

# Are you equipped for a transfer pricing audit?



**A**re you doing business in Tanzania? Then a “TRA audit” must be common terminology with you – if not, then either you have a charmed life, or it is just a matter of time before you acknowledge receipt of an audit notification. A wise person once said, “if you fail to plan, then you are planning to fail” and it can never be overemphasized how crucial planning ahead is, for a successful transfer pricing audit.

Subjectivity in determining whether related party transactions conform to the arm’s length principle makes transfer pricing audits with the Tanzania Revenue Authority (“TRA”) very challenging to taxpayers. However, with the guidance provided in the Transfer Pricing Guidelines, 2020 (“the TP Guidelines”), conducting a successful transfer pricing audit is trickled down to rely on proactive planning (thinking ahead) by the taxpayers.

Over the years, intercompany services have remained the most challenging related party transactions for taxpayers to be audited by the TRA. The type of intercompany services rendered among related parties, is highly dependent on the structure adopted by the group of companies, whereby majority of intercompany services are witnessed in centralized group structures. The common services provided among related parties are such as (but not limited to) management and support, procurement and logistics, IT, human resources, strategy and planning, marketing and advertisement services.

During a transfer pricing audit, before the prices for intercompany services are tested for conformity to the arm’s length principle, the TRA first conduct tests to confirm the following

- Whether the said intra – group services were rendered; and
- Whether the provision of such services has conferred an economic benefit or commercial value to the business that enhances its commercial position

A test of whether intra-group services have in fact been rendered, is an area where most taxpayers fail to demonstrate to the satisfaction of the TRA that indeed services were rendered within the prescribed period under consideration. As a result, the expense incurred for such services is disallowed outright for tax purposes, and penalties may be charged to the taxpayer regardless of the fact that the transaction prices meet the arm’s length principle.

The TP Guidelines introduced in June 2020 provide clarity and examples of the information that taxpayers should be able to submit to the TRA, to satisfy the rendering test. With this clarity, taxpayers can engage in intercompany services with their related parties being fully aware of the information

that will be needed when time comes for a transfer pricing audit. Hence proactive planning becomes the key to a successful transfer pricing audit.

By way of an example, and depending on the facts and circumstances, the TP Guidelines provide that the information required to demonstrate the rendering of services, depending on the facts and circumstances include, the service provider’s employees profile detailing their names, titles or positions, academic qualifications, and work experience. These employees’ profiles enable the tax auditors to confirm the technical ability of the personnel rendering the intercompany services, and reference being made to the stated need of support by the recipient of the services.

In cases where the services were rendered physically by the related party, the taxpayer will be required to submit details on experts’ visits to support the business operations of a person, as part of the rendering test. These are such as names, visits dates, duration and purpose for each visit, passport copies, permits and hotel reservations to prove their accommodation.

Also, as part of the rendering test, the tax auditors may request taxpayers to provide copies of correspondences between the service provider and the recipient. The information is requested to enable the tax auditors understand the full extent of the service, from the point of requisition up to when the final deliverable is provided. The correspondence requested is such as emails, telephone notes and work reports.

It is important to note that, gone are the days when what is detailed in a service contract was considered as the primary, and only evidence that the services in questions were rendered.

Now if a taxpayer does not provide the necessary evidence or provides only limited evidence, it may be concluded that no services were rendered or that only limited services were rendered. This fact is considered in the determination of the fees to compensate the related party rendering the services.

Therefore, as the TRA make efforts to reduce ambiguity that comes with the transfer pricing audit requirements, I would encourage taxpayers to proactively prepare for such audits, by maintaining information that will allow clear justification for the arrangements and transfer prices applied in their transactions, as they engage with their related parties. This will enable you stand a TRA audit.

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