



AFRICAN TAX ADMINISTRATION FORUM

Leading Africa in tax administration

TRANSFER PRICING AND DOMESTIC RESOURCE MOBILISATION

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TAX AVOIDANCE THROUGH PROFIT SHIFTING IN AFRICA

- Profit shifting by Multinational Enterprises (MNEs) **can have a substantial impact on domestic resource mobilisation** in African countries.
 - African countries, often **rely very heavily on tax revenue from MNEs**, and profit shifting has a particularly significant effect on vital tax revenues.
 - This can particularly be the case where the country's economy is heavily dependent upon the export of commodities.
- *In Burundi one company contributes nearly 20% of total tax collection. (Source: NSI, 2010)*
 - *In Nigeria, MNEs represent 88% of the tax base. (Source: ATAF Conference, 18-19 March 2014)*

TAX AVOIDANCE THROUGH PROFIT SHIFTING IN AFRICA

- The impact of such profit shifting on African countries, however, extends beyond revenue.
 - ❑ It undermines the credibility of the tax system in the eyes of all taxpayers.
 - ❑ If the largest and most high-profile taxpayers are seen to be avoiding their tax liabilities, confidence and effectiveness of the tax system is undermined.

TRANSFER PRICING RISKS FOR AFRICAN COUNTRIES

- African countries face increasing risk of profit shifting as their economies becomes more globalised
- A major contributor to such profit shifting is through the transfer pricing of cross border transactions
- Such transaction by MNEs are a normal and legitimate part of an MNEs business.
- However inappropriate and abusive transfer pricing represents a major risk to African tax bases.

CAPACITY OF AFRICAN COUNTRIES TO DEAL WITH TP RISKS

- African countries challenges in effectively dealing with transfer pricing risk are multi-faceted but include:
 - ❑ Ineffective legislation (for example that places the onus of proof for determining the arm's length price on the tax administration)
 - ❑ Difficulties in obtaining the information they require from MNEs to adequately assess the transfer pricing risk or to apply their transfer pricing rules (for example a lack of transfer pricing documentation rules and limited EOI mechanisms).
 - ❑ Lack of capacity to apply transfer pricing rules that are highly complex and very subjective.

ATAF PRODUCTS TO ASSIST MEMBERS ADDRESS TRANSFER PRICING RISK

Country
Programmes
(TP)


BEPS Toolkits

Increased
participation in
CFA and WP6

Model TP
Legislation for
Africa

Risk
Assessment
Tool for TP

INEFFECTIVE TRANSFER PRICING LEGISLATION

- ATAF is developing model transfer pricing legislation for ATAF members.
 - The aim of the model legislation is to present African countries with the option of adapting the most recent model of TP legislation to their domestic legislation.
 - The model legislation will incorporate the changes effected to the TPG by ATAF's participation in the OECD Working Party meetings.
 - Deemed pricing date
 - Allocation of risk
 - Use of the CUP method on commodity transactions
 - ATAF members will benefit directly from newer and tighter legislation especially those countries who are introducing TP regimes for the first time.
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INEFFECTIVE TRANSFER PRICING LEGISLATION

- In its bi-lateral Transfer Pricing Technical Assistance programmes ATAF is working with member countries to assist them implement new transfer pricing rules that are aligned with international best practice
- Zimbabwe for example introduced new transfer pricing primary legislation and secondary legislation with effect from 1 January 2016.

DIFFICULTIES IN OBTAINING THE RELEVANT INFORMATION

- In its bi-lateral Transfer Pricing Technical Assistance programmes ATAF is also working with member countries to assist them implement appropriate transfer pricing documentation rules that balance the need to obtain relevant information with reducing the compliance burden on taxpayers.
- ATAF also has started a three year EOI Programme to assist in the establishment and growth of a stable and sustainable Competent Authority Office in each ATAF member state.

LACK OF CAPACITY TO APPLY TRANSFER PRICING RULES

- Through its Technical Assistance programmes ATAF is working with member countries to build transfer pricing audit skills.
- Those programmes are already having a significant impact on domestic resource mobilisation
- In one African country following advice provided at an ATAF workshop the tax administration resolved the audit dispute for an additional tax collection of USD105 million.

THANK YOU FOR YOUR ATTENTION

MERCI POUR VOTRE ATTENTION

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