

Namibia Transfer Pricing

Transfer pricing legislation and rules

Section 95A

“95A. (1) For the purposes of this section

‘goods’ means any goods, whether tangible or intangible, and includes, without limiting the generality of the foregoing, any corporeal movable thing, fixed property and any real right in any such thing or fixed property;

‘international transaction’ means a transaction, operation or scheme entered into between

(a) (i) a person who is a resident; and

(ii) any other person who is not a resident; or

(b) (i) a person who is not a resident; and

(ii) any other person who is not a resident,

for the supply of goods or services to or by a permanent establishment of either of such persons in Namibia; or

(c) (i) a person who is a resident; and

(ii) any other person who is a resident,

for the supply of goods or services to or by a permanent establishment of either of such persons outside Namibia; or

(d) (i) a person who is a resident; and

(ii) any other person who is a resident,

where either of such persons is as a result of the application of the provisions of any agreement entered into by Namibia for the prevention of double taxation, not subject to tax in Namibia;

‘resident’ means

(a) any natural person who is ordinarily resident in Namibia; or

(b) any person (other than a natural person) which is incorporated, established or formed in Namibia or which has its place of effective management in Namibia;

‘services’ includes anything done or to be done, including, without limiting the generality of the foregoing

(a) the granting, assignment, cession or surrender of any right, benefit or privilege;

(b) the making available of any facility or advantage;

(c) the granting of financial assistance, including a loan, advance or debt, and the provision of any security or guarantee;

(d) the performance of any work;

(e) an agreement of insurance; or

(f) the conferring of rights to incorporeal property.

(2) Where any goods or services are supplied or acquired in terms of an international transaction and

(a) the acquiror is a connected person in relation to the supplier; and

(b) the goods or services are supplied or acquired at a price which is either

(i) less than the price which such goods or services might have been expected to fetch if the parties to the international transaction had been independent persons dealing at arm's length (such price being the arm's length price); or

(ii) greater than the arm's length price,

then, for the purposes of this Act in relation to either the acquiror or supplier, the Minister may, in the determination of the taxable income of either the acquiror or supplier, adjust the consideration in respect of the international transaction to reflect an arm's length price for the goods or services.

Practice Note 2 of 2006

During September 2006, the Director of Inland Revenue issued Practice Note 2 of 2006 containing guidance on the application of transfer pricing the policies and procedures legislation.

Practice Note 2 determines that:

"The Taxpayer needs to demonstrate that it has developed a sound transfer pricing policy in terms of which transfer prices are determined in accordance with the arm's length principle by documenting the policies and procedures for determining those prices."

Documentation requirements

The transfer pricing documentation should include the policies and procedures for determining the arm's length prices. However, the taxpayer is expected to use judgment in determining the level of documentation required.

Paragraph 8.5 states that a taxpayer is required to be in possession of transfer pricing documentation, for example, to be able to demonstrate that prices charged by or to that taxpayer in terms of a cross-border transaction with connected persons, is arm's length. Such taxpayer would also be expected to retain and implement transfer pricing documentation. Thus, when the Directorate of Inland Revenue performs transfer pricing audits, a taxpayer would be expected to be able to produce appropriate documentation (and have implemented the relevant pricing), even retrospectively.

Currently, there is no obligation to submit transfer pricing documentation.

Methods

Namibia makes use of the five methods in the OECD Transfer Pricing Guidelines, namely:

- Comparable Uncontrolled Price Method
- Resale Price Method
- Cost Plus Method
- Transactional Profit Split Method
- Transactional Net Margin Method

The taxpayer shall adopt the method that is most appropriate for each specific transaction in order to reflect the arm's length principle.

Advance Pricing Agreement (APA)

There is currently no provision made for Advanced Pricing Agreements in Namibia. The Tax Authority does, however, issue binding opinions whenever requested by the Taxpayer for particular transactions.

OECD Transfer Pricing Guidelines

Although Namibia is not a member of the OECD, Inland Revenue accepts the OECD Guidelines and has largely based its practice on them. Practice Note 2 provides as follows:

"This Practice Note is based on and acknowledges the principles of the OECD Guidelines. Nothing in this Practice Note is intended to be contradictory to the OECD Guidelines and in cases where there is conflict, the provisions of the OECD Guidelines will prevail in resolving any dispute."

Inland Revenue also accepts the principal methods referred to in the OECD Guidelines.