

Transfer Pricing Alert

Alert 1 of the 'Transfer Pricing Alert' series

Botswana Budget 2018/19 gives vision into the implementation of transfer pricing laws in Botswana. Accordingly, Grant Thornton presents its insight on the matter in a series of alerts about transfer pricing, supported by local knowledge and experience of Rajesh Narasimhan, Taxation Partner.

At Grant Thornton, we understand that transfer pricing is the number one international tax area of concern to multinationals. Although the principles are common, interpretations differ from one tax authority to another and we are now starting to see a greater emphasis on examination and audit activity to encourage compliance. With ever-more fiscal authorities now also focusing on further developing their transfer pricing rules, ignoring the issue is not an option for any well run business.

What is transfer pricing and who is affected?

Transfer pricing is the pricing of goods and services within a multinational organization. The term usually refers to prices on cross-border transactions between entities, eg from a parent company to a foreign subsidiary. Since prices are controlled within the organization, a price that appears to reflect market pricing may not be viewed as an "arm's length" price by a tax authority.

Tax authorities review transfer pricing in order to tackle profit shifts detrimental to the tax revenue of their country. Grant Thornton transfer pricing specialists are experts at helping clients navigate through the maze.

Understanding multinational tax challenges

Growing international businesses need to examine their related party transactions to ensure that they comply with the transfer pricing laws of each country in which they operate. Compliance with the differing requirements of multiple tax jurisdictions is a complicated and time consuming task, hence we can provide local advice from our various Grant Thornton offices in the region and across the world, to make certain that they satisfy local rules and avoid double taxation (being taxed twice on the same profit).

Tax authorities in each country strive to ensure that transfer prices have not been set (or profits manipulated) to avoid tax. Almost without exception, they are imposing stricter penalties, new documentation requirements, an increase in information exchange and increasing their audit and inspection activity.

Facing complex issues

We understand that businesses will have to face a number of complex issues which could include:

- Managing transfer pricing policies and procedures efficiently
- Documentation requirements in multiple jurisdictions



Rajesh Narasimhan, Partner - Taxation

- Tax authority transfer pricing audits or enquiries
- Taking a more strategic view of the business, for example, centralizing services and supply chain management

How transfer pricing specialists can help you address your business needs

We provide comprehensive solutions tailored to your needs, taking business objectives and the exact nature of the transactions into consideration, to deliver the best service to you.

The transfer pricing process

We can devise and document a clear transfer pricing strategy for your organization. We tailor our approach to your needs and the process may include:

- A fact-finding exercise - analysis of the functions performed and risks assumed by each entity
- Selection of the appropriate transfer pricing method and identification of the tested parties
- Benchmarking analysis - comparable companies are identified using both global and local databases, and an economic analysis is conducted
- Documentation - results are collated into a report and the required documentation is prepared
- Assistance with related party disclosures
- Dispute resolution - assisting your company in defending your transfer pricing policies before the tax authorities
- International compliance assessment to meet standards in other jurisdictions
- Transfer pricing risk assessment
- Transfer pricing planning

For a detailed assessment or assistance in addressing/resolving inter-company transfer pricing within your organization, please contact the Marketing, Communications and Business Development team on 395 2313, or Rajesh Narasimhan on rajesh.narasimhan@bw.gt.com.

Tax Alert

Income Tax Act Amendment (Cap 52:01)

The government has recently introduced a Bill to amend the Income Tax Act (Cap 52:01) in a bid to further reduce harmful tax practices as required by Base Erosion and Profit Shifting (BEPS) framework. The effective date of the bill is not known at this stage.

Botswana joined the BEPS Inclusive Framework in June 2017. The Framework is a forum of more than 100 jurisdictions that collaborate on the implementation of the OECD/G20 Base Erosion and the BEPS Action Plan. The requirements on being a member of the Inclusive Framework includes complying with the work of the Forum on Harmful Tax Practices (FHTP) through the country's own laws, participate thereat and conduct peer reviews.

In the above light, transfer pricing has been introduced as an amendment to the Income Tax Act. The salient points of the amendments are:

- a) The Act defines transfer pricing transaction when a person engages directly or indirectly with a connected person.
- b) The Act requires that such transaction to be at arm's length and it shall be the onus of the taxpayer to prove the same.
- c) The Act further requires that the taxpayer shall maintain proper transfer pricing documentation that covers all related party transactions. The type of documentation shall be duly prescribed by the Minister.
- d) Where assets are purchased / transferred from connected companies who are not residents, the value of them will be nil unless the taxpayer can provide a proof of purchase by the non-resident connected company from an independent third party.
- e) The taxpayer may also approach the Commissioner to obtain an Advance Pricing Agreement (APA) for any transaction.
- f) The Minister will prescribe regulations for APA which could specify the eligibility, time limits, procedures, conditions, etc.
- g) The Commissioner may also enter into APA with countries with whom Botswana has double tax agreement.
- h) The net interest that may be claimed by a company has been capped at 30% of the "Tax EBITDA".
- i) Tax EBITDA is sum of taxable income, net interest expense, depreciation and amortisation.
- j) The interest includes interest such as in the case of Islamic funding, imputed interest on zero coupon bonds, finance cost element in a finance lease, notional interest charged, guarantee fees and arrangement fees, forex gains and losses on borrowings, etc.
- k) The interest paid over and above the capped percentage will be disallowed. The disallowed portion of the interest can be carried forward for 3 years.
- l) All fines and penalties for non-compliance of the provision of the Act have been increased. Additional penalties, for not providing transfer pricing documentation or for non-compliance of any provisions of transfer pricing, will be 200% of the amount of tax that would have been avoided.

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BEPS

BEPS refers to tax planning strategies that exploit gaps and mismatches in tax rules to artificially shift profits to low or no-tax locations where there is little or no economic activity. Although some of the schemes used are illegal, most are not.

OECD

The Organization for Economic Cooperation and Development is a unique forum where the governments of 34 democracies with market economies work with each other, as well as with more than 70 non-member economies to promote economic growth, prosperity, and sustainable development.

About Us

Grant Thornton is one of the world's leading organisations of independent assurance, tax and advisory firms. These firms help dynamic organisations unlock their potential for growth by providing meaningful, forward looking advice. More than 53,000 people across over 130 countries, are focused on making a difference to clients, colleagues and the communities in which we live and work.