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Global Tax Alert

News from Transfer Pricing

Tanzania issues new transfer pricing guidelines

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Executive summary

The Commissioner General (CG) of the Tanzania Revenue Authority (TRA) published the *Transfer Pricing Guidelines, 2020* (the Guidelines) on 1 July 2020. The Guidelines replace the *Transfer Pricing Guidelines, 2014*.

This Tax Alert summarizes the updated guidance provided by the Guidelines.

Detailed discussion

Scope of the guidelines

The Guidelines provide guidance on the interpretation and application of the Tax Administration (Transfer Pricing) Regulations (2018) (TP Regulations). The Guidelines contain illustrations and simplified examples of the procedures to be followed in the determination of arm's-length prices, among other determinations.

The Guidelines do not address every transfer pricing issue that might arise as each transfer pricing issue will be decided by considering the specific facts and circumstances, including the person's business assumptions and commercial judgment.

It is important to note that the Guidelines are not intended to be a substitute to the applicable laws and regulations. If the Guidelines contradict the law, the latter shall prevail.

Critical issues for consideration in the functional analysis

A functional analysis must be undertaken based on the actual performance of functions and supported by the evidence documenting all critical claims and where appropriate, confirmed by quantitative data. It should also include the assets employed and risks assumed by the parties to the transaction being evaluated. This is particularly essential for functions performed by a foreign entity where the CG has limited access to information regarding its business operations.

Accordingly, practical guidance on the functional analysis for specific functions including procurement, financing, management, and sales and marketing has been provided.

Further, functions performed and risks assumed need to be summarized in a tabular form that is to be included in the functional analysis indicating the responsible entity, the significance and performance score of the function or risk.

At the end of the functional analysis, an entity characterization should be provided such as fully-fledged manufacturer, fully-fledged distributor, limited risk distributor, or service provider based on the functional analysis.

Tested party

The Guidelines confirm that the selection of a tested party outside of Tanzania is allowed as long as all relevant information, related to the case can be supplied. The information may include audited financial reports; employees' profiles; registration as evidence of intangibles; organization chart; and certification of incorporation; among others.

Comparability analysis

The Guidelines set forth the typical steps to be followed in an analysis of comparables, as well as the factors to be considered when determining whether transactions are comparable.

Comparability adjustments, where applicable, to reflect the arm's-length price are covered by the Guidelines. The adjustments should also be reflected by a corresponding adjustment upon request of the other party to the controlled transaction.

Adjustments may be made where the consideration is less than the consideration that would have been received/receivable in an arm's-length arrangement in transactions involving a supply of property or services.

With respect to the acquisition of property or services, adjustments may be made where the consideration is more than the consideration that would have been given or agreed to be given in an arm's-length arrangement and where no consideration has been charged to the associated person for the supply of goods or services.

Extension of time to file transfer pricing documentation

The Guidelines provide that a person who falls within the threshold of TZS10 billion may request an extension of time to submit the transfer pricing documentation. The CG shall grant such extension upon demonstration of good cause. The extension shall not exceed the extension period for filing an income tax return, i.e., 30 days.

Further, the Guidelines confirm that no extension shall be granted to persons with related party transactions that fall below the threshold of TZS10 billion upon issuance of a notice to submit the transfer pricing document by the CG.

Penalty for non-compliance is to be levied where the document is not submitted within the specified time limit of 30 days upon the CG's request.

The rules regarding the compounding of offenses and compounding procedures as provided for under Section 92 of the *Tax Administration Act*, (TAA, 2015), including a notice to a person, will be applied for contravention of reg. 7 of the TP Regulations which requires submission of TP Documentation.

Criminal measures will also be initiated if a person does not respond to the CG's notice regarding contravention to Regulation 7 of the TP Regulations on submission of the transfer pricing documentation.

Electronic submission of the transfer pricing documentation

The Guidelines recommend submission of the transfer pricing documentation in electronic form. However, the documentation may also be filed in hard copy.

List of documentation

The Guidelines list the documents that should be submitted along with the transfer pricing documentation which, include the worldwide ownership structure of the Group, percentage ownership and operational structure as well as all commercial agreements setting forth the terms and conditions of the transactions with associates and third parties where applicable.

Intra-group services

The transfer pricing method for intra-group services is to consider the costs of providing the services. The Guidelines also provide that appropriate allocation keys should be used for centralized functions. An appropriate mark-up is to be determined and applied on the actual costs of rendering the services.

The charging mechanism for such services is to be based on the actual costs of providing the services. As such, charges based on percentage of revenue for intra-group services will not be accepted.

Intra-group financing

The comparable uncontrolled price (CUP) method is the preferred method for determination of arm's-length consideration.

There are also additional confirmatory tests including actual delivery, size and utilization of the loan consistent with the purpose of the stated loan.

Intangible property

Intangibles are broadly categorized into trade intangibles and marketing intangibles. Distribution channels and customer lists are recognized as marketing intangibles.

Emphasis on the functional analysis of the parties involved in the intangible transaction with respect to the functions performed, assets utilized, and risks assumed in connection with the development, maintenance, protection and exploitation of the intangibles is also covered in the Guidelines and summarized as DEMPE functions.

The DEMPE analysis forms the basis of determination of appropriate remuneration for the intangible transactions.

In determination of the arm's-length range, the CUP or profit split method may be used depending on the facts and circumstances of the case.

Commodity transactions

Controlled commodity transactions should be priced using the CUP method. The quoted spot rates obtained from the domestic or international commodity exchange markets may be used as a benchmark to determine the arm's-length price in a controlled transaction.

The transaction date is deemed to be the date of shipment as evidenced by the bill of lading or an equivalent document depending on the means of transport.

Advance pricing arrangements (APAs)

The Guidelines provide guidance and elaborate on the aim, scope, types, and guiding principles regarding APAs. APAs can be unilateral or bilateral; an application can be submitted to the CG by any person with related party transactions. For the benefit of taxpayers, the TRA will expedite the APA process which involves a formal application, review and negotiation, and implementation.

Corresponding adjustments

A corresponding adjustment is an adjustment made to taxable income by a foreign tax authority for purposes of eliminating double taxation. Such adjustments will be granted to the extent that they are in line with the arm's-length principle.

A request for consideration of a corresponding adjustment must be made to the CG within one month from the date an adjustment was made or within such time allowable under an existing tax treaty for the case to be resolved by way of agreement procedure. The request should be accompanied with the necessary information to examine consistency with the arm's-length principle.

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