



Transfer Pricing Country Summary

Namibia

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1. Introduction

Namibia is not a member of OECD, but the tax authority accepted OECD TP guidelines. Namibian tax practices are largely based on them.

2. Laws & Regulations

a) References to OECD/EU/Local Rules

Namibian TP regulation is enshrined in Section 95A of the Namibian Income Tax Act (ITA) on determination of taxable profit with respect to international transactions. Largely in line with the OECD Transfer Pricing Guidelines, the Namibian Transfer pricing regulations took effect 14 May 2005.

According to its provisions, the Minister of Finance may adjust the consideration in respect of a transaction between connected persons to reflect an arm's length price for goods and services between an acquirer and a supplier in an International transaction. Practice Note (PN) 2/2006 of Namibia further interprets Section 95A by providing guidelines on the procedure to follow in determining the arm's length price, the nature of the documentation required and solving other practical transfer pricing issues, taking into account the Namibian business environment.

b) Definition of Related Party

A 'connected person' as defined by PN 2/2006 in relation to a Namibian company, constitutes its Holding Company; its subsidiary; the subsidiaries of the same Holding Company; holding 20% of the resident companies equity share and any other company that manages and controls a connected party. The Transfer Pricing rules also apply to transactions between a Head office and its branch; and in branches of the same legal person dealing with each other.

c) Nature of Transfer Pricing Documentation

In terms of par 8 of Practice Note 2 of 2006 (PN 2/2006) the taxpayer is

d) Tax Havens & Blacklists

Not applicable.

e) Advance Pricing Agreement (APA)

There is currently no provision on Advanced Pricing Agreements (APA) in the Namibian Transfer pricing rules.

f) Audit Practice

As transfer pricing cases are fact-sensitive and may involve difficult evaluations of comparability, markets, and financial or other industry information, the Namibian Minister of Finance has set up a special unit to deal with Transfer pricing cases. The country equally seeks technical assistance from the OECD and the South African Revenue Services (SARS) to better apply its transfer pricing provisions.

3. Transfer Pricing Documentation

a) Level of Documentation

In Namibia, tax returns lodged in the form prescribed by the minister must be signed by the taxpayer or his duly authorized agent, including a computation of the taxable income of the person and the amount of tax payable on the income.

The Minister may thus require any taxpayer to submit, in support of any return, a financial statement certified by an accountant registered with the 'Institute of Chartered Accountants of Namibia' or any other professional involved in the performance of functions in accounting and related fields approved by the Minister. Any doubtful balance sheet, statement of account, assets and liabilities prepared by any other person must be clarified to the minister.

In practice, it is up to the taxpayer to judge and determine the level of documentation required for transfer pricing purposes. Thus, the level of documentation required depends on the facts and circumstance of the case.

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 Namibia Minister of Finance in line with the OECD, endorsed the CUP, RPM, CP, TNMM and the Profit Split methods as acceptable transfer pricing methods. Although the tax authorities of Namibia have not indicated a preferred method¹, the most appropriate of these methods depends on the particular situation, and the extent and reliability of the data to enable its proper application.

f) Economic Analysis – Benchmark Study

There is no requirement for comparables. In general, a three– year testing is applied. Namibia does not require a fresh benchmarking search every year, and it prefers the weighted average with regards to arm's length analysis.

¹ [tax-first-newsletter-july-2021.pdf \(pwc.com\)](#) source states: "No prescription is given by the Namibian Tax Authorities on which method is preferred or which must be used. However, it is evident that some methods may provide more reliable results than others. Choosing the most appropriate method will depend on various factors, such as the availability of comparative data, the quality of such data and the taxpayer's specific circumstances."

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. These 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	N/A	N/A	N/A	N/A	N/A	N.A
Master File	N/A	N/A	N/A	N/A	N/A	N.A
Local File	N/A	N/A	N/A	N/A	N/A	N.A
CbCR	N/A	N/A	N/A	N/A	N/A	N.A
Local form X	N/A	N/A	N/A	N/A	N/A	N.A
Local form Y	N/A	N/A	N/A	N/A	N/A	N.A
Local form Z	N/A	N/A	N/A	N/A	N/A	N.A
Annual Accounts	N/A	N/A	N/A	N/A	N/A	N.A
Segmented P&L	N/A	N/A	N/A	N/A	N/A	N.A

*Namibia has not signed the MCAA agreement for the filing of CbCR.

* Namibia 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 Act stipulates that the minister may require tax return documentation to be produced on oath. Deeds, plans, instruments, books, accounts, trade lists, stock lists or documents which the Minister may deem necessary for tax purpose must be produced in the English language; otherwise the Minister by notice in writing may, require the taxpayer to produce at his or her own expense and at such time and place as may be appointed, a translation in the English language prepared and certified by a sworn translator or a person approved by the Minister.

k) Notification Requirement

Not applicable.

l) Record Keeping

There is no specific time limit for transfer pricing records keeping in Namibia. The Act stipulates the Minister has the right to retain tax returns documentation for such period as necessary, after a consultation with the Auditor-General. The taxpayer on her part must preserve tax documentation with the same prudence, management principles that would govern evaluation of her business decisions.

m) Penalties and Interest Charges

There are no specific Transfer Pricing penalties in the Act, as supplemented by the Practice Note 2/2006. However, general tax penalty provisions found in the Act applies to Transfer Pricing cases. These penalties comprise:

- Underpayment of taxes is penalized by up to 200% of the initial amount and interest also accrues to the unpaid amount at a 20% rate or part thereof;

An additional tax equal to 100% of an unpaid provisional tax arises where the first provisional payment is not at least 40% of the years' taxable income;

- An additional tax equal to 100% of the unpaid tax arises where the second provisional payment is not at least 80% of the taxpayer's taxable income;

- And, a late payment of the second provisional return is subject to additional tax of NS100 for each day during which the returns remain outstanding.