



In conversation with Deloitte Africa Tax & Legal

Transfer pricing controversy trends in Africa
and managing disputes webinar

3 February 2021





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Introduction - Focus on controversy

Introduction



Focus on controversy

Governments are grappling for tax revenue as a result of increasing fiscal debts. SARS has significantly increased its activity over the past few years and similar trends can be seen across Africa.

Finance Minister Mr Tito Mboweni specifically mentioned that, “...**improved tax collection and administration will be an important element in achieving fiscal stabilisation.**”

The South African Revenue Service (SARS) is aiming to increase tax collection:

- Focusing on international taxes, particularly aggressive tax planning using transfer pricing.



Overview of common trends and our practical experience in transfer pricing disputes across South Africa

Transfer pricing controversy in South Africa



It is important for taxpayers to consider how best to respond to the tax environment.

- Where there are a number of risk flags for a particular transaction or group of transactions, it may be appropriate to liaise with the tax authorities in advance of any tax audit via an Advanced Pricing Arrangement (APA). Whilst APAs not available in South Africa currently, pressure will be put on SARS to consider in the near future. **Note draft discussion on APAs.**
- Alternatively, a ‘file and defend’ approach may be preferred. In this case, we would recommend that a strategic approach to manage any tax audit is prepared on a proactive basis.
- Note: Transfer pricing matters very seldom proceed to court (assuming they are not resolved in audit phase). The most common form of settlement is done in the Alternate Dispute Resolution (ADR) process.



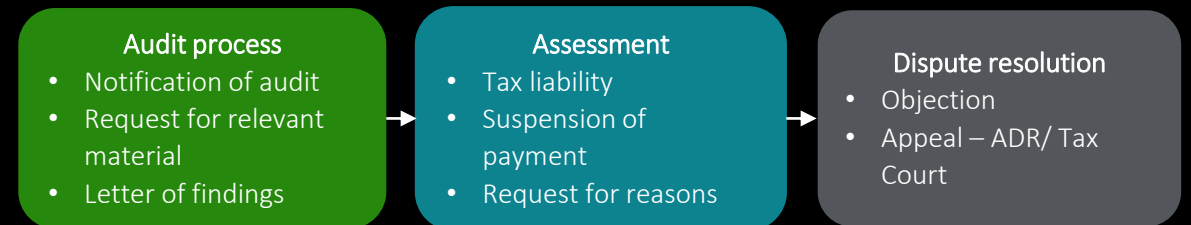
Trends in case selection

- Loss-making entities
- Industry focus – Automotive, mining, equipment (but active across all industries)
- Recent fact-finding mission by SARS requesting for information regarding all transactions with related parties



Transfer pricing audit process

A typical transfer pricing audit in South Africa can last a few years:





Transfer pricing controversy trends in Africa - ATAF



Increased compliance activity



Many legislative changes

- Revised transfer pricing legislation
- New transfer pricing documentation requirements

Increase in audit capacity and litigation

- Larger transfer pricing teams
- Increased technical assistance; e.g. ATAF, TIWB etc.
- Litigation; e.g. Nestle and Mopani Copper Mining in Zambia



Tax certainty – Where is Africa?



Amount B in Pillar One proposal

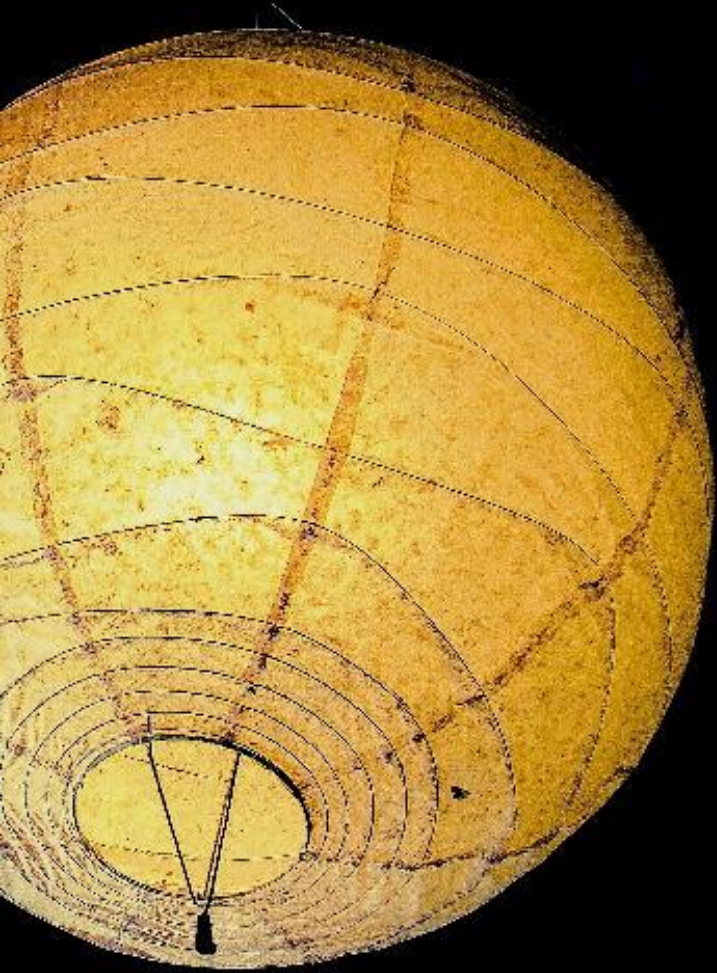
- Will Amount B increase tax certainty?
- Design issues such as scope may have an impact
- Use of formulaic indicators
- African countries broadly supportive of Amount B
- Little tax in Amount A
- Role of mandatory, binding dispute resolution mechanisms beyond Amount A

Tax certainty – Where is Africa?



Advanced Pricing Programmes

- Interest is increasing,
- Number of African countries exploring
- Concerns lack of capacity to carry out compliance work and APAs
- “Outgunned” in a bilateral APA
- Role of ATAF, TIWB, etc



Dispute prevention: Global best practices
for mitigating transfer pricing risks

A global perspective on transfer pricing controversy

1

Tax authority approach and types of challenges

2

Transfer pricing cases

3

Interaction with tax authorities – APA/MAP, MLI, Exchange of information

4

COVID-19 impact



A broader tax environment, including
dispute prevention

A broader tax environment, including dispute prevention

Tax risk management

- A Tax Risk Management Framework can promote governance and assist in addressing tax risks.
- Tax risk management is part of the organisation's overall enterprise risk management (ERM) function for which the Board is responsible, according to the King Committee.
- Aspects that need to be addressed include:
 - Tax Strategy. This must be documented, and the appropriate control mechanisms (documenting all tax planning and reviewing transactions regularly for changes in law) put in place to ensure that the strategy is correctly implemented. Other methods of control could include post-implementation reviews of significant planning decisions, and external reviews of the tax function.
 - Tax considerations must be aligned with operational issues, particularly accounting and information technology (IT).
 - The tax function should be appropriately resourced, and staff provided with ongoing technical training and access to external advice when needed.
- There should be clear procedures in place for the timely identification and reporting of significant tax issues to the Board. This requires an integrated management information system and is facilitated by the role of the internal audit function in evaluating risk management and governance.

Why it is important?

- Providing the organisation, the ability to proactively evaluate legislative changes and the potential impact on business.
- Providing a level of comfort to all stakeholders that risk is maintained at an acceptable level.
- Ensuring that tax strategies, policies and processes are standardised and integrated within the wider organisation.

Transfer pricing tax risk management

- Consider risk factors brought about by country-by-country report (i.e. high profits in low tax jurisdictions with minimal employees).
- Consider wider risks such as reputational risk of being caught not paying taxes where economically significant functions are performed and risks undertaken.

So how do you manage transfer pricing risk?

- **Transfer pricing risk diagnostics**
- **Targeted resource allocation**
- **Tracking and transparency**



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