Graphene Economics
Transfer Pricing Advisory

Transfer Pricing in Africa, 2024:

Compliance, controversy and climate change

Graphene Economics 2024 Annual
Transfer Pricing Matters Survey

African TP firm of the year
as voted by International Tax Review
EMEA Tax Awards 2023.

Contents

Introduction

The 2024 survey marks the fourth year that Graphene Economics has canvassed transfer pricing (TP) professionals for their views on trends affecting the industry and we're now able to see patterns emerging in the data.

Some of the developments we observed in 2023 have continued to make their impact felt, and we're seeing the emergence of new trends too.

Designed to meet the evolving needs of multinational enterprises (MNEs) and revenue authorities, our 2024 report explores the key developments that shaped the past year. It also provides a forward-looking view of the trends and challenges anticipated in 2025 and beyond. We hope you find the insights presented here both valuable and thought-provoking.

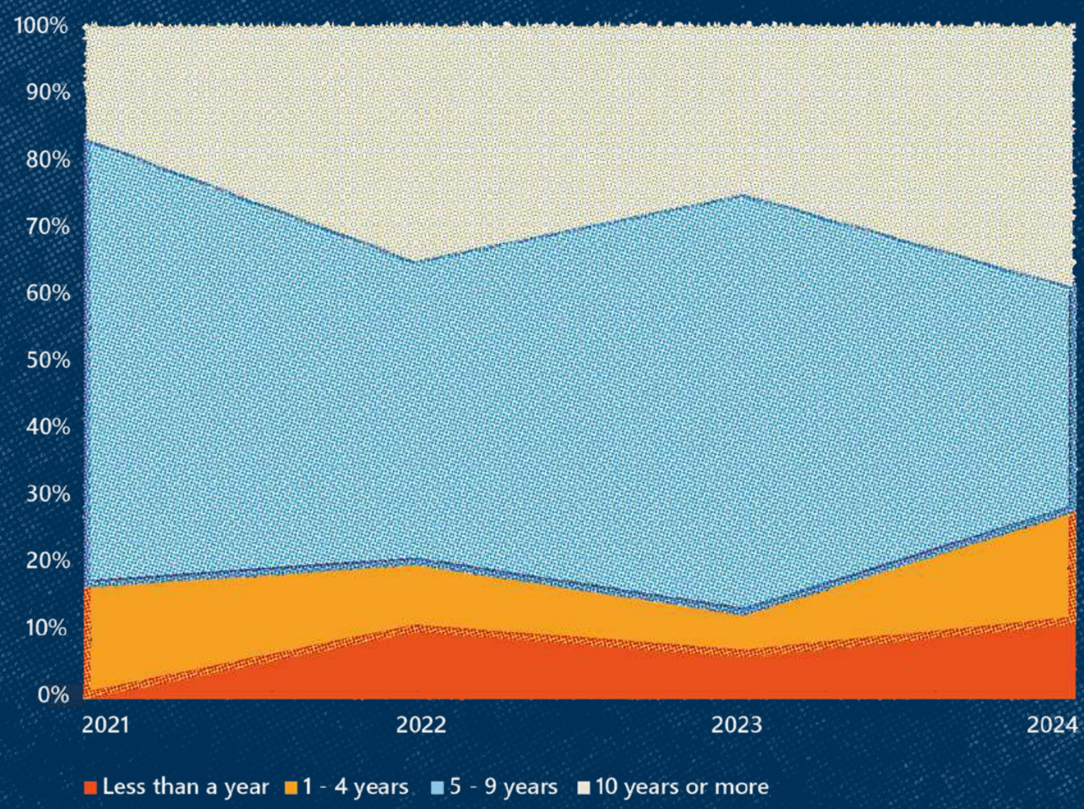
About the 2024 report

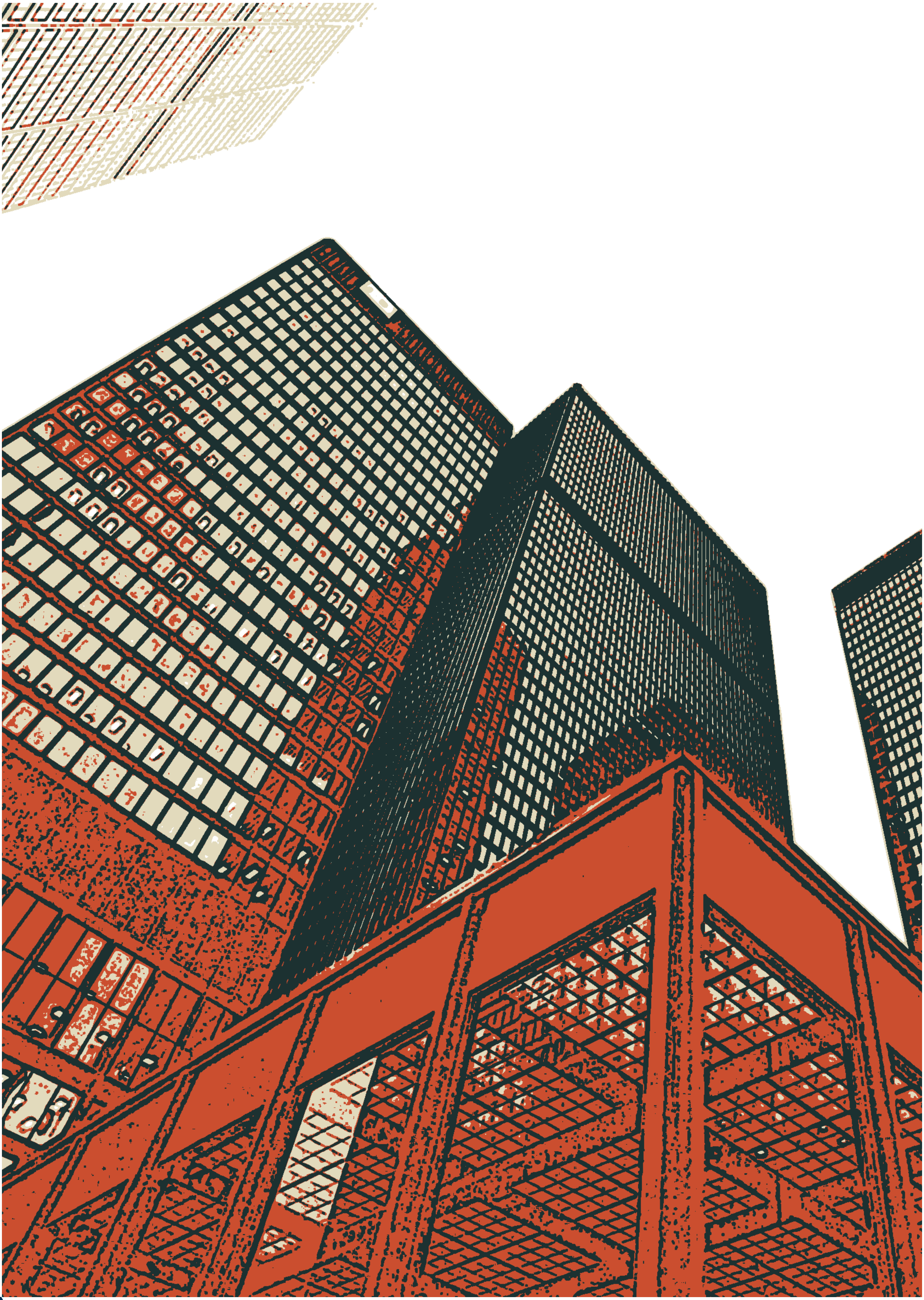
The purpose of the Graphene Economics annual TP survey is to monitor industry trends and insights, with the aim of sharing valuable findings with our clients, associates, and the diverse stakeholders within our sector.

In our fourth edition of the survey (and fifth annual report on the state of TP), we received responses from 32 participants – predominantly individuals working in MNEs. The largest percentage of respondents (38%) had more than 10 years of TP experience, representing an increase in the seniority of participants since the inaugural survey (when 13.33% of respondents answered they had more than 10 years of TP experience).

Complementing the survey results are contributions from experts in tax law, tax disputes, and industry bodies, as well as from our own team, based on our TP experience across the African continent over the past year.

Respondents' TP experience





Overarching TP trends for 2024

Compliance requirements and digital services taxes remain high on the agenda, with increased internal reporting and stakeholder focus taking up more time than ever before for tax teams.

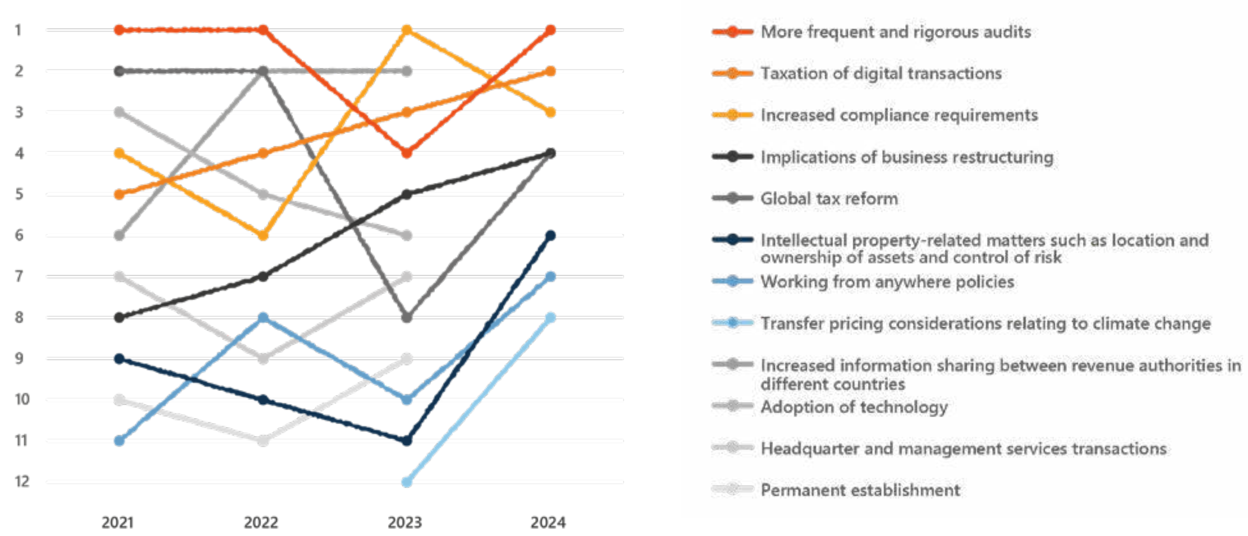
Tax controversies and global economic factors have proved the major challenges for many respondents. Intra-group services and intellectual property were identified as high-risk areas requiring focus from a TP perspective.

Interestingly, the use of both in-house and outsourced TP specialists is prevalent, with a shift towards outsourcing. This could be because of the increasing complexity of TP management across Africa, driven by several factors (from evolving business models to limited internal resources, and the need for specialised regional expertise).

While climate change is moving up the business agenda, there's a lag in terms of the consideration being given to how it will impact TP, especially in Africa.

While global macroeconomic uncertainty has spiked on the back of geopolitical tensions, elections and war, some things have not changed. Excel remains the dominant tool for TP calculations, despite increased interest in external technology. And, as we've heard from respondents in all four years of the survey, TP compliance costs are expected to rise, with the priority of TP within organisations seen as needing further elevation.

TP Trends over time // 2021 - 2024



Africa's macroeconomic environment in 2024

Globally, there was a trend towards decreasing inflation rates in 2024, which precipitated a decrease in interest rates. While interest rates fell faster in many developed countries, developing nations – including many in Africa – are now also lowering interest rates, which means the cost of capital is decreasing.

However, global uncertainty remained high on the back of continuing geopolitical volatility. With elections in over 50 countries across the world in 2024, including 19 African countries, the World Economic Forum had predicted in 2023 that geopolitical and geoeconomic relations between major economies would remain a significant risk and this proved to be true.

There is also a level of interdependence, which may affect certain African countries. For example, while they grapple with their own regional political challenges (such as post-election protests in Mozambique, or the realities of a government of national unity (GNU) in South Africa), many African countries are also significantly affected by the outcome of the US election and the resultant policy and foreign investment changes that are expected.

Wars in the Ukraine, the Middle East and Sudan, along with conflict in other areas of Africa, including Burkina Faso, the DRC and Libya, also continue to drive uncertainty on the continent.

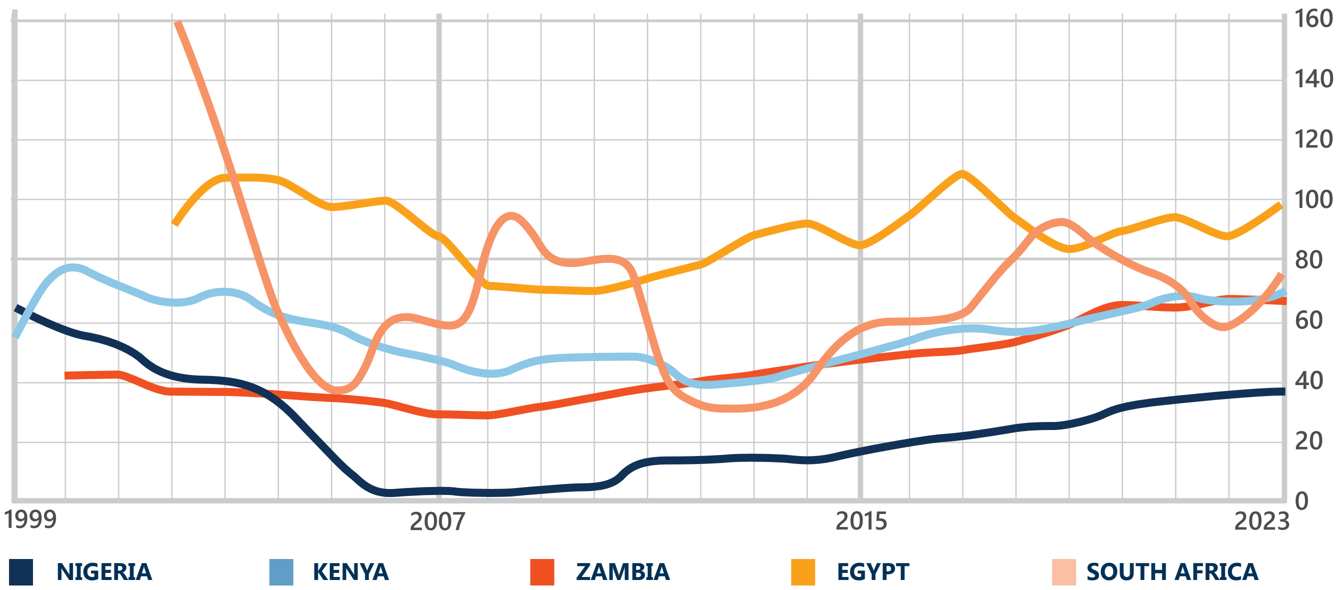
Climate change looms large as a factor that will affect African economies, with energy security and the Just Transition both needing to be addressed. African countries are questioning who will fund the transition away from fossil fuels – an issue that dominated headlines coming out of COP29, but remains largely unanswered, with wealthier nations resisting contributing towards the $1.3 trillion in financing required annually to help developing countries adapt to climate change.

The debt levels of many African countries remain high and continue to increase, which means debt-to-GDP levels are high, which puts strain on the fiscus and prohibits much needed government investment into infrastructure.

The OECD's Base Erosion and Profit Shifting (BEPS) project has sought to stop MNEs from stripping out profits from countries to help address the role the private sector plays in tax avoidance. In Africa the focus on MNEs as a source of revenue collection continues, and as global tax reform takes shape, there's been an increase in regulation in recent years – particularly with regards to the OECD Pillar Two (essentially implementing a global minimum corporate tax rate of 15%).

This essentially means revenue authorities are competing for their share of the pie, and governments will need to compete to attract business. Competitiveness, coupled with the need to raise additional revenues, and ongoing focus on MNEs, is likely to be a key trend shaping tax policy in the years to come.

National Debt-to-GDP



TP trends and challenges

In 2024, survey respondents cited more frequent and rigorous audits, global tax reform and increased compliance requirements as the top three trends they believe will shape TP in the year to come.

Interestingly, taxation of digital transactions also remains high on the list. While digital services taxes were meant to be scrapped in the face of the OECD's Pillar One and Two tax reform programmes, the lack of agreement regarding Pillar One amounts has seen some countries press ahead with digital services taxation. In Africa, this includes Kenya, Nigeria, Sierra Leone, Tanzania, Tunisia, Uganda and Zimbabwe[1].

When it comes to the issues that tax teams and TP professionals are grappling with, 2024 has seen an uptick in increased internal reporting of TP requirements (likely due to an increase in controversies and disputes, which sees TP being brought to the attention of more senior stakeholders).

On one hand, this means that the importance of TP is elevated internally – which is a good thing, given the risk it can pose to MNEs. On the other hand, it means it is taking up more time for tax teams and adding to the compliance burden. This might also be driving the increase in reliance on external TP consultants that we've seen, as MNEs prioritise their internal resources

Map of countries with digital services taxation

[1] Source: https://www.vatcalc.com/global/digital-services-taxes-dst-global-tracker/

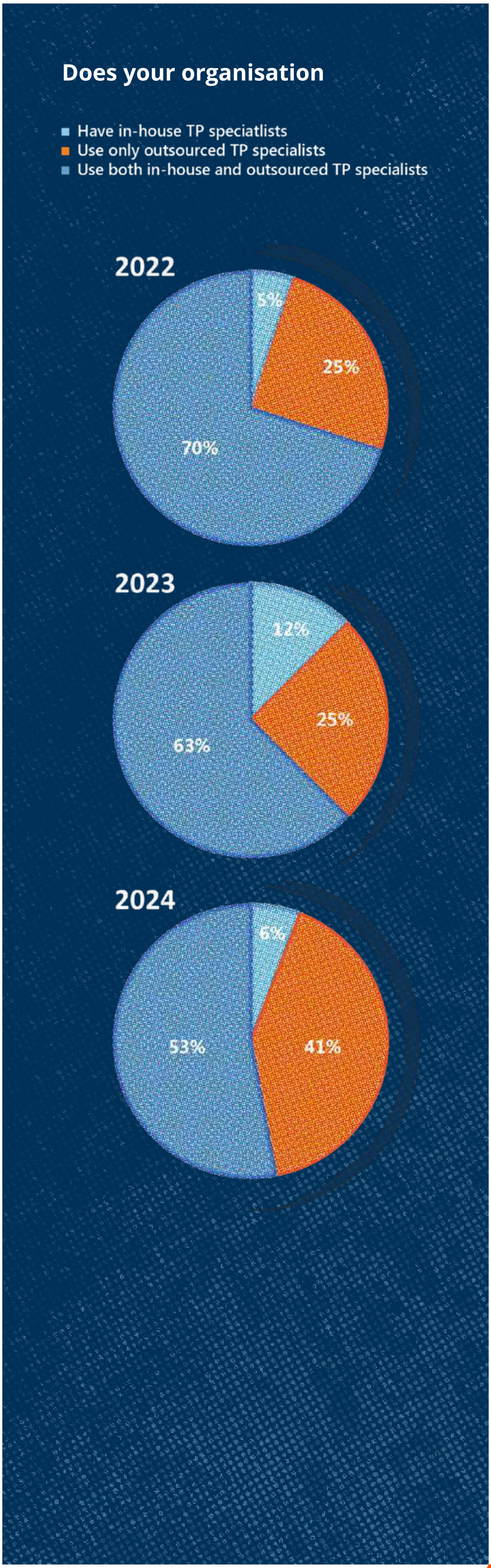
and lean on the expertise of external specialists to assist in managing the complexities of their TP strategies and reporting requirements.

Respondents believe that intra-group services will remain an area of focus for revenue authorities in 2025 as it touches almost every industry and business and is a mainstay of tax audits. They also believe intellectual property (IP), such as location and ownership of assets and control of risk, will come under scrutiny, which makes sense as more companies leverage technology for IP development.

It's complicated to determine the value of IP (e.g. what's an appropriate royalty fee for a brand, or how should one determine the licencing fee for use of a certain technology?). However, while IP transactions can be complex, they are often significant. For example, in 2024, South Africa saw its first TP court case related to IP (ABD Limited vs The Commissioner for The South African Revenue Service).

The case revolved around determining an arm's length royalty rate for the use of IP rights by foreign subsidiaries (Opcos) of the South African telecommunications company ABD Limited. The Tax Court ultimately ruled in favour of ABD Limited, with the judgment reaffirming the importance of the OECD Transfer Pricing Guidelines as a framework for analysing TP issues and selecting appropriate methodologies.

We believe these types of disputes are likely to increase into 2025 and beyond.



Specialist skills

In 2024, it seems more MNEs are focusing on proactively managing their TP as cross-border transactions climb up the tax agenda.

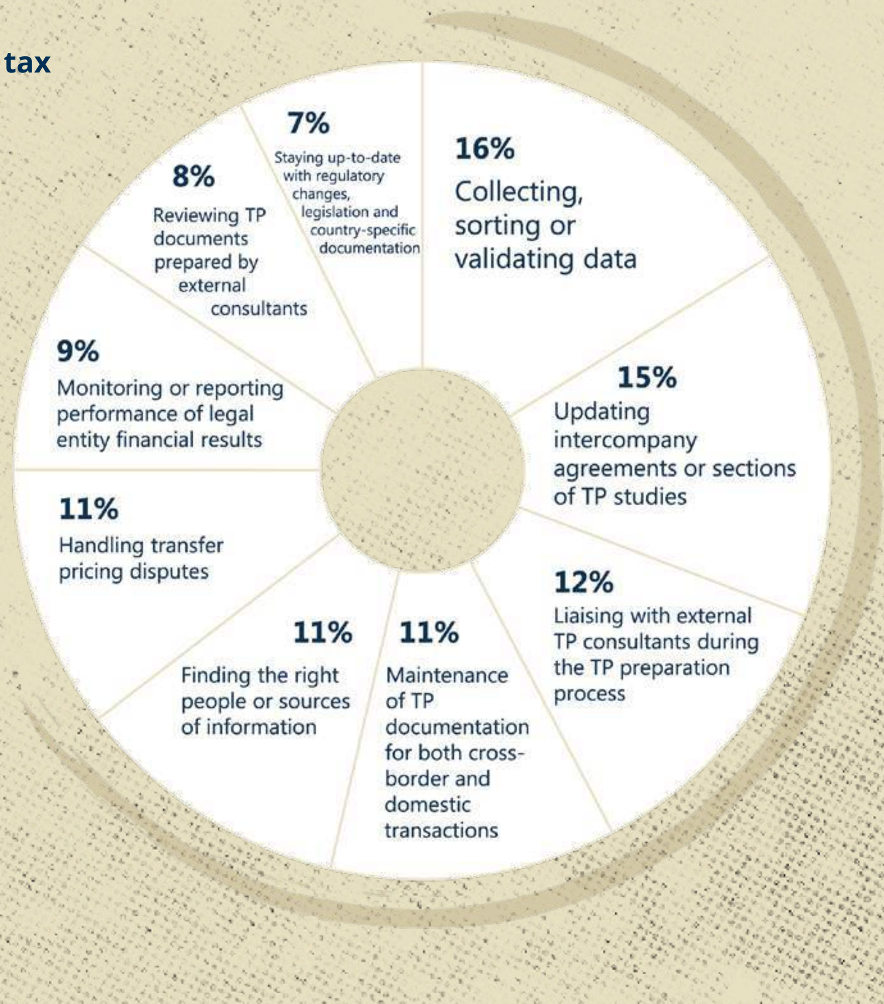
With the increasing compliance burden and the fact that TP continues to become more complex to manage – particularly as MNEs expand operations to new countries or as countries introduce new regulations and requirements – scarce TP skills are more in demand than before and there's pressure on the talent pool.

Tax teams are investigating technology solutions, but also looking to leverage the expertise of external consultants and to find the right people for their internal teams.

Encouragingly, it seems more MNEs are also getting their internal TP processes in order and streamlining these where possible. Respondents noted that they are focused on maintenance of TP documentation for both cross-border and domestic transactions, monitoring or reporting performance of legal entity financial results for TP purposes, and updating intercompany agreements and other supporting documents, as well as spending time on collecting, sorting and validating data, which remains the area where most time is spent.

The consensus seems to be that the implementation of TP policies is seen as an area where greater attention is required.

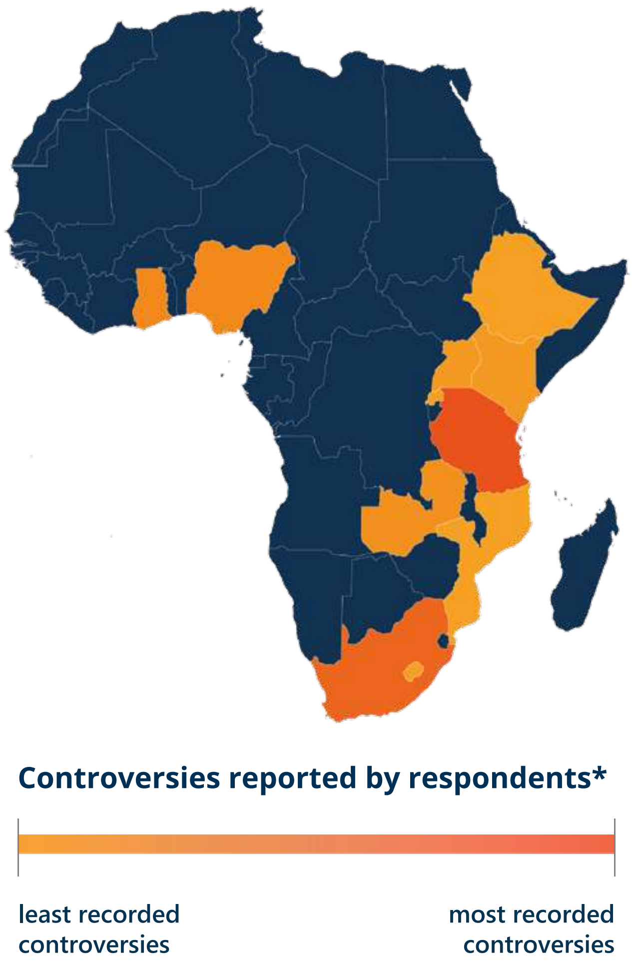
How time is spent by in house tax departments on TP matters



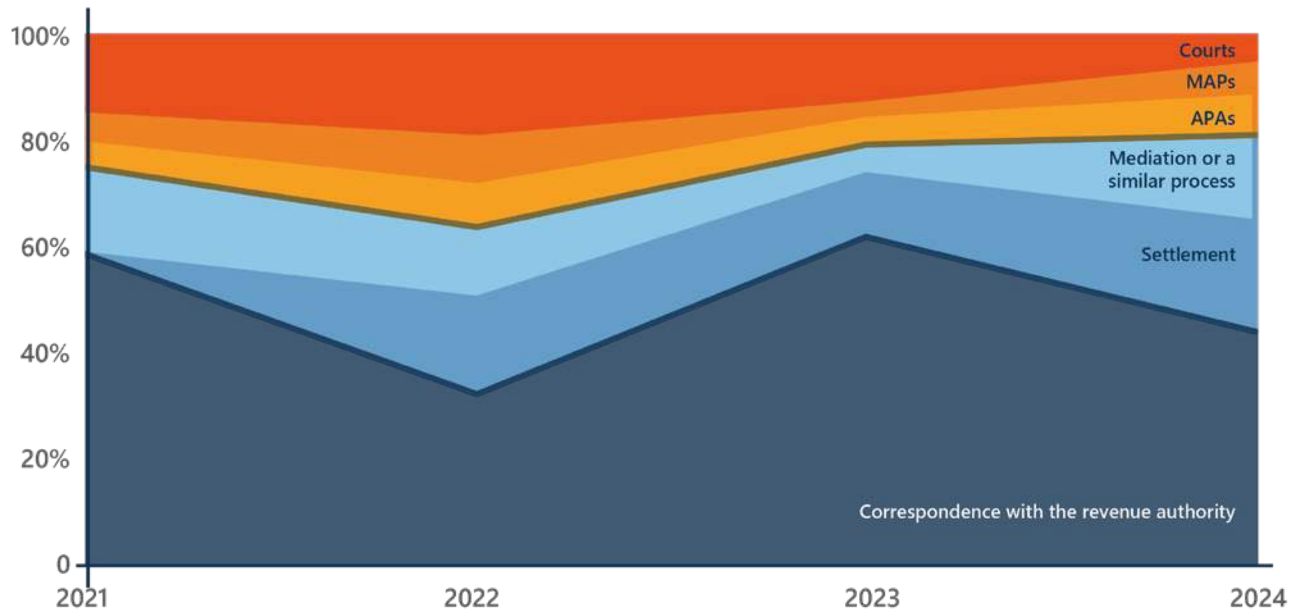
Controversies and disputes

Trends in TP controversies and disputes seem fairly unchanged from 2023, with the majority of respondents facing TP audits in one or more countries during the course of the year. These are more prevalent in certain countries in Africa, and most respondents believe this is likely to increase in the year ahead.

In terms of dispute resolution approaches, there is interest in Advanced Pricing Agreements (APAs) from respondents, but this option remains limited to a handful of African countries at present.



Dispute resolution approaches



*** Note:** The heat map indicates countries where there is a high prevalance of TP audits.
It is not an exhaustive indication of all TP disputes in Africa.

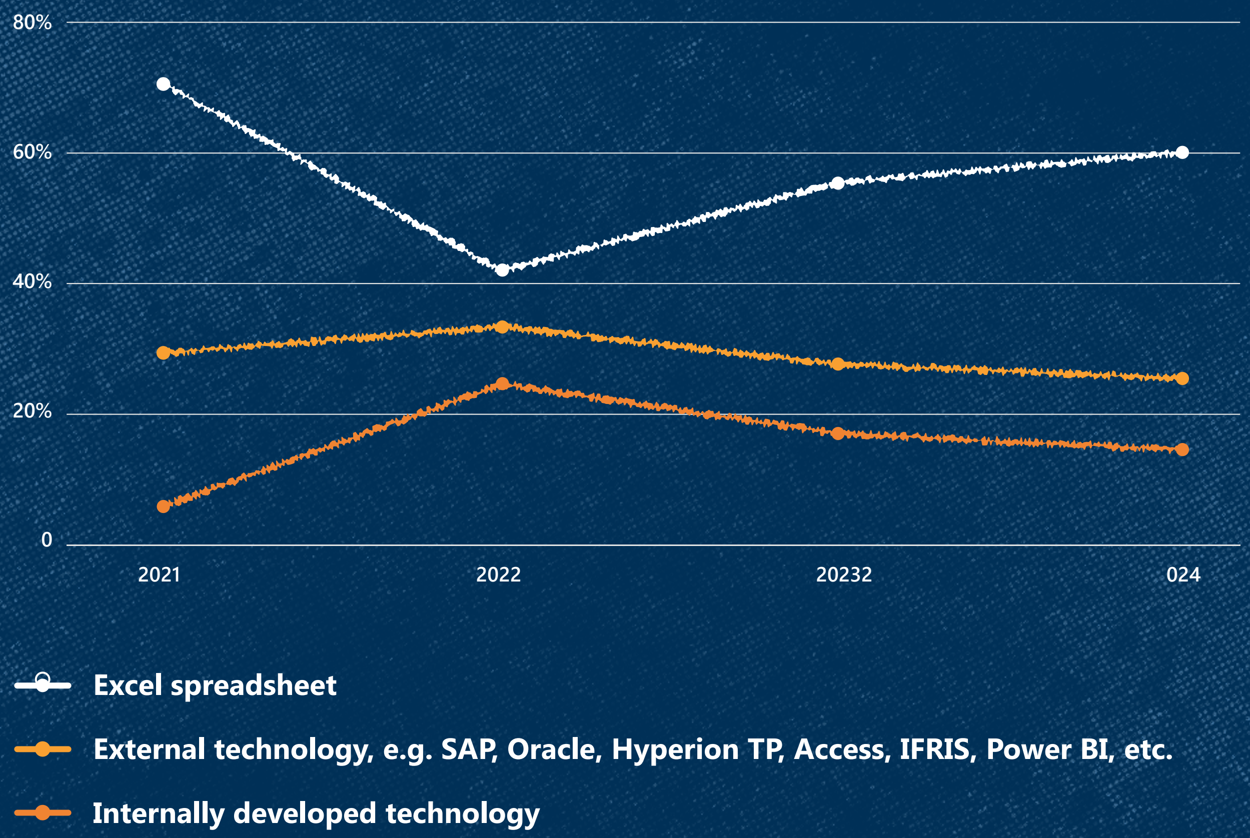
TP approaches, tools and teams

There doesn't seem to be a unified approach to how businesses are approaching TP in Africa, which is likely due to the varying requirements in different regions, differences in business models and strategies, and the uncertain landscape in many countries, which sees MNEs adopting a wait-and-see approach.

What has remained consistent over the four years since we first implemented the TP survey is that Excel remains the most used tool or software for managing and calculating TP, and that professionals working in the field feel that TP requires further prioritisation within their organisation.

This year, more taxpayers seem to be taking a dual approach, working across internal and external teams. In terms of how time is spent, this means that for those working within an MNE, there is a greater focus on reviewing TP materials and analysis, and slightly less time spent on preparing TP documentation.

Most used software tools for TP



Continental rift

As alluded to elsewhere, TP continues to grow in complexity, but particularly within Africa. For an MNE that might operate in 15 different countries, there is a huge amount to keep track of. Each economy will be affected by different factors, and those factors can be fairly extreme in Africa.

For example, there might be political unrest in one country, supply chain issues in another, climate change in certain regions, and currency issues in others. Laid over that is the matrix of TP pricing regulations, which might be similar across some countries because of adherence to OECD or UN guidelines, but will also have local differences depending on legislation, the approach of revenue authorities or their interpretation of the guidelines.

On top of this, there's increased information sharing between revenue authorities and greater transparency than ever before. This means that MNEs need to try to have some kind of unified TP approach that shows consistent pricing methodology across every country in which they operate. It's extremely challenging.

In Europe, currency is largely standardised through the Euro, along with certain other economic metrics, and there are well established supply chains. Distances between countries are smaller and transport and other infrastructure is largely well developed. This makes implementing a TP strategy within a set of European countries less complex than doing so in Africa, where the conditions are far more nuanced per country and region.

For example, within much of Francophone Africa, the accounting standards used are those set out by the Organization for the Harmonization of Business Law in Africa (OHADA), as opposed to the IFRAS standards. There are also caps in place related to certain types of payments that aren't generally in place elsewhere on the continent.

MNEs working across the continent may find it useful to employ the services of external TP specialists within specific regions, but it's ideal to then have someone who assists with ensuring consistency across all the markets. As Graphene Economics, that's where we believe we can play an important role.

TP trends in francophone Africa

By Cédric Maheo, Transfer Pricing Partner at LPA Maroc

Cedric MAHEO, Transfer Pricing Partner at LPA Maroc

With a background in economics, Cédric Maheo has been providing expertise exclusively dedicated to TP issues for nearly 15 years. His experience in structuring policies and drafting TP documentation, performing benchmarks, managing Advance Pricing Agreement (APA) procedures and supporting clients in TP disputes is highly valued in the French-speaking African market. As an active member of the TPED association (Transfer Pricing Economists for Development), he is recognised for his editorial contributions and is frequently invited to conduct training sessions, speak at conferences, and host webinars on technical or legislative topics.

Francophone African states have clearly understood the message persistently conveyed by institutions like the UN and the OECD over recent years, highlighting revenue losses due to the erosion of taxable bases by taxpayers, particularly multinational companies. TP has thus become a major focus area, as evidenced by the modernisation of legislation, advancements in tax guidelines, and the upskilling of audit teams via targeted training.

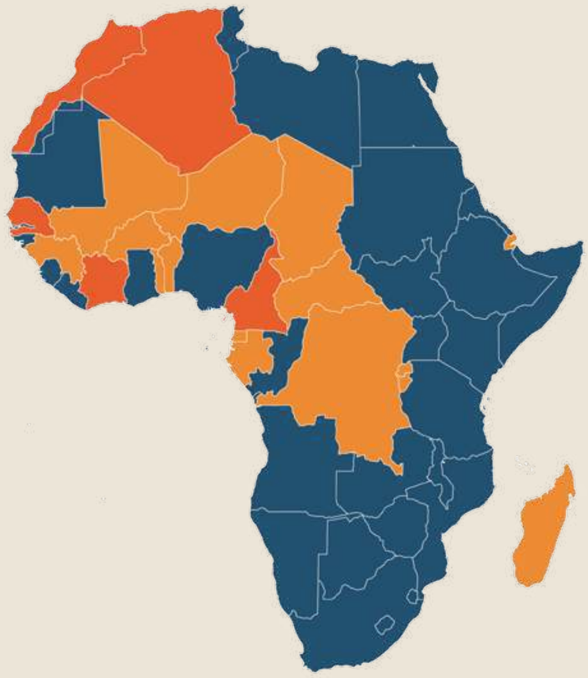
Modernising legislation

Francophone African jurisdictions have gradually been incorporating the minimum standards of the OECD's BEPS project into national law, particularly Action 13, starting in 2018. However, legislative modernisation gained significant momentum in 2023. During a meeting in Bissau on July 6–7, 2023, the Council of Ministers of ECOWAS States adopted Directive C/Dir. 6/07/23, aiming at harmonising TP rules within member states. The directive outlines the arm's length principle and defines the concept of dependency, urging member states to establish TP documentation requirements aligned with Annexes I and II of Chapter V of the OECD Transfer Pricing Guidelines (January 2022 edition).

In 2023 and 2024, several African countries formalised their TP documentation obligations into national law:

- **Ivory Coast:** The 2023 Finance Law introduced documentary obligations via the new Article 36 of the General Tax Code (GTC).
- **Cameroon:** On 4 January 2024, Cameroon issued Decision No. 5/MINFI/DGI/LRI/L, specifying the documentation requirements, supplementing Article L19 of the GTC, which has codified this obligation since 2020.
- **Senegal:** The Ministry of Finance released Decree MFB/DGID No. 025840 on 1 August 2023, implementing the provisions of Article 638 of the CGI concerning documentation requirements (originally codified in 2018).
- In 2024, **Algeria** followed suit, setting out the content for TP documentation in a Ministry of Finance decree dated 15 February, 2024, following the introduction of this obligation by the 2023 Amending Finance Law.

Map of Francophone Africa



Impact of capacity building

The OECD has been actively involved in capacity building, frequently organising seminars attended by tax officials from regional administrations, such as those held in Dakar, Senegal, in February and Lomé, Togo, in June 2023.

In keeping with this emphasis on training, it is important to note the significant impact of the organisation Tax Inspectors Without Borders (TIWB), whose vast majority of support programmes are aimed at benefiting African states.

Very concretely, inspectors with strong expertise in certain areas acquired in developed countries are seconded to assist local audit teams in conducting tax audits.

As the TIWB Annual Report 2022 noted: “TIWB has been instrumental in building auditors’ capacity and entrenching best practices in TP matters. TIWB has deployed more than 60 programs in 30 jurisdictions across Africa. More than half of these are repeat programmes, which follow an initial programme establishing a sound base for TP audits. They often focus on key sectors including the extractive industries, financial services, telecommunications, and agriculture.”

In recent years, several francophone African countries have thus benefited from these programmes, including Senegal (2022), Togo (2022), Benin (2023), Cameroon (2023) and Guinea (2023).

Evolution of TP audit practices

Creation of specialised units
Recognising the importance of TP issues for state revenue, and considering the two points mentioned earlier, some jurisdictions have restructured their tax administrations to establish specialised units focused on TP audits, with a national scope of intervention. This is the case, for example, in Morocco and Côte d'Ivoire.

Doctrine: Focus on the Moroccan case
On 21 December 2023, the Moroccan Tax Administration published a "Transfer Pricing Control Guide", signed by the Director General of Taxes, which thus serves as binding doctrine for inspectors.

This Guide, which is inspired by both the OECD and UN Manual, provides numerous contributions and demonstrates a strong pedagogical approach. For instance, it defines the five existing methods for determining the prices of intra-group transactions and illustrates how they work. It explains the usefulness of a functional analysis and how to conduct it, including a sample questionnaire and a model grid to complete. However, the main contribution of this Guide lies in its specific directives for comparability analysis. Indeed, the manual details, over four pages, the fundamental steps that must be strictly followed by audit teams to successfully conduct a benchmark. The publication confirms that "foreign" comparables can be highly relevant in certain cases, that unprofitable comparables should not be systematically eliminated, and that a "full market" profitability level is analysed concerning an interquartile range, rather than relying solely on a spot margin rate.

Moreover, the Guide now requires audit services to provide taxpayers with the data on which they relied to propose adjustments to taxable bases. In other words, this Guide puts an end to the detrimental practice of using "secret comparables".

This represents a significant work that redefines the power dynamics between audit teams and taxpayers in the context of tax audits.

Kalale Mambwe, OECD Project Manager for Tax Inspectors Without Borders

Currently located in Paris, Kalale Mambwe serves as the OECD's Project Manager for the Tax Inspectors Without Borders (TIWB) initiative, overseeing programmes across more than 60 countries in Africa, Latin America and the Caribbean, Asia and the Pacific, and Eastern Europe. In her role, Kalale facilitates technical assistance in tax administration for developing nations, coordinates the deployment of TIWB experts, and monitors and evaluates TIWB programme outcomes. Kalale also serves as an advisor on the Taxation of Extractive Industries in the Centre for Tax Policy and Administration at the OECD. With a background in economics and tax, Kalale brings extensive practical experience to her position.

Previously, Kalale held a managerial role in international tax and TP at the Zambia Revenue Authority, primarily focused on TP and auditing cross-border transactions. She played a key role in developing policy and legislation on TP and other international tax issues in Zambia. Additionally, she served as Zambia's delegate to the OECD Pillar One and Pillar Two discussions before joining the OECD.

Tax Inspectors Without Borders: 21st-Century capacity building initiative

By Kalale Mambwe, OECD Project Manager for Tax Inspectors Without Borders

Launched in 2015 at the Third International Conference on Financing for Development in Addis Ababa, Tax Inspectors Without Borders (TIWB) is a joint initiative of the OECD and the United Nations Development Programme (UNDP) that underpins the OECD/G20 BEPS Actions and contributes to the UN's Financing for Development agenda.

Leveraging global cooperation, TIWB provides impactful, measurable, and sustainable capacity building in developing countries by delivering hands-on technical support on real audit and investigation cases, going beyond traditional approaches. TIWB experts work alongside local tax auditors on cases from risk assessment and case selection to audit findings, enabling auditors to apply best practices in TP, international tax matters and tax crime investigation.

TIWB's impact in Africa

Revenue
While TIWB supports developing countries worldwide, Africa remains the primary focus of its activities. In strategic partnership with the African Tax Administration Forum (ATAF), joint TIWB/ATAF programmes have helped African jurisdictions generate over USD 1.8 billion in additional tax revenues and USD 4.3 billion in taxes assessed over the past nine years.

Impact and beyond
Beyond revenue gains, TIWB support has enhanced the confidence of local auditors through knowledge and expertise in handling complex international tax cases. This improvement has led to more consistent, high-quality audits resulting in increased revenue for African governments. Tax administrations that have hosted TIWB programmes report higher voluntary compliance, better-quality documentation submitted by MNEs, and improved adherence to documentation requirements. Alongside the many organisational changes, TIWB experts continue to provide recommendations to strengthen domestic legislation and regulations, offering greater clarity to taxpayers, increasing tax certainty, and reducing disputes.

TP challenges in African countries
Despite the successes, TIWB continues to observe numerous TP specific challenges in African countries:

- **Access to information:** African tax administrations face challenges in obtaining adequate information from MNEs for TP audits.
- **Access to commercial databases:** Financial constraints limit access to commercial databases, and those available often lack sufficient African comparables for effective benchmarking.
- **Demand for industry-specific expertise:** African tax administrations increasingly need specialised expertise for complex sector-specific TP audits.
- **Advance Pricing Agreements (APAs):** While there is interest in APA legislation, it remains a lower priority, with few African countries enacting it.
- **Challenges with Exchange of Information (EOI):** High pressure to complete audits and raise revenue makes it difficult for African authorities to rely on lengthy EOI processes.
- **Mutual Agreement Procedures (MAP) cases:** Africa reports fewer cases in MAP, with most TP disputes settled directly with taxpayers.
- **TP expertise:** Some African countries have developed notable expertise, though limited experts highlight the need for ongoing capacity building.

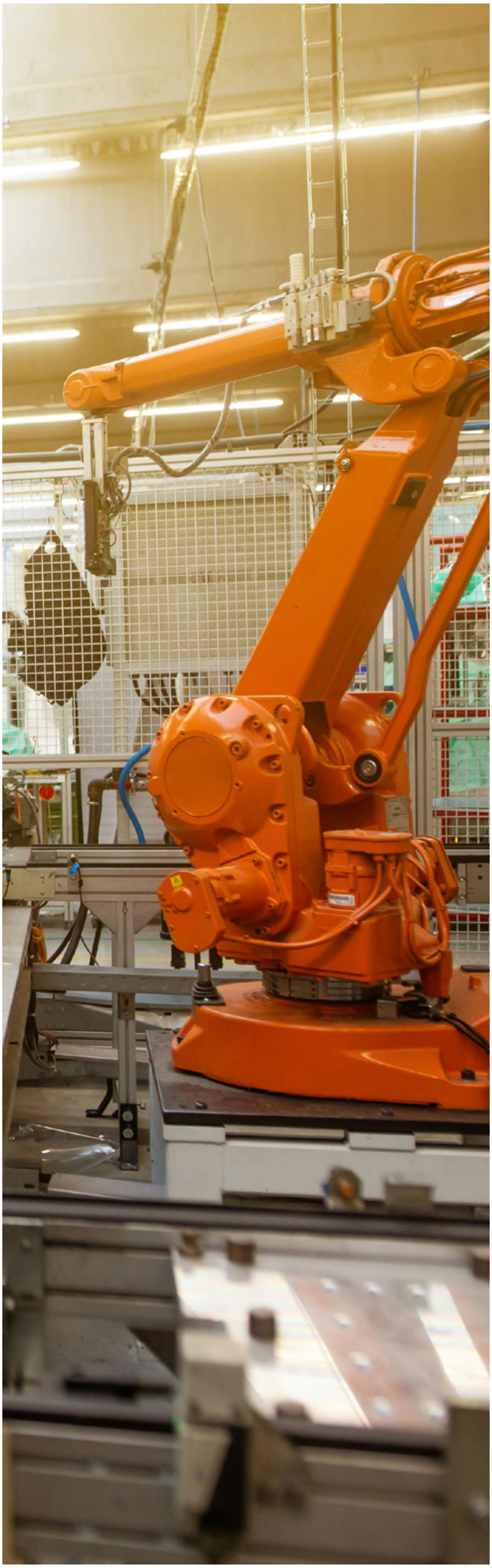
As TIWB approaches its 10th anniversary in 2025, it will continue supporting African tax administrations in overcoming these challenges including those in the various thematic areas it provides support in. In this regard, TIWB continues to expand its technical support to developing countries in Africa, while maintaining its niche of working on real audit cases, to ensure countries remain equipped to handle complex and evolving global tax challenges.

Getting to grips with client businesses – why operational exposure benefits TP strategy

As TP becomes more complex and as MNEs seek to get to grips with how to implement TP strategies more effectively, it's important for TP professionals (whether internal or external) to acquire a deeper understanding of the business.

At Graphene Economics, we are privileged to serve a variety of clients across wide-ranging industries. While we bring our taxation and economics expertise to the table, along with our experience of managing TP across the African continent, we know we need to spend a **lot of time getting to know our clients' businesses and understanding their operating models to be able to deliver the best possible solutions for them.**

Something we have found enormously helpful in this regard is when clients invite us to experience their operations – for example through a site visit – which enables a deeper understanding of how their businesses work, what the on-the-ground challenges are, and the realities facing their people on a day-to-day basis.



Observing a business in action

As Henry Dicks, Manager at Graphene Economics, explains, “Perhaps one of the most beneficial ways to deepen the understanding of a client’s business, and the transactions entered into by it, is to spend time observing the actual business operations in person. Members of the Graphene Economics team recently had the opportunity to conduct two plant tours of the manufacturing facilities of a client engaged in the manufacturing of chemical products.”

Graphene Economics has been assisting the client for several years in preparing TP documentation and with various TP advisory engagements. This was, however, the first opportunity the team had to conduct a site visit.

“The sites are structured into various plants that manufacture different types of products,” says Henry. “Being led through these facilities by highly capable engineers and plant foremen can only be described as impressive. Immediately noticeable is the level of automation and advanced manufacturing processes. Computer screens are manned by engineers who, with the click of a button, can view any level or point within the manufacturing process, track raw material levels, monitor outputs and instantly identify any abnormalities or anomalies in the manufacturing process. When touring the plants, one obtains a greater appreciation for the technical skill required throughout the Group. From procurement of raw materials to the delivery of products to mines globally, each step in the value chain must run optimally and uninterrupted to ensure the Group’s strategic outcomes are met.”

Michael Hewson, Director at Graphene Economics, adds that visiting a client’s business gives insights that can never be delivered in a boardroom or on a Teams or Zoom call. “For example, with this client, we had been unaware of certain licencing agreements they have in place until we visited their facilities and asked questions about where certain technologies came from as we chatted with their R&D teams. Understanding the licencing agreements gives us insights into their IP and is now another consideration that we will take into account as we advise them on their TP.”

Extensive TP benefits

Michael suggests that by exposing TP consultants to a business's operations, they gain a deeper understanding of the company's business model, including its value chain, cost structures, and profit drivers. "This insight allows us to develop TP strategies that are more aligned with the company's actual economic activities," he says. "Being in tune with the operational realities of a business ensure we're able to better tailor our solutions to the specific needs and circumstances of the company. This in turn results in improved risk management (by addressing potential compliance issues proactively), streamlined decision-making (as we can provide insights into how operational changes might impact TP strategies), and better contribution to value creation (as we're not just managing TP compliance, but able to ensure TP strategy plays more of a part in the overall efficiency and profitability of the business)."

Henry uses accurate delineation as a practical example. "The term accurate delineation refers to, in broad terms, the identification of the economically relevant characteristics of the transaction," he explains. "This can include the relevant functions performed, assets used, and risks assumed by the parties to a transaction. Accurate delineation of a transaction is at the very core of considering that transaction from a TP perspective. Firstly, it informs the so-called comparability analysis, to compare the transaction to similar transactions entered into by independent third parties. Secondly, in accordance with the arm's length principle, a transacting party should be remunerated commensurate to the functions performed, assets used, and risks assumed by the party. Accordingly, the arm's length nature of a transaction cannot be considered without the transaction being accurately delineated."

Why is this important from a taxpayer's perspective? April Nicholson, Associate Director at Graphene Economics, explains that there are several reasons. Accurate delineation:

- Supports that the **allocation of profit within the group is aligned to the value chain** and activities that drive revenue within the business
- Ensures that the **economic substance of the transaction** (including the actual business and commercial operations) **matches its legal form**
- **Assists with risk management** within the group, as accurate delineation of the transactions is aimed at reducing instances of disputes with revenue authorities, and therefore reducing the risk of double taxation within the group

"TP advisors can accurately delineate a transaction through gathering and considering relevant information, conducting functional analyses meetings and gaining a deeper understanding of the industry and economic factors impacting the transaction, together with the broader sector within which their client operates," says Henry. "By obtaining a real and deep understanding of how a client's business operates, and seeing it practically, not only assists in the accurate delineation of transactions but makes the whole TP analysis come alive."

Henry adds that understanding the business at a granular level not only informs the accurate delineation, but the comparability analysis. “By obtaining a deeper understanding of the Group’s business we can more effectively conduct benchmarking studies, consider potential comparable companies and provide even more robust and accurate testing of transactions. Perhaps a noteworthy example of this is the discovery of an internal Comparable Uncontrolled Price (CUP) agreement we became aware of through our discussions with one of the engineers on site,” he says. “The agreement was not previously identified as it is only applicable to certain of the products manufactured and has been in place for a long period of time. Through the discovery of this agreement, we were able to compare it to a licensing benchmarking study performed recently for the client. This CUP agreement enabled us to compare the agreement against the analysis we performed and ultimately bolstered the analysis and results further.”

Making TP analysis come alive

“I can only describe the overall experience as incredible,” Henry says, of the site visit. “The observations made and lessons learned are things we can actively apply when preparing TP documentation for the client, as well as when we provide advisory services. It assisted us, in real and practical terms, to more accurately delineate transactions, understand the functions performed, risks assumed, and assets used by the South African operations as well as the group subsidiaries. We walked away from the experience with a much deeper understanding of the IP used by the group and the paramount importance of continuous enhancements and development of the IP, which often comes down to the day-to-day continuous enhancements, improvements and optimisations made by the highly skilled technical staff on site.”

Beyond the visit itself, Henry says, the experience emphasised the need for truly understanding clients’ businesses and how activities such as an opportunity to experience their operations can assist advisors in providing better services.

Navigating the risk control framework in Africa

By Michael Hewson, founder and director of Graphene Economics

How valuable is the contribution of one person to an organisation?
How valuable is the contribution of two college dropouts?
How valuable is the contribution of 100 people?

The answer to all these questions, I'd like to suggest, should be **"it depends".**

Maybe the one person is someone like Oprah Winfrey, starting her production company. The two college dropouts might be the next Steve Jobs and Steve Wozniac. The 100 people might be back-office call centre agents or mid-level managers. In each case, our assessment of the value that these people's contributions would have might be very different.

The same sort of assessment is something we need to grapple with in TP, but in relation to global value chains. The questions tax professionals are faced with are: what is the value that each participant in the value chain contributes, and what should be their reward?

A critical part of figuring this out relates to the risk control framework. With evolving business models, and a dynamic environment in Africa, the assumption of risk – as well as the control of risk – plays an important role in determining the profits that should be earned by different parties.

Maximising competitive advantage across value chains

In 1985, Michael Porter (widely regarded as the father of the modern strategy field) introduced the term value chains in his book, Competitive Advantage. In that book he explained how organisations make decisions across the value chain to maximise their competitive advantage. This may include centralising certain activities, collaborating with other organisations on certain activities or sometimes, outsourcing activities. These concepts are equally evident in third party circumstances and in related party circumstances.

An important concept in business economics is that the higher risk that a company is taking, the greater the expected return. This suggests that the parties in the value chain that carry risk would expect to be compensated accordingly.

The OECD's Transfer Pricing Guidance, which was released in 2015 (and later updated in 2017 and 2022), lays out a six-step process (known as the control of risk framework) aimed at assessing how the economically significant risks that arise in connection with intragroup transactions should be allocated between entities for the purposes of TP.

The idea behind the framework was to counteract concerns that businesses had been shifting their profits out of higher-tax-rate jurisdictions into lower-tax-rate jurisdictions by using contractual terms to transfer risk and associated profits. To address this, the OECD amended the Transfer Pricing Guidelines, introducing new requirements to test the contractual assumption of risk against conduct, centring on key risk control decisions.

Applying the OECD guidance

Briefly, the OECD's six-step process can be summarised as follows:

1. **Identify economically significant risks:** Determine the risks relevant to the controlled transaction (e.g., market, financial, operational risks). It's important to note that not all risks are relevant to all entities. For example, during the COVID-19 pandemic, different countries were under varying levels of lockdown conditions at different times, meaning that an entity in one country might have been affected to a greater or lesser degree than a related entity in another country.
2. **Contractual assumption of risks:** Review contracts to identify which party assumes which risks.
3. **Functional analysis of risk management:** Analyse which entities control and manage risks by performing key risk management functions, such as risk mitigation or decision-making.
4. **Interrelation between assumption and control:** Assess whether the entity assuming the risk also has the capacity to control the risk and manage its outcomes.
5. **Actual conduct vs. contracts:** Compare the contractual assumption of risks with the actual behaviour of the parties, ensuring alignment with economic realities.
6. **Risk allocation and pricing outcomes:** Allocate risks to the appropriate entities based on the above analysis and ensure TP outcomes (i.e., pricing and profit allocation) reflect the risk allocation.

While this looks simple on paper, it can be quite complex in reality. A party may appear to carry a risk, but doesn't. For example, when a contract stipulates that a distributor assumes inventory risk, but in practice, the manufacturer controls and mitigates that risk.

For instance, a multinational entity (MNE) might have a distribution agreement where the distributor is contractually responsible for unsold inventory. At face value, it seems the distributor bears the inventory risk. However, if the manufacturer closely monitors inventory levels, determines restocking and production schedules, and compensates the distributor for unsold or obsolete goods (through buyback agreements, credits, or price adjustments), the actual control and financial exposure related to the inventory lie with the manufacturer.

In this scenario, despite the contractual assignment, the distributor doesn't bear the economically significant risk, as the manufacturer effectively controls and mitigates it. This is an example of where risk-bearing needs to be aligned with actual risk control to ensure appropriate profit allocation under TP rules.

Looking beyond contracts

In understanding which entity should be subject to the potential upside or downside of the work, contractual agreements are an important starting point. But the guidance is clear: you need to sometimes look beyond the contractual parties.

In this regard, we need to look at who is managing the economically significant risks, undertaking functional analysis to help us consider which entity has the capability to:

- Make decisions to take on, lay off or decline a risk-bearing opportunity
- Make decisions on whether and how to respond to the risks associated with the opportunity
- Mitigate the risk and take measures that affect risks outcomes

Changing risks

As risks evolve, our application of the OECD guidance will need to shift. Two examples of factors that make it more challenging to apply are globalisation and the use of technology.

1. **Globalisation:** companies have value chains across the world. Sometimes parts of the value chain are inter-connected and require careful consideration of who is assuming the risks.
2. **Use of technology:** this has caused certain risks to change, such as cybersecurity. The question is, who is liable for that risk? Who should benefit from the potential upside?

How this affects TP analysis

In a TP analysis, the focus on control of risks affects a few aspects of the analysis. Firstly, it affects the characterisation of the entities. Limited risk entities do actually carry some risk. This influences the TP method that should be used to analyse a transaction, as well as influencing the entity that should assume the risk if the risk materialises.

Tax authorities also scrutinise whether risks are truly borne and managed by the parties assigned those risks in intercompany transactions. Analysing who controls the risks helps ensure compliance with local tax regulations and OECD guidelines, thereby reducing the risk of disputes or adjustments by tax authorities.

An African perspective

There are specific risk factors MNEs operating in and through Africa should consider. For example, a company headquartered in Europe may not understand some of the particular issues a subsidiary in South Africa faces, such as loadshedding or delays in getting shipments through customs at the port.

Other risks might include political instability, exchange control and currency issues, skills gaps, and regulatory uncertainty.

MNEs should therefore ensure the presence of appropriately skilled and capacitated individuals to appropriately manage the risks within their African entities.

Understanding who is performing important functions relating to the control of risks is important in a TP analysis. It is particularly relevant in the post-Covid world with integrated and multinational value chains.

It is the determination of how parties actually manage and control risk that is important, so MNEs need to ensure they focus on understanding the economically significant risks, determining who is controlling the risks, considering the full context, and addressing the various factors that may impact risks differently across different industries.

Climate change

As the International Energy Agency (IEA) notes in its 2024 World Energy Outlook report[2], "Despite gathering momentum behind transitions, the world is still a long way from a trajectory aligned with its climate goals. Decisions by governments, investors and consumers too often entrench the flaws in today's energy system, rather than pushing it towards a cleaner and safer path... And the costs of climate inaction, meanwhile, grow higher by the day as emissions accumulate in the atmosphere and extreme weather imposes its own unpredictable price."

It was hoped that the COP29 meeting would result in an ambitious new funding target of $1 trillion every year, but developed countries proved reluctant to commit to additional funding towards the Just Transition and the amount (in direct finance) finally agreed to amounted to only $300bn.

As countries look to implement carbon taxes and governments seek other ways to ensure the private sector plays its part in climate change mitigation, MNEs will need to rethink their business models, which will in turn affect TP.

While survey respondents in 2024 did not cite climate change considerations as a significant trend, Graphene Economics believes that this will begin to change in 2025 and beyond.

Carbon credits and offsets and TP

By Monique van Herksen, advocate and partner in the Amsterdam office of Simmons & Simmons

As the pressure on achieving net zero emission results and sustainable operation increases, carbon projects are becoming more of a mainstay occurrence. The projects serve to reduce, avoid or remove greenhouse gas (GHG) emissions. Moreover, they also bring a whole host of other positive benefits. For example, they may empower communities, protect ecosystems, restore forests, and reduce reliance on fossil fuels.

Carbon credits, carbon offsets, and carbon markets are all part of a system that's all about cutting down on carbon dioxide (CO2) emissions and serve to put a price (or cost) on GHG emissions. They give people, companies, and governments a way to take ownership of their carbon footprint and back eco-friendly projects that balance out their emissions.

[2] Source: https://www.iea.org/reports/world-energy-outlook-2024/executive-summary

Monique van Herksen, advocate and partner in the Amsterdam office of Simmons & Simmons

Monique has been working as a TP controversy specialist for over 30 years. She has led Global TP and EMEA tax controversy teams, worked for the US Internal Revenue Service (IRS) in their APA team and served as adviser to the US competent authority when with the IRS' Associate Chief Counsel International. She handles tax and TP audit settlements, APAs and MAP requests.

Monique has been advising the United Nations Tax Committee since 2010. She assists the United Nations' Financing for Development Office with training materials for tax authorities in developing countries and has trained tax inspectors for organisations such as the Inter-American Centre of Tax administrations (CIAT) and the African Tax Authorities Forum (ATAF). She contributed materially to the UN TP Manual's Methods, Intragroup Financial Transactions, Dispute Avoidance and Resolution chapter and the guidance on TP and carbon credits.

She is regularly recognised for her role as a tax disputes lawyer and highly regarded TP practitioner, most recently for 2025 by ITR. Monique uses her expertise to educate the next generation of lawyers and has been teaching TP at leading universities for the vast majority of her career.

She frequently authors thought leadership materials and has published and contributed to 195 professional publications.

Carbon credits and carbon offsets are financial instruments that represent the reduction or removal of GHG from the atmosphere. A carbon credit typically represents one metric tonne of CO_2, while a carbon offset refers to a project or action that facilitates emissions avoidance equivalent to one metric tonne of CO_2.

Differentiating between credits and offsets

Carbon credits and offsets are created through various projects and activities aimed at reducing emissions. These projects can include renewable energy generation, energy efficiency improvements, reforestation, and methane capture from landfills. Each project undergoes a rigorous assessment process to ensure its legitimacy and the accuracy of emission reductions.

The key distinction between carbon credits and carbon offsets lies in their voluntary or compulsory nature. Voluntary carbon credits are purchased willingly by individuals, organisations, or governments to support emission reduction projects beyond regulatory requirements. They allow entities to take proactive steps in addressing their carbon footprint and demonstrating environmental responsibility.

On the other hand, compulsory carbon offsets are typically part of compliance markets established under government-regulated cap-and-trade systems. In these markets, companies are legally obligated to offset a portion of their emissions by purchasing and retiring a specific number of carbon credits. Compliance markets provide a framework for meeting emission reduction targets set by regulatory authorities.

Once a carbon project is accredited, emission reduction units are issued by the relevant standards that review the carbon projects they result from and they are made available as credits or offsets, usually in the carbon market. The carbon marketplace is where carbon credits and offsets are bought and sold. It functions as a platform for individuals, companies, and governments to purchase credits or offsets to compensate for their own emissions. It also facilitates investment in sustainable projects that generate carbon credits.

TP considerations

While all of these activities can be taken on stand-alone by commercial participants, MNEs can also decide to take some or all of them on inhouse and then the relevant transactions: developing, investing in and conducting operations to qualify for emission reduction, registering for and being issued carbon credits or offsets, transferring and selling carbon credits or offsets for retirement and application against emission ceilings or targets need to comply with the arm’s length standard and applicable transfer pricing rules. This means that the intercompany transactions need to be accurately delineated, appropriate TP methods need to be decided on and benchmarks need to be conducted.

Carbon offsets are designed to achieve real and measurable emission reductions. When individuals or organisations purchase carbon offsets, the funds are directed toward projects that either prevent or remove GHG emissions from the atmosphere. These projects can include renewable energy installations, forest conservation initiatives, or methane capture from agricultural operations. Rigorous standards and verification processes ensure that carbon offsets represent genuine emission reductions. However, it is essential to choose reputable and transparent offset providers to ensure the integrity of the offsets. To assure proper TP, it is material to understand the business, benchmark the relevant intercompany transactions thoroughly, while considering the relevant assets used and risks involved.
The world of carbon credits and offsets is a complex ecosystem, however. A few of the challenges with possible TP impact are listed below:

1 | **Scepticism regarding standards:** An emission reduction unit is issued by so-called carbon crediting agencies or standards, which are organisations that vouch that the project underlying the carbon credit or offset does in fact lead to GHG emission reduction. There are several standards, some established by governments and others privately operated and only for the voluntary markets, and they may have their own protocols and principles. As a result, there is some scepticism as to how reliable the respective standards actually are. Well-known standards include Verra, Gold Standard, Climate Action Reserve, ACR, ART, the Global Carbon Council, to name a few. If and to the extent the crediting agency is not respected or sufficiently highly regarded, that can have impact on the price a carbon credit or offset gets in the market.

2 | **Scandals in the carbon credit business** have heightened scepticism. Some criticism regards overstating the level of carbon offsetting actually achieved. For example, does conserving a forested area lead to legitimate carbon emission reduction units? Also, measuring emission reduction against which baseline is an area of much debate. There may be a multiplicity of carbon neutral claims, leading to bogus credits. That means that such carbon emission units, once retired by a registry operator, give a false impression of emission reduction. This materially impacts the price of the credits or offsets and reputation of the project, negatively impacting the expected ROI.

Between associated enterprises, a relevant question will be which party carries this risk when it materialises. The carbon market suffers from lack of integrity of carbon crediting projects. Necessary rules for transparency, environmental integrity, additionality and avoiding double counting (which is key for credible global emissions trading and cost-effective climate mitigation) under Article 6 of the Paris Agreement have not been finalised. However, during the UN Climate Change Conference (COP29) in Baku, Azerbaijan on 12 November 2024, climate negotiators announced that they reached consensus on a set of standards under Article 6.4 of the Paris Agreement and a dynamic mechanism to update them. Hopefully, that will serve to greatly reduce the integrity-related challenges.

[3] COP29 Agrees International Carbon Market Standards | UNFCCC

3 **Establishing legal ownership of carbon credits is still relatively unclear.** Carbon emission reduction units are transferred via Emission Reduction Purchase Agreements (ERPAs). Once issued to a domestic party of record by a crediting agency, the credits or offsets are listed in the account of a project proponent with a unique identification number. The registry is merely a record keeping system and does not denote legal ownership, however. All the registry does is identify the emission reduction achieved through the identification number. Emission reduction units are transferred by a transferor to a transferee. This transfer will have to be recorded with the registry to make sure that they are retired by the party who claims to use them as offset. For tax purposes, this means that the characterisation of a carbon emission credit or offset under a treaty for the avoidance of double taxation may lead to conflicting interpretations. Does the sale of a carbon credit lead to income from immovable property (Article 6), business profits (Article 7) or perhaps other income (Article 21)? If there would be a conflict in this regard, how is that handled in MAP? The characterisation will also impact the TP analysis. For example, if an intangible, does the hard to value intangible (HTVI) regime apply under certain facts and circumstances?

4 **Tax accounting for carbon credits is still unclear.** Emission allowances evidence the authorisation to pollute, based on the number of allowances that are allocated by a government entity or otherwise obtained. In addition, emission allowances lack physical substance. They are generally not considered financial assets because cash is not delivered when they are used. Instead, the emission allowance itself is delivered to demonstrate compliance with established regulations. As a result, they meet the definition of an intangible asset. Contracts for the purchase or sale of emission allowances (e.g., forwards, futures, or options) may meet the definition of a derivative. For GAAP/IFRS purposes, emission reduction units have been classified as an intangible asset to be accounted for under IAS 38 – intangible assets – unless they are to be treated as inventories under IAS 2 – inventories and held for sale in the ordinary course of business. Government intervention in carbon reduction may drive the accounting treatment under IAS 20 – government assistance. These determinations are fact specific, however.

5 **Government claims:** There are governments that have – unexpectedly – claimed or arguably even expropriated carbon emission reduction units to use them against their National Determined Contributions (NDC) rather than allowing companies engaged in the projects to market and sell them freely cross border.
For example, Zimbabwe, concerned about greenwashing, announced a takeover of the carbon credit trade, voiding past deals in May 2023. It was stated that all past agreements signed with international agencies and organisations would be "null and void." Furthermore, it was decided that the Zimbabwe Treasury would be entitled to 50% of any revenue from the credits while foreign investors can earn as much as 30% and local investors must get at least 20%. The rules that were issued later in 2023 softened the changes a bit (from 50% to 30%) but still presented a major change.

Kenya likewise issued rules in July of 2024 that introduced a 15% take of carbon credit income. These sudden charges are a significant disruption to the expected ROI of carbon projects and, in some cases, lead to investors deserting the projects entirely. For TP purposes, it not only needs it be determined who carries this risk, but including country risk becomes a relevant factor too when benchmarking,

To assist tax authorities in reviewing carbon projects, the UN Tax Committee's TP subcommittee issued a guidance paper in October 2023 called Transfer Pricing of Carbon Offsets and Carbon Credits. It is available at UN DESA's website.

The above serves to highlight that carefully considering and accurately delineating carbon projects involving associated enterprises is required to protect against TP exposure. It is furthermore possible that a future protocol under the UN Framework Convention on International Tax Cooperation addressing tax cooperation on environmental challenges will help harmonise and standardise tax treatment of carbon credits and offsets, and as such, materially contribute to sustainable development.

Notable cross-border tax and related developments in 2024

Sources: reports issued by organisations, government documents and legislation (where available) or other tax news platforms, such as Orbitax, MNETax, etc.

Eswatini: new interest deduction restriction and transfer pricing rules introduced

According to recent reports, Eswatini published the Income Tax (Amendment) Act 2023 on 20 October 2023, which includes several important tax changes. The main changes include:

a. An interest deduction restriction is introduced with a cap equal to 30% of EBITDA, which applies to companies that are a member of a group, except for banking and insurance companies.

b. A new transfer pricing regime is introduced, including:
   - the definition of the arms-length principle, which means the price payable between independent enterprises;
   - rules for the use of the five standard transfer pricing methods, including comparable uncontrolled price, resale price, cost-plus, transactional net margin, and transactional profit split method;
   - rules for the use of another method if none of the standard methods can be reasonably applied to determine the arm's length price, in which case the

Commissioner must be satisfied that none of the standard methods can be reasonably applied and that such other method yields an arm's length result; and
- requirements for taxpayers to keep transfer pricing documentation.

Mauritania: Draft Finance Bill for 2024 includes TP

Mauritania's Ministry of Finance has published the Draft Finance Bill for 2024. TP-related measures include:

- Replacing the term "associated enterprises" with "related enterprises" to harmonise the terminology used in the articles of the Tax Code related to TP;
- Extending the TP documentation requirements for cross-border related party transactions to domestic related party transactions;
- Changing the CbC reporting threshold to account for the change in the Mauritian currency code from MRO to MRU, with the specified threshold changed from MRO 250 billion to MRU 25 billion (approx. EUR 570 million);
- Extending the fines for non-filing of annual TP declarations and CbC reports so that the penalties also apply for incomplete or inaccurate filing, including a fine of MRU 2 500 000 (approx. EUR 57 thousand) for TP declarations, and a fine of MRU 4 000 000 (approx. EUR 91 thousand) for CbC reports.

OECD: Amount B Report providing a simplified approach to TP for baseline marketing and distribution activities released

The OECD announced the release of the report on Amount B of Pillar One, which provides a simplified and streamlined approach to the application of the arm's length principle to baseline marketing and distribution activities. The original announcement is quoted below:

On 19 February 2024, the OECD/G20 Inclusive Framework on BEPS released the report on Amount B of Pillar One, which provides a simplified and streamlined approach to the application of the arm's length principle to baseline marketing and distribution activities, with a particular focus on the needs of low-capacity countries. The approach set out in this report answers the call of low-capacity countries for what the African Tax Administration Forum (ATAF) has described as "vital" changes to the OECD Transfer Pricing

Guidelines, providing what "could be a game changer for the African TP landscape". Content from the report has now been incorporated into the OECD Transfer Pricing Guidelines.

Several low-capacity countries report that between 30-70% of their TP disputes relate to baseline marketing and distribution activities. The changes to the OECD Transfer Pricing Guidelines agreed in this report will provide jurisdictions with the option of applying straightforward bright-line rules to these activities, allowing them to secure revenue and preserve valuable tax administration resources while providing additional certainty to multinational enterprises.

Drawing from existing principles in the OECD Transfer Pricing Guidelines, Amount B provides a simplified and streamlined pricing framework that determines a return on sales for eligible distributors. This framework is expected to reduce TP disputes, compliance costs, and enhance tax certainty for tax administrations and taxpayers alike. Low-capacity jurisdictions facing limited resources and data availability will especially benefit from the administrative simplification provided by Amount B.

The report, which introduces two options for implementation for jurisdictions that opt into the simplified and streamlined approach from January 2025, describes the circumstances under which a distributor is within scope of Amount B including cases where it also performs certain non-distribution activities, such as manufacturing. It also sets out the activities that may exclude a distributor from the scope of the simplified and streamlined approach, such as the distribution of commodities or digital goods.

The report is released in line with the July 2023 Outcome Statement on the Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy, with further work on the interdependence of Amount B and Amount A under Pillar One to be undertaken prior to the signing and entry into force of the Multilateral Convention.

The inclusion of the Amount B guidance into the OECD Transfer Pricing Guidelines is accompanied by conforming changes to the Commentary on Article 25 of the OECD Model Tax Convention. The conforming changes signpost specific language relating to tax certainty and the elimination of double taxation included in the report on Amount B and are intended to ensure optionality is preserved in all dispute resolution mechanisms for non-adopting jurisdictions. In particular, the amendments to the Commentary on Article 25 direct States and taxpayers to have regard to and follow specific directions within the report on Amount B where relevant to issues being considered under mutual agreement and MAP arbitration procedures. The conforming changes were prepared by Working Party 1, approved by the Inclusive Framework and will be submitted shortly for approval to the OECD Council prior to publication.

Further information on Amount B is available at https://oe.cd/bepsaction1.

Seychelles: new TP documentation and related party dealings schedule requirements

Seychelles has introduced new TP documentation and related party dealings schedule requirements with effect from 1 January 2024.

TP documentation

a. A person with annual turnover exceeding SCR 1 000 000 (approx. EUR 61 thousand) that enters into controlled arrangements must prepare documentation verifying that the conditions in its controlled arrangements for the relevant tax year are consistent with the arm's length principle.

b. When required to prepare TP documentation, the documentation must be submitted within 21 days from the date of a request by the Commissioner General. The documentation requirements include various elements from the OECD's approved master file and local file format.

c. In addition to the documentation requirements, a person must prepare additional documentation if:
   - The total value of all controlled arrangements is more than 10% of the person's turnover for a tax year; or
   - The total value of all controlled arrangements for a tax year exceeds an amount equivalent to SCR 50 000 000 (approx. EUR 3 million).

d. The additional documentation includes:
   - Copies of all intercompany agreements concluded by the person;
   - A detailed functional analysis of the controlled arrangements between associates, including details of functions performed, assets used, and risks assumed by each party;
   - A comparability analysis, including, a description of the process undertaken to identify comparable uncontrolled arrangements; a description of the comparable uncontrolled arrangements; an analysis of comparability of the controlled arrangement(s) and the comparable uncontrolled arrangements; and details and explanation of any comparability adjustments made;
   - A summary of financial information used in applying the TP method;
   - An indication of which party to the arrangement is selected as the tested party, if applicable, and an explanation of the reasons for this selection;
   - A summary of the important assumptions made in applying the TP method and reasons for the rejection of other methods;
   - Details of any industry analysis, economic analysis, budgets or projections relied on;
   - Details of any advance pricing agreements or similar arrangements in other countries that are applicable to the controlled arrangements; and
   - The name of the author, company name if employed by a company, of the additional documentation and the date of finalisation and approval.

e. Furthermore, a person who is a member of an MNE group and whose consolidated turnover is greater than EUR 100 million must also prepare a Master file in accordance with the OECD Transfer Pricing Guidelines.

f. TP documentation must be submitted in English, French, or Creole. The documentation and related information must be kept, retained, and maintained for at least 7 years after the end of the period in which the controlled arrangements took place.

g. Penalties in relation to the new requirements include the following:
   - A person that fails to submit documentation when requested, without reasonable cause, will be liable for an additional tax penalty equal to SCR 75 000 (approx. EUR 4 600) plus SCR 2 500 (approx. EUR 155) per week or part of a week the failure continues;
   - A person that knowingly submits any false or misleading documentation or information will be liable for an additional tax penalty equal to 5% of the person's annual turnover; and
   - A person that knowingly or recklessly fails to keep, retain, and maintain relevant documents, information, and records will be liable for an additional tax penalty equal to at least SCR 10 000 (approx. EUR 618) for small businesses, SCR 50 000 (approx. EUR 3 000) for medium businesses, and SCR 100 000 (approx. EUR 6 200) for large businesses.

Related party dealings schedule

A person that enters into controlled arrangements must complete and furnish to the Commissioner General a related party dealings schedule. The related party dealings schedule is part of the annual tax return and includes information on the reporting entity, the ultimate controlling entity, the associates with which controlled arrangements are entered into, the controlled arrangements, etc. Records pertaining to the related party dealings schedule must be kept for at least 7 years after the end of the period in which the controlled arrangements took place.

Penalties in relation to the related party dealings schedule requirements are similar to those for the TP documentation and include the following:

- A person that fails to complete the related party dealings schedule of the tax return, without reasonable cause, is liable for an additional tax penalty equal to:
- SCR 5 000 (approx. EUR 310) if the related party dealings schedule is not furnished in accordance with regulations; and
- SCR 75 000 (approx. EUR 4 600) plus SCR 2 500 (approx. EUR 155) per week or part of a week the failure continues;
- A person that knowingly submits any false or misleading documentation or information will be liable for an additional tax penalty equal to 5% of the person's annual turnover; and
- A person that knowingly or recklessly fails to keep, retain, and maintain relevant documents, information, and records will be liable for an additional tax penalty equal to at least SCR 10 000 (approx. EUR 618) for small businesses, SCR 50 000 (approx. EUR 3 000 for medium businesses, and SCR 100 000 (approx. EUR 6 200) for large businesses.

Zimbabwe: domestic minimum top-up tax introduced

The Zimbabwe Revenue Authority (ZIMRA) has issued Public Notice 9 of 2024, which provides an overview of the main tax changes introduced by Finance Act 2023 (Act No. 13 of 2023), which came into effect on 1 January 2024. The measures include the introduction of a domestic minimum top-up tax (DMTT) with a minimum rate of 15% to guard against ceding taxing rights to foreign jurisdictions under the Pillar 2 global minimum tax rules.

The DMTT is a tax levied on the income of foreign entities active in Zimbabwe. Under the tax, global profits of large multinational enterprises will be taxed at a minimum corporate income tax rate of 15 per cent. It targets companies, trusts, or juristic persons domiciled outside Zimbabwe, including locally incorporated subsidiaries, registered companies, and local branches of foreign entities. The essence of this tax is to ensure that foreign entities contribute a fair share to Zimbabwe's tax revenue, particularly when these entities benefit from the country's market but pay little to no corporate tax in their country of residence.

To determine the DMTT, a two-step calculation process is used. The actual corporate tax charged on the entity's income is compared against the corporate tax that would have been charged without deductions under section 15 of the Income Tax Act. This comparison yields the "effective" rate of corporate tax, reflecting the real tax burden on the entity's income.

The tax comes into play under specific circumstances. It will be applicable when a foreign entity earns income from any business or activity within Zimbabwe. It will also be applicable when the foreign entity's country of residence either does not levy corporate tax at all or it levies taxes at an effective rate of less than 15% of the corporation's income. Under these conditions, despite any existing double taxation agreements, the foreign entity is liable to pay the DMTT.

The DMTT for entities not liable to tax in Zimbabwe, the DMTT is equal to 15% of jurisdictional profits earned in Zimbabwe during the assessment year. Where the entity on the other hand, is liable to tax in Zimbabwe but at a rate less than 15%: the DMTT is 15% minus the corporate tax rate paid in the country of residence, or the tax chargeable under Zimbabwean law due to double taxation agreements, whichever is greater.

ATAF: Technical Note on Amount B rule of Pillar I issued

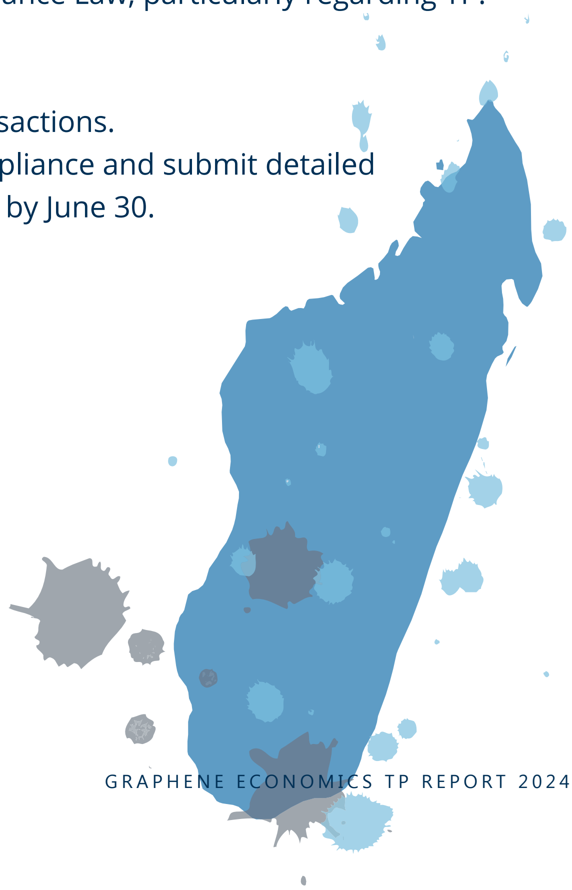
The African Tax Administration Forum (ATAF) has released a technical note discussing the Amount B rule of Pillar 1 and its potential advantages for African nations. This note is part of ATAF's series addressing tax challenges from the digital economy.
Key points include:

- The technical note aims to help ATAF members assess whether to adopt this simplified approach, detailing its main provisions and emphasising aspects crucial for African countries.
- ATAF plans to release a revised guide for drafting TP legislation, which will include recommendations for implementing the simplified approach.
- Many ATAF members face significant disputes over TP in domestic distribution, straining their limited resources. The new approach, applicable from fiscal years starting 1 January 2025, could reduce disputes and enhance tax certainty for both tax administrations and businesses.
- The note outlines design features essential for maximising the benefits of Amount B, fostering increased tax certainty for African governments and multinational enterprises operating in the region.

Madagascar: Finance Law and Amending Finance Law for 2024 include revised TP rules

On June 11, 2024, Madagascar's Ministry of Finance adopted the Amending Finance Law (Bill) 2024, which introduces significant changes to the 2024 Finance Law, particularly regarding TP. Key updates related to TP and BEPS include:

- Arm's length principle now applies to all domestic transactions.
- Documentation: Taxpayers must provide proof of compliance and submit detailed documentation for related-party transactions annually by June 30.
- Minimum Tax: Established based on annual turnover.



OECD: TP framework for lithium released

The OECD has announced the release of a TP framework for lithium. The release note is provided below:

OECD and IGF have joined forces to support developing countries with practical guidance when addressing the TP challenges faced when pricing lithium—a critical mineral in the global energy transition. This practice note identifies the primary economic factors that can influence the pricing of lithium using TP principles, building on the TP framework in Determining the Price of Minerals: A TP framework. The practice note provides practical guidance for countries to accurately delineate the transaction and price lithium exports on an arm's length basis. Interested parties were invited to provide comments on a preliminary version of the practice note during a public consultation process. The OECD and IGF appreciate all the feedback received.

Background

For many resource-rich developing countries, mineral resources present a significant economic opportunity to increase government revenue. Tax base erosion and profit shifting (BEPS), combined with gaps in the capabilities of tax authorities in developing countries, threaten this prospect. Government revenue depends on mineral products being priced and measured accurately. However, pricing is not always straightforward. It may be complicated by the different stages of mineral beneficiation, the lack of publicly quoted prices for certain minerals, and adjustments based on the quality or grade of the product. Many governments worry they do not know the value of their exported minerals and are therefore losing much-needed revenue.

The OECD's Centre for Tax Policy and Administration (CTPA) is collaborating with the Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development (IGF) to address some of the challenges developing countries face in raising revenue from their mining sectors. Under this partnership, a series of practice notes and tools are being developed for governments.

The IGF and OECD CTPA have formed a partnership, combining the IGF's mining expertise with the OECD's knowledge of taxation to design sector-specific guidance on some of the most pressing BEPS challenges facing resource-rich developing countries. This work is published under the responsibility of IISD (the IGF's host organisation) and of the Secretary-General of the OECD. The opinions expressed and arguments employed herein do not necessarily reflect the official views of the Member countries of the OECD and the IGF.

Seychelles: signing Multilateral Instrument for Pillar 2 Subject to Tax Rule approved

On 11 September 2024, the Seychelles Cabinet of Ministers approved the signing of the Multilateral Convention to Facilitate the Implementation of the Pillar Two Subject to Tax Rule (STTR MLI). The STTR MLI has been designed to help developing countries protect their tax base and allows for the implementation of the STTR in existing bilateral tax treaties without the need for bilateral negotiations. It includes provisions to allow source jurisdictions to "tax back" where defined categories of intra-group covered income are subject to nominal corporate income tax rates below the STTR minimum rate of 9% and domestic taxing rights over that income have been ceded under a tax treaty. For example, if a payor jurisdiction can impose a 5% withholding tax on a payment of covered income under a treaty and the recipient is subject to a 1% nominal tax rate, the payor jurisdiction retains the 5% withholding tax right and can impose an additional tax under the STTR equal to 3% of the covered income amount (9% – 5% – 1% = 3%). The STTR takes priority over the GloBE Rules (IIR and UTPR) and is creditable as a covered tax under those rules.

United Nations: TP guidance for agricultural products and pharmaceutical industry released by UN Tax Committee Releases

The UN Committee of Experts on International Cooperation in Tax Matters recently released advanced unedited versions of interstitial guidance on TP of agricultural products and TP in the pharmaceutical industry.

Executive summary of interstitial guidance on TP of agricultural products

This guidance was prepared in response to the need, often expressed by developing countries, for practical advice in applying the arm's length principle to agricultural products. All tax administrations, but particularly those from developing countries, face resource and capacity constraints in a specialised area such as TP. These constraints make it important to ensure that the limited resources of tax administrations are targeted as efficiently and effectively as possible. In addition, agriculture is of great importance to all countries, both developed and developing, and has a huge impact on the global economy, with multinational enterprises (MNEs) active in agricultural production and along agricultural global value chains. Agriculture also intersects with many other industries including chemicals, logistics, and machinery. Given the relevance and size of the agricultural industry in the economy of many developing countries, the goal of this guidance is to provide practical advice for tax authorities and to multinational enterprises (MNEs) in agriculture.

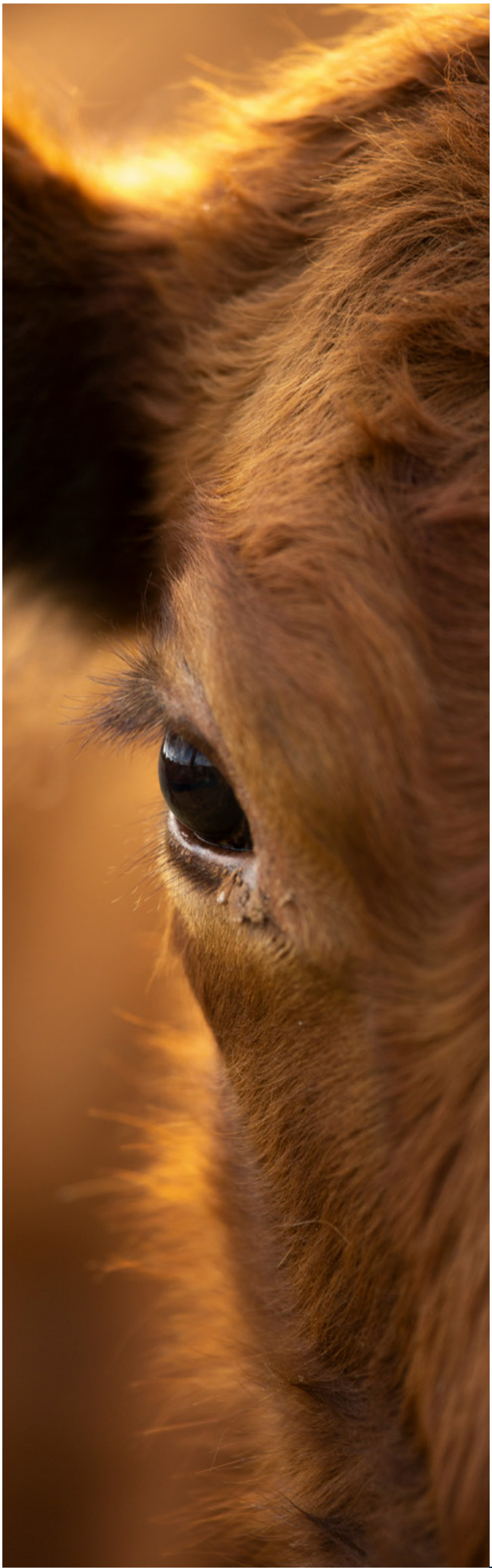
This guidance commences by giving an overview of agricultural products and the industry in general, and then focuses on case studies of two specific agricultural industries: coffee and soybeans. The guidance provides an overview of the two industries, discussing their global value chains and key value drivers. Practical issues relating to transaction delineation, comparability analysis, and the application of TP methods in the agriculture industry are addressed, followed by example designed to illustrate these issues.

Four appendices provide additional context. Appendix 1 includes a list of abbreviations used in this guidance. Appendices 2 and 3 provide statistics on agricultural production, sales and international trade. Appendix 4 lists potential questions that can be asked in a tax audit setting for a functional analysis of agricultural producers.

It should be noted that the analysis contained in this document may not reflect the particularities specific to all countries, but instead takes a systematic approach by describing the most pertinent features with regards to agricultural products and related TP issues. It is important to highlight that the United Nations Practical Manual on Transfer Pricing for Developing Countries ("the UN TP Manual") in its most recent version is applicable to the agriculture industry and the guidance provided in this document is based on, and should be read in conjunction with, the most recent version of the UN TP Manual. References in this document are to the 2021 UN TP Manual.

Executive summary for interstitial guidance on TP in the pharmaceutical industry

This guidance was prepared in response to the need, often expressed by developing countries, for practical guidance in applying the arm's length principle to the pharmaceutical industry. All tax administrations, but particularly those from developing countries, face resource and capacity



constraints in a specialised area such as TP. These constraints make it important to ensure that the limited resources of tax administrations are targeted as efficiently and effectively as possible. In addition, given the importance of the pharmaceutical industry to all countries the goal of this guidance is to provide practical advice for tax authorities and to multinational enterprises (MNEs) in the pharmaceutical industry.

This guidance commences by describing the global value chain of the pharmaceutical industry, its value drivers and business models. The application of TP analysis to the pharmaceutical industry is the discussed. Practical issues relating to the delineation of the transaction and the comparability analysis are addressed. The document then provides several examples.

Two appendices provide additional context. A list of the abbreviations used in this guidance is attached as Appendix 1 and a glossary of key terms is attached as Appendix 2. Appendix 3 (forthcoming) lists potential questions that can be asked in a tax audit setting for a functional analysis in the pharmaceutical industry.

It should be noted that the analysis contained in this document may not reflect particularities present in all countries, but instead takes a systematic approach of describing the most pertinent features of the pharmaceutical industry and related TP issues.

It is important to highlight that the United Nations Practical Manual on Transfer Pricing for Developing Countries ("the UN TP Manual") in its most recent version is applicable to the pharmaceutical industry and the guidance provided in this document is based on, and should be read in conjunction with, the UN TP Manual.

South Africa: Pillar 2 Global Minimum Tax Bill adopted

On 30 October 2024, the South African National Treasury has published the 2024 Medium Term Budget Policy Statement, along with the related bills. This includes, among others, the Global Minimum Tax Bill and the Global Minimum Tax Administration Bill, which provide for the introduction of the Pillar 2 Global Anti-Base Erosion (GloBE) Rules in South Africa.

The Global Minimum Tax Bill is aimed at implementing the GloBE Model Rules in South Africa to enable South Africa to impose a multinational top-up tax at a rate of 15 per cent on the profits of in-scope multinational enterprise groups. The Global Minimum Tax Administration Bill is aimed at the administration of the Draft Global Minimum Tax Bill.

South Africa's implementation of the rules includes an Income Inclusion Rule and a Domestic Minimum Top-up Tax. It does not include an Undertaxed Payments/Profits Rule. As drafted, the legislation will be deemed to have come into operation on 1 January 2024 and apply to fiscal years beginning on or after that date.

Conclusion

Looking ahead to 2025, MNEs should adopt proactive strategies to navigate shifting TP dynamics.

TP and related issues will remain a priority for revenue authorities across Africa, while the tax function within organisations increasingly takes centre stage in managing and mitigating business risks. The growing emphasis on data collection and management will drive organisations to focus on finer levels of detail. Concurrently, transaction models and information-sharing processes are expected to evolve to align with changing regulatory requirements.

The trend of rising TP disputes and controversies shows no signs of abating. MNEs that elevate TP matters to their CFO or board of directors will be better equipped to respond proactively to this complex environment and address unexpected challenges effectively.

Our recommendations to MNEs include:

- **Invest in ensuring compliance:** Assess resource needs, explore outsourcing arrangements and technology solutions, and ensure compliance obligations are met without delay.
- **Anticipate TP challenges:** Identify potential TP-related risks early, enabling a proactive response rather than a reactive one.
- **Strengthen cross-functional collaboration:** Encourage close cooperation between the tax function and operational teams at the transaction level to provide timely tax insights and reduce the likelihood of post-audit adjustments.
- **Integrate climate considerations into TP strategies:** Recognise the growing importance of climate change in shaping business models and tax policies. Evaluate how sustainability initiatives, such as carbon credits, green investments, or renewable energy incentives, impact intercompany pricing, and ensure TP policies align with environmental goals and regulations.
- **Leverage technology and automation:** Explore advanced digital tools to streamline TP compliance, improve data accuracy, and facilitate real-time monitoring of intercompany transactions. This will not only enhance efficiency but also enable MNEs to adapt more swiftly to regulatory changes.

In summary, navigating the evolving cross-border taxation landscape in 2025 will require MNEs to adopt a forward-looking and adaptable approach. Should you require help with navigating this landscape, please consider getting in touch with Graphene Economics.

We are with you at every point of the cross-border transactions journey, from planning to implementation and support.

Graphene Economics®
Transfer Pricing Advisory

Contact details

If you would like to discuss African cross-border tax developments and their potential impact on your organisation or industry, please contact Graphene Economics.

Website: grapheneeconomics.com
Telephone: (+27) 010 534 6409
Email Address: graphene@grapheneeconomics.com
Office Address: Block E, Hurlingham Office Park, Woodlands Avenue, Sandton, 2196