

# Graphene Economics<sup>®</sup>

Transfer Pricing Advisory



## THE EVOLVING LANDSCAPE OF TAXATION: Transfer pricing trends in Africa – what 2024 may hold

Graphene Economics 2023 Annual  
Transfer Pricing Matters Survey

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## Introduction

In 2023, the transfer pricing (TP) environment has maintained a consistent focus, similar to what we observed in 2022, with a few twists. This focus continues to revolve around global tax reform, the impact of new technologies, and their implications, as well as addressing the heightened attention from revenue authorities regarding taxation of cross-border transactions and the increased emphasis on information sharing. The slowly increasing capacity of the revenue authorities, greater transparency, and growing use of technology are all impacting the world of cross-border transactions.

Crafted with a focus on addressing the needs of multinational entities (MNEs) and revenue authorities, this report from Graphene Economics delves into critical themes that defined the past year. Additionally, it offers a forward-looking perspective on the unfolding dynamics for 2024 and beyond. We trust you will discover valuable insights within these pages.



### **African TP firm of the year**

as voted by International Tax Review  
EMEA Tax Awards 2023.

## About the survey

In 2021, Graphene Economics embarked on our inaugural annual survey focusing on TP within the African context. Our objective was to monitor industry trends and insights, with the aim of sharing valuable findings with our clients, associates, and the diverse stakeholders within our sector. As we present our third edition of the survey (and fourth annual report on the state of TP), we have refined our questionnaire, incorporated slight modifications, and introduced new inquiries. These adjustments stem from trends we are observing, and the lessons learned during our initial efforts, reflecting our commitment to continuous improvement and providing enhanced value to our readers.

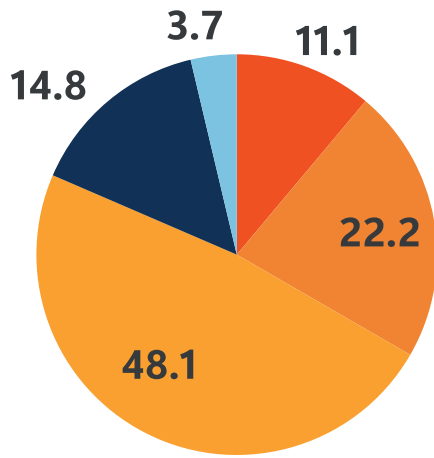
We received responses from 39 participants, who were individuals working in various roles across African countries. These participants included representatives from MNEs with headquarters in Africa, Europe, North America, and the United Kingdom. Individuals from tax consulting firms, revenue authorities, and academia also contributed to the survey.

Of the respondents, the majority (62%) have between 5 and 20 years of TP experience and are managers or senior managers within their organisations.

The survey results were further corroborated through interviews with people in senior management at multinational enterprises operating across the continent.

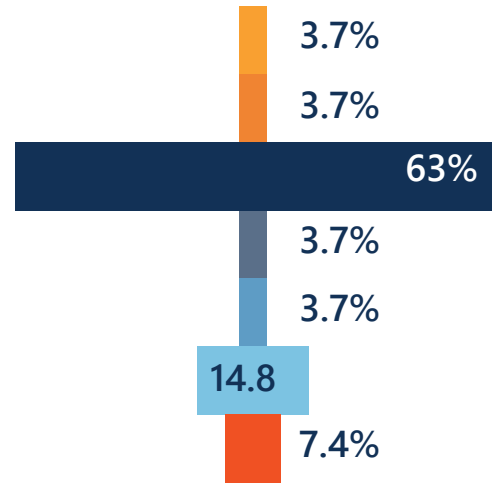


### Years of TP experience



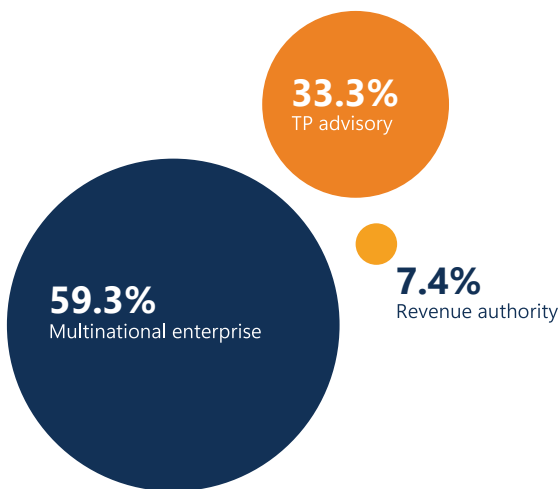
- Less than a year
- 1 - 4 years
- 5 - 10 years
- 11 - 20 years
- 21 - 30 years
- More than 30 years

### Respondents position in their organisation

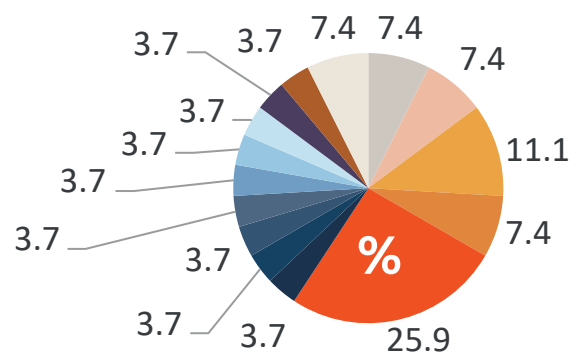


- Executive management / partner / C-level
- Team lead
- Shareholder
- Associate
- Manager / senior manager
- Junior consultant
- Other

### Respondents' organisation type



### Industries represented



- Technology
- Chemicals
- FMCG
- Advisory
- Resources
- Consulting
- Financial services
- Mining
- Government
- Manufacturing
- Regulator
- Transport and logistics
- Diversified industrial
- Consumer products
- Media and entertainment

# Relevant global and regional trends impacting the tax landscape across Africa

Significant global tax developments have historically been influenced by economic and political events. The 2017/2018 Global Financial Crisis ushered in an unprecedented level of focus on measures to address the base erosion and profit shifting of multinational enterprises, as governments needed to raise revenue. Similarly, the Covid-19 pandemic, initially regarded as a significant global health crisis, quickly caused widescale shocks to global supply chains and has expedited efforts by many countries on several key tax matters.

To better understand the context of the results of this survey, we briefly discuss certain important global and regional trends impacting businesses and revenue authorities.

The figure below indicates various global trends impacting businesses.

## Global trends to note



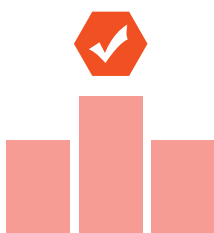
Climate change /  
green economy



Digitisation



Employment  
trends



Global  
competitiveness  
and value chains



Inflation



Global tax reform

In certain regions, notably the US, Europe, and other developed areas, the focus on sustainability and climate change has been significant. This has become a critical factor that many businesses in these countries have had to address. As there are incentives for companies that are doing well and penalties for those that are not, it is driving business decisions. From our experience, the extent to which companies in Africa have considered this is far less. It is our expectation that this will be a growing trend across Africa over the next few years. In certain circumstances, it will have implications for TP models as it may impact the profitability of businesses and the appropriate pricing of intercompany transactions.

The rapid advances in technology, as well as changes to employment models with people being able to work remotely and the extent of the globalisation of value chains, are all factors that are impacting the way that businesses produce their goods and services and engage with their customers. In many instances, these factors have altered the contributions that different entities make towards value creation. These factors are having an important bearing on the analysis of value chains and the determination of TP policies.

During the past couple of years, high inflation rates have negatively impacted businesses and consumers as they battled to either pass on or otherwise absorb the increase in prices. Finally, these rates of inflation are trending downwards. In certain countries (i.e., inter alia, the US, Singapore, the UK), measures were introduced to raise taxes to subsidise the costs of certain products in the domestic market. Therefore, the inflationary pressure also led to certain changes in tax policies.

Finally, we note that global tax reform, which includes, inter alia, the implementation of Pillar 1 and Pillar 2, is a factor that will impact many of the largest businesses. While the financial consequences of these reforms are still to be quantified (as few detailed economic impact assessments have been performed), the immediate consequence is that large companies have had to develop complex systems to enable compliance with these requirements.

## Africa's macroeconomic environment in 2023

This survey took place within the context of African economies grappling with the aftermath of COVID-19, facing additional global uncertainties such as the Russia-Ukraine conflict, and more recently the conflict in the Middle East, as well as ongoing climate challenges. The global economic landscape, marked by inflation shocks and difficulty accessing external funding, is straining liquidity in domestic markets. Despite these global challenges, many countries in Africa are showing increased resilience by diversifying products, integrating environmental, social, and governance (ESG) measures, and improving transparency.

The economic growth outlook for the region indicates a slowdown to 2.5% in 2023 from 3.6% in 2022, with South Africa expected to grow by a modest 0.5%. Nigeria and Angola are projected to see growth rates of 2.9% and 1.3%, respectively, impacted by lower international prices and currency pressures. Sudan, grappling with internal conflict, faces a significant contraction of 12% in economic activity. Across the continent, per capita growth has stagnated since 2015, potentially signalling a lost decade of growth.

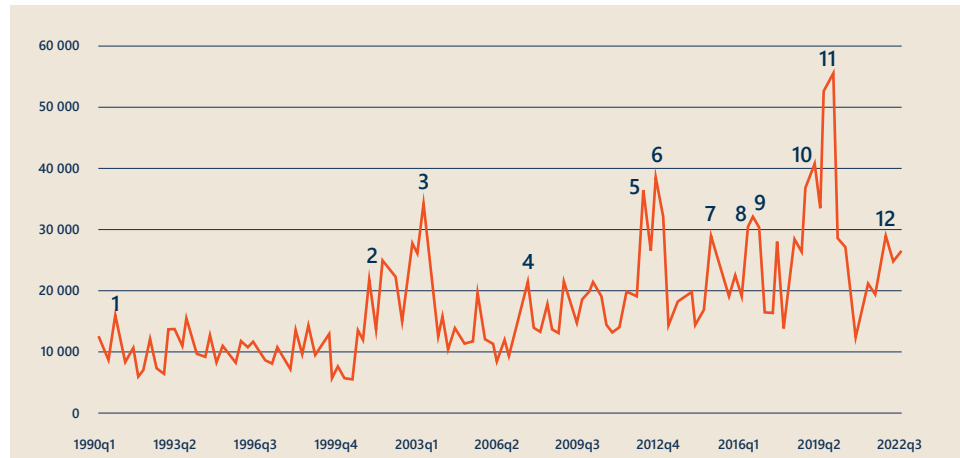
Despite these challenges, there are positive signals, including expectations of decreasing inflation and improving fiscal balances in select African countries. The East African Community (EAC) and the West African Economic and Monetary Union (WAEMU) are anticipated to experience growth rates of 4.9% and 5.1%, respectively, in 2023. However, concerns persist about debt distress, with 21 countries at high risk of external debt distress.

The economic pressures in many countries across the continent mean that revenue authorities are required to raise tax collections to address the needs of the fiscus. It is, therefore, not surprising that many respondents to this survey have indicated an increased level of revenue authority audits and information sharing. Given the relatively high reliance of revenue authorities in Africa on revenue collection from multinational enterprises and the challenging economic environment in many countries, we expect that the scrutiny of cross-border transactions within multinational enterprises will continue to increase.



### Global uncertainty

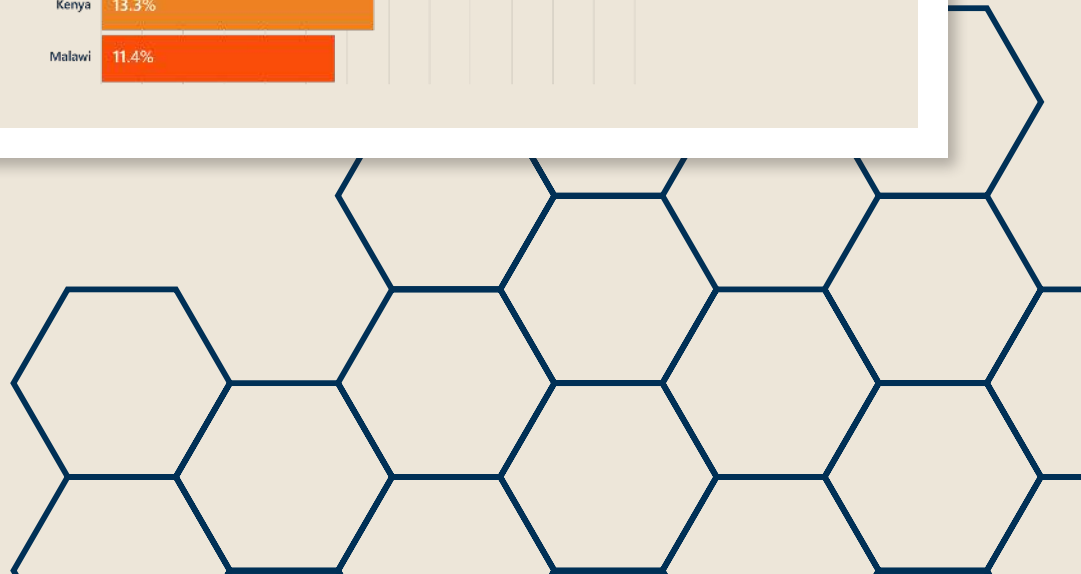
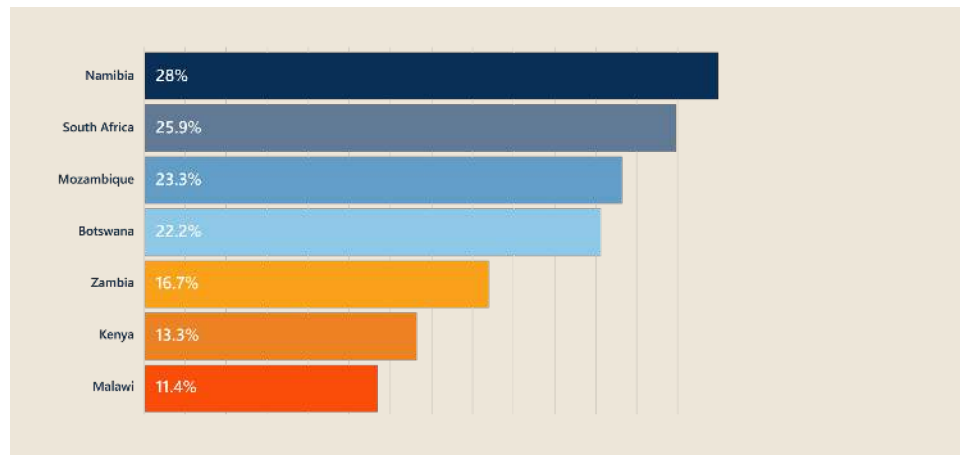
World Uncertainty Index 1990Q1 – 2022Q4



- 1. Gulf war 1
- 2. US recession and 9/11
- 3. Iraq war and outbreak of SARS
- 4. Financial credit crunch
- 5. Sovereign debt crisis in Europe
- 6. US fiscal cliff and sovereign debt crisis in Europe
- 7. FED tightening and political risk in Greece and 8.
- 8. Brexit
- 9. US presidential elections
- 10. US-China trade tensions, and Brexit
- 11. Coronavirus
- 12. War in Ukraine

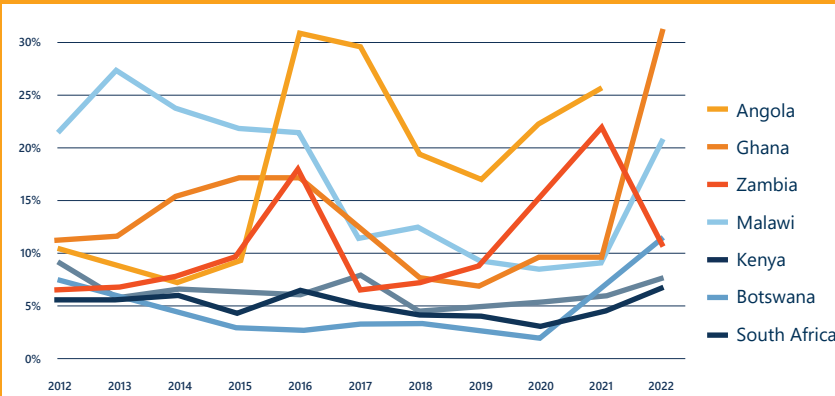
### Tax revenue as a percentage of GDP

Tax as a % of GDP (2021)



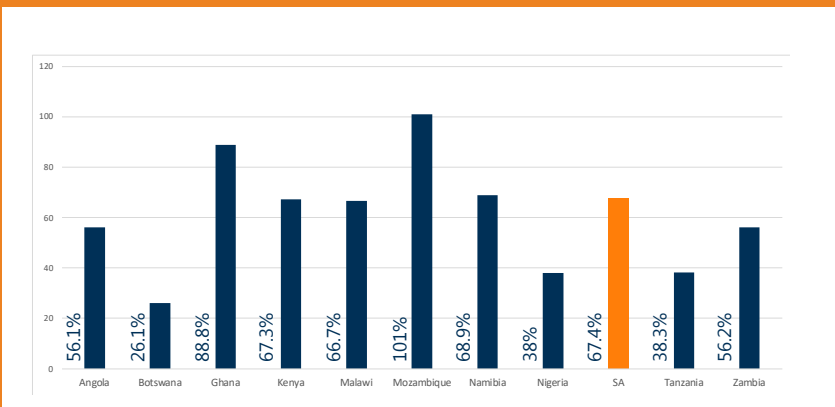
### Macroeconomic figures

Inflation rates from 2012 – 2022



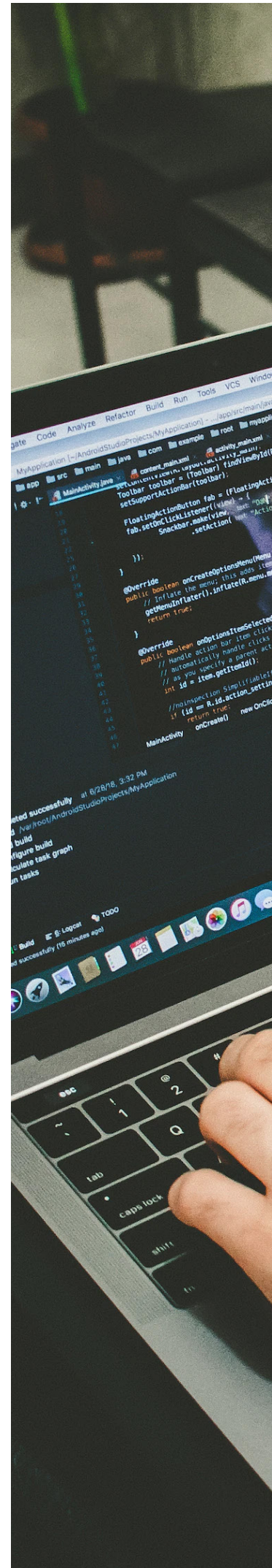
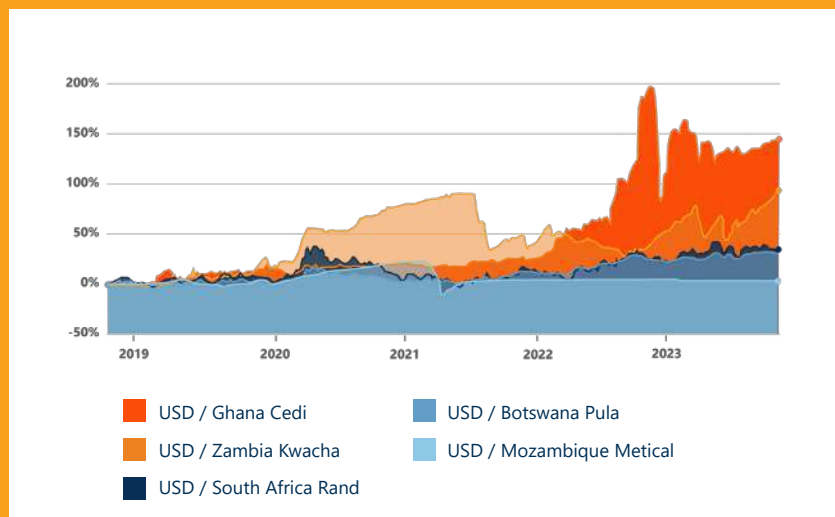
### Debt to GDP

Government debt to GDP as of Dec 2022



### Exchange rate volatility

% Change of USD to currencies over the past 5 years



## **INSIGHTS: Navigating climate change and transfer pricing**

*A significant global trend, yet to be reflected in our surveys on African transfer pricing trends, is the convergence of climate change and transfer pricing. The Nairobi Declaration this year, proposing a global carbon taxation regime, emphasises the urgency of addressing climate-related issues in Africa.*

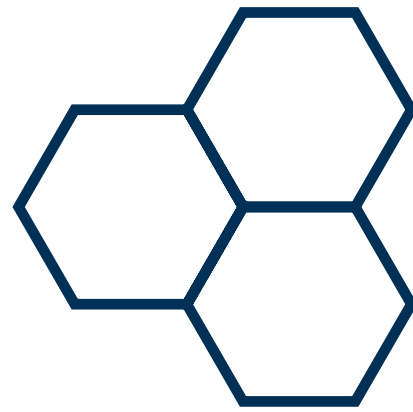
*Companies worldwide are under increased pressure to align their operations with ESG principles.*

*Although specific regulations concerning ESG reporting and transfer pricing from an ESG perspective are in the early stages of development, tax authorities in more developed countries are increasingly requesting additional information on ESG activities. This prompts companies in those countries to incorporate ESG-related details into their transfer pricing documentation, demonstrating compliance and mitigating potential tax risks linked to ESG considerations.*

*ESG considerations significantly impact various aspects of a company's operations, including profit allocation, supply chain decisions, and transfer pricing models. Whether a company adopts centralised or decentralised models, the key is to ensure alignment with economic substance and value creation influenced by ESG factors. Companies may need to include additional costs related to environmentally friendly practices in their transfer pricing arrangements, accounting for variations in tax laws and regulations across jurisdictions.*

*As the connection between transfer pricing and ESG continues to evolve, businesses globally must proactively consider this intersection. Adapting to changing regulations, where relevant, companies should integrate ESG principles into their transfer pricing policies, aligning with ethical, sustainable, and compliant practices. This allows companies to meet regulatory expectations and contribute to a more sustainable and responsible global business environment.*

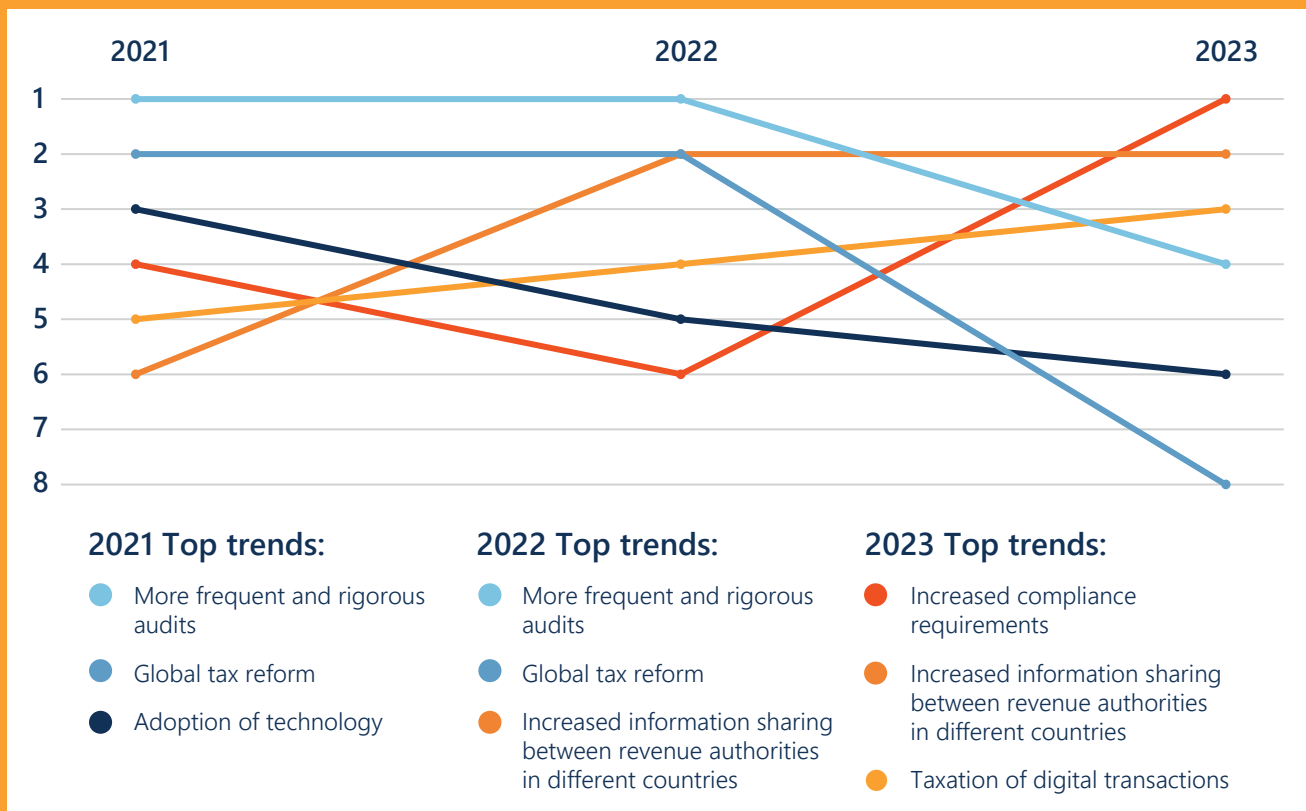
# TP trends and challenges



In 2021, the primary trends identified by MNE respondents centred around increased audit activities, global tax reform, and the adoption of technology. By 2022, there was a noticeable shift towards placing more importance on information sharing among revenue authorities, coupled with a continued focus on rigorous audits and the taxation of digital transactions.

However, in 2023, there was a significant change as increased compliance requirements surged to claim the top position. This shift pushed the top trends from 2022 down with increased information sharing between revenue authorities across different countries retaining its significance, and taxation of digital transaction ranking third.

Comparison of top 3 trends for 2021, 2022 and 2023





### **Drivers of increased compliance requirements for MNEs in 2023**

**1. Regulatory evolution:** TP regulations and compliance requirements have been evolving rapidly, with governments worldwide emphasising transparency and ensuring that MNEs follow TP guidelines meticulously. This shift requires organisations to invest more resources in compliance to meet the evolving regulatory landscape.

**2. Global tax reforms:** The global tax reform discussions, such as those surrounding Pillar 1 and Pillar 2, have brought about new compliance obligations for MNEs. These reforms have driven organisations to reevaluate and enhance compliance strategies to conform to the changing tax environment.

**3. Heightened scrutiny:** Tax authorities are becoming more vigilant and sophisticated in their audit and review processes. Increased scrutiny necessitates a higher level of compliance readiness for MNEs to avoid disputes and penalties.

**4. Data and information requirements:** Compliance now requires a deeper level of data and documentation to support TP arrangements. Organisations must invest in systems and processes to collect, validate, and maintain this data to meet the heightened compliance demands.

**5. International reporting initiatives:** The adoption of international initiatives like CbCR has amplified the need for comprehensive compliance. These initiatives facilitate the exchange of financial information between countries, placing added pressure on MNEs to ensure accurate reporting.

2023 is a response to the changing regulatory landscape, heightened scrutiny, and the need for more robust data and documentation (see box). This trend indicates the ongoing efforts to prevent tax avoidance, ensure fair income distribution across jurisdictions, and align with international reporting standards. It underlines the importance of proactive compliance practices in today's TP landscape.

Respondents' focus on compliance underscores the impact of all the regulatory developments we have observed across the continent. This includes the requirement for MNEs operating in various countries to prepare (and often also submit) a TP master file and local file in an increasing number of African countries.

The continued prominence of increased information sharing as a key trend is indicative of the ongoing efforts to prevent tax avoidance and ensure a fair distribution of taxable income across jurisdictions. It is also clear that it directly impacts how TP is scrutinised and enforced. International initiatives, such as, country-by-country reporting (CbCR), have also contributed towards increased transparency.

The taxation of digital transactions is still a significant trend, which reflects the growing global interest and challenges related to taxing digital businesses and ensuring fair tax practices in the digital economy.

While topical and still highly relevant due to growing levels of digitalisation, taxes on digital



### **VIEWPOINT: Addressing commercial questions first**


***Daniel Grobler, Executive Head: Structuring M&A and Transfer Pricing at Vodacom Group and Lutando Mvovo, Executive Head: International Tax at Vodacom Group***

*While digital services taxation is fast climbing the tax agenda and will affect TP strategies, many businesses are grappling with challenges that precede tax aspects. As digital services continue to grow and companies explore new revenue generation opportunities, the initial questions that arise are commercial in nature. For example, for a telecommunications company such as Vodacom that is expanding into a technology business, one of the challenges is understanding how to package digital services and transactions.*

*As new products and services are developed, the business first needs to understand the commercial realities and then the taxation impact. For example, Vodacom might create a new platform of some sort – say an insurance-based platform – and then look to roll this out within its markets where there is demand for it. If the platform has been built in South Africa and is then sold into other African markets, there will be TP implications. But the initial question that the tax department will face is how best to package that transaction. Will the parent company sell subsidiaries a copy of the platform? Should it provide them with a licence to access the platform?*

*Typically, the company will need to weigh up the commercial pros and cons. Is it better to try to recoup development expenses upfront by selling the product outright in the market, or is there long-term commercial opportunity in a licencing agreement?*

*This issue continues to gain relevance within Vodacom because we're no longer just providing a network or access to a network – we're now also creating content for users to engage with to create a demand for data. Only once these fundamental commercial questions are addressed can one begin to apply a TP strategy.*



transactions have gone into hibernation, as many countries want to see what happens with the rollout of the Organisation for Economic Co-operation and Development's (OECD) Pillar 1 and Pillar 2. In particular, most governments have agreed to delay imposing digital services taxes (DSTs) until December 2024.

Two other significant trends have emerged this year. The increased adoption of technology and the implementation of flexible remote working policies. This development is hardly surprising given the growing utilisation of artificial intelligence (AI) in tax and TP, the heightened emphasis on technology for streamlining and improving analytics, and the rise of firms providing technological solutions in this domain. Furthermore, chief financial officers (CFOs) are now showing keen interest in how technology will play a role in their tax departments, underscoring its importance. The trend in flexible remote work policies can be attributed to the recognition that remote work is no longer a temporary fix; it has evolved into a more permanent arrangement. Consequently, companies are adjusting to accommodate the requirements of their remote workforces.

If we look at service-based MNEs, a different picture emerges. The most significant trend is the taxation of digital transactions. This

contrasts with the main trend service-based MNEs faced in 2022, which was data quality. The shift in trends suggests that service-based MNEs are facing new and evolving challenges in the field of TP.

Many service-oriented companies, including those in banking, telecommunications, consulting, and software development, use technology to deliver services. Initially, numerous countries agreed to implement DSTs until 31 December 2023. The expectation was that Pillar 1 and Pillar 2 would be introduced, limiting the implementation of DSTs. However, due to delays in implementing Pillar 1, the deadline for DSTs has been extended until the end of 2024. There is now increased uncertainty about the introduction of Pillar 1, raising the possibility that many countries may hurriedly adopt DSTs in 2025. Notably, Canada, which is typically compliant with the OECD's agenda, has displayed impatience by refusing to accept the DST delay. In Africa, Kenya and Nigeria, both of which had previously implemented DSTs, have reported success in taxing digital services.

## Compliance crunch

This year's survey shows that the trend of compliance tasks occupying a significant portion of the time for TP professionals persists, mirroring findings from previous surveys. Notably, TP professionals report an increase in the time allocated to specific compliance-related tasks, such as collecting, sorting, or validating data and maintaining TP documentation for both cross-border and domestic transactions. These tasks have seen a year-on-year increase of 10%. This reinforces the ongoing demand for effective compliance management.

Linked to this is the shift towards more companies retaining in-house TP specialists. This reflects the increasing complexity and demands in the field. Several factors may explain this shift:

- **Data and information challenges:** Obtaining good-quality data and information for TP analysis can be challenging. In-house specialists often work closely with the organisation's departments to gather the necessary data and have discussions with business units. They are often better positioned to access relevant information and ensure data accuracy.
- **Increased TP workload:** Organisations may be facing a higher workload in terms of TP-related tasks, including documentation, analysis, compliance, and controversy support and involvement with new transactions that the group is entering into. Having in-house specialists can help manage this increased workload efficiently.
- **Expertise integration:** Organisations may benefit from integrating TP expertise into their daily operations, enabling them to make more informed decisions and align their business strategies with TP requirements.

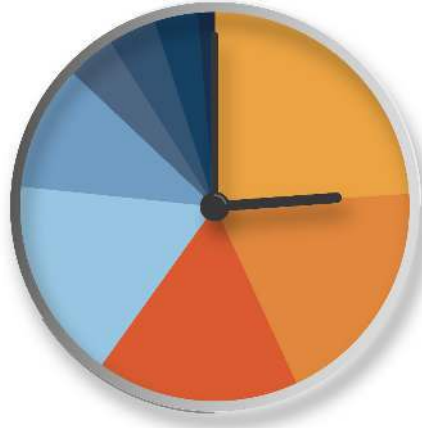
However, the survey also reveals that TP professionals often allocate valuable time to tasks that could potentially be outsourced to TP consultants or streamlined through automation using TP technology tools. At Graphene Economics, we recognise the importance of addressing this challenge. Our role in compliance is to assist our clients in managing their compliance needs efficiently, allowing them to redirect their time and resources toward more strategic and value-added activities. We provide recommendations to help clients optimise their work processes and enhance their focus on strategic business aspects.

In addition to our commitment to improving compliance management, we are closely monitoring the role of technology in simplifying and enhancing TP work. The rapid development of AI has demonstrated its versatility and utility, from writing business emails to simplifying complex report documents. We believe that AI applications are on the horizon for the field of tax, particularly in the realm of compliance. The potential for AI to automate and streamline compliance-related tasks presents exciting opportunities for increased efficiency and accuracy.

Graphene Economics is dedicated to staying at the forefront of technological advancements to better support our clients' evolving needs. As AI and other technologies continue to advance, we are committed to harnessing these tools to deliver more efficient, effective, and strategic solutions to the challenges faced by TP professionals and the broader business landscape.



### How TP professionals at MNEs spend their time



- Collecting, sorting or validating data
- Handling transfer pricing disputes
- Liaising with external TP consultants during the TP preparation process
- Reviewing TP documents prepared by external consultants
- Maintenance of TP documentation for both cross-border and domestic transactions
- Monitoring or reporting performance of legal entity financial results
- Updating intercompany agreements or sections of TP studies
- Finding the right people or sources of information
- Staying up to date with regulatory changes, legislation and country-specific documentation

### Tools respondents are using to manage and calculate TP

Excel spreadsheet

14

External technology, e.g. SAP, Oracle, Hyperion TP, Access, IFRIS, Power BI, etc

2

Internally developed technology

2



## **VIEWPOINT: The value of investing in specialist consulting services**

### **Group Head of Tax at a diversified financial services group**

*Although the 2023 survey found there's been a significant increase in the amount of time MNEs are spending on TP compliance tasks, that hasn't been the case within our organisation. I would estimate that TP compliance takes up about 10% of my time over a typical month period. This is because we outsource TP documentation to Graphene Economics.*

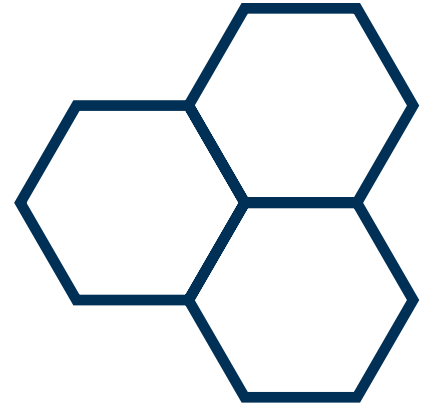
*However, if we did not outsource compliance tasks – specifically TP documentation preparation – we would have to employ an in-house TP resource. Because of the expertise available to us through specialist TP consultants, we've been able to turn around the TP documentation very quickly, without many changes on review. What has been a challenge, however, is to timeously source all the information required for the documentation from within our business, which tends to be confirmation of the services being rendered cross-border, as well as the specific amounts.*

*The biggest benefit of outsourcing the TP documentation is the time it saves me in having to upskill someone and having to manage someone internally to review and prepare these documents. The outsourced team is very prepared and knowledgeable about the business and up-to-date on TP requirements. It's also useful to me that Graphene Economics publishes TP updates on LinkedIn and through their newsletter.*

*In terms of TP trends, while the role of AI is something that's being discussed with regards to TP solutions, that's something that would likely only warrant investment by entities with far more or high-value transactions than ours. Our cross-border transactions are fairly simplistic in nature.*

*One of the things that I do think needs more focus as a trend is what the South African Revenue Service (SARS) is doing with regards to advance pricing agreements (APAs). It would give taxpayers a lot more comfort to have input on a framework for entering into APAs. South African taxpayers would like to know that we're operating in line with first-world best practice and observing OECD guidance.*

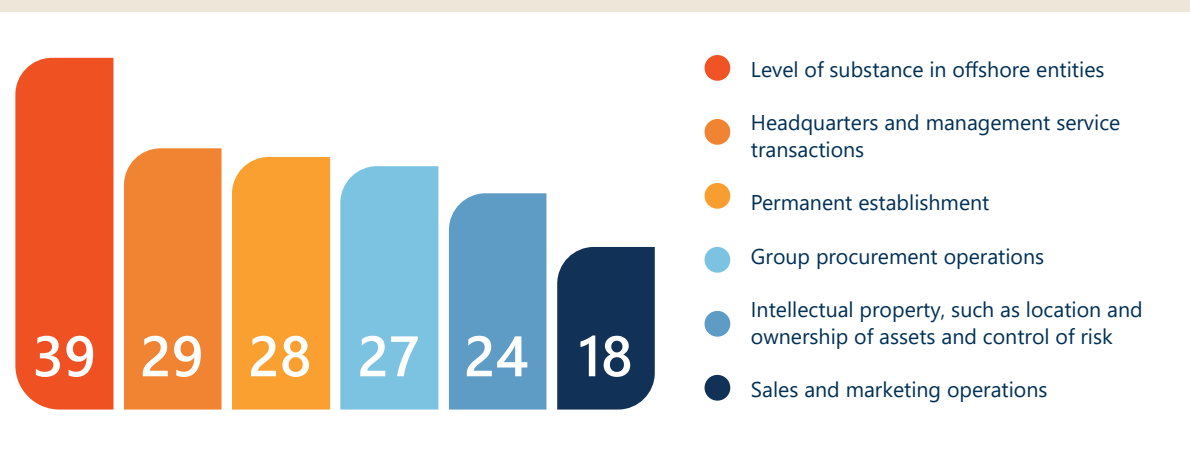
# The rising scrutiny of offshore entities



The level of substance in offshore entities is identified as the top concern for the upcoming year. This trend's prominence is driven by a confluence of factors, including increasing transparency, greater access to taxpayer information by revenue authorities, and a general interest in understanding offshore operations. The focus on this issue is expected to have far-reaching implications, particularly in TP assessments. Revenue authorities are likely to scrutinise offshore entities more closely. They may reevaluate transactions based on the actual substance of these entities, potentially leading to changes in how these transactions are categorised and taxed.

The heightened scrutiny surrounding offshore entities coincides with the increasing focus on their substantive operations. In South Africa, a widely publicised court case unfolded between SARS and fund management company Coronation. While the case primarily addressed the issue of foreign business establishments with controlled foreign companies, it also delved into principles relevant to transfer pricing. The central question revolved around whether offshore companies outsourcing key functions could legitimately claim their main business activity as being conducted in an offshore entity. This scrutiny gains significance in light of CbCRs, which offer insights into the personnel and operations of offshore entities. The trend aims to assess the legitimacy of profit allocation strategies that may use offshore entities as conduits for profit shifting.

## The extent to which respondents feel the following issues will come under scrutiny in the next 12 months



## Revisiting CbCR impact

In our 2021 report, we shared the findings of an informal online poll conducted by Chris Whitehouse, Partner at Questro International, regarding tax audits triggered by information submitted through CbCR. Two years later, we decided to conduct the LinkedIn poll again to identify any shifts in trends.

Despite the significant efforts invested in CbCR since 2016, both polls indicate that there have been relatively few tax audits directly linked to CbCR. This observation could suggest two possibilities. First, it's conceivable that CbCR has not lived up to expectations. Alternatively, it's more plausible that a substantial wave of additional audits will materialise once revenue authorities have organised themselves and gained a better

understanding of CbCR reporting. From our discussions with one revenue authority in Africa, we understand that CbCRs are being utilised, along with other taxpayer data, to perform more advanced risk profiling of cases that should be audited.

Therefore, in our view, the fact that there may not appear to have been many audits directly from the CbCR data is not surprising and does not imply that the high level of diligence that has gone into preparing CbCR reports should be reduced. Rather, it implies that a high degree of accuracy is required across all taxpayer documentation because discrepancies and positions that cannot be explained and justified may well be challenged.

### Are you aware of a tax audit arising as a result of the submission of CbCR

The author can see how you vote. [Learn more](#)



42 votes • Poll closed

### Are you aware of a tax audit arising as a result of the submission of CbCR?

You can see how people vote. [Learn more](#)



7 votes • Poll closed

## How your globally mobile workforce may increase your people-related tax risk



*For companies with operations in more than one location, there's often a need to move employees between operations, be it for short business trips or longer term work arrangements. This can, however, create tax risk, says Cinzia De Risi, founder and global mobility tax specialist at Tax Connect.*

*"When drafting a TP policy, the last thing a person would think about is the people tax risks," says De Risi. "Why would you, when TP is all about fairly allocating profits among the various entities within a multinational organisation? Personal tax risks, on the other hand, relate to the tax exposures of, or created by, individuals. However, while a TP policy is not designed to address or mitigate individual tax risks, international tax managers should not lose sight of the people aspects as part of their holistic approach to managing the overall tax risk of their cross-border operations."*

*Michael Hewson, founder and director of Graphene Economics, adds that international TP tax risks should also be considered when companies allow remote working arrangements.*

## Potential people-related tax and regulatory risks related to TP

Hewson suggests that the first international TP-related tax risk that might come to mind relating to the movement of people is the corporate tax risk of creating a permanent establishment (PE). In simple terms, a PE is a fixed place of business where a company conducts its operations in a foreign country. Establishing a PE can expose the company to local tax laws and regulations. Therefore, companies must be cautious of unintentionally establishing a PE when moving people between countries.

Beyond this, De Risi says there are also several personal tax considerations linked to PEs that businesses need to be aware of:

- **Legal status of employees:** Ensuring employees have a valid work or residence visa is essential. Each country has its own set of possible visa types and procedures that must be complied with. Failure to comply is not only a risk to the employees themselves, but also to the company – both from a reputational and governance perspective.
- **Employment taxes:** Companies need to abide by the laws of both the country where their employees work and the country where their head office is located. The compliance requirements may vary significantly from one country to another, leading to increased complexity and

potential errors. International companies moving employees across borders face various compliance issues related to employment taxation, from the need to set up payroll to effect income tax and social security withholding, to the local or head office tax authorities. This can also extend to registering for associated levies and complying with mandatory reporting, placing an enormous administrative burden on companies.

- **Personal taxation of employees:** Independent from an employer's employment-related obligations, employees need to be aware of the impact of their tax status in the country where they are, and if and how they will be classified as tax residents. Employees' tax residency status impacts their tax base (source versus worldwide) and tax filing obligations.

"In addition to these tax considerations, it is important to determine whether there are any relevant exchange control regulations. For example, suppose an individual who is a South African resident for exchange control purposes is paid their salary (or a part thereof) outside the country. In that case, it is necessary for the funds to flow back into South Africa to comply with the Exchange Control Regulations," says De Risi.

## Potential TP implications of remote working

The advancement of technology has caused a boom in remote working, particularly in the wake of COVID-19. While this has several pros and cons for businesses and employees alike, Hewson suggests that the tax considerations need to be understood.

“From a corporate perspective, where employees work remotely in another country, in addition to the PE risk, it is important to evaluate whether the individuals give rise to other tax exposures for the business, or potential recharacterisation of transactions for TP purposes,” he says.

“For example, if an individual is employed by Company X but is based in Country Y, there is a high likelihood of the individual creating a taxable presence for Company X in Country Y. To address this risk, it may be tempting to employ the individual in Company Y, which is an affiliate and based in Country Y. In this case, the nature of the activity of the individual, together with their roles and responsibilities, must also be carefully evaluated. Could they still be seen to be ‘carrying out the business’ of Company X in Country Y? Alternatively, if the individual is very senior and has significant responsibilities and decision-making authority, it is possible that the characterisation of Company X may have been altered through the relocation of the individual, which will have taxation implications for Company X and Company Y.”



## What this means for multinationals

Well-established multinational companies should have structured mobility programmes, policies and procedures in place to manage these risks and ensure compliance. However, with the economic downturn and the advent of new remote working models, it may be time to revisit these programmes to assess if they are tax compliant, cost effective and serving organisations' talent and people agendas," says De Risi.

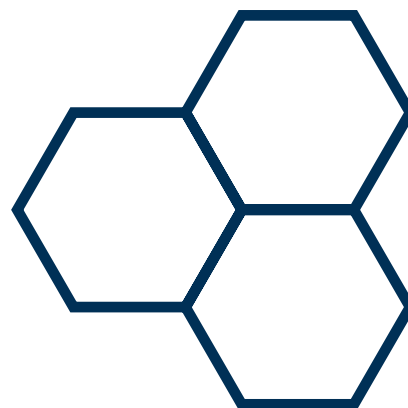
"For companies at their fledgling stage of expansion, it is never too early to consider the people aspect, including how best to structure secondment packages, set up payroll, and ensure tax compliance in both locations. Early planning is key not only to avoiding future pitfalls, but also to tap into tax efficiencies."

Hewson agrees, adding that the people tax risks associated with cross-border movements for international companies require careful planning and execution to ensure compliance with local tax laws and to minimise the tax and legal burden.

"Working with experienced tax advisors and consultants can help businesses navigate these personal tax considerations and avoid potential pitfalls," he concludes.



# TP disputes



In 2023, like in 2021 and 2022, most respondents anticipate an uptick in TP disputes and controversies over the next 12 months. When comparing the responses from 2022 to those from 2023, it becomes evident that there is a decline in the number of respondents reporting no TP disputes in the past 12 months, while the number reporting one or more disputes has increased. Certain countries, such as South Africa, Tanzania, and Ghana, stand out due to their repeated mentions in the context of TP disputes.

There have been notable shifts in the use of dispute resolution methods. Specifically, there has been a visible rise in the adoption of mediation to resolve TP disputes. However, it's worth noting that there is limited utilisation of APAs and mutual agreement procedures, which are also recognised methods for addressing TP disputes.

## VIEWPOINT: Navigating revenue authority relationships



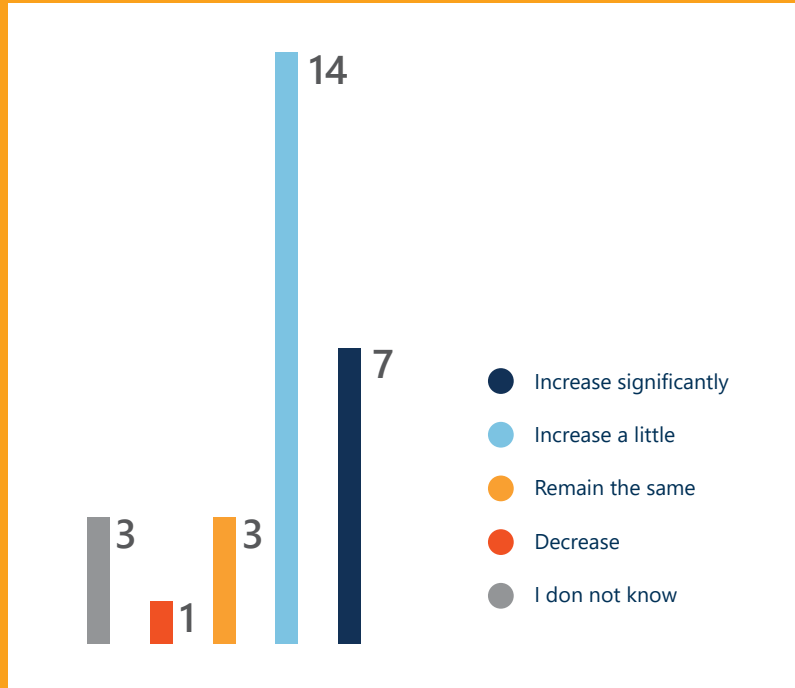
### ***Tracey Roper, Group Tax Executive: Compliance and Reporting at Massmart***

*When it comes to avoiding disputes and controversy, I think one of the things we've found is, in addition to ensuring absolute legal and regulatory compliance, it's very important to be proactive in ensuring availability and access to supporting documentation. Revenue authorities are looking for detailed information years down the line, right down to general ledger and invoice levels.*

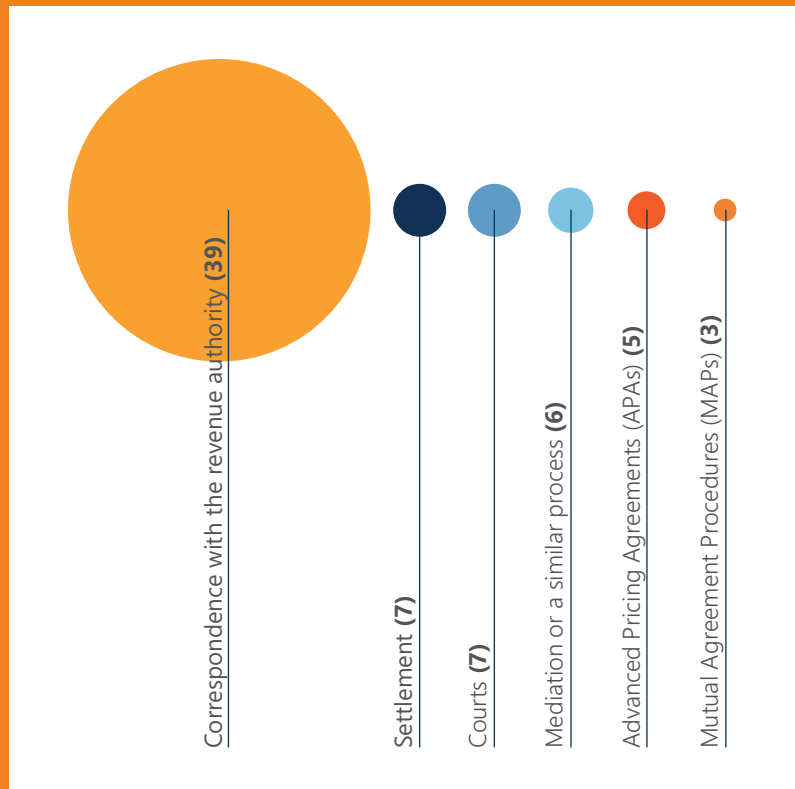
*My other recommendation is to make use of a TP advisor if you can. It's definitely worth the money saved in disputes and in keeping up with all the TP developments around the continent, which can be quite a minefield of legislation.*

*Pillar 2 is also going to be interesting for MNEs. It's less that we're concerned about paying higher tax rates and more about the level of documentation that's going to be required. That's the benefit of partnering with a specialist firm where you can lean on a whole team with different areas of expertise. I don't think having one TP person is sufficient anymore – you need a range of expertise.*

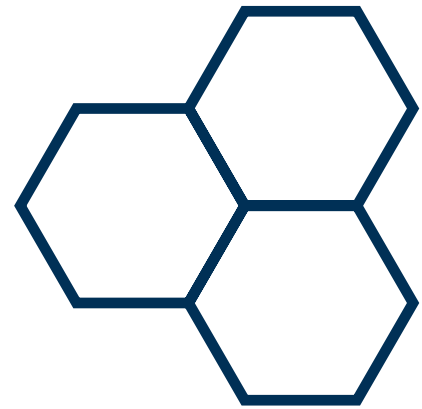
### Expectation for TP disputes and controversies to increase or decrease over the next 12 months



### TP dispute resolution mechanisms used in the last 12 months



# Advanced pricing agreements



APAs serve as crucial tools for proactive TP management, enabling tax-paying entities to mitigate disputes, audits, additional assessments, and the risk of double taxation, ultimately fostering an environment of tax certainty. Despite their significance, it's important to note that only a handful of African nations have established comprehensive APA legislation.

Among the African countries that have implemented APA programmes are Tanzania, Morocco, Nigeria, and Uganda. However, Nigeria has not fully implemented its legislation, and Tanzania has shown reluctance in issuing APAs due to constraints in its TP capacity. Uganda, on the other hand, lacks any known cases of issued APAs.

Significant steps have been taken by the South African National Treasury, as evidenced in the 2023 draft Taxation Laws Amendment Bill (TLAB). This legislative proposal outlines the introduction of an APA programme aimed at enhancing clarity and certainty in the domain of TP for taxpayers. The TLAB provides a legislative framework that will define the procedures for engaging in APAs.

With the potential implementation of the APA programme in South Africa, it is anticipated

that more MNEs operating within the country will explore this mechanism to mitigate TP disputes and enhance overall tax certainty.

In a global context, several BRICS nations, such as Russia, India, and China, have established APA legislation. Furthermore, countries with tax regimes akin to South Africa, including Australia, Canada, New Zealand, and the United Kingdom, have also enacted APA legislation. Most European Union (EU) member states have also adopted APA programmes. This suggests that Africa may be lagging behind its global counterparts when it comes to the introduction of comprehensive APA programmes.

In addition to these developments, the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting has outlined guidelines for its members to report annual statistics related to APAs, with this reporting set to commence in 2024. Notably, the European Commission has been proactive in providing statistics on APA programmes within EU member states, and the United Kingdom's HM Revenue and Customs has also joined in reporting APA statistics, further emphasising the importance of transparency and data sharing in the field of TP.



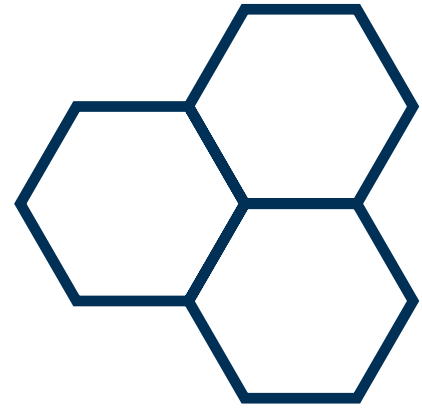
## **Key considerations for an effective APA programme in South Africa**

*As Graphene Economics, we welcome the proposed introduction of APAs by SARS. We believe that various crucial aspects need to be addressed to guarantee the effective functioning of the APA programme. These considerations encompass:*

- 1. Issuing a detailed public notice/interpretation note:** SARS must provide a comprehensive public notice or interpretation note. This should offer further guidance and details regarding the APA process. Such guidance can include information on handling complex transactions and the interaction of APAs with ongoing TP audits.
- 2. Cost and timing transparency:** Companies seeking APAs require clear information about the expected costs associated with the entire application process. Equally important is knowing the estimated timeframes for SARS to respond to their APA applications. This transparency ensures that businesses can plan effectively and make informed decisions.
- 3. Capacity of SARS:** Maintaining separate teams dedicated to APAs, distinct from SARS teams handling TP audits, is vital. This separation is critical for fostering trust in the APA programme and demonstrating SARS's commitment to fair and transparent TP practices.



# Notable cross-border tax and related developments in 2023



## BRICS revenue meetings

Recently, a noteworthy trend has been the increased collaboration between SARS and revenue authorities from the BRICS bloc. In November 2023, SARS actively participated in two multilateral meetings aimed at strengthening international tax cooperation within Africa and among BRICS member countries. It's worth noting that some BRICS nations employ distinct strategies in handling transfer pricing. For instance, China follows a systematic approach to transfer pricing audits, while Brazil has recently updated its transfer pricing rules and introduced country risk adjustments for non-domestic comparable transactions. Also, India is known for its high degree of transfer pricing litigation. The impact of these diverse policies and approaches within BRICS countries on the future landscape of South African transfer pricing is something to watch closely.



## Pillar 1 and Pillar 2 updates

The OECD devised the Two-Pillar Solution (Pillar 1 and Pillar 2) in response to the changing nature of business, moving from traditional to digitalised models. The shift to a digitalised economy has presented challenges in taxing MNEs, leading to the introduction of Pillar 1 and Pillar 2. Pillar 1 focuses on highly digitalised businesses operating in jurisdictions unable to tax income generated within their borders. Amount A, a component of Pillar 1, reallocates profits of large MNE groups to market jurisdictions, irrespective of physical presence. The formulaic approach considers factors like revenue sourcing, tax base determination, and allocation of profits to eligible market jurisdictions, with mechanisms in place to eliminate double taxation.

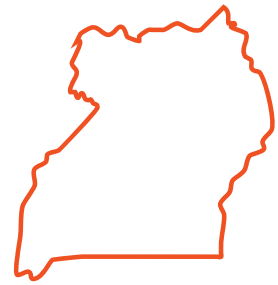
Pillar 2 establishes rules to ensure MNEs pay a minimum level of tax on global profits. The Global Anti-Base Erosion (GloBE) Rules impose a global minimum tax rate of 15%, applying to MNEs with consolidated revenue exceeding EUR 750 million. The rules include the calculation of GloBE income, covered taxes, effective tax rate, and top-up tax. Additionally, the Subject To Tax Rule (STTR) allows source jurisdictions to “tax back” covered income subject to nominal corporate income tax rates below the STTR minimum rate. The STTR prioritises taxing such income and takes precedence over GloBE Rules, aiming to protect the tax base of developing Inclusive Framework members.

The OECD’s 11th outcome statement, issued in July 2023, highlights agreements on Pillar 1 and Pillar 2. Amount A’s scope has expanded to cover any MNE falling within the defined scope, aiming to tax the largest and most profitable MNEs, prevent DSTs, and ensure international tax system stability. The Multilateral Convention (MLC) outlines the features necessary for the application of Amount A. Amount B’s scope and pricing framework are under review, with public input invited until 1 September 2023. The implementation support plan includes efforts to enhance understanding of the MLC, support for Amount B submissions, and capacity building initiatives for Pillar 1.

For Pillar 2, the STTR will be facilitated by a Multilateral Instrument (MLI), with an open signature from 2 October 2023. Implementation support includes training material, workshops, and assistance for GloBE Rules and tax incentives. The OECD/United Nations Development Programme Tax Inspectors Without Borders will play a niche role in this regard. Overall, the OECD aims to provide comprehensive support for the swift and coordinated implementation of the Two-Pillar Solution, with a focus on assisting developing countries.



## Uganda: Parliament approves digital services tax



The Ugandan Parliament has issued a release announcing the approval of amendments to the Income Tax Act on 11 July 2023, including a digital services tax.

Little detail is provided in the release, although the approved measure is reportedly similar to the original proposal. This includes a new section providing that tax will be imposed on every non-resident person deriving income from providing digital services in Uganda to a customer in Uganda at a prescribed rate of 5%. For this purpose, income is derived from providing a digital service in Uganda to a customer in Uganda, if the digital service is delivered over the internet, an electronic network, or an online platform. Digital services include:

- Online advertising services;
- Data services;
- Services delivered through an online marketplace or intermediation platform, including an accommodation online marketplace, a vehicle hire online marketplace, and any other transport online marketplace;
- Digital content services, including accessing and downloading of digital content;
- Online gaming services;
- Cloud computing services;
- Data warehousing;
- Services, other than the above, delivered through a social media platform or an internet search engine; and
- Any other digital services as the Minister may prescribe by statutory instrument.

The digital services taxes were to apply from 1 July 2023, although considering the timing of their approval, the implementation date is uncertain.



## South Africa: interpretation note on the definition of associated enterprise



SARS has published Interpretation Note 6 (Issue 3), which provides guidance on the interpretation and application of the term “place of effective management” in determining the tax residence of a company as one of the considerations under the tie-breaker rule in a tax treaty. The interpretation note replaced the prior version issued in 2015 and takes into account relevant developments since that time, including the 2017 version of the OECD Model Tax Convention. The general approach to place of effective management is summarized in the conclusion to the interpretation note as follows:

“A “place of effective management”, in determining the tax residence of a company, is only one of the considerations under the tie-breaker rule in a tax treaty that adheres to Article 4 of the OECD Model Tax Convention and its accompanying commentary.

A company’s place of effective management is the place where key management and commercial decisions that are necessary for the conduct of its business as a whole are in substance made. This approach is consistent with the OECD’s commentary on the term “place of effective management”.

A company may have only one place of effective management at any one time. There are normally multiple facts that need to be taken into account, often involving multiple locations, and from those facts and locations it is necessary to determine a single dominant place where effective management is located.

Definitive rules cannot be laid down in determining the place of effective management, and all relevant facts and circumstances must be examined on a case-by-case basis.

The place of effective management test is one of substance over form. It therefore requires a determination of those persons in a company who actually “call the shots” and exercise “realistic positive management”.

# ATAF: three suggested approaches to drafting Domestic Minimum Top-Up Tax legislation released

The African Tax Administration Forum (ATAF) has released its Suggested Approaches to Drafting Domestic Minimum Top-Up Tax (DMTT) Legislation, which updates an earlier suggested approach that was released in January 2023. The latest DMTT includes three suggested approaches.

Members of the ATAF include Angola, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Chad, Comoros Islands, Egypt, Eritrea, Eswatini, Gabon, Gambia, Ghana, Ivory Coast, Kenya, Lesotho, Liberia, Madagascar, Malawi, Mauritania, Mauritius, Morocco, Mozambique, Namibia, Niger, Nigeria, Rwanda, Senegal, Seychelles, Sierra Leone, South Africa, Sudan, Tanzania, Togo, Uganda, Zambia and Zimbabwe.

The ATAF's Suggested Approaches to DMTT Legislation has been developed by the ATAF Secretariat's International Tax team in partnership with the ATAF Cross Border Taxation Technical Committee (CBT).

The suggested approaches include three different alternative models that a country could consider depending on which is most appropriate in its legislative context. Only one approach is needed, but all three are presented for countries to consider.

**Approach 1:** This includes brief, skeleton provisions necessary for enacting a DMTT in the primary legislation that is enacted through a parliamentary process, supported by the more detailed supplementary regulations

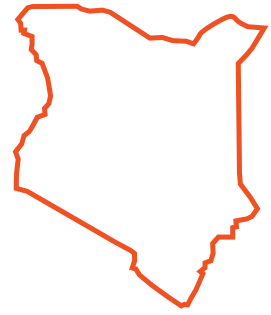
that the relevant minister could issue. The regulations contain many of the calculation provisions for the DMTT, as well as associated definitions. The regulations copy or closely follow many of the rules from the GloBE Rules directly to ensure maximum consistency. An advantage of this approach is that it makes the primary legislation shorter than incorporating the GloBE Rules into domestic law in full, which may make the parliamentary process more straightforward as most of the detail is included in the regulation and under the responsibility of the relevant minister.

**Approach 2:** This is a "reference model", which would enact a DMTT by incorporating the GloBE Rules by reference, with only the necessary modifications to make it appropriate to the DMTT context. An advantage of this approach is that it ensures the maximum consistency with the GloBE Rules and makes the rules required to be issued by the local country very short.

**Approach 3:** This is a long-form version of a DMTT based on the GloBE Rules, with all of the rules in the primary legislation enacted through a parliamentary process. An advantage of this approach is that it provides the maximum oversight role for parliaments.

The explanatory notes at the end of each approach describe the main reasoning underlying the draft provisions in greater detail.

# Kenya: consultation on Draft Income Tax Transfer Pricing Rules 2023



The Kenya Revenue Authority has announced a consultation on the draft Income Tax (Transfer Pricing) Rules 2023, which will replace the Income Tax (Transfer Pricing) Rules 2006. The purposes of these rules are to:

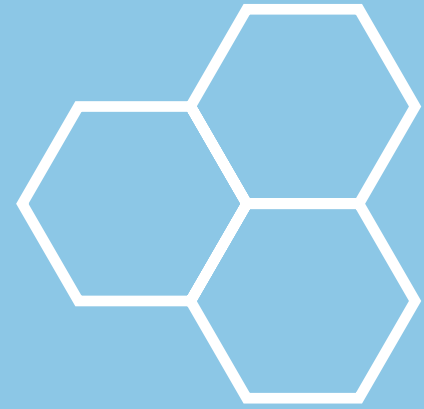
- Provide guidelines to be applied by related enterprises, in determining the arm's length prices of goods and services in transactions involving them.
- Provide administrative regulations, including the types of records and documentation to be submitted to the Commissioner by persons involved in controlled transactions.

The main rules cover:

- The transactions that may be subject to transfer pricing adjustment under the rules.
- The allowed transfer pricing methods and their application, including that a taxpayer must choose the most appropriate transfer pricing method to employ in determining the arm's length price.
- The power of the Commissioner to request information, including books of accounts and other documents relating to transactions where the transfer pricing is applied, along with a detailed list of required documents.
- The application of arm's length pricing, including that taxpayers shall:
  - develop an appropriate transfer pricing policy;
  - determine the arm's length price as prescribed under the guidelines provided under the rules; and
  - avail documentation to evidence their analysis upon request by the Commissioner.

The deadline for comments on the draft Income Tax (Transfer Pricing) Rules 2023 was 22 September 2023.





## Conclusion

Looking ahead to 2024, it's clear that the landscape of TP is in a state of continuous change, and organisations are taking proactive steps to adapt to these evolving dynamics. In this context, several key observations and recommendations can be made.

TP and related matters are poised to remain high on the agenda of revenue authorities across the African continent. Simultaneously, the role of the tax function within organisations is gaining greater significance in the context of mitigating and managing business risks.

There will be an increased emphasis on collecting and managing data, delving into finer levels of granularity. Additionally, transaction models and information sharing processes are anticipated to undergo changes to align with evolving regulations.

The trend of increasing TP disputes and controversies is expected to continue. Organisations that escalate TP matters to the attention of their CFO or board of directors will be better positioned to proactively respond to the evolving landscape and effectively manage unexpected events.

Our advice to MNEs in the context of cross-border transactions is to develop a strategy that enables them to actively oversee their cross-border taxes. This strategy should encompass the following:

- Ensure that various compliance requirements are met promptly. This may involve assessing whether additional resources are needed, considering outsourcing, or exploring co-sourcing arrangements.
- Be proactive in identifying potential TP-related issues and challenges that may arise, rather than reacting to them after the fact.
- Foster collaboration between the tax function and the company's operational teams. This collaboration should occur at the point of transaction, allowing for timely advice on tax matters and reducing the need for retroactive adjustments during audits.

In summary, the evolving landscape of taxation that impacts cross border transactions in 2024 requires a forward-thinking and adaptable approach from organisations. The effective management of cross-border taxes, data precision, and proactive identification of issues are vital components for success in this dynamic environment.



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