

**15 June 2022**

The Co-Coordinator of the Transfer Pricing Subcommittee  
The United Nations Committee of Experts on International Cooperation in Tax Matters  
United Nations  
New York  
United States of America

By Email: [taxcommittee@un.org](mailto:taxcommittee@un.org)

Subject: Response to the Call for Comments on transfer pricing workstreams

Dear Sirs and Madams,

Thank you for the opportunity to provide our input on the workstream dealing with toolkits to assist developing country tax administrations in conducting efficient and effective transfer pricing risk assessments and audits as well as workstream dealing with dispute avoidance and resolution.

Over the last few years, several African countries have introduced transfer pricing rules or regulations while others have updated the existing transfer pricing legislation. At the same time there has also been an increase in transfer pricing audit activity performed by tax authorities in Africa.

Due to the complex nature of transfer pricing, transfer pricing audits often lead to disputes that tend to take many years to resolve. However, many disputes are conducted in an environment where there is an apparent lack of trust between revenue authority and business. This can result in unusually high tax demands, for which it is difficult to determine the legal basis, or the basis for the comparables utilised in the tax authority analysis. Other disputes are caused by local transfer pricing regulations that are not clear and tend to deviate from international guidance. In some cases there is inconsistent application of the regulations coupled with a lack of guidance on the implementation of the regulations. Therefore greater consistency in transfer pricing approaches across Africa, would both help businesses to engage better with revenue authorities on these issues and resultantly, build more trust between revenue authority and business.

Finally, there are some disputes which result from a lack of transfer pricing expert capacity within a given tax authority and we believe these can be addressed through training and capacity building.

While it is common globally for MNEs to approach tax authorities in advance and enter into advance pricing agreement (APA) where the pricing methodology is agreed and cannot be challenged for an agreed period of time (subject to certain terms and conditions), this is generally uncommon in Africa as most African countries do not have APA regimes and even those that have APA regime in their legislation, they have not implemented it. Even countries that have advance tax ruling (ATR) systems like South Africa exclude transfer pricing issues from the ATR system.

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For business, tax certainty is a key priority as it affects business decisions and costs of operation. Tax certainty is supported by clear and up to date rules, consistent implementation of the tax rules coupled with guidance that minimises disputes between the tax authority and business.

In view of the above, we support the development of toolkits to assist developing countries tax administrations in conducting efficient and effective transfer pricing risk assessments and audits and on dispute avoidance and resolution. We believe that will go a long way in eliminating uncertainty.

With regard to the development of the toolkit to assist developing countries tax administrations in conducting efficient and effective transfer pricing risk assessments and audits we propose that the following factors be taken into account:

- clear tax administration rules setting out the rights and obligations of both the tax authority and taxpayer including clear processes to resolve issues at the initial stages, through a dialogue between the tax authority and the taxpayer and processes to follow before raising assessments. This could involve the introduction of client relationship managers within the tax administration who will be responsible for improving engagement and relationship between the tax authority and taxpayer.
- ensuring equitable and transparent legal processes such as providing reasonable time to the taxpayers within which to respond or provide information as transfer pricing matters tend to span many years requiring volume of information;
- eliminating uncertainty about the application of transfer pricing rules through the development of transfer pricing guidance, practice or interpretation notes; and
- ensuring that transfer pricing regulations and guidelines are aligned as far as possible with global best practices and where there are deviations, such deviations are clearly explained and communicated to taxpayers through mechanisms such as practice and interpretation notes.

With regard to the development of toolkit on dispute avoidance and resolution, there should be more focus on dispute prevention mechanisms so that the dialogue begins earlier and this may result in fewer formal disputes. We therefore propose that the following factors be taken into consideration:

- recognition of the value and importance of advance pricing agreements (APAs). Currently, the only countries in Africa that have introduced APA provisions in their legislation are: Botswana, Burkina Faso, Congo Brazzaville, Egypt, Gabon, Nigeria, Morocco, Senegal, Tanzania, Tunisia, and Uganda. Even these countries have not fully implemented the APAs and therefore guidance on the implementation or negotiation of APAs in the toolkit will be very helpful.
- promoting the introduction of advance tax ruling (ATR) systems, especially for developing countries that have not introduced APAs, with these rulings redacted and published. We believe that these will support greater transparency and taxpayers may be encouraged to seek rulings as they benefit from the certainty provided;

Regarding the dispute resolution mechanisms, the route for resolving disputes should be clarified as there are various mechanisms that may come into play at different phases. The objective should be to resolve disputes equitably, transparently and efficiently. Other than the well-known dispute resolution mechanisms such as mutual agreement procedure (MAP) and arbitration, we propose that dispute resolution mechanisms such as alternative dispute resolution (ADR) or mediation be considered. ADR as a mechanism to resolve disputes in-country can provide an early and effective opportunity to resolve disputes before going to court. However, it is important that the presiding official is independent and has supporting transfer pricing experts especially in complex transfer pricing matters.

If you have any queries regarding this submission or if further information would be useful, please contact Andrew Titchener ([andrew.titchener@vodafone.com](mailto:andrew.titchener@vodafone.com)) or Lutando Mvovo ([Lutando.mvovo@vodacom.co.za](mailto:Lutando.mvovo@vodacom.co.za)).

Yours faithfully

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