



TAX ADMINISTRATION (TRANSFER PRICING) REGULATIONS, 2018

SUMMARY

- The Tax Administration (Transfer Pricing) Regulations, 2018 came into effect by way of Government Notice 166 published on 27 April 2018. However, these Regulations were released to the public on 21 November 2018. It is our understanding that these Regulations shall apply with effect from the date of release. The previous Transfer Pricing Regulations are therefore revoked.
- The Regulations has factored recent global developments under Base Erosion and Profit Shifting ("BEPS") project undertaken jointly by G20 countries and the Organisation for Economic Corporation and Development (OECD). This is an affirmation that United Republic of Tanzania is geared towards implementation of the BEPS action plan.
- The key highlights of the Regulations have been highlighted below.

TRANSFER PRICING METHODS

- The New Regulations maintain the same order of methods as the previous Regulations. The traditional transaction methods are required to be applied first which are the comparable uncontrolled price (CUP) method; the resale price method and the cost plus method. Where the traditional transaction method cannot be reliably applied or applied at all, the person shall apply other methods stipulated in the OECD Transfer Pricing Guidelines.
- Where the most appropriate method requires selection of a tested party outside the United Republic, such a party shall be considered only when the person provides the relevant information of the person. No clarification or definition of the term "relevant information" has been provided however from our experience the information referred to under Documentation in the Regulations is required to be availed of the tested party.
- Where the person fails to comply with the arm's

length principle, the penalty for non-compliance shall be equivalent to 100% of the adjusted amount rather than 100% of the underpayment of tax. This implies that the absolute amount shall be adjusted rather than the tax applicable on the adjustment.

COMPARABILITY ANALYSIS

- The Regulations put emphasis on use of domestic comparable data. Only when there is no domestic data available, external comparable data may be used.
- Where the comparability analysis is conducted such that the most appropriate method is applied on more than four comparable data, the arm's length shall be the data point between thirty fifth percentile and sixty percentile. Where four or less comparable data is used, the average of the data shall be the arm's length result.
- The median point of an arm's length range shall be used to make any adjustment during the audit. Whilst this requirement is not in line with OECD principles, it provides clarity on the basis to be used being the median point rather than the whole of the range determined using the comparability tools.

DOCUMENTATION

- Contemporaneous transfer pricing documentation needs to be prepared. The requirements under the new Regulations require additional information such as group and operational structure, the roles and shareholding percentages; description of the controlled transactions including volumes and values involved; financial statements for the parties to the controlled transactions included where the tested party has been selected outside the country.

- Where total transactions with associates amounts to or is above ten billion Tanzania Shillings, the documentation is required to be submitted with the income tax returns for that Year of Income.
- The requirement for providing the document within 30 days from the date of request for those entities that do not fall in the above category remains.
- Failure to adhere to the requirements of having the documentation in place could result in penalty not less than three thousand five hundred currency points. This is tantamount to Tanzania Shillings fifty two million five hundred as a currency point is equal to Tanzania Shillings fifteen thousand. The Regulations stipulate this penalty to be a minimum and leaves the penalty to be prescribed by the Commissioner. It is worth noting that the imprisonment term not exceeding six months included in the previous Regulations has been removed.
- The Regulations also give the power to the Commissioner to require a person to provide any other information by notice in writing.

BRANCH AND HEADQUARTER PERSONS

- There is further clarity to confirm that a branch person and a headquarter person shall be deemed as associates. This means that the branch shall be considered a separate person to the head office.

INTRA GROUP SERVICES, INTANGIBLE PROPERTY AND INTRA GROUP FINANCING

- Further requirements have been stipulated in the Regulations to demonstrate transactions with related parties. A person is required to demonstrate intra group services have been rendered; the services have conferred an economic benefit or commercial value to the business that enhances its commercial position; the charge for the intra group service is justifiable and at arm's length.
- Where services are rendered by a person jointly to various associates and it is not possible to identify specific services rendered to each associate, the total service charge shall be allocated among the associates using reasonable allocation criteria. Such criteria shall be measurable and relevant to the type of services rendered. Some examples of allocation criteria have been included in the Regulations.
- There is a specific requirement to determine the arm's length interest rate for intra group financing.

INTANGIBLE PROPERTY BETWEEN ASSOCIATED PERSONS

- The Regulations put emphasis that in determining arm's length conditions for controlled transactions involving exploitation of an intangible property must take into account the contractual arrangements in respect of the development, enhancement, maintenance, protection and exploitation of the intangible property ("IP").
- Where a locally developed intangible asset is

subsequently transferred outside the United Republic, it shall be compensated appropriately at the time of the transfer and such intangible shall not attract royalty when licensed back for use in the United Republic. This means the royalty fees shall not be eligible for tax deduction.

COMMODITY TRANSACTIONS

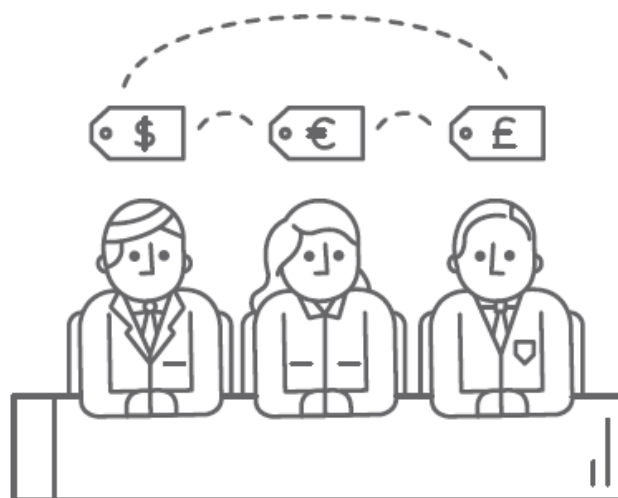
- The Regulations require the CUP method to be used for commodity transactions. However, where the commodity is exported from the United Republic and the price agreed between associates is higher than the quoted spot price, the agreed price shall apply.

ADVANCE PRICING ARRANGEMENTS

- The provisions for the APA rulings are similar to the previous regulations.

CONCLUSION

- As the burden of proof is on the taxpayers, it would be prudent to have the transfer pricing documentation in place timely and due consideration on pricing is given on transactions with associates.
- Taxpayers should give due consideration to the documentation and pricing of the transactions with associates to avoid being penalized.



Caveat

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