

TANZANIA

TRANSFER PRICING LANDSCAPE

2004: Arm's length principle for transactions between associates introduced in Section 33 of the Income Tax Act 2004

2014: Income Tax (Transfer Pricing) Regulations, 2014 (Old TP Regulations) were introduced vide government notice no 27 on 7 February 2014

2014: Transfer Pricing Guidelines were published on 1 May 2014

2018: Tax Administration (Transfer Pricing) Regulations, 2018 (New TP Regulations) were introduced vide government notice no 166 on 27 April 2018, however, released in November 2018



Introduction

- Income Tax (Transfer Pricing) Regulations, 2014 have been revoked from immediate effect.
- Any person entering into related party transactions (either domestic or international) with its associates is required to undertake transaction that is consistent with the arm's length principle.
- If a person fails to comply with the arm's length principle, the Commissioner of Income Tax (Commissioner) has the power to make necessary adjustments and may impose a tax liability on such person.
- New TP Regulations also recognize the OECD Transfer Pricing Guidelines and the UN Transfer Pricing Manual for applying the arm's length principle. However, domestic income tax act and TP Regulations shall prevail if there arise any inconsistencies between them.

Associates

- Meaning of the term 'Associate' is provided in Section 3 of Income Tax Act and Transfer Pricing Guidelines issued earlier in 2014.
- Following persons are said to be Associates:
 - Individual and his/her relative; unless it is not reasonable to expect that either individual will act in accordance with intentions of the other
 - Partners in the same partnership; unless it is not reasonable to expect that either individual will act in accordance with intentions of the other
 - In case of an entity, any person, who either alone or together with an associate(s), whether directly or through one or more interposed entities, controls or benefits from 50 percent or more of the rights to income or capital or voting power of the entity
 - Any other persons, other than an employee, such that one may reasonably be expected to act in accordance with intentions of the other
 - Branch and headquarter shall be deemed to be a separate person and deemed to be associates for this purpose.

Arm's length principle

- Arm's length price means the price charged between associates as if the parties were unrelated.
- Any transactions with related parties shall satisfy the arm's length principle.

Transfer Pricing Methods

- New TP Regulations follow a hierarchy of methods as stated under:

a. Traditional Transaction Method

- Comparable Uncontrolled Price (CUP) Method
- Resale Price Method
- Cost Plus Method

b. Transaction Profit Method

- Profit Split Method
- Transactional Net Margin Method

3. Other Method

- Any other method as may be prescribed by the Commissioner
- Despite the explicit hierarchy of methods provided, New TP Regulations also state that the most appropriate method should be selected having regard to the nature of transactions.
- While applying other method as the most appropriate method, Transfer Pricing Documentation should provide robust reasons for the inapplicability of traditional transaction methods and transaction profit methods.
- If the most appropriate method requires selection of tested party outside Tanzania, it can be done only when all "relevant information" is available from such a party.

Transfer Pricing Documentation

- A taxpayer who has entered into controlled transactions with related parties is required to prepare contemporaneous transfer pricing documentation annually.
- Following information/details should form part of transfer pricing documentation:
 - Organization structure, including group and operations structure, role, and shareholding percentage
 - Nature of the business or industry and market conditions
 - Description of controlled transactions, including volumes and values involved
 - Strategies and assumptions working factors that influenced the setting of any pricing policies
 - The actual computational workings carried out in determining transfer prices
 - Details of the functions performed, assets employed, and risks assumed by each person in relation to the controlled transaction
 - Comparability analysis

- Selection and application of the transfer pricing method, tested party and the financial indicator; financial statements for the parties to the controlled transaction including where the tested party has been selected outside the country
- Documentation that provides the foundation for or otherwise support or were referred to in developing the transfer pricing analysis
- Index to document
- Any other information, data, or document considered relevant by the person submitting the document.
- Commissioner may require a person to submit document, whether or not liable for tax, as per the time specified in the notice (generally 30 days).
- Following services shall be excluded from intragroup services:
 - Shareholder or custodial activities
 - Duplicative services
 - Services that provide incidental benefits or passive association profits
 - On-call services
- When services are rendered jointly to more than one associate, the total service charge shall be allocated based on “reasonable allocation criteria” such as a number of computers, license, employee, net sales, etc.
- The taxpayer is required to determine the arm’s length interest rate for intragroup financing activity.

Maintenance/ submission of documents

All the taxpayers are required to prepare/maintain contemporaneous documentation. However, if the quantum of transactions with related parties exceed ten billion Tanzanian Shillings for a tax year, the taxpayer will also be required to submit Transfer Pricing Documentation along with annual income tax return.

Comparability analysis

- New TP Regulations place special emphasis on the following comparability factors:
 - Characteristic of properties and services;
 - Functional analysis;
 - Contractual terms and conditions;
 - Economic circumstances;
 - Business strategies.
- It is specifically provided that external data may be used for comparability purpose when comparable domestic data are not available.
- New TP Regulations specifies the use of arm’s length range of 35th to 60th percentile for more than four comparable data. If the transaction price between related party falls outside the arm’s length range, adjustment shall be made for the difference between the median of arm’s length range and the price of a controlled transaction.
- However, if comparable data are four or less, the average of data shall be arm’s length price.

Certain specific transactions

Intragroup services and intragroup financing

- The taxpayer is required to demonstrate that
 - Intragroup services have been actually rendered
 - Provision of such services has conferred an economic benefit or commercial value to the business
 - Charge for the intragroup services is justifiable and at arm’s length

Intangible property

- The taxpayer is required to determine the arm’s length consideration for any transfer or licensing of intangible property commensurate with the future expected benefit.
- While determining arm’s length consideration, due regard shall be given to functional analysis carried out by associate (whether or not the legal owner) in relation to development, enhancement, maintenance, protection, and exploitation of intangible property.
- Furthermore, the taxpayer who is not the owner of the intangible property but undertakes marketing activities (in excess of a comparable independent person) shall receive arm’s length consideration for its activities.
- Owner of a locally developed intangible property shall receive appropriate consideration for the transfer of intangible outside Tanzania. Furthermore, no royalty shall be paid if the same intangible is subsequently licensed back for use in Tanzania.

Commodity transactions

- CUP method is the most appropriate method to benchmark commodity transactions.
- Quoted spot prices may be used as CUP to determine arm’s length price (except where actual price is higher than the spot price).
- Commodity includes physical goods such as grains, oilseeds, and other goods obtained from the land, hydrocarbons, and derivatives thereof.
- Quoted spot price means price obtained in the domestic or international market for the relevant period and includes price obtained from recognized statistical agencies or governmental agencies.

Reporting and Compliance

Tax Return Disclosures/Due date

- Presently, there is no separate transfer pricing return to be submitted.
- The taxpayer is required to submit Transfer Pricing Documentation along with annual income tax return if the quantum of transactions with related parties exceed ten billion Tanzanian Shillings for a tax year.
- Presently, the due date for filing a tax return is six months from the end of the year. Hence, for the year ending in December, the due date to file tax return would be 30 June of the next year.

Transfer pricing assessment

There are no separate transfer pricing assessments conducted. It is conducted as a part of regular tax assessment for a tax year. The statute of limitation to complete the tax assessment is generally five years in Tanzania.

Penalties

- Penalty for non-maintenance of transfer pricing documentation shall be not less than 3,500 currency points (presently one currency point is equivalent to Tanzanian Shillings 15,000).
- Penalty for transfer pricing adjustment made during tax audit is 100% of the adjusted amount.

Corresponding adjustments

Where an adjustment is made by the competent authority of another country with whom Tanzania has treaty and adjustment results in taxation in another country of income or profits that are also taxable in Tanzania, the Commissioner (upon request by the taxpayer) may make the corresponding adjustment to the amount of tax charged in Tanzania to avoid double taxation.

Advance Pricing Agreement (APA)

- New TP Regulations provide an option to the taxpayer to determine, in advance, the appropriate arm's length price for their future controlled transactions with related parties by entering APA.
- APA shall be effective for not more than five years.
- The taxpayer is required to make a written request to the commissioner and can enter either unilateral APA or bilateral/multi-lateral APA.
- Furthermore, the taxpayer is required to file an annual APA compliance report on the date of filing an annual income tax return.

BEPS/ CBCR applicability

Base Erosion and Profit Shifting issues and Country by Country reporting are expected to be more remote. For the time being, transfer pricing regulations in the country still need to be more matured.



SUMMARY OF TRANSFER PRICING REQUIREMENTS

Effective from	2014
Compliance requirements	No specific transfer pricing return to be file. However, transfer pricing documentation needs to be accompanied with annual tax return if the quantum of transaction exceeds ten billion Tanzanian Shillings.
Penalties	Specific penalties have been introduced for transfer pricing non-compliance.
Method and preference for comparable	Five methods as provided in OECD Guidelines. Reasonable justification to be provided for using any other method.
Peculiar features	<ul style="list-style-type: none">• Branch and headquarter are considered a separate person for this regulation.• Commissioner has the power to make the corresponding adjustment to the amount of tax charged in Tanzania to avoid double taxation.
APA Regulations	APA regulations have been prescribed.
BEPS/ CBCR applicability	Not yet introduced

Our Services

Our dedicated transfer pricing professionals are ready to work with you in building, managing, reviewing, documenting and defending your transfer pricing policies and processes.

Our hands-on approach enables us to deliver robust, high-quality services whereby we are able to partner with you in your growth. Besides extensive experience in providing solutions for small and medium enterprises (SMEs), we have successfully supported transfer pricing cases of larger MNEs as well. Streamlined operating structures, coupled with the effective use of technology, gives us a cost-efficient while delivering quality solutions.

Our Experience



Formulated a transfer pricing policy balancing Indian and UK TP regulations for an Indian multinational software company resulting in an effective tax rate



Advised one of the largest shipping companies in the world on changing their transfer pricing policy to remunerate its subsidiary from percentage-based commission to cost-plus model, leading to substantial tax savings



Advised a listed Indian company (the largest paint manufacturer in India) with 20+ subsidiaries overseas in formulating an intra-group management fee policy from the transfer pricing perspective



Advised a speciality packaging company having various subsidiaries across the globe on alternative approaches to formulate arm's length guarantee charges/fees



Assisting an Indian listed pharmaceutical MNE in restructuring its supply chain thereby making the structure tax-efficient – both from a corporate tax and indirect tax perspective



Assisted a leading global cosmetic company in getting substantial relief against the transfer pricing adjustment proposed by Indian tax authorities on marketing intangible issue along with defending transfer pricing policy for other intra-group transactions



Assisted a US parent company engaged in social entrepreneurship to get substantially reduced mark-up on investment advisory services, provided by the Indian arm through representations and negotiations with Advance Pricing Authorities

About Nexdigm (SKP)

Nexdigm (SKP) is a multidisciplinary group that helps global organizations meet the needs of a dynamic business environment. Our focus on problem-solving, supported by our multifunctional expertise enables us to provide customized solutions for our clients.

Our cross-functional teams serve a wide range of industries, with a specific focus on healthcare, food processing, and banking and financial services. Over the last decade, we have built and leveraged capabilities across key global markets to provide transnational support to numerous clients.

We provide an array of solutions encompassing Business Consulting, Business Services, and Professional Services. Our solutions help businesses navigate challenges across all stages of their life-cycle. Through our direct operations in USA, India, and UAE, we serve a diverse range of clients, spanning multinationals, listed companies, privately owned companies, and family-owned businesses from over 50 countries.

Our team provides you with solutions for tomorrow; we help you *think next*.

Contact Us

India - Mumbai

Urmi Axis, 7th Floor
Famous Studio Lane, Dr. E. Moses Road
Mahalaxmi, Mumbai 400 011
India
T: +91 22 6730 9000
E: IndiaSales@skpgroup.com

www.nexdigm.com
www.skpgroup.com



Subscribe to our
insights

 [linkedin.com/company/skp-group](https://www.linkedin.com/company/skp-group)

 twitter.com/SKPGroup

 facebook.com/SKPGroupIndia

 youtube.com/c/SKPGroup

The contents of this brochure are intended for general marketing and informative purposes only and should not be construed to be complete. This brochure may contain information other than our services and credentials. Such information should neither be considered as an opinion or advice nor be relied upon as being comprehensive and accurate. We accept no liability or responsibility to any person for any loss or damage incurred by relying on such information. This brochure may contain proprietary, confidential or legally privileged information and any unauthorized reproduction, misuse or disclosure of its contents is strictly prohibited and will be unlawful.

© 2020 SKP Business Consulting LLP. All rights reserved.