



Africa Tax Symposium – Webinar Edition

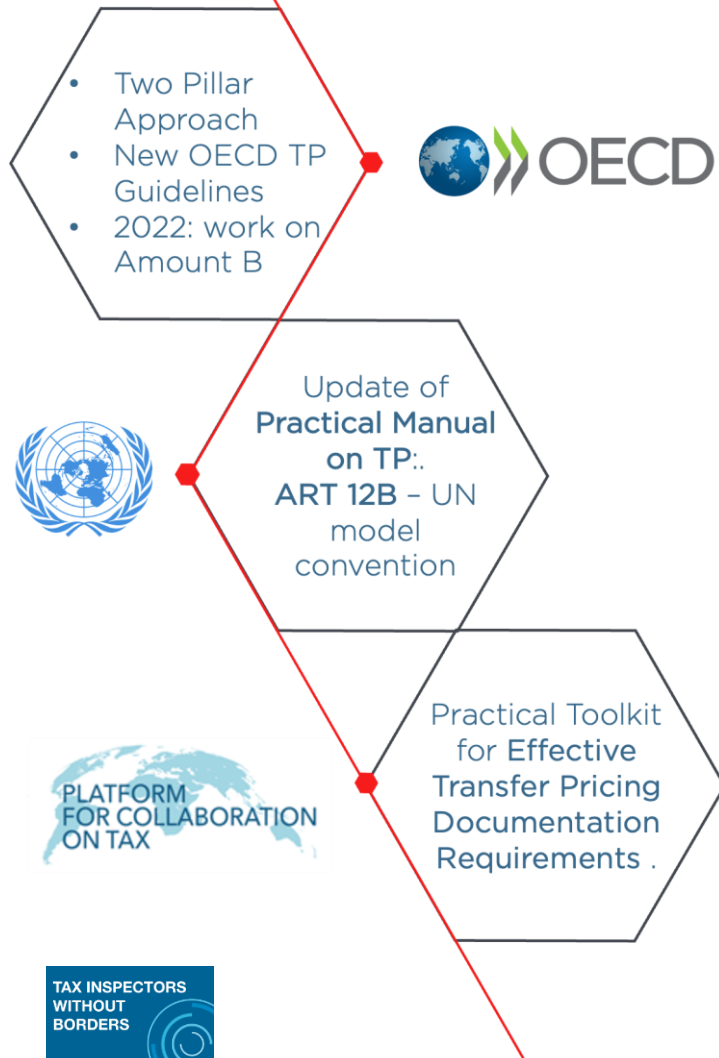
Recent Development in Transfer Pricing – An African perspective

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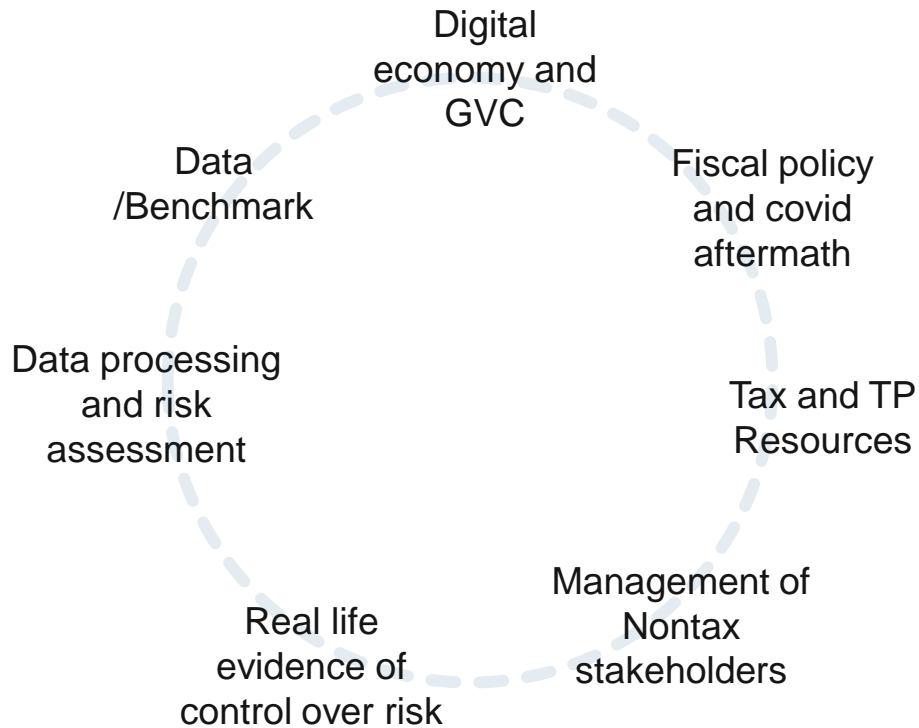
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Transfer Pricing in flux – observed trends



► Selected discussion points

- Complexity vs. Simplification: the TP pendulum is still in motion
- A higher pressure on intangibles (HTVI) and on entitlement to intangible profits (DAEMPE functions)
- The unfinished story of low added value services: controversy ahead, pressure on benefit test
- Enhanced TP communication: changing gears



▶ An increased level of pressure on Tax Administrations and taxpayers

- ▶ From invocation to evidence: the necessary evolution of TP narratives
- ▶ A further step into business economics and fiscal policy
- ▶ Resources: the quest of skills and the increase of data processing needs

Digital
business
models

Digital
In industry
4.0

- Less linear and less sequential value chains: more collaborative teams in more fragmented teams
- A necessity in some cases to perform a value chain analysis on data itself: i) collection, ii) processing, iii) insights, iv) competitive advantage

- ▶ Beyond the fully digital business models, digitalization of Industry 4.0 is likely to create tensions on TP analysis
 - ▶ On functional analysis through less siloed functions and feedback loops of higher value
 - ▶ On economic analysis through the value pegged to internal data transfers



Transfer Pricing Economists for Development (TPED) is a Paris-based Non-Profit Organization aiming to promote business economics knowledge-sharing in transfer pricing, notably in emerging and developing countries.

Comparables



Sample of over 11,000 manufacturing firms located across 84 countries over the period 2012-2016. Our findings suggest that **the search for foreign comparables is better guided by country risk rather than geographic proximity** and that insufficiently controlling for country-level sovereign risk biases high-risk countries' corporate tax revenues downwards.

Bilateral safe harbors could be tailored to the economics of a particular market, and circumstances, and thus be compatible with the arm's length principle

OECD TP Guidelines
2022

Safe Harbours

The objective of the project is to confirm to what extent safe harbours are compatible with the arm's length principle in theory and in practice; whether a broader application of safe harbours is recommendable for developing and emerging economies, or whether even developed countries could make broader use of such mechanisms.



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Recent Developments in Transfer Pricing – An African Perspective

October 14, 2014

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Recent TP Developments: An African Perspective

New provisions
in internal
legislation

Documentation
and declarative
obligations

Revenue
authority audits

South
Africa

- ▶ **Draft model and legislation for Advance Pricing Agreement (APA) system**
 - ▶ South African Revenue Service (SARS) to run an APA pilot project which will only accept bilateral APA applications to enable SARS to learn from other jurisdictions and expand capacity before introducing the full APA programme
- ▶ **Draft Interpretation Note (IN) on Intra-Group Funding**
 - ▶ Importance of a credit rating analysis of the borrower in order to determine the debt capacity of the borrower and the pricing of a loan to the borrower.
 - ▶ Emphasis on the commercial and financial rationale for requiring debt funding from a borrower's perspective, the economic conditions prevailing when requiring the debt funding as well as the business strategies of the group regarding loan funding.

Zambia

- ▶ **Updated Country-by-Country Report Regulations**
 - ▶ MNEs required to provide details of the constituent entities of the MNE's group, aggregated business activities per tax jurisdiction and provide any additional information such as the nature of activities of a respective constituent entity.

Nigeria

Lift of suspension on local filing of CbC reports

- ▶ Applicable to Nigerian subsidiaries of MNE Groups not headquartered in Nigeria, where required. (Effective January 2022)

▶ Introduction of Guidelines for shared services arrangements for Banks and other financial institutions

- ▶ Compliance obligations introduced to ensure shared service arrangements are in line with TP guidelines and regulatory requirement for Banks and other financial institutions (Effective from 1 June 2022)

▶ Introduction of Integrated Tax Administration System (ITAS)

- ▶ Aimed at enhancing tax administration and simplifying the tax compliance process in Nigeria. TP and CbCR filings now done electronically.

▶ Increase in revenue authority audits

- ▶ Increase in TP audits with focus on areas such as; cost recharged to local entities, cost base on which mark-up is charged, reclassification of loans as equity and allocation of some DEMPE functions to the Nigerian recipient of IP related services.

Ghana

- ▶ **Introduction of OECD simplified approach to low value adding services.**
- ▶ Companies will be exempted from the requirements of documentation if the monetary value of the arrangement do not exceed the Ghana Cedi equivalent of USD200,000 and also fulfil safe harbor requirement.
- ▶ **Exemption from maintaining contemporaneous transfer pricing documentation**
- ▶ Companies with technology transfer agreements with related parties may elect (in writing) to be exempt from maintaining contemporaneous transfer pricing documentation provided the technology transfer agreement is registered with the Ghana Investment Promotion Centre (GIPC) and the amount charged in respect of the transaction complies with the safe harbour rules.
- ▶ **Introduction of revised TP and CbC reports obligations by taxpayers.**
- ▶ Companies are required to file electronic copies of their local and master files with the Commissioner-General not later than four months after the end of each fiscal year.

Recent TP Developments: An African Perspective

Kenya

- ▶ **Expansion of the scope of transfer pricing**
 - ▶ Proposal to expand the scope of TP to cover transactions between resident entities and a non-resident person/associated enterprise of a non-resident person/ a permanent establishment (PE) of a non-resident person operating in Kenya is located in a preferential tax regime including low tax jurisdictions
- ▶ **Country-by-Country Reporting Notifications**
 - ▶ Proposal to introduce CbCR notification requirements for MNEs resident in Kenya with a gross turn over of KES 95B (approximately EUR 750M).

Rwanda

- ▶ **Capping of intercompany recharges**
 - ▶ management, technical services and royalty fees paid to a non-resident person exceeding two percent (2%) of the turnover are not deductible expenses from taxable income.
 - ▶ The deductible expenses is to be determined based on the summation of management, technical services and royalty fees in a given tax period



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**Practical challenges for African
Taxpayers and Tax administrations**

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▶ Introduction of New Legislation in the International Tax Space/Continued Amendments

- Assessing Risk, Compliance Cost-Master/Local File, Subscription to commercial database

▶ Lack of comparability Data

- Determining acceptable arms length prices acceptable by the fiscal authorities
- Zambia uses the reference Price-Should ideally provide reliable reference- numerous challenges in determining the arm's length discounts

- ▶ **Constant Changes in the taxation regimes**
 - i.e. Mining regimes in the extractive/High cost of compliance

- ▶ **Submission of sufficient Documentation to Substantiate Transactions**
 - Some may have not maintained the culture to do so prior to introduction of certain legislation
 - E.g. Zambian legislation requiring taxpayers selling base metals to provide information of its related parties sales to a third party in a foreign Jurisdiction.

▶ **Exchange of Information**

- Limited Double Taxation treaty network

▶ **Lack of comparable in the region**

- No Comparables, Comparability Adjustments?

▶ **Constrained Financial Capacity by Governments**

- To employ sufficient staff
- Settlements to supplement constraint revenues

▶ **Lack of Capacity/Specialised Skills**

Some tax administrations have not set up specialised units with sufficient skill to tackle audits in certain industries or specialised areas of Tax such as Transfer pricing

▶ **BEPS Issues**

- Some not unique to Africa, Challenges of taxing the digital Economy, Excessive interest deductibility, Determining PEs, Aligning TP outcomes to value creation, treaty shopping

▶ **Multiple Tax Audit Disputes**

- e.g TP audits, Time consuming

▶ **Lack of IT infrastructure**

Impede Data analysis, challenged interface with other relevant entities-Reduce Compliance and limited access to relevant information

- ## ▶ **Some of the Challenges are not unique to Taxpayers or Tax Administrators e.g. Lack of Comparables in handling transfer pricing matters**