



TP REPORT:

Transfer Pricing Indaba Africa- Livingstone 2023

DECEMBER 2023

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"Navigating the Evolving Landscape: Transfer Pricing in Africa on the Edge"



FOREWORD

It is with great pride that we present this report on the Transfer Pricing Indaba Africa, hosted in Livingstone from 8-10 November 2023. This event, a collaboration between BDO Zambia Limited (BDO Zambia) and Matrix Tax School, Zimbabwe, marks a significant milestone in our journey towards excellence in the field of Transfer Pricing and Taxation.

The theme, "Transfer Pricing in Africa on the Edge," effectively represents the current state of transfer pricing amidst evolving legislative landscapes. Our goal was to create a vibrant forum for discussing these challenges and brainstorming forward-thinking solutions. The participation of renowned tax professionals, industry leaders, policymakers, and revenue authorities fostered a dynamic environment of knowledge exchange and collaboration.

Notable speakers from various African countries, including BDO Zambia's own experts, enriched the discussions with their insights on transfer pricing, international tax, and legal matters. Sessions covered a range of vital topics, from best practices in documentation and audit strategies to policy frameworks and the impact of digitalization on global tax structures.

The key takeaways from this indaba underscore the importance of comprehensive documentation, the integration of transfer pricing policies into business operations, and the need for strategic planning in facing global and regional tax challenges. This event not only highlighted BDO Zambia's expertise but also reinforced our commitment to serving our clients with up-to-date and effective solutions.

As we reflect on the success of this event, we are inspired by the collective wisdom and the shared vision of shaping a robust transfer pricing landscape in Africa. We are confident that the insights and strategies discussed will greatly benefit professionals and businesses navigating this complex field.

We extend our heartfelt gratitude to all participants, speakers, and organizers for making this indaba a landmark event. Together, we are stepping into a future where Africa's transfer pricing landscape is not just on the edge, but at the forefront of global taxation innovation.

Katrina Mabika

Director Tax/Transfer Pricing

BDO Zambia Limited

**TP
INDABA
AFRICA
LIVINGSTONE
2023**

EXECUTIVE SUMMARY

The Indaba was a melting pot of ideas, with tax professionals, industry leaders, policymakers, and revenue authorities contributing to a rich tapestry of dialogue and knowledge exchange. The selected speakers included transfer pricing, international tax and legal experts from the region, with some notable speakers being **Thando Rampa**, (BDO South Africa, Associate Director, Transfer Pricing), **Marvellous Tapera**, (Matrix Tax School, CEO), **Keith Engel**, (South African Institute of Taxation, CEO), **Solomon Choge**, (Royalty Range, Head of Marketing), **John Nawa**, Zambia Revenue Authority, Manager, International Tax Unit, and, BDO Zambia's own **Katrina Mabika**. Other speakers were experts from various organisations from Botswana, Kenya and Zimbabwe.

The topics discussed, ranged from best practices in Transfer Pricing Documentation (TPD) to the challenges in global mobility and the implications of Qualified Minimum Domestic Top Up Taxes (Pillar 2). These discussions highlighted the need for robust documentation, the importance of integrating transfer pricing (TP) policies into business operations, and how best businesses can safeguard their TP positions while simultaneously adhering to the relevant legislation. Some key concepts that were explored include:

- **Documentation** - Regarding the complexities TPD, in an African context, understanding the specifics of jurisdictional TP legislation, the influence of OECD guidelines, and the unique documentation formats from each jurisdiction is crucial.
- **Audit preparedness** - It is imperative for taxpayers to constantly monitor their TP risk by identifying common audit triggers such as management services and significant offshore transactions. Contemporaneous documentation is essential for effective audit preparedness.
- **Benchmarking and comparability concerns** - Understanding benchmarking in African contexts, including comparability analysis and addressing unique challenges such as the lack of public data, is fundamental.
- **TP policy framework** - The distinction between TP policies and TPD highlights the role of TP policies as supporting documents. Furthermore, selecting the most appropriate TP methods for related party transactions, addressing misinterpretations in TP policy and documentation, and best practices for conducting benchmarking studies are key.
- **Interaction with Revenue Authorities** - Understanding the scope of authorities' powers in TP cases, including audit authority and documentation review, is crucial, as is knowledge of how entities can conduct effective self-assessments.
- **Global mobility perspectives** - The analysis of global employees in permanent establishments brings attention to tax implications in various jurisdictions and the importance of risk management in creating global establishments.
- **Taxing the digital economy** - The digital economy presents new tax challenges, with the impact of digitalization on the global economy and the implications of Pillars I and II requiring a deep understanding for effective tax reallocation.

"Understanding the specifics of jurisdictional TP requirements, the influence of OECD guidelines, and unique documentation formats is crucial."



OVERVIEW

Hosted against the awe-inspiring backdrop of the *Mosi-oa-Tunya*, (also known as the Victoria Falls), the Transfer Pricing Indaba Africa 2023 convened a distinguished assembly of tax and TP specialists and industry representatives from five nations. This premier event, held at the esteemed *Radisson Blu Resort*, offered delegates an unparalleled opportunity to merge professional enrichment with the natural splendor of one of the world's seven natural wonders.

Overview of the Indaba

The Indaba was meticulously structured into two comprehensive sessions, encompassing nine critical topics and a range of engaging activities. Below is a summary of the event's proceedings:

DAY 1

The event commenced with an interactive Kahoot quiz, testing delegates' knowledge and wit. Officially opened by Katrina Mabika of BDO Zambia, the first day was a deep dive into significant TP topics, the day's agenda included:

- Transfer Pricing Documentation
- Transfer Pricing Audits & Litigation
- Transfer Pricing Policy Framework
- Powers of Revenue Authorities in TP Cases
- Latest Transfer Pricing Developments

The sessions were marked by vigorous participation and insightful discussions. The day concluded with a culturally themed African Attire Dinner along the Zambezi River.

DAY 2

The day began with another stimulating high stakes Kahoot quiz, with prizes. After the battle of the brains, the session continued where it left off the preceeding day, the agenda included:

- Managing Tax Challenges in Permanent Establishments & Global Mobility
- Tax in the Digital Global Economy
- Benchmarking Dilemma in African Contexts
- Qualified Minimum Domestic Top Up Taxes (Pillar 2)

The afternoon's highlight was a serene boat cruise on the Zambezi River, leading into an elegant black-tie dinner and an awards ceremony to celebrate the event's successes.

LOOKING AHEAD

The Transfer Pricing Indaba Africa 2023 was an extraordinary convergence of professional expertise and natural wonder, setting a new benchmark for industry events. Anticipation is already building for **Transfer Pricing Indaba Africa II**, scheduled for **September 2024**. We urge you to save the date and join us for another landmark event in the world of TP in Africa.



SESSION SUMMARIES

THEME: TRANSFER PRICING IN AFRICA ON THE EDGE

In the dynamic and evolving economic context of Africa, the role and significance of transfer pricing are becoming increasingly important. This trend is driven by the continent's expanding economies and the escalating presence of multinational activities.

Historically, African nations have grappled with challenges related to base erosion and profit shifting (BEPS), primarily due to regulatory frameworks that were less stringent. However, a wave of reforms is now sweeping across the continent, ushering in a new era of fair and transparent trade practices.

These reforms are particularly vital in light of the African Continental Free Trade Area (AfCFTA), which is facilitating a significant increase in intra-African trade. The challenge for these nations lies in maintaining a delicate balance: attracting foreign investment while ensuring that rightful tax revenues are not compromised. This balance is becoming increasingly critical as Africa finds itself on the verge of a major leap into global economic integration. The continent is tasked with aligning TP policies with international standards, yet it must do so in a way that protects and promotes local economic interests.

The shifting global trade dynamics, marked by factors such as the economic recovery post-pandemic and various political realignments, present a complex array of challenges and opportunities for TP in the African context. These global changes necessitate a strategic rethinking and realignment of TP policies to ensure compliance with international norms while fostering regional economic growth. African countries, many of which are poised for significant economic breakthroughs, are now faced with the critical task of ensuring that transfer pricing frameworks support, rather than hinder, their journey towards enhanced intra-African trade and broader global business engagements.

For corporations operating within these dynamic markets, the challenge extends to finding an equilibrium between traditional TP methods and innovative approaches that are adaptable to the unique market dynamics and rapid socio-economic changes characteristic of their regions.

As the global business landscape evolves, these corporations must also consider how to effectively harness technological advancements and digital transformations. This aspect is increasingly becoming a cornerstone for refining TP strategies, ensuring that African corporations remain competitive and agile on the global stage.

Moreover, as Africa continues to reshape its economic narrative, the strategic implementation and adaptation of TP practices are becoming essential. These practices not only need to comply with existing regulations but also anticipate future trends and changes in the global economic order. Effective TP strategies will play a critical role in enabling African nations and businesses to navigate the complexities of the global market, leveraging opportunities for growth and development. This comprehensive approach

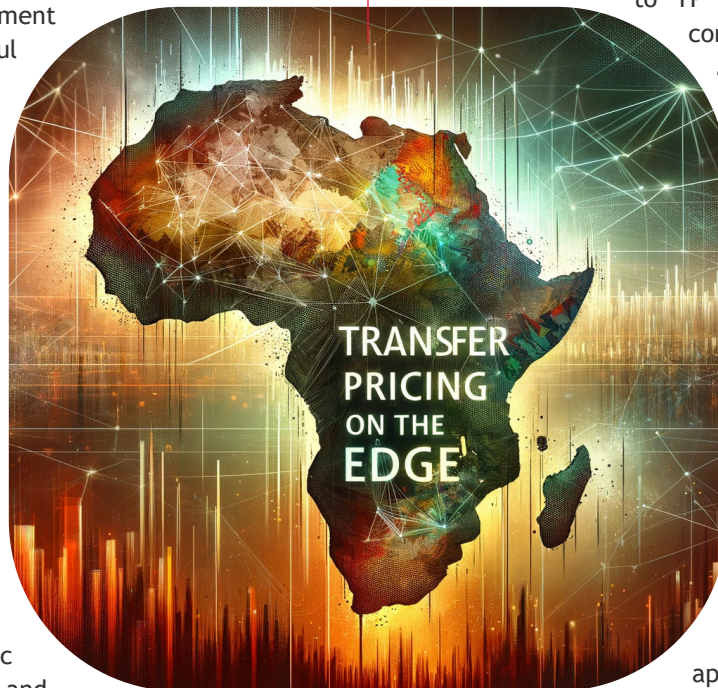
to TP is crucial for bolstering the continent's economic resilience and enhancing its position in the global economic arena.

In conclusion, the critical role of TP in Africa's evolving economic landscape cannot be overstated. As this report has highlighted, the continent is at an important juncture, seeking to harmonize its TP frameworks with global standards while nurturing local economic interests. The challenges and opportunities presented by global economic shifts and the digital revolution necessitate a re-calibrated approach to TP. This delicate

balance of compliance, innovation,

and strategic foresight is key to unlocking Africa's potential in the global market.

In the following session summaries, we delve into the complexities of TP in Africa, exploring its balance with global standards and technological evolution. These discussions provide critical insights into how African nations and businesses are navigating their unique economic landscape.



1

TRANSFER PRICING DOCUMENTATION (BEST PRACTICES)

Experts shared insights on crafting robust documentation to meet regulatory requirements and support defensible TP policies.

In the dynamic landscape of TP in Africa ensuring accurate and comprehensive Transfer Pricing Documentation (TPD) is imperative. Africa's unique position, marked by its rapid economic growth and integration into global markets, necessitates that intra-group transactions are transparent and aligned with arm's length principles to counteract base erosion and profit shifting.

Key points to note:

Three Tier Documentation - Multiple jurisdictions apply three tier documentation rules, but have different penalty regimes and submission requirements.

TP Returns - Typically, different jurisdictions have different reporting methods, it is imperative for MNEs' to gain a good understanding of these.

Alignment of Policy and Practice - Given Africa's evolving economic landscape, it's crucial for entities to ensure TPD reflects real-time operations, addresses all inter-company interactions, and remains compliant with both continental and country-specific guidelines.

Importance of TPD - Rigorous and adaptive TPD is a cornerstone for multinationals operating on the continent.

2

TRANSFER PRICING AUDITS & LITIGATION (SAFEGUARDING YOUR BUSINESS)

Strategies for protecting businesses in TP audits and litigation took centre stage.

The depth and scope of TP audits often depend on the intricacy of MNEs' dealings, clarity of TP regulations, ambiguity in arm's length pricing techniques, resource constraints, and the scarcity of comparable transactions, among other considerations.

Key points to note:

In order to better safeguard Transfer Pricing positions and mitigate risk of audits MNEs in Africa should:

Adherence to Regulations - Complete adherence to global and local TP regulations greatly reduces audit risk.

Supporting Documentation - Maintenance of appropriate evidence of related party transactions improves the overall strength of TP positions in the event of an audit.

Consistency is Key - Ensuring consistency between TP policy and the actual reality of the transactions is a simple way of further mitigating any risk.

Common Triggers - The following were identified as the most common triggers for transfer pricing audits by tax authorities in the region and should therefore be focus areas when performing risk assessments.

- Complex group structures.
- Groups with member parties in tax havens, and
- Low hanging fruit transactions such as management services.

3

WHAT POWERS SHOULD REVENUE AUTHORITIES HAVE IN TP CASES?

An important discourse focused on the powers that revenue authorities should possess in transfer pricing cases. Participants explored the balance between enabling authorities to ensure compliance and protecting businesses from potential overreach.

When a comprehensive risk assessment indicates the necessity for an audit, the tax administration must possess the capability to acquire pertinent information to determine whether an adjustment is necessary.

Key points to note:

Sources of Information - Revenue authorities possess the powers to seek supplementary details in the course of a TP audit or subsequent to a risk evaluation.

Access to Information - The primary focus should be on the ability to access this information when it becomes essential.

Communication - The provision of information, coupled with prompt communication between tax authorities and multinational corporations, could potentially result in a decrease in the frequency and duration of audits.

This outcome would be beneficial for both taxpayers and tax authorities alike.

4

TRANSFER PRICING POLICY FRAMEWORK (SIGNIFICANCE AND IMPLEMENTATION)

An exploration of the critical role of a TP policy framework. Discussions centred on why it is essential and how businesses can design and implement effective frameworks aligned with global and regional standards.

A robust TP Policy Framework is pivotal in today's complex economic landscape. This framework goes beyond merely setting guidelines for pricing transactions within related entities; it serves as a defense against the risks of BEPS. As countries, particularly those in emerging markets, seek deeper integration into global trade, having a clear and comprehensive policy is crucial.

Key points to note:

TP Documentation vs. Policy - A TP policy is distinct from documentation; it does not replace documentation nor serve as a substitute for a local file.

Compliance Issues - Absence of a TP policy can lead to compliance challenges with revenue authorities.

Role of TP Policy - The policy supports the TP documentation by highlighting the entity's pricing mechanism for arm's length transactions.

Consequences of Lacking a TP Policy - Increased risk of non-arm's length transactions, and risk of oversight in crucial transactional considerations.

5

MANAGING TAX CHALLENGES IN PERMANENT ESTABLISHMENTS AND GLOBAL MOBILITY

The complexities of managing tax challenges in permanent establishments and global mobility were unravelled. Attendees gained insights into effective strategies for navigating these intricate tax scenarios.

In the realm of global employment, understanding taxation implications for global employees is crucial. The "work from anywhere" trend, amplified by COVID-19 and digital advancements, might inadvertently establish a "taxable presence" for employers in foreign tax jurisdictions.

Key points to note:

Taxable Presence - This presence can arise from factors like maintaining a physical work space, employee-led business activities, local manufacturing, property or equipment ownership, local digital footprints, or when a representative has the power to finalize contracts for the company.

Other Taxes - Remote employees are subject to both income tax and Value Added Tax (VAT), depending on their work jurisdiction. The taxation of different types of PEs, such as Agent PE, Construction PEs, and Service PEs, varies significantly across jurisdictions, particularly concerning income tax and withholding tax.

Permanent Establishment rules - There are two primary types of PEs; those governed by the Source Rule, where non-residents are taxed based on the income source, and the Residence Rule, where taxation is based on the entity's residence.

6

TRANSFER PRICING DEVELOPMENTS (AFRICA AND GLOBAL TRENDS)

A comprehensive overview of TP developments in Africa and globally highlighted emerging trends and their implications for businesses operating in diverse jurisdictions.

TP in Africa has evolved to meet the growing complexities of international trade, ensuring that multinational enterprises (MNEs) maintain transparency in their intercompany dealings. As Africa integrates further into the global economy, there has been a pressing need to align its TP regulations with global standards. This alignment ensures a fair taxation environment, which attracts foreign investment while protecting national revenues.

Recent advancements in African TP policies particularly target international tax erosion, addressing concerns of profit shifting and integrating mechanisms to efficiently manage cross-border transactions. This progression not only fosters a robust fiscal environment but also positions African nations favorably in the international business community.

Understanding the evolving landscape of TP is essential for taxpayers, especially in the context of changing trends and requirements. This includes being well-informed about the various forms and disclosures of related party transactions, which are increasingly influenced by external factors like the economic conditions of different countries.

7

TAX AND THE DIGITAL GLOBAL ECONOMY (REGIONAL AND GLOBAL ISSUES)

The impact of digitalisation on the global economy and its tax implications were thoroughly examined. Participants explored regional and global perspectives on addressing tax challenges arising from the digitalisation of business models.

Digital transformation profoundly impacts domestic tax revenues in developing countries, amplifying the need to bolster domestic revenue collection for developmental support. In Africa, taxes typically constitute a smaller percentage of countries' GDP compared to OECD nations.

This disparity arises due to a dominant informal sector, coupled with an inadequate revenue collection system, base erosion due to TP discrepancies, and other factors. With the rapid surge of digitalization in the 21st century, safeguarding this tax base in a digital economy has become increasingly intricate.

Some key points from the session:

Digitalization Challenges for Africa

- Increased transaction complexity in digital spaces.

Tax Nexus Rules and Digital Economy

- Introduction of tax rules extending beyond physical presence.

Unique Challenges for African MNEs

- Issues like load shedding affecting MNE operations in Africa.

Use of Digital Tools by Revenue Authorities

- Adoption of e-filing and e-auditing for enhanced information sharing and connectivity.

8

BENCHMARKING DILEMMA AND OPTIONS FOR AFRICAN COUNTRIES

The challenge of benchmarking in TP for African countries was dissected, and viable options were discussed. Attendees gained insights into navigating benchmarking challenges specific to the African context.

The "Benchmarking Dilemma and the Options for African Countries" addresses a pivotal challenge faced by the continent: the limited availability of local data for effective benchmarking.

As African nations navigate the complexities of international trade and taxation, establishing arm's length pricing through comparable uncontrolled prices becomes intricate.

The scarcity of analogous African entities often necessitates a reliance on benchmarks from mature markets, potentially resulting in disparities and injustices. This scenario underscores the need for innovative, region-specific solutions, prompting African nations to seek alternative benchmarking approaches that better align with their distinct growth patterns and market conditions.

9

QUALIFIED MINIMUM DOMESTIC TOP UP TAXES (PILLAR2) AND IMPACT ON AFRICAN ECONOMIES

This session focused on the evaluation and implications of implementing Qualified Minimum Domestic Top Up Taxes, commonly known as Pillar 2, within African economies. The discussion provided an in-depth look at how these tax measures are designed to work in the African context, the potential economic impacts they could have, and strategies for effective implementation.

Pillar 2 is one segment of a dual-pronged initiative originally designed to tackle the tax challenges of the digital economy. This primarily refers to the tax complexities stemming from the rise of intangible assets in production and the reduced necessity for multinational corporations (MNEs) to maintain a physical footprint to generate profits in a particular jurisdiction.

Pillar Two seeks to curb profit-shifting tendencies and will reshape the corporate income tax incentive landscape globally. If a tax incentive drops a company's effective tax rate (ETR) below the proposed 15% minimum threshold, an additional tax will be applied to the remainder, impacting the tax advantages that companies gain from such incentives.

For businesses operating in Africa, addressing compliance challenges associated with these new top-up taxes is essential. Developing strategic tax planning strategies becomes imperative to optimize outcomes under the influence of Pillar II, ensuring that African economies can benefit from these changes.

KEY TAKEAWAYS & INSIGHTS



Accurate and comprehensive documentation is essential for regulatory compliance and the establishment of defensible TP policies.

It is imperative for taxpayers to not only distinguish between TP policy and TP documentation but to fully understand their purposes and integration.

Preparation is key to protecting businesses in TP audits and litigation; effective defence mechanisms are crucial for managing disputes.

Consistency between TP policy, documentation, source documents (such as agreements) and actual practice is imperative to full compliance.

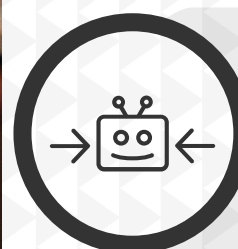


Effectively navigating tax challenges in permanent establishments and global mobility requires strategic planning and a deep understanding of regulatory landscapes.

Taxpayers must be aware of the disruption presented by the new working culture and methods and ensure that policies align with the trends to ensure continued compliance.

Staying informed about TP developments is crucial for businesses operating in diverse jurisdictions, with a focus on emerging trends globally and within the African context.

Although not yet operational, adoption of the OECD Pillar 2 requirements may create an opportunity for African countries to increase tax revenues under the proposed 15% minimum tax provision.



Addressing tax challenges arising from the digital global economy requires a nuanced understanding of regional and global perspectives and proactive strategies.

It is imperative to apply thorough benchmarking methodologies that will increase the level of comparability.

TP INDABA AFRICA IN PICTURES



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