

SUGGESTED APPROACH

to Drafting Transfer Pricing Practice Notes

An ATAF Publication



AFRICAN TAX
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FORUM SUR
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FISCALE AFRICAINE



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INTRODUCTION

About this Suggested Approach

ATAF members have reported that issues relating to transfer pricing represents one of the highest risks to the tax base of African countries. According to the United Nations Economic Commission for Africa, Africa is losing approximately USD 50 billion per year in illicit financial flows. Abusive transfer pricing practices is one of the primary sources of these losses.

Transfer pricing is the mechanism for pricing transactions between related legal entities within the same multinational enterprise (MNE). Various terms are used to describe such transactions but for the purposes of this Suggested Approach to Drafting Transfer Pricing Practice Notes uses the term “controlled” transactions. Such transactions may include the purchase or sale of goods or intangible assets, the provision of services, the provision of financing, cost allocation, or cost-sharing agreements.

It is important to note that transfer pricing is a normal and commercial practice that is used by all MNEs, to price their controlled transactions. However such transactions provide opportunities for profit shifting. To address such tax avoidance an international standard of the arm’s length principle. This requires that for the purposes of computing taxable income of the parties to the transaction the terms and conditions (including the price) of the controlled transaction are comparable to the “arm’s length” terms and conditions at which the transaction would have taken place between unrelated parties. However, transfer pricing may become abusive or illegal when related parties seek to distort the price to reduce their overall tax liability.

This is the fourth publication in the ATAF series of *Suggested Approaches* and it is strongly recommended that it is read in conjunction with the *ATAF Suggested Approach to Drafting Transfer Pricing Legislation* which sets out a suggested approach to the drafting of transfer pricing legislation. *The Suggested Approach to Drafting a Transfer Pricing Practice Note* provides taxpayers with guidance on how in practice the tax administration will implement the country’s transfer pricing legislation. This publication sets out a proposed approach as to how a tax administration would implement the *ATAF Suggested Approach to Drafting Transfer Pricing Legislation*. As that will differ to a varying degrees from member countries transfer pricing legislation it is extremely important that countries adapt the wording of this publication to reflect how the tax administration intends to implement the country’s transfer pricing legislation.

The draft language set out in the attached is intended to be flexible. The intention, however, is that the subject matter contained in each of the sections of the publication be considered by countries as they implement a transfer pricing regime based on the arm’s length principle. The explanatory notes at the end of the document describe in greater detail some of the reasoning underlying the Suggested Approach.



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