



Botswana introduces transfer pricing regulations

Global Transfer Pricing Alert 2019-022

Botswana's minister of Finance and Economic Development on 12 July introduced the highly anticipated transfer pricing regulations under section 145 of the Botswana Income Tax Act. The regulations give effect to the transfer pricing legislation contained in section 36A of the act, which was enacted in December 2018.

The regulations entered into effect on 1 July 2019 and apply to taxpayers who engage directly or indirectly in transactions with connected persons. However, they generally do not apply to domestic transactions except when Part XVI of the act applies, that is, in the taxation of International Financial Services Centre companies.

Determination of the arm's length principle

The arm's length principle requires that transfer prices charged between related parties be equivalent to those that would have been charged between independent parties in the same circumstances. An arm's length price is generally considered to be the price that would exist if the related parties to the transaction were dealing with each other as independent parties.

In the application of the arm's length principle, the transfer pricing regulations provide for use of the most appropriate method, taking into account the respective strengths and weaknesses of the methods, availability of reliable information to apply the method, and degree of comparability.

The regulations empower the commissioner general to make adjustments when the conditions of a controlled transactions are inconsistent with the arm's length principle.

Documentation requirements

The regulations require affected taxpayers to prepare an annual transfer pricing local file as a matter of compliance. Affected taxpayers are also required to submit the transfer pricing local file when filing their tax return. The local file must contain information regarding the transfer pricing policies adopted for the determination of transfer of prices, specifically the information detailed in the regulations. In addition, affected taxpayers with a transaction or transactions exceeding BWP 5,000,000 with a connected person within a multinational entity (MNE) group are required to provide to the commissioner general a transfer pricing master file upon written request.

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