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To whom it may concern

DRAFT HANDBOOK ON TRANSFER PRICING RISK ASSESSMENT

The draft handbook on transfer pricing risk assessment is a worthy tool and has some good advice as to go about assessing risk. The step by step process envisaged in the handbook, if possible in practice, would greatly assist Revenue Authorities to identify where transfer pricing audits are necessary so that focus is placed on audit-worthy taxpayers. In reality however, such a comprehensive process of risk review may become too onerous and time consuming for concerned taxpayers as well as the Revenue Authorities undertaking the process as the 'pre-audit' review may become a lengthy, fruitless enquiry lacking the discipline and controls of a proper audit.

From a South African perspective it is likely that SARS, our Revenue Authority, lacks the capacity to carry out these risk assessments in the amount of detail contemplated in the handbook. Transfer pricing is relatively new focus area of SARS who are still very much in the development phase of building up teams and training SARS employees to carry out risk assessment and transfer pricing audits.

The procedure of assessing risk contained in the document is very helpful but tends to assume that Revenue Authorities utilising the handbook have the manpower, experience and efficiently carry out complex risk assessments. This is likely not the case in many developing countries, including South Africa.

The handbook presents what is probably an 'ideal' approach to transfer pricing risk assessment by a Revenue Authority but the reality is that most Revenue Authorities, especially in developing countries, need a much simpler and quicker starting process. For example, SARS has recently issued a new corporate income tax return which asks specific questions about transfer pricing. These questions are aimed at identifying which taxpayers have related parties; whether they transact cross-border with these related parties and how significant their cross-border related party transactions are. Once taxpayers have submitted their returns, this useful information then will be saved in SARS IT system for further analysis by SARS employees responsible for assessing transfer pricing risk.

This is a simpler way of identifying companies which are a potential risk to the *fiscus* as a significant amount of the work done is IT automated and therefore does not involve a large number of SARS staff having to be assigned to one particular company for a long time prior to an actual transfer pricing audit even being deemed necessary.

SARS has invested much capital into developing their IT infrastructure which performs the automated risk profiling function as described above (this is not limited to transfer pricing risk assessment.) Despite this approach to risk assessment being more simple and requiring significantly fewer SARS employees, it may not however be possible for other developing countries to employ a similar system due to lack of funds available to invest in such technology. The starting point for these Revenue Authorities is then very unclear.

Countries who are unable to develop and place reliance on IT to assist in their initial risk profiling must rely on manual risk assessment procedures like those described in the handbook. However, despite the handbook providing valuable advice in this regard, many developing countries, like South Africa, lack the capacity of staff who have the requisite transfer pricing knowledge to be available to perform such a comprehensive risk assessment. These Revenue Authorities require alternate means of risk identification which is less time and resource consuming. Therefore, despite being helpful in theory, the approach set out in the handbook may not be very practical.

An additional consideration is in respect of the real time working discussion included in the section on building productive relationships with taxpayers. This section does not seem to flow very comprehensively and may not be relevant to South Africa as well as most developing countries, especially in Africa. Although a good relationship between SARS and taxpayers obviously enhances both parties ability to communicate effectively, SARS has expressly stated that any sharing of information and the APA process as well as any other kind of 'pre-transaction' approval is not going to be legislated any time soon. Developing countries are still in the process of developing domestic transfer pricing regulations and are focused on the enforcement thereof. It is unlikely that APA type processes will be considered in the near future.

Yours sincerely



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