

# South Africa

## Transfer Pricing Country Profile

December 2021

		SUMMARY	REFERENCE
<b>The Arm's Length Principle</b>			
1	Does your domestic legislation or regulation make reference to the Arm's Length Principle?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Section 31 of the <a href="#">Income Tax Act</a> , Act No. 58 of 1962 ("SA Income Tax Act")
2	What is the role of the OECD Transfer Pricing Guidelines under your domestic legislation?	The OECD Transfer Pricing Guidelines provide supporting guidance for the application of the arm's length principle contained in the South African domestic transfer pricing legislation.	
3	Does your domestic legislation or regulation provide a definition of related parties? If so, please provide the definition contained under your domestic law or regulation.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No  Section 1 of the SA Income Tax provides for a definition of "connected person". It is a general definition that encapsulates natural persons, trusts, partnerships and companies.  For the purposes of the South African domestic transfer pricing legislation, the general definition of 'connected person' has been widened. Effective for years of assessment commencing on or after 1 January 2022, the South African domestic transfer pricing legislation is also applicable to "associated enterprises" as defined in Article 9 of the OECD Model Tax Convention, in relation to one another.	Section 1 of the SA <a href="#">Income Tax Act</a> Interpretation <a href="#">Note 67</a>
<b>Transfer Pricing Methods</b>			
4	Does your domestic legislation provide for transfer pricing methods to be used	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<a href="#">Practice Notes – South African Revenue Service (sars.gov.za)</a>

	<b>in respect of transactions between related parties?</b>	<p>If affirmative, please check those provided for in your legislation:</p> <table border="1" data-bbox="696 164 1543 323"> <thead> <tr> <th data-bbox="696 164 808 244">CUP</th> <th data-bbox="808 164 936 244">Resale Price</th> <th data-bbox="936 164 1064 244">Cost Plus</th> <th data-bbox="1064 164 1193 244">TNMM</th> <th data-bbox="1193 164 1323 244">Profit Split</th> <th data-bbox="1323 164 1543 244">Other (<i>If so, please describe</i>)</th> </tr> </thead> <tbody> <tr> <td data-bbox="696 244 808 323" style="text-align: center;"><input type="checkbox"/></td> <td data-bbox="808 244 936 323" style="text-align: center;"><input type="checkbox"/></td> <td data-bbox="936 244 1064 323" style="text-align: center;"><input type="checkbox"/></td> <td data-bbox="1064 244 1193 323" style="text-align: center;"><input type="checkbox"/></td> <td data-bbox="1193 244 1323 323" style="text-align: center;"><input type="checkbox"/></td> <td data-bbox="1323 244 1543 323" style="text-align: center;"><input type="checkbox"/></td> </tr> </tbody> </table> <p>South Africa relies on the methods in the OECD Transfer Pricing Guidelines without having any direct reference to any method in its Transfer Pricing domestic legislation. This is reflected in Practice Note No. 7.</p>	CUP	Resale Price	Cost Plus	TNMM	Profit Split	Other ( <i>If so, please describe</i> )	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<p>Practice Note 7 must be read with the following: The record requirements of this Practice Note (including the addendum) will now be replaced by the record requirements of <a href="#">Notice 1334</a> of Government Gazette 40375 dated 28 October 2016 to the extent applicable (as mentioned in the <a href="#">Briefing Note</a>)</p>
CUP	Resale Price	Cost Plus	TNMM	Profit Split	Other ( <i>If so, please describe</i> )										
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>										
5	<b>Which criterion is used in your jurisdiction for the application of transfer pricing methods?</b>	<p>Please check all that apply:</p> <p><input type="checkbox"/> Hierarchy of methods</p> <p><input checked="" type="checkbox"/> Most appropriate method</p> <p><input type="checkbox"/> Other (<i>if so, please explain</i>)</p> <p>South Africa relies on the guidance in the OECD Transfer Pricing Guidelines on the selection of the applicable transfer pricing method using the most appropriate method as a criterion.</p>													
6	<b>If your domestic legislation or regulations contain specific guidance on commodity transactions, indicate which of the following approaches is followed.</b>	<p><input type="checkbox"/> For controlled transactions involving commodities, the guidance contained in paragraphs 2.18-2.22 of the TPG is followed.</p> <p><input type="checkbox"/> Domestic legislation mandates the use of a specific method for controlled transactions involving commodities (<i>if so, please explain</i>)</p> <p><input checked="" type="checkbox"/> Other (<i>if so, please explain</i>)</p> <p>The South African domestic transfer pricing legislation does not contain specific legislation or guidelines for the treatment of commodity transactions. The practice is that the OECD Transfer Pricing Guidelines are consulted for purposes of considering and selecting the most appropriate transfer pricing method.</p>													
<b>Comparability Analysis</b>															
7	<b>Does your jurisdiction follow (or largely follow) the guidance on comparability</b>	<p><input checked="" type="checkbox"/> <b>Yes</b></p> <p><input type="checkbox"/> <b>No</b></p>													

	<b>analysis outlined in Chapter III of the TPG?</b>	South Africa follows the guidance on comparability analysis as outlined in Chapter III of the OECD Transfer Pricing Guidelines.	
8	<b>Is there a preference in your jurisdiction for domestic comparables over foreign comparables?</b>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No  The South African domestic transfer pricing legislation does not contain specific legislation or guidelines for the selection and or use of domestic or foreign comparables. However, the OECD Transfer Pricing Guidelines are consulted to provide guidance on comparability analysis.	
9	<b>Does your tax administration use secret comparables for transfer pricing assessment purposes?</b>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
10	<b>Does your legislation allow or require the use of an arm's length range and/or statistical measure for determining arm's length remuneration?</b>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No  The South African domestic transfer pricing legislation does not contain a specific provision that allows or requires the use of an arm's length range and/or statistical measure for determining the arm's length range. However, South Africa follows the OECD Transfer Pricing Guidelines, which provide in-depth guidance on the use of an arm's length range and/or statistical measure for determining arm's length remuneration. This is reflected in Practice Note No. 7 at a high level.	<a href="#">Practice Notes – South African Revenue Service (sars.gov.za)</a> Practice Note 7 must be read with the following:  The record requirements of this Practice Note (including the addendum) will now be replaced by the record requirements of <a href="#">Notice 1334</a> of <i>Government Gazette</i> 40375 dated 28 October 2016 to the extent applicable (as mentioned in the <a href="#">Briefing Note</a> )
11	<b>Are comparability adjustments required under your domestic legislation or regulations?</b>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No  The South African domestic transfer pricing legislation does not contain a specific provision or inclusion for comparability adjustments. However, the OECD Transfer Pricing Guidelines are consulted to provide guidance on comparability adjustments.	
<b>Intangible Property</b>			
12	<b>Does your domestic legislation or regulations contain guidance specific to</b>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<a href="#">Practice Notes – South African Revenue Service (sars.gov.za)</a>

	<b>the pricing of controlled transactions involving intangibles?</b>	The South African domestic transfer pricing legislation does not contain a specific provision or inclusion on the pricing of transactions involving intangibles. However, South Africa follows the OECD Transfer Pricing Guidelines, which provide in-depth guidance on pricing of controlled transactions involving intangibles. This is reflected in Practice Note No. 7 at a high level.	Practice Note 7 must be read with the following: The record requirements of this Practice Note (including the addendum) will now be replaced by the record requirements of <a href="#">Notice 1334</a> of <i>Government Gazette</i> 40375 dated 28 October 2016 to the extent applicable (as mentioned in the <a href="#">Briefing Note</a> )
13	<b>Does your domestic legislation or regulations provide for transfer pricing rules or special measures regarding hard-to-value intangibles (HTVI)?</b>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No  South Africa follows the OECD Transfer Pricing Guidelines in this respect.	<a href="#">HTVI Implementation Questionnaire</a>
14	<b>Are there any other rules outside transfer pricing rules that are relevant for the tax treatment of transactions involving intangibles?</b>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No  Section 23I is the South African domestic provision that prohibits a deduction in respect of certain intellectual property. The purpose of the provision is to, in specified circumstances, disallow the deduction in the hands of a South African resident who licenses IP from a non-taxable person, including a non-resident. The following is a summary of the licensing transactions to which the provision applies: <u>Exportation of IP</u> – where a South African taxpayer (resident) licenses patents, designs, trademarks or copyright IP from a non-taxable person and the IP was developed by the licensee or a person connected to the licensee. <u>Bare dominium structures</u> – where a resident licenses IP, the IP is owned by a taxable resident, and the royalties are paid to a non-taxable person. A bare dominium structure is a situation wherein ownership in an asset is divorced from use rights therein. <u>Sale of business as a going concern</u> : Where a resident’s business is sold by the sale of assets of the seller generally to another resident (purchaser) while transferring the IP to a non-taxable person and the purchaser licenses the IP. <u>Research and Development (R&amp;D) structure</u> - Where R&D that gave rise to IP was performed by a resident within South Africa, the IP is licensed to the resident or to another “connected” resident, the licensor is a non-taxable person and the licensee	Section 23I of the SA <a href="#">Income Tax Act</a> - Prohibition of deductions in respect of certain intellectual property

		<p>and resident connected persons in relation to the licensee own at least 20% shares in the licensor.</p> <p><u>Controlled Foreign Companies (CFCs)</u> - Where royalties are paid by a resident to a CFC, royalties paid to the CFC are captured in the section to the extent that shares in the CFC are held by non-taxable persons.</p> <p><u>Synthetic arrangements</u> – Where any arrangement that attempts synthetically to achieve the same tax result as any of the above scenarios.</p>	
<b>Intra-group Services</b>			
15	<p><b>Does your domestic legislation or regulations provide guidance specific to intra-group services transactions?</b></p>	<p><input type="checkbox"/> Yes</p> <p><input checked="" type="checkbox"/> No</p> <p>The South African domestic transfer pricing legislation does not contain a specific provision or inclusion on intra-group service transactions. However, Practice Note No. 7 states that Chapter VII of the OECD Transfer Pricing Guidelines is relevant and therefore the OECD Transfer Pricing Guidelines are followed.</p>	<p><a href="#">Practice Notes – South African Revenue Service (sars.gov.za)</a></p> <p>Practice Note 7 must be read with the following:</p> <p>The record requirements of this Practice Note (including the addendum) will now be replaced by the record requirements of <a href="#">Notice 1334</a> of <i>Government Gazette</i> 40375 dated 28 October 2016 to the extent applicable (as mentioned in the <a href="#">Briefing Note</a>)</p>
16	<p><b>Do you have any simplified approach for low value-adding intra-group services?</b></p>	<p><input type="checkbox"/> Yes</p> <p><input checked="" type="checkbox"/> No</p> <p>South Africa does not subscribe to the simplified approach for low value-adding intra-group services.</p>	
17	<p><b>Are there any other rules outside transfer pricing rules that are relevant for the tax treatment of transactions involving services?</b></p>	<p><input checked="" type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p>The following general sections 11(a) (general deduction of expenses provision) and 80A – 80L (general anti-avoidance provision) of the SA Income Tax Act may be applicable.</p>	<p>Section 11(a) of the SA <a href="#">Income Tax Act</a>-General deductions allowed in determination of taxable income</p> <p>Sections 80A – 80L of the SA <a href="#">Income Tax Act</a>-General Anti Avoidance Rules (“GAAR”)</p>

## Financial transactions

18	<p><b>[NEW]</b> Does your domestic legislation or regulations provide guidance specific to financial transactions?</p>	<p><input type="checkbox"/> Yes</p> <p><input checked="" type="checkbox"/> No</p>	
		<p>The South African domestic transfer pricing legislation does not contain a specific provision or inclusion on financial transactions. However, South Africa follows the OECD Transfer Pricing Guidelines, which provides in-depth guidance on financial transactions.</p>	
19	<p><b>[NEW]</b> Are there any other rules outside transfer pricing rules that are relevant for the tax treatment of financial transactions?</p>	<p><input checked="" type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p>	<p>Section 23M of the SA <a href="#">Income Tax Act</a>– Limitation of interest deductions in respect of debts owed to persons not subject to tax</p> <p>Section 23N of the SA <a href="#">Income Tax Act</a>– Limitation of interest deductions in respect of reorganisations and acquisition transactions</p> <p>Section 50B of the SA <a href="#">Income Tax Act</a>– levy of withholding tax on interest</p> <p><a href="#">National Treasury</a> Discussion Paper on Reviewing the Tax Treatment of Excessive Debt Financing, Interest Deductions and Other Financial Payments dated 26 February 2020</p> <p>Section 24J of the SA <a href="#">Income Tax Act</a>– Incurral and accrual of Interest</p> <p>Section 24JA of the SA <a href="#">Income Tax Act</a> – Sharia compliant financing arrangements</p> <p>Section 24JB of the SA <a href="#">Income Tax Act</a>– Taxation in respect of financial assets and liabilities of certain persons</p> <p>Section 24K of the SA <a href="#">Income Tax Act</a>– Incurral and accrual of amounts in respect of interest rate agreements</p>

			<p>Section 24L of the SA <a href="#">Income Tax Act</a>– Incurral and accrual of amounts in respect of option contracts</p> <p>Section 24O of the SA <a href="#">Income Tax Act</a>– Incurral of interest in certain debts deemed to be in the production of income</p>
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**Cost Contribution Agreements**

20	<p><b>Does your jurisdiction have legislation or regulations on cost contribution agreements?</b></p>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<p><a href="#">Practice Notes – South African Revenue Service (sars.gov.za)</a></p> <p>Practice Note 7 must be read together with the following:</p> <p>The record requirements of this Practice Note (including the addendum) will now be replaced by the record requirements of <a href="#">Notice 1334</a> of <i>Government Gazette</i> 40375 dated 28 October 2016 to the extend applicable (as mentioned in the <a href="#">Briefing Note</a>)</p>
		<p>The South African domestic transfer pricing legislation does not contain a specific provision or inclusion on cost contribution agreements. South Africa follows the OECD Transfer Pricing Guidelines, which provides guidance on this topic. This is reflected in Practice Note No. 7.</p>	

**Transfer Pricing Documentation**

21	<p><b>Does your legislation or regulations require the taxpayer to prepare transfer pricing documentation?</b></p>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No  <p><i>If affirmative, please check all that apply:</i></p> <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> Master file consistent with Annex I to Chapter V of the TPG</li> <li><input checked="" type="checkbox"/> Local file consistent with Annex II to Chapter V of the TPG</li> <li><input checked="" type="checkbox"/> Country-by-country report consistent with Annex III to Chapter V of the TPG</li> <li><input type="checkbox"/> Specific transfer pricing returns (separate or annexed to the tax return)</li> <li><input checked="" type="checkbox"/> Other (specify): ITR14</li> </ul>	
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		The income tax return for companies (ITR14) contains a detailed section that the taxpayer must complete in relation to its cross-border transactions entered into with its connected persons.	
22	<b>Please briefly explain the relevant requirements related to filing of transfer pricing documentation (i.e. timing for preparation or submission, languages, etc.)</b>	<p>For tax return filing purposes taxpayers are asked questions on the returns, for example, pertaining to whether the taxpayer has entered into intra-group transactions with offshore connected parties and if the taxpayer has supporting documentation to support the arm's length nature of such transactions.</p> <p>In addition to the above, taxpayers who meet the criteria of the sections and/or provisions set out below are mandated to:</p> <p>(i) keep or retain certain transfer pricing related documents in terms of Section 29 of the Tax Administration Act, 2011; and</p> <p>(ii) file a Country-by-Country Report; a Master File, and/or a Local File within a year of the end of their financial year in terms of Section 25 of the Tax Administration Act, 2011.</p> <p>All of the above must be completed in English. The relevant filing or retention dates are provided for in each of the relevant notices (see links provided).</p>	<p>Duty to keep records, books of account or documents in terms of <a href="#">Section 29 of the Tax Administration Act</a>, 2011</p> <p>Return to be submitted by persons in terms of <a href="#">Section 25 of the Tax Administration Act</a>, 2011</p> <p>Extension of deadline to file country by country returns in terms of <a href="#">section 25(7) of the Tax Administration Act</a>, 20110</p>
23	<b>Does your legislation provide for specific transfer pricing penalties and/or compliance incentives regarding transfer pricing documentation?</b>	<p><input type="checkbox"/> Yes</p> <p><input checked="" type="checkbox"/> No</p> <p>The South African domestic transfer pricing legislation does not provide for any specific penalties or compliance incentives pertaining to the filing of transfer pricing documentation. General administrative penalties apply for the late or non-filing of CbC reports, Master files and Local files.</p>	<p>Incidences of non-compliance by a person in terms of <a href="#">Section 210(2) of the Tax Administration Act</a>, 2011 that are subject to a fixed penalty in accordance with sections 210(1) and 211 of the Tax Administration Act, 2011</p>
24	<b>If your legislation provides for exemption from transfer pricing documentation obligations, please explain.</b>	<p>Where a CbC report is required to be filed, a CbC report, master file and local file must be filed by the Ultimate Parent Entity or the Constituent Entity. The threshold for CbC reporting is consolidated group revenue of R 10billion or EUR 750million.</p> <p>In addition, where the aggregate of a person's potentially affected transactions (i.e. transactions potentially subject to transfer pricing adjustments) for the year of assessment, without offsetting any potentially affected transactions against one another, exceeds or is reasonably expected to exceed R100 million, and that person is a tax resident, the person must submit a local file. If the ultimate holding company of the person's group is resident in South Africa or a master</p>	



		file has been prepared by any entity within the group, the person must also submit a master file.	
<b>Administrative Approaches to Avoiding and Resolving Disputes</b>			
25	<b>Which mechanisms are available in your jurisdiction to prevent and/or resolve transfer pricing disputes?</b>	<p>Please check those that apply:</p> <p><input type="checkbox"/> Rulings</p> <p><input checked="" type="checkbox"/> Enhanced engagement programs</p> <p><input type="checkbox"/> Advance Pricing Agreements (APA)</p> <p style="padding-left: 20px;"><input type="checkbox"/> Unilateral APAs</p> <p style="padding-left: 20px;"><input type="checkbox"/> Bilateral APAs</p> <p style="padding-left: 20px;"><input type="checkbox"/> Multilateral APAs</p> <p><input checked="" type="checkbox"/> Mutual Agreement Procedures</p> <p><input type="checkbox"/> Other (<i>please specify</i>):</p>	<a href="#">South Africa's MAP Profile</a>
<b>Safe Harbours and Other Simplification Measures</b>			
26	<b>Does your jurisdiction have rules on safe harbours in respect of certain industries, types of taxpayers, or types of transactions?</b>	<p><input type="checkbox"/> Yes</p> <p><input checked="" type="checkbox"/> No</p>	
27	<b>Does your jurisdiction have any other simplification measures not listed in this questionnaire? If so, please provide a brief explanation.</b>	<p><input type="checkbox"/> Yes</p> <p><input checked="" type="checkbox"/> No</p>	
<b>Other Legislative Aspects or Administrative Procedures</b>			
28	<b>Does your jurisdiction allow/require taxpayers to make year-end adjustments?</b>	<p><input checked="" type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p>	Section 31 of the SA <a href="#">Income Tax Act</a>
		Although there are no specific provisions included in South Africa's transfer pricing legislation dealing with year-end adjustments, year-end adjustments would	

		generally be considered and evaluated based on the arm's length principle as provided for by Section 31 of the SA Income Tax Act.	
29	<b>Does your jurisdiction make secondary adjustments?</b>	<input checked="" type="checkbox"/> <b>Yes</b> <input type="checkbox"/> <b>No</b>	Section 31(3) of the SA <a href="#">Income Tax Act</a>
		Section 31(3) of the SA Income Tax Act provides that the difference between taxable income on an arm's length basis and taxable income on the non-arm's length basis is deemed to be a dividend consisting of a distribution of an asset <i>in specie</i> declared and paid by the SA taxpayer to its offshore connected person, on which withholding taxes are payable in the case of a company..	
<b>Attribution of Profits to Permanent Establishments</b>			
30	<b>[NEW] Does your jurisdiction follow the Authorised OECD Approaches for the attribution of profits to PEs (AOA)?</b>	<input type="checkbox"/> <b>Yes</b> <i>In how many tax treaties?</i> <i>If yes, how do you implement it in cases, where the old tax treaties do not contain the new version of Article 7 (OECD MTC 2010 and later)</i>	
		<input checked="" type="checkbox"/> <b>No</b> <i>In how many tax treaties?</i> South Africa does not follow the AOA in its tax treaties.	
31	<b>[NEW] Does your jurisdiction follow also another approach?</b>	<input type="checkbox"/> <b>Yes</b> <input checked="" type="checkbox"/> <b>No</b>	
		South Africa has a reservation to use the profit attribution guidelines as contained in the OECD Profit Attribution Guidelines 2008. Therefore, in determining the profit that needs to be attributed only expenses actually incurred in the year of assessment by the permanent establishment are taken into consideration, for example, pertaining to interest, royalties and other relevant expenses.	

## Other Relevant Information

32	<b>Other legislative aspects or administrative procedures regarding transfer pricing</b>	There are no separate legislative aspects or administrative procedures regarding transfer pricing. Domestic enhanced programmes such as the general Alternative Dispute Resolution (ADR) processes which apply in Corporate Tax matters are similarly applicable in transfer pricing dispute resolution matters.	<a href="#">Dispute resolution guide</a>
33	<b>Other relevant information</b> (e.g. <i>whether your jurisdiction is preparing new transfer pricing regulations, or other relevant aspects not addressed in this questionnaire</i> )	South Africa is currently exploring the introduction of Advance Pricing Arrangements in the medium term.	

For more information, please visit: <https://oe.cd/transfer-pricing-country-profiles>