Transfer Pricing Country Summary

Malawi

June 2022

1. Introduction

Malawi abolished the Taxation (Transfer Pricing) Regulations 2009 on July 1, 2017, and enacted the Taxation (Transfer Pricing Documentation) Regulations 2017, as well as the Taxation (Transfer Pricing) Regulations 2017. With effect from 1 July 2017, Section 127A of The Taxation Act, which dealt with TP and was enacted in 2009, was changed.

2. Laws & Regulations

a) References to OECD/EU/Local Rules

The Malawian TP regulations that was contained in Chapter 41:01(Taxation Act) of the Income Taxation Act, 'Taxation Transfer pricing regulation 2009', was replaced bynew legislation on transfer pricing on 1July 2017. This regulation provides guidelines for determining the arm's length price for supply and transfer of goods and services; administrative rules, including the types of records and documents required by the commissioner general of taxes. Per the new requirements, taxpayers have to prepare a contemporaneous transfer pricing documentation. The TP regulation applies to domestic and cross-border transactions between related persons, and are based on OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (OECD Guidelines).

The updated regulations are contained in two Government notices

- Transfer pricing documentation regulations (Government Notice No. 36), and
- Transfer pricing regulations (Government Notice No. 37).

b) Definition of Related Party

There is no relationship threshold for Transfer Pricing regulations in the Act to apply. The regulations simply applies to the sale or purchase of goods; and lease of tangible assets; the transfer, purchase or use of tangible assets; the provision of services; the lending or borrowing of money; and any other transaction that may affect the profit and loss of the enterprises involved.

The regulations include a number of paragraphs that specifically concern intra-group services. In line with the OECD guidance on intra-group services, an intra-group service charge shall be considered consistent with the arm's length principle where:

- It is charged for a service that is actually rendered;
- The service provides, or was expected to provide, the recipient with economic or commercial value to enhance its commercial position;
- It is charged for a service that an independent party in comparable circumstances would have been willing to pay for or would have performed in-house; and
- Its amount corresponds to that which would have been agreed upon between independent parties in comparable circumstances.

c) Nature of Transfer Pricing Documentation

Malaysia implemented Country-by-Country Reporting (CbCR) on January 1, 2017.

d) Tax Havens & Blacklists

Not applicable.

e) Advance Pricing Agreement (APA)

There is currently no APA applicable in the Malawian TP rules.

f) Audit Practice

In a bid to scrutinize and enforce its TP regulation, the Malawian Revenue Authority (MRA) has a service with 500 employees in more than 15 field offices. This aggressive enforcement of the TP regulations revealed that many MNCs are not fully compliant with the transfer pricing rules. The MRA has equally demonstrated an efficient and proactive interest in capacity building geared at educating staffs capable of handling transfer pricing issues, hence its active participation at the African Tax Administration Forum (ATAF).

3. Transfer Pricing Documentation

a) Level of Documentation

The level of documentation is high but flexible for compliance. In this respect a Malawian company may adopt any date as its accounting year-end. The taxable income is generally taxed in the fiscal year in which the accounting year ends, usually from 1 July to 30June.

Although there is no requirement to file the transfer pricing documentation, documentation must be submitted within 45 days after a written request issued by the Commissioner General of the MRA.

According to the regulation, taxpayers are required to conform to contemporaneous documentation requirements for controlled transactions. The following items are to be included in the documentation:

- An overview of the taxpayer's business operations and organizational chart;
- Description of the corporate organizational structure of the group of which the taxpayer is a member and the group's operational structure;
- Details of controlled transactions including analysis of the comparability factors;
- Details of the functions undertaken by the connected parties in relation to the controlled transaction;
- An explanation of the selection of the most appropriate transfer pricing method;
- Financial statements for the parties to the controlled transaction;
- A comparability analysis, including a description of the process to identify comparables, basis for rejection of any comparables, any adjustments made, etc.;
- Details of any industrial analysis, economic analysis, budgets, or projections relied on;
- Details of any relevant Advance Pricing Agreements or similar arrangements in other countries;
- Conclusions as to the consistency of the conditions of controlled transactions with the arm's length principle, including any adjustments made to ensure compliance; and
- Any other documentation or information for the determination of compliance with the arm's length principle.

b) Industry Analysis

By identifying value drivers for the relevant industry, a first indication of the level of profitability common in the industry is being given.

c) Company Analysis

A description of the management structure of the local entity, a local organisation chart, and a description of the individuals to whom local management reports and the country(ies) in which such individuals maintain their principal offices.

A detailed description of the business and business strategy pursued by the local entity including an indication whether the local entity has been involved in or affected by business restructurings or intangibles transfers in the present or immediately past year and an explanation of those aspects of such transactions affecting the local entity.

d) Functional Analysis

In conducting a functional analysis, an assessment is made of the significant activities and responsibilities that are performed by the related parties relevant to the Intercompany Transactions under review, the tangible and intangible assets that are employed and the risks that are borne in undertaking the business activities. Such an assessment is consistent with the recommendations that have been made in the OECD Guidelines at paragraph 1.51.

e) Choice of Transfer Pricing Method

The taxpayer may therefore choose amongst the OECD Transfer Pricing Methods in determining the arm's length nature of the transaction, thus:

- The Comparable Uncontrolled Price method;
- The Resale Price method;
- The Cost Plus method;
- The profit split method;
- The TNMM and;

The Commissioner General under circumstances may accept other methods, where the approved methods (listed above) are regarded as less appropriate and the alternative method does provide a better arm's length price.

f) Economic Analysis - Benchmark Study

Per the Act, taxpayers are required to provide comparables to justify their TP policy and the arm's length standard of the taxable transaction. Taxpayers involved in intercompany transaction are urged to include the market value of such goods, property or services in their assessable income during tax filing.

g) Inter-company (IC) Legal Agreement

Although an Inter-company legal agreement formalizes the business and financial relationship between group entities, the legal agreements have a lower ranking since the OECD 2017 Guidelines made the ''conduct of parties'' the prevailing concept.

h) Financial Statements

Not applicable.

i) Production Process for TP Relevant Returns, Documents, Forms and Financials

In the chart below, the existence of the filing requirements with the details of which format is used, the latest filing date, notification requirement and its deadline, thresholds to be applied in case it exists, and the required languages are demonstrated. This information can be seen respectively for CIT, master file, local file, CbCR, local forms, annual accounts and segmented P&L documentations.

	Prepare or File?	**Format**	**Deadline**	**Notification Deadline***	**Threshold * (Yes/No)**	**Local Language (Yes/No)*(If "No", it can be filed in English)**
Corporate Income Tax	File	Local format	filed within 180 days after the end of the financial year	N.A.	N.A.	No
Master File	Prepare	OECD Guidelines format	n.a.	n.a.	n.a.	No
Local File	Prepare	OECD Guidelines format	30 june	n.a.	n.a.	No
CbCR	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
* Malawi has NOT signed the MCAA agreement for the filing of CBCR.						
* Malawi does not request as much and detailed information from smaller and less complex enterprises (SME's included) than it does from large and complex enterprises.						

j) Mandatory Language

The language of Transfer Pricing documentation in Malawi is the English language.

k) Notification Requirement

Not applicable.

l) Record Keeping

The Malawian Taxation Act requires businesses/persons to maintain sufficient records of their income and expenditure in order to enable income and allowable deductions readily ascertained. Records must be retained for at least 7 years, after completion of the transaction and acts or operation to which they relate except notified by the Commissioner that its preservation is not required.

m) Penalties and Interest Charges

Any person who fails to comply with the transfer pricing documentation requirements shall be liable to an initial penalty not exceeding the Malawi Kwacha equivalent of 1,400 US Dollars at the prevailing exchange rate. Subsequent penalties will be imposed in an amount not exceeding the Kwacha amount equivalent of 2,100 US Dollars at the prevailing exchange rate for every month while the failure continues.