

Tanzania issues new Transfer Pricing Regulations

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Executive summary

The Government of Tanzania published the Tax Administration (Transfer Pricing) Regulations, 2018 (the Regulations) on 27 April 2018. The Regulations, which were issued in November 2018, revoke and replace the Income Tax (Transfer Pricing) Regulations of 2014.

The new Regulations introduce additional transfer pricing rules and requirements that were not included in the previous regulations. This Tax Alert outlines the key changes introduced by the Regulations.

Detailed discussion

Introduction of transfer pricing documentation filing obligation

For taxpayers with related party transactions exceeding Tanzanian shillings (TZS) 10 billion (i.e., approximately US\$4.3 million) in a taxable year, the new Regulations require them to file the transfer pricing documentation with the final return of income.

Taxpayers that do not reach the TZS10 billion threshold do not have to submit the contemporaneous transfer pricing documentation to the Tanzania Revenue Authority (TRA), but must have it in place by the due date for filing the corporate income tax return for that year. Upon request, the transfer pricing documentation should be submitted to the TRA within 30 days.

Documentation

The Regulations provide an overview of all information that should be contained in the contemporaneous transfer pricing documentation to support the arm's-length character of the controlled transactions. For example, taxpayers must provide the actual computational workings that were prepared when determining the transfer prices of the controlled transaction.

Further, the Regulations grant the Commissioner wide power to request by notice in writing from a person, whether or not liable to tax, to provide "any other information."

Information for a tested party outside Tanzania

An entity outside Tanzania can be used as a tested party only if all relevant information, including financial statements of that person, is provided.

Intra group services and financing

The Regulations provide requirements regarding the acceptability of allocation keys used when non-directly allocable services are performed for various related parties. In general, allocation keys should be acceptable, provided they are measurable and relevant for the type of service (e.g., number of computers for IT, number of cars for vehicle fleet management, number of employees for HR).

Intangible property and sale lease back

The owner of a locally developed intangible that is transferred outside Tanzania should be compensated appropriately at the time of the transfer. Importantly, the Regulations provide that such an intangible cannot attract a royalty when licensed back for use in Tanzania.

Commodity transactions

Controlled commodity transactions should be priced using the comparable uncontrolled price (CUP) method. The quoted spot rates may be used as a benchmark to determine the arm's-length price for a controlled commodity transaction. The quoted spot prices can be obtained from a domestic or international commodity exchange market. If the price agreed between associates is higher than the quoted spot price, the agreed price shall be considered as the sale price.

Comparability analysis

The Regulations list the factors that should be considered when determining whether transactions are comparable.

Further the Regulations confirm that where domestic comparable data cannot be obtained, external comparable data may be used.

The Regulations stipulate that: where four or less comparable data points are used, the average is the arm's-length result, while in the case of more than four comparable data points, the arm's-length result shall be the data point between the 35th percentile and 60th percentile. If the result falls outside the arm's-length range, the price should be adjusted to the median point of the range.

Penalty for non-compliance

A currency point system is introduced to determine the penalty for taxpayers that fail to comply with the transfer pricing regulations. The penalty is set at a minimum of 3,500 currency points as prescribed from time to time by the Commissioner (currently 1 currency point = TZS15,000) which results in a penalty of TZS52,500,000 (i.e., approximately US\$23,000).

This penalty is in addition to a possible penalty of 100% of the adjusted amount that is applicable for failure to comply with the arm's-length principle when transacting with associates.

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