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Reassessing the Arm's Length Principle in Transfer Pricing Regulation: A Doctrinal and Practical Analysis from a Zambian Perspective

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Abstract

The arm's length principle (ALP) has long been considered the cornerstone of international transfer pricing regimes. Originating from Article 9 of the OECD Model Tax Convention, the ALP aims to ensure that transactions between related entities reflect market conditions as if undertaken by independent enterprises. This article critically examines the doctrinal, institutional, and practical dimensions of the ALP, particularly within the context of developing economies such as Zambia. While the ALP underpins Zambia's transfer pricing regulatory framework, significant concerns remain regarding its conceptual robustness, administrative enforceability, and susceptibility to manipulation by multinational enterprises (MNEs). The study evaluates the OECD's comparability analysis, the best-method rule, and the documentation requirements that form the procedural backbone of the ALP. It also explores prominent criticisms—including the principle's reliance on comparable transactions, its administrative burden, and its inadequacy in addressing complex intra-group transactions involving intangible assets or work-in-process inventories. Drawing on legal, economic, and policy perspectives, this paper contributes to the scholarly debate on whether the ALP remains a viable mechanism for equitable taxation in global commerce or whether alternative paradigms are necessary.

Keywords: Arm's Length Principle, Transfer Pricing, OECD Guidelines, Zambia Tax Law, Multinational Enterprises (MNEs)

1. Introduction

Transfer pricing (TP) regulation is one of the most contentious and complex areas of international taxation, particularly for developing economies grappling with revenue leakage from multinational enterprises (MNEs). At the heart of TP governance lies the arm's length principle (ALP), which mandates that cross-border transactions between related parties be conducted under conditions comparable to those between independent parties in open market conditions. The ALP is enshrined in Article 9 of the OECD and UN Model Tax Conventions and forms the legal backbone of many national TP regimes, including Zambia's.

Zambia has incorporated the ALP into its domestic law through the Income Tax (Transfer Pricing) Regulations, reflecting global best practices. However, the application of this principle raises intricate doctrinal, administrative, and economic questions. On the one hand, the ALP purports to simulate market fairness by neutralising artificial price setting within MNE groups.

On the other hand, critics argue that the principle is conceptually flawed, practically unenforceable in many contexts, and misaligned with the economic realities of integrated multinational operations. Furthermore, developing countries such as Zambia face significant institutional and technical barriers in applying complex comparability analyses or determining appropriate pricing benchmarks in the absence of reliable data.

This article explores the theoretical underpinnings and operational mechanics of the ALP, including documentation obligations, functional analyses, and the determination of arm's length prices. It further critiques the principle's conceptual assumptions and practical limitations in the face of transfer mispricing, intangibles, work-in-process inventories, and vertical integration within MNEs. In doing so, it provides a nuanced understanding of how the ALP is both applied and challenged in practice, particularly within low-resource tax administrations.

2. Literature Review: Arm's length principle

2.1. Understanding of the arm's length principle

The arm's length principle can be traced back to the International Union Tax Code, which formed an international consensus on transnational trade in the first half of the 21st century. In 1963, the arm's length principle was incorporated into Article 9 of the OECD Model Taxation Convention. In 1980, the United Nations also adopted the arm's length principle. This is reflected in Article 9 of the United Nations Model Convention on the Avoidance of Double Taxation between Developed and Developing Countries. Since 1979, the OECD has produced practical guidance on the implementation of the arm's length principle known as OECD Transfer Pricing Guidelines.

For years, the arm's length principle has been regarded as the leading approach for both instances of transfer pricing and thin capitalisation. It appears as part of Article 9(1) of the OECD Model Convention dealing with both transfer pricing and thin capitalisation. The principle deals with situations where two associated/related companies make or impose conditions in their commercial or financial relations that differ from those that would be imposed by independent enterprises. The principle is therefore an adjustment standard under which entities that may be part of a company group are regarded as separate entities and are therefore subjected to the same treatment that comparable independent entities would have transacted under.

The arm's length principle is based on comparing non-controlling transactions between independent enterprises with controlling transactions between related parties. Uncontrolled transactions are transactions between independent entities. A controlled transaction is a related party transaction between two companies. The arm's length pricing principle requires that related parties calculate their pre-tax profits based on prices that would be charged between unrelated parties in similar circumstances. The definitions of controlled and uncontrolled transactions introduce two important terms that must be reviewed to understand the context in which the arm's length principle operates. These terms include independent enterprises and associated enterprises. Enterprises are said to be independent if they are not related enterprises or associated enterprises. According to OECD Transfer Pricing Guidelines, two enterprises are related to each other if they meet the requirements of Article 9(1a) or (1b) of the OECD Model Tax Convention.

The arm's length principle is based on the principle that one transaction must be compared with another transaction under the same or similar terms. In practice, comparisons may be difficult or even impossible in some cases, as no two transactions are identical in all respects. Comparisons are further complicated by comparing controlled and uncontrolled transactions. Controlled transactions are subject to the internal supply chain procedures of the multinational group, which are strictly controlled to comply with the group's policies, and transfer prices are susceptible to manipulation due to internal controls and lack of tax administration.

In contrast, uncontrolled transactions are subject to open market conditions and are less susceptible to manipulation because transactions occur between unrelated, independent parties, and the motivation for these transactions is market competition. In addition, the comparison results are not ideal because controlled and uncontrolled transactions usually exist in different economic, market, political, legal and geographical environments. The conclusion here is that, due to these factors, transfer pricing comparability results are likely to be distorted and susceptible to manipulation.

Taklalsingh[1] points out that the global guiding principle for transfer pricing management is the arm's length principle. According to OECD data, more than 100 developed, emerging and developing countries have adopted the arm's length principle as their transfer pricing standard arm's length is an English idiom that refers to a metaphor using the human body as a measure.[2] The hand is not directly connected to the body, but maintains an undeniable distance from the body, equivalent to the length of the arm.[3]In this sense, the metaphorical meaning of keeping an arm's length is to maintain a certain distance, not too close, and not too far.[4] This expression is frequently used in contract law, where a contract entered

[1] Taklalsingh, R., 2019. *Transfer Pricing Legislation: Effect on Multinational Enterprises in the United States* (Doctoral dissertation, Walden University).

[2]Du Preez, Agatha Catharina. The Application of the Arm's Length Principle to Section 34 of the National Credit Act 2005. University of Pretoria (South Africa), 2016.

[3]Same as above

[4]Thusi, Peggy. "The Arm's Length Principle in Section 34 of the National Credit Act 2005." Masters thesis, University of Pretoria (South Africa), 2022.

into on an arm's length basis will ensure that the parties are independent and equal when entering into the agreement.[5]
The arm's-length principle is an international standard for transfer pricing. The arm's-length principle can be referred to as the difference that exist between two separate enterprises on how they relate there financial and commercial activities with the controlled and uncontrolled cases. The arm's-length principle can be achieved for controlled transactions when their transactions are in compliance with the comparability analysis and the best method rule.[6] The best-method rule is the method that the company adopts as the procedure that best suits the tax business policy; on the other hand, the comparability analysis is concerned with a situation in which the company of controlled transitions makes several comparison before finalising the transactions that may achieve the goals of the arm's-length principle.[7] As noted by Du Preez[8], the arm's length principle also applies to economic policy, credit agreements, tax legislation and bankruptcy law. However, these are outside the scope of this research and are therefore only mentioned to the extent necessary.
According to paragraph 23 of International Accounting Standard 24 'Related Party Disclosures' (i.e., IAS 24), companies should perform 'disclosures that related party transactions were made on terms equivalent to those that prevail in arm's length transactions, only if such terms can be substantiated'. In addition, the arm's length principle is authoritatively articulated in Article 9(1) of the African Tax Administration Forum (ATAF), OECD and United Nations (UN) Model Tax Conventions, which form the basis of Zambia's bilateral agreements. This provision states:

> *"If the commercial or financial relations between two associated enterprises are established or carried out under conditions different from those which would have been established or carried out between independent enterprises, then if, as a result of those conditions, one of the enterprises would have made a profit but, as a result of those conditions, did not make that profit, that profit may be included in the profits of that enterprise and taxed accordingly"*[9]

The application of the ALP is usually based on a comparison of the conditions of a controlled transaction (a transaction between two related parties) with those of a comparable uncontrolled transaction (a transaction between independent parties). In this context, the term "conditions" usually refers to the commercial or financial terms of the transaction. Depending on the approach adopted, this is usually price, gross margin or profit split.
However, the term "conditions" can also refer to whether a transaction would not occur at all between independent persons, or a different transaction would occur. This means that for an actual transaction that someone makes, the arm's length condition may be that the transaction would not occur. The process of determining arm's length prices is not simple and requires judgement and skepticism on the part of the taxpayer and the tax authorities. For example, in Zambia, transfer pricing cases need to be examined on a case-by-case basis as each case is different and therefore a one-size-fits-all approach cannot be applied.
While there are a variety of methods available for determining arm's length prices for transactions between entities within the same group, it remains the responsibility of the company to determine a transfer pricing strategy that must take into account all factors, such as the goods or services provided, the functions performed by the parties involved, the risks affecting the company, and the assets used in the business, to ensure that the calculated transfer price is an arm's length price. Each taxpayer has the responsibility to compare the price they believe to be an arm's length price with other prices in the open market for similar transactions with similar characteristics to ensure that any differences found are adjusted or eliminated, thereby ensuring that the transfer price is accurate and relevant to the market.
However, because of its comparative approach, the ALP is criticised for its failure to account for economic considerations that may motivate the connected entities to transact outside the arm's length which may not necessarily be unrelated to an intention to seek a tax advantage. Moreover, the ALP is also criticised for its complexities which tend to present difficulties for tax administrations which are not as well-resourced and equipped to assess whether the arrangements in question properly fall under its compass.

2.2. Documentation of the arm's length principle

According to the ALP, the price charged between related parties should be the price that unrelated parties would pay for similar goods and in comparable circumstances.[10] In order to prove that related-party transactions comply with the ALP, companies should conduct detailed analysis and prepare relevant documentation. International standards related to this analysis are provided in the OECD Guidelines. Most countries in the world have adopted the provisions of these guidelines in their domestic legislation.[11] Rossing, Cools, and Rohde[12] pointed out that the ALP is based on the comparability between

[5] ibid

[7] ibid
[8] Ogunoye, Aderounmu A., Oyebanji J. Ibitoye, and Ewert PJ Kleynhans. "Manipulation of transfer prices by multi-national companies in Nigeria." *South African Journal of Economic and Management Sciences* 26, no. 1 (2023): 4657.Du Preez, Agatha Catharina. *The Application of the at Arm's Length Principle in Terms of the National Credit Act 34 of 2005*. University of Pretoria (South Africa), 2016.
[9] https://www.un.org/esa/ffd/wp-content/uploads/2013/01/20130130_Presentation_Lennard.pdf
[10] Choe, Chongwoo, and Noriaki Matsushima. "The arm's length principle and tacit collusion." *International Journal of Industrial Organization* 31, no. 1 (2013): 119-130.
[11] ibid
[12] Rossing, Christian Plesner, Martine Cools, and Carsten Rohde. "International transfer pricing in multinational enterprises." *Journal of Accounting Education* 39 (2017): 55-67.

related-party transactions and comparable market transactions. The OECD Guidelines outline four main steps related to the comparability analysis required to prove arm's length prices, as follows:

Step 1: identification of the related party transaction including an overview of the transaction;

Step 2: functional analysis – here are identified functions performed, risks incurred and assets used by each company involved in the transaction;

Step 3: identification of the appropriate transfer pricing method;

Step 4: performing of the comparability analysis.

All the above steps should be performed in cascade as the first step is to perform the functional analysis that influences the decision on the selection of TP method.[13] The functional analysis and the chosen method determine how the comparability analysis is conducted. Finally, a conclusion is drawn based on the comparability analysis as to whether the transaction complies with the ALP.[14] Functional analysis is an overview of the functions performed, risks assumed, and assets used by each company.[15] Based on functional analysis, companies are mainly divided into three categories: manufacturers, distributors and service providers.

In order to perform the final step of the comparability analysis, at least one TP method must be applied. In order to determine whether a transaction complies with the ALP, the profitability indicators obtained by the testing party from the transaction should be compared with the profitability indicators registered by the identified comparable companies. The OECD TP Guidelines recommend calculating the profitability of each comparable business as a multi-year average.

2.3. Criticisms of the arm's length principle in transfer pricing

Although the OECD defends the ALP, it acknowledges that the ALP may be difficult to apply because related enterprises may engage in transactions that do not exist between independent enterprises, making it difficult for both tax authorities and taxpayers to obtain data.[16] Eden[17] also criticized the "arm's length" TP approach, which requires TP transactions to reflect "comparable" prices. Eden[18] further argues that it is not feasible for multinational companies to operate non-integrated businesses. For example, if a manufacturer and a distributor are independently owned, such a business cannot compete with an integrated multinational company. Therefore, "comparable" prices do not exist at all because all participants in the market are integrated and there exists no trade between independent business enterprises.[19] The World Bank[20] also stressed that ALP's over-reliance on comparable data is detrimental and will increase the administrative burden on tax authorities and the compliance burden on taxpayers. Bhat[21] further pointed out that if comparable uncontrolled prices do exist, no multinational enterprise will choose TP manipulation.

The two-pillar agreement negotiated by the OECD represents a significant modification of the ALP rules rather than abolishing them entirely according to Andrus and Collier[22]. This change raises serious concerns about the ability to effectively police large multinational businesses.[23] These updates show how changing business practices make it hard to define economic activities in their normal settings.[24] Furthermore, according to Avi-Yonah[25], the ALP can be easily manipulated because different tax rates exist between countries. When large companies, such as multinationals, manipulate transfer pricing, they can take advantage of differences in tax regimes to defeat the purpose of the arm's length principle.[26] International tax rules face significant challenges as a result of this type of manipulation.[27]

Furthermore, according to Keuschnigg and Devereux[28], ALP has created internal management problems for multinational corporations. Pricing errors can occur when independent market prices are used too frequently as a pricing benchmark, affecting how foreign subsidiaries use their investments.[29] These distortions harm the interests of individual companies and have harmful consequences for the global economy and tax systems between countries.[30]

[13]Ignat, Ioana and Liliana Feleaga. "A study on the issue of the arm's length principle in IAS 24." Economic Research - Ekonomska istraživanja 32, No. 1 (2019): 3034-3051.

[14]ibid

[15]ibid

[16] https://www.oecd.org/en/topics/sub-issues/transfer-pricing.html

[17] Eden, Lorraine. "The arm's length standard: making it work in a 21st century world of multinationals and nation states." (2015).

[18] ibid

[19] ibid

[20] https://pubdocs.worldbank.org/en/222281493655511173/Global-Economic-Prospects-June-2017-Topical-Issue-Arms-length-trade.pdf

[21] Bhat, Ganapati. *Transfer pricing, tax havens and global governance*. No. 7/2009. Discussion Paper, 2009.

[22] Andrus, Joseph L., and Richard S. Collier. "Transfer Pricing and the Arm's Length after the Pillars." *Tax Notes International* 105, no. 5 (2022): 543-555.

[23] ibid

[24] ibid

[25] Avi-Yonah, Reuven S. "The Rise and Fall of Arm's Length: A Study in the Evolution of US International Taxation." *U of Michigan Law & Economics, Olin Working Paper* 07-017 (2007).

[26] ibid

[27] ibid

[28] Keuschnigg, C. and Devereux, M.P. "The arm's length principle and distortions to multinational firm organization". *Journal of International Economics*, *89* no. 2: 432-440 (2013).

[29] ibid

[30] ibid

In some circumstances, it may be difficult to apply the arm's length principle. The application of the arm's length principle is particularly difficult in the case of unique intangible assets and the provision of specialized services. The main problem with unique intangible assets (primarily pharmaceutical products) is that they are essentially impossible to copy due to the exclusivity created by copyright and registered patent protection, which are closely guarded by registered companies. In the context of transfer pricing, a criticism of unique intangible assets is that there are insufficient and unreliable comparables to determine an appropriate price. This means that the pricing of these assets cannot be compared to any price in the open market. The fact that these transfers and pricing occur between related parties, far from the jurisdiction of tax authorities, also exacerbates this problem. Because these products are unique and cannot be compared with other products, there is a lack of reliable forecasts of future cash flows generated by the transfer of intangible assets.

The arm's length principle also presents difficulties in the production of highly specialized products involving work-in-process inventory. Work in process inventory is the transfer of unfinished work inventory from one affiliate to another as part of its integrated production activities. This is the inventory that a manufacturer has on the production line that is incomplete and not part of finished goods inventory. This account contains the cost of direct materials, direct labor, and factory overhead to produce the product on the factory floor. Manufacturers must disclose their work in process costs along with the finished goods and materials on hand in their financial statements. Since it is difficult for tax authorities to verify the costs associated with work in process inventory, it is easy for multinational corporations to manipulate prices to reduce the tax obligations associated with the sale of final products.

Another biggest criticism of the ALP is that it can produce inaccurate results in some situations because it fails to account for profit. The benefits that related businesses usually derive from combined operations. The ALP is based on the separate entity approach. The separate entity approach does not always take into account economies of scale created by integrated operations and the interrelationships of various activities. This is because these separate entities are treated differently from other aspects of the enterprise, but are only treated the same for transfer pricing purposes. The problem is further exacerbated by the fact that there are no widely accepted objective standards for allocating economies of scale or benefits between related enterprises.

Another practical difficulty in the application of the ALP in relation to profit segregation is that related parties may engage in transactions that independent parties would not engage in. Such transactions may not necessarily be motivated by tax considerations but by other commercial considerations that independent entities may not encounter. In situations where independent parties rarely engage in transactions that related parties would engage in, the ALP is difficult to apply because there is little or no direct evidence of what conditions would be established by independent entities.

Another weakness of the ALP is that it is based on the unrealistic assumption that related parties are treated as unrelated parties with respect to the pricing of transfers, expecting them to trade similarly independent parties. The application of this principle ignores the genuine commercial considerations of related parties operating as a group. It also ignores the fact that in practice related parties and unrelated parties operate in different economic environments. The idea of treating related entities as irrelevant, thereby ignoring the true economic realities of taxpayers, was also echoed in the case of *Canada v. GlaxoSmithKline*.[31] In that case, the Supreme Court of Canada held that in determining the appropriate arm's length price, the court must consider all the economic and commercial realities that gave rise to the non-arm's length transactions, to the extent that those realities would still apply if the parties to those transactions were acting at arm's length.[32] In other words, the court confirmed that the application of the ALP required the Canada Revenue Agency to consider all relevant economic factors of the intercompany transaction between the Canadian company, GlaxoSmithKline and its affiliated Swiss company.[33] In contrast, the situation would be different if the two parties were unrelated and conducted transactions at arm’s length. The fact that related parties operate differently from independent parties should be not ignored because this is equivalent to In order to apply the ALP.

Furthermore, the OECD acknowledges that the application of the ALP would impose administrative burdens on MNEs. Taxpayers also believe that due to the complex nature of the arm's length doctrine, its application would impose administrative burdens on multinational companies and tax authorities. The administrative burden comes from the transfer of pricing documents, finding and maintaining comparable information. The ALP requires tax authorities to verify the transactions conducted by taxpayers. Verification takes a long time and requires skills to complete and taxpayers also need to prepare documents to prove that their transactions comply with the ALP. If the industry in question is vertically integrated, comparable information may not exist. The goal of TP is to make a reasonable estimate of the arm's length transaction outcome based on reliable information. However, the OECD has failed to specify the parameters for determining a reasonable estimate. In other words, there is no standard to measure the reliability of the information, so the estimate is easily manipulated by taxpayers. The above criticisms or weaknesses directly demonstrate the inadequacy of the general ALP and indicate problems that adversely affect legislation based on that principle.

On the contrary, Oguttu[34] argues that the ALP has produced good results and rejecting it will undermine international consensus and promote double taxation. From the literature, the ALP advocated by the OECD seems to be the gold standard at the moment. However, some commentators believe that the principle is flawed because it treats related-party transactions

[31] https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/12613/index.do
[32] ibid
[33] ibid
[34] Oguttu, Annet. "Transfer Pricing Adjustments." *The Comparative and International Law Journal of Southern Africa* 55, no. 2/3 (2022): 1-49.

of multinational corporations as unrelated transactions.

3. Transfer pricing

The historical background of TP regulations reveals a fascinating evolution, influenced by the complexities of global economics and the need for equitable taxation. Globally, the inception of TP regulations can be traced back to the early 20th century, with countries gradually recognizing the need to regulate prices in transactions between related entities to prevent tax circumvention and ensure fair tax collection. The evolution was significantly marked by the OECD's introduction of guidelines in 1979, which were periodically updated to address emerging challenges in international taxation.

Historically, MNEs have engaged in aggressive tax planning through profit shifting to minimize their overall group tax burden. One of the ways profit shifting is achieved is through TP, more specifically, transfer mispricing.[35] Transfer mispricing or transfer price manipulation is considered a key means of profit shifting.[36] Transfer mispricing involves arrangements whereby transactions between members of a MNE group are artificially priced in order to shift income or expenditure from one region to one that is more attractive from the perspective of the MNE.[37]

Traditionally, TP is defined as the act of setting prices for goods and services between multinational companies, but as the world evolves, different researchers have given different meanings to this term. Some scholars, such as Shikwambana[38] believe that TP is a means for multinational corporations to manipulate prices to maximize profits, while others believe that TP is a means for governments to obtain tax revenue through arm's length prices. TP is not considered illegal; it is only when it is used to obtain tax benefits in a manner that is considered abusive and misleading. Multinational companies may use TP as a tax avoidance tool in certain circumstances to profit within the limits of the law without facing any criminal consequences.

TP is a mechanism for selecting prices to value transactions between related legal entities within the same multinational enterprise. These transactions are called "controlled transactions" and may include the sale or purchase of goods or intangible assets, the provision of services, the provision of financing, the allocation of costs and cost-sharing agreements. According to the OECD[39], TP refers to the pricing of goods, services and intangible assets traded between related parties of multinational corporations. Roger and Oats[40]TP is defined as the prices charged when goods and services are sold between related parties, domestically or internationally. TP can also refer to the price-setting mechanism for cross-border intra-company transactions.[41] Ogunnoye[42] believes that TP is the price set by multinational corporations when conducting internal transactions of goods, capital flows, services and intangible assets.

Conceptually, according to Osita[43], TP is the process of determining the value of goods (intangible or tangible) and services exchanged between different divisions of the same entity or between different entities under the same control. Sometimes these entities are located in the same tax territory, but when they are located in different tax territories, the tax implications become greater.[44] Particularly for multinational companies, TP is a mechanism for transferring goods and services between their global subsidiaries or associates.[45] Muhammadi et al.[46] It is believed that TP is the process of determining the price when physical goods, intangible assets or services are transferred between related entities. The price charged by a unit of an organization to another organization or a member of a group to another organization for providing or transferring goods or services is called transfer price.[47] Among them, the transfer price is the price at which an enterprise transfers tangible assets and intangible assets or provides services to an affiliated enterprise.[48]

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[35] Isaac, Nereen. "The Determinants and Deterrents of Profit Shifting: Evidence from a Sample of South African Multinational Enterprises." PhD diss., 2020

[36] ibid

[37] ibid

[38]Shikwambana, Esther Nomthandazo. "Comparative Analysis: The South African TP System Compared with Other African Developing Countries." PhD Dissertation, 2020.

[39]https://www.oecd.org/en/publications/2010/08/oecd-transfer-pricing-guidelines-for-multinational-enterprises-and-tax-administrations-2010_g1g1127e.html

[40]Rogers, Helen and Lynne Oats. "TP: Changing Perspectives in Changing Times." Accounting Forum, Vol. 46, No. 1, pp. 83-107. Routledge, 2022.

[41]Same as above

[42] Ogunoye, Aderounmu A., Oyebanji J. Ibitoye, and Ewert PJ Kleynhans. "Manipulation of transfer prices by multi-national companies in Nigeria." *South African Journal of Economic and Management Sciences* 26, no. 1 (2023): 4657.

[43]Osita, David Okwuchukwu. "The Effectiveness of TP Regulation on Foreign Direct Investment Flows in Nigeria." Master's Thesis, University of Pretoria (South Africa), 2017.

[44]Same as above

[45]Same as above

[46]Muhammadi, Abdul Haris, Zahir Ahmed, and Ahsan Habib. "TP of Cross-Border Intangible Assets: The Indonesian Tax Auditor's Perspective." Asian Accounting Review 24, no. 3 (2016): 313-337.

[47]Same as above

[48]Same as above

In other words, TP is a profit allocation method used to attribute a company's pre-tax net profit or loss to a taxing jurisdiction. TP is therefore a charge between controlled or related legal entities (i.e. within the same group). Legal entities controlled by a company include branches and companies that are wholly or majority owned by the company. As long as the price set is consistent with the "arm's length" price for transactions between unrelated parties, there is no problem. However, TP can become abusive or illegal when related parties attempt to reduce their overall tax bill by distorting prices. In these cases, the practice may be referred to as "transfer mispricing."

Furthermore, TP is a general term for cross-pricing (border, internal), i.e. transactions between related companies. It therefore refers to the prices of transactions between related companies of a multinational enterprise group for the transfer of property or services. These transactions are also called "controlled" transactions, as distinct from "uncontrolled" transactions, i.e. transactions between unrelated companies that can be assumed to operate independently ("arm's length") when concluding the terms of such transactions.[49] Therefore, since setting such prices is part of the normal operations of multinational companies, "TP" itself does not necessarily involve tax avoidance. When pricing does not comply with applicable international or national legal norms, we enter the realm of what is more properly called "mispricing", "incorrect pricing", "unreasonable pricing" or similar situations, and the issue of tax avoidance and evasion may arise.[50]

TP refers to the structuring and pricing of transactions between members of the same controlled group. Typically, the focus is on cross-border transactions where income and expenses are allocated between taxpayers in different jurisdictions. However, many countries (such as Nigeria) also consider domestic transactions between related parties.[51]

4. Conclusion

While the arm's length principle continues to dominate international transfer pricing discourse, its theoretical clarity does not necessarily translate into practical effectiveness, especially in jurisdictions like Zambia. The comparative approach at the heart of the ALP is increasingly criticised for its reliance on "comparable" transactions that are often non-existent or irrelevant in the context of unique intra-group arrangements. Moreover, its application to intangibles, work-in-process inventories, and vertically integrated operations exposes significant administrative vulnerabilities.

The documentation and comparability requirements recommended by the OECD may further overwhelm the already limited capacities of developing country tax authorities, creating loopholes that MNEs can exploit. As this article has shown, while Zambia has made commendable progress in aligning its TP regulations with international standards, the implementation of the ALP in practice remains fraught with interpretive ambiguities, technical challenges, and enforcement deficits.

In view of these findings, it is critical to reconsider whether a universalist model such as the ALP can function effectively across diverse economic and institutional landscapes. The principle's continued dominance, despite its flaws, is perhaps more a reflection of international consensus than of contextual appropriateness. To enhance tax equity and prevent profit shifting, Zambia and similarly placed countries may need to explore hybrid models that combine elements of the ALP with simplified methods and formulary apportionment frameworks tailored to their realities. Transformational and democratic leadership styles offer significant potential to navigate cultural resistance, policy limitations, and stakeholder coordination. Strengthening school leadership capacity and stakeholder collaboration can enhance the impact of sexuality education programmes across Zambia.

The literature reviewed affirms that leadership is not merely an administrative function but a transformational force with the capacity to shape the trajectory of adolescent health education. Effective implementation of LSHE/CSE in Zambian secondary schools hinges on the quality, vision, and responsiveness of school leadership. Transformational and democratic leadership styles emerge as the most promising paradigms for fostering inclusive school environments, overcoming resistance, and cultivating collaborative partnerships among stakeholders. Despite policy advancements and curriculum reforms, significant barriers persist—including negative perceptions, religious and cultural resistance, inadequate resources, and limited leadership training.

Theoretical models such as Higgins' 8-S Framework, the Upper Echelons Theory, and the LOC Model illuminate the structural and behavioral variables that influence leadership effectiveness in this domain. However, the realization of LSHE/CSE goals requires more than conceptual frameworks; it demands morally courageous leaders who are willing to challenge societal norms, redistribute power, and champion inclusive education from the frontlines.

The review underscores an urgent need to bridge existing research gaps, especially in leadership-specific studies within LSHE/CSE implementation in Zambia. Building school-level leadership capacity, strengthening institutional support, and ensuring coherent policy guidance are essential strategies for fostering sustainable and culturally responsive delivery of sexuality education. In reimagining the future of LSHE/CSE, it becomes evident that empowered leadership is not just desirable—it is indispensable.

Conflict of Interest

[49] Ogunoye, Aderounmu A., Oyebanji J. Ibitoye, and Ewert PJ Kleynhans. "Manipulation of transfer prices by multi-national companies in Nigeria." *South African Journal of Economic and Management Sciences* 26, no. 1 (2023): 4657.

[50] ibid

[51] See note 36

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Ethical considerations

The article followed all ethical standards appropriate for this kind of research.

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