Transfer Pricing in Rwanda

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1. Background to TP in Rwanda

- Rwanda’s national budget for the financial year 2011/2012 was 1,116.9 billion Rwandan Francs which is approximately 1.75 million USD.

- Rwanda has lost approximately 90 times its current annual budget.

- In addition, for the 5-year period that estimations were made the volume increased at an average rate of around 18% per year.
1. Background to TP in Rwanda

- The Constitution of the Republic of Rwanda lists the constitution as supreme over all laws in the country including treaties.

- Three Bilateral Investment Agreements are in force currently with: the United States of America, South Korea and South Africa and one Bilateral Trade Agreement in force with the Republic of Congo.

- Four Double Taxation Agreements with: Belgium, Mauritius, South Africa and most recently the East African Community. (The DTA to Mauritius was cancelled mainly because WHT was 0 and so no benefit to Rwanda was negotiated more as an economic agreement rather than tax. A lot of money is moving to Mauritius.)
2. The Current TP Rules

- Its transfer pricing provision set out in article 30 of Law Number 16 of 2005 which came into being together with an attached ministerial order, which set out additional transfer pricing provisions at article 9-13

- result of a DFID funded process

- First TP case 2009
3. Testing the TP Rules in Rwanda

- Was settled out of court.
- In the end approximately 900 million Rwandan francs roughly equivalent to 1.5 million USD was the agreed upon settlement in this case. reasons for this decision:
3. Testing the TP Rules in Rwanda

- There was a lack of information that would allow calculation of tax on both sides, the RRA and the MNC.
- No provision in the law requiring that companies have a transfer pricing policy and that they keep information within the country on transfer pricing and related party transactions that they had undertaken in any given year.
- Since there was no transfer pricing policy, companies had not in the past been submitting any information and this added on the additional challenge of creating a set of comparables, which simply did not exist, as the data had neither been requested nor collected from either MNCs or local companies.
- Calculating TP requires comparables the absence of these almost cripples an investigation and audit for tax purposes.
- How to set up comparables
3. Testing the TP Rules in Rwanda

- The current TP law listed only 3 methods of TP while currently there are 5 methods of calculating TP already in common use worldwide under the OECD guidelines.

- Taxpayers were not required to have a TP policy. However in the 2012 financial year all companies were requested to submit their TP policy with their annual returns. The assessment of this information has not yet begun.

- Although MNCs are aware of transfer pricing regulations, local companies being asked to submit a TP policy sometimes have no awareness of this and this has caused some confusion. Currently approximately 90% of all companies are local and 10% are MNCs.

- Issuance of advance pricing agreements.

- There are a lot of companies registered locally as there is a 24-hour rule on registration of companies: ghost companies.
4. The Ongoing Amendment Process

- Amendment of rules
- ATAF membership
- TP risk audits
- Fragmented v joint TP unit
- Taxpayer to prove arms length not RA (shift the burden of proof)
- Comparables solution EA solution and ATAf solution
5. Conclusion

- OECD influenced
- TP Staff prefer unitary tax