

# Tax Alert - Transfer Pricing Enforcement of Documentation Requirements

November 2015

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## ***In brief***

- Taxpayers with related party transactions are required to have contemporaneous transfer pricing documentation in place before filing a final tax return.
- The Tanzania Revenue Authority (“TRA”) has recently started requesting such documentation
- Failure to provide such documentation can result in significant penalties and / or imprisonment.

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## ***Background***

The Income Tax (Transfer Pricing) Regulations, 2014 (The Regulations), in effect since 7 February 2014, explicitly require taxpayers with related party transactions to have contemporaneous transfer pricing documentation in place at the time of filing their income tax return. The transfer pricing documentation should be provided to the TRA within 30 days of it being requested. (For further detail on the Regulations refer to our newsletter issued in May 2014.)

## ***Enforcement by the TRA***

Recent years have seen significant tax audit activity from the TRA in relation to transfer pricing matters, and this focussed has increased since the beginning of 2015.

Until recently, TRA had not been formally requesting transfer pricing documentation from taxpayers. However, since September 2015, the TRA has sent requests to several taxpayers requesting transfer pricing documentation on the basis of their powers granted by the Regulations. The timing would appear to be driven by the fact that tax returns for companies with a December 2014 return should have been submitted by the deadline of June 2015, or if an extension was granted then no later than August 2015.

The letters sent by TRA give taxpayers 30 days to provide the transfer documentation, and include guidelines on the minimum information expected to be included in such documentation.

## ***Penalties for non-compliance***

The penalty provisions in the Regulations provide for the following penalties for non-compliance with transfer pricing documentation requirements:

- Imprisonment for not more than 6 months and/or
- A fine of not less than 50 million Tanzanian shillings.

## ***Our experience***

Preparing transfer pricing documentation is time consuming as a significant amount of information needs to be collected, reviewed and analysed. A transfer pricing document requires as a minimum a business background, industry analysis, functional analysis, the terms of the transactions, analysis, selection of methods and an economic analysis.

Even relatively straightforward documentation can take between 6 to 8 weeks to prepare. Therefore it is not advisable to delay preparation until a TRA request for documentation.

Aside from the need to be able to respond to potential TRA requests for such documentation, the transfer pricing documentation is an

important report as the TRA have to refute it in order to make any transfer pricing adjustment. This is an important consideration bearing in mind that the Regulations impose a penalty of 100% for any transfer pricing adjustment made as part of a tax audit, and against a background of transfer pricing adjustments that can be quite high in quantum.

In any case, even where extensions are granted, these do not exceed an additional 30 days and explicitly state that if the transfer pricing documentation is not provided within the extended time, then the penalty for non-compliance will be imposed.

### **Action required**

Companies with related party transactions should urgently ensure that they have a transfer pricing documentation to support their transactions.

Although we have been successful in obtaining time extensions from the TRA for some clients in providing the transfer pricing documentation, they have indicated that such extensions are only being granted because the documentation requirement is a relatively recently imposed requirement.

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### **Let's talk**

If you require our assistance in preparing / updating your transfer pricing documentation, please contact:

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