Crowe

White Paper - Transfer Pricing in Africa

October 2021

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Significance of Transfer Pricing

International tax dynamics have changed substantially over the years because of economic challenges and the well-known 2008 financial crisis. One such landscape is the introduction of Transfer Pricing (TP) legislation by many countries across the globe.

Transfer pricing is a term used to describe intra-group pricing arrangements between members of multinational corporations. With increases in cross-border transactions between multinational corporations, corporations often tend to shift revenue / profits from high tax jurisdictions to low tax jurisdictions thereby, reducing the overall tax burden of the Group. Because of this, the Related Party Transaction (RPT) framework and transfer pricing principles are gaining increased attention globally.

Recently, the Organisation of Co-Operation and Development (OECD) with the support of G20 countries have launched Base Erosion and Profit Shifting (BEPS) Inclusive Framework (IF) project to jointly take efforts to increase tax transparency and exchange of information amongst signatories' countries. As a part of project, the OECD introduced a 15-point Action plan to tackle global tax avoidance and transfer pricing issues. Presently, 135+ countries have become signatories to the BEPS inclusive framework and have thereby shown commitment to follow the minimum requirements as set out in the various actions.

Traditionally, transactions have been carried out by parties locally (in one jurisdiction). With increasing globalisation and liberalisation, cross-border transactions have rapidly increased. As a result, Multinational Enterprises (“MNE's”) have become a feature across multiple jurisdictions. This has resulted in a tremendous increase in intra-group transactions amongst MNE'S.

As per the OECD, the estimated global annual revenue loss to government is in the range of USD 100 to 240 billion, i.e. equivalent to 4-10% of worldwide corporate tax revenue.

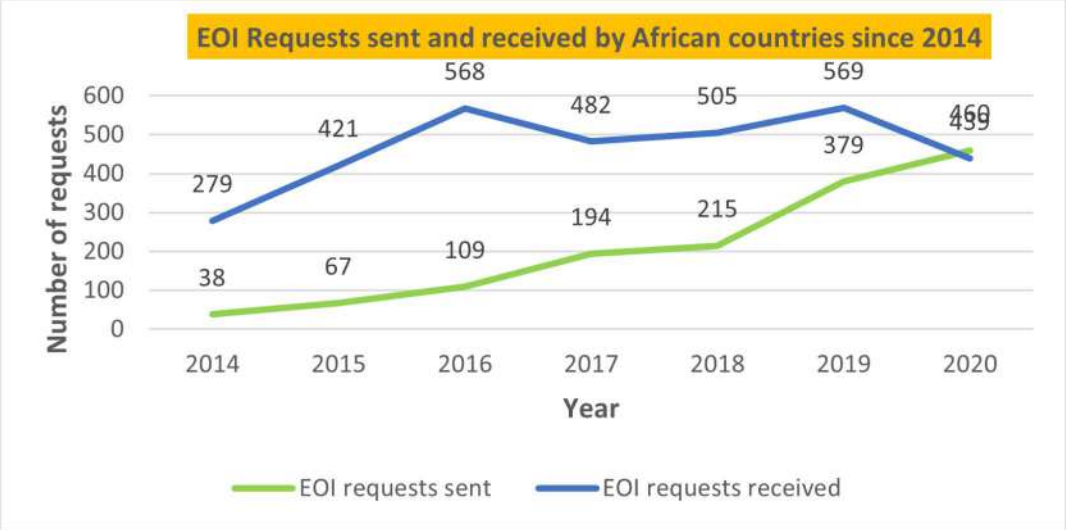
It is estimated that around two-thirds of world trade is performed within multinational companies.

Africa Countries - The Journey so Far

Traditionally, in the absence of transfer pricing regulations or no/low tax rates, the Africa region was seen by multinationals as a region where taxable revenues/profits could be shifted. Over the last few years, most African countries, having realised the magnitude of revenue leakage, have felt the need to introduce Transfer Pricing laws domestic regulations in an attempt curb tax evasion and profit shifting.

Given the high levels of illicit financial flows from African countries and, recognising the potential for tax transparency and the exchange of information as resources for development, African members of the Global Forum on Transparency and Exchange of Information for Tax Purposes (Global Forum) created an African focused programme: the Africa Initiative in 2014. The objective of the initiative was to unlock the potential of tax transparency and exchange of information (EOI) for Africa by ensuring that African countries are equipped to exploit the improvements in global transparency to better tackle tax evasion.

This report also provided a snapshot of the tax transparency and EOI measures introduced by the 34 African countries that were surveyed and the advancements accomplished.



Source: *Tax Transparency in Africa 2021 - Africa Initiative Progress Report*

The number of EOI requests sent by African countries in 2020 increased by 21%. For the first time, African countries turned the tide in 2020 and became net senders of EOI requests. However, most African countries are still behind their potential EOI targets.

African countries identified more than USD 43 million (EUR 34.8 million) in additional tax revenues due to EOI request in 2020. Since 2009, EOI has enabled African countries to identify over EUR 1.2 billion in additional revenues (comprising tax, interest and penalties). The Africa Initiative is open to all African countries. Currently, the initiative is supported by 32 African member jurisdictions and by
11 partners and donors. Recently, the 3rd edition (2021) report was published on progress that has been made by African countries (i.e. the 34 countries surveyed), that utilised tax transparency and Exchange of Information (EOI) to tackle tax evasion in 2020.

In 2009, **Africa Tax Administration Forum (ATAF)** was established to build more efficient and effective tax administrations in Africa, ATAF aims to become the leader on African tax matters and at present has 38 members. ATAF also works closely with the above-mentioned Global Forum and provides ongoing technical assistance to members through 20 country programmes, which has led to reviewing of business structures and procedures; training of 500 auditors implementation of Automatic Exchange of Information; units and transfer pricing units in over 15 countries; revision of 28 transfer pricing legislation regimes; introduction of new interest deduction legislation, and new permanent establishment rules designed to reduce tax avoidance and evasion.

Considering the above, the role of African countries global in terms of their business volume and intra-group transactions, the importance of the region as a popular market for many multinational corporations is apparent.

It is estimated that Africa loses around USD 50 to 80 billion every year in tax evasion.

Summary of Transfer Pricing Regulation in Africa

With the introduction of Value Added Tax and Corporate Tax, many of the Africa region countries have already transformed their domestic tax landscapes.

Moreover, while many countries have already signed up for the OECD's Inclusive Framework on BEPS, few countries have taken steps in implementing the 3-tier documentation system as per BEPS framework recommendations.

We have summarised below, the transfer pricing requirements and implementation recommendations of the BEPS Inclusive Framework in 20 Africa countries:

Country	BEPS IF Signatory?	Local File	Master File	Country by Country Report	TP/Related Party Disclosure Form
West Africa					
Nigeria	Yes	Yes	Yes	Yes	Yes
Ghana	No	Yes	Yes	Yes	Yes
Cote D'Ivoire (Ivory Coast)	Yes	Yes	Yes	Yes	Yes
Senegal	Yes	Yes	Yes	Yes	Yes
East Africa					
Tanzania	No	Yes	Yes	No	No
Kenya	Yes	Yes	No	Yes	No
Uganda	No	Yes	No	No	No
Rwanda	No	Yes	No	Yes	No
Ethiopia	No	Yes	No	No	Yes
Seychelles	Yes	Yes	No	Yes	No
Cameroon	Yes	Yes	No	No	Yes
Southern Africa					
South Africa	Yes	Yes	Yes	Yes	Yes
Zambia	Yes	Yes	Yes	Yes	No
Botswana	Yes	Yes	Yes	No	No
Mozambique	No	Yes	No	No	Yes
Angola	Yes	Yes	No	No	No
Malawi	No	Yes	No	No	No
North Africa					
Egypt	Yes	Yes	Yes	Yes	Yes
Morocco	Yes	Yes	Yes	Yes	No
Tunisia	Yes	Yes	Yes	Yes	No

Transfer Pricing authority in most countries are aggressively scrutinizing intra-group transactions and pricing policy adopted in controlled transactions.

Country-specific Transfer Pricing Updates and Developments

We have summarised below the latest updates on country-specific Transfer Pricing requirements and what may be expected in near future.

West Africa

Nigeria

While Nigeria is not a member of the OECD, it has adopted and signed the OECD BEPS Inclusive Framework and has, introduced 3-tier documentation.

The Nigerian Federal Inland Revenue Service (FIRS) issued Income Tax (Transfer Pricing) Regulations in 2018 (i.e. wef 12th March 2018) to replace Income Tax (Transfer Pricing) Regulations that were issued in 2012.

Taxpayers having controlled transactions (including domestic transactions) with connected persons are required to prepare local file and master files annually. Whilst regulations has exempted the taxpayers from having to prepare documentation, if the quantum of related party transactions does not exceed NGN 300 million, tax authority may request taxpayers to submit documentation if deemed necessary. It is therefore recommended that taxpayers maintain comprehensive documentation to justify related party transactions that have taken place.

Moreover, Regulation stipulates certain peculiar requirements for following intra-group transactions as under:

- **Intra-group services** - Need to justify benefit test and arm's length price for the services

- **Royalty** – Substance over form approach to be adopted and payment for royalty is restricted up to 5% of EBITDA

- **Commodity transactions** – Regulation emphasized to adopt quoted price as comparable uncontrolled price while benchmarking the commodity transaction

Additionally, multi-national group are required to comply with Country-by-Country Reporting ("CbCR") Regulation if the consolidated group turnover exceeds NGN 160 billion (approx. USD 0.40 billion).

Further, taxpayers are required to submit Transfer Pricing disclosure form (annually) and declaration (in the first year and thereafter, at the time of material changes) as a part of tax return.

FIRS has prescribed stringent penalties for non-compliance of transfer pricing provisions, and it is learnt that tax authority is quite active in terms of scrutinizing transfer pricing audits.

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Ghana

Ghana is neither a member of OECD nor it is a signatory to OECD BEPS Inclusive Framework. Interestingly, despite not being a signatory, Ghana has adopted a 3-Tier documentation approach as suggested by OECD. Ministry of Finance, Ghana has introduced Transfer Pricing Regulation 2020 (effective from 2nd November 2020) replacing Transfer Pricing Regulation 2012 requiring all related party transactions (including domestic transactions) to be at arm's length.

While regulations have exempted taxpayers from having to prepare documentation, if the quantum of related party transaction does not exceed USD 200,000, tax authorities may request taxpayers to submit documentation if deemed necessary.

Taxpayers are also required to submit an annual TP disclosure form providing details of related party transactions and methodologies used.
Certain peculiar requirements of local regulations are:

- **Intangible related transactions** – Requirement in line OECD BEPS Action Plan 8 to evaluate DEMPE (Development, Enhancement, Maintenance, Protection, Exploitation) analysis of transactions to determine arm's length price
- **Cost Contribution Agreement** – While determining arm's length price, tax authority to consider contractual arrangement, FAR (functions, assets, risks) analysis, financial capacity, etc.
- **Safe harbour rates** – Regulation prescribe certain safe harbour rates for
  - Low value-added services – 3%
  - Royalty/ knowhow payments – 2% of net profit
  - Management/ technical fees – 2% of net profit

Additionally, Regulations require taxpayers to submit country by country reports if consolidated turnover exceeds GH 2.9 billion (approx. USD 495 million).
The Ministry of Finance has prescribed stringent penalties for non-compliance with transfer pricing provisions, and it is expected that the Ghana tax authority may adopt an aggressive approach to the scrutinizing transactions in transfer pricing audits.

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Côte d'Ivoire (Ivory Coast)

Côte d'Ivoire is a signatory to OECD BEPS Inclusive Framework. The Finance Law for 2017 adopted Transfer Pricing Regulations.

Article 15 of the 2017 Finance Law requires companies to file a Transfer Pricing disclosure return wef from 1st January 2017. While local file and master file are not required to be furnished while filing Transfer Pricing disclosure form, it needs to be maintained/ prepared and submitted in the event of an audit by the tax authorities to substantiate related party transactions.

Further, Article 14 of the 2018 Finance Law requires that companies file a CbCR if consolidated turnover of a Group exceeds Euro 750 million. These provisions of the law are applicable from 1st January 2018.

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Senegal

Senegal is a signatory to the OECD BEPS Inclusive Framework and in line with other signatories, it has also adopted 3-Tier documentation approach. The Senegalese Revenue Authority (SRA) has published Law No. 2018-10 on 30th March 2018 introducing transfer pricing Regulation wef 1st January 2018.

Taxpayers are required to prepare a local file and master file if their revenue is equal to or exceeds XOF 5 billion (approximately USD 9 million) or if a holding (directly or indirectly) of more than half of the issued share capital / voting rights of a company (situated in Senegal or outside) which has revenue equal to exceeding XOF 5 billion or where more than half of share capital / voting rights is held (directly or indirectly). Additionally, taxpayers are required to submit Transfer Pricing disclosure returns, in French, as part of their annual tax return.

Further, a CbCR is required to be submitted if consolidated revenue for of the particular group exceeds XOF 491 billion (approximately USD 0.9 billion) in the preceding year.

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East Africa

Tanzania

Tanzania is neither a member of the OECD nor is it a signatory to the OECD BEPS Inclusive Framework. The Tanzania Revenue Authority (TRA) published Tax Administration (Transfer Pricing) Regulations in 2018, which replaced the previous regulations issued in 2014. In 2020, the TRA issued guidelines on the interpretation and application of Transfer Pricing regulations. Guidelines issued also provide insights on the benchmarking of intra-group transactions relating to intra-group services, intra-group financing, intangible property, etc.

Taxpayers having controlled transactions (including domestic transactions) of more than TZS 10 billion (approx. USD 4.5 million) need to mandatorily submit TP documentation along with annual tax returns. Taxpayers whose controlled transactions do not exceed the prescribed threshold need to prepare/ maintain documentation which may need to be filed upon request by the TRA within 30 days if deemed necessary. In the case of an offence or non-compliance, penalty of 80,000,000 units of TZS 24 million (approx. USD 10,350).

Presently, Tanzania has not adopted any CbCR regulations.

Interestingly, Tanzania Regulation also provides the option for advance pricing agreement to taxpayers. With increased scrutiny related to intra-group transactions and adverse increases in tax many taxpayers in Tanzania are struggling to justify intra-group transactions, especially in the absence of robust documentation.

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Kenya

Kenya is a signatory to OECD BEPS Inclusive Framework. Kenya Revenue Authority introduced Income Tax (Transfer Pricing) Rules, 2006 and applied transfer pricing provisions from 1st July 2006. Rules were then amended in 2012, 2014, 2017 and 2021 through the respective Finance Acts.

At present, master file documentation are not required in Kenya. Further, Finance Act 2021 introduced the definition of Control, Multinational Enterprise Group and CbCR reporting requirement for ultimate parent entities. Further, local transfer pricing documentation need to be prepared and maintained for all cross border intra-group transactions irrespective of any quantum threshold. Lack of the threshold increase the burden on taxpayers having insignificant transactions with related party entities.

Interestingly, Kenya Regulation also provides the option for advance pricing agreement to taxpayers. The Kenyan Revenue Authority is known to be aggressive in their approach and often makes adverse adjustments on account of non-adherence to the arm's length principle.

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Uganda

While Uganda is not signatory to OECD BEPS Inclusive Framework, it introduced Transfer Pricing Regulations in 2011. Section 90 and 91 of Income-tax Act governs Transfer Pricing provisions and specific Transfer Pricing Regulations were introduced in July 2011. Subsequently, Uganda Revenue Authority also published a Practice Note in May 2012 on the interpretation and application of Transfer Pricing regulations. It also makes provision for reference to OECD guidance, where required.

Whilst local transfer pricing documentation is applied to all cross-border related party transactions, it applies to domestic related party transactions only if the quantum of the transactions exceed 25,000 currency points equivalent to 500 million Uganda shillings (approx. USD 0.14 million). Presently, master file and CbCR documentation is not yet required.

Ugandan Regulation also provides the option to opt for advance pricing agreements. Despite not being a member of the OECD BEPS Inclusive Framework, Uganda has progressed well in terms of implementing transfer pricing rules in country, however, it is notable that exchange of tax information with other countries does not yet take place now.

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Rwanda

Rwanda is not a signatory to the OECD BEPS Inclusive Framework. The Rwanda Government, published ministerial order no. 003/20/10/TC, on 14 December 2020 providing local rules on Rwandan transfer pricing. This replaces the previous rules which were in place since 2007.

The scope of Rwandan Transfer Pricing Regulation is wider than that of the OECD Guidelines and most other countries in that regulations are made applicable not only to controlled transaction (domestic as well as cross-border) but also to deemed controlled transactions (where transaction are entered into with a non-related party, situated in a country providing beneficial tax regime).

Regulations require taxpayers to prepare Transfer Pricing policy documentation (which is combination of a local file and a master file in general). Transfer Pricing documentation is required to be prepared:

- if taxpayers having revenue exceeding FRW 600 million (approximately USD 600,000); or
- a single controlled transaction value exceeding FRW 10 million (approximately USD 10,000); or
- aggregate controlled transaction value exceeding FRW 100 million (approximately USD 100,000).

Having said this, even if prescribed threshold doesn't satisfy, arm's length principles need to be followed for any controlled transactions.

Additionally, regulations require CbCR Regulations to be furnished within 12 months after the last day of the reporting fiscal year of MNE if an ultimate parent entity of Group has prepared such report in other jurisdiction. Presently, documentation is not yet required to be filed, however it must be prepared and be maintained.

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Ethiopia

Ethiopia is not a signatory to the OECD BEPS Inclusive Framework. The Ethiopian Ministry of Finance has issued Transfer Pricing Regulation applicable from October 2015.

Taxpayers who have entered into transactions with domestic related parties are required to prepare transfer pricing documentation if annual revenue of the taxpayer is more than 500,000 Ethiopian birr (approximately USD 22,400). Taxpayers who have entered into transactions with non-resident related parties are required to prepare transfer pricing documentation if the quantum of transactions is more than 500,000 Ethiopian birr (approximately USD 22,400) and additionally, they need to prepare a Transfer Pricing declaration Form.

Master file and CbCR regulations have not been introduced at present. Interestingly, Regulations provide for the option to opt for Advance Pricing Agreement.

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Seychelles

Seychelles is a signatory to the OECD BEPS Inclusive Framework. In accordance with Section 54 of the Business Tax Act, 2009, the Seychelles Revenue Commission issued Public Ruling – 2015-3 wef 25th May 2015.

Public Ruling provides that taxpayers must prepare/ maintain adequate transfer pricing documentation (similar to local file) to justify intra-group transactions and need to be submitted only upon request from tax authorities. Master File documentation is not mandatorily required to be prepared/ submitted at the moment.

In April 2019, Seychelles Revenue Commission published statutory instrument no 25 of 2019 introducing Country-by-Country reporting to Seychelles for multinationals having consolidated revenues exceeding Euro 750 million or more.

While transfer pricing regulation is still at preliminary stage, Seychelles is progressing well in terms of their efforts in aligning with global tax developments. It is expected that the tax authority may aggressively ask information about intra-group transactions of taxpayers going forward.

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Cameroon

Cameroon is a signatory to the OECD BEPS Inclusive Framework. The Cameroon tax authority issued transfer pricing regulations in its 2014 finance law and subsequently, rules were modified in 2018 and 2020.

As per amendments in the 2020 Finance Bill, the obligation to file Transfer Pricing documentation has been replaced by the obligation to file a TP return if partner company owns more than 25% of or more of any company. It remains essential to prepare TP documentation, which must be presented at the start of a tax audit for the covered companies. As per Article 19, Transfer Pricing documentation is required to be prepared for those taxpayers having a turnover, excluding taxes being equal or greater than XAF1 billion (approximately USD 1.75 million), and which are under the dependence, or which control other entities.

As per Article 18, companies being at the DGE (Direction des Grandes Enterprises, Large Companies Division) and which are under the dependence, or which control other companies, are required to file an annual Transfer Pricing disclosure return electronically in prescribed format.

At present, master file and CbCR Regulations are not introduced in the country.

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Southern Africa

South Africa

South Africa is a signatory to OECD BEPS Inclusive Framework. Transfer pricing rules are contained in Section 31 of the Income Tax Act and are supported by Practice Note 7, which provides additional guidance on arm's length principles.

Taxpayers are required to prepare and submit local file and master files if the quantum of cross-border related party transactions exceed or expected to exceed ZAR100 million (approximately USD 6.5 million) for the year (wef 1st October 2016). Where the threshold is not exceeded, preparation of documentation is still required. Taxpayers are also required to submit related party disclosures along with tax return.

Regulations also requires the taxpayer to submit CbCR if consolidated turnover is exceeding ZAR10 billion (approximately Euro 750 million) and requires filing by a subsidiary of a MNC group situated in South Africa.

South African revenue authority is known to be aggressive in scrutinizing intra-group transactions, Penalties and additional tax are often imposed for non-compliance.

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Zambia

Zambia is a signatory to OECD BEPS Inclusive Framework and in line with other signatories, it has also adopted the 3-Tier documentation approach. The Zambia Revenue Authority (ZRA) published Income Tax (Transfer Pricing) (Amendment) Regulations in 2018 and Income Tax (Transfer Pricing) (Amendment) Regulations, in 2020. Transfer pricing regulation also refers to the OECD guidelines as a relevant source of interpretation.

Recently, the ZRA has exempted medium-sized businesses having an annual turnover of ZMW 50 million (approximately USD 2.95 million) (increased from ZMW 20 million) that are not multinational enterprises from transfer pricing documentation filing requirements. In other words, the threshold doesn't apply to intra-group transactions entered into by multinational enterprises (having presence in multiple countries). Transfer Pricing documentation include local file as well as master file.

Taxpayers having controlled transactions (including domestic transactions) of more than ZMW 50 million are required to mandatorily submit TP documentation with annual tax returns. Taxpayers whose controlled transaction do not exceed this threshold are required to prepare/ maintain documentation, which may need to be filed upon within 30 days of the written request being duly issued by the Commissioner-General. In the case of an offence or non-compliance, penalty of 80,000,000 units of ZMW 24 million (apprx. USD 1.47 million).

The ZRA has also published a Statutory Instrument (i.e. No. 117 of 2020) to introduce CbCR Regulations (effective from 1st January 2021). CbCR regulations are applicable for a MNE group if the consolidated group revenue exceeds Zambia Kwacha 4,795 million (equivalent to EUR 750 million).

With increased scrutiny relating to intra-group transactions and the aggressive approach of Zambian tax authorities (including the Supreme Court), many taxpayers in Zambia are struggling to justify intra-group transactions especially in the absence of robust documentation.

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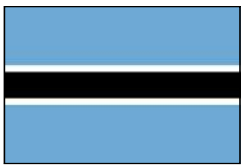
Botswana



Botswana is a signatory to the OECD BEPS Inclusive Framework. Botswana enacted transfer pricing legislation by adding a new Section 36A to the Income Tax Act, followed by the promulgation of the Income Tax (Transfer Pricing) Regulations 2019 on 12th July 2019 and laws were made effective from 1st July 2019.

Regulation does not provide threshold / relaxation for applicability of local transfer pricing documentation and therefore, it would be mandatory to prepare the same if there are any controlled transactions and additionally, local transfer pricing documentation is required to be submitted along with income tax return. Further, those taxpayers whose controlled transactions exceed BWP 5 Million (approx. USD 450,000) need to prepare master file documentation. Presently, Botswana has not adopted CbCR Regulation.

Botswana Regulation also provides the option to opt for advance pricing agreement to taxpayers.

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Mozambique

Mozambique is a not signatory to OECD BEPS Inclusive Framework. In line with corporate income tax provision, Mozambique tax authority has published Decree 70/ 2017 dated 6th December 2017 relating to transfer pricing Regulation.

At present, CbCR Regulations and master file documentation is not introduced in country. Local transfer pricing documentation is required to be prepared and maintained for all cross border and domestic intra-group transactions where taxpayer's revenue exceeds MZN 2.5 million (approximately USD 0.039 million) in the previous fiscal year. Regulation has also provided certain guidance on intra-group transactions relating to commodity transactions, cost sharing arrangements and intra-group services.

In spite of being not member of OECD BEPS Inclusive Framework, Mozambique has progressed well in terms of implementing transfer pricing rules in country. Having said this, exchange of tax information with other countries may not take place at the moment.

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Angola

Angola is a signatory to OECD BEPS Inclusive Framework. Angola tax authority has issued Presidential Decree 147/13 of 1 October 2013 in national gazette which is effective from 1st January 2014 to provide transfer pricing regulations.

As per the decree, taxpayers who has annual gross turnover equal to or exceeding AOA 7 billion (approximately USD 11 million) is required to prepare and submit of transfer pricing documentation to the National Directory of Taxes. Moreover, transfer pricing documentation is also required for those taxpayers who are included in the Major Taxpayers List (large government owned companies), financial and banking institutions, oil and gas, insurance/ reinsurance companies, diamond, and telecommunication companies.

At present, master file and CbCR Regulations are not introduced in the country.

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Malawi

Malawi is not a signatory to OECD BEPS Inclusive Framework. The Malawi Revenue Authority (MRA) has published Government Notice No. 36 of 2017 (effective from 01 July 2017) enacting Transfer Pricing Documentation Regulations i.e. 2017 Transfer Pricing Regulations. This notice has also repealed the previous regulations i.e. Regulations issued in 2009.

At present, master file and CbCR Regulation are not applicable in Malawi. However, taxpayers are required to prepare a local file for any intra-group transactions entered into by them on contemporaneous basis.

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North Africa

Egypt

Egypt tax law contained the arm's length principle since 2005 and issued Transfer Pricing Guidelines in 2010. Recently, in 2018, Egypt updated its Transfer Pricing Guidelines in line with BEPS recommendation to be effective from the year ended 31st December 2018.

Basis the updated guidelines, taxpayers are required to submit the Transfer Pricing documentation to the authorities. Local file needs to be submitted within 2 months of filing tax return whereas master file needs to be prepared in accordance with ultimate parent entity's tax return filing date and thus, need to be submitted in due course. Applicability of master file and local file documentation arises when quantum of controlled transaction is exceeding EGP 8 million (approximately USD 0.51 million) during the reportable period.

Additionally, CbCR Regulation applies to (a) Egyptian parent group when consolidated revenue is more than EGP 3 billion' (approximately USD 0.19 billion) or (b) Egyptian entity of foreign group when consolidated group revenue is more than EUR 750 million.

Egypt also requires providing disclosure of related parties transaction as a part of tax return.

It is learnt that Egypt tax authorities is being adopting rigorous inspection of intra-group transactions and therefore, taxpayers are suggested to timely comply with Regulation.

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Morocco

Morocco is a signatory to OECD BEPS Inclusive Framework and have introduced Transfer Pricing documentation requirement in Finance Law 2019 which is applicable from 1st January 2020.

Finance Law 2021 (articles 154 ter and 199 bis of the Moroccan General Tax Code as amended by the law n 70-19) provided requirement to prepare local file and master file if taxpayer's turnover is exceeding MAD 50 million (approximately USD 5.56 million) or taxpayer's total gross assets at end of financial year is exceeding MAD 50 million (approximately USD 5.56 million).

Moreover, Morocco has also adopted CbCR Regulations in a country and Multinational Enterprises having consolidated turnover of Group exceeds MAD 8.122 billion (approx. USD 0.907 billion) in preceding year are required to submit CbCR.

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Tunisia

Tunisia is a signatory to OECD BEPS Inclusive Framework and in line with other signatories, it has also adopted 3-Tier documentation approach. Initially, in October 2019, Tunisia has published Ministerial Order No. 086 on transfer pricing documentation requirement and CbCR Regulations which is applicable from 1st January 2020 onwards.

Subsequently, Finance Law 2021 provided significant changes in threshold and documentation requirements. Threshold to prepare documentation was increased from TND 20 Million (approximately USD 7.13 million) to TND 200 million (approximately USD 71.30 million). Moreover, taxpayers are only required to document the transactions with non-resident related parties having only dependency or control relationships and quantum is exceeding 100.000 Dinars. Documentation requirement includes both local file and master file.

Further, CbCR Regulations is required to be submitted if consolidated turnover of Group exceeds TND 1.63 billion (approximately USD 0.58 billion) in preceding year.

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Principles of Transfer Pricing may be adopted for other regulations as well such VAT, customs – while justifying related party transactions.

Interplay - Transfer Pricing v/s Value Added Tax v/s Other Regulations

Case 1 – Transfer Pricing v/s Value Added Tax (VAT)

In the above case, let us assume both Company A and Company B are related party. Company A has sold goods to Company B at USD x. Generally, as per VAT Regulation, any related party transaction needs to be accounted for at market value and appropriate VAT needs to be computed/ paid on the same. We, we have assumed that export of goods doesn't qualify for exemption in VAT Regulation.

While most countries' VAT Regulation does not specify any methodology to derive the market value, one may rely on the globally recognised Transfer Pricing principles/ methodology. This also expresses the importance of Transfer Pricing principle in VAT regime and therefore, one need to be careful while undertaking the valuation and its corresponding impact on other Regulation.

In other scenario, let us assume Company A has sold goods to Company B at free of cost. In such case, authority may impute market valuation rules to compute the VAT liability on such goods.

Similarly, transfer pricing authority may also compute arm's length price of such goods sold by Company A on free of cost basis. In both situations, globally recognised Transfer Pricing methodologies may be adopted for undertaking valuation.

This example is more suitable for domestic related party transactions and where such transactions are also required to be justified under Transfer Pricing Regulation.

Case 2 – Transfer Pricing v/s Other Regulation (Custom or Exchange Regulation or Companies Act)

In the above case, let us assume Company A has purchased goods from Company B (related party). Goods have been purchased at USD 100. From a Transfer Pricing perspective, tax authority of South Africa may try to reduce the arm's length price for purchase transaction to reduce tax deductible expenditure of taxpayer. Against this, custom authority of Zambia may always try to increase the valuation of purchase cost of inventory to levy higher custom duty on valuation. While both Transfer Pricing and custom Regulation are required to adopt fair market valuation for the covered transaction, intention behind valuation in these regulations significantly differs. Therefore, as a taxpayer, it is vital to undertake appropriate valuation strategy in line with globally recognised methodology to demonstrate its valuation.

At the same time, it is also suggested to understand the interplay of Transfer Pricing principles with exchange control Regulation of a country. Generally, exchange control Regulation provides permissibility or threshold on capital/ current account transaction or equity/ debt products. This threshold/ limit may also need be considered while applying Transfer Pricing principles.

Previously, only security exchange Regulation of many countries did require necessity of board approval or shareholder approval for certain related party transactions of listed entities. Additionally, in recent past, many countries have also introduced adoption of fair market principles and approval criteria in their local Companies Act for related party transaction. In our experience, these Regulation also do not prescribe any specific methodology/ principles for valuation. Therefore, one may again rely on Transfer Pricing methodologies for such valuation.

Robust documentation and comprehensive analysis is a key to mitigate potential Transfer Pricing risk.

Future ahead – 6 Tips to be Transfer Pricing Compliant

1. Be abreast – Momentous changes in plate

The last decade has witnessed significant changes with respect to Transfer Pricing regulations in Africa region. With many countries introducing the Regulation in line with BEPS requirement, few countries already started evolving with complex transfer pricing issues. In our experience, many countries like South Africa, Zambia and Tanzania have already commenced scrutinising the intra-group transactions aggressively and many taxpayers are grappling with non-compliance risk.

It is important for taxpayers having operations in this region to keep abreast with the new introduction/amendments in Regulation to timely comply with the requirements. Most of countries prescribe stringent penalties for non-compliance. It is recommended to analyse the updated threshold/exemption criteria enunciated by any country while undertaking compliance in order to save time, cost and efforts.

2. Be proactive - Prepare with Modern-Era complex TP issues

While TP regime in many of the Africa countries is still evolving with basic compliance requirement, we won't be surprise to hear that sooner the multinationals in the region start facing questions from tax authorities on complex topics. Few of them include justification of need-benefit test for royalty and intra-group services, applying arm's length principle for financial transactions in line with OECD guidance, excessive Advertising, Marketing and Promotion (AMP) expense incurred by taxpayer to promote brand of foreign multinational group, etc.

Many of the multinational corporations in developed and developing countries are struggling with these complex topics and are undergoing detailed scrutiny for multiple years. This may entail significant outflow of cost, time and efforts.

Therefore, it is recommended to multinational corporations pro-actively act towards designing/ revisiting transfer pricing policy to prepare for the future.

3. Be optimistic - Look for an opportunity

Introduction of Transfer Pricing Regulation and undertaking its compliance exercise is often seen as burdensome by many taxpayers. Instead, this should be perceived as an opportunity to revisit their existing transfer pricing policy which may not only help to structure the business operations in a most efficient manner but also help in saving overall tax cost.

As an example, a multinational may consider centralizing few of the functions (such as centralised IT, HR, payroll, procurement, etc) at one jurisdiction which were previously carried out by jurisdictions separately basis ancient business model. Centralisation of functions may help in achieving efficiency in their operations as well as it may benefit in considerable cost saving for the Group.

At times, multinationals operate on a business model which was designed decades ago. Considering the rapid changes in the international tax law across geographies, it's a high time for multinationals to review ages old business model in line with recent Regulations.

4. Be convergent - Numerous Regulations exist today

While this white paper document focuses mainly on Transfer Pricing aspect of Africa countries, one should not forget about few other Regulations while re-designing their business model/ transfer pricing policy. As you may be aware, many of the countries in region have recently introduced (or in process to introduce) Value Added Tax (VAT), withholding tax requirement as per respective tax treaties, Custom Regulation, Exchange Control Regulation, Companies Act, Corporate tax, etc.

It is utmost crucial to be convergent with multiple Regulations to elude challenges at a later stage.

In few developed or developing countries, certain regulatory authorities handling afore-mentioned Regulation have activated the mechanism to internally exchange their data with each other. This step helps them to obtain the information shared by one person with other authorities and to identify the deviation, if any. While this practice is not yet fully activated in most countries yet, however, with rapid increase in digitalisation, we may soon experience this.

5. Be smart – Rely on digital/ technology solutions

We are in a 21st century wherein countries aim towards excelling in technology and science. Moreover, Covid-19 pandemic has mandated many industries to rely on technology and digital environment to operate their businesses.

Similarly, on tax side, taxpayers have apprehended to rely more and more on technological aspects to get effective results in a timely manner. This would include relying on tool or databases, customisation of ERP/SAP to make it effective from tax/ transfer pricing perspective.

6. Be document-savvy – Document the analysis comprehensively

Transfer Pricing is a subjective analysis, and the result may deviate basis the fact pattern of each case. With this background, it is extremely important for taxpayers to carry out extensive analysis and document each aspect appropriately. As we mentioned, change in functional or risk analysis may change the characterisation of the entity and correspondingly, it will also impact economic analysis to be carried out.

Inter-company agreement is a preliminary document highlighting key terms and conditions of transaction, pricing policy, credit period and transit terms, etc. In our experience, in most of the scrutiny cases, tax authority often insists on submitting the inter-company agreement as a primary document. Additionally, document also include supporting documents such as valuation report which may help in substantiating the pricing/valuation of inter-company transactions.

Considering the above, it is recommended to prepare/maintain comprehensive documentation to substantiate Transfer Pricing analysis.

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About Crowe Global

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