

# TRANSFER PRICING IN THE MINING INDUSTRY

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# AGENDA

- Introduction
- Key Transfer Pricing Risks
- Audit Challenges
- Co-operation from MNE's
- Co-operation amongst Revenue Authorities

# INTRODUCTION

- The mining sector (including the oil and gas) is a significant sector within the SARS Large Business Centre in terms tax payable;
- There are currently 10 major MNE's that make up the majority of taxpayers on register in the mining sector;
- Most of these taxpayers are headquartered outside of South Africa

# KEY TRANSFER PRICING RISKS (1)

- Fragmentation of the supply chain in order to extract profits through:
  - Offshore Marketing / procurement companies or branches
  - Offshore hedging companies
- Thin Cap
- Intra-Group Service Charges
- Royalties

# KEY TRANSFER PRICING RISKS

## (2)

- Of the risks identified, often the most difficult to audit are the transactions involving fragmentation i.e. where MNE's enter in convoluted structures involving the interpositioning of multiple companies, generally in tax havens, (splitting out functions and risks) to divide profits.

# KEY TRANSFER PRICING RISKS

## (3)

- In these instances testing of substance is important
- To look out for:
  - Look in broader structure or supply chain
  - Elements of artificiality of transaction flows and / or agreements
  - Relevance of dates linked to changes in legislation
  - High volumes

# AUDIT CHALLENGES (1)

For developing countries there are some shared challenges in attacking these transaction types under the transfer pricing rules. These include:

- Lack of strong legislation and policy around international transactions, transfer pricing and thin capitalisation
- Lack of resources and expertise to identify and address TP risks.
- Lack of local comparables and access to databases;
- The difficulties of tax administrations in accessing information on the offshore entity that is party to the transaction (due to treaty network);

# AUDIT CHALLENGES (2)

- Bullying” and delaying tactics of taxpayers in co-operating and providing relevant information;
- The “power” and access of MNE’s to advisors and their own global transfer pricing resource
- The political will of capital importing African countries to address transfer pricing matters with MNEs



# HOW CAN MNE's CO-OPERATE?

- Maintain relevant transfer pricing documentation;
- Provide relevant and contemporaneous information in a timely manner;
- Avoid tactics that result in unnecessary delays and avoidance in rendering information

# AREAS OF CO-OPERATION AMONGST REVENUE AUTHORITIES

- Greater and more effective use of Exchange of Information article in the DTA's;
- Explore joint audits;
- Greater collaboration in respect of building capacity and skills

Thank you!