit such studies but ZRA expects that such a study would be used to prepare the tax return. BOZ requires evidence to be submitted as a basis for approval to outsource.

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 normal period for the Commissioner General to require a company to submit information is 30 days, and this can be extended at the Commissioner General's discretion. We anticipate new information and documents requirement when the MOF prescribes additional guidelines.

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

The taxpayer can appeal to the Commissioner General and if still dissatisfied, appeal to the Revenue Appeal Tribunal. Further recourse can be sought at the High Court of Zambia and finally, the Supreme Court of Zambia, in that order.

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

The penalties prescribed under the ITA depend on whether the omission is negligent, wilful, or as a result of a fraud. The penalties are determined as follows:

- in case of negligence, 17.5 percent of the amount
- in the case of wilful default, 35 percent of the amount
- in the case of fraud, 52.5 percent of the amount of any income omitted or understated, or any expenses overstated, in consequence of such failure, incorrect return, information or submission.

To what extent are transfer pricing penalties enforced?

Penalties are enforced in full by the Commissioner General and where a court process is preferred; the sanctions imposed by the court would subsist.

What defenses are available with respect to penalties?

The Commissioner General has the discretion to waive the penalties or partially reduce the penalties depending on the mitigating circumstances. Where documentation is supplied to the satisfaction of the Commissioner General, the penalties can be waived in full.

What trends are being observed currently?

There has been an increased desire by the tax authorities to clamp down on transfer pricing. Experts from Norway have been assisting the tax authorities on audits of mining and large taxpayers. BOZ too is actively monitoring related party transactions. Furthermore, in recent years, the Government has a strong drive on getting more taxes from corporate institutions and less from employed individuals.

## Special considerations

### Are secret comparables used by tax authorities?

ZRA has procured a database for the use of comparables.

### 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?

There are no such requirements.

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

Not applicable.

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

For related party loans, there is an expectation that the status of the balance sheet of the borrower must be such that an independent person could be willing to lend to the borrower.

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

The Zambian tax authorities have an integrated tax administration system which captures information from the customs system called Asycuda++ and uses this information as intelligence data in income tax and VAT audits.

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

Yes. ZRA expects that management fees will be paid by based on actual services provided to the Zambian entity.

Generally, OECD Guidelines methods are applied on all transfer pricing transactions, except those related to minerals which have specific provisions under the Act. The arm's length price for minerals is determined using the reference price as described below.

The sale price (i.e. arm's length price) in any transaction involving the sale of minerals by a company carrying out mining operations, directly or indirectly, to related or associated parties is the reference price.

The reference price is defined as:

- the monthly average London Metal Exchange (LME) cash price
- the monthly average Metal Bulletin (MB) cash price to the extent that the base metals or precious metal prices are not quoted on the LME
- the monthly average cash price of any other metal exchange market as approved by the Commissioner General to the extent that the base metal price or precious metal price is not quoted on the LME or MB.

The average monthly LME cash price, average monthly MB cash price or any other monthly average metal market exchange cash price approved by the Commissioner General, less any discounts on account of poor or low quality or grade.

### Are management fees subject to withholding?

Yes.

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

No.

### Are royalties subject to withholding?

Yes.

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

Yes. Generally, year-end adjustments are permitted. For transfer pricing, adjustments can be made in order to make the results clear or fairly presented. Such adjustments may give rise to VAT and withholding tax depending on whether they relate to services or not.

### Other unique attributes?

Thin capitalization is dealt with under general transfer pricing rules.

For mining companies, the maximum accepted debt-to-equity ratio is 3:1. Interest outside the thin capitalization ratio is not allowed as a deduction.

Prior to 2013, mining companies' thin capitalization was dealt with outside the transfer pricing rules. With effect from 1 January 2013, interest payments on debt made by mining companies shall be subjected to transfer pricing rules too. The new BOZ regulations apply to companies under the banking

and financial services act and require approval from BOZ before outsourcing services from a related party.

## Tax treaty/double tax resolution

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

A number of tax treaties are being renegotiated among them Ireland, the United Kingdom, India, South Africa and the Netherlands. New treaties with Serbia, Botswana among others have been negotiated.

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

No experience yet.

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

This process is yet to be formalized.

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

Where a client requires double taxation relief, the same can be obtained from the tax authorities prior to paying the tax.

## 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?

No.

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

Not applicable.

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