

EXECUTIVE TAX SUMMIT AFRICA

"Strategy in Focus: Governance, Compliance, and Tax Planning"

26 - 29 September 2024 | Sun City Resort, South Africa

wts taxmatrix
academy



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Leveraging Tax Education for Professional and Business Growth



The tax regulation landscape is becoming increasingly intricate, and the shifting global economy brings both opportunities and challenges for African businesses. Amidst the complexities of evolving local and global regulations, effective strategies for compliance, governance and tax planning have become essential for businesses to thrive. Some of the critical risks or challenges include transfer pricing, permanent establishments, payment of taxes in foreign currency, thin capitalisation ratios, management services and digital taxation. For businesses, these complexities are not just abstract concepts but tangible threats that can lead to substantial financial losses if not properly managed. Businesses require a thorough understanding and a proactive approach, supported by up-to-date and targeted tax education to effectively mitigate these risks and seize emerging opportunities.

At WTS Tax Matrix Academy, through our Tax Faculty, we have witnessed first-hand the growing importance of advanced tax education and training in addressing the complex tax and regulatory challenges businesses face. Now, more than ever, organisations must prioritise tax

education to safeguard their businesses from significant financial and operational tax risks. The key to managing these risks lies in comprehensive tax education tailored to the needs of today's businesses and its leaders.

WTS Tax Matrix Academy offers a range of specialised courses and training programs designed to equip individuals and organisations with the knowledge and skills required to tackle intricate tax and regulatory challenges. These include Commercial Training Programs specifically designed to meet the evolving needs of today's businesses, Professional Courses for individuals pursuing advanced qualifications and certifications, as well as Module-Based Short Courses offered as occupational courses designed for operational staff, in-house tax personnel and professionals seeking to enhance tax compliance capabilities and mitigate operational tax risks. These courses provide both theoretical knowledge and practical, hands-on training to prepare executives, professionals and individuals for real-world tax issues.

Accredited by the South African Institute of Taxation (SAIT) and delivered by experienced tax professionals, with certificates issued in partnership with the Zimbabwe Open University, our short courses are available both in-person and online. These programs are crucial for professional development and staying ahead in today's complex tax environment.

As tax regulations continue to evolve, it is imperative for business leaders to stay ahead. The upcoming Executive Tax Summit Africa event, scheduled for 26-29 September 2024 at the Sun City Resort, offers a unique opportunity for business executives and leaders to engage with top experts, explore the latest developments in tax governance and develop strategies that align with current governance and compliance requirements.

WTS Tax Matrix Academy is committed to bridging the skills and knowledge gap by equipping professionals and organisations with the knowledge and tax education necessary for staying at the forefront of compliance and governance. It is imperative that businesses and organisations leverage tax education to enhance tax knowledge for professional and business growth.

Article | Marvellous Tapera, WTS Tax Matrix Academy

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South Africa Tightens Trust Loan Rules with New Amendments

In pursuance of the objective to further curb tax avoidance through trusts, Section 7C of the South African Income Tax Act, No. 58 of 1962 ("ITA"), was initially introduced to prevent the tax-free transfer of wealth across generations via interest-free or low-interest loans to trusts. Since its enactment, Section 7C has undergone several amendments aimed at closing emerging loopholes. Continuing this trend, the National Treasury has proposed further amendments to Section 7C in the 2024 Draft Taxation Laws Amendment Bill (TLAB), this time focusing on the exclusion that applies when transfer pricing provisions are in place.

Section 7C addresses the scenario where an individual provides an interest-free or low-interest loan, advance, or credit arrangement to a trust. The section deems the forgone interest as a continuous donation, making the lender liable for donations tax on the difference between the official interest rate and the charged interest rate. The "official rate of interest" is the South African repo rate plus 100 basis points for ZAR-denominated debt (currently 9.25%).

Section 7C(5) outlines circumstances where Section 7C does not apply. Specifically, subsection (e) exempts loans subject to the transfer pricing provisions in Section 31 of the ITA, particularly for cross-border loans made by a South African resident to a non-resident. However, due to the wording of Section 7C(5)(e), debate has persisted about the interaction between Sections 7C and 31, with the prevailing view being that Section 7C does not apply when Section 31 governs the loan.

The issue, as highlighted in the 2024 Budget, is that the Section 7C(5)(e) exclusion does not adequately address the overlap between trust anti-avoidance measures and

transfer pricing rules when the arm's length interest rate is lower than the official rate for cross-border loans. For instance, consider a South African resident making a non-arm's length, interest-free, cross-border loan of ZAR 10 million to a connected non-resident trust. A transfer pricing study determines a market-related interest rate of 5% per annum. Transfer pricing adjustments will therefore be calculated with reference to the 5% interest rate. The question arises: does this mean that the provision of Section 7C does not apply to this loan?

To clarify the policy intent, the 2024 Draft TLAB proposes a legislative amendment ensuring that the exemption of the trust anti-avoidance measure in Section 7C for loans subject to transfer pricing only extends to the interest rate covered by the transfer pricing adjustment (5% in the example above). The difference between the market rate and the official rate (4.25% in the example) would still be subject to Section 7C, and the lender would be liable for donations tax on this amount.

If enacted, the proposed amendment will take effect on 1 January 2025, applying to years of assessment commencing on or after this date.

This proposed amendment signals SARS and National Treasury's commitment to closing any loopholes that might allow taxpayers to use trusts to avoid or reduce their tax liabilities. Taxpayers involved in or considering loans, advances, or credits with trusts, especially cross-border ones, should seek expert advice to ensure their structures are not only tax-efficient but also fully compliant with the relevant tax provisions. Failure to do so could result in significant tax liabilities and penalties.

Article | Jane' Visagie, WTS Renmere



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Theme: "Strategy in Focus: Governance, Compliance, and Tax Planning"



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Customs Compliance in South Africa: Key Strategies for Leaders

Managing customs compliance is a daunting task for CFOs, Financial Directors and Tax Directors due to its complex nature. Customs and excise taxation is not just a numbers game; it is deeply intertwined with operations, requiring a highly technical analysis of various aspects of a company's functions. To help manage these complexities, customs control can be simplified into five key areas, providing a structured approach for businesses to ensure compliance.

Registration, Licensing and Security: Customs and excise compliance is governed by existing legislation, covering activities related to the cross-border movement of goods and the manufacturing or processing of specified articles. Entities involved in these activities must register or update their company particulars with the South African Revenue Service (SARS) to comply with local regulations.

Tariff and Non-Tariff Compliance: This is the most technically challenging area of customs compliance. The World Customs Organization (WCO) maintains a global classification system, where products are classified under a "tariff heading." This system is used worldwide to determine applicable customs duty rates and non-tariff barriers. The classification process requires both a technical understanding of products and a solid knowledge of WCO's rules. Developing a partnership with logistics service providers and customs professionals can help build a reliable tariff library, simplifying this complex task.

Customs Valuation and Supplier Management: Valuation is a high-risk area, especially in transactions involving related entities. Two main aspects need management: the impact of the relationship between buyer and seller on the selling price and the components that make up the total price. Transfer pricing policies and additional payments like commissions, royalties and design fees may require adjustments to customs value. Regular annual reviews can help manage valuation risk effectively.

Customs and Excise Duty Planning: The customs legislation offers facilities for duty management and compliance. Companies should incorporate these into their annual strategy and ensure diligent governance. Regular reviews can help identify and manage potential risks.

Information Management: Proper record-keeping is crucial for customs audits. A defined process between the business and record keepers, aligned with SARS's data requirements, can prevent compliance issues. Regular monitoring of time-sensitive documents can also help avoid penalties.

In conclusion, compliance doesn't have to be overly burdensome. A smart, consistent approach can help manage effort levels, mitigate risks, and maintain business continuity and reputation.

Article | Kayn Woolmer, Anthony Norman & Associates

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Construction Projects in Africa: Tax & PE Rules

Investing in Africa presents attractive opportunities for foreign businesses but also comes with various tax implications and challenges. A critical issue for foreign investors is determining whether their activities in Africa will create a permanent establishment (PE), potentially leading to a corporate income tax liability in that jurisdiction. This article offers a high-level overview of the general income tax rules and principles relevant to the construction industry—a sector frequently at risk of triggering a PE in African countries.

While this article focuses on income tax, it is important to note that a PE may also result in other tax obligations, such as value-added tax (VAT) and employee taxes, as well as regulatory requirements that need to be considered when evaluating potential PE risks across the continent.

In most African jurisdictions, taxation is based on the residence principle, meaning that non-residents are taxed only on income sourced within the country, unless a Double Taxation Treaty (DTA) offers relief. Corporate income tax rates across Africa range from 15% to 35%. For instance, South Africa applies a 27% rate uniformly to both domestic companies and branches of foreign companies.

Many African countries define the term PE in their domestic legislation by referencing Article 5 of the OECD Model Tax Convention on Income and Capital (OECD Model DTA). The applicable DTA specifies the activities that must be conducted in a source jurisdiction before it can tax the profits from such activities. The key principle is that a resident of a contracting state, Country A should not be taxed in the source state, Country B unless they establish significant 'economic allegiance' with the source state.

Article 5 of the OECD Model DTA defines a PE as a fixed place of business where the enterprise's business is wholly or partly carried on, including places of management, branches, offices, factories, workshops, mines, and construction sites lasting over 12 months. Excluded activities that do not create a PE include facilities used solely for storage, display, or delivery of goods, processing by another enterprise, and preparatory or auxiliary activities.

According to the OECD Model DTA, a building site, a construction, installation or assembly project constitutes a PE only if it lasts more than 12 months. Although this period can vary depending on the specific DTA and jurisdiction, the 12-month threshold is widely adopted. Based on the OECD commentary, the phrase "*a building site or construction or assembly project*" should not be interpreted restrictively and includes associated or similar activities. Projects should be regarded as single units, even if based on multiple contracts, as long as they form a coherent whole - commercially and geographically.

A site exists from the date the contractor begins work, including preparatory activities, but excluding negotiations. If a general contractor undertakes a comprehensive project and subcontracts parts of it, the time spent by subcontractors is also considered in determining whether a PE exists for the general contractor. The site continues until work is completed or permanently abandoned, and the 12-month period applies to each individual site or project, with temporary interruptions not affecting the timeline.

The OECD Model DTA suggests that once the 12-month threshold is met, the PE is deemed to have existed retrospectively from the start of the project and not only from the date that the threshold is met. Article 7 of the OECD Model DTA states that profits of an enterprise are taxable only in the residence state, unless business is conducted in the source state through a PE. Profits attributable to the PE may be taxed in the source state, and a functional and factual analysis is conducted to identify PE activities, with the arm's length principle used to determine remuneration for dealings between the PE and the enterprise.

Given these principles, it is easy for a construction PE to arise inadvertently. Investors engaging in cross-border construction projects in Africa should carefully monitor the duration and nature of their activities and seek professional advice to avoid unexpected tax consequences.

Article | Dean van den Berg, WTS Renmere



SHORT COURSES

WTS Tax Matrix Academy, registered by the Ministry of Higher and Tertiary Education, offers short courses accredited by the South African Institute of Taxation (SAIT). Certificates are issued in partnership with Zimbabwe Open University. Courses are delivered by experienced tax professionals, available both in-person and online.

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Stay Ahead of the Tax Game !!!



Mauritius the Strategic Gateway to Investing in Africa

Investors expanding into African markets are increasingly recognizing Mauritius as a strategic hub for structuring their investments. The country has positioned itself as a strategic hub for African investments, offering an unparalleled combination of favorable tax regimes, a robust legal framework and strategic advantages. The benefits of using Mauritius as a gateway for African investments are diverse.

Strategic Advantage: Mauritius, located in the Indian Ocean, serves as a natural conduit for investments into Africa due to its geographical positioning at the crossroads between Africa and Asia. The country has leveraged its strategic positioning to develop a world-class financial services sector that caters to the needs of international investors. As a member of several key regional organizations, including the Southern African Development Community (SADC), the Common Market for Eastern and Southern Africa (COMESA), and more recently, the African Continental Free Trade Area (AfCFTA), Mauritius provides businesses with preferential access to African markets. This enables companies based in Mauritius to benefit from reduced tariffs and streamlined customs procedures when exporting goods and services to these regions. The country's modern infrastructure, stable political environment and commitment to a business-friendly climate further enhance its appeal as a hub for managing African ventures.

International Standards: Mauritius adheres to international best practices in taxation and anti-money laundering, being a member of the Inclusive Framework of the OECD on Base Erosion and Profit Shifting (BEPS). Its tax regime is validated by both the OECD and the EU, and it complies with the FATF's Anti-Money Laundering and Counter-Terrorism Financing (AML/CFT) requirements. The jurisdiction has adopted key international taxation practices, including the BEPS Action Plan, FATCA/CRS exchange of information regimes, and Country-by-Country Reporting (CbCr). Mauritius has also adopted the Multilateral Instrument of the OECD to enhance the effectiveness of tax treaties and has committed to implementing the Global Minimum Tax. As a result, Mauritius is home to a number of high-profile investors, including Development Finance Institutions, multinationals, corporates and high-net-worth individuals.

Tax Regime: One of the most compelling reasons to base African investments in Mauritius is its favourable tax regime. With a general corporate tax rate of 15% (excluding levies), and a flat 3% rate for companies engaged in exports, Mauritius offers one of the most competitive tax jurisdictions globally. The tax rate can be further reduced through preferential regimes, such as

partial income exemption and tax holidays, provided economic substance requirements are met. Mauritius also allows for generous foreign tax credits, potentially reducing the tax payable in Mauritius to zero. The absence of capital gains tax is another significant advantage, particularly for private equity funds, venture capitalists and other investors seeking long-term capital appreciation. Enhancing its appeal, Mauritius now allows profits or gains from the disposal of virtual assets to be earned tax-free.

Double Taxation Avoidance Agreements: The country has established an extensive network of Double Taxation Avoidance Agreements (DTAAs) with over 45 countries, including key African markets like South Africa, Botswana, Congo, Ghana, Tunisia, Uganda, Egypt and Zimbabwe. These DTAAs prevent the double taxation of income, thereby enhancing the profitability of cross-border investments structured from Mauritius. The DTAAs also facilitate the efficient repatriation of profits, dividends and interest to Mauritius by offering improved withholding tax rates applicable to Mauritian residents, enabling investors to effectively manage their global tax exposure.

As Africa continues to emerge as a high-growth investment destination, Mauritius stands as the preferred gateway for international investors, allowing businesses to maximize returns, mitigate risks and navigate the complexities of investing in Africa.

Article | **Mohammad Akshar Maherally,**
WTS Tax Consulting, Mauritius



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Mastering Transfer Pricing: Strategies, Compliance and Documentation

Growth in global trade has created opportunities for corporations to use transfer pricing strategies through offshore subsidiaries to their advantages. However, tax authorities have recognized the missed revenue opportunities and are quickly plugging the loopholes. To address this, practitioners, clients and tax administrators can benefit from transparent methodologies and comprehensive transfer pricing documentation, to determine appropriate transfer pricing charges in intercompany transactions. These tools ensure compliance with the arm's length standard. The arm's length principle requires that the pricing of any intercompany transaction is comparable to the price that would be arrived at if the same transaction were conducted in the open market, between two unrelated parties.

Tax authorities or revenue administrators across the globe, including those in non-OECD countries, have developed transfer pricing documentation requirements which is significant for both taxpayers and tax administrations, as they guide the pricing of transactions between associated enterprises operating in different tax jurisdictions. As a result, corporations now face an intricate landscape of transfer pricing regulations, each with its own tax regime. In the case of Zimbabwe, we have seen the introduction of statutory 109 of 2019. The regulatory authority have now made it mandatory that companies engaging in cross-border transactions with related parties prepare transfer pricing documentation annually.

The Transfer Pricing Documentation outlines the general trading information of the company, industry analysis, competitors within the sector and the pricing of each transaction conducted during the year of assessment. The determining factors of these transactions are assessed through various factors that measure the degree of arm's length standards. These factors includes functional analysis, risk assumed by each party and asset used. The analysis requires thorough examination of data through comparability analysis which calls for extensive databases for comparative purposes.

The final stage is to put each transaction to test by applying the correct transfer pricing method. These are classified as traditional methods and profitability transfer pricing methods. Traditional methods include the Comparable Uncontrolled Price (CUP), Resale Price (RP) and Cost Plus (CP) methods. Profitability methods include Profit Split (PS) and Transaction Net Margin (TNM) methods.

The common pitfalls of transfer pricing documentation is the difficulty with determining the arm's length transaction. The application of comparability analysis is associated with its own pitfalls due to lack of commercial data. The availability of commercial data for good comparability is often not available especially in Africa. The economic environment in many regions is often unstable, making it challenging to achieve consistency in transfer pricing documentation. The practice notes typically used as guidelines are not conclusive in any court of law. Mutual Agreement Procedures (MAPs) and Advance Pricing Agreements (APAs) which are normally applied in tax dispute resolutions are not legislated.

Contemporaneous documentation is still a challenge to maintain due to gig economy. Achieving a consensus on what constitute 'ARMS LENGTH STANDARD" before both parties, the taxpayers and the Revenue administrators is often difficult. It is therefore advisable that the taxpayers should keep and maintain proper and accurate commercial data for every transaction. This is crucial for preparing both Master Files and Local Files. The transfer pricing documentation should be arched with tangible information that can be availed in any court of law.

Corporations should always liaise with the revenue authorities especially on any transaction involving two related parties. Tax Practitioners are key and essential elements when it comes to interpretations of tax legislation and in tax controversy. Mutual relations is always of paramount importance among the taxpayers.

Article | Dr Ezekiel Mvundla, Transfer Pricing Expert, Zimbabwe





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Theme: "Strategy in Focus: Governance, Compliance, and Tax Planning"



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Speakers



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WTS Tax Matrix Academy
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Tax Director
WTS Tax Matrix
Zimbabwe

Executive Tax Summit Africa Programme

Time	Topic & Facilitators
Thursday, 26 September 2024	
16.00 - 16.10	Opening Remarks
17.00 - 18.30	Refreshing
18:30 Till Late	Hotel Dinner
Friday, 27 September 2024	
08:30 - 09.00	Welcome Remarks
09:00 - 10.00	<p>Tax Management: Key Considerations for Leaders and Business Owners</p> <p>Jane' Visagie -Senior Tax Manager; WTS Renmere, South Africa Marvellous Tapera - Chief Executive Officer; WTS Tax Matrix Academy, South Africa Keith Engel - Chief Executive Officer; South African Institute of Taxation, South Africa</p> <p>Effective tax management is crucial for business success. This session focuses on strategies for optimizing tax efficiency and compliance, providing practical tips to enhance your tax management practices.</p>
10.00 - 10.30	Tea break
10.30 - 11.20	<p>The Digital Shift: How AI is Reshaping Revenue Collection</p> <p>Prof. Arthur G.O Mutambara - Director & Full Professor Institute for the Future of Knowledge (IFK) University of Johannesburg Dr Ezekiel Mvundla - Transfer Pricing Specialist & TP Documentations Specialist, Zimbabwe Simbarashe Mambara - Tax Research Associate; WTS Tax Matrix, Zimbabwe</p> <p>AI integration in revenue collection is transforming tax administration. This session explores the benefits and challenges of AI adoption. Discover how AI can also streamline tax preparation processes for businesses, aid in ensuring compliance, and identify potential tax risks and errors.</p>
11:20 - 12.10	<p>Transfer Pricing in Africa: Challenges & Opportunities</p> <p>Dr Ezekiel Mvundla - Transfer Pricing Specialist & TP Documentations Specialist, Zimbabwe Mohammad Akshar Maheraly - Managing Director; WTS Tax Consulting, Mauritius</p> <p>Transfer pricing remains a critical issue for businesses in Africa. This session addresses the unique challenges and opportunities in the African context, offering strategies for effective transfer pricing management. Learn best practices and recent developments from industry experts.</p>
12.10 - 12.20	Commercial Break
12.20 - 13.00	<p>Holding Portfolio Investments in South Africa: Tax and Other Issues from a Zimbabwean Perspective</p> <p>Marvellous Tapera - Managing Director; WTS Tax Matrix, Zimbabwe Keith Engel - Chief Executive Officer; South African Institute of Taxation, South Africa</p> <p>This session delves into the complexities and considerations for Zimbabwean investors holding real property and other investments in South Africa. Gain insights into the tax implications, regulatory requirements, and strategic considerations essential for managing cross-border investments. Learn how to navigate the South African tax landscape, mitigate potential risks, and optimize your investment returns from a Zimbabwean perspective.</p>
13.00 - 14.00	Lunch
14.00 - 15.00	<p>Mauritius: A Strategic Hub for Investing in Africa</p> <p>Mohammad Akshar Maheraly - Managing Director; WTS Tax Consulting, Mauritius Dean van den Berg - Tax Consultant; WTS Renmere, South Africa Tafadzwa Mhonde - Tax Director; WTS Tax Matrix, Zimbabwe</p> <p>Mauritius has become a key strategic hub for investments in Africa. This session highlights the benefits of using Mauritius as a base for African operations, including its financial system, tax regime, and strategic location. Explore how to leverage Mauritius for business growth and expansion.</p>
15.00 - 17.30	Tour
17.30 - 18.30	Refreshing
18.30 Till Late	Hotel Dinner
Saturday, 28 September 2024	
08:30 - 09.20	<p>AfCFTA "Borderless Economies": Tax Insights & Implications for Businesses</p> <p>The African Continental Free Trade Area (AfCFTA) aims to create a single market for goods and services across Africa. This session explores the tax implications of this initiative, providing insights into how businesses can navigate and benefit from a borderless African economy. Understand the opportunities and challenges presented by AfCFTA.</p> <p>Kayn Woolmer - Director; Anthony Norman & Associates, South Africa Tafadzwa Mhonde - Tax Director; WTS Tax Matrix, Zimbabwe Simbarashe Mambara - Tax Research Associate; WTS Tax Matrix, Zimbabwe</p>
09:20 - 09.30	Closing Remarks
09.30 - 10.00	Tea Break
10.00 - 17.00	Nine Hole Golf Event
17.00 - 18.30	Refreshing
18.30 Till Late	Closing Dinner
Sunday, 29 September 2024	
08:30	Checkout

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