Transfer pricing in Uganda
Transfer Pricing Seminar
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Research planning and development
• Background
• Legal framework
• Expected benefits
• Level of implementation
• Challenges
• Way forward
• Current economic environment is conducive for FDI and a number of MNEs have now established a presence bringing with them TP challenges. Over 20
• FDI grew from 894 Mn USD in 2011 to 1,721 MnUSD in 2012. (UNCTAD WIR 2013)
• Government therefore has the challenge of establishing a balance between protecting its tax base yet at the same time ensuring the legal framework designed to protect the tax base does not act as a barrier to FDI
• The first attempt at managing transfer pricing is contained in the main income tax Act (section 90). It provides for arms length concept in testing price of transactions between associates.

• This provision does not offer sufficient framework given the complexity of transfer pricing issues.

• In July 2011, transfer pricing regulations came into effect. Their main aim is to improve certainty in the determination of the arm’s length prices.
Sections 90 & 164 of the ITA Cap 340.

1. **Scope**; controlled transactions in which one party (associate) in located and subject to tax in UG and the other located in or outside Uganda. Branches are deemed associates.

2. **Comparability to OECD**; Consistent with OECD Model Tax conventions and TP guidelines. In case of inconsistency ITA prevails.
3. ALP, Documentation, APA and adjustments

i. Controlled transactions require compliance with ALP or Commissioner adjusts.

ii. Specifies documentation required adopted from OECD.

iii. Provide for Advanced Price Agreements for future controlled transactions over a fixed period of time. If misrepresentation, mistake or omission detected then APA nullified. Provide for relief on adjustment in countries with DTAs.

iv. Adopted 5 methods for adjustment; CUP, RPM, CPLM, PSM, TNMM. Taxpayer free to choose best choice method, may be adjusted by Commissioner.

v. On assessment, 20% penalty imposed on shortfall of less than 90% of tax paid. Late payment is 2% per month.
• Ability to detect revenue loss from controlled transactions.
• Ability to address tax issues in extractive industries. Supported by the global transparency move such as the US Dodd-Frank Act, EU transparency directive, and the EITI. Now member of Global forum on transparency and exchange of information for tax purposes.
• About 20 MNCs involved in extractive industry in Uganda. 3 extract, others support services.
Provides for separation of regulatory, policy formulation and commercial roles;

• Directorate of petroleum in ministry responsible for oil and gas for policy setting and implementation.

• Petroleum Authority of Uganda to handle regulatory aspects.

• National Oil company to handle commercial interests on behalf of government.
LEVEL OF IMPLEMENTATION

1. URA is generally at infancy level in implementing the TP regulations. International taxation desk being created.
2. Published required TP documentation.
3. Engaged key stakeholders, MNEs, tax agents on TP
4. Capacity building of core audit teams including lawyers and investigators. Through IBFD international tax academy, Malaysian tax academy, OECD and ATAF.
5. Started on the audits and practice knowledge sharing
6. Areas of focus 2013/14; intragroup financing arrangements and services; tracking anti avoidance through treaty shopping and thin capitalisation; collection of information on related party transactions; formation of partnerships and bridging skills gaps.
CHALLENGES

• New area received with mixed feeling and expect controversy from tax agents .
• Capacity of staff and experience gaps .
• Facilitation in investigation and access to information still lacking especially in countries where we don’t have DTAs ( 14 DTAs).
• Sanctions for non disclosure of associated parties.
• Availability of local comparable databases.
WAY FORWARD

• Development of regional comparable databases.
• Develop effective dispute resolution mechanism for TP interventions. Enhance APA as dispute prevention.
• Consideration of alternative methods of addressing relocating of profits to low tax jurisdictions.
• Still an area of major leakage thus need to focus on monitoring cross border transactions and e-commerce. Thus support C2C reporting requirements.
CONCLUSION

With increasing globalisation and resultant mobility of capital and technology all emerging economies have to protect their economies by enacting and implementing TP guidelines or any other alternative methodologies. Uganda though in the infancy stages is very eager to collect and assess fair share of revenue while creating closer links with partners in trade.