



Transfer Pricing
Country Summary

Zambia

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1. Introduction	2
2. Laws & Regulations	2
a) References to OECD/EU/Local Rules.....	2
b) Definition of Related Party.....	2
c) Nature of Transfer Pricing Documentation.....	2
d) Tax Havens & Blacklists.....	2
e) Advance Pricing Agreement (APA).....	2
f) Audit Practice.....	3
3. Transfer Pricing Documentation	3
a) Level of Documentation.....	3
b) Industry Analysis.....	3
c) Company Analysis.....	3
d) Functional Analysis.....	3
e) Choice of Transfer Pricing Method.....	3
f) Economic Analysis – Benchmark Study.....	4
g) Inter-company (IC) Legal Agreement.....	4
h) Financial Statements.....	4
i) Production Process for TP Relevant Returns, Documents, Forms and Financials.....	4
j) Mandatory Language.....	5
k) Notification Requirement.....	5
l) Record Keeping.....	5
m) Penalties and Interest Charges.....	6

1. Introduction

The amended regulations ("Regulations"), incorporate many of the OECD's recommendations in respect of BEPS Actions 8-10, including the requirement to prepare transfer pricing documentation, rules governing the application of the arm's length principle, and a new safe harbor in relation to low value add intra-group services.

The Regulations are to be interpreted consistently with the OECD Guidelines and the United Nations Practical Manual on Transfer Pricing for Developing Countries. In the case of conflict between these documents and the Regulations however, the Regulations prevail.

On 14 December 2017, the OECD announced that Zambia has joined the inclusive framework on BEPS.

2. Laws & Regulations

a) References to OECD/EU/Local Rules

The Zambian transfer pricing rules apply to related party transactions both domestically and cross-border.

The legislative basis for the Zambian transfer pricing rules is Section 97 (A-D) of the Income Tax Act (Chapter 323 of the laws of Zambia) ("Act"), read with the Income Tax (Transfer Pricing) Regulations of 2000, as amended by the Income Tax (Transfer Pricing) (Amendment) Regulations 2018, published on 6 April 2018.

b) Definition of Related Party

The threshold for application of the transfer pricing regulation is 50% participation by a person/corporate entity, directly or indirectly in the management, control or capital of a second person/corporate body at a point in time.

c) Nature of Transfer Pricing Documentation

Zambia participated in the OECD/G20 Inclusive Framework on BEPS but has not yet officially implemented BEPS Action Plan 13 regarding transfer pricing documentation. The country has invested substantial resources in building its transfer pricing audit capacity, specifically in the mining sector. In addition, Zambia joined Tax Inspectors Without Borders (TIWB) and the BEPS in Mining Programme.

In a recent landmark case, ZRA were able to successfully combat base erosion and profit shifting in the mining sector. In the judgement the court ordered a mining company to pay an additional sum of 240 million Kwacha (USD 13 million) as ZRA was able to demonstrate tax avoidance in the form of base erosion and profit shifting schemes (*Zambia vs Mopani Copper Mines Plc., May 2020, Supreme Court of Zambia, Case No 2017/24*).

d) Tax Havens & Blacklists

Zambia does not have a tax haven or 'black list' for non-cooperative jurisdictions.

e) Advance Pricing Agreement (APA)

There is no provision for Advanced Pricing Agreements in the Act. However, a taxpayer may consult the tax authorities regarding the interpretation or application of any provisions in the Income Tax Act.

f) Audit Practice

In recent years the audit practice of Zambia has had its focus on the mining sector.¹ The tax authorities have been actively expanding their mining audit team to effectively deal with transfer pricing issues in the mining sector. Amongst other strategies, the tax authorities are working on a risk log, keeping track of many of the mining companies carrying on business in Zambia.²

3. Transfer Pricing Documentation

a) Level of Documentation

In terms of the Regulations, a person participating in a controlled transaction is required to prepare, on an annual basis, contemporaneous documentation (defined as documentation which is generated when a person is developing or implementing a controlled transaction), which is to be provided to the revenue authority upon request.

The structure and content required for such contemporaneous documentation is based on the local file template in Annex II to Chapter V of the OECD Guidelines, with some additional specific requirements regarding budgets and financial estimates.

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

As aforementioned, the ZRA has embraced the OECD Transfer Pricing international standards – the Arm's Length Principle. She also adopted the 5 OECD transfer pricing methods:

- the comparable uncontrolled price method;
- resale price method;

¹ [nrgi_zambia_transfer-pricing-study.pdf \(resourcegovernance.org\)](#).

² [nrgi_zambia_transfer-pricing-study.pdf \(resourcegovernance.org\)](#).

- cost plus method;
- transactional net margin method;
- transactional profit split method.

It is noted that the application of the CUP method in relation to the acquisition of new or used assets from non-connected persons resident outside Zambia, is subject to specific documentary requirements in relation to the supply chain, including invoices and delivery notes.

Other transfer pricing methods may be applied, in case it can be established that:

- none of the methods can be reasonably applied to determine arm's length conditions for the controlled transaction; and
- such other method yields a result consistent with that which would be achieved by independent persons engaging in comparable uncontrolled transactions under comparable circumstances.

The approval of the Commissioner-General is required in order to apply such non-standard transfer pricing methods.

f) Economic Analysis – Benchmark Study

Zambia follows the guidance on comparability analysis outlined in Chapter III of the OECD TP Guidelines.

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

Since the OECD 2017 Guidelines made the "conduct of parties" the prevailing concept, parties need to also make sure their conduct is in line with what is reported in their accounts.

In terms of guidance issued by the tax authorities, the following financial information should be provided by the taxpayer (Guidance on Preparing Transfer Documentation):³

- Annual local entity financial accounts for the fiscal year concerned. If audited statements exist, they should be supplied and if not, existing unaudited statements should be supplied.
- Information and allocation schedules showing how the financial data used in applying the transfer pricing method may be tied to the annual financial statements.
- Summary schedules of relevant financial data for comparables used in the analysis and the sources from which that data was obtained.

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.

³ [Guidelines on Transfer Pricing.cdr \(ibfd.org\)](https://www.ibfd.org/transfer-pricing/guidelines-on-transfer-pricing.cdr).

	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 GAAP/IFRS	June, 21 st .	No	No	No
Master File	Prepare	OECD Guidelines	June, 21 st .	No	Yes	No
Local File	Prepare	OECD Guidelines	June, 21 st .	No	Yes	No
CbCR	File	OECD Guidelines	December, 31 st .	Yes	Yes	No
Local Form	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
* Zambia has signed the MCAA agreement for the filing of CbCR.						
* Zambia 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

Documentation should be in English. Where a document required for purposes of the Regulations is not in English, the person required to submit it shall, at the person's own expense, produce a translation in English, prepared and certified by a translator before a Notary Public.

k) Notification Requirement

Every Zambian group entity, which is obliged to file a country-by-country report, should file the country-by-country reporting notification form. It should specify whether the Zambian entity is the ultimate parent entity, the surrogate parent entity, or if none of these, who will be the filing company within the group. The Country-by-Country reporting notification form must be filed ultimately on the last day of the financial year the notification relates to.

l) Record Keeping

In addition to the contemporaneous documentation, a person who engages in a controlled transaction is required to maintain certain information regarding the transaction, the associated person and the transfer pricing method used. The structure and content of such information largely follows the master file template in Annex I to Chapter V of the OECD Guidelines.

m) Penalties and Interest Charges

Zambia does not have specific transfer pricing penalties. The penalties enshrined in the Act generally apply on transfer pricing cases as well.

Thus, persons guilty of tax offences against the Act are liable for an imprisonment term not exceeding 12 months; and or to a fine; except otherwise another penalty are prescribed by the Commissioner-General.

Generally, penalties ranging from 17.5% to 35% for incorrect return may be charged on understated income amount.

Furthermore, late payment of tax (on mineral as well) is penalized by a fine of 5% per month of the amount due, plus an interest assessed on the outstanding tax payable at the Bank of Zambia discount rate plus 2% surcharge. Fraudulent filing of tax returns is fined at a rate of 52.5% of the amount.