

A photograph of two women in professional business attire. The woman on the left is wearing a colorful patterned headwrap and a dark blazer over a white shirt. She is smiling and looking down at a document on a table, holding a pen. The woman on the right is also smiling and looking at the same document. A laptop is visible on the table in the foreground. The background is dark with out-of-focus circular light bokeh in white, orange, and blue.

Transfer Pricing Dispute Resolution in Zambia



Transfer Pricing (TP) is becoming increasingly significant and challenging in our globalised and ever-changing environment. Policymakers are concerned about base erosion, profit shifting, and maintaining the local tax base as a result of global economic integration.

Tax authorities, such as the Zambia Revenue Authority (ZRA), are gathering more data about taxpayers' affairs with today's dynamic technology, through TP documentation such as Local Files, Master Files, and Country-by-Country Reports, which taxpayers should maintain and file, to provide a more valuable global perspective of a taxpayer's activities. Data analytics and data matching have also enabled tax authorities to share information and discuss best practices between jurisdictions.

Frequent and thorough TP audits have assisted tax authorities worldwide in detecting noncompliance and increasing tax revenues.

Because of the intricacy of TP, audits can be costly for taxpayers if not managed efficiently. Audits by tax authorities consume time, money, and human capital.

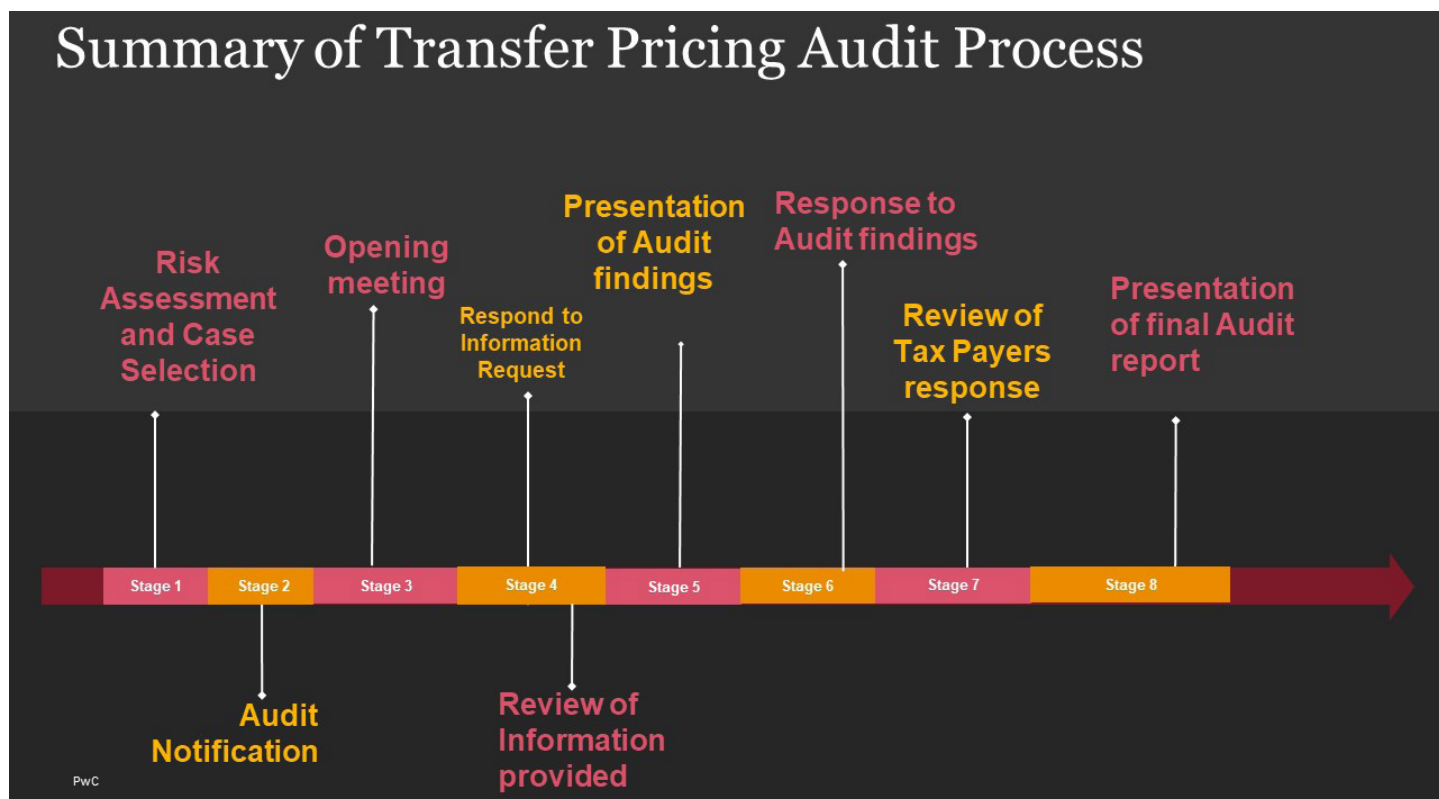
The increased scrutiny of Multinational Enterprise (MNE) TP arrangements and the tax authority's requirement to meet revenue demands, entails that taxpayers must be prepared for audits in addition to complying with local TP rules and regulations.

The Transfer Pricing Audit Process in Zambia

A taxpayer preparing for an audit should be familiar with the audit process, including the various audit stages and timelines.

Zambia's TP audit process is summarised in Figure 1 below:

Figure 1



Risk Assessment and Case Selection

The ZRA identifies taxpayers whose TP policies may be in conflict with the arm's length principle for audit. ZRA audit selection methods include:

Transactional approach: Entities that engage in high-risk related party transactions may be monitored by the ZRA and earmarked for audit. They are often large, complex transactions such as exploiting or transferring intangible property, incurring excessive management services, paying excessive interest.

Jurisdictional approach: Local entities that engage in transactions with entities in low or no tax jurisdictions may be considered high risk for transfer mispricing by the ZRA.

Risk based approach: If a local entity suffers significant or recurring tax or accounting losses in comparison to more profitable group entities operating in other jurisdictions, the ZRA may designate it high risk.

The ZRA may also assess TP risk using publicly available data. Nevertheless, the ZRA's primary TP risk assessment is based on corporate tax filings and Country-by-Country Reports.

Since more jurisdictions now share information with tax authorities in other jurisdictions, TP audit preparedness is becoming increasingly important.

Audit Notification

If it is decided to proceed with a TP audit, the taxpayer is notified via an Audit Notification Letter. The following information will also be included in this notification:

- The nature and scope of the audit
- The period covered by the audit
- An information request - This often includes TP documentation and any other supporting documentation.

It is important to remember that taxpayers are legally obligated to provide ZRA with requested information. To avoid an unfavourable outcome from a TP audit, taxpayers must provide the ZRA with all requested information, as far as is possible. In the event that a TP audit dispute proceeds to the Tax Appeals Tribunal or the Supreme Court, taxpayers who fail to provide the requested information would be prohibited from introducing new evidence during court proceedings.



Table 1 below describes the key TP audit stages that follow once an audit notification has been shared with a taxpayer.

Table 1: Key audit stages after the Audit Notification Stage

Audit Stage	Audit Procedure
Opening meeting and key personnel interviews	<ul style="list-style-type: none">• The ZRA may conduct interviews with key personnel in management and those involved in related party transactions.• This is a critical auditing step in which the taxpayer is given the opportunity to explain the company's operations, its related party transactions, and the group's TP policies among other matters.
Review of TP Documentation and other information provided	<ul style="list-style-type: none">• The ZRA examines the information gathered thus far throughout the audit process, including notes and other information gathered during the opening meeting and personnel interviews, as well as the information contained in the TP Local and Master Files.
Presentation of preliminary audit findings	<ul style="list-style-type: none">• Following a comprehensive evaluation of taxpayer information, the ZRA will provide its preliminary audit findings.• The preliminary findings of the ZRA are not audit assessments.• Before the ZRA presents their final audit report, taxpayers can submit clarifications to ZRA audit findings or provide new information to the preliminary findings.
Review of Taxpayers Response	<ul style="list-style-type: none">• The ZRA will take into account taxpayer responses to its preliminary findings. Further meetings with the ZRA may be necessary, and the ZRA may request additional information to support the taxpayer's perspective.
Presentation of Final Audit Findings	<ul style="list-style-type: none">• A final audit report is issued after the conclusion of a TP audit. A notice of assessment is also included in the final audit report.• Taxpayers can dispute audit assessments by filing grounds for objection.• The assessments raised at this point are due and payable on demand by the ZRA.• The concept of "pay now, argue later" may be applied to assessments even if the taxpayer disputes the assessment.



TP Audit Management - Best Practices

There are several ways for taxpayers to avoid the burden of managing TP Audits. Table 2 below describes some of the best practices that taxpayers can adopt.

Table 2: TP Audit Management

Audit Management Best Practices	Description
TP Defence file	<ul style="list-style-type: none">• TP audits are typically performed years after the related party transaction has occurred.• The Zambian TP documentation retention duration is 10 years, making it more difficult for taxpayers to locate the information needed for TP audits.• Taxpayers can create a TP defence file, which is an “audit-ready” work file that documents and makes transaction information available for TP audits.• A TP local and master file, invoices for goods and services, contractual agreements, financial statements, account ledgers, emails and reports, and other pertinent information can all be used to support the entity’s TP policies. TP defence files should be prepared contemporaneously with related party transactions.• Keeping a defence file can make the audit process more cost-effective and efficient by allowing the taxpayer to defend its TP policies and offer information regarding the periods under audit to the ZRA, especially if there is considerable employee turnover over the years.
TP Health Check	<ul style="list-style-type: none">• A TP health check enables taxpayers to self-examine their TP policies and practices in order to identify risks associated with related party transactions before the ZRA conducts an audit.• Risk identification allows the taxpayer to decide whether to revise corporate income tax filings or adjust their TP policies and practises to conform with the arm’s length principle and reduce the possibility of punitive tax avoidance penalties.
Use of Safe Harbors	<ul style="list-style-type: none">• According to the OECD TP Guidelines, a safe harbour is “a provision that applies to a defined category of taxpayers or transactions and that relieves eligible taxpayers from certain obligations otherwise imposed by a country’s general transfer pricing rules.”• By eliminating the need for benchmarking studies, a safe harbour under a TP regime may save taxpayers time and money.• The Zambian TP Regulations provide for “low value adding” pricing for services. Taxpayers may apply a 5% mark-up on the cost of low-value-added services. Entities that receive or provide intra-group low value added services can price them without incurring costly benchmarking TP studies.• A safe harbour ensures that the tax authorities are likely to accept the TP policy for low-value adding services in the event of an audit.
Training of Personnel	<ul style="list-style-type: none">• Key personnel must understand how the group’s TP policies affect the profitability of the local entity. Local management is crucial in ensuring that the group’s TP policies are consistently applied as part of routine business operations.• Typically, the ZRA conducts Functional Analysis Interviews with key local personnel. As a result, understanding the TP policies assists management in appreciating the TP consequences of key decisions.• It also assists management in explaining and defending these policies in the event that the ZRA requests it during an audit.

The takeaway for MNE Groups operating in Zambia

The dependability of a taxpayer's and its related parties' TP arrangement will rely on whether the appropriate systems and procedures are in place to collect relevant data and enable effective transfer pricing analysis.

To ensure that the transfer prices charged will result in arm's length transactions in future periods, internal procedures and systems must be implemented that include regular reviews and, if necessary, changes to intercompany transfer pricing policies.

Preparing and maintaining TP documentation and retaining contemporaneous documentation will also ensure that the MNE's TP compliance levels are continuously monitored.

How can we help you?

PWC acknowledges the enormous administrative burden TP audits impose on taxpayers. We have and will keep helping our clients with the following:

- TP controversy and dispute resolution
- Designing and implementation of TP policies
- Preparing TP documentation in line with TP Regulations
- Reviewing existing TP policies and documentation
- Performing TP health checks and risk assessments
- Preparing TP defence files
- At the time of filing, aligning income tax returns to arm's length

Please feel free to reach us on the contacts provided to discuss how we can help you.



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