Zimbabwe enacted new legislation on transfer pricing with effect from 1 January 2016. These latest provisions augment the current anti-avoidance sections of the **Income Tax Act**. The new rules govern domestic transactions between associates as well as transactions with foreign entities.

### Detailed discussion

The new transfer pricing legislation endorses the arm’s length principle and imposes documentary obligations on taxpayers. Its scope includes transactions between connected persons, applying to both domestic and international transactions; it is effective 1 January 2016. These new provisions are aligned with transfer pricing principles developed by the Organisation for Economic Co-operation and Development (OECD) and the law recognizes the **OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations** as a relevant source of interpretation. However, the United Nations (UN) Manual on the interpretation of transfer pricing and the UN Practical Manual on Transfer Pricing for developing countries are also explicitly mentioned as relevant sources.

These rules enable the Zimbabwe Revenue Authority (ZIMRA) to adjust transactions which are concluded on terms inconsistent with the arm’s length principle; such adjustments have the potential to create additional tax liabilities.
for the parties involved. The new legislation accepts the five OECD-recognized methods as a basis of determining the comparable arm's length price for a transaction. These methods are the comparable uncontrolled price method, resale price method, cost plus method, transactional net margin method and the transactional profit split method.

Any other method will be accepted by the Commissioner General under circumstances where the approved methods (listed above) do not create a reliable comparable figure and the alternative method does. Taxpayers are not required to apply more than one of the approved methods when determining the arm's length price on a given transaction and the Commissioner is restricted to the method chosen by the taxpayer, provided the taxpayer has satisfied the requirements of the law.

The law establishes the concept of the arm's length range, this being an acceptable range of prices, margins or profit shares that have been reached after the application of one of the approved transfer pricing methods. In principle, no adjustment shall be made by the Commissioner if the relevant financial indicator derived from the controlled transaction(s) falls within the arm's length range and if the appropriate transfer pricing method is selected. If the relevant financial indicator falls outside the arm's length range, the Commissioner may adjust it and any such adjustment will be to the median of the arm's length range.

The new legislation includes a number of paragraphs that specifically concern intra-group services. As per these paragraphs, which are generally in line with OECD guidance on intra-group services, an intra-group service charge shall be considered consistent with the arm's length principle where:

- It is charged for a service that is actually rendered.
- The service provides (or was expected to provide) the recipient with economic or commercial value to enhance its commercial position.
- It is charged for a service that an independent party in comparable circumstances would have been willing to pay for or would have performed in-house.
- Its amount corresponds to that which would have been agreed upon between independent parties in comparable circumstances.

Furthermore, the new legislation contains specific provisions for transactions involving intangible property. These provisions require, among others, that the determination of arm's length conditions for controlled transactions involving intangible property shall take into account the perspective of the various parties to the transaction, including the value and usefulness of the intangible property to their business.

Under this law, taxpayers engaging in transactions with associates must generate and maintain relevant transfer pricing documentation. Although it is not mandatory for the documentation to be submitted, it is in the taxpayer's best interest to keep relevant and appropriate documentation.

The new law recognizes the potential of double taxation which may occur as a result of ZIMRA adjustments. Therefore the law facilitates corresponding adjustments for both domestic and international transactions where necessary.

Implications

Taxpayers currently transacting with associates, trading with foreign entities, or planning on entering into contracts with any of the aforementioned categories of entities must do so after considering their position in relation to this new legislation. Affected taxpayers should:

- Apply the arm's length principle on all transactions with associated parties.
- Develop a transfer pricing policy that conforms to the new legislative requirements.
- Review and align any existing policies to the new legislation.
- Review affected contracts and evaluate the impact of the new legislation, and ensure all intercompany transfer prices are within the arm's length range.
- Develop and maintain relevant transfer pricing documentation.
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