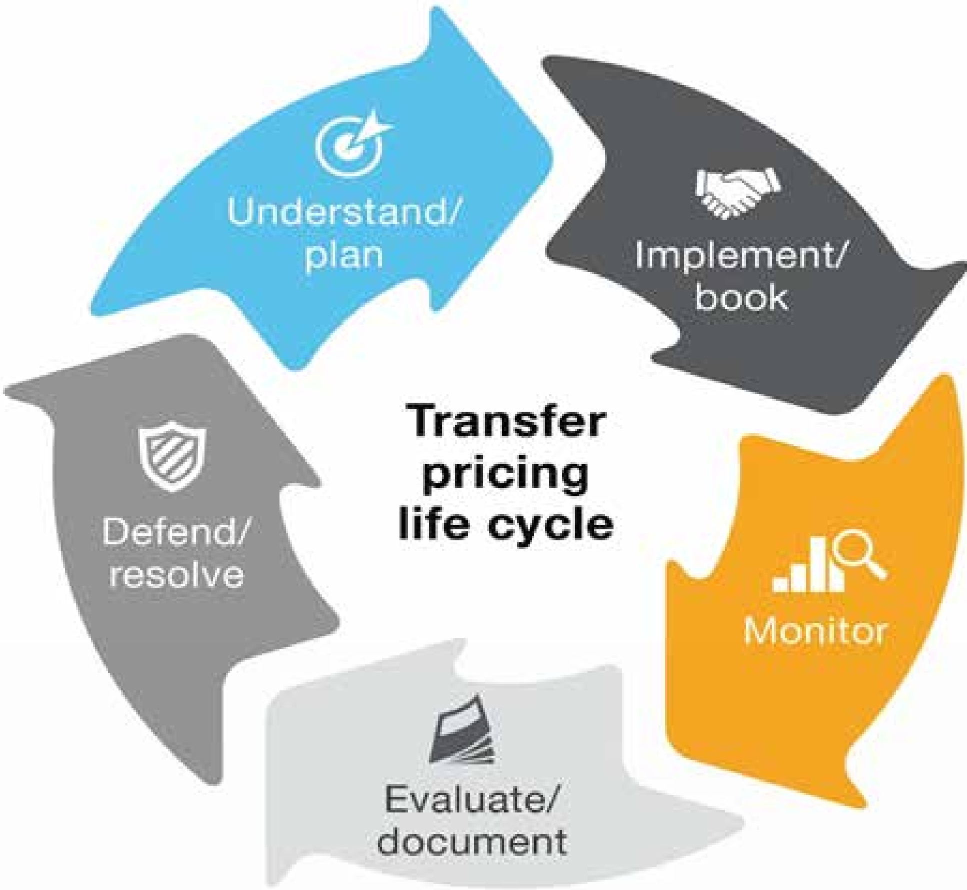
Cristal Advocates

Reinforcing the Implementation of Uganda's Transfer Pricing Rules

Are you prepared for the scrutiny?



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1. Introduction

If you're part of a group of companies with common ownership, regularly trading with sister entities, extending credit /loan facilities, or providing services to each other, then this article is relevant for you. Pending Parliamentary approval, Uganda is set implement new tax measures, effective 1st July 2024. Among the proposed changes is the requirement for taxpayers within group structures to furnish transfer pricing (TP) documentation concurrently with their tax returns. This departure from the current practice, where TP documentation is supplied upon specific request by the Uganda Revenue Authority (URA), represents an adjustment in compliance protocols. In this article, we delve into the potential implications of this forthcoming change, offering insights to aid businesses in adapting to the evolving regulatory landscape effectively.

2. What is Transfer Pricing?

While transfer pricing may appear complex, it's essentially about setting prices for transactions between related parties. Unlike transactions between independent entities, which are primarily commercially driven, dealings between sister entities within the same group are influenced by broader considerations. For instance, consider Companies A, B, and C within the same group. They might structure their dealings in a way that minimizes the group's overall tax exposure. For example, Company A might sell goods to Company B below market rates, while Company B charges overstated fees for services provided to Company A. This allows them to shift profits from a high-tax jurisdiction like Country A to a low-tax jurisdiction or 'tax haven' like Country B, thereby reducing tax liabilities in what's known as transfer mispricing.

To address tax avoidance stemming from transfer mispricing and tax arbitrage, Uganda's tax laws include transfer pricing provisions empowering the Uganda Revenue Authority to recharacterize related party transactions that don't adhere to the arm's length standard. This standard, fundamental to transfer pricing rules, requires taxpayers to establish prices for related party transactions based on independently observed market rates and document the rationale for these prices. If the prices deviate from those typically observed between unrelated parties, the URA can adjust taxable profits accordingly.

Unlike in some countries where transfer pricing rules apply only to cross-border transactions, Uganda extends these regulations to domestic dealings between related party entities. This broader scope aims to prevent profit shifting to entities enjoying tax advantages or incurring losses through transfer pricing practices domestically. Furthermore, there are valuation rules for VAT and customs duty that may similarly impact relevant transactions.

3. Transfer pricing methods

Uganda's regulatory framework envisions five transfer pricing methods to adhere to the arm's length standard. The first trio namely comparable uncontrolled price, cost plus, and resale price focuses on individual transactions. Comparable uncontrolled price involves comparing prices for similar goods or services sold to or acquired from unrelated parties, drawing from transactions between the taxpayer and unrelated entities or between independent third parties.

The cost-plus method entails applying a margin to the seller's costs, reflecting the profit expected in an arm's length sale. Similarly, the resale price method determines the seller's profit by identifying an arm's length margin embedded in a third-party sale price. However, acquiring detailed data on third-party transactions for comparison can be challenging.

In response, two methods emerged, focusing on the overall profit generated from groups of similar transactions, which may be more readily identifiable in published information. These are the transactional net margin method (TNMM) and the transactional split method. The transactional net margin method compares the net profit margin from a related party transaction with that from similar transactions with a third party or between two unconnected third parties while the transactional profit split method examines how unconnected third parties would split their overall profit on a transaction or series of transactions between them.

Taxpayers must thus conduct a transfer pricing study to select the most suitable method for each relevant transaction, taking into account terms, functions, risks, and assets. Essential to this process is benchmarking

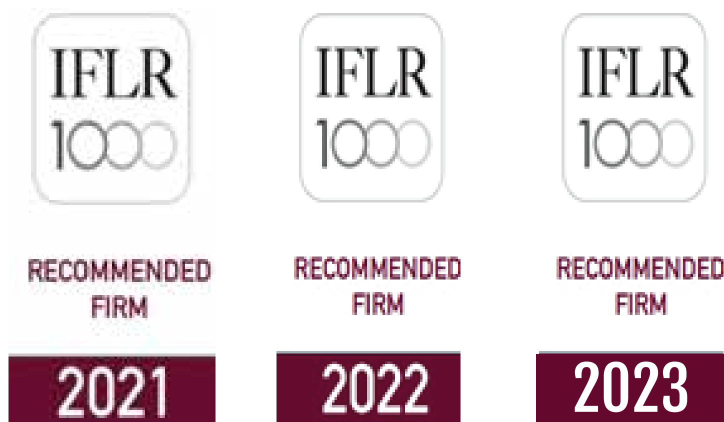
intra-group transaction prices against those with third parties. You may please note that despite the reliance on objective evidence in selecting and applying transfer pricing methods, subjectivity inevitably arises, underlining the importance of careful contemporaneous documentation to support the rationale behind the chosen method and mitigate potential conflicts with tax authorities during audits.

4. Conclusion

Ensuring compliance with transfer pricing requirements shouldn't solely fall on the tax department. Companies within a group often face transfer pricing challenges when senior management isn't fully engaged. Instead of treating transfer pricing as just a compliance task, it should be seamlessly integrated into everyday business operations and planning. Companies should prioritize enhancing internal processes and controls to ensure compliance. This includes implementing robust transfer pricing policies, conducting comprehensive studies, and maintaining detailed documentation to support transfer pricing methodologies and transactions.

The URA has an established dedicated transfer pricing team to address cases of potential underpayment of taxes due to mispricing. With the expectation of increased tax revenues from transfer pricing audits, businesses need to be prepared, especially considering proposed tax changes regarding transfer pricing documentation.

Cristal Advocates accepts no responsibility for any loss occasioned to any person acting or refraining from acting as a result of material contained in this publication. Further advice should be taken before relying on the contents of this publication.



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Denis is the Managing Partner of the Firm. He is qualified both as a Lawyer and Chartered Accountant with UK training and vast experience serving local, regional and international companies in Sub Saharan Africa. He is recognized as a notable corporate and commercial law practitioner in Uganda.

Before joining Cristal Advocates, Denis spent nearly 10 years at Deloitte, an international professional services firm, where he started his career and rose to senior roles. While with Deloitte, he worked and lived in Uganda, Kenya, Tanzania and the United Kingdom.

Education

a) Master of Laws in Petroleum Taxation and Finance with distinction - University of Dundee, UK
b) Certified Public Accountant (Uganda) - ICPAU
c) Certified Chartered Accountant ("ACCA") – ACCA
d) Post Graduate Diploma in Legal Practice - Law Development Center, Uganda
e) Bachelor of Laws degree - Makerere University, Uganda

John Teira

John is a Partner with the firm but presently on sabbatical leave. Before joining Cristal, he worked as a Private Secretary to the President of Uganda. Prior to this role, he had worked with Shonubi Musoke & Company Advocates and Post Bank Uganda Limited.

John is presently a Member of Parliament representing Bugabula County North in Kamuli District in Uganda National Assembly.

Education

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Dickens is a Partner at Firm where he also leads the oil and gas practice. Before joining Cristal Advocates, Dicken had served as Company Secretary of the Uganda Refinery Holding Company Limited (URHC) and the Uganda National Oil Company (UNOC) where he played key role in its formation.

Prior to joining the UNOC, Dickens had spent five years as Legal Counsel at the Petroleum Directorate of the Ministry of Energy and Mineral Development, where he evaluated several oil and gas transactions, negotiated contracts, and participated in the preparation of Uganda's oil laws and regulations.

Education

a) Master of Laws in Petroleum Law and Policy with merit - University of Dundee, UK
b) Post Graduate Diploma in Legal Practice - Law Development Center, Uganda
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Bill Page

Bill is a Senior Advisor at the Firm and is a leading global energy and tax practitioner with extensive international experience.

From 1986 to 1998, Bill worked in London with the UK tax authorities and Big Four accounting firms. From 1998 to 2004, he was based in Kazakhstan, working across the Caspian region with Deloitte during a period of major infrastructure development for crude oil production.

From 2004 to 2008, Bill worked in Russia, leading Deloitte's oil and gas industry group and establishing the firm's Sakhalin office. In 2009, he moved to East Africa, where he led Deloitte's energy and resources industry group in Uganda, Kenya, Tanzania, Rwanda, Ethiopia, and Mozambique. Initially based in Kampala, Uganda, he later relocated to Dar es Salaam, Tanzania.

In 2014, Bill returned to the UK to support Deloitte UK teams on projects investing in Africa and remained a key member of Deloitte UK's energy and resource practice until his retirement in September 2018.

Education

Bill is a graduate of Oxford University and completed his inspectors' training with the UK Inland Revenue in 1989.

- Energy & Infrastructure
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