# Rwanda Tax Alert

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# New Transfer Pricing Rules, 2020

## Ministerial Order No. 003/20/10/TC of 11/12/2020 Establishing General Rules on Transfer Pricing came into effect on 14 December 2020 with the publishing of Official Gazette No. 40 of 2020. For the first time, Rwanda now has elaborate TP rules which are consistent with international practice.

Transfer pricing (TP) rules are designed to ensure that transactions between related entities as well as dealings within an entity adhere to the arm's length principle. The fundamental aspect of the arm's length principle is that the price of a transaction between two or more related parties should be the same as those of a comparable transaction between two unrelated parties in comparable circumstances.

While transfer pricing has been a feature of Rwanda tax law since 2005, this is the first time that the country has issued elaborate Transfer pricing rules that are fairly consistent with international practice. In our view, this is a move in the right direction and gives international and regional businesses some level of certainty and consistency with regards to TP compliance while also helping to protect tax revenues against aggressive tax postures by some multinational enterprises operating in the country.

We hope that the below analysis will help to clarify on how these rules will impact your business operations:

### a) Scope of the new transfer pricing rules

The rules apply to entities in Rwanda which carry out controlled transactions with both domestic and foreign related persons.

By definition, related persons include family relatives up to the 3rd degree, direct or indirect participation in the management, control or capital of another enterprise or a third party who participates directly or indirectly in the management, control or capital of two enterprises.

Dealings involving a permanent establishment located in Rwanda are also covered by these rules.

The scope also includes "deemed controlled transactions" which are transactions that may not be carried out between related persons but applies to transactions with third parties who are deemed to operate in a country that is considered to offer beneficial tax regime. A detailed list of features which narrow down which countries are considered as offering such a beneficial tax regimes includes countries that offer a headline corporate income tax rate of 20 percent or less.

### b) Controlled transactions that are subject to the rules

The following categories of transactions between related persons are subject to Transfer pricing rules:

1. Sale, purchase or transfer for free of tangible assets e.g. inventory or other property;
2. Transfer or licensing of intangible assets;
3. Provision or receipt of services including providing services for free;
4. Financial transactions e.g. related party loans including interest free loans, advances, guarantees; etc.
5. Any other transaction that affects the profit or loss.

## c) Comparability factors

The rules provide that the Tax Administration shall consider the following factors in determining if controlled transactions are comparable to comparable uncontrolled transactions in conformity with the arm's length principle:

1. The contractual terms entered between related parties;
2. The functions, assets and risks assumed by the related persons that are party to a controlled transaction;
3. The characteristics of the property or services supplied or transferred;
4. The economic circumstances in which the transaction took place;
5. The business strategies pursued by the related persons in relation to the transaction.

## d) Transfer Pricing Methods

The rules prescribe the following transfer pricing methods

1. Comparable Uncontrolled Price (CUP) method (Article 9);
2. Resale Price Method (RPM) (Article 10);
3. Cost Plus Method (CPM) (Article 11);
4. Transactional Net Margin Method (TNMM) (Article 12);
5. Transactional Profit Split Method (Article 13);
6. Any other method other than the approved methods but only if it can be demonstrated that such method provides the most reliable transfer pricing outcome (Article 14).

## e) Threshold for preparation of Transfer Pricing Documentation

A taxpayer with an annual turnover which is less than RWF 600 Million is not required to prepare transfer pricing documentation. However, a taxpayer with a turnover less than RWF 600 million may still be required to submit documentation in the following two instances:

i. Carries out a single controlled transaction of RWF 10 million or more

ii. Carries out aggregated controlled transactions of RWF 100 million or more

## f) Deadline for preparation and submission of Transfer pricing documentation

Documentation for a relevant tax period must be in place before the deadline of income tax declaration. Consequently, taxpayers with a 31 December 2020 year-end must prepare the Local file for 2020 by 31 March 2021.

Upon request from the Tax Administration, the required documentation must be presented within seven (7) days.

## g) Documentation requirements

The rules provide that any person carrying out transactions that are within the scope of transfer pricing must have a transfer pricing policy and also prepare and maintain transfer pricing documentation (local file) that verifies that the conditions of the controlled transactions for a relevant tax period are consistent with the arm's length principle.

The following information must be included in a transfer pricing policy documentation:

1. an overview of the business operations;
2. a description of the corporate group's organizational and operational structure;
3. a general description of multinational enterprise business including important drivers of business profit and a description of the supply chain for the group's five (5) largest products or service offerings by turnover plus any other products or services amounting to more than five percent (5%) of group turnover;
4. a detailed description of the business strategy pursued by the taxpayer including an indication whether the taxpayer has been involved in or affected by business restructurings or intangible transfers in the present or immediately preceding year;
5. a list of the taxpayer's key competitors in Rwanda for each material category of controlled transactions in which the taxpayer is involved;
6. a description of the controlled transactions and the context in which such transactions took place including an analysis of the comparability factors;
7. detailed comparability and functional analysis of the related persons in relation to the controlled transaction;
8. explanation of the important assumptions made for the selection of most appropriate transfer pricing method, and, where relevant, the selection of the tested party and the financial indicator;
9. a summary of financial information used in applying the transfer pricing method;
10. an explanation of the reasons for performing a multi-year analysis, if any;
11. a comparability analysis in the manner prescribed in the rules;
12. details of any industry analysis, economic analysis, budgets or projections relied on;
13. a conclusion as to consistency of the conditions of the controlled transactions with the arm's length principle, including details of any adjustment made to ensure compliance;
14. information and allocation schedules showing how the financial data used in applying the transfer pricing method may be tied to the annual financial statements;
15. a summary of schedules of relevant financial data for comparable used in the analysis and the sources from which that data was obtained;

## h) Other information requirements

Other information that must also be included is as follows:

1. copies of all material intercompany agreements concluded by the taxpayer;
2. the country by country report where the ultimate parent of the taxpayer is required to prepare such a report;
3. controlled transactions schedule with the model form annexed to this Order;
4. any other documentation or information that is necessary for determination of the taxpayer's compliance with the arm's length principle with respect to the controlled transactions.

right people

right size

right solutions

At PKF, we have a dedicated team of tax professionals who are at hand to facilitate your business to understand the implications of this new regulations and ensure tax compliance.

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