BUSINESS TAXATION ISSUES:

TRANSFER PRICING

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Transfer Pricing in South Africa (1)

- Introduced in 1995
- S31 Income Tax Act No 58 of 1962
- S31(2) - transfer pricing provisions
- S31(3) – thin capitalisation provisions (Debt : Equity safe harbour of 3:1)
- 2 Practice Notes to provide guidance
- No domestic transfer pricing provisions

Transfer Pricing in South Africa (2)

- Overhaul of provisions effective 1 October 2011:
  - TP and Thin Cap combined
  - Arm's length principle
  - One new Interpretation Note (being finalised)

International Tax Planning in Developing Countries

- Risk stripping of distributors and manufacturers
- Transfer of intangibles for no or little consideration
- Over-compliance with developed countries' TP legislation
- Using transfer pricing to mask schemes to avoid CFC legislation

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Transfer Pricing as a Burning Platform

- Continues to be major issue for South Africa
- Despite significant progress, still facing challenges regarding capacity and expertise to effectively risk assess and identify and attack all cases and issues
- Extremely challenging to “measure” the tax gap due to transfer pricing

Prevalence of Transfer Pricing

- Mispricing vs tax planning
- Mispricing occurs across all industries, sectors and transactions
- Certain types of transactions provide greater opportunity for tax planning
- Focus depends on materiality, perception of risk (different for each country, but commonalities)

Policy and Legislation

- Specific TP and/or Thin Cap legislation
- Arm's length principle (NB!)
- Safe harbours (if used responsibly) to provide certainty and assist with risk assessment
- Tax treaties – UN/OECD model & MAP provisions to avoid double taxation

Thank you!

South African
Revenue Service