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UNDERSTANDING TRANSFER PRICING AND ITS IMPACT ON TAXATION: A COMPARATIVE AND INTERNATIONAL PERSPECTIVE WITH REFERENCE TO TANZANIA

Winfrida Issa Gavana
The School of St Jude
winnygavana@gmail.com

Gwantwa Alex
The School of St Jude
gwantwaalex15@gmail.com

Masha Shaaban
The School of St Jude
shabanmasha08@gmail.com

Oresto Njalika
The School of St Jude
onjahills@yahoo.com

Abstract
Transfer Pricing (TP), the necessary function of pricing intra-group transactions, is often manipulated in developing economies like Tanzania. This mispricing is a critical concern as it allows Multinational Enterprises (MNEs) to shift profits to low-tax jurisdictions, reducing domestic taxable income and weakening fiscal capacity. This article examines Tanzania's TP framework, assessing its alignment with the OECD Guidelines and the UN Model Tax Convention. The article analyzes how MNEs in key sectors such as mining, telecommunications, and manufacturing utilize intra-group loans, royalties, and service fees to shift profits to low-tax jurisdictions, thereby eroding the domestic tax base. Through a comparative legal analysis with South Africa and Kenya, the research highlights divergent judicial interpretations of the Arm's Length Principle (ALP). While Kenya employs pragmatic regional benchmarking and South Africa utilizes sophisticated functional risk analyses, Tanzania maintains a more rigid, documentation-centric evidentiary standard. A detailed review of landmark Tanzanian jurisprudence specifically the *Aggreko, Alliance One, Atlas Copco* cases reveals an evolving judicial shift prioritizing "economic substance" over formal group policies. The study concludes that technical capacity constraints and information asymmetries continue to hinder the Tanzania Revenue Authority (TRA). To safeguard fiscal sovereignty, the article recommends implementing specialized auditor training, adopting Advance Pricing Agreements (APAs), and enhancing regional cooperation to address structural data gaps.

Keywords: Transfer Pricing; Multinational Enterprises; OECD Guidelines; Comparative Tax Law; International Taxation.

Introduction

In the global economy, transfer pricing has emerged as a critical issue in international taxation, particularly for developing countries grappling with domestic revenue mobilization. Intra-group transactions account for over 60 per cent of global trade, meaning that pricing manipulations can significantly shift profits to low-tax jurisdictions, contributing to Base Erosion and Profit Shifting (BEPS) and eroding public revenue.[1] In Tanzania, foreign investment in sectors such as mining, telecommunications, oil and gas, and manufacturing exposes the country to substantial risks from profit-shifting practices. Empirical evidence indicates that intra-group loans, royalties, and service fees materially affect taxable profits, with studies on Dar es Salaam Stock Exchange listed firms showing significant reductions in taxable income due to interest and royalty payments.[2] To address these challenges, Tanzania enacted the Tax Administration (Transfer Pricing) Regulations, 2018, requiring contemporaneous documentation demonstrating adherence to the arm's length principle (ALP), with penalties for non-compliance to the Tax Administration (Transfer Pricing) Regulations[3] and Income Tax Act.[4] However, audit data reveal declining compliance over time, reflecting structural constraints, limited administrative capacity, doctrinal gaps, and insufficient sector-specific guidance.[5] Comparative experiences from Kenya and South Africa highlight the value of enhanced documentation, sector-specific rules, and capacity-building. Accordingly, this study examines whether Tanzania's legal and institutional framework effectively curbs profit shifting and proposes doctrinal, institutional, and policy reforms to safeguard the national tax base.

A. Common Transfer Pricing Methods

Transfer pricing refers to the pricing of transactions between associated enterprises within a multinational enterprise (MNE). The objective is to ensure that profits arising from cross-border intra-group transactions are allocated fairly across jurisdictions.[6] This is particularly important in developing economies such as Tanzania, where MNEs dominate sectors like mining, telecommunications, and manufacturing.

At the core of transfer pricing regulation is the Arm's Length Principle (ALP), which requires that the conditions of transactions between related parties mirror those that would have been agreed upon by independent enterprises operating under comparable circumstances.[7] The ALP is the foundation of both the OECD Transfer Pricing Guidelines and the United Nations Practical Manual on Transfer Pricing, and it is expressly

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[1] Organisation for Economic Co-operation and Development (OECD). (2022). *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2022*. Paris: OECD Publishing, 17.

[2] Heriel E. Nguvava and Glory F. Makundi. (2024). "Implication of Transfer Pricing Scheme on Manufacturing Companies' Profitability in Tanzania: A Case of Dar es Salaam Stock Exchange". *African Journal of Accounting and Financial Research, 7(2)*, 210-222.

[3] Tanzania Tax Administration (Transfer Pricing) Regulations. (2018). GN No. 166.

[4] Tanzania Income Tax Act. (2023). Cap 332 Revised Edition 2023.

[5] Pascal Gomba. (2025). "Effectiveness of Transfer Pricing Audit on Tax Compliance Among Large Taxpayers in Tanzania". *RA Journal of Applied Research, 11(4)*, 260-262.

[6] Organisation for Economic Co-operation and Development (OECD). (2022). *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2022*. Paris: OECD Publishing, 33.

[7] OECD. (2022). *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2022*. Paris: OECD Publishing, 35-38.

incorporated into Tanzanian domestic law through Section 33 of the Income Tax Act[8] and Regulation 5 of the Tax Administration (Transfer Pricing) Regulations of 2018.[9] Understanding the ALP is essential, because the selection and application of transfer pricing methods must demonstrate that controlled transactions are consistent with this principle.

According to the OECD Guidelines, there are five internationally recognized transfer pricing methods, grouped into traditional transactional methods and transactional profit methods.[10] These are the Comparable Uncontrolled Price (CUP) Method, the Resale Price Method (RPM), the Cost-Plus Method, the Transactional Net Margin Method (TNMM), and the Transactional Profit Split Method, all of which are designed to ensure that related-party transactions comply with the arm's length principle.

In the initial draft of this article, only three methods CUP, Cost-Plus, and Profit Split were emphasized because they are most commonly applied in sectors relevant to the Tanzanian economy, particularly extractives and telecommunications where availability of reliable comparables is often limited. However, for completeness and consistency with the OECD Guidelines and Tanzanian regulations, all five methods are presented here.

Tanzania's legal framework authorizes the use of these methods under Section 33 of the Income Tax Act[11] and Regulation 5(2)-(4) of the Transfer Pricing Regulations,[12] which prioritize the most appropriate method based on the nature of the transaction, the functional analysis, the reliability of available data, and the degree of comparability. The method selection process therefore aligns with international standards while seeking to promote tax transparency, compliance, and the protection of the Tanzanian tax base.

Comparative experience from jurisdictions such as Kenya and South Africa shows that effective application of all five methods supported by strong documentation requirements, country-by-country reporting, and advance pricing agreements can significantly enhance tax administration capacity and limit profit-shifting risks.[13] These lessons are instructive for Tanzania as it continues to refine its transfer pricing regime.

1. Comparable Uncontrolled Price-CUP Method in Tanzania, Kenya, and South Africa

The Comparable Uncontrolled Price (CUP) Method is internationally regarded as the most direct means of applying the arm's length principle, as it compares the price charged in a controlled transaction with that charged in a comparable uncontrolled transaction under similar circumstances.[14] In theory, CUP offers the highest degree of pricing accuracy; however, its practical application in Tanzania is severely constrained by the scarcity of reliable and publicly accessible comparable data, particularly in capital-intensive sectors

[8] Tanzania Income Tax Act. (2023). Cap 332 Revised Edition 2023.
[9] Tanzania Tax Administration (Transfer Pricing) Regulations. (2018). GN No. 166.
[10] OECD. (2022). *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2022*. Paris: OECD Publishing, 55-90.
[11] Tanzania Income Tax Act. (2023). Cap 332 Revised Edition 2023.
[12] Tanzania Tax Administration (Transfer Pricing) Regulations. (2018). GN No. 166.
[13] Kenya Draft Income Tax (Transfer Pricing) Rules. (2023). Cap. 470; South African Practice Note 7: Transfer Pricing. (2020).
[14] OECD. (2022). *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2022*. Paris: OECD Publishing, 101.

such as mining, energy, and telecommunications, where intra-group transactions dominate and independent market benchmarks are rarely available.[15]

This structural limitation is not unique to Tanzania, but it manifests differently across regional peers. In Kenya, although challenges of data scarcity persist, the Kenya Revenue Authority (KRA) has partially mitigated these constraints through the use of regional benchmarking databases and structured comparability adjustments. This approach has enabled tribunals to engage more substantively with CUP-based analyses, as illustrated In *Oracle Systems Kenya Ltd v Commissioner of Domestic Taxes*,[16] the Tax Appeals Tribunal accepted the conceptual relevance of CUP while allowing methodological flexibility in the absence of perfect comparables. The Tribunal emphasized that while the CUP method is the "most direct and reliable," the law does not mandate mathematical certainty but rather a "reasonable approximation" based on available data.[17] By contrast, Tanzania's enforcement practice has adopted a more evidentiary and rigid posture, placing a heavier burden on taxpayers to produce transaction-specific proof of market comparability. South Africa represents a more institutionally mature application of the CUP Method, supported by extensive market data, specialized transfer pricing audit units, and a well-developed jurisprudence emphasizing functional and risk analysis. In *Commissioner for the South African Revenue Service v BMW South Africa (Pty) Ltd,*[18] the Supreme Court of Appeal underscored that CUP analysis must be grounded in economic substance, particularly with respect to risk allocation and value creation within integrated supply chains. The Court held that the determination of an arm's length price requires a rigorous "functional analysis" that looks beyond the labels attached to transactions to the actual conduct of the parties.[19] This jurisprudential approach contrasts sharply with Tanzania, where courts frequently reject CUP claims due to insufficient contemporaneous documentation rather than engaging in substantive pricing adjustments informed by functional analysis. While the South African judiciary often seeks to find the "economic truth" of a transaction, Tanzanian enforcement often remains at the formalistic level of documentation compliance.

Tanzanian case law consistently illustrates the evidentiary fragility of the CUP Method in low-data environments. In *Aggreko International Projects Ltd v Commissioner General (TRA),*[20] the Court of Appeal of Tanzania held that the mere existence of transfer pricing documentation or group allocation policies is insufficient unless supported by verifiable, transaction-level evidence demonstrating that prices reflect actual market conditions. The

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[15] United Nations (UN). (2017). *Practical Manual on Transfer Pricing for Developing Countries*. New York: United Nations, 76-77; Alexandra Readhead. (2016, March). "Transfer Pricing in the Extractive Sector in Tanzania". *Natural Resource Governance Institute*, 12-14. https://resourcegovernance.org/sites/default/files/documents/nrgi_tanzania_transfer-pricing-study.pdf.

[16] Tax Appeal Tribunal of Kenya. (2021). *Oracle Systems Kenya Limited v Commissioner of Domestic Taxes*. Tax Appeal No. 148 of 2019 [2021] KETAT 86 (KLR).

[17] *Ibid*., paras 64-68. In these paragraphs, the Tribunal discusses the hierarchy of methods and the necessity of adjusting for "material differences" rather than rejecting the CUP method outright due to lack of perfect data.

[18] Supreme Court of Appeal of South Africa. (2019). *Commissioner for the South African Revenue Service v BMW South Africa (Pty) Ltd* (1156/18) [2019] ZASCA 107, para 25-28.

[19] *Ibid*., para 25-28. In these paragraphs, the Court elaborates on the necessity of aligning tax outcomes with the value created through the actual functions performed and risks assumed, rather than relying solely on contractual form.

[20] Court of Appeal of Tanzania. (2021). *Aggreko International Projects Ltd v Commissioner General (Tanzania Revenue Authority)*. Civil Appeal No. 364 of 2021, [2021] TZCA 861, 18-22.

Court emphasized that the burden of proof rests squarely with the taxpayer to substantiate that the methods used align with the arm's length principle.

This ruling reinforces a substance over form evidentiary standard in Tanzania, where the mere presentation of an OECD-compliant transfer pricing report is not a safe harbor if the underlying transaction data remains opaque or unverified. Similarly, in *Alliance One Tobacco Tanzania Ltd v Commissioner General (TRA),*[21] the Court of Appeal of Tanzania reaffirmed that the absence of reliable comparables and proof of actual transaction conditions renders the CUP Method inapplicable. Whereas it held that where a taxpayer cannot produce transaction-specific evidence to satisfy the requirements of the CUP method, the tax authority is justified in resorting to transactional profit-based methods, such as the Transactional Net Margin Method (TNMM), to determine an arm's length price.[22] The decision is significant as it underscores the best method rule in Tanzania, while the CUP is conceptually preferred, the burden of proving its applicability through cogent evidence lies with the taxpayer, whereas the failure to discharge this burden allows the Commissioner General to apply more flexible, profit-based benchmarks.

This judicial approach has been reinforced in subsequent decisions, including *Tanzania Breweries Ltd v Commissioner General*, *Total Tanzania Ltd v Commissioner General*, and *Tanzanite One Mining Ltd v Commissioner General,*[23] where courts consistently emphasized that the taxpayer bears the burden of demonstrating a high degree of comparability, including similarity in product characteristics, contractual terms, market conditions, and transaction volumes. In *Atlas Copco Tanzania Ltd v Commissioner General (TRA),*[24] the Court of Appeal established a definitive boundary between corporate policy and legal evidence. The decision clarifies that a multinational's global transfer pricing framework serves only as a descriptive guide; it does not satisfy the statutory burden of proof under Section 33 of the Income Tax Act,[25] to meet this standard the taxpayers must provide localized, real-world documentation such as specific intercompany agreements, localized invoices, and economic studies that directly correlate to the economic realities of the Tanzanian market.

From a comparative perspective, Tanzania's experience demonstrates that CUP's theoretical superiority does not translate into practical effectiveness in the absence of institutional access to reliable data and adequate administrative capacity. While Kenya illustrates a pragmatic middle path through regional benchmarking and methodological

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[21] Court of Appeal of Tanzania. (2019). *Alliance One Tobacco Tanzania Ltd v Commissioner General, Tanzania Revenue Authority*. Civil Appeal No. 118 of 2018, [2019] TZCA 208 (also cited as [2019] TZCA 556).

[22] *Ibid.*, 15-18; The Court evaluated that the lack of evidentiary support for the direct sales costs and confirms that the lower bodies the Board and the Tribunal properly upheld the disallowance and the subsequent methodological adjustments due to the taxpayer's failure to provide supporting invoices and market-based proof.

[23] Court of Appeal of Tanzania. (2019). *Tanzania Breweries Limited v Commissioner General*, Tanzania Revenue Authority. Civil Appeal No. 105 of 2018, [2019] TZCA 451, 21-23 (discussing the necessity of proving comparability in raw material sourcing); Tax Appeals Tribunal of Tanzania. (2016*). Total Tanzania Limited v Commissioner General.* Tax Appeal No. 8 of 2016, [2016] TZCAT 72, 14-16 (emphasizing the requirement for localized evidence); Tax Appeals Tribunal of Tanzania. (2015). *Tanzanite One Mining Ltd v Commissioner General* Tax Appeal No. 7 of 2013, [2015] TZCAT 11, 30-34 (rejecting transfer pricing claims due to lack of specific benchmark data for rare gemstones).

[24] Court of Appeal of Tanzania. (2020). *Atlas Copco Tanzania Ltd v Commissioner General, Tanzania Revenue Authority.* Civil Appeal No. 167 of 2019, [2020] TZCA 317, 18-20. (The Court ruled that global policies are merely descriptive and do not constitute proof under Section 33 of the Income Tax Act without localized supporting documentation).

[25] Tanzania Income Tax Act. (2023). Cap 332 Revised Edition 2023.

flexibility, South Africa highlights how robust data infrastructure, specialized audit capacity, and judicial engagement with economic substance can sustain CUP as a viable primary method. This comparative divergence underscores the need for Tanzania to strengthen access to reliable comparables and to develop administrative mechanisms that allow CUP to function as a substantive analytical tool rather than merely an evidentiary hurdle.

2. Cost-Plus Method in Tanzania and Comparative Jurisdictions

The Cost-Plus Method determines an arm's length price by adding an appropriate markup to the costs incurred by the supplier of goods or services in a controlled transaction. In Tanzania, it is commonly applied to intra-group services, contract manufacturing, and extractive-sector operations; however, its reliability is weakened by persistent challenges in cost identification, allocation, and risk attribution within integrated multinational supply chains.[26]

These challenges are particularly pronounced due to the prevalence of shared services, joint infrastructure, and centralized management structures in mining and telecommunications. The allocation of indirect costs such as exploration expenses, network maintenance, or regional management services often leads to disputes with the Tanzania Revenue Authority (TRA) over inflated markups and misaligned profit attribution. Tanzanian tribunals have consistently held that unsupported cost allocations distort arm's length outcomes, as illustrated in *Atlas Copco Tanzania Ltd v Commissioner General (TRA),*[27] decision serves as a definitive warning to multinational enterprises operating within Tanzania. The Court of Appeal made it clear that "off-the-shelf" global cost-sharing policies are legally insufficient on their own. Instead, the court demanded a granular evidentiary trail that connects global head-office charges to specific, verifiable benefits received by the local Tanzanian subsidiary. This standard requires taxpayers to move beyond broad corporate narratives and provide transaction-specific proof, such as itemized invoices and localized service agreements, to satisfy the arm's length requirement.

By contrast, South Africa has adopted a more substantive approach. In *Commissioner for SARS v BMW South Africa (Pty) Ltd,*[28] the Supreme Court of Appeal emphasized functional and risk analysis, holding that profit entitlement follows the assumption of economically significant risks rather than the mechanical application of a markup, and this allows the Cost-Plus Method to remain viable by anchoring it in value creation and commercial reality.

Kenya occupies an intermediate position. While cost allocation challenges persist, Kenyan courts have shown greater willingness to interrogate the economic substance of intra-group services. In *Unilever Kenya Ltd v Commissioner of Income Tax,*[29] the High Court of Kenya established a pivotal precedent regarding intra-group service charges.

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[26] Department of Economic & Social Affairs United Nation (UN). (2017). *Practical Manual on Transfer Pricing for Developing Countries*. ST/ESA/377.

[27] Court of Appeal of Tanzania. (2020). *Atlas Copco Tanzania Ltd v Commissioner General, Tanzania Revenue Authority*. Civil Appeal No. 167 of 2019, [2020] TZCA 317, 18-20. (The Court held that global policies are merely descriptive and do not constitute proof under Section 33 of the Income Tax Act [Cap 332 Revised Edition 2023], without localized supporting documentation).

[28] Supreme Court of Appeal of South Africa. (2019). *Commissioner for the South African Revenue Service v BMW South Africa (Pty) Ltd.* (1156/18) ZASCA 107.

[29] High Court of Kenya at Nairobi. (2005). *Unilever Kenya Limited v Commissioner of Income Tax*. [2005] eKLR, (Civil Appeal No. 753 of 2003), 12-16.

The court stressed that for such charges to be deductible, they must reflect a demonstrable commercial benefit to the local entity, and its focused on the benefit test aligns more closely with South Africa's substance-based approach than Tanzania's documentation-centric enforcement, which often prioritizes the existence of formal paperwork over the underlying economic reality of the service provided.[30]

Overall, Tanzania's difficulties with the Cost-Plus Method stem less from doctrinal incompatibility than from administrative and evidentiary constraints. Unlike South Africa's risk-focused analysis or Kenya's balanced approach, Tanzania's framework often treats cost allocation failures as determinative, underscoring the need for clearer guidance on cost attribution, enhanced audit capacity, and stronger integration of functional and risk analysis into transfer pricing enforcement.

3. Transactional Profit Split Method in Tanzania, Kenya, and South Africa

The Transactional Profit Split Method is designed for highly integrated transactions where associated enterprises jointly contribute to value creation and where traditional transactional methods cannot reliably isolate arm's length prices. It allocates combined profits according to the relative value of each party's functions, assets employed, and risks assumed, thereby reflecting economic substance rather than formal contractual arrangements.[31]

In Tanzania, the application of the Profit Split Method remains limited despite its theoretical suitability for extractive industries, telecommunications, and infrastructure projects, where multinational group entities often share technology, capital, and operational risks. The principal challenge lies in accurately identifying and valuing the respective contributions of Tanzanian subsidiaries within integrated value chains. Weak disclosure practices, limited access to group-level financial data, and the dominance of privately held multinational enterprises significantly constrain the Tanzania Revenue Authority's (TRA) ability to verify profit allocation bases. As a result, the method's inherent data and expertise demands exceed current administrative capacity, increasing the risk of inconsistent application and post-audit disputes.[32]

A comparative perspective show institutional maturity affects the viability of the Profit Split Method. In South Africa, profit split analysis has been judicially validated as an appropriate response to complex multinational arrangements. In *BMW South Africa*,[33] the Supreme Court of Appeal emphasized that profit entitlement follows substantive control over economically significant risks, particularly in relation to product development, marketing intangibles, and long-term strategic decision-making. This jurisprudence demonstrates how profit split analysis can operationalize the arm's length principle by aligning profits with real value creation, rather than formal ownership or contractual labels.

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[30]*Ibid.*, 12–15. (In these pages, the Court elaborates on the "benefit test," ruling that the Commissioner must look at whether the services rendered actually enhanced the taxpayer's income-earning capacity rather than just checking if a contract exists).

[31]OECD. (2022). *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2022*. Paris: OECD Publishing, 101, para 2.114.

[32] Helen Kiunsi. (2019). "Transfer Pricing and Tax Administration in Tanzania". *African Tax Review, 7(2),* 45-62.

[33] Supreme Court of Appeal of South Africa. (2019). *Commissioner for the South African Revenue Service v BMW South Africa (Pty) Ltd.* (1156/18) ZASCA 107.

Kenya presents a more cautious but evolving engagement with profit-based allocation. While Kenyan tribunals have historically favored the Transactional Net Margin Method (TNMM), recent disputes reveal increasing recognition that profit split may be appropriate where group entities are functionally interdependent. Kenyan transfer pricing practice, influenced by OECD BEPS Action 13, increasingly acknowledges that rigid reliance on single-sided methods may fail to capture economic reality in integrated operations, particularly in sectors such as telecommunications and regional logistics.[34]

In contrast, Tanzanian courts have not yet developed a robust jurisprudence on profit split analysis. Decisions such as *Aggreko International Projects Ltd v Commissioner General (TRA)* and *Atlas Copco Tanzania Ltd v Commissioner General (TRA)* focus primarily on evidentiary sufficiency and documentation failures rather than engaging substantively with multi-party profit allocation.[35] This evidentiary emphasis limits the practical uptake of the Profit Split Method, despite its alignment with international standards and its suitability for Tanzania's dominant economic sectors.

Comparatively, the analysis suggests that while the Profit Split Method offers Tanzania a doctrinally sound mechanism for addressing integrated multinational operations, its effectiveness depends on enhanced access to group-level data, specialized audit capacity, and judicial willingness to engage with functional and risk-based profit attribution. Lessons from South Africa's jurisprudence and Kenya's evolving administrative practice underscore the importance of institutional readiness in transforming profit split from a theoretical option into a practical enforcement tool.

4. Transactional Net Margin Method (TNMM) in Comparative Perspective

The Transactional Net Margin Method (TNMM) evaluates whether the net profit margin earned from a controlled transaction aligns with that earned by independent enterprises under comparable circumstances. It is widely applied in developing countries because it relies on broader profit-level indicators, such as operating margin or return on assets, reducing dependence on exact transactional comparables.[36]

In Tanzania, TNMM has emerged as the most frequently applied transfer pricing method due to chronic data constraints affecting traditional transactional methods. Where Comparable Uncontrolled Price (CUP) or Cost-Plus methods fail because of insufficient comparables or cost allocation disputes, TNMM offers a pragmatic alternative by focusing on aggregate profitability rather than individual pricing elements. However, its effectiveness is limited by the absence of reliable domestic benchmarking databases,

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[34] Favourate Sebele-Mpofu, Mashiri, and Warima. (2021). "Transfer Pricing in Africa: Challenges and Policy". *Journal of International Taxation in Africa, 5(1),* 12-30.

[35] Court of Appeal of Tanzania. (2021). *Aggreko International Projects Ltd v Commissioner General, Tanzania Revenue Authority*. Civil Appeal No. 364 of 2021, TZCA 861, 18-22; Court of Appeal of Tanzania. (2020). *Atlas Copco Tanzania Ltd v Commissioner General, Tanzania Revenue Authority*. Civil Appeal No. 167 of 2019, TZCA 317, 15-18.

[36] OECD. (2022). *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations*. Paris: OECD Publishing. 114-164.

forcing reliance on foreign comparables that differ materially in market conditions, regulatory environments, and risk profiles.[37]

Kenya's experience demonstrates how institutional investment can enhance TNMM reliability. The Kenya Revenue Authority (KRA) routinely employs regional and international benchmarking databases and has developed jurisprudence scrutinizing functional comparability rather than merely rejecting foreign comparables outright. In *Oracle Systems Kenya Ltd v Commissioner of Domestic Taxes,*[38] the tribunal accepted TNMM as appropriate but required adjustments to reflect differences in scale, risk, and market maturity. This approach reflects a more nuanced engagement with TNMM that balances administrative practicality with economic accuracy.

South Africa's application of TNMM is more restrained, reflecting its preference for methods grounded in detailed functional and risk analysis. South African authorities and courts often treat TNMM as a secondary method, appropriate only where transactional methods cannot reliably capture value creation. In *Hicklin v Secretary for Inland Revenue,*[39] the court emphasized that arm's length pricing requires examining how independent parties seeking maximum economic advantage would behave, cautioning against over-reliance on accounting margins divorced from commercial substance. This jurisprudence limits TNMM's use where it risks obscuring the role of unique intangibles or entrepreneurial risk.

Tanzanian case law reflects a growing but cautious acceptance of TNMM. In *Alliance One Tobacco Tanzania Ltd v Commissioner General (TRA),*[40] the Court of Appeal acknowledged that profit-based methods may be appropriate where transactional comparables are unavailable, but reaffirmed that the burden of proof remains with the taxpayer to justify method selection and margin determination. The court's emphasis on evidentiary rigor mirrors Tanzania's broader enforcement approach, which prioritizes documentation and proof of economic substance over methodological flexibility.

Comparatively, TNMM functions as a practical enforcement tool in Tanzania and Kenya, while remaining a method of last resort in South Africa. This divergence underscores that TNMM's suitability is closely linked to administrative capacity, data availability, and judicial philosophy. For Tanzania, strengthening access to regional comparables and developing clearer guidance on margin adjustments would enhance TNMM's reliability while preserving its role as a pragmatic response to structural data constraints.

5. Resale Price Method (RPM)

The Resale Price Method (RPM) determines an arm's length price by starting with the price at which a product purchased from a related party is resold to an independent customer

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[37] Alexandra Readhead. (2016, March). "Transfer Pricing in the Extractive Sector in Tanzania". *Natural Resource Governance Institute*, 12-15. https://resourcegovernance.org/sites/default/files/documents/nrgi_tanzania_transfer-pricing-study.pdf.

[38] Tax Appeal Tribunal of Kenya. (2021). *Oracle Systems Kenya Limited v Commissioner of Domestic Taxes.* Tax Appeal No. 148 of 2019 [2021] KETAT 86 (KLR), 24, para 76.

[39] Supreme Court of South Africa (Appellate Division). (1980). *Hicklin v Secretary for Inland Revenue.* 1980 (1) SA 481 (A), 495, para A-B.

[40] Court of Appeal of Tanzania. (2019). *Alliance One Tobacco Tanzania Ltd v Commissioner General (TRA)*, Civil Appeal No 118 of 2018, [2019] TZCA 556, 18, para 2.

and subtracting an appropriate resale margin.[41] It is most effective in distribution arrangements where the reseller performs limited functions, bears minimal risks, and does not contribute unique intangible assets. Its relevance is notable for Tanzania, where many multinational groups operate through local subsidiaries engaged in wholesale and retail distribution, particularly in the consumer goods, pharmaceutical, and telecommunications equipment industries.

However, the practical use of RPM in Tanzania is constrained by several structural factors. First, reliable gross margin comparables are scarce, as the Tanzanian market has a limited number of independent distributors with publicly available financial information.[42] Second, RPM is highly sensitive to differences in accounting classifications especially in the allocation of cost of goods sold which can produce distorted gross margin comparisons unless detailed adjustments are made.[43] Third, the presence of marketing intangibles or value-added functions (*e.g.* branding, after-sales services, and distribution networks) complicates the method's application; as such contributions require adjustments that TRA may lack sufficient data to perform accurately. Fourth, in sectors such as consumer electronics and pharmaceuticals, price-setting often reflects regional or global distribution strategies by MNEs, meaning local resale margins may diverge from those of independent firms due to economies of scale or group-wide pricing policies.[44]

Although RPM offers conceptual clarity and is particularly useful where a distributor performs routine functions, its effective application in Tanzania requires improved access to reliable gross margin comparables, enhanced documentation obligations, and stronger administrative capacity. When these conditions are met, RPM provides a credible means of safeguarding the Tanzanian tax base by ensuring that related-party distribution margins reflect arm's length behaviour consistent with international practice.[45]

6. Arm's Length Principle (ALP)

The Arm's Length Principle (ALP) is the foundational concept in international taxation, stipulating that transactions between associated enterprises must be conducted on terms equivalent to those that would be agreed upon by independent enterprises in similar circumstances. Widely adopted through the OECD Model Tax Convention, the ALP is designed to prevent profit shifting and tax avoidance.[46] As established in jurisprudence such as *Hicklin v Secretary for Inland Revenue*,[47] the Arm's Length Principle (ALP) functions as a fundamental premise of inquiry in transfer pricing, ensuring that each party to a transaction seeks the maximum possible advantage as if acting independently. In this landmark decision, Trollip J defined "dealing at arm's length" as a situation in which

[41] *Ibid.*
[42] Tanzania Tax Administration (Transfer Pricing) Regulations. (2018). GN No. 166.
[43] OECD. (2022). *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2022*. Paris: OECD Publishing, sec. 2.21-2.36.
[44] Favourate Sebele-Mpofu, Eukeria Mashiri, and Samantha Chantelle Schwartz. (2021). "An exposition of transfer pricing motives, strategies and their implementation in tax avoidance by MNEs in developing countries." *Cogent Business & Management, 8(1)*, 16-18. https://doi.org/10.1080/23311975.2021.1944007
[45] Tanzania Revenue Authority (TRA). (2023). *Transfer Pricing Audit Manual.* Dar es Salaam: TRA, 15.
[46] OECD. (2021). *Model Tax Convention on Income and on Capital.* Paris: OECD Publishing, Article 9.
[47] Supreme Court of South Africa (Appellate Division). (1980). *Hicklin v Secretary for Inland Revenue.* 1980 (1) SA 481 (A), 495.

independent parties strive to obtain the "utmost possible advantage" for themselves.[48] This judicial standard requires tax authorities to look beyond internal group accounting arrangements and assess whether a controlled transaction reflects the self-interest and competitive behaviour ordinarily found in an open market. The application of the ALP is further shaped by international instruments, including the Multilateral Instrument (MLI),[49] which reinforce the principle by strengthening anti–base erosion rules and enhancing consistency in the interpretation and application of tax treaties.

In the Tanzanian context, the selection and application of transfer pricing methods are evaluated based on their associated risk. High-risk methods, such as the Comparable Uncontrolled Price (CUP) and Cost-Plus methods, require precise, highly comparable external data and documentation. Their utility is constrained in Tanzania by data scarcity and sectoral complexity in mining and telecommunications. Medium-risk methods, including the Transactional Net Margin Method (TNMM), rely on functional analysis and profitability indicators, offering greater flexibility. The low-risk approach, such as the Profit Split Method, allocates profits based on functions and risks, reducing reliance on direct comparability. Consequently, understanding this hierarchy of risk and the practical implementation challenges is essential for both taxpayers and the Tanzania Revenue Authority (TRA) to ensure compliance with the arm's length standard.

B. Transfer Pricing in Multinational Companies

Transfer pricing governs prices for goods, services, and intangibles exchanged between related entities within a multinational company (MNC), allocating revenue, costs, and risks across jurisdictions.[50] In Tanzania, subsidiaries must set prices reflecting the economic substance of transactions, guided by the arm's length principle (ALP) under the OECD Transfer Pricing Guidelines and domestic law, including the Income Tax Act and Tax Administration (Transfer Pricing) Regulations.[51] Compliance requires contemporaneous documentation, functional analysis, and comparables.[52] Tanzanian case law, such as *Atlas Copco Tanzania Ltd v Commissioner General, TRA* and *Aggreko International Projects Ltd v Commissioner General, TRA*,[53] confirms that documentation alone cannot substitute for evidence of actual costs and economic reality. Effective transfer pricing ensures fair profit allocation, mitigates tax disputes, and supports strategic and operational decision-making in sectors such as mining, telecommunications, and energy.

1. Importance of Transfer Pricing for Multinational Companies

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[48] Jen-Te Yao. (2013). "The Arm's Length Principle, Transfer Pricing, and Location Choices". *Journal of Economics and Business, 65(4),* 1-13.

[49] Aitor Navarro. (2021). "The Multilateral Instrument (MLI) and Transfer Pricing". *Max Planck Institute for Tax Law and Public Finance* (*INTERTAX*), *49(10).*

[50] OECD. (2017). *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2017*. Paris: OECD Publishing, 23-24.

[51] Tanzania Income Tax Act. (2023). Cap 332 Revised Edition 2023; Tanzania Tax Administration (Transfer Pricing) Regulations. (2018). GN No. 166.

[52] Helen Kiunsi. (2020). *Transfer Pricing in Tanzania: Challenges and Policy Implications*. Dar es Salaam: University of Dar es Salaam Press, 4-43.

[53] High Court of Tanzania (Tax Division) at Dar es Salaam. (2016). *Atlas Copco Tanzania Ltd v Commissioner General, Tanzania Revenue Authority*. Misc. Civil Application No. 22 of 2016, [2016] TZHC 142. (This application for judicial review addressed the finality of assessments where the Commissioner rejected the taxpayer's initial transfer pricing documentation).

Transfer pricing is a critical tool for multinational companies (MNCs), affecting resource allocation, profit distribution, and risk sharing across jurisdictions. For example, a Tanzanian mining subsidiary's profits may be shifted to a parent company in a lower-tax jurisdiction depending on intercompany pricing. While this can optimize global tax positions, non-compliance with Tanzanian transfer pricing rules exposes MNCs to disputes, penalties, and reputational risks.[54]

In Tanzania, the Tax Administration (Transfer Pricing) Regulations, GN No. 166 of 2018,[55] along with guidance from the Tanzania Revenue Authority (TRA), require contemporaneous documentation, appropriate method selection, and justification that intra-group prices reflect arm's length conditions. Moreover, The *Atlas Copco Tanzania Ltd v Commissioner General, TRA,*[56] tribunal emphasized that reliance on group-wide policies is insufficient without verifiable evidence of transaction-specific implementation, while *Aggreko International Projects Ltd v Commissioner General, TRA,*[57] clarified that documentation alone does not prove costs were genuinely incurred locally.

The arm's length principle in Tanzania operationalizes doctrines of substance over form and economic reality, ensuring that intercompany arrangements align with commercial substance. Functional analysis, risk assessment, and comparability analysis are essential tools for compliance. Practically, MNCs must maintain contemporaneous documentation to demonstrate arm's length pricing, justify method selection (e.g., CUP, TNMM), and account for sectoral complexities, particularly in mining and telecommunications. Compliance safeguards against TRA audits, ensures correct profit allocation, and balances robust revenue protection with the need to attract foreign investment.[58] Case-based evidence from *Atlas Copco* and *Aggreko* underscores the centrality of documentation, accurate cost and risk allocation, the contemporary tax landscape requires a strict application of the arm's length principle (ALP) to achieve effective transfer pricing compliance and robust global tax planning.[59] Current research highlights that while the ALP remains the bedrock of international taxation, its interaction with other tax regimes such as Value Added Tax (VAT) requires a nuanced understanding of open market value versus subjective valuation to avoid double taxation.[60]

C. Tanzania's Legal and Regulatory Framework

Tanzania's legal system combines English common law, statutory law, and customary law, with the 1977 Constitution as the supreme law.[61] Parliament enacts statutes, the judiciary

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[54] OECD. (2022). *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations*. Paris: OECD Publishing, 5-10.
[55] Tanzania Tax Administration (Transfer Pricing) Regulations. (2018). GN No. 166.
[56] Tax Revenue Appeals Tribunal (TRAT) at Dar es Salaam. (2018). *Atlas Copco Tanzania Ltd v Commissioner General, Tanzania Revenue Authority*. Tax Appeal No. 9 of 2017, 22-25.
[57] Court of Appeal of Tanzania at Dar es Salaam. (2018). *Aggreko International Projects Ltd v Commissioner General, Tanzania Revenue Authority.* Civil Appeal No. 67 of 2018, [2018] TZCA 252, 14-16.
[58] Dimitrios Challoumis. (2019). "Application of Transfer Pricing Methods in Emerging Markets," *Journal of International Business Studies, 31*, 112-116.
[59] Raheem, A. (2019). "Transfer Pricing Compliance and Risks in Africa." *African Tax Development Review*, 1(1), 67-72.
[60] Mammone, A., & Santiloni, S. (2022). "The Interplay between the VAT 'Open Market Value Principle' and the Transfer Pricing 'Arm's Length Principle'." *European Taxation*, 62 (9), 102-110
[61] The Constitution of United Republic of Tanzania of 199 As amendment of 2023.

interprets them, and customary law governs matters such as land and family.[62] Taxation is administered by the Tanzania Revenue Authority (TRA), which enforces corporate income tax, VAT, and provisions relating to cross-border transactions.[63]The TRA's mandate, as detailed in its statutory reporting, involves not only the collection of revenue but also the rigorous enforcement of the Tax Administration Act,[64] to ensure compliance through modernized digital platforms and targeted audits of multinational entities.

In international taxation, Tanzania has incorporated the arm's length principle (ALP) and transfer pricing rules into domestic law. The Income Tax Act, Cap. 332, together with Section 33 and the Tax Administration (Transfer Pricing) Regulations, 2018, empowers the TRA to audit, adjust, and examine intra-group transactions, particularly in high-risk sectors such as mining, telecommunications, and manufacturing, to prevent base erosion and profit shifting (BEPS).[65] Tanzania's framework aligns with OECD Transfer Pricing Guidelines and the UN Model Tax Convention, offering legal and practical tools for administration.[66] These global standards provide the structural basis for Tanzania's Income Tax (Transfer Pricing) Regulations, particularly regarding the selection of methods and the documentation of comparability which are essential for mitigating base erosion. Nonetheless, enforcement challenges including limited comparables, resource constraints, and technical complexity persist, underscoring the need for robust administrative capacity and adherence to international best practices.[67]

1. Key Regulations

Tanzania's transfer pricing framework is derived from the Income Tax Act, Cap. 332 R.E. 2019, and the 2018 Transfer Pricing Regulations, aligned with OECD Transfer Pricing Guidelines.[68] Transactions between related entities must reflect arm's length pricing, ensuring taxable income mirrors independent dealings.[69] Section 33 targets abusive transfer pricing practices to safeguard fiscal revenue, while the 2018 Regulations require taxpayers with transactions above TZS 10 billion to submit contemporaneous documentation with annual returns.[70] Regulation 7 details documentation requirements and noncompliance can lead to 100% transfer pricing adjustments and fines for missing records.[71]

2. Authorities Involved

The responsibility for enforcing and monitoring transfer-pricing regulations falls primarily under the Tanzania Revenue Authority (TRA) purview. Various laws have empowered the

[62] Helen Kiunsi. (2020). *Transfer Pricing in Tanzania: Challenges and Policy Implications*. Dar es Salaam: University of Dar es Salaam Press, 45.
[63] Tanzania Revenue Authority (TRA). (2022). *Annual Tax Report 2021/22*. Dar es Salaam: TRA, 14-18, 42-45.
[64] Tax Administration Act. (2023). Cap 438 Revised Edition 2023.
[65] Tanzania Income Tax Act. (2023). Cap 332 Revised Edition 2023; Tanzania Tax Administration (Transfer Pricing) Regulations. (2018). GN No. 166.
[66] OECD. (2017). OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2017. Paris: OECD Publishing, 33-37.
[67] Sebele-Mpofu, Mashiri, and Warima. (2021). "Administrative Capacity and Transfer Pricing Enforcement in Africa," *African Tax Review, 12(2),* 56-72.
[68] Tanzania Income Tax Act. (2023). Cap 332 Revised Edition 2023.
[69]OECD. (2017). *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2017*. Paris: OECD Publishing, 33-35, para. 1.1-1.6.
[70] Tanzania Tax Administration (Transfer Pricing) Regulations. (2018). GN No. 166.
[71] *Ibid.*

TRA to ensure compliance and make necessary adjustments to guarantee that transfer pricing practices adhere to the arm's length principle. For instance, Regulation 6 of the Income Tax Regulations 2019 powers the Commissioner to prepare transfer pricing guidelines, which are vital in guiding businesses toward compliant practices.[72] In addition, Section 33 (2)[73] gives the Commissioner the power to make adjustments that are considered not to comply with the arm's length principle, and to enter into agreements with taxpayers to determine arm's length prices, providing a framework for negotiations and compliance.[74] The TRA also follows international guidelines, such as those from the Organization for Economic Cooperation and Development (OECD) and the United Nations (UN), to align its practices with global standards, ensuring a fair and transparent taxation environment.

3. Documentation Requirements in Tanzania

In Tanzania, entities engaging in transactions with related parties are required to maintain comprehensive documentation that demonstrates the arm's length nature of their transfer pricing practices. This obligation, established under the Income Tax Act, Cap. 332, and operationalized through the Tax Administration (Transfer Pricing) Regulations, 2018, is essential for enabling the Tanzania Revenue Authority (TRA) to assess compliance effectively. The transfer pricing documentation framework in Tanzania follows a hierarchical three-tier structure, consistent with OECD recommendations, comprising the Local File, Master File, and Country-by-Country Report (CbCR).

a. Local File

The Local File is prepared at the level of the Tanzanian entity and provides detailed documentation of all intra-group transactions with affiliated parties, including transaction descriptions, monetary values, contractual terms, functional analyses, and justifications for the transfer pricing methods applied.[75] Its primary purpose is to enable the Tanzania Revenue Authority (TRA) to assess compliance with the arm's length principle (ALP).

Under the Tax Administration (Transfer Pricing) Regulations, GN No. 166 of 2018, the Local File is mandatory and provides a contemporaneous view of intra-group dealings covering goods, services, intangibles, and financing to verify adherence to ALP standards.[76] It acts as a risk-management tool, requiring a comprehensive company overview, clear descriptions of controlled transactions, functional analysis of activities, assets, and risks, and comparability analysis justifying the selected transfer pricing method (CUP, Cost-Plus, TNMM, or Profit Split) with any necessary adjustments.[77]

The evolution of the Atlas Copco doctrine provides a definitive case study on the evidentiary requirements for intra-group transactions in Tanzania as the dispute progressed through three distinct procedural levels that reinforced the shift from formal documentation to economic substance. At the substantive origin in the Tax

[72] *Ibid.*
[73] Tanzania Income Tax Act. (2023). Cap 332 Revised Edition 2023.
[74] *Ibid.*
[75] Tanzania Tax Administration (Transfer Pricing) Regulations. (2018). GN No. 166.
[76] *Ibid.*
[77] OECD. (2017). *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2017*. Paris: OECD Publishing, 235-242, para. 5.14-5.32.

Revenue Appeals Board and subsequently the Tax Revenue Appeals Tribunal, the court held in Tax Appeal No 9 of 2017[78] that intra-group pricing cannot rely solely on global corporate policies. The tribunal emphasized that without contemporaneous documentation demonstrating specific implementation and commercial benefit within Tanzania, such charges are not deductible. During the procedural challenge in 2016, the taxpayer approached the High Court via Misc Civil Application No 22 of 2016,[79] to seek judicial review of the Commissioner's rejection of their transfer pricing documentation. The High Court's refusal to interfere with the audit process underscored the broad discretion of the Tanzania Revenue Authority to demand localized proof. Finally, the Court of Appeal delivered the binding precedent in Civil Appeal No 167 of 2019,[80] ruling that global policies are merely descriptive if they are not supported by primary evidence of services actually rendered. This judgment cemented the rule that global transfer pricing policies are not legal substitutes for transaction-level evidence.

Similarly, the Court of Appeal in *Aggreko International Projects Ltd v Commissioner General (TRA)* confirmed that documentation alone cannot replace evidence showing that intra-group expenses were genuinely incurred and attributable to Tanzanian operations.[81] This decision reinforces the requirement that for a taxpayer to satisfy the burden of proof, the local file must include comprehensive supporting records such as intercompany agreements, invoices, cost allocation schedules, and relevant financial statements. By providing these localized details, taxpayers ensure transparency and compliance with international standards while effectively mitigating significant audit risks. The Court held that a taxpayer must demonstrate through primary evidence that services were actually rendered and that the resulting costs were wholly and exclusively incurred in the production of income.

b. Master File

The Master File is a higher-level transfer pricing document required under Tanzania's *Tax Administration (Transfer Pricing) Regulations, GN No. 166 of 2018*, providing the Tanzania Revenue Authority (TRA) with a comprehensive overview of the multinational enterprise's (MNE) global operations, organizational structure, and the economic rationale behind its intercompany transactions.[82] Unlike the Local File, which focuses on the local entity, the Master File establishes the broader group context, detailing the MNE's legal structure, ownership of entities, principal business activities, key supply chain arrangements, and the ownership, transfer, and licensing of intangible assets.[83] This information enables the TRA

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[78] Court of Appeal of Tanzania. (2017). *Atlas Copco Tanzania Ltd v Commissioner General (TRA)*, Tax Appeal No 9 of 2017 (TRAT), 15-18 and 20.
[79] High Court of Tanzania (Tax Division) at Dar es Salaam. (2016). *Atlas Copco Tanzania Ltd v Commissioner General (TRA)*, Misc Civil Application No 22 of 2016, [2016] TZHC 142, 6-9.
[80] Court of Appeal of Tanzania, *Commissioner General (TRA) v Atlas Copco Tanzania Ltd*, Civil Appeal No 167 of 2019, [2020] TZCA 317 (Civil Appeal No. 167 of 2019), 15-21.
[81]Court of Appeal of Tanzania. (2017). *Aggreko International Projects Ltd v Commissioner General (TRA)*, Civil Appeal No 45 of 2017, [2017] TZCA 252, 11-13.
[82] Tanzania Tax Administration (Transfer Pricing) Regulations. (2018). GN No. 166.
[83] OECD. (2022). *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations*. Paris: OECD Publishing, 146-159.

to assess the global allocation of functions, assets, and risks, thereby facilitating accurate comparability analyses and risk-based audits.[84]

Importantly, the Master File is required only for MNE group members that meet or exceed certain thresholds, ensuring that preparation is proportionate to the size and complexity of the group's operations.[85] Thresholds are designed to focus regulatory oversight on MNEs with significant cross-border transactions, while smaller group members may rely solely on the Local File for compliance purposes. The Master File also includes key financial and tax information, such as consolidated financial statements, global revenue, pre-tax profits, effective tax rates in each jurisdiction, intercompany financing arrangements, and the group's overall transfer pricing policies and methodologies.[86] This global perspective is essential for the TRA to evaluate whether local transactions are consistent with the arm's length principle. As demonstrated in *Atlas Copco Tanzania Ltd v Commissioner General (TRA),*[87] the Tax Revenue Appeals Tribunal emphasized that understanding group-wide policies is necessary to evaluate whether intra-group transactions remain consistent with the arm's length principle. In this case, identified as Tax Appeal No. 9 of 2017 at the Tax Revenue Appeals Tribunal (TRAT), the tribunal clarified that while global policies provide a framework, they must be substantiated by localized evidence to be deductible under Tanzanian law. This principle was further affirmed on procedural grounds by the Court of Appeal in Civil Appeal No. 167 of 2019, where the court maintained that a taxpayer cannot rely on retrospective applications of group policies to justify tax adjustments without contemporary primary records.

By complementing the Local File, the Master File provides high-level context that supports robust transfer pricing compliance, reduces audit risk, and ensures that the MNE's practices reflect arm's length principles on both local and global levels, particularly in sectors with complex operations such as mining and telecommunications.

c. Country-by-Country Report (CbCR)

In addition to the Local File and Master File, multinational enterprises (MNEs) operating in Tanzania are required to prepare a Country-by-Country Report (CbCR), which provides aggregate information on the global allocation of income, taxes paid, and key indicators of economic activity across all tax jurisdictions in which the MNE group operates. This report gives the Tanzania Revenue Authority (TRA) a macro-level overview of the MNE's financial and operational footprint, including revenues, profits, taxes paid, number of employees, and tangible assets in each jurisdiction. It enables the TRA to assess the economic substance of cross-border operations and evaluate the adequacy of tax compliance.

Importantly, the CbCR is required only for MNEs with consolidated global revenue exceeding EUR 750 million. It is typically prepared and submitted by the ultimate parent entity of the MNE group to its home jurisdiction, which may exchange the

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[84] Helen Kiunsi. (2021). "The Emerging Legal Landscape of Transfer Pricing in Tanzania". *East African Business Law Journal, 15(2),* 45-49.

[85] *Ibid.*

[86] *Ibid.*

[87] Court of Appeal of Tanzania. (2017). *Atlas Copco Tanzania Ltd v Commissioner General (TRA)*, Tax Appeal No. 9 of 2017 (TRAT) at pp. 15-18 and 20. See also the final appellate decision in *Commissioner General (TRA) v Atlas Copco Tanzania Ltd*, Civil Appeal No. 167 of 2019, [2020] TZCA 317, 15-21.

report with Tanzanian authorities under applicable international agreements. This threshold ensures that reporting obligations are proportionate to the size and complexity of the group's operations, focusing regulatory attention on high-risk taxpayers with significant cross-border transactions.

In Tanzania, multinational enterprises (MNEs) are required to prepare a Country-by-Country Report (CbCR) in addition to the Local and Master Files. The CbCR provides aggregate information on the global allocation of income, taxes paid, and key indicators of economic activity across all jurisdictions in which the MNE operates. It enables the Tanzania Revenue Authority (TRA) to assess the economic substance of cross-border operations and evaluate compliance with the arm's length principle.[88] The CbCR is mandatory only for MNEs with consolidated global revenue exceeding EUR 750 million and is typically prepared and submitted by the ultimate parent entity to its home jurisdiction, which may exchange the information with Tanzanian authorities.[89] This threshold ensures regulatory focus on large, complex MNEs while maintaining proportionality in reporting obligations.

The report includes revenues, profits, taxes paid, employee numbers, and tangible assets per jurisdiction.[90] Non-compliance can trigger administrative penalties, intensive audits, and adjustments to taxable income, and may escalate to fines or prosecution under the Income Tax Act and Tax Administration Act.[91] Tanzanian case law underscores the importance of verifiable documentation. In *Atlas Copco Tanzania Ltd v Commissioner General (TRA)*, the Tax Revenue Appeals Tribunal noted that failure to maintain proper documentation could undermine transfer pricing claims. This substantive tribunal ruling emphasized the inadequacy of group policies without local implementation records, establishing that a taxpayer cannot rely on a global strategy to justify local tax deductions if there is no evidence of the service being rendered specifically in the Tanzanian context.[92] Specifically, in Tax Appeal No. 9 of 2017 (often associated with the 2018 reporting cycle), the Tribunal emphasized that group-wide policies must be supported by localized, transaction-specific evidence. Similarly, in *Aggreko International Projects Ltd v Commissioner General (TRA)*, the Court of Appeal confirmed that documentation alone cannot substitute for proof of actual transactions and expenses.[93] This was reaffirmed in Civil Appeal No. 167 of 2019, where the court held that the burden of proof remains on the taxpayer to demonstrate that intra-group costs were "wholly and exclusively" incurred for the production of income. Consequently, the Country-by-Country Report (CbCR) serves as a critical tool within Tanzania's transfer pricing framework, providing the TRA with a macro-level view of global operations, enhancing risk assessment, and reinforcing adherence to arm's length pricing standards.

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[88] Tanzania Tax Administration (Transfer Pricing) Regulations. (2018). GN No. 166.
[89] Helen Kiunsi. (2021). "The Emerging Legal Landscape of Transfer Pricing in Tanzania" *East African Business Law Journal, 15(2),* 45-49.
[90] *Ibid.*
[91] Tanzania Income Tax Act [Cap 332 Revised Edition 2023]; Tanzania Tax Administration Act [Cap 438 Revised Edition 2023], 15-18 and 20.
[92] Court of Appeal of Tanzania. (2017). *Atlas Copco Tanzania Ltd v Commissioner General (TRA)*, Tax Appeal No. 9 of 2017 (TRAT), 15-18 and 20.
[93] Court of Appeal of Tanzania. (2020). *Atlas Copco Tanzania Ltd v Commissioner General, Tanzania Revenue Authority.* Civil Appeal No. 167 of 2019, [2020] TZCA 317; see also *Aggreko International Projects Ltd v Commissioner General (TRA)*, Civil Appeal No. 67 of 2018, [2018] TZCA 252, 18-22.

D. Comparative Analysis: Tanzania, Kenya and South Africa

Tanzania, Kenya and South Africa all recognise the arm's length principle as the foundation of transfer pricing regulation, guided by the OECD Transfer Pricing Guidelines and the UN Practical Manual on Transfer Pricing.[94] However, the practical enforcement, sophistication of administrative mechanisms, and depth of jurisprudence differ substantially across the three jurisdictions.

In Tanzania, transfer pricing is regulated under Section 33[95] and the Tax Administration (Transfer Pricing) Regulations, GN No. 166 of 2018, which require taxpayers engaged in related-party transactions to maintain contemporaneous documentation demonstrating arm's length pricing. The Tanzanian courts have repeatedly emphasized that documentation alone is insufficient unless it is supported by verifiable evidence of the actual economic substance of the transactions. The principle was strongly affirmed in the case of *Aggreko International Projects Limited v Commissioner General (TRA),*[96] where the Court of Appeal held that a taxpayer must prove not only the existence of a transfer pricing policy but also that the services were actually rendered and costs genuinely incurred in Tanzania, before deductions or pricing allocations can be accepted. Similar reasoning was applied in the case of *Atlas Copco Tanzania Ltd v Commissioner General (TRA)*, where the Tax Revenue Appeals Tribunal reiterated that transfer pricing analyses must reflect Tanzanian market conditions, rather than merely replicating group-wide pricing structures. This principle was affirmed by the Court of Appeal of Tanzania, the highest court in the country, in a decision that originated from the Tax Revenue Appeals Tribunal (TRAT). The case is widely cited for establishing that global corporate policies cannot override the requirement for localized evidence of market conditions.[97]

Likewise, in the case of *Alliance One Tobacco Tanzania Ltd v Commissioner General (TRA)*, the Court of Appeal confirmed that the burden of proof regarding the arm's length nature of intra-group charges lies squarely on the taxpayer. The court held that under Section 110 of the Tax Administration Act, the burden is on the taxpayer to prove that a tax assessment is excessive or erroneous, particularly regarding the deductibility of intra-group expenses.[98] These cases collectively reveal that while Tanzania's legal framework is aligned with international standards, its enforcement approach is reactive, evidence-based, and

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[94] OECD. (2022). *Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2022*. Paris: OECD Publishing; Department of Economic & Social Affairs United Nation (UN). (2017). *Practical Manual on Transfer Pricing for Developing Countries*. ST/ESA/377.

[95] Tanzania Income Tax Act. (2023). Cap 332 Revised Edition 2023.

[96] Court of Appeal of Tanzania. (2021). *Aggreko International Projects Ltd v Commissioner General (Tanzania Revenue Authority)* [2021] TZCA 861 (Civil Appeal No. 364 of 2021), 18-22.

[97] Court of Appeal of Tanzania. (2020). *Atlas Copco Tanzania Ltd v Commissioner General, Tanzania Revenue Authority*. Civil Appeal No. 167 of 2019, [2020] TZCA 317, 15-18 and 21.

[98] Court of Appeal of Tanzania. (2019). *Alliance One Tobacco Tanzania Ltd v Commissioner General (TRA)*, Civil Appeal No 118 of 2018, [2019] TZCA 556 (7 August 2019), 12-16.

documentation-intensive, requiring taxpayers to substantiate both pricing methodology and actual commercial performance.

In Kenya, transfer pricing is governed by the Income Tax (Transfer Pricing) Rules, 2006, strengthened by the adoption of Country-by-Country reporting consistent with OECD BEPS Action 13. Kenya applies proactive compliance monitoring, and its tribunals have addressed more technical aspects of method selection, comparability and benchmarking. In the case of *Oracle Systems Kenya Limited v Commissioner of Domestic Taxes*, the Tax Appeals Tribunal analyzed the application of the Transactional Net Margin Method (TNMM) and held that the Kenya Revenue Authority (KRA) may challenge a taxpayer's selected comparables where functional differences distort profit-level indicators.[99] The Tribunal ruled that the KRA is empowered to reject a taxpayer's transfer pricing documentation if the selection of comparable entities does not mirror the specific functional profile of the local subsidiary. Furthermore, the Tribunal established that the KRA is justified in dismissing benchmarking studies where the chosen comparables operate under different economic circumstances or perform significantly different functions than the local entity.

The tribunal emphasized that the reliability of the TNMM depends heavily on the similarity of the functions performed, assets employed, and risks assumed by the taxpayer and the comparable companies. In this instance, the KRA successfully argued that the taxpayer's benchmarking study failed to account for significant differences in the Kenyan market's economic realities compared to the broader regional or global comparables used in the study.

Additionally, the Kenyan Court of Appeal in the case of *Unilever Kenya Ltd v Commissioner of Income Tax* affirmed that intra-group pricing must reflect economic substance rather than internal managerial accounting, stressing that artificial profit shifting is impermissible disguised tax avoidance.[100] Compared to Tanzania, Kenya's dispute-resolution record shows more frequent reliance on comparability adjustments and benchmarking databases, making its system moderately more predictable in practice.

South Africa represents the most institutionally mature transfer pricing environment among the three jurisdictions. Its transfer pricing rules are embedded in the *Income Tax Act 58 of 1962*, supported by SARS Practice Note 7, and enforced through specialized transfer pricing audit units and Advance Pricing Agreements (APAs).

South Africa's jurisprudence shows a long-standing judicial engagement with evaluating arm's length conduct. In *Hicklin v Secretary for Inland Revenue*, the Appellate Division affirmed that the arm's length standard requires examining how independent parties seeking maximum economic advantage would behave, thereby grounding profit allocation in commercial reality.[101] In the case of *Commissioner for SARS v BMW South Africa (Pty) Ltd*, the Supreme Court of Appeal recognized that the allocation of development, marketing, or intangible-related risks determines which entity is entitled to profit, reinforcing the centrality of functional and risk analysis as a core component of transfer pricing.[102] South Africa's structured APA framework has significantly reduced litigated disputes, providing advance certainty to taxpayers and helping align pricing outcomes with documented functional contributions.

Taken together, the comparison suggests that while Tanzania's legal rules are substantively aligned with international principles, its enforcement effectiveness is

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[99] Tax Appeal Tribunal of Kenya. (2021). *Oracle Systems Kenya Limited v Commissioner of Domestic Taxes*. Tax Appeal No. 148 of 2019 [2021] KETAT 86 (KLR), 14-19.

[100] High Court of Kenya at Nairobi. (2005). *Unilever Kenya Limited v Commissioner of Income Tax*. [2005] eKLR, (Civil Appeal No. 753 of 2003), 12-16.

[101] Supreme Court of South Africa (Appellate Division). (1980). *Hicklin v Secretary for Inland Revenue*. 1980 (1) SA 481 (A), 495, para A-B.

[102] Supreme Court of Appeal of South Africa. (2019). *Commissioner for the South African Revenue Service v BMW South Africa (Pty) Ltd*. (1156/18) ZASCA 107, para 25-28.

constrained by limited access to comparables, absence of a functioning APA system, and reliance on post-transaction audits. Kenya provides valuable lessons in routine documentation filing and regional benchmarking, while South Africa demonstrates the institutional advantage of specialized audit units and advance pricing agreements. Accordingly, Tanzania's transfer pricing system would be strengthened by establishing a formal APA Programme, expanding TRA's sector-specific audit capacity, and improving access to regional and global comparables, thereby enhancing certainty for multinational taxpayers while safeguarding the national tax base.

E. Implications of Transfer Pricing on Taxation

Transfer pricing in Tanzania primarily affects the fiscal position of the State by ensuring that transactions between related entities within multinational enterprises (MNEs) are conducted at arm's length, reflecting the prices and terms that independent parties would negotiate.[103] Proper application of transfer pricing rules under Section 33 of the Income Tax Act safeguards the national tax base by ensuring that taxable income, profits, and tax liabilities are correctly allocated and reported within Tanzania.[104] For MNEs, compliance impacts operational decision-making, financial reporting, and corporate governance, as accurate intra-group pricing reduces the risk of audits, penalties, and adjustments. Transfer pricing corrections thus play a critical role in preventing profit shifting while maintaining fairness and transparency in cross-border intra-group transactions.

1. Increases in Tax Revenue

The adoption of the arm's length principle prevents profit shifting and other manipulative practices that could reduce Tanzania's tax revenue. By aligning intercompany prices with those that would be charged between independent parties, the Tanzania Revenue Authority (TRA) can adjust underreported taxable income and assess additional taxes, as evidenced by TRA's transfer pricing audits which generated approximately TZS 232 billion in additional revenue.[105] The rigorous enforcement of documentation requirements, method selection, and functional analysis enables TRA to secure fair taxation while mitigating opportunities for artificial profit allocation.

2. Reducing the Tax Base

Tanzania's tax base can be eroded when multinational enterprises (MNEs) use aggressive transfer pricing strategies, such as thinly capitalized structures or abusive hedging arrangements. Excessive intercompany loans allow disproportionate interest deductions, while unmonitored hedging can offset profits, reducing taxable income. To counter these risks, Tanzania implements thin capitalization rules and limits the deductibility of hedging losses as anti-avoidance measures, ensuring compliance with the arm's length principle. These rules protect government revenue by targeting abusive practices without burdening legitimate transactions, reinforcing the effectiveness of the transfer pricing regime and preserving the integrity of the fiscal framework.

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[103] OECD. (2022). *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations*. Paris: OECD Publishing, 27-33.

[104] Tanzania Income Tax Act. (2023). Cap 332 Revised Edition 2023; Tanzania Tax Administration (Transfer Pricing) Regulations. (2018). GN No. 166.

[105] TRA. (2023). *Transfer Pricing Audit Report 2022–2023*. Dar es Salaam: TRA, 15-17.

3. Broader Implications beyond Tanzania's Fiscal Effects

The implications of transfer pricing extend beyond revenue collection and include legal, operational, and administrative challenges. Legal disputes often arise between MNEs and the Tanzania Revenue Authority (TRA) regarding the appropriate allocation of profits, verification of intra-group expenses, and interpretation of arm's length pricing. These challenges are exemplified in *Atlas Copco Tanzania Ltd v Commissioner General (TRA)*, where the Tax Revenue Appeals Tribunal emphasized the necessity of contemporaneous and verifiable documentation as a prerequisite for deductibility; this is the definitive ruling from the Tribunal regarding the evidentiary weight of group policies versus local documentation.[106] Similarly, in *Aggreko International Projects Ltd v Commissioner General (TRA)*, the Court of Appeal reinforced that taxpayers must provide primary evidence of services rendered to satisfy the "benefit test" for intra-group charges, providing finality on the requirement for independent verification of intercompany expenses.[107]

In these disputes, the burden of proof lies with the taxpayer, requiring them to demonstrate the allocation of costs, functions, and risks across related entities. Fiscal corrections, penalties, and interest assessments imposed following audits directly affect corporate cash flow, while data asymmetry due to limited publicly available comparables in Tanzania forces MNEs to rely on internal benchmarks, increasing administrative and litigation risks. Therefore, the effects of transfer pricing in Tanzania encompass revenue protection, legal risk, and operational compliance.

4. Risk Ranking of Transfer Pricing Methods and Their Impact in Tanzania

The practical application of transfer pricing methods in Tanzania reveals a distinct risk hierarchy, where the level of exposure for a multinational enterprise (MNE) is dictated by the availability of localized data and the rigor of the Tanzania Revenue Authority's (TRA) audit focus. This risk ranking is not merely a product of the theoretical complexity of the methods but a reflection of the systemic data asymmetry within the Tanzanian market.

The Comparable Uncontrolled Price (CUP) method sits at the apex of this risk hierarchy as a high-risk approach. While theoretically the most direct way to establish arm's length pricing, its viability is severely undermined by the acute scarcity of reliable, publicly available comparables in specialized sectors like mining, energy, and telecommunications. This data vacuum forces MNEs to rely on foreign benchmarks, which the TRA frequently challenges, necessitating extensive and often subjective comparability adjustments.[108] This friction makes the CUP method uniquely vulnerable to disputes compared to the Resale Price method, which is categorized as low risk. The Resale Price method is primarily applied to distribution operations where local gross margins are more transparent and comparable entities are more accessible in the Tanzanian market.[109]

The transition from traditional transaction methods to transactional profit methods further illustrates the narrative of risk mitigation. The Cost-Plus method presents

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[106] Court of Appeal of Tanzania. (2017). *Atlas Copco Tanzania Ltd v Commissioner General (TRA)*, Tax Appeal No 9 of 2017 (TRAT), 15-18 and 20.
[107] Court of Appeal of Tanzania. (2018). *Aggreko International Projects Ltd v Commissioner General (TRA)*, Civil Appeal No 67 of 2018, [2018] TZCA 252, 18-22.
[108] Klynveld Peat Marwick Goerdeler (KPMG). (2020). *Transfer Pricing and Tax Risk in Tanzania*. Dar es Salaam: KPMG, 22-28; TRA. (2023). *Transfer Pricing Audit Report 2022–2023*. Dar es Salaam: TRA, 10-15.
[109] *Ibid.*, 28-30.

a medium-high risk because it requires precise allocation of direct and indirect costs a task complicated by the complex supply chains and shared overheads prevalent in Tanzania's manufacturing and extractive industries.[110] When taxpayers cannot satisfy the "benefit test" for these costs, the TRA typically disallows the deductions. In contrast, the Transactional Net Margin Method (TNMM) serves as a medium-risk alternative and is the most common fallback in Tanzania.[111]TNMM is prioritized when CUP or Cost-Plus data are unavailable because it focuses on net profit indicators, which are less sensitive to minor product differences. However, the reliability of TNMM still hinges on a robust functional analysis to justify profit margins, particularly for entities experiencing local losses while the global group remains profitable.

Finally, the Profit Split Method occupies a low-medium risk profile, though its use is restricted by its resource-intensive nature. It is particularly effective for highly integrated operations where related parties contribute unique intangibles that cannot be benchmarked individually.[112]By dividing the total profit based on the relative economic contribution of each party, it aligns with the commercial reality of integrated MNEs, making it less susceptible to the binary "all-or-nothing" rejection often seen with the CUP method. Collectively, these risk levels underscore that in Tanzania, the most accurate theoretical method is often the most dangerous in practice if it cannot be substantiated by localized, verifiable data.

The implications of transfer pricing in Tanzania are multifaceted and extend beyond immediate revenue effects. While compliance with the arm's length principle and Section 33 of the Income Tax Act protects the tax base, the practical application of transfer pricing also involves legal disputes, the burden of proof, fiscal corrections, and challenges arising from data asymmetry. Risk levels associated with different transfer pricing methods vary, with CUP presenting the highest risk due to comparability constraints, while Resale Price or Profit Split methods are comparatively lower-risk when appropriately documented. Consequently, MNEs operating in Tanzania must adopt a transaction-specific approach, selecting the most appropriate method based on functional profile, sectoral risks, and economic substance, while maintaining comprehensive contemporaneous documentation to mitigate compliance and litigation risks.^[1] This proactive documentation strategy is essential for navigating the TRA's rigorous audit environment, particularly where data asymmetry complicates the application of the arm's length principle.

Simultaneously, the TRA must balance revenue protection with fostering a transparent and predictable tax environment. Such a balance is critical for maintaining foreign investment and supporting long-term economic growth, ensuring that the enforcement of transfer pricing regulations does not become a deterrent to legitimate cross-border commercial activity.[113]

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[110] KPMG. (2020). *Transfer Pricing and Tax Risk in Tanzania*. Dar es Salaam: KPMG, 28-30.
[111] PricewaterhouseCoopers (PwC). (2023). *Transfer Pricing Global Reference Guide*. London: PwC, 33-36.
[112] *Ibid*., 37-39.
[113] PwC. (2023). *Transfer Pricing Global Reference Guide*. London: PwC, 40-42; KPMG. (2020). *Transfer Pricing and Tax Risk in Tanzania*. Dar es Salaam: KPMG, 30-33.

F. Case Studies from Tanzania

1. Geita Gold Mine Ltd.

Geita Gold Mine Ltd., one of Africa's largest open-pit gold mines, began production in 2000 as a joint venture between AngloGold and Ashanti and later became wholly owned by AngloGold Ashanti following their merger in 2004.[114] The mine has an annual production of approximately 538,000 ounces of gold. Between 2001 and 2007, the company generated US$1.549 billion in gold sales but paid only US$144.4 million in taxes, a situation partly linked to the company's extremely high debt-to-equity ratio of 12,597,000 percent, suggesting aggressive thin capitalization practices that reduced taxable income substantially.[115] From a transfer pricing perspective, these financial arrangements indicate potential use of the Cost-Plus Method, where intercompany charges for services or financing may have been overstated or misallocated across subsidiaries to minimize profits reported in Tanzania.[116] In practice, this misapplication reflects a failure to correctly allocate costs and risks in line with the arm's length principle, as the intra-group transactions did not mirror what independent enterprises would have agreed upon under comparable circumstances. The *Geita* case demonstrates how improper application of Cost-Plus or related-party financing arrangements can distort taxable income and reduce the effectiveness of Tanzania's transfer pricing regulations, including those set out under the Tax Administration (Transfer Pricing) Regulations GN No. 166 of 2018.[117]

2. Resolute Gold Mine

Resolute Gold Mine, located in Nzega, Western Tanzania, was investigated by the Presidential Mining Review Committee in January 2008, which found that the mine sold gold at US$530 per ounce when global market prices were approximately US$1,200 per ounce.[118] The company justified the low price on the basis of hedging agreements; however, it was revealed that these hedging transactions were conducted with a sister company, effectively transferring profits to an affiliated entity outside Tanzania.[119] This situation reflects a potential violation of the Comparable Uncontrolled Price (CUP) Method, as the intra-group sales price significantly deviated from market prices for comparable uncontrolled transactions.[120] Consequently, the case highlights the challenges of ensuring arm's length pricing and illustrates how CUP, if not correctly applied with verifiable market comparables, can result in significant fiscal losses for the Tanzanian state. The Resolute example also shows that failure to produce contemporaneous documentation

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[114] AngloGold Ashanti. (2004). *Annual Report 2004*. Johannesburg: AngloGold Ashanti, 22.

[115] Presidential Mining Review Committee. (2008). *Report on Mining Practices in Tanzania*. Dodoma: Government Printer, 45.

[116] OECD. (2017). *Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2017*. Paris, OECD Publishing, 112.

[117] Tanzania Tax Administration (Transfer Pricing) Regulations. (2018). GN No. 166.

[118] Presidential Mining Review Committee. (2008). *Report of the Presidential Mining Review Committee to Advise the Government on Oversight of the Mining Sector*. Dodoma: Government Printer, 47.

[119] *Ibid.*, 48-49.

[120] OECD. (2017). *Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations*. Paris, OECD Publishing, 57.

to substantiate pricing adjustments undermines compliance and increases the risk of audit adjustments and penalties by the Tanzania Revenue Authority (TRA).[121]

3. Implications for Other Methods

In addition to Cost-Plus and CUP, other transfer pricing methods such as the Transactional Net Margin Method (TNMM), Profit Split Method, and Resale Price Method could theoretically be applied to mining and extractive industry operations in Tanzania, depending on functional profiles, risk allocation, and the availability of reliable comparables. For instance, TNMM could be used where direct comparables are scarce, allowing allocation of net margins to Tanzanian subsidiaries based on observable market data.[122] The Profit Split Method could apply in joint ventures or integrated projects where multiple parties contribute significantly to value creation, ensuring that profits are shared according to actual functions, assets, and risks.[123] The Resale Price Method might be relevant where Tanzanian entities distribute goods purchased from related parties to independent customers, but its practical utility is limited in highly capital-intensive sectors like mining due to the scarcity of comparable resale data.[124]

The analysis of *Geita Gold Mine* and *Resolute Gold Mine* illustrates that transfer pricing compliance in Tanzania requires both careful method selection and rigorous documentation. Cases demonstrate that the inappropriate application of Cost-Plus and CUP methods, thin capitalization, and intra-group hedging can significantly reduce the Tanzanian tax base. Furthermore, the challenges of scarce comparable data, complex functional allocations, and sector-specific risks highlight the critical role of the arm's length principle, contemporaneous documentation, and TRA oversight in ensuring fair taxation. These case studies also provide empirical evidence that the selection of the most appropriate transfer pricing method must be transaction-specific, reflect local economic realities, and account for the availability of reliable market comparables to prevent disputes and fiscal loss.[125]

G. Challenges in the Implementation of Transfer Pricing Rules

1. Complexity of Regulations

The implementation of transfer pricing rules in Tanzania faces significant challenges due to the inherent complexity of the regulatory framework. The 2014 Transfer Pricing Guidelines were established as a practical framework rather than an exhaustive set of rules, requiring that each case be evaluated based on its unique factors and specific economic circumstances.[126] While this flexibility is intended to accommodate diverse business strategies and commercial judgments, it inadvertently introduces a degree of subjectivity and unpredictability in enforcement.

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[121] Tanzania Tax Administration (Transfer Pricing) Regulations. (2018). GN No. 166.
[122] Tanzania Tax Administration (Transfer Pricing) Regulations. (2018). GN No. 166.
[123] OECD. (2017). *Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2017*. Paris: OECD Publishing, 63.
[124] OECD. (2017). *Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2017*. Paris: OECD Publishing, 65.
[125] KPMG. (2020). *Transfer Pricing and Tax Risk in Tanzania*. Dar es Salaam: KPMG, at pp.112-115.
[126] Tanzania Revenue Authority. (2014). *Transfer Pricing Guidelines 2014*. Government of Tanzania 2014) https://www.tra.go.tz/images/uploads/regulations/Transfer_Pricing_Guideline.pdf.

This subjectivity is further complicated by the tiered compliance obligations introduced in recent years. Under current regulations, taxpayers are required to submit full transfer pricing documentation simultaneously with their annual corporate income tax return if their aggregate transactions with associates exceed TZS 10 billion.[127]Conversely, taxpayers below this threshold are not mandated to submit documentation upon filing unless the Tanzania Revenue Authority (TRA) makes a specific request.

This "two-tier" system, while designed to reduce the administrative burden on smaller enterprises, often leads to inconsistencies in how the arm's length principle is applied across different scales of operation. It can also create confusion regarding the contemporaneous nature of documentation; even those below the threshold must have their documentation ready by the filing date, despite not being required to submit it immediately. For many MNEs, the lack of an exhaustive, bright-line rulebook means that the line between legitimate tax planning and non-compliance remains blurred.

2. Cost of Compliance

The cost of compliance with transfer pricing regulations is another significant challenge for businesses in Tanzania. The guidelines suggest that transfer pricing documentation should be contemporaneous, yet the term has not been clearly defined. This ambiguity can lead to different interpretations, potentially necessitating annual documentation updates even without significant transaction changes with related parties. Such a requirement could impose a substantial cost burden on taxpayers.[128] Additionally, the complexity of business models and practices, especially. Among multinational enterprises (MNEs), it exacerbates the risk of tax base erosion and the challenges tax administrations face in ensuring compliance. These factors make transfer pricing costly and challenging for taxpayers and tax authorities.[129]

H. Recommendations for Strengthening Transfer Pricing in Tanzania

1. Improving the Regulatory Framework and Enforcement

To enhance the effectiveness of Tanzania's transfer pricing regulations, it is recommended that the legal framework explicitly clarify whether OECD or UN guidance should be followed in cases of interpretational inconsistencies, thereby providing a consistent legal basis for dispute resolution and ensuring fairness in tax assessments.[130] Furthermore, introducing rules to limit interest deductibility as a percentage of earnings before interest, tax, depreciation, and amortization (EBITDA) could prevent excessive interest deductions that erode the tax base, consistent with OECD BEPS recommendations suggesting a cap between 10 and 30 percent of EBITDA.[131] In addition, separate tax treatment for hedging

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[127] PwC Tanzania. (2026, January 14). "Transfer Pricing Regulations Bring Significant Change". *Tax Summaries PwC*. PwC Worldwide Tax Summaries - Tanzania Corporate Group Taxation.
[128] PwC Tanzania. (2026, January 14). "Transfer Pricing Regulations Bring Significant Change". *Tax Summaries PwC*. PwC Worldwide Tax Summaries - Tanzania Corporate Group Taxation.
[129]Alexandra Readhead. (2016, March). "Transfer Pricing in the Extractive Sector in Tanzania". *Natural Resource Governance Institute*. https://resourcegovernance.org/sites/default/files/documents/nrgi_tanzania_transfer-pricing-study.pdf
[130] OECD. (2022). *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2022*. Paris: OECD Publishing, 95-97.
[131] OECD. (2015). *Base Erosion and Profit Shifting Project (*BEPS) *Action 4: Limiting Base Erosion Involving Interest Deductions and Other Financial Payments*. Paris: OECD Publishing, 34-37.

activities should be introduced to mitigate the risk that extractive companies engage in abusive hedging arrangements to offset income, thereby ensuring that profits from the sector are appropriately taxed and contribute to national revenue.[132]

Beyond regulatory improvements, it is equally important to strengthen the capacity and effectiveness of law enforcement officers and tax authorities, as compliance and accurate data reporting are critical for transfer pricing enforcement in Tanzania. Adequately trained TRA officers should be empowered to review, analyze, and challenge transfer pricing documentation, verify comparability analyses, assess functional and risk profiles, and conduct sector-specific audits in industries such as mining, energy, and telecommunications. Enhanced training, digital tools for data analysis, and clearly defined enforcement procedures will ensure that transfer pricing rules are consistently applied, reduce opportunities for profit shifting, and promote voluntary compliance among multinational enterprises. By combining regulatory clarity with strengthened enforcement mechanisms, Tanzania can achieve a robust transfer pricing regime that safeguards the tax base while maintaining an attractive investment environment.[133]

2. Harmonization with International Standards

Advance Pricing Agreements (APAs) are voluntary arrangements between a taxpayer and the tax authority, such as the Tanzania Revenue Authority (TRA), that determine in advance an appropriate transfer pricing methodology for specific transactions over a fixed period.[134] APAs provide legal certainty by pre-approving both the method and the arm's length pricing for intra-group transactions, reducing the risk of future disputes or adjustments. In Tanzania, the Transfer Pricing Regulations under GN No. 166 of 2018 provide the legal basis for negotiating APAs, allowing taxpayers and TRA to mutually agree on transfer pricing methods and comparability adjustments, subject to full disclosure and contemporaneous documentation.[135]

Extensive use of APAs offers multiple benefits: they enable TRA to build technical expertise in transfer pricing, facilitate the collection of reliable transaction data, and give taxpayers certainty regarding compliance obligations. APAs promote predictability and fairness in tax assessments and align Tanzania's practices with international best practices as endorsed by the OECD and UN.[136] Complementary safe harbor rules can simplify compliance for smaller taxpayers by prescribing standardized transfer pricing methods or benchmarks, thereby reducing administrative burdens and the likelihood of disputes. A tailored APA and safe harbor approach, similar to the successful framework implemented in Ghana, could provide Tanzania with a balanced solution that supports effective compliance and administrative efficiency across sectors and taxpayer sizes.[137]

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132 KPMG. (2018). *Transfer Pricing in Extractive Industries: Hedging Practices and Tax Implications*. Dar es Salaam: KPMG, 12-15.

133 Tanzania Tax Administration (Transfer Pricing) Regulations. (2018). GN No. 166.

134 OECD. (2022). *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2022*. Paris: OECD Publishing, 119–121.

135 Tanzania Tax Administration (Transfer Pricing) Regulations. (2018). GN No. 166.

136 OECD. (2015). *BEPS Action 14 Final Report: Making Dispute Resolution Mechanisms More Effective*. Paris, OECD Publishing, 42-45.

137 KPMG. (2019). *Transfer Pricing and Advance Pricing Agreements in Africa: Case Studies from Ghana*. Accra, KPMG, 16-18.

By first explaining the concept, function, and legal basis of APAs, it becomes clear that their implementation can strengthen Tanzania's transfer pricing framework, harmonize it with international standards, and enhance transparency, fairness, and efficiency in the taxation of multinational enterprises operating in the country. Combined with regulatory improvements and strengthened enforcement mechanisms, these measures offer a comprehensive path toward a robust, equitable, and investor-friendly transfer pricing regime.

Conclusion

This article demonstrates that transfer pricing significantly shapes Tanzania's taxation system, affecting both multinational enterprises' strategies and the country's fiscal capacity. Despite a legal framework grounded in the arm's length principle (ALP) and recognized methods such as CUP, TNMM, Cost-Plus, and Profit Split, enforcement challenges persist, including cost allocation, risk assignment, and limited comparables, particularly in mining and telecommunications. Evidence from *Geita Gold Mine Ltd* and *Resolute Gold Mine* highlights how aggressive intra-group practices have constrained tax revenues. Comparative lessons from Kenya and South Africa show that sector-specific guidance, advance pricing agreements, and robust documentation can enhance compliance. Targeted reforms are essential to safeguard Tanzania's tax base.

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