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The evolving tax landscape and Base Erosion and Profit Shifting (BEPS)
The evolving tax landscape

Drivers

- **Government deficits:** Increase pressure for tax income collection
- **Corporate citizenship:** Renewed focus on corporate responsibility and citizenship
- **Outdated tax policies:** International taxation standards are not aligned with the current global business environment
- **Increased media attention:** “Are companies paying the right amount of tax, in the right place, and at the right time?”

**Global Tax Reset:** Triggered by the OECD Base Erosion & Profit Shifting Project
The evolving tax landscape

Implications

Authorities are responding by:
- Demanding increased transparency across jurisdictions
- Sharing information between jurisdictions
- Applying increasingly aggressive, but inconsistent, approaches

As a result, businesses are facing:
- Greater compliance burden
- Increased risk
- Business model uncertainty

Businesses are responding by:
- Centralizing processes to drive global consistency of numbers
- Using technology solutions to be more efficient and to automate data aggregation, validation, and reporting when possible
- Employing data analytics to identify anomalies and mitigate risk
Tax audits: increased number of transfer pricing audits

Economic double taxation: transfer pricing adjustments can trigger economic double taxation (taxation of the same profits on both sides of the transaction).

Anti-avoidance penalties: adjustments made to the tax base

Custom Duty: interaction of transfer pricing with customs duty.

WHT: interaction of transfer pricing with withholding taxes.

Cash flow/Predictability: use of money in hand to pay contingent spending from the past (retrospective payments, penalties, income tax) affecting resources available resulting in the mothballing or rethinking of investment plans.
Overview of Transfer Pricing
Transfer Pricing refers to the pricing of transactions between associate entities

- 60% of global trade is conducted by multinational corporations and half this amount is between subsidiaries of a parent company.
- This elevates the focus by regulatory/revenue authorities on transactions between associate parties, more so in Africa.
- Cross border transactions thus present various risks to multinational corporations.

Transacting at arm’s length akin to independent parties.
Overview of Transfer Pricing

Transaction types

- Domestic
- Cross-Border
- Low tax jurisdictions

Entity A

Goods/Materials

Intangible Assets

Services

Leases, Loans, Guarantees

Entity B
Transfer pricing legislation in Zimbabwe
Changes to Transfer pricing legislation

- Amendment to section 98 of the Income Tax Act, 2015
- Statutory Instrument 109 of 2019
A. Documentation format

1. An overview of the taxpayers business operations;

2. The organisational structures;

3. A description of the related party structure;

4. The TP method used;

5. Comparability analysis,

6. Detail on any Industry & economic analysis, budgets relied on;

7. Detail on any APA;

8. Conclusion on compliance with arm`s length principle;

9. Any other information that may have material impact.
B. Time limit for submission

7 days from written request being issued by the commissioner

C. Contemporaneous documentation

By definition-existing at or occurring in the same period.

OECD definition of contemporaneous

A. Agrees to S.I

B. Tax payers should not be expected to incur high costs and burdens in producing documentation. Cost vs Benefit
Three objectives are:

1. To ensure taxpayers give appropriate consideration to TP;

2. To provide tax administrations with the information necessary to conduct an informed transfer pricing risk assessment; and

3. To provide tax administrations with useful information to employ in conducting an appropriately thorough audit of the transfer pricing practices of entities subject to tax in their jurisdiction, although it may be necessary to supplement the documentation with additional information as the audit progresses.
OECD has identified a nine-step approach which is considered as typical or accepted good practice.

- Selection of TP method
- Benchmarking studies - identify comparables
- Outcome is a conclusion on arm’s length nature of transaction
Transfer Pricing – Zimbabwe
Typical characterisations

- Sales
  - Commission agent
  - Limited risk
    - Distributor- takes flash title to the goods
  - Distributor- does not develop any marketing intangible
  - Marketer distributor

- Manufacturer
  - Toll
  - Contract
  - Full fledged
  - Developer

- Service provider
  - Administrative
  - Technical / professional
  - Strategic

- Entrepreneur
  - Varied

Complexity
Return
Adjustments

• **Non-arm’s length transactions have the following consequences:**
  
  − Adjustment of pricing to arm’s length in computing taxable income
  
  − Deemed dividend – WHT consequences
  
  − Wider indirect tax consequences e.g. Customs duty & VAT
How to get started & ensure compliance
How to get started

Understanding

- Identification
- Review & analyses
- Sustainability

Design and structuring

- Design TP model
- Pricing

Documentation

- Document
- Operational issues

Ongoing implementation and monitoring
“TP rules will assist to stem illicit financial flows which have a negative impact on development and improve the transparency required to attract Foreign Direct Investment”