Tanzania Transfer Pricing Regulations, 2014

Introduction

On 7th February 2014, The Tanzanian Government published the Income Tax Transfer Pricing Regulations, 2014, Notice number 27 ("TP Regulations"), operational on the same date of publication.

The TP Regulations revoked Regulation 33(1) and Regulation 6 of the Tanzanian Income Tax Act. The revoked section & regulation provided for the application of the arm's length in calculating income between associates and that the arm's length shall be construed in the best manner that secures consistency with the transfer pricing guidelines in the Practice Notes issued by the Commissioner respectively. No Practice Notes had been issued.

Application & Interpretation

The TP Regulations are applicable to local and cross-border transactions between associates. An associate is defined as per Section 3 of the Tanzanian Income Tax Act, 2004 ("ITA") to constitute;

a) For an entity, where there is direct or indirect ownership of 50 percent or more of the rights to income or capital or voting power of the entity;
b) For a partnership, the partners in the same partnership unless the Commissioner is satisfied that reasonably neither person is expected to act with the intentions of the other;
c) For individuals, that of an individual and a relative unless the Commissioner is satisfied that reasonably neither person is expected to act with the intentions of the other; and
d) Any other case not covered above where one, other than an employee, may reasonably be expected to act with the intentions of the other.

The TP Regulations are applicable to local and cross-border transactions between associates the transactions between associates have to be consistent with the arm's length principle in determining the income and expenditures from the transactions.

Failure to comply with the arms length principle will result in the Commissioner making adjustments and imposing a penalty equal to 100% of any underpaid tax.

Transfer Pricing Methods

The most appropriate method shall be used when determining consistency with the arm's length principle. The methods the associates shall apply in determining the arm's length price of the controlled transactions are;

a) The traditional transaction methods: Comparable Uncontrolled Price, Resale Price Method & Cost Plus Method;
b) The transactional profit methods: Transactional Net Margin Method and the Profit Split Method; and
c) Any other method as may be prescribed by the Commissioner from time to time.

The traditional transaction methods take precedence. However, a person shall apply the most appropriate method having regard to the transaction nature, class of transaction, associated persons or functions performed.

Comparability

Comparable transactions are determined based on the OECD five comparability factors i.e. characteristic of the property or services transferred or supplied, functions undertaken considering assets used & risks assumed, transactions contractual terms, economic circumstances and business strategies pursued by the associates in the controlled transaction.

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Documentation requirements & due dates

Any person in a related party/controlled transaction shall prepare contemporaneous documentation. For a year of income, the documentation shall be in place prior to the due date for filing the income tax return for that year.

The documentation shall be submitted within thirty days from the date of request by the Commissioner.

Any person who fails to document controlled transactions commits an offence and is liable on conviction to imprisonment for a term not exceeding six months or to a fine not less than shillings fifty million or both.

Branch

A branch is a separate and distinct person, with the branch and its headquarters deemed as associates. Both are considered to be located where their activities are.

OECD/UN Regulations application

The TP Regulations will be construed in a manner consistent with Article 9, *Associated enterprises*, of the OECD/UN Model Tax Convention on Income and Capital, the OECD Transfer Pricing Guideline for Multi-National Enterprises and Tax Administration approved by the OECD Council and the UN Transfer Pricing Practical Manual for developing countries as periodically supplemented & updated.

The ITA will take precedence in any inconsistency between the TP Regulations, ITA and the OECD/UN documents referred above.

Intra-group services

In determining the arm's length transfer price for intra group services, a person shall apply the methods mentioned above. Further, the person shall demonstrate that the services have conferred an economic benefit or commercial value to the associate business receiving the service and the service charge is at arm's length.

Any intra group service charge shall be disregarded if it involves shareholder or custodial activities, duplicative services or any services the Commissioner may deem not appropriate.

Intra-group financing

Any person receiving or providing intra group financing directly or indirectly, with or without consideration shall determine the arm's length interest rate for the financing.

Intangible property

Where an intangible property ("IP") is sold or licensed out in a controlled transaction, the owner or licensee shall charge an arm's length price. The value of the IP shall be the expected IP benefits to be generated.

The arms length price for IP in a sale or license transaction shall be determined by application of CU. Where the IP is highly valuable or unique, the residual profit method will be applied. However, the Commissioner may allow other methods application if the method chosen provides the highest comparability degree.

The legal owner of the IP who is not the developer shall pay to the developer an arm's length consideration for the IP development.

The rules introduces the concept of marketing intangibles. This will occur where an entity incurs marketing costs of trademarks or trade names in excess of comparable independent persons. The person incurring the marketing costs shall be entitled to an arm's length consideration for undertaking the marketing activities.

Advanced Pricing Agreements ("APA")

APA provisions introduced both for unilateral and multilateral APAs. The APA entered shall be for a period not exceeding five years of income but may be reviewed.

The Commissioner may cancel an APA in writing where;

a) a material failure to comply with the fundamental terms of the agreement;
b) there has been a material breach of one or more of the critical assumptions underlying the agreement;
c) there is a change of law materially relevant to the APA; or

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d) the agreement was based on a misrepresentation, mistake or omission by the person seeking the APA.

The cancellation under clause a) and c) takes effect from date specified in the cancellation notice, b) from the date of the material breach and d) from the agreement date.

The Commissioner is bound by confidentiality for the information shared by a person during the APA negotiation process. The person who enters in the APA shall furnish the Commissioner with an annual compliance report during the APA period.

Double taxation

The TP Regulations provide for alleviation from double taxation on the same income/profits taxed in a jurisdiction that has a tax treaty with Tanzania.

Guidelines

The Commissioner may make guidelines for better carrying into effect the TP Regulations provisions.

Contact us

For more assistance on this matter or any other tax issues, kindly get in touch with the below named persons or your regular Taxwise Consulting Limited contact.

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