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BEWARE OF TRANSFER PRICING 'DOCUMENTATION PENALTIES' IN TANZANIA, UGANDA AND RWANDA

Did you know that failure to have a transfer pricing policy, failure to furnish a transfer pricing policy within the prescribed time or the use of the wrong transfer pricing method could result in fines or imprisonment in some of the East African countries? These documentation penalties are imposed over and above the regular penalties for the underpayment of taxes and were introduced or will be introduced through the Transfer Pricing Regulations in different countries.

According to the Tanzanian Transfer Pricing Regulations, taxpayers whose transfer prices are inconsistent with the arm's length principle -- have applied a method that the Commissioner disagrees with or applied a method in a manner that the Commissioner disagrees with - are liable to pay "a penalty equal to 100% of the underpayment of tax." Further, if a taxpayer does not have a TP Policy at the time of filing the tax return, such a taxpayer is liable to imprisonment for a term not exceeding 6 months or a fine not less than TShs 50 million or both. This same provision seems to apply to instances where a taxpayer fails to furnish the Commissioner with their TP Policy within 30 days from the day it is requested.

In Uganda, failure to comply with the arm's length principle (use of the wrong or inappropriate transfer pricing method or the improper application of a method) makes one liable on conviction to imprisonment for a term not exceeding 6 months or a fine not exceeding 25 currency points or both. A currency point is equal to US\$ 20,000. As with

Tanzania, there is a separate penalty for failure to maintain contemporaneous documentation, that is, sufficient information and analysis at the time of filing the tax return to verify that controlled transactions are arm's length. Again, such infractions will lead to imprisonment for a term not exceeding 6 months or a fine not exceeding 25 currency points or both.

In Rwanda, there is a proposal for multinationals to submit transfer pricing documentation with their annual tax return. Failure to do so will attract a penalty of 2% of annual turnover. So, what about Kenya? There are no documentation penalties for now, but that will likely change in the not too distant future because the Kenya Revenue Authority is considering "punitive measures for non-compliance."

Documentation penalties are intended to drive compliance and they can be very costly. Affected taxpayers should therefore not only have transfer pricing policies, but also strive to ensure that the documentation is accurate, defensible and is maintained as current.

