



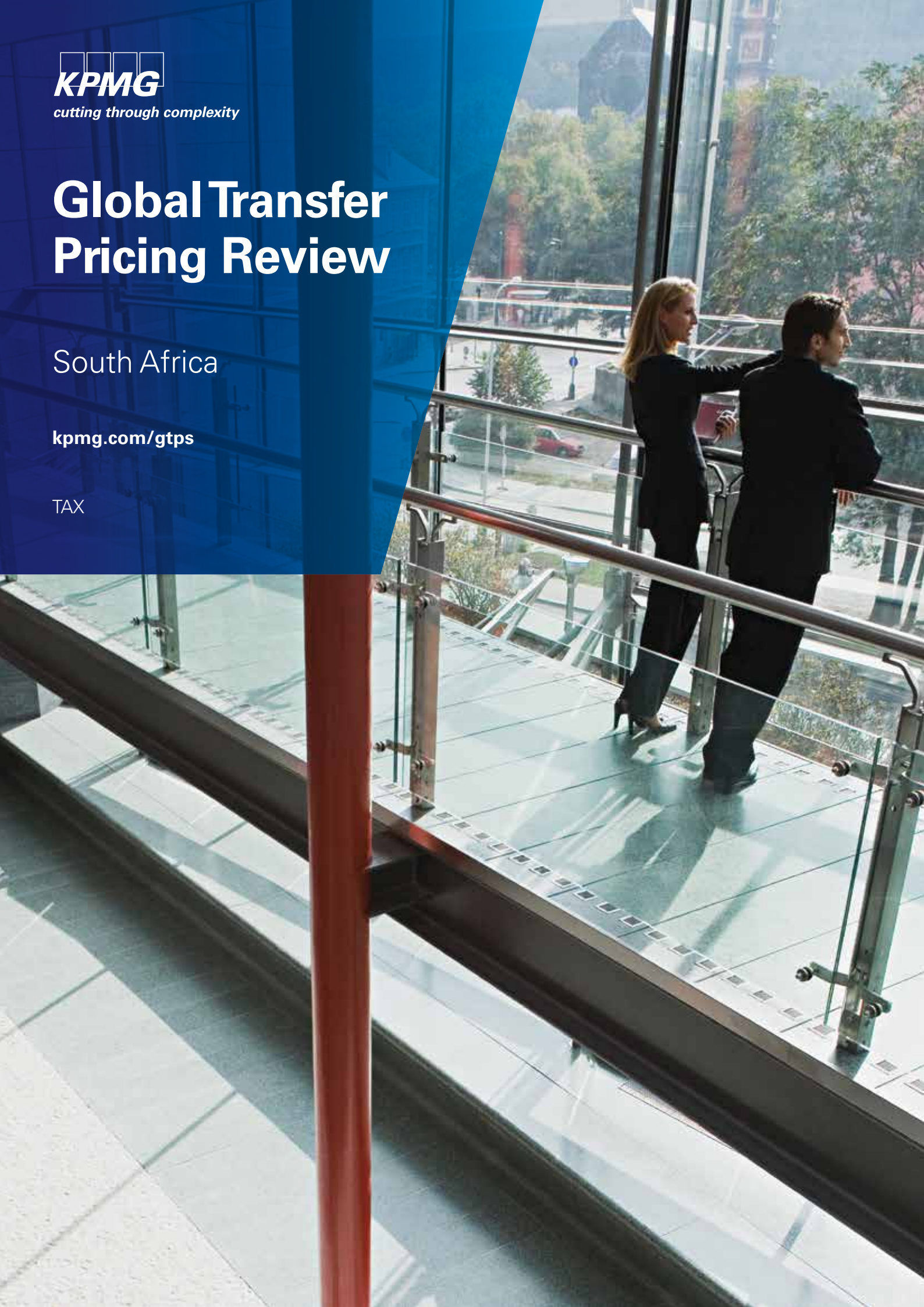
*cutting through complexity*

# Global Transfer Pricing Review

South Africa

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TAX



# South Africa



## KPMG observation

Transfer pricing in South Africa, and Africa as a whole, has taken on immense importance and is currently in the spotlight. The South African Revenue Authority is training its transfer pricing department to be able to cast its net wider as far as audits are concerned.

Transfer pricing has recently been a topic of much media coverage in South Africa, with increasing calls from politicians and the judiciary for transfer pricing to be prioritized by the South African Revenue Service (SARS).

KPMG anticipates that the SARS will continue to support the Base Erosion and Profit Shifting (BEPS) Action Plan.

## Transfer pricing study snapshot

### The purpose of a transfer pricing study

	Applicable	Required to be contemporaneous
Legal requirements		●
Protection from penalties	●	●
Reduce risk of adjustment		●
Shifts burden of proof	●	●

## Basic information

### Tax authority name

South African Revenue Service (SARS).

### Citation for transfer pricing rules

Section 31 of the Income Tax Act and Practice Note 7.

### Effective date of transfer pricing rules

1995.

### What is the relationship threshold for transfer pricing rules to apply between parties?

Ownership of greater than 20 percent of the share capital or under common management or control.

### What is the statute of limitations on assessment of transfer pricing adjustments?

Three years from the date of assessments unless there has been fraud, misrepresentation and/or a material nondisclosure by the taxpayer.

## Transfer pricing disclosure overview

### Are disclosures related to transfer pricing required to be submitted to the revenue authority on an annual basis (e.g. with the tax return)?

Yes. Transfer pricing documentation, together with justification for the pricing of transactions, should be prepared and available to SARS on request. The

income tax return does however request disclosure of transactions.

### What types of transfer pricing information must be disclosed?

The following information must be disclosed:

- disclosure of related party transactions
- disclosure as to whether the company has transfer pricing documentation
- disclosure of financial assistance to/from an offshore-related party
- disclosure of any Advance Pricing Agreements (APAs) in a foreign jurisdiction.

### What are the consequences of failure to submit disclosures?

The annual income tax return requires disclosure relating to transactions with related parties. Failure to provide accurate responses would lead to the prescription period not applying to the return, which would mean SARS could challenge the transfer pricing at any time and would not be limited to the prescription period of three years after assessment.

## Transfer pricing study overview

### Can documentation be filed in a language other than the local language? If yes, which ones?

No. Documentation can be submitted in any of South Africa's 11 official languages. However, on a practical level, English is preferable.

### When a transfer pricing study is prepared, should its content follow Chapter V of the Organisation for Economic Co-operation and Development (OECD) Guidelines?

Yes, for all transactions.

### Does the tax authority require an advisor/tax practitioner to have specific designation in order to prepare or submit a transfer pricing study?

No.

## Transfer pricing methods

### Does your country follow the transfer pricing methods outlined in Chapter II of the OECD Guidelines? If exceptions apply, please describe.

Yes.

## Transfer pricing audit and penalties

### When the tax authority requests a taxpayer's transfer pricing documentation, are there timing requirements for a taxpayer to submit its documentation? And if so, how many days?

Yes, 30 days.

### When the tax authority requests a taxpayer's transfer pricing documentation, are there timing requirements for a taxpayer to submit its documentation? Please explain.

Generally, the response period is 30 days. Extensions of the time period can be requested and are generally approved.

### If an adjustment is proposed by the tax authority, what dispute resolution options are available?

The taxpayer may approach SARS and follow alternative dispute resolution (ADR) procedures. This procedure is between the taxpayer and SARS. MAP procedures could also be followed.

### If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions?

Yes. Up to 200 percent of the adjusted tax amount.

### To what extent are transfer pricing penalties enforced?

Depends largely on the intention of the taxpayer.

### What defenses are available with respect to penalties?

The maintenance of contemporaneous documentation evidencing the taxpayer's intention and that consideration has been given to the transfer prices can be used as a defense against penalties.

### What trends are being observed currently?

Extensive audits by SARS across all industries. SARS is focusing on distribution entities, particularly where these have been classified as low-risk distributors. Companies that have effected true-up payments at year-end are also being looked at.

## Special considerations

### Are secret comparables used by tax authorities?

Not to our knowledge.

### Is there a preference, or requirement, by the tax authorities for local comparables in a benchmarking set?

No.

### Do tax authorities have requirements or preferences regarding databases for comparables?

No, but it is common practice to use Bureau van Dijk Orbis database.

### Does the tax authority generally focus on the interquartile range in a TNMM analysis?

Yes, sometimes.

### Does the tax authority have other preferences in benchmarking? If so, please describe.

Comparable Uncontrolled Prices (CUPs) are preferred if available but generally all OECD methods are accepted.

### What level of interaction do tax authorities have with customs authorities?

High.

### Are there limitations on deductibility of management fees beyond the arm's length principle?

No. General deduction principles and Exchange Control requirements may in certain circumstances limit this.

### Are management fees subject to withholding?

No.

### Are there limitations on the deductibility of royalties beyond the arm's length principle?

No. General deduction principles and Exchange Control requirements may in certain circumstances limit this.

### Are royalties subject to withholding?

Yes.

### Are taxpayers allowed to file tax return numbers that differ from book numbers?

Yes, but these need to be supported by the transfer pricing policy and methodology applied and may lead to queries from SARS.

### Other unique attributes?

SARS works closely with the South African Reserve Bank to monitor the inflow and outflow of money from and to South Africa.

## Tax treaty/double tax resolution

What is the extent of the double tax treaty network?

Extensive.

If extensive, is the competent authority effective in obtaining double tax relief?

No experience.

When may a taxpayer submit an adjustment to competent authority?

No formal rules exist in this area.

May a taxpayer go to competent authority before paying tax?

No formal rules exist in this area.

## Advance pricing agreements

What APA options are available, if any?

None.

Is there a filing fee for APAs?

Not applicable.

Does the tax authority publish APA data either in the form of an annual report or through the disclosure of data in public forums?

Not applicable.

Are there any difficulties or limitations on the availability or effectiveness of APAs?

Not applicable.

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