Africa - Overview of recent transfer pricing legislation and compliance activities

Most countries in Africa have shown an active interest in transfer pricing over the last decade. In combination with the sharp increase in the volume of cross-border transactions, two trends have added to the complex and challenging nature of Africa's transfer pricing environment.

The first trend is an increase in specific transfer pricing rules or anti-avoidance legislation introduced by a number of African countries. To date, 33 countries in Africa have introduced some form of regulation that allows the tax authorities to adjust the pricing of related-party transactions; and there are signs that even more countries will move towards the introduction of transfer pricing rules.

The second trend is increased compliance activities by the tax authorities. For example, the Nigerian Revenue Authority is in the process of drafting specific transfer pricing guidelines. Currently, the Nigerian tax authority is authorized to adjust the tax liability of a company in situations when it considers any transaction that reduces or would reduce the amount of tax payable, to be artificial or fictitious. The new legislation would be intended to provide greater clarity for taxpayers.

South African transfer pricing rules

In South Africa, the transfer pricing rules have changed dramatically, with the focus shifting from looking at a specific transaction in isolation to looking at the overall profit objective, economic substance, and commercial objective of an arrangement with a related party. This change to the South African transfer pricing rules was effective 1 October 2011. Transfer pricing has also come up in the 2011 Budget Speech as one of two focus areas to generate additional tax revenue. A transfer pricing specialist from the UK has been engaged by the South African Revenue Service to spearhead this task.

KPMG observation

Companies doing business in Africa need to be aware that they can no longer view transfer pricing issues as isolated, country-specific concerns. Transfer pricing issues are global. It has been observed that transfer pricing examinations will be thorough and sophisticated, and the sanctions for non-compliance severe. Some countries in Africa may be expected to top the list for the most aggressive tax authorities in the near future.

Prudent multinational corporations will consider taking practical, coordinated steps to understand the transfer pricing documentation requirements in Africa. Risks must be identified and addressed. Companies will come to note that disputes and audits in Africa need to be avoided, or at the very least, administered and resolved.