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TRANSFER PRICING NEWS

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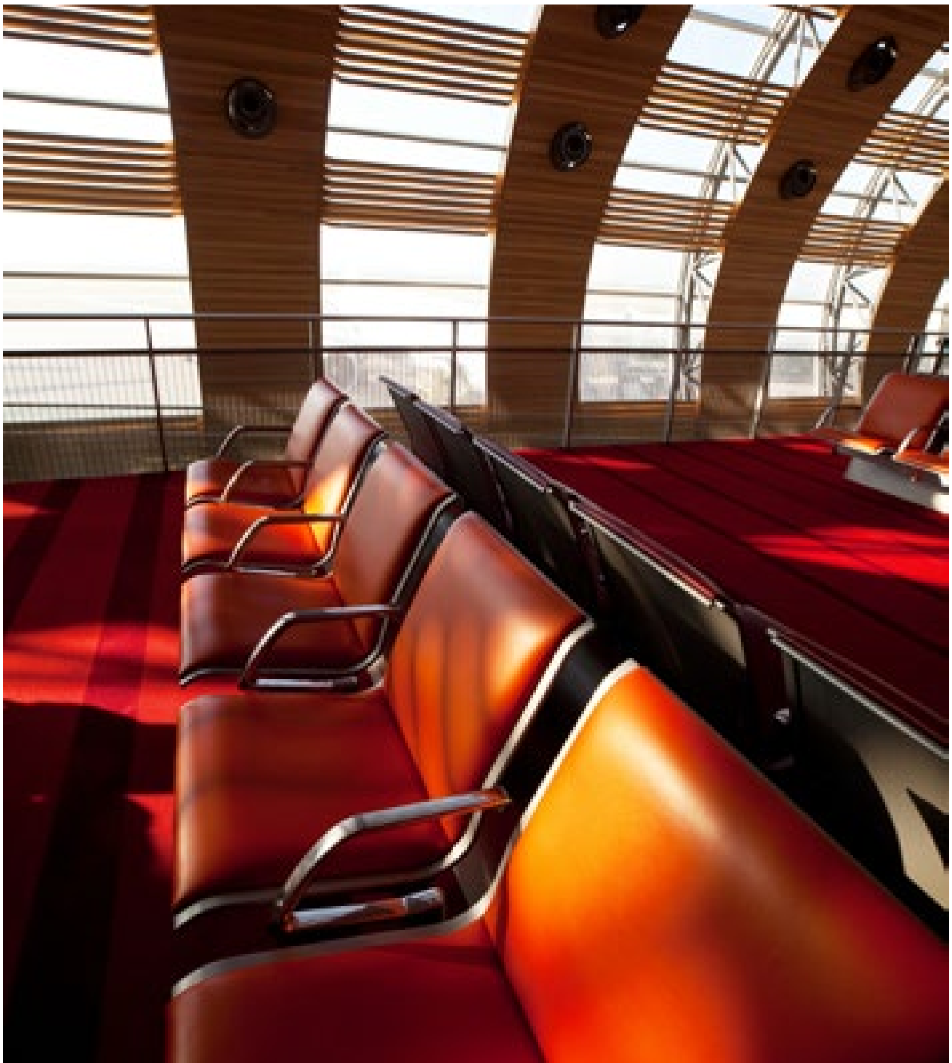
INTRODUCTION

Transfer pricing is increasingly influencing significant changes in tax legislation around the world. This 17th issue of BDO's Transfer Pricing Newsletter focuses on recent developments in the field of transfer pricing in Canada, Morocco, Africa, Spain, and Indonesia. As you will read, various countries are showing initiatives following the ongoing work on OECD's BEPS project.

We are very pleased to bring you this issue of BDO's Transfer Pricing News, which we were able to produce in close co-operation with our colleagues from the above-mentioned countries. We trust that you will find it useful and informative. If you would like more information on any of the items featured, or would like to discuss their implications for your business, please contact the person named under the item(s). The material discussed in this newsletter is intended to provide general information only, and should not be acted upon without first obtaining professional advice tailored to your particular needs.



CONTENTS

CANADA

RECENT DEVELOPMENTS

As tax authorities around the world, the Finance Ministers of the G-20 countries, the Organisation for Economic Cooperation and Development ("OECD"), the public and the press focus on Transfer Pricing and international taxation, we highlight some recent developments in Canada.

Transfer pricing – a recap

Transfer pricing refers to the prices charged between related parties in different tax jurisdictions for goods, services, assets, the right to use intangibles, interest, guarantee fees and factoring fees.

Transfer prices must be determined following the arm's length principle which requires that all transfer prices, and the related terms and conditions, must be established on the same basis as if the parties were not related, i.e., the prices, terms and conditions should reflect what two unrelated parties would agree to in similar circumstances.

The Canadian penalty

In Canada, failing to follow the arm's length principle exposes the Canadian entity to a 10% penalty on any transfer pricing adjustment made by the Canada Revenue Agency ("CRA[1]"). The CRA may not impose that 10% penalty when the entity has made reasonable efforts to determine and use arm's length prices, as evidenced by preparing and maintaining Contemporaneous Transfer Pricing Documentation ("Documentation").

A company's Documentation is its first line of defence in any transfer pricing audit and should be prepared from that perspective.

Recent Canadian developments

The CRA issued three Transfer Pricing Memorandums ("TPM") to provide its guidance with respect to certain transfer pricing issues: revised TPM-05R, Requests for Contemporaneous Documentation; TPM-15, Intra-Group Services and Section 247 of the *Income Tax* Act; and, TPM-16, *Role of Multiple Year Data in Transfer Pricing Analyses*.

TPM-05R, requests for contemporaneous documentation[2]

TPM-05R clarifies the CRA's expectations regarding a company's response to a CRA request to provide its Documentation to the Agency. The main point is that the CRA expects some level of documentation will be prepared and maintained for each taxation year. For example, even if a company has a Study for its 2014 taxation year the CRA will expect some form of documentation for 2015, i.e., the preparation of a Memo that confirms there have been no material changes in 2015 to all of the factual information in the 2014 Study, and testing the 2015 results against any benchmarks or other relevant economic analyses used in the Study.

The CRA expects that a company will have Canadian-specific Documentation for each taxation year that is available to be provided to the Agency within 3 months of a written request to provide it.

TPM-15, Intra-Group Services and section 247 of the Income Tax Act[3]

TPM-15 elaborates on certain requirements for the analysis of intra-group service charges as set out in the Information Circular[4] on transfer pricing. The two main issues that must be addressed during the analyses and documentation of intra-group services are:

– Whether a service has, in fact, been provided; and

– What amount would represent an arm's length charge for such a service.

The TPM goes on to discuss, in greater detail, the direct versus indirect charge method and the need to link the services being provided by the providing entity to the users of those services. There is also a more detailed discussion about which Transfer Pricing Methodologies may be considered to determine an arm's length value for a service, and the use of mark-ups to reflect how arm's length parties would charge fees for a given service to recover their costs plus an element of profit. The CRA confirms that the approach and principles applied to intra-group services fees must be applied consistently for both inbound and outbound charges.

Companies are expected to perform detailed analyses relating to any intra-group services transactions; in terms of the precise services being rendered in a given taxation year, the benefits received by the entity paying for those services, the appropriate transfer pricing methodology used to charge for those services, and support for a conclusion that the resulting services fee is an arm's length amount.

TPM-16, Role of multiple year data in transfer pricing analyses[5]

TPM-16 confirms the CRA's long held position that when a company is setting its transfer prices, and later testing and documenting them, the CRA expects it to use the results of a single year of data from comparable company information, as opposed to averaging multiple years of data.

The TPM includes an appendix that provides a full discussion of the CRA's views as to the appropriate and inappropriate uses of statistical tools in transfer pricing analyses, distinguishing between descriptive statistical tools, those used to describe a set of numerical data, and inferential statistical tools – those used to infer of predict the value of observations within a set of data.

The CRA also confirms that when a company's prices or margin falls outside the arm's length range, the Agency will adjust the company's results (transfer prices) using the average from the arm's length range for that year to reassess the company.

As a result, it is imperative to have strong comparables and operating results that fall within the arm's length range established by those comparables.

Proactive planning and annual documentation is recommended

Given the increasing focus on transfer pricing, in Canada and globally, now is the time for companies to revisit how they set their transfer prices for all of their intercompany transactions, and what support they have on file to support a conclusion that they made "reasonable efforts" to determine and use arm's length prices or allocations.

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[1] *The transfer pricing adjustment will apply to those adjustments that exceed the lesser of:*
(a) CAD 5 million; and,
(b) 10% of the Canadian company's gross revenues for the taxation year in question.

[2] *TPM-05R was issued on 28 March 2014.*

[3] *TPM-15 was issued on 29 January 2015.*

[4] *Information Circular IC 87-2R, International Transfer Pricing, issued 27 September 1999.*

[5] *TPM-16 was issued on 29 January 2015.*

INDONESIA

ADVANCE PRICING AGREEMENT IN INDONESIA – WHAT'S NEW?

The Minister of Finance issued Regulation No. 7/PMK.03/2015 ("PMK 7/2015") on 12 January 2015 regarding the procedure and implementation of an Advance Pricing Agreement ("APA"). PMK 7/2015 will be effective from 90 days of the enactment date or as of 12 April 2015 and applicable for all outstanding and prospective APA applications.

This regulation does not cancel the previous APA regulation – i.e. Director General of Taxation ("DGT") Regulation No PER-69/PJ/2010 ("PER-69"). Instead, it provides clearer guidance on the APA process and confirms that roll-back is no longer possible for open years in relation to the same/similar transactions.

Qualified parties

- An Indonesian resident taxpayer or a non-resident taxpayer that has a Permanent Establishment ("PE") in Indonesia which has been operating or conducting business activities in Indonesia for at least three years prior to entering the APA process; or
- A taxpayer of a treaty country through their competent/tax authority.

APA validity period

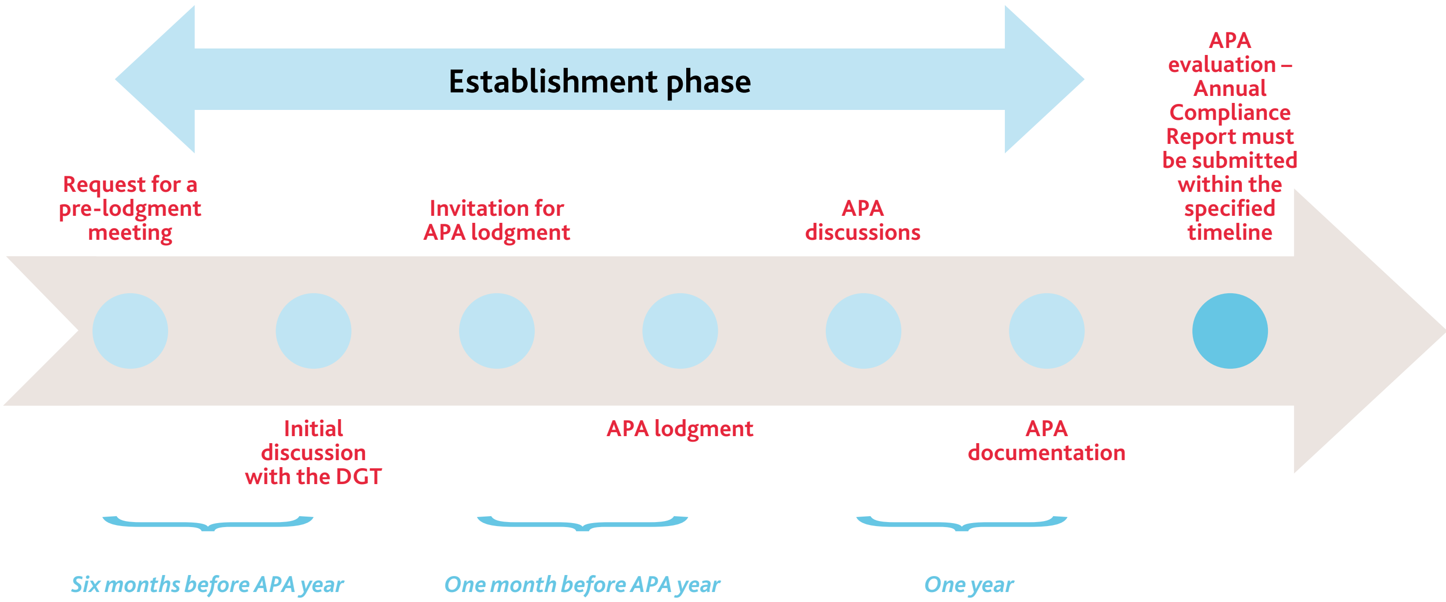
- A unilateral APA (i.e. an APA between an Indonesian resident taxpayer or an Indonesian PE and the DGT) will be valid for a maximum of three years.
- A bilateral APA (i.e. an APA between the applicants and the DGT and the competent/tax authority of a treaty country) will be valid for a maximum of four years.

Phases of APA process

The APA process (applicable to Unilateral and Bilateral APAs) is broadly divided into the following phases:

- **Establishment phase**
  - Preliminary discussions (includes pre-lodgement meetings)
  - Invitation to file an APA application
  - Filing of an APA application
  - Discussions on an APA
  - Completion of the APA document.
- **Implementation phase**
  - Evaluation of the APA through an Annual Compliance Report
  - APA renewal for subsequent years.

The following diagram provides the milestones of the APA process and the estimated timeline of each milestone:



Steps	Timing	Notes
Establishment phase		
Preliminary discussions	At least six months prior to the beginning of the tax year covered in the APA.	The purpose is for the DGT and the applicant to discuss the following: – The merits of an APA and whether it should be a Unilateral or a Bilateral APA – Taxpayer's business operations, related-party transactions and the proposed transfer pricing methodology – Transfer Pricing documentation and supporting information to enable the DGT to evaluate the application – Coverage years of the APA. PMK 7/2015 specifically prohibits the DGT from conducting an audit based on the information gathered during the APA process. All data must also be returned to the applicant even when the APA process falls through. Despite this, PMK 7/2015 does not rule out the rights of the DGT to initiate an audit within its normal authority under the tax laws. Complementing PER-69, PMK 7/2015 adds the following provisions: – The APA must be based on a real transaction and/or planned transaction based on the taxpayer's management decision, – The APA must be in line with the prevailing transfer pricing guidelines and regulations, and – The APA is applied not with a sole intention of minimising tax costs. Discussions before filing an APA application can be conducted more than once. Upon its discretion, the DGT may also visit the applicant's business premises to gather the necessary information to consider the APA application.
Invitation to file an APA application	See opposite.	Under PMK 7/2015, the DGT now has an obligation to confirm whether or not an applicant can continue the APA process. This stage was not covered under PER-69. The product of this stage is as follows: – If the DGT agrees for the applicant to continue the process, it will issue an invitation letter no later than one month prior to the tax year to be covered in the APA. – If the DGT does not agree to proceed further, it will issue a notification latter no later than one month before the end of the tax year when the pre-lodgement meeting request was filed. With a timescale of only one month, applicants need to be well prepared – especially those that are granted to progress further.
APA application	1 month before APA year.	The documents required for this stage generally remain the same as in the previous regulation. As a minimum, the documents must include the following information: – The outcome of the preliminary discussions; – The proposed Transfer Pricing method, including supporting documents and detailed explanation on conditions of the chosen method; – Explanation of how the chosen Transfer Pricing method satisfies the arm's length principle; – Detailed explanation of the critical assumptions; and – Other information or analyses that would support the arm's length nature of the application. Given the efforts required to prepare the above, an applicant should ideally include most if not all transactions in its APA application. Another important aspect to consider is timing. If a *complete* APA application is not filed before the start of the intended APA period, the years to be covered will be reduced by one year. For Bilateral APAs, the validity period of the APA can be discussed between the competent authorities. If an APA application is not submitted within the first year of the intended APA period, the application process will not continue to the next stage.

<table>
<tr><th>Steps</th><th>Timing</th><th>Notes</th></tr>
<tr><td>APA discussion</td><td>Within one year of the APA application.</td><td>If the applicant proceeds to the discussion stage, the DGT will form an APA discussion team. The topics that will be discussed include the following:
– Scope of the transactions and years to be covered;
– Comparability analysis, selection and determination of comparable data;
– Selection of the Transfer Pricing method;
– Conditions and factors affecting the critical assumptions in determining the Transfer Pricing method; and
– Explanation on whether or not double taxation exists.

If the APA is a bilateral APA, the discussions will take place with the applicant and also between the Competent Authorities.

In a case where a unilateral APA may lead to a potential double taxation, the DGT can request a Mutual Agreement Procedure (“MAP”) with the competent/tax authority of the treaty partner country or agree to an APA application filed by a tax resident of a treaty partner country through its competent/tax authority.

The APA discussion team will then submit a recommendation to the DGT and it will be discussed with a DGT quality assurance team. In some cases, the DGT may extend the one-year timeframe. For Bilateral APAs, the discussions will follow the procedure and timeframe under the MAP proceedings.

This phase can lead to the following results:
– If an agreement is reached, the APA application will continue with the drafting of an APA document.
– If there is no agreement, the APA application is deemed cancelled.
– Agreement with the competent/tax authority for Bilateral APA.
– If there is a disagreement with the competent/tax authority of a treaty country, then the APA discussion will continue as a Unilateral APA (i.e. discussions will take place with the Indonesian tax resident or with the Indonesian PE) or the discussion process will not continue.</td></tr>
<tr><td>APA document</td><td></td><td>The APA document will cover the following:
– Transactions to be covered
– Covered years
– Agreed Transfer Pricing method
– Application and the critical assumptions.</td></tr>
<tr><td>Implementation Phase</td><td></td><td>The APA is implemented starting from the tax year when the APA is agreed. For Bilateral APAs, the implementation is in accordance with the Mutual Agreement.</td></tr>
<tr><td>APA evaluation</td><td>– For Unilateral APAs: Annual Compliance Report shall be submitted within four months of the end of a relevant tax year.

– For Bilateral APAs: the Annual Compliance report must be submitted within four months after the month of the signing of the APA document.</td><td>The annual compliance report will include:
– Compliance with the Transfer Pricing method as described in the APA
– A detailed explanation concerning the accuracy and consistency of the TP method application
– A detailed explanation of the accuracy of factors affecting the critical assumptions in determining the Transfer Pricing method.

In the event that there are factors affecting the critical assumptions, the taxpayer must notify the DGT, or the APA may be reconsidered or cancelled. The taxpayer may request reconsideration or a cancellation of the APA within 30 days from the occurrence of these factors. Some examples of factors that can change the critical assumptions include changes in the business operations of the taxpayer, law/regulation or government policies, market forces caused by new competition that have a significant effect on sales or market share, and exchange rates.</td></tr>
<tr><td>APA renewal for subsequent years</td><td>APA last year.</td><td>Renewal of APA for subsequent years is now possible under PMK 7/2015; this was not provided in PER-69. Renewal applications will be processed similarly to a new APA application under the establishment stage. Assuming there are no significant changes in the conditions from the previous APA, the renewal process should be less intensive than a first-time application.</td></tr>
</table>

Closing remarks

PMK 7/2015 does not discuss further the application of a unilateral APA as a result of disagreement in a bilateral APA. In this regard, it is not clear if an approved unilateral APA can be used as a basis to resolve future transfer pricing disputes relating to the transactions as covered in the APA in a MAP proceeding.

While APA in Indonesia is still at an early stage, APAs have been recognised as an effective tool to manage the transfer pricing position of taxpayers outside Indonesia, as they provide certainty for the covered transactions. With the intensive global efforts to promote Base Erosion and Profit Shifting ("BEPS") initiatives, there have been discussions on the possible issue of regulations in the near future that resonate with the BEPS action points. Many local and international parties view Indonesia to have taken some positive steps to provide more clarity to its taxpayers and future investors in the taxation aspect of doing business in the country.

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MOROCCO

ADVANCE PRICING AGREEMENTS (APA): THE MAJOR CHANGE INTRODUCED BY THE BUDGET LAW OF 2015

As part of the implementation of the recommendations of a National Conference on the tax system in 2013, and to answer operators' complaints, a new procedure was established allowing companies having links of dependence with foreign companies to contract an Advance Pricing Agreement (APA) in accordance with the arm's length principle.

To assure legal safety and stability of the fiscal environment, particularly for multinationals operating in Morocco, the 2015 Budget law introduced in part II of the fiscal procedures of the General Tax Code (CGI), a chapter dedicated to Advance Pricing Agreement procedures, the main features of which are:

Scope of the agreement

All taxable businesses that have direct or indirect dependency with businesses situated outside of Morocco can conclude a prior agreement with the Moroccan tax administration on the agreed transfer price method for a period of four years.

Duration of the agreement

According to article 234bis of CGI, the duration of an APA should not exceed four years.

Conditions of the agreement

The conditions of conclusion of the APA will be subject to a statutory text which will specify in particular:

- The filing, the structure and the contents of the application as well as the documents forming part of it;
- The examination of the application and the progress of the negotiations;
- The duration of the agreement and its aims;
- The Administrative entity responsible for the management and monitoring of these agreements.

Guarantees of the agreement

The APA allows the company to benefit from the following guarantees:

- The guarantee that the prices practiced in its industrial, commercial or financial intra-group relations would not be subject of adjustment in the indirectly transferred profits;
- The guarantee that the agreement will be applied to all its future transactions realised during the period of the agreement.

Consequently, the Tax Administration cannot challenge the adopted transfer price method which has been the subject of an APA with a company, according to article 234bis of CGI, except in the following cases:

- Untrue statement of the facts, the dissimulation of information, errors or omissions attributable to the company;
- Non-compliance with the agreed method and with the requirements contained in the agreement by the company, or the use of fraudulent practices.

Thus, when the accuracy of the facts presented initially by the taxpayer, during the conclusion of the agreement, is not verified, or when the taxpayer does not respect the contractual obligations, the agreement is considered as invalid and ineffective from the outset.

However, the above-mentioned cases can be raised by the administration only within the rectification procedures stipulated in articles 220 or 221 of the CGI. The tax position is then established in accordance with ordinary law.

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SOUTH AFRICA

AFRICA SPOTLIGHT: 15 BY 2015?

The OECD's 15 step action plan is no longer new to conversation, yet African countries are still evaluating its feasibility in lieu of local tax landscapes and the capacity of African tax authorities to fall in line with the OECD's ambitious goals. Meanwhile, projections for further growth in Africa continue to draw multinational corporations (MNCs) to the continent and strengthen tax revenues from increased investment. This revenue flow and international presence is vital to strengthening the infrastructure in Africa and securing further foreign investment in the region.

In a more recent context, where the global financial crisis has reduced the emphasis on official development assistance, developing countries are beginning to realise that the achievement of economic goals (i.e. market reforms, promotion of private sector investment, and industrialisation, etc.) will depend heavily on tax revenues. Consequently, creating robust and equitable tax policies and implementing fair and effective tax systems has become critical.

BEPS and the African tax landscape

Though composed of over 50 sovereign countries, tax authorities throughout the African continent have garnered attention due to common obstacles and apprehensions as more developed tax authorities implement the proposed BEPS action plan[1]. The action plan has set out to minimise the artificial segregation of taxable income from the activities that generate it by eliminating the gaps in the interaction of different tax systems, and to ensure that income from cross-border activities is not untaxed or unduly lowly taxed.

As Africa is largely categorised as low income and developing countries, the regional tax landscape presents a number of domestic factors which muddy the waters for local revenue authorities to apply comprehensive transfer pricing regimes as suggested by the BEPS action plan. Hot topics for transfer pricing discussion in Africa can be summarised in four broad areas:

- Capacity constraints
- Legislative barriers
- Comparable data, and
- Raw materials.

Capacity constraints

Despite the development of international and domestic guidance, even the world's most sophisticated tax administrations sometimes have difficulties assessing whether the prices at which MNCs carry out cross-border transactions are manipulated, especially for complex financial transactions and those involving significant unique intangibles. For developing countries, the problem of assessing appropriate transfer prices is exacerbated by a lack of the requisite skills and experience required to analyse complex transfer pricing issues.

Many African nations' anti-avoidance principles are largely based on the OECD guidelines, but due to the lack of local resources, comprehensive transfer pricing regimes still present high cost thresholds to the tax administrations of developing countries and have yet to be implemented[2]. Judge Dennis Davis of South Africa heads the country's tax review committee, and explains that the South African Revenue Service (SARS) currently lacks the capacity to deal effectively with local transfer pricing matters, which potentially affect the economy by billions of Rand. Citing discrepancies with the size and power of units within authorities like the HMRC, Davis is calling for SARS to bolster its staff to match this fiscal challenge, and to invest heavily in the future of transfer pricing in South Africa.

In addition, African Economic Outlook, a product of collaborative work by the African Development Bank, the OECD Development Centre and the United Nations Development Programme, has determined that African tax authorities may not be able to recognise profit shifting where this occurs and that they often lack the means and technical capacity to deal with the complexities of the practice. Despite the current deficiencies in capacity, much of Africa is focused on capacity-building in order to provide clear taxation policies which foster foreign direct investment (FDI). These efforts aim to align Africa with international norms and taxation objectives set by regional organisations such as the African Tax Administration Forum (ATAF).

ATAF, currently composed of 36 African member countries, is a platform for mutual cooperation, whereby African countries can share views on tax matters and best practices with the aim of making a substantial contribution towards levelling the playing field in the area of transfer pricing.

Legislative barriers

Although organisations like ATAF are increasing the response to transfer pricing concerns in the region, no African country is yet a member of the OECD (despite South Africa being one of its five key partners) and only 14 countries in Africa have established specific transfer pricing legislation or documentation requirements.

Each country, listed below by date of transfer pricing regulation implementation, has established local legislation in varying degrees (most notably Kenya, Egypt and South Africa) to meet fiscal needs without creating burdensome compliance regulations that deter good governance in tax matters. As an example, countries like South Africa and Kenya have cultivated well-established regimes that tend to serve as models for the region, while other countries, such as Angola and Tanzania, are only beginning to implement transfer pricing specific legislation.

[1] *OECD (2013), Action Plan on Base Erosion and Profit Shifting, OECD Publishing.*

[2] *UN meeting: 'Transfer Pricing and Capacity Development in Tax Matters' held on 14 March 2012.*

Countries with Transfer Pricing legislation/rules

1995 – 2000	2001 – 2005	2006 – 2010	2011 - 2015
1. South Africa	1. Namibia	1. Algeria	1. Algeria
2. Zambia	2. South Africa	2. Egypt	2. Angola
	3. Zambia	3. Kenya	3. Egypt
		4. Malawi	4. Cameroon
		5. Namibia	5. Ghana
		6. South Africa	6. Kenya
		7. Zambia	7. Malawi
			8. Nigeria
			9. Namibia
			10. Senegal
			11. South Africa
			12. Tanzania
			13. Uganda
			14. Zambia

In the absence of transfer pricing legislation, both tax administrations and MNCs have only limited guidance to which they can refer when determining TP in related-party transactions.

Generally, African countries that have yet to develop transfer pricing legislation follow practical guidance regarding the implementation of the broad-spectrum anti-avoidance provisions based on the arm's length principle as well as the OECD Guidelines and the UN Practical Manual. Nevertheless, an MNC cannot assume that the prices established for intra-group transactions under a typical worldwide transfer pricing policy based on the OECD Guidelines would definitely be accepted by the African authority concerned.

Lack of comparable data

Although both the OECD and the UN endorse the use of arm's length pricing regimes to dictate cross-border transactions, African countries frequently express concerns about the availability and quality of financial data for transactions between unrelated parties to be used for comparisons. A lack of local comparable data often forces MNCs and revenue authorities to use non-domestic comparable data (often sourced from North American or European databases) which does not reflect local market conditions. This lack of data creates significant challenges for both taxpayers and tax administrations in the continent and often results in increasingly difficult tax audits.

The raw material rush

Many African countries are rich with raw material and natural resources, and their national welfare depends on an appropriate share of profit from the exploitation of their natural resources. Taxation of these natural resources is unique, as it essentially requires a splitting of the profits from the use of the natural resources between the country where they were harvested, and the company (usually a MNC) that has the capacity to extract the mineral from the ground, refine it and sell it.

If the tax regime does not split these profits appropriately, there may be a significant loss of revenue for the country. Intrinsically, there is widespread concern for the mining sector in sub-Saharan Africa, where there are several race-to-the-bottom investment incentives and inconsistencies in the granting of tax incentives.

In an attempt to prevent BEPS for mineral and commodity products in controlled transactions, a number of resource-rich countries have developed methods which require pricing of commodity transactions in accordance with publicly available data from commodity exchanges. This has the effect of preventing the shifting of commodity product related income outside of the country of extraction, but comes with significant burdens to the tax-payer and the local revenue authorities to agree upon an established extraction price which considers refinement and transport costs incurred.

Africa in the future

With increased FDI, Africa's infrastructure in the socio-political sphere will continue to launch new initiatives and align domestic economic and legal foundations with the region's aspirations. As more African countries adopt transfer pricing regimes and local legislation, the continent will naturally harmonise with the global economy to some degree.

Where transfer pricing is a long-term goal, and for countries on the continent which already employ comprehensive transfer pricing regimes, moving forward in the future will include increasing their institutional capacity to meet their current capacity constraints, and clarifying compliance regulations. Although many countries have begun to build transfer pricing regimes based on the OECD Guidelines and the UN Practical Manual, protection of both revenues from raw materials and the domestic tax base are likely to dictate Africa's priorities in the future.

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SPAIN

NEW CORPORATE INCOME TAX REGULATIONS

Introduction

On 1 January 2015 a series of changes were introduced to the Spanish Corporate Income Tax (CIT) Act, some of which relate to transfer pricing. This legislation will be complemented by a new set of CIT Regulations, which are expected to be approved at short notice. A draft version of these Regulations was already published on 18 March 2015 by the Spanish Ministry of Finance, and it clearly shows Spain's commitment to the recent OECD work on Base Erosion and Profit Shifting (BEPS).

Information and documentation requirements

Under the new rules, the information and documentation requirements focused on transfer pricing will be centred around three areas:

- Country-by-Country Reporting;
- Group documentation and taxpayer documentation;
- Information through the annual corporate income tax return.

All these elements are mandatory, but relief is available to smaller groups and, more particularly, to Small and Medium Enterprises (SMEs).

Country-by-Country Reporting

From fiscal year 2016 onwards, Spanish ultimate parent companies of multinational groups with a turnover of more than EUR 750 million will be required to file a Country-by-Country report with the Spanish tax authorities. This report must be lodged within 12 months after the end of the fiscal year, by means of a model to be published by the Spanish Tax Authorities.

The turnover threshold and the information to be presented by the ultimate parent are in line with the OECD recommendations. Therefore, the following must be provided:

- Group's gross income, segmented by related party and unrelated party income.
- Profit and loss before income tax or taxes of a similar nature.
- Income tax paid (on cash basis), including withholdings incurred.
- Income tax accrued, including withholding taxes.
- Capital and other shareholders' funds at the end date of the fiscal period.
- Average number of employees.
- Tangible assets and investment properties other than cash and cash equivalents.
- List of resident entities, including permanent establishments, and their core activities.
- Any other relevant information.

Master file and taxpayer file

The new CIT Regulations will again contain a very detailed definition of all the information blocks to be included in the annual transfer pricing documentation. Each of these elements is directly linked to specific tax penalties for non-compliance, which may be applicable in situations both with and without a transfer pricing adjustment. In the case of such an adjustment, the penalties should generally be expected to be at least twice as high.

The definitions of the mandatory content of the master file and taxpayer file have been adapted to those listed in Annexes I and II of the OECD's "Guidance on Transfer Pricing Documentation and Country-by-Country Reporting" published in 2014. There are, however, some material differences, in particular with respect to additional information to be included on intangible assets and intangible-related transactions.

Documentation relief

The new legislation offers some documentation relief for taxpayers that belong to smaller groups with revenue of less than EUR 45 million. These companies must only provide the following:

- Description and amount of the controlled transactions;
- Identification details of taxpayer and the related parties;
- Transfer pricing method(s) selected;
- Comparables used and the arm's length value or range derived from the same.

The documentation obligations can be further reduced if the entity belongs to a qualifying SME, which must have a turnover of less than EUR 10 million. These companies may provide the above information through a specific tax form (to be published), and they do not need to present any comparables.

Information in the tax return

Taxpayers must provide specific details on related party transactions in the annual corporate income tax return. These details include the type(s) of transaction, the identification of the related counterparties, amounts, and the transfer pricing method applied and reported in the taxpayer file. This information obligation is only applicable to those transactions that are subject to the general documentation obligations, and which, following a predefined segmentation, exceed the amount of EUR 100,000.

Advance Pricing Agreements

The new CIT Act has also introduced some interesting changes to the Advance Pricing Agreement (APA) provisions. As was the case under the previous rules, these agreements may in principle be entered into for a maximum period that includes the current fiscal year and the following four years. However, whilst under the old provisions taxpayers could sometimes also include the previous fiscal year – when the presentation period for the corporate income tax return had not yet expired – the taxpayer may now request a full retrospective application of the APA to any fiscal year that is still open for tax inspection. This creates interesting planning opportunities and greatly improves the legal certainty of multinational groups that are active in Spain.

As a final point, it is worth mentioning that taxpayers may now also request an APA from the Tax Authorities to confirm:

a) That certain intangibles to be exploited pertain to the categories provided by Spain's patent box regime, and
b) That the proposed transfer price will be acceptable from an arm's length perspective.

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CURRENCY COMPARISON TABLE

The table below shows comparative exchange rates against the euro and the US dollar for the currencies mentioned in this issue, as at 7 July 2015.

Currency unit	Value in euros (EUR)	Value in US dollars (USD)
Canadian Dollar (CAD)	0.71752	0.79244
Euro (EUR)	1.00000	1.10422

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