

Transfer pricing

Transfer pricing has emerged in the global economy as one of the most important tax issues for multinational companies. Managing transfer pricing risk and maximising efficiency opportunities through pricing planning are both key shareholder and value issues. The PricewaterhouseCoopers Africa Central Transfer Pricing team based in Nairobi, Kenya, can provide clients with the tools to ensure that their international financial position is adequately managed and the fiscal risk adequately covered.

A synchronised approach

The PricewaterhouseCoopers Transfer Pricing team, together with the broader International Tax team and other service lines within Tax, has the skills, experience and tools to optimize business change to deliver the greatest overall commercial and tax benefits to an organisation. We are able to guide and assist organisations undergoing change to identify and maximize profit opportunities in the value chain, and create the necessary structures to realign portable profits in a more tax advantaged way.

There is no 'one best model' that fits every business, as the optimal structure reflects the character of the business, the commercial synergies available and the overall fiscal and tax strategy.

Where the business involves the physical movement of goods, specialists from PricewaterhouseCoopers' Custom and Excise team will also play a significant role. Their assessment of potential customs outcomes and trade agreements can maximize the benefits that are achieved.



Key to success of the PwC process is a coordinated approach that works with the commercial implementation teams, and includes expert input on a range of transfer pricing, international and indirect tax issues.

At PricewaterhouseCoopers we have one of the largest and most highly qualified specialist teams of transfer pricing professionals in Africa Central, and the world. We apply specialist knowledge in various industries, drawing on a network of international transfer pricing specialists across the globe. We have also developed a range of leading-edge products and solutions to help clients prosper in the face of changing global trade conditions.

Transfer pricing is an important driver of shareholder value, providing an opportunity to optimize the value of a business by effective tax rate and foreign tax credit management. Managing transfer pricing risk remains critical in an increasingly aggressive environment. Kenya and other African revenue authorities continue to focus on transfer pricing, and are increasingly auditing taxpayers. These audits can lead to substantial corporate tax adjustments. Consequently, organisations need to understand their approach to transfer pricing risk and dealings with revenue authorities.

The PricewaterhouseCoopers Transfer Pricing team will work with you to ensure your organisation's international financial position is effectively managed, your fiscal risk is covered and you are in the best possible position to take advantage of the benefits of globalisation and international restructuring, as value chains are remodelled to increasingly focus on customer satisfaction.

With unrivalled transfer pricing expertise in Kenya and the rest of Africa, our team also draws upon global networks to offer you access to specialist knowledge and leading-edge tools and solutions relevant to your industry.

A complete transfer pricing solution

Business transformation — planning transfer pricing on a global scale

Competitive pressures, technological advances, new trade agreements and the opening up of new economies, coupled with more sophisticated and demanding customers are just some of the issues facing business today.

Companies are confronting issues such as globalisation, technological advances, legislative changes, streamlined supply chains and more sophisticated and demanding customers. Successful businesses must adapt quickly to these challenges or risk being left behind.

In this environment, an increasing number of multinational corporations are seeking opportunities to realign their global operations to achieve commercial efficiencies and maximise global taxation opportunities, making transfer pricing an integral part of any business transformation.

Where businesses are expanding across borders, or existing international operations are being restructured, there are always risks and opportunities.

Business transformation is capable of uncovering a number of significant tax and other financial opportunities as well as potential risks. Whilst many companies are well aware of the commercial implications, the tax implications of these restructures are often overlooked. Organisations embarking on these changes owe it to their shareholders to consider optimising tax outcomes, such as lowering their effective tax rate, utilisation of losses and generation of foreign tax credits.



By optimising business change in this way, the tax advantage is embedded into the substance of the business and delivers year-on-year benefits that are less exposed to legislative initiatives.

Audit defence strategies

With an increasing number of large businesses being confronted with transfer pricing audits, it is essential to understand the risks and have a sophisticated and tailored audit defence strategy. The PricewaterhouseCoopers Transfer Pricing team has the experience and tools to assist organisations facing an audit.

Our approach to audit defence strategies:

- Ensures greater certainty about transfer pricing;
- Provides cost effective defence in potential audit situations; and
- Ultimately results in cost savings in transfer pricing audit defence disputes and litigation

Global core documentation

Global Core Documentation (GCD) is a methodology that leverages off the development of base documentation to provide an efficient global solution to the problem multinationals face in meeting the

transfer pricing documentation requirements of numerous countries.

TP3 - Transfer pricing project platform

A web based solution for organising and storing transfer pricing documents and information, TP3 provides organisations with a framework for managing knowledge about planning, documentation and defence issues related to transfer pricing.

PKN-Knowledge sharing is the key business

With ever-changing environment, the need for up-to-date knowledge of changing trends in the international transfer pricing arena is crucial.

The PricewaterhouseCoopers PKN Pricing Knowledge Network® is a global electronic network that provides members with up-to-date information about:

- Alerts on significant breaking news in transfer pricing
- Updates on developments locally and internationally; insight into moves by Kenya Revenue Authority (KRA)
- Access to a national and international network of transfer pricing experts

Kenya transfer pricing rules



1. Section 18 (3) of the Act empowers the Commissioner to adjust the profits accruing to a resident from a course of business conducted with related non-resident persons to reflect such profit as would have accrued if the course of business had been conducted by independent persons dealing at arm's length. This amounts to powers to adjust the transfer price in international transactions between connected parties to reflect an arm's length price.
 2. For the purposes of the Section 18 (3) of the Act and with specific reference to companies, a company is related to another company if:
 - it participates directly or indirectly in the management, control or capital of the business of the other
 - a third person participates directly or indirectly in the management, control or capital of the business of both of them
 3. Section 18 (8) of the Act makes provision for the issuance of guidelines for the determination of an arm's length value of a transaction for purposes of Section 18 and for the specification of such further requirements as the Minister may consider necessary for the better carrying out of the provisions of the Section.
 4. Such guidelines have been issued by the Minister in the form of The Income Tax (Transfer Pricing) Rules, 2006 ('TP Rules'). The stated purpose of the TP Rules is to provide guidelines to be applied by related enterprises in determining the arm's length prices of goods and services in transactions involving them and to provide administrative regulations, including the types of records and documentation to be submitted to the Commissioner by a person involved in transfer pricing arrangements.
 5. Rule 6 lists the transactions which may be subject to adjustment of prices under the TP
- Rules to include:
- the sale and purchase of goods;
 - the sale, purchase or lease of tangible assets;
 - the transfer, purchase or use of intangible assets;
 - the provision of services;
 - the lending or borrowing of money; and
 - any other transactions which may affect the profit or loss of the enterprise involved.
6. Rule 10 of the TP Rules requires a person who avers the application of arm's length pricing to develop an appropriate transfer pricing policy, to determine the arm's length price in accordance with the guidelines provided in the TP Rules and to avail documentation evidencing their analysis upon request by the Commissioner. In addition to the requirements set out in Rule 10, Rule 9 (1) gives the Commissioner powers to request information, including documents relating to transactions where transfer pricing is applied.



7. Whilst no hard and fast rules for compiling documentation or for the process that taxpayers should follow are laid down in the TP Rules, the documents which the Commissioner may request include documents relating to:

- the selection of the transfer pricing method and the reasons for the selection;
- the application of the method including the calculations made and price adjustment

factors considered;

- the global organisation structure of the enterprise;
- the details of the transactions under consideration;
- the assumptions, strategies and policies applied in selecting the method
- such other background information as may be necessary regarding the transaction.

8. This non-comprehensive list of the documents which the Commissioner may request is contained in Rule 9 (2).

9. The effect of the above express and implied statutory requirements is to place the burden of proving that prices are arm's length on the taxpayer. A taxpayer who fails to provide transfer pricing documentation to support the arm's length nature of its prices is therefore at risk that the KRA will conduct a transfer pricing audit and examine its transfer pricing policies in detail. In the event that the KRA, as a result of the examination, adjusts the transfer price adopted by the taxpayer, the lack of adequate documentation will make it difficult for the taxpayer to rebut the adjustment.

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