ISSN: 2958-2326

African Journal of Commercial Studies

Publisher's Home Page: https://ijcsacademia.com/

Research Paper | Peer Reviewed | Open Access

# Reconciling Global Norms and Local Realities: An Assessment of Zambia's Legislative and Institutional Framework on Transfer Pricing Regulation

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African Journal of Commercial Studies, 2025, 6(2), 204–214
**DOI Link:** https://doi.org/10.59413/ajocs/v6.i2.20

Article Info

Volume 6, Issue 2

Publication history:
Accepted on 24 April 2025;
Published: 29 April 2025

Article DOI:
10.59413/ajocs/v6.i2.20

## Abstract

Transfer pricing (TP) regulation has become a central concern in global tax governance, particularly in resource-rich developing countries susceptible to base erosion and profit shifting by multinational enterprises (MNEs). This article critically evaluates Zambia's legislative and institutional framework for transfer pricing, focusing on its alignment with the OECD Transfer Pricing Guidelines and the United Nations Practical Manual. Drawing upon Zambia's Income Tax Act, statutory instruments, practice notes, and the evolution of regulatory amendments from 1999 to 2023, the study explores the legal, administrative, and practical implications of enforcing the arm's length principle (ALP). The findings reveal that although Zambia has adopted many international best practices, its enforcement regime remains weakened by limited administrative capacity, legislative fragmentation, data inaccessibility, and insufficient penalties. Using a comparative doctrinal method, the article underscores the need for contextual legal reforms and capacity-building mechanisms to improve the effectiveness of TP governance in Zambia and other similarly situated African jurisdictions.

**Keywords:** Transfer Pricing, Arm's Length Principle, Zambia Income Tax Act, OECD Guidelines, Base Erosion and Profit Shifting, and Multinational Enterprises

## 1. Introduction

The transfer pricing practices of multinational enterprises (MNEs) have long challenged the fiscal autonomy of developing countries, particularly in Africa's resource-abundant jurisdictions such as Zambia. With the exponential growth of cross-border intra-group transactions, the manipulation of transfer prices has emerged as a pervasive mechanism for tax avoidance and illicit financial flows. In response, many countries, including Zambia, have adopted regulatory frameworks inspired by the OECD Transfer Pricing Guidelines and the United Nations Practical Manual on Transfer Pricing for Developing Countries.

This article examines the evolution and effectiveness of Zambia's TP legislation from its inception in 1999 to the recent amendments of 2023. It interrogates the alignment between Zambia's domestic legal instruments—including Sections 97A to 97D of the Income Tax Act, the Income Tax (Transfer Pricing) Regulations (SI No. 24 of 2018), and Practice Note No. 2/2018—and international transfer pricing norms. The analysis goes further to address the practical limitations of the Zambian legal regime in terms of administrative enforcement, access to comparable data, and the application of transfer pricing methods. Particular attention is given to how these frameworks interact with Zambia's economic dependence on extractive industries, its tax authority's institutional capacity, and global developments in the Base Erosion and Profit Shifting (BEPS) initiative.

## 2. Literature Review: Legislative framework for transfer pricing

TP regulations are designed to ensure that transfer prices between related entities are accurate and fair. Regulations in different countries enforce arm's length rules, requiring companies within the same group to set transaction prices based on similar transactions between unrelated parties. In Shikwambana's view, TP rules are anti-tax avoidance rules, with the primary purpose of preventing multinational groups from shifting profits to low-tax jurisdictions.

Basically, transfer pricing legislations are typically designed to (1) assess the financial performance of different business units (profit centers) within the corporate group, and/or (2) shift earnings from high-tax jurisdictions to low-tax jurisdictions.[1] Tax authorities generally disapprove of transfer pricing for tax avoidance purposes and insist that divisions within a company deal with each other at "arm's length."[2] There are several international and domestic legislations and treaties for regulating transfer pricing. Some of the international treaties and model tax laws that influence TP regulation include the OECD model tax convention on income and on capital, the United Nations (UN) TP Working Paper, the OECD TP Guidelines, the Economic Community of West African States (ECOWAS) Model Tax Law.

### 2.1. OECD TP Guidelines for MNEs and Tax Administrations

The OECD TP Guidelines for MNEs and Tax Administrations provide guidance on the application of the "arm's length principle", which is the international consensus on TP that is on the valuation, of cross-border transactions between associated enterprises for taxation purposes.[3] The guidelines provide valuable guidance for countries around the world on how to address TP issues in a fair and consistent manner. These guidelines are essential for helping countries such as Zambia navigate the complexities of TP and ensure that MNEs pay their fair share of taxes.

The Organization for Economic Cooperation and Development (OECD) TP Guidelines for Multinational Enterprises and Tax Administrations provide valuable guidance for countries around the world on how to address TP issues in a fair and consistent manner. These guidelines are essential for helping countries navigate the complexities of TP and ensure that multinational enterprises (MNCs) pay their fair share of taxes.

The OECD TP guidelines were first introduced in 1995 and have since been updated on multiple occasions to reflect changes in the global economy and advancements in TP practices. The guidelines provide a set of principles and best practices for determining the prices at which goods, services, and intangible assets are transferred between related entities within an MNE. By establishing clear rules and recommendations, the guidelines help to prevent tax avoidance and ensure that profits are allocated appropriately among different tax jurisdictions.

One of the key principles of the OECD TP guidelines is the arm's length principle, which requires that the pricing of transactions between related entities should be consistent with the prices that would be charged between unrelated parties in similar circumstances. This principle helps to prevent MNCs from artificially shifting profits to low-tax jurisdictions by manipulating transfer prices. By adhering to the arm's length principle, tax administrations can ensure that MNCs pay their fair share of taxes based on the economic substance of their transactions.

The OECD TP guidelines also provide detailed guidance on a wide range of TP issues, including the use of TP methods, the treatment of intangible assets, cost contribution arrangements, and the role of customs in TP. These guidelines help tax administrations to assess and adjust transfer prices in a systematic and transparent manner, reducing the risk of disputes between taxpayers and tax authorities.

In addition to providing guidance on TP methodologies, the OECD guidelines also offer recommendations for improving the consistency and efficiency of TP audits and dispute resolution processes. By promoting transparency and collaboration between tax administrations and MNCs, the guidelines help to build trust and foster a cooperative relationship that benefits all parties involved.

The OECD TP guidelines have been widely adopted by countries around the world including Zambia and are considered the international standard for addressing TP issues. By following these guidelines, countries can ensure that their TP rules are in line with best practices and are consistent with the approaches taken by other jurisdictions. This harmonization of TP rules helps to reduce compliance costs for MNCs and promote a level playing field in the global economy.

Despite the widespread adoption of the OECD TP guidelines, challenges remain in ensuring their effective implementation and enforcement. Some countries may lack the resources or expertise to fully implement the guidelines, leading to inconsistencies in TP practices between different jurisdictions. To address these challenges, the OECD provides capacity-building support and technical assistance to help countries strengthen their TP regimes and improve their compliance with the guidelines.

In recent years, the OECD has also been working on initiatives to address the tax challenges of the digital economy, which poses unique TP issues due to the intangible nature of digital goods and services. The OECD's work on digital taxation

[1] Osita, David Okwuchukwu. "Effectiveness of Transfer Pricing Regulation in Nigeria in Relation to Foreign Direct Investment Flow." Master's thesis, University of Pretoria (South Africa), 2017.

[2] ibid

[3] ibid

aims to ensure that MNCs operating in the digital economy pay their fair share of taxes and that tax rules are adapted to the evolving nature of digital business models.
Overall, the OECD TP guidelines for play a vital role in promoting fair and transparent tax practices in the global economy. By providing clear and comprehensive guidance on TP issues, the guidelines help to prevent tax avoidance, reduce the risk of disputes, and promote cooperation between tax authorities and MNCs. As the global economy continues to evolve, the OECD has continued to update its guidelines to address new challenges and ensure that TP rules remain relevant and effective in an increasingly digital and interconnected world.

### 2.2. United Nations Practical Manual on Transfer Pricing for Developing Countries

Thes United Nations (UN) Practical Manual on TP for Developing Countries guide helps developing countries understand and use transfer pricing regulations. The UN published this manual about transfer pricing in 2013 and updated it to a newer version in 2017. The manual now includes changes that reflect the new OECD BEPS Action Plan standards while adapting them for developing countries. A practical solution exists to tax cross-border business transactions between affiliated companies since this system shares tax burden fairly between different nations. The manual describes how the principle of arm's length pricing works in transfer pricing by setting fair and unbiased prices for related party deals. Tax administrations in developing countries can use the manual to put transfer pricing methods into practice easily.
The UN Guidelines were published in 2013 to guide countries on how to develop TP policies from scratch. This is mainly covered in the capacity building chapter (Chapter 4) of the Guidelines. Although the UN TP Guidelines are specifically targeted at developing countries, the Guidelines retain most of the underlying principles of the OECD. The "UN Practical Manual" helps developing nations' tax departments make better transfer pricing decisions. The manual teaches tax professionals about transfer pricing analysis for multinational firms through the arm's length principle which requires fair market values in transactions between affiliated business branches. This tax guideline is applied to reduce international tax abuses and establish fair taxation rules that attract overseas investors.
The manual tells auditors not to use secret comparator data except when taxpayers can provide their own supporting information. According to the manual. authorities need to be upfront about their assessment rules to ensure equal treatment of taxpayers. The direction helps tax officials and taxpayers deal with advanced transfer pricing matters for better tax collection and better tax compliance. This manual helps developing nations set up better transfer pricing regulations.

### 2.3. Transfer pricing regulation in Zambia

Zambia first introduced TP legislation in 1999, with subsequent amendments in 2001, 2002 and 2008. The TP legislation was initially enacted in 1999 and came into force on 1 April 1999. The scope of Zambia's TP provisions is contained in sections 97A to 97D of the Zambia Income Tax Act, 1966 (Zambia Income Tax Act), read together with the TP Regulations, 2000 (Regulations) and the final draft Practice Note (Zambia Draft Practice Note) issued by the Zambia Revenue Authority (ZRA). However, the enforcement of the legislation by the ZRA has not been as strict as expected. On the contrary, it is difficult to argue that "there is no TP legislation" when the ZRA has begun to actively monitor the legislation.
Section 97A of the Zambian Income Tax Act introduces the ALP. The Income Tax (TP) Regulations 2000 also provide further definition of the scope of application of the TP provisions in the Income Tax Act. In March 2005, the Zambia Revenue Authority issued a draft practice note detailing how the Zambia Revenue Authority will apply the TP rules. As Zambia does not levy taxes worldwide, the legislation is intended to offset tax losses from non-arm's length pricing. In addition, TP legislation only applies where related-party pricing results in an understatement of Zambian profits or an overstatement of Zambian losses.
Zambia's TP policy applies not only to cross-border transactions, but also to transactions between Zambian taxpayers wholly and exclusively within the Zambian tax jurisdiction (i.e. domestic transactions). This is to ensure that losses are not effectively shifted between taxpayers or between sources through the use of dependent pricing. In addition, TP legislation applies to companies, partnerships and individuals. Section 97A(2) of the Zambian Income Tax Act provides that the TP provisions apply:
Where an actual condition other than an arm's length condition is imposed, the amount of income to be taken into account in computing the income of one of the associated persons referred to in subsection (1) (in this section referred to as the first taxpayer) who is taxable by that associated person in a tax year (in this section referred to as the income year) is reduced, except for this section.[4]
However, amendments were made in 2008. The amendments to the TP provisions of the Income Tax Act in 2008 introduced specific provisions applicable to the mining industry. New subsections 97A(13) to (17) deal with transactions between related parties in respect of the sale of base and precious metals or substances containing base and precious metals. These subsections provide that the applicable price shall be the reference price which shall be the price of the London Metal Exchange or any other metal exchange approved by the Director General or the Metals Bulletin. The provisions of section 97A are also cross-referenced with the new Mines and Mineral Development Act to determine the arm's length gross value and standard value of minerals for the purpose of determining the mineral royalties payable by mining companies to the Government.

[4]Section 97A(2) of the Zambian Income Tax Act

Section 97A of the Income Tax Act provides that the computation of an individual's taxable income shall be based on the ALP for all controlled transactions. In addition, section 97A(3) provides that:

The income taxable by the first taxpayer for the year of income shall be computed on the basis of arm's length conditions established or imposed between the first taxpayer and the other related persons referred to in subsection (2) and not on the basis of the actual situation; computation on this basis is called arm's length computation.

Section 97A(13) provides for a specific method of determining the arm's length price for controlled transactions involving the direct or indirect sale of base metals or any substance containing base metals or precious metals between related parties. The applicable sales price for such metals or recoverable metals shall be the reference price. This is a specific method applicable to transactions involving the sale of base metals or any substance containing base metals or precious metals to the exclusion of all other methods. In addition, section 97C(3) of the Zambian Income Tax Act provides that conditions are deemed to be imposed by an arrangement or series of arrangements or an agreement or series of agreements. However, there are no detailed rules on TP. However, sections 97A, 97B, 97C and 97D of the ITA provide for TP.[5]

Significant changes were introduced in 2018, with these amendments introducing provisions relating to the ALP and the preparation of TP documentation, among others.[6]Country-by-country reporting requirements were introduced in 2021, and further amendments to the TP regulations were made in 2022 and 2023.[7]

## Income Tax (Transfer Pricing) (Amendment) Regulations 2018

Zambia's 2018 Income Tax Transfer Pricing regulations brought new changes to the nation's tax system. The Government Gazette published the regulations on 6 April 2018 as Statutory Instrument No. 24. In 2018 the regulations manage business deals among company groups and document usage obligations. Zambia updated its tax transfer pricing regulations to match OECD's Base Erosion and Profit Shifting (BEPS) standards by placing special attention on Regulations 8-10 which establish proper economic terms when linked companies trade with each other. These new rules explain what paperwork businesses (MNEs) must keep and how to determine fair transaction prices for businesses operating within and outside Zambia.

The regulations define the term "arm's length" and provide guidelines for determining the appropriate arm's length point. Regulation 10 empowers the Zambian Commissioner to test transactions between related parties to determine whether they are consistent with the ALP. The regulations provide that:

The Commissioner shall determine, in accordance with the provisions of this Regulation, whether the terms of a controlled transaction are at arm's length for the purposes of section 97A(2) of the Regulation and the amount of any adjustment to be made under section 97A(3) of the Regulation.

In addition, the regulations provide for the application of the "ALP" to controlled transactions. This means that the results of controlled transactions should be consistent with the results of comparable transactions between independent persons under comparable circumstances.

More importantly, they provide for the use of the OECD TP Guidelines and the United Nations TP Practical Manual, as well as the TP Regulations, where appropriate. The regulations require that the taxable income of an individual should be calculated on the basis of applying the ALP to all controlled transactions. Under the regulations, the most appropriate TP method must be used to determine the arm's length condition, or to test whether the arm's length condition has been applied.

Under the regulations, when the conditions of a controlled transaction do not conform to the ALP, the taxpayer must make appropriate adjustments to ensure that the person's taxable income is calculated in accordance with the ALP. Article 15 allows the aggregation of controlled transactions that are economically closely related or form a continuum that cannot be analyzed separately. In such cases, the use of a TP method may be appropriate to determine the arm's length price of the aggregated controlled transactions.

The Regulations further prescribe five TP methods and provide guidelines that the Director-General may use to select the most appropriate method to apply to controlled transactions. In addition, the Regulations prohibit the use of more than one TP method to test a controlled transaction at any one time and permit the use of any other method with the Director-General's approval.

Notable amendments include that the Z$20 million (approximately USD 2.1 million) threshold will no longer apply to multinational enterprises, effectively making all multinational enterprises subject to TP requirements.The regulation also proposesThe new rules require taxpayers to submit certified translations of all TP documents that are not in English.

Under the regulations, the deadline for providing the required documents is 30 days (instead of the initial 14-day deadline announced in the 2017 draft regulations). Entities that fail to provide the required documents will be subject to penalties under the Income Tax Act. This may include a fine not exceeding 10,000 penalty units or imprisonment for a term not exceeding 12 months, or both. The draft regulations provide for a fine of 500,000 Zambian Kwacha (approximately US$50,000).

## Practice Note No. 2/ 2018

This Practice Note No. 2 of 2018 summarizes the Commissioner of Taxation's interpretation of section 97A of the ITA,

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[5]https://assets.kpmg.com/content/dam/kpmg/pdf/2015/10/tp-review-zambia-v3.pdf

[6]https://practiceguides.chambers.com/practice-guides/transfer-pricing-2024/zambia

[7] ibid

Chapter 323 of the Laws of Zambia (the "Act") and the Income Tax (TP) Regulations (SI No. 20 of 2000) (the "TP Regulations 2000") and describes the changes introduced by the Income Tax (TP) (Amendment) Regulations (SI No. 24 of 2018) (the "TP Regulations").[8]

This Practice Note is not intended to prescribe or exhaustively discuss all potential TP issues that may arise in the course of business, but rather to provide guidelines and procedures to be followed in determining the arm's length conditions for controlled transactions in the Zambian business environment. TP rules widely adopt the internationally recognized "ALP" to determine the income and related expenses of transactions between related parties.[9]Accordingly, this Practice Note has been drafted in a manner broadly consistent with the ALP set out in Article 9 of the OECD-UN Model Tax Convention on Income and Capital and the OECD TP Guidelines for Multinational Enterprises and Tax Administrations.

The Practice Note states that while sections 97A to 97D of the Zambia Income Tax Act do not apply to transactions between a branch and its head office, those provisions do apply to transactions between a Zambian branch of an overseas head office and an associated company of the overseas head office (regardless of where it is resident), or between an overseas branch of a Zambian head office and an associated person of the Zambian head office (regardless of where it is located).[10]In the event of any inconsistency between this Practice Note and the OECD's TP Guidelines for Multinational Enterprises and Tax Administrations or the United Nations' Practical Manual on TP for Developing Countries, this Practice Note and the relevant laws and regulations under Zambian law shall prevail.

Furthermore, this Practice Note is for reference only and does not in any way replace the provisions of the Act and the TP Regulations 2000. In the event of any inconsistency between this Practice Note and the Act and the TP Regulations 2000, the Act and the TP Regulations will prevail to the extent of the inconsistency. In the event of a tax treaty between the jurisdictions of the parties to a controlled transaction under this Practice Note, the provisions of that treaty will prevail over the Act, the TP Regulations 2000 and this Practice Note.

The following principles should be used to determine arm's length conditions in Zambian MNE transactions when there is a discrepancy between the actual contractual terms between the controlling persons and the conduct of the parties.

**Economic circumstances**

Even when transactions involve the same property or services, arm's length prices and profits may differ in different markets; therefore, comparability requires that the markets in which related parties and persons engaging in comparable transactions operate do not differ in a way that would materially affect the prices, or that appropriate adjustments can be made to eliminate these differences. As a first step, the relevant markets must be identified, taking into account available substitute goods or services.

Economic circumstances relevant to determining market comparability may include: (a) geographic location, (b) market size, (c) the degree of market competition and the relative competitive positions of sellers and buyers, (d) the risk of the availability of substitute goods and services, (e) the level of market supply and demand, (f) consumer purchasing power, (g) the nature and extent of government regulation of the market, (h) production costs, including capital, land, and labor costs, (i) transportation costs, (j) the level of the market, such as retail or wholesale, and (k) the date and time of the transaction.

Arm's length prices and margins may vary across different markets even for transactions involving the same property or services; therefore, comparability requires that the markets in which associated persons and persons conducting comparable transactions operate do not have differences that have a material effect on price or that appropriate adjustments can be made to eliminate those differences. As a first step, it is essential to identify the relevant market or markets taking account of available substitute goods or services.

**Business strategies**

According to the Practice Note, when determining the comparability of TP in Zambia, business strategy must also be reviewed. Business strategy considers factors such as: (a) innovation and new product development, (b) degree of diversification, (c) risk appetite, (d) assessment of political stability, (e) existing and planned workforce inputs, (f) market penetration strategy, (g) duration of the arrangement and (h) other factors affecting the day-to-day conduct of business. Several factors should be considered when assessing whether a taxpayer is following a business strategy of temporarily reducing profits in exchange for higher expected long-term profits.

For example, it is important to review the conduct of the parties to determine whether it is consistent with the alleged business strategy. For example, if a manufacturer charges its associated distributors below market prices as part of a market penetration strategy, it would be expected that the distributors' cost savings would be reflected in the prices charged to the distributors' customers or in greater market penetration costs borne by the distributors. If neither of these occurs, then the alleged business strategy and the associated pricing may be questionable.

Another factor to consider is whether the nature of the relationship between the parties to the controlled transaction is consistent with the taxpayer incurring the costs of a business strategy. For example, in an arm's length transaction, if a company has no realistic expectation of benefiting from a market penetration strategy, it will generally not incur the costs of that strategy. If a company carries out market development activities at its own risk and enhances the value of its products

[8]https://www.zra.org.zm/wp-content/uploads/2020/01/Transfer-Pricing.pdf
[9]Same as above
[10]Same as above

(e.g. through a trademark or trade name), this should be reflected in the functional analysis to establish comparability.
Another consideration is whether there is a reasonable expectation that, over a period of time that is acceptable in an arm's length arrangement, the pursuit of the business strategy will generate returns sufficient to offset its costs. It is well known that a business strategy such as market penetration may fail, and failure in itself does not disregard the strategy for TP purposes. However, if such expected results were implausible at the time of the transaction, or if the business strategy was unsuccessful but continued to be pursued, beyond the bounds of what an independent person would accept, the arm's length nature of the business strategy may be questionable. Ultimately, the most important consideration is whether the strategy in question can reasonably be expected to be profitable in the foreseeable future (while recognizing that it may fail), and whether an arm's length party would be willing to sacrifice profitability over similar periods in such economic circumstances and competitive conditions.

### Transfer Pricing Methods for MNEs in Zambia

Consistent with the OECD TP Guidelines and the United Nations Practical Manual on TP for Developing Countries, the 2018 Practice Note sets out TP methods for multinational enterprises in Zambia to be used to determine the arm's length price for controlled transactions. According to the Practice Note, the method most appropriate in a particular case will depend on the facts and circumstances of the case and the scope and reliability of the data on which the comparability analysis is based. It should always be the intention to select the method that produces the highest comparability. However, according to the Practice Note, taxpayers are not required to use more than one method when conducting a TP analysis. However, taxpayers may choose to adopt the second (corroborative) method if they deem it necessary to increase the reliability of their analysis.
Therefore, according to the Practice Note, the selection of the most appropriate method should be based on a practical balance of evidence, taking into account: (a) the nature of the activities under review, as determined by an analysis of the functions performed by each person in the controlled transaction and taking into account the assets used and the risks assumed, (b) the availability, quality and reliability of the data required to apply the selected TP method or other TP methods, (c) the nature and extent of any assumptions, (d) the degree of comparability that exists between controlled and uncontrolled transactions, where differences would affect the arm's length conditions under review, and (e) the respective advantages and disadvantages of the various methods in the specific case.

## 3. Tax implications of transfer pricing practices of MNEs

TP affects the taxable profits of the companies affected. Because business is conducted between related companies, factors other than market conditions sometimes determine the transfer prices of goods and services within the group. This can result in profits being shifted from the tax jurisdiction where the profits were generated to a jurisdiction that is more convenient for the multinational company. As Osita points out[11], multinational companies can use TP techniques to shift profits to low-tax jurisdictions, thereby reducing their overall tax burden. Transfer prices also affect import and export tariffs. For example, if the transfer price of imports into a certain country is reduced, then import tariffs and other tariffs based on the value of the imports will also be reduced. The prices adopted by companies have a direct relationship with profits. If any one factor is artificial, then the reported profits will be ridiculous.[12]
Another problematic area is when costs are incurred by the head office of a multinational corporation or by a group member for the benefit of all or several of the group members, the allocation of joint costs to the group necessarily affects its profits and tax revenues.[13]Osita said management fees are one of many ways multinational companies reduce their taxable profits in African countries[14]These fees are usually unrelated to the actual cost of providing any management services. Management fees are usually paid to local companies by competent and capable managers.
Parent companies can also charge excessive fees to their foreign subsidiaries, associates, etc. for intangible assets such as patents, licenses, trademarks, etc., and use these channels to transfer funds to tax havens or tax-favorable jurisdictions. For example, when a Zambian subsidiary pays royalties to a parent company located in another country for the right to produce that company's products in Zambia, the taxable profits of the Zambian subsidiary will be affected by the amount of royalties paid to the parent company. If the royalties paid by the Zambian subsidiary are excessive, the taxable profits and tax liability in Zambia will be reduced.
It is argued that in a global economy where multinational enterprises play a major role, governments need to ensure that the taxable profits of multinational enterprises are not artificially shifted outside their jurisdictions and that the tax base reported by multinational enterprises in their country reflects the economic activities carried out in that country. It is important for taxpayers to limit the risk of economic double taxation, which may arise from disputes between two countries over the determination of arm's length remuneration for cross-border transactions with related enterprises.
Clearly, TP is important to both taxpayers and tax authorities as it affects the income and expenses of associated companies

[11]Osita, David Okwuchukwu. "The Effectiveness of TP Regulation on Foreign Direct Investment Flows in Nigeria." Master's Thesis, University of Pretoria (South Africa), 2017.
[12]Same as above
[13]Same as above
[14]Same as above

in different tax jurisdictions where a multinational company operates, and therefore its taxable profits. Cross-border TP can provide a channel for tax fraud. Companies in different tax jurisdictions within the same group may decide to overprice or underprice intra-group transactions, depending on what they want to achieve.

Therefore, the above situation shows that the Zambian government loses a lot of tax revenue due to TP arrangements and the Zambia Revenue Authority must pay attention to the taxes paid by subsidiaries, associates, etc. of foreign companies operating in Zambia. One of the ways to control the TP threat is through regulation, taking into account the provisions of domestic laws and other international laws.

## 4. Effectiveness of TP regulations in combatting transfer mispricing

According to several studies on the effectiveness of TP legislation, TP requires dedicated legislation to provide more certainty for transactions between related parties of multinational corporations. This section reviews some of the empirical studies that have attempted to test the effectiveness of TP regulations. Despite the growing importance of anti-profit shifting regulations, the impact of regulations on cross-border income shifting has received little attention. In addition, prior research has produced conflicting predictions about the relationship between TP regulations and firms pre-tax income. Klassen and Laplante15, Riedel et al.16 and Marques and Pinho17 all find that stronger regulations increase the pre-tax income of low-tax subsidiaries by reducing the income shifting activities of multinational corporations.

Saunders-Scott (2014) also examines the impact of domestic and foreign TP regulations on cross-border income shifting and finds that stronger domestic and foreign regulations reduce reported profits for both low- and high-tax firms because of high compliance costs. However, the magnitude of regulatory costs is unlikely to be higher than the magnitude of the revenue increase because stronger regulations typically incur one-time fixed costs in the early stages of enactment. Taklalsingh18 studied the effectiveness of U.S. TP regulations and found that updated TP regulations prompted multinational enterprises to report higher profits than before because of improved compliance. Rathke et al.19It is also found that the introduction of TP regulations has significantly inhibited profit shifting between multinational enterprises.

However, Klassen and Laplante20 did not identify the regulatory effect of TP regulations, while Riedel et al.21 and Marques and Pinho22 did not consider the impact of foreign TP regulations on income shifting. Yoo23 also studied the effectiveness of TP regulations on income shifting and found that stricter TP regulations reduce the tax and non-tax incentives of multinational corporations to shift income out of the host country. The study further found that regulations restrict the income shifting behavior of small multinational corporations to a greater extent than that of large multinational corporations.24The results confirm that active income shifting activities are generally carried out by large multinational corporations that are able to exploit legal tax loopholes and engage in complex tax planning.25

Rieddle, Zien and Hoffman26 conducted a study to examine the effectiveness of TP regulations in limiting international profit shifting by European multinational corporations. The study empirically investigated whether TP regulations actually limit profit shifting behavior by multinational corporations. The study used a quantitative approach. The study found that TP regulations reduce profit shifting activities by multinational corporations. However, the study also found that TP regulations impose a heavy administrative burden on multinational corporations and tax authorities.

In Nigeria, the relevance of transfer pricing and international tax compliance is underscored by the government's efforts to maximize tax revenue in a challenging economic environment. The country has been proactive in updating its transfer

[15] Klassen, Kenneth J., and Stacie K. Laplante. "Are US multinational corporations becoming more aggressive income shifters?." *Journal of Accounting Research* 50, no. 5 (2012): 1245-1285.

[16] Riedel, Nadine, Theresa Zinn, and Patricia Hofmann. "Do transfer pricing laws limit international income shifting? Evidence from Europe." University of Bochum, CESinfo Munich, DIW Berlin, NoCet & Oxford University CBT (2015).

[17] Marques, M. and Pinho, C., 2016. Is transfer pricing strictness deterring profit shifting within multinationals? Empirical evidence from Europe. *Accounting and Business Research*, *46*(7), pp.703-730.

[18]Taklalsingh, R. 2019. TP legislation: Implications for U.S. multinational corporations (PhD dissertation, Walden University).

[19]Rathke, Alex AT, Amaury José Rezende, and Christoph Watrin. "The Effects of TP Rules Across Countries on Profit Shifting." Journal of Applied Accounting Research 22, no. 1 (2021): 22-49.

[20] Klassen, Kenneth J., and Stacie K. Laplante. "Are US multinational corporations becoming more aggressive income shifters?." *Journal of Accounting Research* 50, no. 5 (2012): 1245-1285.

[21] Riedel, Nadine, Theresa Zinn, and Patricia Hofmann. "Do transfer pricing laws limit international income shifting? Evidence from Europe." University of Bochum, CESinfo Munich, DIW Berlin, NoCet & Oxford University CBT (2015).

[22] Marques, M. and Pinho, C., 2016. Is transfer pricing strictness deterring profit shifting within multinationals? Empirical evidence from Europe. *Accounting and Business Research*, *46*(7), pp.703-730.

[23] Yoo, Ji Seon. "The effects of transfer pricing regulations on multinational income shifting." *Asia-Pacific Journal of Accounting & Economics* 29, no. 3 (2022): 692-714.

[24]Same as above

[25]Same as above

[26]Riedel, Nadine, Theresa Zinn, and Patricia Hofmann. "Do TP Laws Restrict International Income Shifting? Evidence from Europe." University of Bochum, CESinfo Munich, DIW Berlin, NoCet, and CBT Oxford (2015).

pricing regulations, aligning them with international best practices to curb tax avoidance and ensure fair taxation of MNCs. This alignment is evident in the amendments made to the Nigerian transfer pricing regulations in 2018, which reflects a commitment to the OECD's BEPS project. Critically, while Nigeria's efforts to align with global standards in transfer pricing and tax compliance are commendable, they also raise concerns. One such concern is the capacity of the Nigerian tax authorities to effectively implement and enforce these complex rules. The FIRS, although making strides in capacity building, faces challenges in terms of resources and expertise in handling sophisticated transfer pricing audits and disputes.27

Osita28 examined the effectiveness of TP Regulation in Nigeria in relation to FDI flows. The study employed the secondary desk research methodology. The study found that the TP legislations in Nigeria lacked effectiveness due to loopholes inherent in them. The major loopholes found in the Nigeria's TP regulations included absence of effective enforcement and lack of self-assessment. The study further found that the major challenges which confronted effective implementation of TP regulations in Nigeria included dearth of data, lack of professionalism, lack of administrative capacity by regulatory authorities, political interference, faulty tax policies and volatility of business environment. From these findings, Osita29 concluded that although TP regulations aligned with OECD guidelines, they were not robust as some of provisions of the regulations are either deficient or conflicting in some respects. The government of Nigeria was therefore recommended to address all the loopholes resulting in non-compliance with the ALP by MNEs towards an effective and efficient transfer pricing regime.

Furthermore, Akindrinde30 found that the challenges Nigeria facing in effectively enforcing its TP regulations including limited capacity of tax authorities and the potential impact on foreign investment. In addition, the application of the ALP in Nigeria is challenging, where market data for comparables is not readily available or easily ascertained.31

In Kenya, Nyamori32 analysed the effectiveness of Kenya's TP system.33 The judgement rendered in Unilever Kenya Limited v Commissioner of Income Tax was analysed. In the Unilever case, the judge applied the OECD guidelines to deal with the issue at hand as there were no guidelines dealing with the matter in Kenya. Nyamori34It is believed that since Kenya was not a member of the OECD in 2012, they could not participate in the formulation and drafting of the OECD guidelines.35

It is held that the court should consider the substantive laws and regulations dealing with TP in Kenya before applying foreign precedents.36The argument also details that Kenya's 2012 TP rules are not without problems as they fail to make documentation mandatory and as the rules are a subsidiary legislation, they cannot overrule Kenya's existing income tax laws.37 It noted that the complexity of TP, scarcity of experts and lack of comparable data to determine arm's length prices have hampered efforts to mitigate TP manipulation by multinational enterprises operating in Kenya.

More so, Nyatsambo38 assessed the effectiveness of the thin capitalisation legislative framework in South Africa in addressing BEPS through excessive interest deductions by MNEs. The qualitative methodology was employed using the comparative desk-research approach following the legal doctrinal approach. This study aimed to ascertain whether the existing framework was effective in dealing with TP particularly thin capitalisation and assessed whether the existing framework reflected contextual realities in South Africa.

The study concluded that the thin capitalisation framework for South Africa was fraught with administrative difficulties and uncertainties which hindered effectiveness of the framework. Nyatsambo39 further concluded that the South Africa framework's reliance on OECD's standards was misguided and failed to reflect the country's contextual realities.

Another study by Isaac40 empirically and theoretically analysed the efficiency of the introduction of the South Africa's TP regulations on deterring occurrence of profit shifting. The study was based on secondary quantitative data obtained from annual financial reports of parented MNEs in South Africa focusing on the period from 2010 to 2017. The study revealed that implementation of TP regulations resulted in significant reductions in profit shifting among MNEs in South Africa.

[27] Nkechinyere, Anazor Jennifer. "Transfer Pricing: A Tool For Tax Evasion & Avoidance By Multinational Corporations In Nigeria." Phd Diss., Faculty Of Law, University Of Lagos, 2018.
[28] Osita, David Okwuchukwu. "Effectiveness of Transfer Pricing Regulation in Nigeria in Relation to Foreign Direct Investment Flow." Master's thesis, University of Pretoria (South Africa), 2017.
[29] ibid
[30] Akinrinde, Akin. "Transfer Pricing Regulations and International Tax Compliance in Nigeria." Boston University; University of Ibadan; The Nigerian Law School; Afe Babalola University (2024)
[31] ibid
[32]Nyamori, Bosire. "Analysis of Kenya's TP System." Insight (2012)
[33]Same as above
[34]Same as above
[35]Same as above
[36]Same as above
[37]Same as above
[38] Nyatsambo, Nyasha Gift. "Siezing the BEPS: an assessment of the efficacy of South Africa's thin capitalisation regime in combating base erosion and profit shifting (BEPS) through excessive interest deductions." Master's dissertation, 2019
[39] ibid
[40] Isaac, Nereen. "The Determinants and Deterrents of Profit Shifting: Evidence from a Sample of South African Multinational Enterprises." PhD diss., 2020.

Based on these findings, Isaac41 recommended the South African government to allocate adequate resources to ensure maximum compliance with TP regulations.
There are several factors inhibiting effectiveness of TP regulations in Egypt. As noted by Abdellatif[42], the lack of comprehensive TP guidelines and tax authority capacity in Egypt led to insufficient TP compliance.

## 5. Challenges confronting effective implementation and enforcement of the ALP regulations for TP

The application of arm's length principles in transfer pricing regulations produces specific challenges. Murphy[43] further noted that even though arm’s length rules exist in developing countries, problems of enforcing them are overwhelming. Chand[44] also reported that lack of clear guidelines in applying the ALP under the BEPS actions creates uncertainties and discretions potentially leading to profit shifting by MNEs. Similarly, Choi et al.[45] also found that lack of clear guidelines in applying ALP leads to profit shifting by MNEs. Greil[46] found lack of guidelines in applying the arm's length principle creating possibilities for profit shifting by MNEs.
The implementation of ALP in transfer pricing is associated with difficulties because of today's intricate worldwide MNEs and differing national rules with weak enforcement.[47] Sometimes multinational enterprises use transfer pricing legitimately in their commercial operations and functions to arrange transactions in such a way that profits get shifted from one country to another with the sole objective of paying no or less tax and as a result developing countries need to be in a better position to be able to identify and understand different schemes that are being used to shift the profits out of their countries as that will hinder their economic growth. The study by Garcia[48] also found that lack of TP regulations for intangibles allowed MNEs in countries such as Colombia to shift income and erode tax bases. Lack of TP regulations for HTVIs according to Juranek, Steffen, Schindler and Schjelderup[49] promote profit shifting particularly abusive profit shifting by MNEs.
The administrative challenges that developing countries continues to face to gather, collect and analyse the relevant information that is required to deal with transfer pricing manipulation schemes that seek to promote tax avoidance remains one of the big challenges for developing countries as with no information they would not be able to determine which information is relevant. (Lohse, Riedel and Spengel 2012) In addition, the current transfer pricing legislations in most developing African countries lack the technical, administrative and auditing capacity to ensure that the laws are enforced and to also conduct thorough effective and efficient audits where transfer pricing cases are concerned. Picciotto[50] also highlighted that lack of effective enforcement was one of the major problems and loopholes in transfer pricing regulations in most developing economies. In the context of the US, it has been found that the practice of profit shifting through transfer pricing manipulations by MNEs was mainly due to ineffective enforcement approaches.[51]
Limited administrative capacity is another challenge. The limited administrative capacity of tax authorities includes unskilled and inexperienced staff, redundant and out-of-support information technology. (Mashiri, 2018). The study by Oguttu[52] found that there are several challenges which inhibit implementation of the comparative analysis which underpins application of the ALP in most developing countries. The challenges were found to include policy-related, legislative-related, administrative-related, conceptual-related and capacity related challenges.[53] Scholars such as Chugan and Dhar[54], Smith[55] and Tambunan et al.[56] who also established that resource shortages and corruption hinder effective enforcement and

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[41]ibid.
[42] Abdellatif, M. M. "Towards a Comprehensive Transfer Pricing Framework to Foster Tax Compliance in Egypt." (2019).
[43] Murphy, Richard. "Country-by-country reporting." *Global tax fairness* 96 (2016): 96-112.
[44] Chand, Vikram. "Achieving Certainty in an Uncertain Profit Allocation Environment." *Intertax* 47 (2019): 1000.
[45] Choi, Jay Pil, Jota Ishikawa, and Hirofumi Okoshi. *Tax havens and cross-border licensing*. RIETI, 2019.
[46] Greil, Stefan. "The dealing at arm’s length fallacy: A way forward to a formula-based transactional profit split?." Intertax 45, no. 10 (2017).
[47] Cooper, Joel, Randall Fox, Jan Loeprick, and Komal Mohindra. *Transfer pricing and developing economies: A Handbook for policy makers and practitioners*. World Bank Publications, 2017.
[48] García, Juan Carlos Díaz. "Transfer Pricing for Intangibles: Problems and solutions from Colombian perspective." *Revista De Derecho Fiscal* 8 (2016): 103-123.
[49] Juranek, Steffen, Dirk Schindler, and Guttorm Schjelderup. "Transfer pricing regulation and taxation of royalty payments." *Journal of Public Economic Theory* 20, no. 1 (2018): 67-84.
[50] Picciotto, Sol. *Problems of transfer pricing and possibilities for simplification*. Institute of Development Studies, 2018.
[51] Curtis, Stephen L., and Yaron Lahav. "Forensic Approaches to Transfer Pricing Enforcement Could Restore Billions in Lost US Federal and State Tax Losses: A Case Study Approach." *Journal of Forensic & Investigative Accounting* 12, no. 2 (2020).
[52] Oguttu, Annet Wanyana. "Challenges of applying the comparability analysis in curtailing transfer pricing: Evaluating the suitability of some alternative approaches in Africa." *Intertax* 48, no. 1 (2020).
[53] ibid
[54] Chugan, Pawan K., and Upinder Dhar. "The Role of Human Resources in New Transfer Pricing Regime." *AIMS Journal of Management* 2, no. 1 (2016): 59-69.
[55] Smith, Adum Ovunda. "The impact of transfer pricing on financial reporting: A Nigerian study." *Research Journal of Finance and Accounting* 6, no. 16 (2015): 208-218.
[56] Tambunan, Maria RUD, Haula Rosdiana, and Edi Slamet Irianto. "Minimising Potential Tax Avoidance by Strenthening Tax Policy on Transfer Pricing in Indonesia." *J. Australasian Tax Tchrs. Ass'n* 14 (2019): 189-199.

implementation of arm's length TP regulations.

As noted by Sebele-Mpofu et al.[57], although the ALP has become the core of the TP regulations in most African developing economies, its implementation and enforcement has brought significant challenges to tax administrators and auditors such as lack of clarity in TP regulations, complexity of transactions, resource constraints, subjectivity of the ALP, lack of expertise and shortage of comparable data. The research by Choi, Furushawa and Ishikawa[58] also showed that lack of robust non-compliance penalties presents incentives for MNEs to manipulate internal transfer price in most developing countries.

## 6. Conclusion and Recommendations

Zambia's evolving transfer pricing legal framework, while commendably reflective of OECD and UN recommendations, remains fundamentally constrained in its enforcement capability and contextual sensitivity. The absence of comprehensive, localised guidelines for addressing challenges such as intangible valuation, cost-sharing arrangements, and digital taxation undermines the applicability of the arm's length principle. Despite adopting robust legislative instruments and participating in international tax reform dialogues, Zambia continues to grapple with capacity deficits, information asymmetries, and regulatory inconsistencies that embolden tax avoidance by multinational corporations.

To enhance effectiveness, this article recommends a dual-track approach: first, the development of sector-specific and Zambia-contextual TP guidelines, particularly for the mining and digital sectors; and second, the enhancement of institutional capacity through investment in skilled personnel, forensic audit capabilities, and inter-agency cooperation. Furthermore, the operationalisation of country-by-country reporting and the incorporation of anti-avoidance clauses with stronger penalties can serve as deterrents against TP abuses. Only through such comprehensive legal, administrative, and political commitments can Zambia fully protect its tax base and uphold its sovereign right to tax. exacerbating market swings. Only 11% re-entered equities early in recoveries, highlighting a conservative risk appetite.

The results of this investigation reaffirm how crucial mutual fund expenses, investor education, and open communication are in shaping investment choices. Long-term growth, security, and congruence with individual financial objectives are top priorities for ALFS investors. But they also have trouble striking a balance between reasonable expectations and the need for rapid liquidity and returns. To tackle these issues, fund managers should offer low-cost solutions, communicate clearly and consistently, and inform investors about the long-term nature of mutual fund investing. They can eventually support the expansion and stability of Zambia's mutual fund market by doing this, which will cultivate a more knowledgeable and contented investor base.

### Conflict of Interest

The authors declare that they have no conflicting interests

### Funding

This research did not receive any specific grant from finding agencies in the public, commercial, or not-for-profit sectors.

### Ethical considerations

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

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[58] Choi, Jay Pil, Taiji Furusawa, and Jota Ishikawa. "Transfer pricing and the arm's length principle under imperfect competition." (2018).

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