Building Africa's
transfer pricing technical expertise

AFRICAN TAX
ADMINISTRATION FORUM

FORUM SUR
L'ADMINISTRATION
FISCALE AFRICAINE

1. Introduction

In an increasingly globalised world most trade is carried out by multinational companies and a substantial part consists of transactions within group companies. African countries are very much part of the globalised economy and are increasingly opening their borders to international trade and investment. This is important for economic development but it is essential, also, that developing countries are able to collect tax on the profits that multinational enterprises earn in their countries and do so in a way that does not discourage or distort international trade and investment.

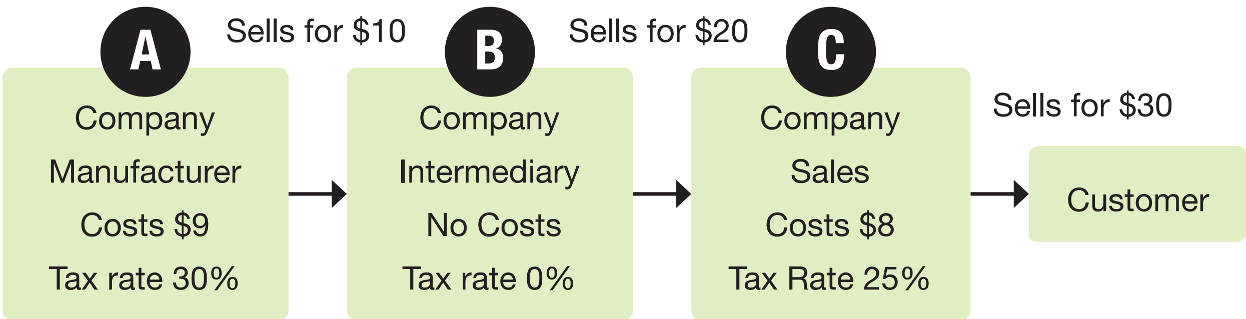
When members of multinational groups of companies undertake transactions with each other such as buying and selling goods and services, one member of the MNE charges a price to another member (i.e. the "transfer price"), which is reflected in their accounts and forms the basis for the computation of their accounting and taxable profits. The transfer prices used by multinational enterprises influence the amount of profits that they report (and pay tax on) in each country in which they operate. An example of a transfer pricing transaction between companies belonging to the same MNE and operating in three different jurisdictions is illustrated below.

Profit calculations derived from transfer pricing

A: 10 – 9 =1

B: 20 – 10 =10

C: 30 – 28 = 2



For purposes of this example, the intermediary company B (which buys goods from A for $10 and sells them to C for $20) generates significant profit despite carrying on no economic activity, nor incurring any cost. In this case, the intermediary is located in a no-tax jurisdiction and does not incur tax on this profit. Transfer pricing rules raise the question as to whether an "arm's length" price has been set between the producing, intermediary and selling companies. If not, the governments of either or both of the producing and selling companies may lose out on significant potential revenues.

2. Providing transfer pricing technical assistance programmes

Many members report that abusive transfer pricing practices are one of the most significant risks to their tax base and have requested ATAF's assistance to build effective transfer pricing regimes. In response to these calls for assistance, ATAF, in partnership with the OECD, is now delivering transfer pricing technical assistance programmes in ten member countries.[1] We have recently recruited two transfer pricing experts, one on loan from the OECD and one on loan from HMRC in the UK.

The programmes are already having a significant impact on both improvements in increasing revenue collection and starting to bring in legislation that both addresses tax loss and creates a more certain and transparent investment climate.

Revenue collection

"We collected an additional US$105 million tax from the audit of a MNE taxpayer using the advice we received from the expert at one of the programme's workshops. These programmes add real value" - **Moses Madongorere** Case Manager, Investigations, ZIMRA, Zimbabwe

New legislation

"The advice we are receiving from the technical assistance programme is invaluable to Botswana's review of our current transfer pricing rules and other legislation relating to international tax matters"**- William Nkitseng**, General Manager, LTO, BURS, Botswana

If you are interested in ATAF providing such a technical assistance programme in your country, please contact one of the ATAF staff listed at the bottom of this publication.

[1] Botswana, Kenya, Liberia, Malawi, Namibia, Nigeria, Senegal, Uganda, Zambia and Zimbabwe

3. ATAF as the African voice on setting the global tax rules

At the ATAF International Taxation conference in 2014, members noted that the OECD/G20 BEPS Project's focus on ensuring profits should be taxed where the economic activity is taking place was extremely important for Africa and that Africa must have a voice in setting the new rules to ensure they took account of the specific challenges faced on the continent. The ATAF Cross Border Taxation Technical Committee (ATAF/CBT TC) was created in June 2014 to define the African position with the members, communicate the African response to the BEPS project and in general present an African perspective on global tax matters. The CBT TC has participated in the OECD's:

- Working Party 1 on Tax Conventions and Related Questions
- Working Party 6 on Taxation of Multinational Enterprises
- Working Party 11 on Aggressive Tax planning

Having reviewed thousands of pages of deeply technical and complex papers drafted by the Working Parties, the CBT TC, with the support of ATAF technical experts, submitted numerous written comments on:

- The Artificial Avoidance of Permanent Establishment Status;
- Transfer Pricing issues relating to i) cross-border commodity transactions, ii) intra-group services, and iii) transfer pricing documentation rules; and
- Interest deductibility rules.

ATAF Delegates also made numerous substantive interventions during the Working Party meetings. This work resulted in revisions to:

- The recommended approach to interest deductibility rules
- Revised transfer pricing guidelines relating to pricing cross border commodity transactions
- Revised transfer pricing guidelines relating to intra-group services
- Revision to Article 5 of the OECD Model Tax Convention (relates to Permanent Establishments)

These are all areas where members told us the existing international tax rules did not address African challenges. The revised rules will assist in meeting those challenges.