THE UNITED REPUBLIC OF TANZANIA

NATIONAL AUDIT OFFICE

PERFORMANCE AUDIT REPORT ON CONTROLS OVER TRANSFER PRICING IN TANZANIA'S BUSINESS SECTOR

AS PERFORMED BY

TANZANIA REVENUE AUTHORITY

REPORT OF THE CONTROLLER AND AUDITOR GENERAL

MARCH, 2021

THE UNITED REPUBLIC OF TANZANIA

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PREFACE

Section 28 of the Public Audit Act No. 11 of 2008 authorizes the Controller and Auditor General to carry-out Performance Audit (Value-for-Money Audit) for the purposes of establishing the economy, efficiency and effectiveness of any expenditure or use of resources in the MDAs, LGAs and Public Authorities and other Bodies which involves enquiring, examining, investigating and reporting, as deemed necessary under the circumstances.

I have the honour to submit to Her Excellency, the President of the United Republic of Tanzania, Hon. Samia suluhu Hassan and through her to Parliament of the United Republic of Tanzania, the Performance Audit Report on the Effectiveness of Controls over Transfer Pricing in Tanzania as implemented by Tanzania Revenue Authority.

The report contains findings, conclusions and recommendations that directly concern the Ministry of Finance and Planning and Tanzania Revenue Authority.

The Ministry of Finance and Planning and Tanzania Revenue Authority were given the opportunity to scrutinize the factual contents of the report and come up with comments. I wish to acknowledge that the discussions with the MoFP and TRA were very useful and constructive in achieving the objectives of the audit.

My office intends to carry-out a follow-up at an appropriate time regarding to actions taken by the Ministry of Finance and Planning and Tanzania Revenue Authority in relation to the recommendations in this report.

In completion of the audit, the office subjected the draft report to a critical review of experts namely Ms Donasia Massambo Managing Director at TP&Tax (Transfer Pricing and Tax Advisory) and Samwel S. Ndandala, Senior Manager at Deloitte Consulting who came up with useful inputs on improving the output of this report.

This report has been prepared by Mr Deusdedit Sise Muhono (Team Leader), Ms Trust Tweve and Mr Ahimidiwe Ngilangwa (Team Members) under the supervision and guidance of Mr Michael Malabeja - Chief External Auditor, Eng. James Pilly – Assistant Auditor General and Mr Jasper Mero – Deputy Auditor General.

I would like to thank my staff for their devotion and commitment in the preparation of this report. My thanks should also be extended to the Ministry of Finance and Planning and Tanzania Revenue Authority for their cooperation with my office which has enhanced timely completion of this report.

Charles E. Kichere,
Controller and Auditor General,
Dodoma, United Republic of Tanzania,
March, 2021.

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ACRONYMS AND ABBREVIATIONS

BEPS	-	Base Erosion and Profit Shift
CPs	-	Corporate Plans
CSOs	-	Civil Society Organisations
FY	-	Financial Year
GDP	-	Gross Domestic Product
ITU	-	International Taxation Unit
LDCs	-	Least Developed Countries
LTD	-	Large Taxpayer Department
MNCs	-	Multinational Corporations
MNEs	-	Multinational Enterprises
MoFP	-	Ministry of Finance and Planning
MTEF	-	Medium Term Expenditure Framework
OECD	-	Organization for Economic Co-operation and Development
SDGs		Sustainable Development Goals
TEITI	-	Tanzania Extractive Industries Transparency Initiative
TIC	-	Tanzania Investment Centre
TP	-	Transfer Pricing
TRA	-	Tanzania Revenue Authority
USD	-	United States dollar

EXECUTIVE SUMMARY

Background

Tax is important for any country's development. Collection of tax depends on the effectiveness of the tax legislation of a country, among other things. Taxation of domestic income poses less problems when it is dealt with through local legislation. The problems are likely to increase when dealing with tax of foreign elements or local businesses operating multiple businesses and ability to shift profits. This is obvious in taxation of associated multinational corporations operating across countries, where goods and services are transferred through transfer pricing[1].

According to Tanzania Revenue Authority (TRA)[2], transfer pricing of goods, services and intangible properties are intercompany pricing arrangements between associated parties in their transactions. For developing countries, transfer pricing rules are essential to provide a climate of certainty and an environment for increased cross-border trade while at the same time ensuring that the country is not losing out on critical tax revenue. Transfer pricing is thus of paramount importance and hence detailed transfer pricing rules are essential.

The aim of the audit was to determine whether the Ministry of Finance and Planning and Tanzania Revenue Authority ensure controls over transfer pricing are adequately implemented so as to enhance and improve tax collection.

Specific objectives of the audit were to assess whether:

1) TRA adequately plans for implementation of transfer pricing controls;
2) TRA has adequate capacity to implement transfer pricing controls in place;
3) TRA has a working mechanism of monitoring the performance and impact of transfer pricing controls; and
4) Ministry of Finance and Planning adequately provide support and monitors the performance of TRA in transfer pricing activities.

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[1] https://www.ibfd.org/IBFD-Products/Journal-Articles/International-Transfer-Pricing-journal/collections/itpj/html/itpj_2020_01_tz_1.html accessed 7th May, 2020

[2] Transfer pricing guidelines, May 2014

The main audited entity was the Ministry of Finance and Planning (MoFP) and Tanzania Revenue Authority (TRA). MoFP is responsible for coordinating the implementation of the transfer pricing policies and strategies as well as preparation of financial and fiscal policies in the country. TRA on the other hand is responsible for administering Income Tax legislation and other functions in order to curb transfer pricing.

The audit focused mainly on the adequacy of the extent of transfer pricing controls, strategies and plans and implementation of the controls. It also focused on monitoring of performance and impact of transfer pricing controls as well as support given by MoFP to TRA to facilitate the implementation of transfer pricing controls. The audit covered a period of four financial years (2016/17 to 2019/20).

Findings

Lack of Specific Strategy for Controlling Transfer Pricing

The audit noted that, there was no specific strategy in place to address transfer pricing in the country. Despite the efforts noted in its operations, TRA did not accord appropriate attention and efforts on transfer pricing within its strategic goals.

Based on interview with TRA officials, TRA considered transfer pricing function as an operational activity. As a result, it did not specifically incorporate it in its Corporate Plans. Lack of specific strategy for controlling transfer pricing functions led to TRA failing to prepare goals and targets for transfer pricing. This would have ensured MNCs are strategically controlled with regards to manipulation of transfer pricing.

Inadequate Risk-Based Planning for Implementation of Transfer Pricing Controls

Review of TRA's business plans for ITU for financial years 2016/17 to 2019/20 and database of existing MNCs noted that, TRA did not plan for transfer pricing audits to match the large number of MNCs. TRA, at the time of the audit 504 MNCs in the database which were attended by International Taxation Unit (ITU) but out of these, TRA was able to initiate only 60 transfer pricing audits from the financial year 2016/17 to 209/20.

Furthermore, TRA used manual risk assessment tool for selection of MNCs for transfer pricing audits. This would cause mishap in capturing the most risky MNCs to be considered for audits. It was also noted that, TRA had a tendency of accepting ad-hoc transfer pricing cases during each financial year which were dealt with out of risk analysis. This undermined the risk-based audit approach as new ad-hoc cases were handled out of planned cases.

Transfer Pricing Controls Not Adequately Addressed in TRA's Corporate Plan

The audit noted that transfer pricing controls were not included in the Corporate Plans because TRA did not consider transfer pricing control as one of the strategic functions but rather as a normal operational activity that would be reported at the end of the year. It was noted that, the available controls were embedded in the daily activities at an operational level.

On the other hand, TRA seemed to give importance to controls of transfer pricing through establishing the ITU for the purpose of planning, implementing and monitoring of transfer pricing activities. Therefore, it was considered that excluding corporate plans in plan contradicts other operational efforts as explained above.

Failure to include controls within the Corporate Plans is likely to hamper planning, implementation, monitoring and evaluation performance of transfer pricing controls.

Transfer Pricing Plans Not Adequately Implemented and Completed as Planned

Review of annual progress reports of 2016/17 to 2019/20 indicated that TRA did not implement the planned transfer pricing audits as per its annual plans. Further review of TRA's business plans and progress reports showed that plans were not aligned to the progress reports to provide the extent of implementation of transfer pricing plans due tor reported errors which however were subsequently rectified.

According to the annual progress reports for financial years 2016/17 to 2019/20, there was significantly low rate of completion of the conducted audits. Out of the 60 audits initiated since 2016/17 to 2019/20 TRA was able to complete only 23 audits for the four financial years. This was equivalent to 38% of the anticipated accomplishments. Based on that at least 444 MNCs were yet to audited.

This situation was attributed by ever increasing ad-hoc cases, complexity of transfer pricing cases and minimum number of staff to handle the all planned and ad-hoc cases within the same financial year.

Inadequate Inter-Departmental Coordination in Handling Transfer Pricing

Review of TRA's Business Plans for years 2016/17 to 2019/20 and interviews held with Officials from different Departments within TRA showed that there was inadequate interdepartmental coordination with regards to transfer pricing control function.

There were also no documented efforts that showed how transfer pricing audits and cases were complementary within TRA Departments. The audit noted that other departments such as Domestic Revenue were also dealing with transfer pricing issues at Zonal and Regional levels. However, there was no systematic form of communication on how these issues were reported to ITU or whether feedback was given by either ITU or DRD once reported transfer pricing audits were concluded or completed.

Imperfect International Coordination through Double Taxation Treaties (DTAs) and Exchange of Information Agreements

In 2019/20 TRA was involved in negotiations involving two (2) Double Taxation Treaties (DTAs) between: Tanzania and Egypt; and Tanzania and Zimbabwe. All these were hosted by MoFP as the parent Ministry responsible for policy and negotiation of international treaties and agreements. In the financial year 2017/18, TRA, again participated in negotiation of three (3) DTAs with Morocco, South Korea, Singapore, and East Africa Tax Formulation. These treaties are yet to be finalised and operationalised to date due to complications in the local tax regime on issues of security of information.

As a result of not reaching the conclusion of the negotiated agreements, since its establishment TRA has finalised only nine (9) agreements which are in operation. These involve Canada, Denmark, Finland, India, Italy, Norway, South Africa, Sweden, and Zambia. According to 5th Corporate Plan and interviews held with TRA Officials, the reason for not meeting the target of reviewing and initiating the twelve (12) agreements annually was said to be long discussions which involve contacting countries on taxing rights.

Also At the time of audit, it was noted that, TRA was in the process of assessing and evaluating its legal and institutional framework with regard to exchange of information with other foreign countries by reviewing and initiating exchange of information.

Performance of Information Database for Comparability Analysis

Review of transfer pricing audit reports conducted between 2016/17 and 2019/20 showed that TRA used TPCatalyst software to obtaining comparable data for transfer pricing analysis. The database also comprised ktMINE and CUFTanalytics. Software namely Orbis and Royalty Range were used. The database was acquired in the financial year 2015/16 and has been used to-date.

Although, it was noted that the current database and software for comparability analysis is widely used internationally, the interviews with TRA officials indicated that to some extent, the two softwares had limited capacity to process all tax data and products. Also it was noted there were few staff who had exclusive use of the database which hampered the wide use of the database within TRA.

Also, it was noted that ktMINE was basically used for analysing intangibles products e.g. royalties, licences and management fees but also intellectual property products. CUFTanalytics was used for analysing loans (interest rates such as thin capitalisation[3]). Because of this limitation TRA lacked comprehensive analysis of transfer pricing transactions.

Insufficient Budget for ITU to Execute Transfer Pricing Functions

ITU was receiving less amount of the entire budget allocated to LTD. The maximum budget allocation was in 2019/20 where about 20% of total budget was allocated to ITU. Furthermore, the audit conducted an analysis based

[3]Thin capitalisation refers to the ratio of debt to equity. Where a corporation is heavily capitalised by debt claims, it is considered to be thinly capitalised. In certain circumstances, a corporation that is thinly capitalised may not be entitled to a full deduction of its interest expense (https://www.rsm.global/tanzania/insights/tax-insights/tanzania-tax-laws-and-practice.)

on the required budget for carrying out transfer pricing audits and the amount allocated to ITU.

Even though ITU was allocated funds to finance its functions, large portion of the allocated amount was for payments of subscriptions and membership fees. The percentage amount of subscriptions and membership ranged between 40% and 78%. Thus the budget was not adequate to enable ITU to discharge it transfer pricing function as per plans.

Insufficient Human Resource for Implementing Transfer Pricing Controls

Multinational Companies (MNCs) with a total turnover of TZS 4,239,304,909,000 for financial years 2016/17, 2017/18 and 2019/20 and USD 137,048,000 in financial year 2018/19 were audited. From these transfer pricing audits tax recovered was TZS 108,609,505,044.60. This was for only completed audits. However, despite the efforts, ITU was understaffed for the past four financial years. The Audit Team noted that ITU had a total of 19 staff at the end of the financial year 2019/20. This number included management staff.

As a result, TRA was not able to promptly handle the workload arising from the number of MNCs they were expected to reach. For the past four years ITU had a deficit of staff to complete transfer pricing audits for all MNs per year. This was benchmarked with a team of a minimum of 3 staff per audit. Thus, due to such staff deficit there were some MNCs which were not audited for the past four financial years. ITU had the potential to audit about 16% to 38% of all MNCs leaving 75% to 84% unattended. The number of MNCs which could not be attended per year ranged between 116 and 153.

Training to Transfer Pricing Staff Not Adequately Conducted

For the past four years, TRA conducted 44 trainings to staff of Large Taxpayers' Department. Out of these trainings, only 9 trainings were on specific transfer pricing. This represented 20% of all the trainings planned. The training events on transfer pricing were spread across the four years. Also, trainings did not target all staff dealing with transfer pricing audit function. For the past four financial years it is only in financial year 2016/17 where 11 staff attended training on transfer pricing while no staff attended any training in 2018/19. This was below the total number of staff within ITU which ranged between 12 in 2016/17 and 19 in 2019/20. Consequently, this would pose a challenge of having staff within the Unit with partial skills on transfer pricing.

Inadequate Tools to Enhance Transfer Pricing Controls

TRA subscribed to tax databases and software for handling transfer pricing cases. For instance, in the financial year 2016/17 an upgrade cost of Euro 124,775 was incurred by TRA. This contract covered: TPCatalyst (Transfer Pricing application which cost Euro 43,125.00); cost of upgrading features (ORBIS Full access) Euro 72,450.00; and a database on Royalty Agreements for Euro 9,200.00 for the duration of three years.

However, according to interviews with TRA officials it was noted that not all aspects of products had specific software for transfer pricing comparability analysis were effective to cover all products for transfer pricing purposes.

Key Sectors Not Adequately Covered in Transfer Pricing Audits

Due to inadequate analytical tools, some sectors (with their respective GDP contribution to the economy) such as construction (GDP 13.6%); Agricultural (GDP 27.7%), Extractive (GDP 5%) and Manufacturing (GDP 4%) sectors were not adequately audited despite their notable contribution to national GDP.

Due to limitation of current software for comparability analysis it was not easy for TRA to accurately capture comparable data for products from the above sectors.

Lack of Key Performance Indicators for Monitoring Implementation of Transfer Pricing Controls

Review of 4th and 5th corporate plans as well as transfer pricing business plans noted that the corporate plans were silent on how transfer pricing function would be monitored as there were no KPIs to that effect. Lack of KPIs for monitoring transfer pricing activities was attributed to the fact that transfer pricing was considered by TRA as an operational activity. Therefore, it did not set specific KPIs for measuring performance of transfer pricing function.

Lack of monitoring performance of transfer pricing activities within ITU and other regional offices is likely to deny TRA the opportunity to learn and improve on dealing with transfer pricing matters. This may lead TRA to lose revenue through tax emanating from transfer pricing transactions.

Limited Taxpayers Education and Awareness Campaigns on Transfer Pricing

Review of taxpayers' services and education plans showed that TRA managed to conduct about 49% of the awareness programmes which were planned with regards to transfer pricing for the past four financial years. TRA planned to conduct a total of 2424 Seminars but was able to conduct 1192 seminars. This was equivalent to 49% of planned seminars for enhancing tax awareness and voluntary tax compliance. It was also noted that in financial years 2018/19 seminars were not conducted.

Evaluation of Potential Tax Resulting from Transfer Pricing Function Not Done

TRA did not conduct any evaluation to determine potential tax that could be raised or that could be at risk because of transfer pricing dealings. This was because this activity was not included in its business plans and therefore there was no budget to conduct such evaluation. The audit analysis of tax resulting from transfer pricing audits showed that TRA had records of tax assessed, recovered and disputed and could use the available information to evaluate the potential tax gain or loss as a result of transfer pricing function.

For the past four financial years, the turnover of MNCs which were audited amounted to TZS 4.23 trillion, out of which, TZS 152.67 billion of tax was assessed, TZS 108.61 billion recovered and TZS 44.07 billion was still disputed by audited MNCs.

Conclusion

TRA has generally strived to ensure that systems for enhancing tax administration are well instituted and developed. The availability of databases and software currently used to analyse transfer pricing data provide minimum conform to the effectiveness of controls over transfer pricing in the country.

The introduction of International Taxation Unit as a unit dedicated to conduct transfer pricing audits and provide transfer pricing opinions was established and is currently operational. This indicates the efforts made towards controlling transfer pricing manipulation by Multinational Corporations (MNCs).

However, TRA has not been able to ensure compliance by all MNCs towards transfer pricing compliance. As a result, TRA has not adequately used the available transfer pricing controls to minimize tax avoidance and increase in tax collection through transfer pricing audits.

Ministry of Finance did not provide adequate support towards ensuring that TRA discharges its transfer pricing functions effectively. There was no linkage between the monitoring function of MoFP and that of transfer pricing being implemented by TRA.

Recommendations

The Ministry of Finance and Planning should:

1) Ensure that TRA is given support in terms of resources such as budget, offices, enough number of staff specialized in Transfer Pricing issues and tools like laptops, reliable systems to support performance and enhance controls over activities within TRA;

2) Review and initiate the automatic exchange of information between foreign governments to enable TRA to effectively perform its transfer pricing control function;

3) Monitor and evaluate TRA's performance over time including reporting on transfer pricing performance in order to effectively implement transfer pricing control function.

Recommendations to Tanzania Revenue Authority

Tanzania Revenue Authority should:

1) Capacitate the International Taxation Unit by providing adequate staff and technology to enable it to deal with transfer pricing audits and other related reviews effectively;
2) Develop operational transfer pricing policy and strategies that will set short and long term targets to facilitate prompt implementation of transfer pricing controls in the country;

3) Develop Automated risk assessment for selection and handling of transfer pricing audits and issue-oriented transfer pricing cases;

4) In collaboration with MoFP enhance organisational and international coordination which will allow wide exchange of transfer pricing information;

5) Enhance and facilitate availability of sector-based databases and software that could promptly capture data for transfer pricing comparability analysis;

6) Enhance specialised transfer pricing trainings to ITU Staff with the aim of tapping the wide knowledge of transfer pricing within TRA;

7) Devise a mechanism for monitoring, evaluating and reporting on the performance of transfer pricing functions within TRA including potential revenue that would be realised as a result of transfer pricing audits; and

8) Enhance awareness to taxpayers and stakeholders such as law enforcement agencies and sector regulators to enhance voluntary compliance to transfer pricing requirements.

CHAPTER ONE

INTRODUCTION

1.1. Background

Tax is important for any country's development. Collection of tax depends on the effectiveness of the tax legislation of a country, among other things. Taxation of domestic income poses less problems when it is dealt with through local legislation. The problems are likely to increase when dealing with tax of foreign elements. This is obvious in taxation of associated multinational corporations operating across countries, where goods and services are transferred through transfer pricing[4]. The intercompany transactions may offer transfer pricing manipulation to pay less tax by increasing capital expenditures and so maximizing the profit.

According to Tanzania Revenue Authority (TRA)[5], transfer pricing of goods, services and intangible properties are intercompany pricing arrangements between associated parties in their transactions. When independent parties deal with each other, independent market forces shape the commercial pricing of goods, services and intangibles transacted between them.

According to the UN Manual on Transfer Pricing, 2017 transfer pricing rules are essential for countries in order to protect their tax base, to eliminate double taxation and to enhance cross-border trade. For developing countries, transfer pricing rules are essential to provide a climate of certainty and an environment for increased cross-border trade while at the same time ensuring that the country is not losing out on critical tax revenue. Transfer pricing is thus of paramount importance and hence detailed transfer pricing rules are essential[6].

1.2. Motivation for the Audit

The following are the factors which motivated the Controller and Auditor General to carry-out performance audit on implementation of controls over transfer pricing:

[4]https://www.ibfd.org/IBFD-Products/Journal-Articles/International-Transfer-Pricing-journal/collections/itpj/html/itpj_2020_01_tz_1.html accessed 7th May, 2020
[5]Transfer pricing guidelines, May 2014
[6]The United Nations Practical Manual on Transfer Pricing for Developing Countries, 2017 Part B.1.2.17

(i) Tanzania is affected by capital flight and untaxed foreign earnings. These are usually perpetrated by:
   a. Inadequate laws and regulations to tackle transfer pricing problems;
   b. Lack of sound administrative capacity to deal with transfer pricing problems even where legal framework for monitoring transfer pricing exist;
   c. Lack of comparable uncontrolled transactions and relevant evidence on profitability;
   d. Comparability data less likely to exist for tax administrators in LDCs than it is in developed countries; and
   e. Long period that elapses before transfer pricing cases are settled and uncertainty of unfavourable outcomes.[7]

(ii) There are no cases and procedures on how to investigate transfer pricing issues. Thus, it remains a challenge for Tanzanian authorities to identify transfer pricing manipulations and combat the problem. It is a role of the revenue authority to ensure that a standard ethical procurement principle for associated Multi-National Corporations (MNCs) to implement their transactions at arm's length price is adhered to[8]. On the contrary, transfer pricing manipulation becomes an acute problem, because MNCs contribute substantially to the revenue of the country.[9]

(iii) Despite having strong fundamentals, the International Tax Unit (ITU) of the Tanzania Revenue Authority has been slow to begin transfer pricing audits of mining and petroleum companies. This is due to three key issues:

   a. Weak internal and inter-agency coordination,
   b. Limited extractive industry expertise, and
   c. Difficulties faced in getting relevant comparable data.

The extractive industry Audit Team has been reluctant to refer the transfer pricing issue to ITU for investigation. To a lesser extent the

[7]Dr. Hellen B. Kiunsi, 2017. Transfer Pricing in East Africa: Tanzania and Kenya in Comparative Perspective. (A Ph.D Thesis), Open University Of Tanzania, 2017
[8]Policy Forum, How Much Revenue are we Losing, An Analysis of Tanzania's Budget Revenue Projections 2009/2010, Policy Briefing 2.09 p.3.
[9]Kiunsi, B.H., *Curbing Transfer Pricing in Tanzania: A Critical Evaluation of the Income Tax Act*. International Transfer Pricing Journal, 2020, Vol. 27 No. 1

ITU lacks the technical expertise to pursue extractive companies independently (Alexandra Readhead, 2016)[10].

(iv) Like other countries of the world, Tanzania faces the problem about the law regulating international transfer pricing. Manipulation of prices by multinational corporations (MNC) through transfer pricing causes income tax base erosion and profit shifting problems that have called for changes in tax laws governing transfer pricing in many countries. Arm's length principle[11] as a corner stone for transfer pricing between MNCs, and other principles have been enshrined in various domestic tax legislation and Double Tax Agreements in Tanzania[12].

(v) Lack of adequate Regulatory Frameworks is one of prominent causes of these problems at national and regional levels. Other causes include shortage of technical and human capacity to deal with crime perpetuated by sophisticated companies and individuals; involvement in corruption of key government officials operating at different levels of governance; and view of citizens of resource-rich countries that resource rents are free-for-all to harvest if given the opportunity.

(vi) Requirement to support Sustainable Development Goals. Goal 16 of the SDGs among other things provides that by 2030, there should be significant reduction of illicit financial flows and transfer pricing being part of it if manipulated, strengthening the recovery and return of stolen assets and combating all forms of organized crimes. Tanzania as member of UN intends to combat transfer pricing to support this UN agenda.

Therefore, the essence of conducting the audit on effectiveness of controls over transfer pricing was a result of several weaknesses highlighted by various sources. These sources have indicated that transfer pricing is not

[10]A. Readhead., (2016). Transfer Pricing in the Extractive Sector in Tanzania, 2016,. Natural Resources Governance Institute (Retrived from (https://resourcegovernance.org/sites/default/files/documents/nrgi_tanzania_transfer-pricing-study.pdf)

[11]According to the arm's length principle, a transfer price is acceptable if all transactions between associated parties are conducted at arm's length price. Arm's length price is the price which would have been determined if such transactions were made between independent entities under the same or similar circumstances.

[12]Income Tax Act, Cap 332 RE 2008 (ITA), Income Tax transfer pricing Rule 2014, (TP rules) Tanzania Revenue Authority Guidelines, (TRA Guideline).

well managed within the business and socio-economic undertakings in the country.

1.3 Design of the Audit

1.3.1 Audit Objective

The aim of the audit was to determine whether the Ministry of Finance and Planning and Tanzania Revenue Authority ensure controls over transfer pricing are adequately implemented to enhance and improve tax collection.

Specific Objectives

Specific objectives of the audit were to assess whether:

1. TRA adequately plans for implementation of transfer pricing controls;

2. TRA has enough capacity to implement transfer pricing controls in place;

3. TRA has a working mechanism of monitoring the performance and impact of transfer pricing controls; and

4. Ministry of Finance and Planning adequately provide support and monitors the performance of TRA in transfer pricing activities.

1.3.2 Audit Scope

The main audited entity was the Ministry of Finance and Planning (MoFP) and Tanzania Revenue Authority (TRA). MoFP is responsible for coordinating the implementation of the transfer pricing policies and strategies as well as preparation of financial and fiscal policies in the country. TRA on the other hand is responsible for administering Income Tax legislation and other functions in order to curb transfer pricing manipulation in the country.

The audit focused mainly on the adequacy of the extent of transfer pricing controls, adequacy of transfer pricing strategies and plans, implementation of the controls, Monitoring of performance and impact of transfer pricing controls as well as support given by MoFP to TRA to facilitate the implementation of transfer pricing controls.

Information was gathered from different departments and units within TRA which include but not limited to: Large Taxpayers Department; Domestic Tax Department; Human Resources and Administration; and Taxpayer Services and Education. Data was also collected from MoFP based on the role they play in Tax Policy formulation and monitoring aspects.

The audit covered a period of four financial years (2016/17 to 2019/20). This period was selected in order to provide performance trends on the implementation of the planned transfer pricing controls activities overtime.

1.3.3 Methods for Data Collection and Analysis

Both qualitative and quantitative data was collected to provide evidence on the transfer pricing operations within MoFP and TRA. Two methods for data collection and analysis were used during the audit as presented below:

a) Documents Review

Various documents regarding to Transfer Pricing controls were reviewed from the Tanzania Revenue Authority (TRA) and the Ministry of Finance and Planning (MoFP). Documents such as policies, institutional frameworks, strategic plans, annual action plans and budgets, annual implementation plans, operational manuals or guidelines, tools, systems and international conventions were reviewed by the audit team.

Additional documents were sought from other government and International sources for the purposes of validating the information obtained from reviewed documents. For more details of reviewed documents see **Appendix 3.**

b) Interviews

Interviews were conducted for the purposes of obtaining information regarding to effectiveness of transfer pricing audits in minimizing tax avoidance and improving tax collection. The Audit Team conducted interviews and discussions with officials from MoFP and TRA.

However, in the course of the audit additional information was sought from other government entities for the purpose of corroborating the information obtained.

Interviews were conducted with officials at all levels of operation i.e. Senior and middle levels, managers, and operational officers in order to get their views on the effectiveness of controls over transfer pricing in the country. Details of Officers interviewed are as indicated in **Appendix 4.**

1.3.4 Methods for Data Analysis

The Audit team used different techniques to analyse qualitative and quantitative data. These methods are detailed hereunder:

(a) Analysis of Qualitative Data

- Content analysis techniques were used to analyse qualitative data by identifying different concepts and facts originating from interviews or document reviews and categorise them based on respective assertions;
- The extracted concepts or facts were either tabulated or presented to explain or establish relationships between different variables originating from the audit questions;
- The recurring concepts or facts were quantified depending on the nature of data they portrayed; and
- The quantified information (concepts/facts) were then summed-up or averaged in spread-sheets to explain or establish the relationship between different variables.

(b) Analysis of Quantitative Data

Quantitative information with multiple occurrences was tabulated in spread-sheets to develop point data or time series data and relevant facts extracted from the figures obtained;

- The tabulated data was summed-up, averaged or proportionate to extract relevant information and relationships from the figures;
- The sums, averages or percentages were plotted using different types of graphs and charts depending on the nature of data in order to explain facts for point data or establish trends for time series data; and
- Other quantitative information/data with single occurrence was presented as they are in the reports by explaining the fact it asserts.

1.4 Assessment Criteria

The criteria for the audit depended on the roles played by the Ministry of Finance and Planning (MoFP) and Tanzania Revenue Authority (TRA). These roles are spelt out in the approved functions and organization structure of MoFP; Income Tax Act, Cap. 332 R.E, 2019);Tax Administration Act, Cap.438 R.E, 2019; The Tanzania Revenue Authority Act Cap.399 R.E, 2019; The Tax Administration (Transfer Pricing) Regulations, 2018; and Transfer Pricing Guidelines, July 2020.

Further, other International guidelines and manuals for transfer pricing were also used, these included: Organisation for Economic Co-operation and Development (OECD); Handbook on Transfer Pricing Risk Assessment, April 2013; and United Nations Practical Manual on Transfer Pricing for Developing Countries (2017).

Specific assessment criteria for each of the audit objective as gathered from different sources are detailed below:

Planning for implementation of controls

Section 1.1 (1) of OECD Handbook on Risk Assessment requires TRA to strategically plan and select audit cases. On the other hand, the TRA's fifth Cooperate Plan requires TRA to strategically identify tax avoidance through transfer pricing and Base Erosion Profit Shift (BEPS) as being among threats that the Authority must mitigate to leverage its performance.

Capacity to Implement Controls in Place

Section 1.1 (1) of OECD Handbook on Risk Assessment requires TRA to effectively deploy the available enforcement resources. Resource allocation ultimately requires an effective means to strategically select transfer pricing cases that should be audited. Therefore, TRA was expected to allocate sufficient resources while dealing with the implementation of controls to curb multi-practices and avoidance of tax through.

On the other hand, according to Section 4.6 of TRA's Fourth Corporate Plan, TRA committed to use qualified staff to ensure revenue growth from specialised sectors and international trade. TRA was expected to build staff skills and professionalism. This is also supported by TRA's Fifth Corporate Plan, 2017/18-2021/22. Furthermore, Section 1.2 (5) of OECD Handbook on Risk Assessment requires TRA to commit ample resources to transfer pricing function including setting of a multi-disciplinary team of staff possessing legal, accounting, economic and valuation expertise and other relevant discipline.

Working mechanism of Monitoring the Performance and Impact of Transfer Pricing Controls

TRA is expected to have a monitoring and evaluation framework of different levels of performance expected from the implementation of its 5th Corporate Plan 2017/18 – 2021/22, under item 5 on strategy monitoring, evaluation and reporting.,

Also, the Fourth and Fifth Corporate Plan requires TRA to monitor its performance through Enterprise-wide Risk Management System (ERMS). The ERMS entailed identification of risks, implementing mitigation measures, monitoring and evaluating their trend as well as reporting quarterly and annually to the Management and Board.

Other initiatives were to strengthen handling, monitoring and analysis of tax dispute resolutions, outcome of advanced tax decisions and tax rulings for governance improvement. Furthermore, ISO 2009:2015, within section 9 of the 2015, also requires Organisations to ensure revision of standards, and be supported by the aspiration of effective performance and continual improvement.

Support and Monitoring the Performance of TRA in Activities as Provided and Conducted by Ministry of Finance and Planning

According to MoFP strategic Plan of 2017/18-2021/22 MoFP is responsible for widening tax base so as to increase government revenues. In doing so it should work closely with TRA who are responsible to collect tax by monitoring its performance. The same MoFP strategic plan (2017/18–2012/22) requires the Ministry to hold periodic meetings with stakeholders for coordination purpose. MoFP major roles are to ensure sustainable macroeconomic stability, proper coordination and implementation of national development plans and efficient mobilization and allocation of resources.

1.5 Data Validation

Ministry of Finance and Planning and Tanzania Revenue Authority were given the opportunity to go through the draft report and comment on the facts, figures and information presented.

They confirmed on the accuracy of the figures used and information being presented in the audit report. Furthermore, the information was cross-checked and discussed with experts on the field of transfer pricing to guarantee validity of the information provided.

1.6 Standard for the Audit

The audit was conducted in accordance with the International Standards for Supreme Audit Institutions (ISSAIs) on Performance Auditing. The standards require the Supreme Audit Institution (SAI) to plan and perform the audit so as to obtain sufficient and appropriate audit evidence as well as provide a reasonable basis for findings and conclusions based on audit objective(s).[13]

[13]The International Standards of Supreme Audit Institutions (ISSAI) are benchmarks for auditing public entities. They are developed by the International Organization of Supreme Audit Institutions (INTOSAI) which is a worldwide affiliation of governmental entities. The INTOSAI's members are the Chief Financial Controllers, comptrollers, or Auditor General Offices of nations.

The National Audit Office of Tanzania believes the evidence obtained provides reasonable basis for findings and conclusions based on the audit objectives.

1.7 Structure of the Report

Following this introductory chapter, the remaining part of the audit report is organized as follows:

- Chapter Two presents the description of the system for implementation of controls over transfer pricing in Tanzania. Also, it covers legal framework, processes, key players and stakeholders together with their responsibilities in enhancing controls over transfer pricing;

- Chapter Three presents the findings of the audit covering the planning; implementation, performance monitoring and measurement as well as monitoring by MoFP in transfer pricing activities;

- Chapter Four provides overall conclusion and specific conclusions for the audit; and

- Chapter Five outlines the audit recommendations that can be implemented by the Ministry of Finance and Planning (MoFP) and Tanzania Revenue Authority.

CHAPTER TWO

SYSTEM FOR CONTROLLING TRANSFER PRICING

2.1 Introduction

This chapter describes the systems in place that are used to control transfer pricing in the country. It covers governing legal framework, roles of key stakeholders on the implementation of transfer pricing controls in the country.

2.2 Governing Policies, Laws and Regulations

This part gives highlights on policies, laws and regulations that govern the control of transfer pricing and Illicit financial flows in the country.

2.2.1 Policies

Tanzania does not have a National Policy which is directly linked to transfer pricing issues. However, the National Development Vision 2025 under Target 3.3 insists on having a strong, diversified, resilient and competitive economy that can effectively cope with the challenges of development and which can also easily and confidently adapt to the changing market and technological conditions in the regional and global economy.

Further, Target 3.3 of Vision 2025 advocates for activeness and competitiveness in the regional and world markets, to have capacity to articulate and promote national interests and to adjust quickly to regional and global market shifts[14].

In realising this target, the government through MoFP and TRA needs to increase and diversify its tax base by effectively enhancing the controls over transfer pricing to curb transfer pricing abuse and manipulation which affect the nation's tax base.

Besides, the country has in place a legislation which is used to curb abuse of transfer pricing by MNCs.

[14] https://www.mof.go.tz/mofdocs/overarch/Vision2025.pdf

2.2.2 Governing Legislation

The following are the main legislation governing Transfer Pricing in the country:

Table 2.1: Summary of Legislations Governing Transfer Pricing in the country

Legislation	Issues covered related to Transfer Pricing
The Income Tax Act, revised in 2008 (CAP 332)	The Act provide requirements for: • Arrangements between associates to be conducted at arm's length as per Section 33 requirements. It also gives the Commissioner the power to make adjustments on any arrangements that are considered not to comply with arm's length principle. • Payment of tax from established profit-making enterprises; and • Adherence to transfer pricing regulations and rules.
The Tax Administration Act, Revised Edition of 2019	The Act provides for functions of tax officers as being: • To act for the purposes of more than one tax law at the same time; and • To gGather information for the purposes of any tax law in the proper execution of duties under a particular tax law.
Tax Administration (Transfer Pricing) Regulations, 2018	The regulations among others provides for: • Requirements to comply to transfer pricing administration, documentation of related party transactions; • Penalties for non-compliance to transfer pricing regulations; • Penalties and fines where tax offences are committed by taxpayers.
Transfer Pricing Guidelines, 2020	• Provide for practical guidance to be followed by taxpayers when analysing related party transactions; and • Provides for requirements to be followed by MNCs when reporting on transfer pricing issues. These include details of transactions with related parties and documentation indicating basis for prices used for purchases made.

Source: *Auditor Analysis of Analysis of Legislation Governing Transfer Pricing*

2.2.3 Strategies

Strategies for Controlling Transfer Pricing

Tanzania has no Transfer Pricing Strategy. However, transfer pricing as a tax related component has been integrated within TRA's operational documents. Accordingly, TRA's fifth corporate plan (5^{th} CP) has laid down several strategies in ensuring it increases tax base and supports the government's vision towards having an industrial economy.

In doing so, TRA has outlined key strategic objectives to increase tax collection. These are to:

1) Support Voluntary Compliance;
2) Enhance Trade Facilitation;
3) Improve Compliance Management;
4) Enhance Risk Management and Good Governance;
5) Improve Data Quality;
6) Improve Operational Efficiency; and
7) Strengthen Institutional Capacity.

TRA's 5^{th} Corporate Plan has also identified tax avoidance through Transfer Pricing and Base Erosion Profit Shift (BEPS) as being among threats that the Authority must mitigate to leverage its performance. As such TRA established the International Taxation Unit, which among other functions is responsible for dealing with transfer pricing and act as a resource unit for controls.

For the past four years, TRA planned to improve good governance in tax collection and tax audits including investigations of multinational companies. It also plans to train staff on investigation and transfer pricing audits of MNCs. It further aimed at improving Enterprise-wide Risk Management systems and use of technology to improve quality of information.

2.3 Key Players and their Roles in Implementing Transfer Pricing Controls

2.3.1 Ministry of Finance and Planning

According to the Section 5 of the Public Finance Act of 2004 the Ministry of Finance and Planning is responsible for ensuring that there is a macroeconomic and fiscal policy framework for the United Republic for the purpose of:

- Preparing and administering tax policy of the country;
- Supervising and monitoring finances of the country; and
- Coordinating international and inter-governmental financial and fiscal relations.

2.3.2 Tanzania Revenue Authority (TRA)

In discharging its responsibility of collecting Government Revenues, TRA is required to observe the following obligations to taxpayers/stakeholders:

(a) Issue tax assessment in accordance with tax laws;
(b) Collect taxes according to the tax laws, regulations, and procedures;
(c) Co-operate with the Tax Appeals Board or Tribunal and Courts of Law by ensuring timely attendance and provision of evidence to resolve tax disputes. In the process, TRA will respect judicial decisions;
(d) Provide advice to the Government and other government organs on matters of fiscal policy and its implementation;
(e) Offer professional training on tax matters to stakeholders; and
(f) Provide feedback for tax evasion information provided by taxpayers and the public, and in case of tax recovery[15].

On Transfer Pricing, TRA has the following duties according to Regulations 6 and 33 of the Income tax regulations of 2004. These regulations empower the Commissioner:

(a) To prepare transfer pricing guidelines;
(b) To enter into agreement with persons on how arm's length price shall be determined;

[15]https://www.tra.go.tz/index.php/80-taxpayer-s-charter/85-tra-obligations

(c) Conduct tax audits and tax investigations to taxpayers to enhance compliance of Multinational Companies (MNC) with transfer pricing requirements;
(d) Regulation 6 of the Income Tax Act 2004 Regulations gives the Commissioner the power to prepare transfer pricing guidelines;
(e) Section 33(1) of the Income Tax Act, 2004 requires transactions to be conducted at arm's length;
(f) Section 33(2) gives the Commissioner the power to make adjustments that are considered not to comply with the arm's length principle.

2.4 Other Stakeholders

2.4.1 Multinational Corporations (MNCs)

Multinational Corporations or Multinational Companies are corporate organizations that operate in more than one country other than the home country. Multinational Companies (MNCs) have their central head office in the home country and secondary offices, facilities, factories, industries, and other such assets in other countries.

These companies operate worldwide and hence they are also known as global enterprises. The activities are controlled and operated by the parent company worldwide. Products and services of MNCs are sold around various countries which require global management.

2.4.2 Civil Society Organizations (CSOs) and Academic Institutions

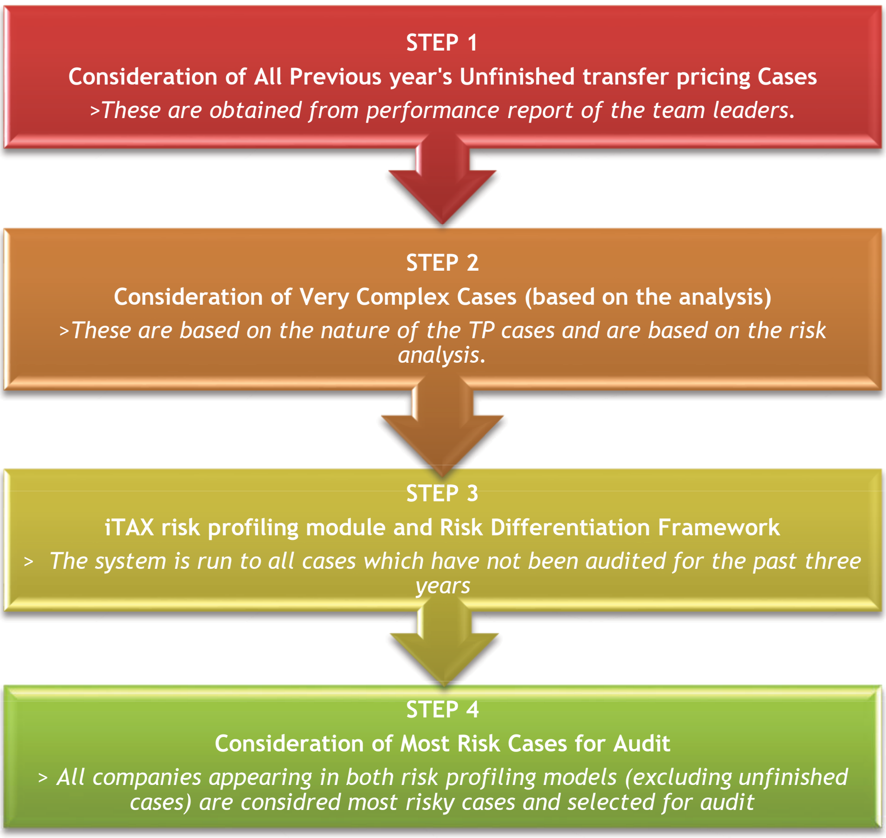
Civil Society Organizations (CSOs) are a group of actors responsible for conducting research, trainings and share reports with the society. Through these CSOs and academic research, the society becomes aware on matters regarding to transfer pricing including its impact to the country's economy once abused. This will encourage whistle blowers and enhance awareness in business operations, including taxation and incidents of avoidance of tax due to existing tax loopholes.

2.5 Transfer Pricing Case Selection Process

In dealing with transfer pricing cases, TRA every year prepares plans which indicate MNCs to be audited for transfer pricing compliance. Based on the systems such as Orbis, iTax or transfer pricing Catalyst, MNCs are selected based on various indicators developed by ITU. MNCs to be considered for transfer pricing audits are usually selected on risk-basis and included in respective annual business plans. However, there are also transfer pricing cases which are issue oriented. Issue-oriented transfer pricing cases are ad-hoc transfer pricing cases which are referred to ITU from other tax departments within TRA such as domestic revenue and tax audit units for determination. These are normally not in the plans at the first instance.

However, if the transfer pricing audits are not completed in a given financial year, they are transferred to the next financial year plan as pricing cases on issue-oriented category. **Figure 2.1** gives steps of the procedure and methodology used.

Figure 2.1: Process for Selection and Handling of Transfer Price Audit



Source: *Auditors' Analysis of Case Selection Procedure Used in Selection of Field Audit Business Plans*

2.6 Transfer Pricing Audit Process

The procedure for handling transfer pricing cases starts from case selection and assignment of the case to transfer pricing Audit Team. Practices indicated that a minimum of 3 staff form a team of transfer pricing auditors and is assigned one transfer pricing cases per year. However, the number of Companies to be audited depends on the available number of staff. Transfer pricing case assignment procedure is as indicated in **Figure 2.2**

Figure 2.2: Transfer Pricing Audit Case Handling Procedure

Step 1: Enterprise-wide Risk

- The LTD - ITU carries out enterpise-wide risk analysis to identify sectors which are most risky to be considered for transfer pricing audit;
- The results are processed and a report for companies to audit is produced.

Step 2: Risk Profiling

- ITU later runs ITAX and Risk Differentiation Framework (RDF) compliance models; and
- These are used to identifyh the most risky transfer pricing companies and which need to be audited immediately.

Step 3: Selection of MNCs to be audited

- Companies are ranked, management picks from the risk profiling report list of companies to audit for that particular year.

Step 4: Allocation of transfer pricing Audits

- After companies are selected for transfer pricing audits, they are allocated and assigned to Audit Teams within the ITU for proceeding with the audits;
- transfer pricing Issues to be looked at during the audit are also communicated for each company to be audited.

Step 5: Actual transfer pricing Audit

- Teams embark in actual audit by developing an audit programme and deliverables;
- The audit cycle for one (1) transfer pricing audit assignment may usually take 9 months to 1 year to complete;
- The normal audit procedures are followed in accordance with public tax auditing standards.

Step 6: Tax Assessment/Adjustment and Closure

- Upon finalisation of the audit, where there are needs for adjustments of asessments, TRA will propose such adjustments or assessments and communicate with the audited companies;
- Case is closed after such adjustment is communicated to audited companies.

Source: *ITU Officials and TRA's Tax Audit Manual*

CHAPTER THREE

FINDINGS

3.1 Introduction

This Chapter presents audit findings. The findings provide the answers to the audit questions provided in Chapter One of this Audit Report. The findings relate to: strategies, plans and targets for controlling transfer pricing; the capacity of TRA in controlling transfer pricing; extent to which TRA monitors and measures performance of transfer pricing controls; and extent to which Ministry of Finance and Planning monitors the performance of TRA in controlling transfer pricing. The observed results are presented in subsequent sections.

3.2 Existence of the Problem

In its 4th and 5th Corporate Plans of 2013/14 to 2016/17 and 2017/18 to 2021/22, TRA acknowledged the existence of tax evasion and avoidance through Transfer Pricing (TP), and Base Erosion and Profit Shifting (BEPS). According to the 4th and 5th Corporate Plans, TRA was committed to mitigate threats to leverage its performance. These included, among others: low tax compliance; tax evasion and avoidance; insufficient resources to undertake planned activities; and porous borders and smuggling.

International Taxation Unit at TRA was established in 2011, and since then it has been able to establish substantial additional taxes in relation to the related party transactions emanating from transfer pricing audits or functions. Up to February 2020, TRA established taxes amounting to TZS 260,425,308,283 and USD 524,848,587 out of which TZS 108, 609, 505,045 was collected while TZS 44,069,680,950 was disputed.

However, civil society organizations contend that these figures would be far higher if not for illicit financial flows and tax incentives. According to their estimates, Tanzania may have foregone USD 1.07 billion in revenue in recent years due to tax incentives, illicit financial flows, inflated claims for expenditure, misreporting of sales and losses and so on[16]. The increase in disputes is also another indicator that cases exist and need to be addressed by the relevant authorities. As of 2019, TRA was involved in 36 transfer pricing cases as compared to six in 2016.

The proceeding part of the Chapter presents the observed conditions and weaknesses of TRA in addressing the problem.

3.3 Inadequate Strategies and Targets for Transfer Pricing Controls

TRA is an ISO certified organisation which has committed itself towards implementation of Organisational Standards stated in the ISO. One of these requirements is enshrined in Clause 4.1 and 5.2. The Clauses, among other things, requires the organization to determine external and internal issues that are relevant to its purpose and its strategic direction.

On the other hand, Clause 5.2 requires management to establish, implement and maintain a quality policy that is appropriate to the purpose and context of the organization and supports its strategic direction. Clause 1.1 (1) of OECD Handbook[17] on Transfer Pricing Risk Assessment requires TRA to strategically plan and select audit cases.

Based on the above requirements the audit noted the following shortfalls:

3.3.1 Lack of Specific Strategy for Controlling Transfer Pricing

Review of the TRA's 4th and 5th Corporate Plans noted that there was no specific strategic goal or objectives for controlling transfer pricing.
TRA identified transfer pricing in their corporate plans as one of the threats and cause for reducing the national tax base through tax avoidance and base erosion. However, the audit noted that, there was no specific strategy in place to address transfer pricing in the country. Despite the efforts noted in its operations, TRA did not give the required weight and efforts on transfer pricing within its strategic goals.

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[16]transfer pricings://resourcegovernance.org/sites/default/files/documents/nrgi_tanzania_transfer-pricing-study.pdf

[17]Tanzania is not a member of OECD but in this case, however it recognizes OECD manuals and guidelines as being used as best practice benchmarking

Interviews with TRA officials revealed that TRA considered transfer pricing function as an operational activity. As a result, it did not specifically incorporate it in its Corporate Plans. TRA was unable to prepare goals and targets for transfer pricing due to the Lack of specific strategy for controlling transfer pricing functions. . This would have ensured that MNCs are strategically controlled with regards to manipulation of transfer pricing. The lack of transfer pricing control targets and goals within its corporate and operational plans made TRA unable to assess its level of achievements.

Incorporating these transfer pricing controls in TRA's corporate plans would enhance implementation of transfer pricing controls as TRA would be able to develop strategic plans and set short and long term targets for controlling transfer pricing manipulation by MNCs.

3.3.2 Inadequate Risk-Based Planning for Implementation of Transfer Pricing Controls

Best practices require TRA to conduct risk profiling and assessment in order to select the right MNCs for transfer pricing audit. This also requires risk assessment to be carried out at various stages of the audit subsequent to the initial risk assessment. This would ensure most efficient and effective use of time and resources.

Review of TRA's business plans for ITU for financial years 2016/17 to 2019/20 and database of existing MNCs noted that, TRA did not plan for transfer pricing audits to match the large number of MNCs despite the fact that selection of MNCs to audit was based on risk.

TRA, at the time of the audit, maintained at least 504 Companies in their database within Large Taxpayers' Department (LTD). However, by the financial year 2019/20 the annual business plan indicated that TRA had classified 140 to 146 MNCs that are risker for transfer pricing audit. **Table 3.1** shows the number of MNCs which were considered the riskiest for transfer pricing purposes over the past four years according to annual business plans and number of transfer pricing audits planned.

Table 3.1: Number of MNCs and Corresponding Tax Audits Planned for Financial Years 2016/17 to 2019/20.

Financial Year	Number of Risky MNCs for Audits	Number of Planned Transfer Pricing Audits as per Annual Business Plans	% of Planned Transfer Pricing Audit
2016/17	140	14	10
2017/18	147	18	12
2018/19	145	13	8
2019/20	146	14	9

Source: *Large Taxpayers Business Plans, 2016/17 to 2019/20*

As indicated in **Table 3.1,** TRA plans did not match with the number of MNCs in the Database or annual business plans. **Table 3.1** also shows that TRA conducted transfer pricing audit to a maximum of 12% of all MNCs for the past four financial years. This was done in financial year 2017/18.

Further review of TRA's business plans showed that for the past four financial years i.e. 2016/17 to 2019/20, only 60 out of 504 MNCs were reached for normal transfer pricing audits. This is equivalent to 11.9% of all MNCs in the database.

As a result, there is a risk that 88% of MNCs were not audited due to the fact that TRA managed to audit only 11% of the entire MNCs. This provides room for tax avoidance due to non-compliance to transfer pricing requirements for non-audited MNCs. This is likely to undermine the national tax base due to shifting of profit to foreign countries.

The Audit Team made an assessment of the 4th and 5th Corporate Plans to check whether TRA adopted risk-based approach during its transfer pricing control planning process. Although TRA carried out risk assessment for case selection, there was no comprehensive risk analysis which provided for TP risks profiling for MNCs over time. This was because TRA used manual risk assessment tool for selection of MNCs for transfer pricing audits. This would cause mishap in capturing the most risky MNCs to be considered for audits. This meant that TRA could not establish trend of transfer pricing risks of MNCs over time.

Also, the risk assessment tool which was carried out manually was generally used for both normal comprehensive tax audits and transfer pricing audits and was not integrated within TRA's corporate plans. This made it difficult for TRA to assess the adequacy of their plans considering that it had a dedicated Unit that dealt with transfer planning issues.

It was noted that TRA would be able to perform risk evaluation by machine learning algorithms which will enable TRA to identify relevant MNCs for conducting transfer pricing audits. Further, the TRA would be able to employ simple analytics and machine learning tools that are good at identifying outliers such as consecutive losses making MNCs, which may be a red flag for transfer mispricing. These tools could be also relied upon during audits, where instead of TRA relying on disclosures, they could instead use a broad range of data to build their own picture of a company and where to focus attention.

3.3.3 Transfer Pricing Controls Not Adequately Addressed in TRA's Corporate Plan

Review of the 4th and 5th TRA's Corporate Plans noted that controls related to transfer pricing such as, transfer pricing auditing strategy, transfer pricing auditing manual, resource allocation, awareness on transfer pricing compliance, and dispute resolution mechanisms, were not specifically addressed in both Corporate Plans for the purpose of streamlining their implementation.

According to interviews with TRA officials, controls were not included in Corporate Plans because TRA did not consider transfer pricing as one of the strategic functions but rather as a normal operational activity that is embedded in the normal operational plans and would be reported at the end of the financial year. On the other hand, the audit noted that TRA gave importance to controlling transfer pricing through establishing ITU for the purpose of planning, implementing and monitoring of transfer pricing activities. Therefore, excluding controls in respective strategic plans contradicts other efforts as explained above.

Failure to include transfer pricing function within the Corporate Plans would likely hamper planning, implementation, monitoring and evaluation of performance of transfer pricing controls. This was evidenced by Lack of progressive and consistent planning regarding to transfer pricing audits as explained under **Section 3.3.2**.

3.4 Insufficient Implementation of Transfer Pricing Controls

TRA was expected to plan and implement an Enterprise Resource Planning (ERP) for all organisational functions. TRA was also expected to implement transfer pricing initiatives that were geared towards improving working environment and provision of tools in TRA offices. Therefore, it was important for TRA to ensure that transfer pricing function is adequately carried out as one of the strategic functions.

However, the audit noted the following shortcomings:

3.4.1 Transfer Pricing Plans Not Implemented and Completed as Planned

Review of annual progress reports of 2016/17 to 2019/20 indicated that TRA did not implement the planned transfer pricing audits as per its annual plans. Further review of TRA's business plans and progress reports showed that plans were not aligned to the progress reports to provide the extent of implementation of transfer pricing plans. **Table 3.2** shows the number of planned and ad-hoc transfer pricing audits and those initiated for the past four financial years.

Table 3.2: Number of Planned and Conducted Transfer Pricing Audits, 2016/17 to 2018

Financial Year	Planned and Ad-hoc Transfer Pricing Audits	Initiated Audits	% Initiated
2016/17	40	14	35
2017/18	59	18	31
2018/19	43	13	30
2019/20	38	15	37
Total	**180**	**60**	**33**

Source: *TRA's Progress Reports, 2016/17 to 2019/20*

Table 3.2 indicates that for the past four financial years, TRA initiated a total of 60 transfer pricing audits which is equivalent to 33% of all planned transfer pricing audits. However, there were inconsistencies with regards to business plans and annual progress reports whereas in the business plans (as indicated in **Table 3.1**) number of planned transfer pricing audits was inconsistent with those reported in the annual progress reports. This was caused by improper planning and errors reported on the implementation of transfer pricing audits in annual progress reports.

It was further noted that business plans and annual progress reports did not capture all transfer pricing audits planned and implemented for each year. Similarly, there was no record as to the basis of the recorded transfer pricing audits planned as indicated in the annual progress reports (as shown in **Table 3.2**).

Furthermore, the annual progress reports for financial years 2016/17 to 2019/20, showed significantly low rate of completion of the conducted audits. Out of the 60 audits initiated, TRA was able to complete only 23 transfer pricing audits for the four financial years. This was equivalent to 38%. **Table 3.3** shows trend in completion of conducted audits for the past four financial years.

Table 3.3: Planned Transfer Pricing Audits versus Completed Audits for Financial Years 2016/17 to 2019/20

Financial Year	Conducted Audits	Completed Audits	%age Completion
2016/17	14	5	36
2017/18	18	10	56
2018/19	13	6	46
2019/20	15	2	13
TOTAL	**60**	**23**	**38**

Source: *Annual Plans and Reports 2016/17-2019/20*

Based on **Table 3.3,** TRA initiated and conducted 60 transfer pricing audits and managed to complete two (2) and ten (10) audit each year. This was equivalent to 13% to 56% whereas the highest score was in the financial year 2017/18 with 56%. Further, the percentage of completed transfer pricing audits was progressively declining in the last two years.

Comparing with the total number of MNCs in TRA annual business plans for each year and number of audits initiated and conducted for the past four financial years, it was noted that TRA completed a total of 23 transfer pricing audits. However, these audits were not necessarily completed within one financial year even though the normal audit cycle was 4 to 12 months. It was further noted that all 23 audited MNCs were audited only once for the past four years.

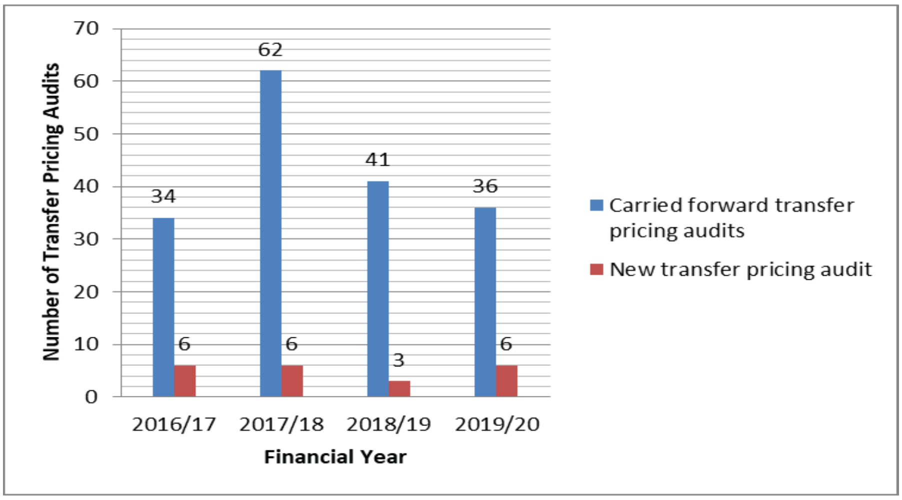
This situation was attributed by ever increasing ad-hoc cases, complexity of transfer pricing cases and minimum number of staff to handle the all planned and ad-hoc cases within the same financial year.

Below are reasons for inadequate implementation and completion of transfer pricing controls:

i. Accumulation of Carried Forward Transfer Pricing Audits

The analysis of planned audits indicated that there were transfer pricing audits which were carried over from one financial year to the next. This means that there were varying increase and decrease of transfer pricing audits which were carried forward as compared to new transfer pricing audit cases. **Figure 3.1** shows comparison between carried forward transfer pricing audits and new transfer pricing cases per year.

Figure 3.1: Comparison Between Carried Forward and New Transfer Pricing Audits



Source: *TRA's Business Plans and Progress Reports, 2016/17 to 2019/20*

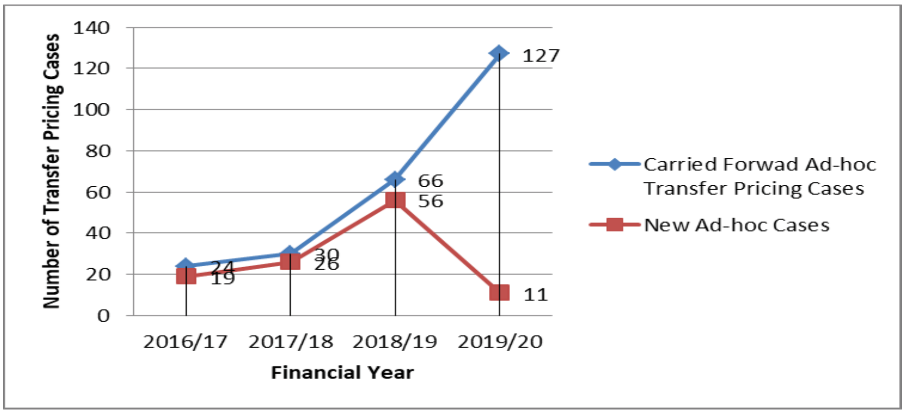
Figure 3.1 shows that TRA had a trend of carrying forward transfer pricing audit cases as compared to initiating new audit cases. It is indicated in the Table that trend in carrying forward transfer price audits was always higher as compared to new audits.

This was because ITU did lacked capacity to complete all transfer pricing audits. As a result, some were rolled over to the following financial year leading to a trend of not initiating new transfer pricing audits due to previous pending audits. This led to accumulation of pending transfer pricing audits.

ii. Increase in the Number of Issue Oriented (ad-hoc) Transfer Pricing Audit Cases also Slowed down Completion of Normal Transfer Pricing Audits

It was further noted that the TRA through ITU handled ad-hoc transfer pricing cases (referred from other Departments within TRA). These were transfer pricing cases which were referred to ITU for opinion, determination or audits from other Departments within TRA. The analysis indicated that usually issue oriented cases were more in number than normal transfer pricing audits. Referred audits were also rolled over and further increased the backlog. **Figure 3.2** shows the trend of rolled over and new ad-hoc transfer pricing cases.

Figure 3.2: Comparison Between Rolled Over and New Issue-Oriented (Ad-hoc) Transfer Pricing Audit Cases



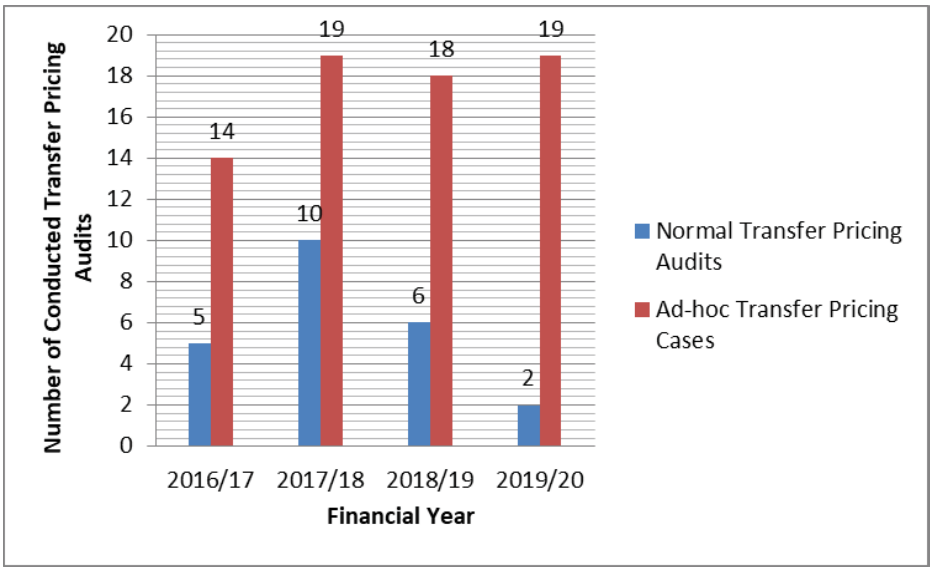
***Source:** TRA's Business Plans and Progress Reports, 2016/17 to 2019/20*

Figure 3.2 indicates that TRA was challenged by large increases in carried forward issue-oriented (ad-hoc) transfer pricing audit cases. As the figure indicates, up to financial year 2019/20, ad-hoc transfer pricing audit cases reached a maximum of 127 as compared to 11 new cases.

iii. Issue-Oriented (Ad-hoc) Transfer Pricing Cases were Given More Priority than Planned Transfer Pricing Audits

It was also noted that, to a large extent ad-hoc transfer pricing audit cases which were referred to ITU were more prioritized than normal planned transfer pricing audits. **Figure 3.3** shows the extent of ad-hoc transfer pricing cases that were conducted as compared to normal transfer pricing audits during the financial years 2016/17 to 2019/20.

Figure 3.3: Completed Normal Transfer Pricing Audits and Ad-hoc Cases for Financial Years 2016/17 to 2019/20



Source: *Auditors' Analysis of Completed Normal Transfer Pricing Audits and Issue Oriented Transfer Pricing Cases, 2016/17 to 2019/20*

Table 3.3 shows that, for the past four financial years the number of completed ad-hoc transfer pricing audits was higher than normal transfer pricing audits. The highest number of 19 audits was recorded in financial years 2017/18 and 2019/20. At the same time the number of completed planned transfer pricing audits declined to two (2) in the financial year 2019/20. However, the ad-hoc cases were not reflected in the annual business plans and are reported separately.

This implies that the priority is progressively inclined towards conducting ad-hoc transfer pricing audits rather than planned transfer pricing audits. As such, this impacted the planning of regular annual transfer pricing audits because ITU was dealing mostly with transfer pricing audit cases referred from other TRA's Departments.

This could be an indication that, the planned normal transfer pricing audit cases were not based on thorough risk assessment. Real needs were identified later and therefore requiring ad-hoc audits.

The reasons provided by Officials responsible with transfer pricing audits was that, completion of transfer pricing audits was impacted by normal on-going tax audits within TRA, once transfer pricing issues were identified during the normal tax audits, they were reported or submitted to ITU for further guidance or audits. However, based on TRA argument that normal transfer pricing audits were selected on risk basis, it was paramount that they were given utmost priority other than ad-hoc transfer pricing cases.

Following this reactive and ad-hoc approach there was likelihood that some MNCs would not be audited for years and accordingly provide room for tax avoidance leading to loss of revenue.

iv. Tax Assessed and Established as a Result of Transfer Pricing Audits

The Audit noted that, there was an obvious return on investment if more efforts and investment was put in conducting transfer pricing audits. Review of progress reports for financial years 2016/17 to 2019/20 noted that despite the above shortfalls in handling transfer pricing cases, transfer pricing audits had huge impact in generating revenue once a case is successfully completed. **Table 3.4** shows amounts of taxes assessed and established as a result of audits conducted and cases completed at ITU.

Table 3.4: Amount of Tax Assessed as a Result of Planned Transfer Pricing Audits and Cases

Financial Year	Number of Transfer Pricing Cases Audits Completed	Amount of Tax Assessed (TZS)	Amount of Additional Tax Established (TZS)
2016/17	-	-	-
2017/18	12	53,661,673,863	27,344,222,493
2018/19	10	1,017,207,842,869	-
2019/20	1	10,493,066,118	-
Total	**23**	**1,081,362,582,850**	**27,344,222,493**

Source: *Analysis of TRA's Annual Progress Reports, 2016/17-2019/20*

Table 3.4 suggests that, transfer pricing if well controlled and handled could yield huge amounts of tax resulting from transfer pricing audits. As indicated above, according to annual progress reports, for the past four financial years TRA was able to assess tax worth TZS 1,081,362,582,850 and established additional tax worth TZS 27,344,222,493 as a result of normal and ad-hoc transfer pricing audits.

3.4.2 Inadequate Inter-Departmental Coordination in Handling Transfer Pricing

According to the 4th and 5th Corporate Plans, TRA was expected to provide a coordinated approach towards management of risks that impact on its ability to achieve the strategic objectives and overall vision. This would be achieved based on Enterprise-wide Risk Management System (ERMS).

Review of TRA's Business Plans for years 2016/17 to 2019/20 and interviews held with Officials from different Departments within TRA showed that there was inadequate interdepartmental coordination with regards to transfer pricing control function. This was attributed by the following scenarios:

(i) Despite investing in systems such as the ERMS, these systems could not effectively capture and inform on matters of transfer pricing. There were also no documented efforts that showed how transfer pricing issues were complementary within TRA Departments. The responses from interviews suggested that ITU was responsible for all tranfer pricing matters. However, the audit noted that other departments such as Domestic Revenue were also dealing with transfer pricing issues at zonal and regional levels;

(ii) Interviews with TRA officials at Large Taxpayers Department at ITU and Domestic Revenue Department, transfer pricing cases were mainly received from Domestic Revenue Departments as a result of normal comprehensive tax audits conducted. However, there was no systematic or mechanised form of communication on how these issues were reported to ITU or whether feedback was given by either ITU or DRD once reported transfer pricing cases were completed or concluded. Based on interviews with same officials, status of transfer pricing disputes including the amount of tax disputed was also not clearly known by other Departments. This would assist TRA to have information on the expected results of the disputes and accordingly plan on how to mitigate further disputes.

Also it would assist TRA to ascertain the amount of tax that would be expected based on the disputed tranfer pricing results;

(iii) It was noted that ITU acted as a resource hub for transfer pricing issues since its establishment in 2011. Some tranfer pricing activities were handled by other Departments or Units such as Domestic Revenue, Tax Audits as well as in zonal and regional offices. However, the status of such audits could not be readily available in ITU. According to interview with TRA officials at ITU, this was because there was also no systematic way that enabled ITU to coordinate transfer pricing activities being handled by other Departments. For instance, there was an overlap of activities as there was no framework for DRD to escalate transfer pricing matters to ITU and it is only left to the tax managers to refer such cases to ITU.

According to TRA's 5th Corporate Plan 2017/18 to 2020/21 TRA was expected to initiate a database for exchange of information at the International Taxation Unit to facilitate sharing of information for tax compliance purposes. Through interviews with TRA officials, it was noted that the database was established. However tha database was not in operation because there was inadequate initiatives to operationalize it.

However, there was no systematic form of communication on how these issues were reported to ITU or whether feedback was given by either ITU or DRD once reported transfer pricing audits were concluded or completed.

This was evidenced by the fact that, it was difficult to accurately establish the number of transfer pricing cases being handled by different Departments, Zonal and Regional Offices within TRA and those referred to ITU from other Departments.

3.4.3 Insufficient Network of Tax Information Sharing and Exchange

Regulation 6 (5) of the Tax administration (Transfer Pricing) Regulations, 2018 requires TRA to obtain both domestic and external comparable data through exchange of information. As part of transfer pricing intervention to curb transfer pricing abuse, TRA through the Ministry of Finance and

Planning (MoFP) planned to enter into agreements with foreign governments and tax authorities for exchange of tax information.

In 2019/20 TRA was involved in negotiation involving two (2) DTAs between: Tanzania and Egypt; and Tanzania and Zimbabwe. All these were hosted by MoFP. In financial year 2017/18, TRA also participated in negotiation of three (3) DTAs with Morocco, South Korea, Singapore, and East Africa Tax Policy Formulation. These treaties are yet to be finalised and operationalise to date. According to TRA officials, among the reasons for delay in signing such agreements was the divergence in taxing rights between contracting states. So far, the existing operational treaties involve Canada, Denmark, Finland, India, Italy, Norway, South Africa, Sweden, and Zambia.

TRA's annual progress reports for years 2016/17 showed that there were initiatives in place to review old and initiate new international tax treaties to facilitate International Coordination and Information exchange. **Table 3.5** shows status of International Tax Treaties which were planned to be reviewed and initiated for the past four financial years.

Table 3.5: Status of Double Taxation Treaties, 2016/17 to 2019/20

Financial Year	Process/Activity	Planned DTAs	Implementation Status
2016/17	Review	12	For the past four financial years these planned activities were not implemented despite the fact that they were in respective business plans each year
	Initiate	12	
2017/18	Review	12	
	Initiate	12	
2018/19	Review	12	
	Initiate	12	
2019/20	Review	12	
	Initiate	12	

Source: *Auditors Analysis of TRA's Annual Progress Reports, 2016/17-2019/20*

Table 3.5 above indicates that, for the past five years, there had been plans to review and initiate TRA 12 DTAs per financial year. However, none was reviewed nor initiated.

The slow pace in signing and finalising the information exchange agreements has affected TRA's ability to effectively get transfer pricing information and thus leading to limited tax information for transfer pricing analysis. A review of TRA's Annual Progress Reports for financial years 2016/17 to 2019/20 indicated that so far TRA was able to exchange information with Countries where they have DTAs such as India, Sweden, and South Africa. As such, it was noted that TRA developed and used an exchange of information template for the purpose of exchanging information with foreign tax authorities named above.

Reasons for not meeting the target of reviewing and initiating twelve (12) agreements each year was the established legal framework which limited sharing national data with foreign countries. According to TRA's officials at the time of audit, it was noted that, TRA is in the process of assessing and evaluating its legal and institutional framework regarding to exchange of information with other foreign countries and tax administrations.

The result of this assessment was expected to provide comfort to other foreign tax jurisdictions to enter into such agreements to facilitate exchange of tax information during transfer pricing audits.

3.4.4 Performance of Information Database for Comparability Analysis

The UN Practical Manual on Transfer Pricing for Developing Countries requires availability of information for examining the pricing of comparable transactions. Furthermore, Clause 1.1 (2) of OECD Handbook on transfer pricing requires a tax administration to have effective risk identification and assessment so as to select the right transfer pricing cases for audit. To achieve this, reliable database that could provide relevant and up-to date data for price comparability analysis is needed.

The audit commends the effort taken by TRA to maintain a database and software for comparability analysis. Review of transfer pricing audit reports conducted between 2016/17 and 2019/20 showed that TRA used Orbis and TPcatalyst software to obtain comparable data for transfer pricing analysis. The database also comprised of Software namely ktMINE and CUFTanalytics. The database was acquired in financial year 2015/16 and has been used to-date.

According to interviews with officials the two softwares had limited capacity to process all tax data needed for comparability analysis. For instance, ktMINE was basically used for analysing intangibles products e.g. royalties, licences and management fees but could not adequately analyse intellectual property products. KUFTanalytics was used for analysing loans (interest rates such as thin capitalisation)[18]. Because of this limitation TRA lacked comprehensive analysis of transfer pricing transactions. Examples of this tax data included, management fees, royalty, intellectual property and commodities. These comparable data were required to be of use for transfer pricing analysis to establish arm's length price of a specific transaction.

Based on the discussion with TRA officials, it was noted that, the current database such as Orbis and TPCatalyst is widely used worldwide despite the shortfalls. However, TRA officials acknowledged that although about 60 staff had access to the database, only 4 to 6 staff could comprehensively use the database to generate reports based on reliable comparables. This would hamper the wide use of the database within TRA for comparability analysis.

Further, according to interviews with TRA officials and review of challenges in the annual progress reports, TRA depended on information requested from foreign governments. Such information included: financial information extracted from financial statements from public listed companies; agreements for transactions such as loans, royalty or intellectual property, commodities which could not be easily obtained through TPCatalyst software; and mergers and acquisition deals for determination of transaction values. Most of these data were obtained through foreign sources.

The exact cost of obtaining information could not be established by ITU because such information is usually obtained from countries with information sharing agreements or Double Taxation Agreements (DTAs).
The impact of not having comprehensive databases for transfer pricing comparability analysis and analytics software hindered TRA's pace of handling transfer pricing cases on timely basis. This could lead to loss of tax that would be collected had the interventions been carried out on timely basis and with up-to-date tools and software.

[18]Thin capitalisation refers to the ratio of debt to equity. Where a corporation is heavily capitalised by debt claims, it is considered to be thinly capitalised. In certain circumstances, a corporation that is thinly capitalised may not be entitled to a full deduction of its interest expense (https://www.rsm.global/tanzania/insights/tax-insights/tanzania-tax-laws-and-practice).

3.5 Inadequate Capacity to Implement Transfer Pricing Controls

Strategic Objective 7 of TRA's 5th Corporate Plan of 2017/18 to 2021/22, require TRA to strengthen Institutional Capacity for the purpose of enhancing revenue collection. This is basically by ensuring availability of human resources, building team capabilities, broad training on transfer pricing, having multidisciplinary skillset within the Organisation, presence of research materials and databases as well as Information Technology.

This requirement was also supported by the UN Practical Manual on Transfer Pricing for Developing Countries of 2017 which requires Tax Authorities to establish transfer pricing capabilities within the transfer pricing Units.
Under this Section the audit noted the following:

3.5.1 Insufficient Budget for ITU to Execute Transfer Pricing Functions

It was noted that, TRA had set aside funds for Large Taxpayers' Department to carry out its functions. The estimates were further allocated to ITU for conducting transfer pricing audits and other related functions. **Table 3.6** shows amounts set aside for ITU to implement transfer pricing functions.

Table 3.6: Budget Set Aside for ITU to Implement Transfer pricing functions

Financial Year	Approved Estimates (LTD) (TZS)	Expenditure Approved Estimates (ITU) (TZS)	% Allocation to ITU
2016/17	3,699,913,522.93	95,873,554.04	3
2917/18	2,727,223,904.23	308,882,754.70	11
2018/19	2,862,915,168.13	552,436,822.54	19
2019/20	3,469,099,720.70	689,212,272.58	20
Total	**12,759,152,315.99**	**1,646,405,403.86**	

Source: *LTD Budget Commitments, 2016/17 to 2019/20*

As indicated in **Table 3.6**, ITU was receiving less amount of the entire budget allocated to LTD. The maximum budget allocation was in 2019/20 where about 20% of total budget was allocated to ITU. The audit conducted an analysis based on the required budget for carrying out transfer pricing audits and the amount allocated to ITU. **Table 3.7** provides details of amounts needed for carrying transfer pricing audits and the amounts approved.

Table 3.7: Amount Needed for Conducting Transfer Pricing Audits and Amount Disbursed to ITU

Financial Year	Amount Allocated for TP Audits at ITU (TZS)	Estimated Cost per Transfer Pricing Audit (TZS)	Number of Planned Transfer Pricing Audit	Number of Initiated Transfer Pricing Audits	Deficit in Transfer Pricing Audits Budget (TZS)
2016/17	95,873,554.04	20,000,000	40	28	464,126,445
2017/18	308,882,754.70	20,000,000	59	51	711,117,245
2018/19	552,436,822.54	20,000,000	43	42	287,563,178
2019/20	689,212,272.58	20,000,000	38	33	None

***Source:** Auditors Analysis*

As indicated in **Table 3.7**, for the four financial years, ITU faced deficit of budget for conducting transfer pricing audits with the maximum deficit being recorded in financial year 2017/18. However, in year 2019/20 ITU did not record any deficit. This impacted ITU's capacity to meet its planned and initiated transfer pricing audits. However, despite the fact that funds were allocated to ITU the Audit noted that large percent of the funds were for subscriptions and membership fees as indicated in **Table 3.8**.

Table 3.8: Amount Allocated to ITU and Amount Spent for Subscriptions and Membership Fees

Financial Year	Approved Budget Allocated to ITU (TZS)	Subscription and Membership (TZS)	% Allocated to Subscription/ membership	% Allocated for ITU Functions
2016/17	95,873,554	0	0	100
2017/18	308,882,754	124,403,650	40	60
2018/19	552,436,822	429,669,075	78	22
2019/20	689,212,272	385,431,866	56	44

***Source:** Auditors' Analysis of ITU budget for 2016/17 to 2019/20*

As shown in **Table 3.8** even though ITU was allocated with funds to finance its functions, large portion of the allocated amount was for payments of subscriptions and membership fees. The percentage amount of subscriptions and membership ranged between 40% and 78%. For the last two financial years amount allocated was over 50% of the total budget with the highest percentage recorded in financial year 2018/19.

Subscriptions and membership fees were crucial to enable TRA to access information from transfer pricing analytical tools. However, the disproportional allocation of funds to this function meant that ITU discharged its transfer pricing functions such as field audits with fewer budgets. As shown in the above **Table**, in years 2018/19 and 2019/20 it received less than 50% of the total budget for ITU functions such as field transfer pricing audits, the lowest being 22% of the total amount allocated to ITU.

Based on **Table 3.8** above, according to approved budget, the cost of auditing one transfer pricing was TZS 20,000,000. Thus, the amount of money that was left for transfer pricing audits for the four years ranged from TZS 95,873,554 to TZS 689,212,272 which would suffice to facilitate a maximum of 4 to 34 audits per year.

3.5.2 Inadequate Human Resource for Implementing Transfer Pricing Controls

Review of the TRA's Company database indicated that TRA had a total of 713 MNCs. Among them, 225 were handled by Large Taxpayers' Department (LTD). ITU had primary function in dealing with transfer pricing matters within LTD either in normal transfer pricing audits or transfer pricing ad-hoc cases which were referred to it for determination or opinion from other Departments.

Review of progress reports and transfer pricing audits analysis of TRA showed that for the past four financial years transfer pricing audits completed covered were seventeen (17). The analysis of tax assessed and recovered is as indicated in **Table 3.9.**

Table 3.9: Amount of Tax Assessed and Recovered as a Result of Transfer Pricing Audits

Financial Year	Total Turnover (TZS)	Tax Assessed (TZS)	Tax Recovered (TZS)
2016/17	613,256,169,000	43,700,000,000	43,700,000,000
2017/18	2,489,843,740,000	61,383,481,785	47,146,656,581
2018/19	1,136,205,002,017	16,602,637,891	3,769,782,145
2019/20	USD 137,048,000[19]	30,993,066,318	13,993,066,318
Total	**4,239,304,911,017**	**152,679,185,995**	**108,609,505,045**

Source: *Auditors Analysis of Assessed Tax Report, 2020*

[19] This amount is not added to the total of TZS 4,239,304,909,000.

From **Table 3.9**, MNCs with a total turnover of TZS 4,239,304,909,000 for financial years 2016/17, 2017/18 and 2019/20 and USD 137,048,000 in financial year 2018/19 were audited. From these transfer pricing audits tax recovered was TZS 108,609,505,044.60. This was for only completed audits. However, despite the efforts, it was noted ITU was understaffed for the past four financial years.

The Audit Team noted that ITU had a total of 19 staff at the end of the financial year 2019/20. This number included management staff. For the past four financial years the number of staff at ITU was as indicated in **Table 3.10.**

Table 3.10: Trend of Staffing Level at ITU, 2016/17 to 2019/20

Financial Year	Required Number	Available Staff	Annual Increase/ Employed	%Staffing Gap
2016/17	30	12	0	60
2017/18	30	14	2	54
2018/19	30	14	0	54
2019/20	30	19	5	47

Source: *Analysis of TRA's Staff Establishment and Staff Disposition at ITU*

Table 3.10 indicates that, from 2016/17 to 2019/20 ITU was not able meet the staff establishment requirements despite the gradual increase in number of staff. Hence ITU was understaffed for the past four financial years. At the time of audit the gap in staffing levels stood at 47%.

Based on interview with TRA officials responsible for human resources management, it was noted that the reason for not meeting staffing level requirement was cancellation of recruitment of new employees since 2015/16 by the government. Therefore, there were no new recruits over the period under audit. As a result, TRA was not able to promptly handle the workload arising from the number of MNCs they were expected to reach.

Furthermore, the review of ITU's business plans for years 2016/17 to 2019/20 indicated that, at least a minimum of 3 staff were supposed to be involved in audit of one MNCs and the duration of one transfer pricing audit was 12 months. This means that one (1) transfer pricing audit for one (1) MNC would at the minimum be carried out by 3 staff. Basing on that premise staffing level was paramount to ensure at least each MNC was audited once in three years as per transfer pricing risk profiling reports due to insufficient number of staff at ITU.

The Audit Team analysed the number of MNCs as compared to a minimum number of 3 Staff that could be involved in one transfer pricing audit for one MNC per year as per business plan. Analysis in **Table 3.11** shows a deficit of staff that would be required to ensure that all MNCs were audited in respective financial years.

Table 3.11: Deficit of staff that would be required to ensure that all MNCs were audited in respective financial years

Financial Year	Number of Planned MNCs for Audit	Staff Available	Staff Deficit
2016/17	179	12	48
2017/18	160	14	41
2018/19	179	14	48
2019/20	183	19	49

Source: *Analysis of TRA's Staff Establishment and Staff Disposition at ITU*

Table 3.11 indicates had for the past four years ITU had a deficit of staff to complete transfer pricing audits for all MNs per year. This was benchmarked with a team of a minimum of 3 staff per audit. Thus, due to such deficit there were some MNCs which were not audited for the past four financial years due to shortage of staff. **Table 3.12** shows the number of MNCs which were potentially not audited due to staff deficit indicated in **Table 3.11**.

Table 3.12: Number of MNCs which were not Audited Due Deficit of Staff

Financial Year	Number of Available Staff	Potential Audit Teams (3 Staff)	Potential Audited MNCs	Potential Unaudited MNCs	% of un-audited MNCs
2016/17	12	4	44	134	75.3
2017/18	14	4	44	116	72.5
2018/19	14	4	44	135	75.4
2019/20	19	6	30	153	83.6

Source: *MNCs Database and Human Resources Establishment, 2016/17-2019/20*

As indicated in **Table 3.12,** ITU had the potential to audit about 16% to 25% of all MNCs leaving 75% to 84% percent unaudited. However, if the deficit of staff shown in **Table 3.11** could be attended then it would suffice to ensure all MNCs were audited. This means that number of MNCs which could not be attended per year ranged between 116 and 153.

This suggests that, there could be huge potential tax to be recovered should audits be timely and adequately conducted. Shortage of staff may potentially lead to loss of revenue as unaudited MNCs may take advantage of the weaknesses and avoid tax, which could be recovered should the respective MNCs be audited from time to time as discussed in above Sections.

3.5.3 Inadequate Skillset within ITU to Implement Transfer Pricing Controls

Section 1.2 (5) of OECD Handbook on Transfer Pricing Risk Assessment requires TRA to commit a substantial amount of time from a multi-disciplinary team of auditors possessing legal, accounting, economic and valuation expertise.

According to TRA Staff's establishment, ITU had a total of 19 staff including management staff and were of different skills. **Table 3.13** indicates number of staff and their professional skills at different levels.

Table 3.13: Number of Staff and their Respective Professional Skills

	Required Skills	**Financial Years (Number of Professions Available at ITU)**			
		2016/17	**2017/18**	**2018/19**	**2019/20**
Expected Professions within ITU for **Transfer Pricing Purposes**	Economists	4	6	6	6
	Tax and Accounting	6	6	6	10
	Valuation experts	0	0	0	0
	Legal	2	2	3	3
	Statisticians (analytics)	0	o	0	0
	Total	**12**	**14**	**15**	**19**

Source: *Auditors' Analysis of ITU Staff Establishment*

As it can be noted, from **Table 3.13** that ITU had a relatively substantial number of Economists and Tax Accounting Professionals compared to other professions. This means that there would be difficulties in getting in-house multidisciplinary skills when transfer pricing audit or transfer pricing ad-hoc cases emanating from MNCs required multiple professions to handle.

The reason for having low number or lacking other professions was non-employment of new employees for the past five (5) financial years. However, TRA could have considered Internal transfers to ensure ITU is well manned with multidisciplinary professionals to be able to promptly and timely conduct and complete transfer pricing audits. Limited number of professionals will usually make transfer pricing audits complex due to lack of relevant skills and multidisciplinary audit team and thus rendering audits to be completed late.

3.5.4 Trainings to Transfer Pricing Staff Not Adequately Conducted

According to the 5th Corporate Plan, TRA was expected to build Institutional Capacity through the provision of education and skills training to employees.

A review of Training Plans and Implementation Reports for financial years 2016/17 to 2019/20 indicated that, for the past four years, TRA conducted 44 trainings for Large Taxpayers' Department. Within which only 9 trainings were planned for specific transfer pricing. **Table 3.14** shows a comparison between planned number of trainings and the actual number of transfer pricing trainings.

Table 3.14: Planned Total Number of Trainings in Relation to Transfer Pricing Trainings at LTD, 2016/17 to 2019/20

Financial Year	Total Planned Number of Training	Total Planned Transfer Pricing Trainings	% variance
2016/17	12	3	25
2017/18	9	2	22
2018/19	14	1	7
2019/20	9	3	33
Total	**44**	**9**	**20**

Source: *Training Plans and Training Reports, 2016/17 to 2019/20*

As indicated in **Table 3.14**, for the past four financial years, TRA planned to conduct a total of 44 trainings out of which 9 trainings were on transfer pricing. This represented 20% of all the trainings planned. The training events on transfer pricing were spread across the four years.

Review of training reports showed that TRA conducted all the nine (9) transfer pricing trainings as planned.

Review of training implementation plans and reports for financial years 2016/17 to 2019/20 revealed that trainings did not target all staff dealing with transfer pricing audit function. **Table 3.15** shows types of trainings and target group of the said trainings.

Table 3.15: Number of Transfer Pricing Training Conducted, Target and Attendance of ITU Staff

Financial Year	No. of Transfer Pricing Trainings Conducted	Training Description	Total Number of Participants	Number of ITU Staff attended	% number of Transfer Pricing Staff (ITU)
2016/17	3	International Taxation and Transfer pricing	7	7	100
		Transfer pricing, Intangibles and Business Restructurings	10	4	40
		Implementing BEPS Initiatives and Transfer Pricing	1	1	100
2017/18	2	Transfer Pricing Dispute Resolution and Avoidance	4	1	25
		Exchange of Information	4	1	25
2018/19	1	Transfer Pricing Guidelines and Comparability Toolkits	20	0	0

Financial Year	No. of Transfer Pricing Trainings Conducted	Training Description	Total Number of Participants	Number of ITU Staff attended	% number of Transfer Pricing Staff (ITU)
2019/20	3	Toolkit on Transfer Pricing Analysis	1	1	100
		Exchange of Information	2	2	100
		Transfer Pricing Guidelines and Comparability Toolkits	9	2	22
Total	**9**		**58**	**17**	**29**

Source: *Auditors Analysis of TRA's Training Plans and Implementation Plans, 2016/17 to 2019/20*

Based on **Table 3.15**, staff in the unit dedicated to conduct transfer pricing audits did not always participate in the training. In this regard only 29% of the participants were from ITU.

For the past four financial years it is only during financial year 2016/17 where 11 staff attended training on transfer pricing while no staff at all attended any training in 2018/19. This was below the prescribed total number of staff within ITU which ranged between 12 in 2016/17 and 19 in 2019/20. Consequently, this would pose as a challenge of having in-house staff within the Unit kitted with partial transfer pricing skills.

According to review of training implementation reports and interviews with TRA officials responsible with training, for the past four financial years the audit noted that training was conducted to a large cross-section of tax officials rather than to a smaller group of officials to build transfer pricing expertise and specialized transfer pricing Audit Teams. This position is disputing the UN Transfer Pricing Practical Manual for Developing Countries which insist that it is wise for tax authorities to build specialised expertise for transfer pricing units to enable them deal with transfer pricing issues as they arise. This will help to enhance available transfer pricing controls through transfer pricing audits.

Inappropriate selection and training relevant staff led to skills gap between newly recruited ITU staff and experienced staff. This was because of insufficient training and exposure to new developments around the International Taxation arena as the field of transfer pricing is always changing.

3.5.5 Inadequate Tools to Enhance Transfer Pricing Controls

UN Practical Manual on transfer pricing requires basic quantitative risk assessment tools to be used. It also requires risk assessment tools to be used to run through large sets of available data. The tools also would involve other transfer pricing activities like analysis of nature of comparables such as intangibles products, loans, extractive products, commodities/goods and services.
According to interview with officials at ITU, it was noted that TRA subscribed to tax databases and software for handling transfer pricing cases. For instance, in the financial year 2016/17 an upgrade costed TRA Euro 124,775. This contract covered: TPCatalyst (Transfer Pricing application which cost Euro 43,125.00); cost of upgrading features (ORBIS Full access) Euro 72,450.00; and a database on Royalty Agreements for Euro 9,200.00 for the duration of three years.

However, according to interviews with TRA officials it was noted that not all aspects of products had specific software for comparability analysis. **Table 3.16** shows type of items or products and the analytical tool available in the current TPCatalyst (Transfer Pricing Application).

Table 3.16: Tools Used by TRA in handling Transfer Pricing Audits and Other Cases

S/N	Items	Analytical Tools available
1.	General Tool	ORBIS
2.	Intangible Products e.g. Royalties, licenses, management fees	KtMine
3.	Loans (Interest Rate)	CUFTanalytics
4.	Margins and Ratio	TPCatalyst
5.	Commodities	Not Available
6.	Extractive Sector	Not Available

Source: *Auditors Analysis Based on Assessment of existing TRA Analytical tools*

As indicated in **Table 3.16**, TRA acquired software for transfer pricing comparability analysis. However, out of the six (6) items identified, TRA was able to analyse four (4) tax items and transactions depending on the analytical tools in place. ITU used various tools but specifically ktMINE and CUFTanalytics for transfer pricing comparability analysis. In addition, there were sectors that the Unit could not easily get data for benchmarking due to lack of analytical tools.

Due to inadequacies of tools for comparability analysis, there would be failure to invest in appropriate databases that are relevant to the transactions being reviewed by TRA.

3.5.6 Key Sectors Not Covered in Transfer Pricing Audits

Due to deficiency in analytical tools, some sectors (with their respective GDP contribution to the economy) such as construction (GDP 13.6%); (Agricultural (GDP 27.7%), Extractive (GDP 5%) and Manufacturing (GDP 4%) sectors were not adequately audited despite their notable contribution to national GDP. Lack of up-to-date software for comparability analysis made it difficult for TRA to accurately capture comparable data for products from the above sectors.

According to Officials responsible for transfer pricing data analysis, it was noted that TRA was compelled to source information from foreign jurisdictions for comparability analysis. This included: information extracted from financial statements from public listed companies; agreements for transactions such as loans, royalty of intellectual property, commodities; and mergers and acquisition deals for determination of transaction values.
Further interviews held with officials dealing with transfer pricing indicated that TRA was selected by Royalty Range which is funded by the European Union's Structural Funds for pilot test of the most recent analytical software to be launched in the near future namely "Royalty Range", which would be used for comparability analysis for intangibles such as Royalties, Intellectual Property, Management Fees, etc.

In addition, review of annual progress reports noted that, there were repeated administrative challenges which were reported every year that hindered ITU from discharging its transfer pricing functions as expected. These were:

(i) delay in submission of information by taxpayers due to the nature and location of the requested information;
(ii) limited office facilities for use such as office library, conference facilities, unreliable internet etc.

According to TRA officials, this impairs clients' confidence with regards to security of their business information and data that is shared with TRA. However, it was noted that TRA did not conduct any survey to establish the level of confidence of its clients.

The impact of this is that, once there is low or no confidence, it would be difficult for TRA to timely get requested tax information from MNCs for transfer pricing analysis and hence prompt delays in completion of the audits or transfer pricing engagement.

3.6 Inadequate Monitoring of Implemented Transfer Pricing Controls

According to the 5th Corporate Plan of 2017/18 to 2020/21, TRA was required to monitor its day to day activities as well as its operations. Monitoring was expected to be used to as a tool to measure the results envisaged in plan and the benefits that will accrue to stakeholders. Monitoring framework intended to show how the interventions would be monitored, reviewed, and evaluated.

The framework also illustrated how the performance indicators and strategic measures would be gauged including the frequency of reporting to stakeholders. The audit noted several weaknesses as detailed in sections below.

3.6.1 Monitoring Plans and Reports Did Not Adequately Address Transfer Pricing Function

It was noted that TRA had an organisational Monitoring and Evaluation (M&E) framework which was used to measure performance every financial year end.

The review of monitoring plans and reports showed that for the past four financial years, monitoring plans did not address Transfer Pricing issues adequately. There was no specific key performance indicator on how Transfer Pricing activities would be measured at the end of financial year. The reason provided by Officials dealing with Monitoring and Evaluation was that, Transfer Pricing is an operational activity which is embodied within the wide organisational monitoring plan and Corporate Plan.

However, this assertion did not match with other initiatives taken by TRA that showed the importance of transfer pricing including the establishment of ITU.

The information given in the reports reflected only the general performance of the entire Department (LTD) but not ITU or transfer pricing specific. There were no results within the reports showing areas for improvements of corrective actions specific to performance of transfer pricing functions but rather Organisational and Departmental matters.

The impact of not specifically addressing transfer pricing within monitoring plans and reports as one of the activities to be monitored impaired oversight on the performance of ITU in discharging transfer pricing functions such as audits and related activities. This situation was likely to negatively affect the quality of work or activities that were carried out within ITU. Therefore, it would be difficult for TRA to measure the adequacy of the available transfer pricing controls based on monitoring data and evidence.

3.6.2 Lack of Key Performance Indicators for Monitoring Implementation of Transfer Pricing Controls

According to the 5th Corporate Plan, TRA was supposed to establish Key Performance Indicators (KPIs) for monitoring transfer pricing audit activities. These indicators would be used to determine type of data required and reporting arrangements; and assist to maintain responsive and up-to-date transfer pricing strategies.

Review of 4th and 5th corporate plans as well as transfer pricing business plans noted that the corporate plans were silent on how transfer pricing function would be monitored as there were no KPIs to that effect.

Lack of KPIs in monitoring transfer pricing activities was attributed to the fact that transfer pricing was considered as an operational activity. TRA therefore did not set specific KPIs for measuring performance of the transfer pricing function.

Lack of monitoring performance of transfer pricing activities within ITU and other regional offices is likely to deny TRA the opportunity to learn and improve in its dealing with transfer pricing matters. This may result in loss of revenue through tax emanating from transfer pricing transactions.

3.6.3 Inadequate Taxpayers Education and Awareness Campaigns on Transfer Pricing

As per Clause 5.4.2 of the UN Practical Manual on Transfer Pricing and the 5th Corporate Plan, TRA was expected to strive to influence the society's attitude toward paying taxes through creating awareness. The awareness was on their rights and obligations in carrying out this civic duty with combination of enforcement, facilitation, awareness and education measures that encourage voluntary participation of taxpayers.
Review of taxpayers' services and education plans showed that TRA managed to conduct about 49% of the planned awareness programmes regarding to transfer pricing for the past four financial years. **Table 3.17** provides details.

Table 3.17: Number of Awareness Programmes Conducted to Taxpayers

Financial Year	Number of Planned Awareness Activities (Seminars)	Actual Number of Awareness Conducted (Seminars)	% of Awareness Conducted
2016/17	595	448	75
2017/18	609	416	68
2018/19	620	0	0
2019/20	605	328	54
Total	**2429**	**1192**	**49**

Source: *Tax Services and Education Plans Reports, 2016/17-2019/20*

As shown in **Table 3.17**, for the past four financial years, TRA planned to conduct a total of 2424 Seminars. But it was able to conduct 1192 seminars. This was equivalent to 49% of planned seminars for enhancing tax awareness and voluntary tax compliance. It can also be seen that in financial years 2018/19 seminars were not conducted. The reason for not conducting seminars was that TRA did not allocate any budget for seminars in that particular financial year.

Analysis of activities carried out for the past four financial years by TRA indicated that, despite the fact that transfer pricing awareness through taxpayers' services and education was in awareness programme plans, no seminars that was carried out with regards to transfer pricing. **Table 3.18** shows number of activities conducted as compared to the number of transfer pricing activities

Table 3.18: Number of TSED[20] Seminars Conducted as Compared to Transfer Pricing Activities

Financial Year	Number of Conducted Seminars	Transfer Pricing Seminars Conducted	% of Transfer Pricing Seminars Conducted
2016/17	448	0	0
2017/18	416	0	0
2018/19	0	0	0
2019/20	328	-	-
Total	**1192**	**0**	**0**

Source: *Tax Services and Education Plans and Reports, 2016/17-2019/20*

As indicated in **Table 3.18**, TRA through TSEP was able to conduct 11 seminars. However, out of these 11, there was no evidence to show that education or awareness on the issues of transfer pricing were covered.

Reasons given for not conducting transfer pricing awareness programmes was that transfer pricing is a newly emerging tax aspect and has few experts. However, based on review of TRA's taxpayers' services and education programmes it was noted that, there was lack of prioritization for transfer pricing education to the public and stakeholders especially MNCs which are key players as they were not included in the plans.

Inadequate awareness to taxpayers especially on transfer pricing issues may limit voluntary declarations of tax to be collected by TRA due to lack of knowledge by some of MNCs' tax officials and management. According to TRA officials, this may also increase tax disputes due to non-compliance by MNCs. Trend of Tax disputes resulting from transfer pricing audits are as portrayed in **Table 3.19**.

[20] Taxpayers Services and Education Department (TRA)

Table 3.19: Trend of Transfer Pricing Disputes Since 2016/17 to 2019/20

Financial Year	Number of MNCs	Number of Disputes	Tax Disputed (TZS)
2016/17	2	-	-
2017/18	8	3	14,236,825,204
2018/19	5	4	12,832,855,746
2019/20	2	1	17,000,000,000
Total	**17**	**8**	**44,069,680,950**

Source: *Analysis of Transfer Pricing Disputes, 2016/17-2019/20*

As shown in **Table 3.19**, for the past four financial years, out of seventeen (17) MNCs audited, eight (8) disputed the audit results and objected to tax adjustments and assessments made by TRA. This is equivalent to 47 % of all MNCs audited.

3.6.4 Impact of Transfer Pricing Awareness Campaigns Not Adequately Assessed

According to the 5th corporate plan, TRA was expected to undertake a reassessment of the way it conducts its businesses. In so doing, it was expected to look at areas where it did well in order to sustain the achievements. It was also expected to identify weaknesses/challenges that affected its performance in order to devise strategies that warrant continual improvement in performance.

However, interviews with TRA officials indicated that for the past four financial years TRA did not conduct any impact assessment resulting from awareness programmes conducted. This was confirmed by review of annual progress reports for financial years 2016/17 to 2019/20 which did not mention impact assessment among the activities conducted.

Further review of business plans for the past four years showed that TRA did not set budget for impact assessment activity and accordingly resources were not allocated for the activity. Impact assessment is important for TRA to be informed about the effectiveness of their interventions towards transfer pricing matters with a view to improve.

3.6.5 Evaluation of Potential Tax Resulting from Transfer Pricing Function not Done

According to Article 3.14 of the OECD Transfer Pricing Risk Assessment Handbook TRA was expected to estimate the amount of tax at risk due to transfer pricing dealings. This is a crucial part in transfer pricing audit case selection process because it is essential to consider the potential tax which could be raised against the amount of enforcement resources required.

Interviews with TRA officials indicated that TRA did not conduct any evaluation to determine potential tax that could be raised or that could be at risk because of transfer pricing dealings. This activity was not included in its business plans and therefore there was no budget to conduct such evaluation.

The audit analysis of tax resulting from transfer pricing audits showed that TRA had records of tax assessed, recovered and disputed and could use the available information to evaluate the potential tax gain or loss as a result of transfer pricing function. **Table 3.20** indicates annual turnover of MNCs whose audits were completed by TRA for the past four financial years as well as tax assessed.

Table 3.20 Amount of Turnover, Tax Assessed, Disputed and Recovered for Audited MNCs for Financial Years 2016/17 to 2019/20

Financial Year	Number of MNCs	Total Turnover (TZS)	Tax Assessed (TZS)	Tax Recoevered (TZS)	Tax Disputed (TZS)
2016/17	2	613,256,169,000	43,700,000,000	43,700,000,000	-
2017/18	8	2,489,843,740,000	61,383,481,785	47,146,656,581	14,236,825,204
2018/19	5	1,136,205,002,017	16,602,637,891	3,769,782,145	12,832,855,746
2019/20	2	USD 137,048,000	30,993,066,318	13,993,066,318	17,000,000,000
Total	**17**	**4,239,304,911,017**	**152,679,185,995**	**108,609,505,045**	**44,069,680,950**

Source: *Auditors Analysis of Completed Audits for MNCs*

Table 3.20 indicates that, for the past four financial years, the turnover of audited MNCs amounted to TZS 4.23 trillion, out of which TZS 152.67 billion of tax was assessed, TZS 108.61 billion recovered and TZS 44.07 billion was still disputed by audited MNCs. The USD amount of 137,048,000 in total turnover column for the financial year 2018/19 is not added to the total in that column.

3.7 Inadequate Monitoring of TRA's Performance by MoFP

TRA continues to rely on Government's support for future success in terms of financing, tax policy reviews, enforcement measures and nationwide reforms that have an impact on the tax administration. In this regard, MoFP was expected to support TRA initiatives in enhancing controls over transfer pricing in the country.

The audit noted that MoFP is not adequately providing support to TRA with regard to transfer pricing activities. Interviews held with MoFP officials responsible for financial policy indicated that MoFP considers TRA as an overall entity responsible for tax administration and revenue collection in the country. In this case, MoFP did not have direct involvement in tax administration. However, it was further noted that, despite the fact that, MoFP is responsible for financing and reviewing tax policies and nationwide tax reforms, issues of transfer pricing were not embedded in their Strategic Plan of 2017/18-2021/22.

The reason for not adequately providing support to TRA was that, MoFP considered TRA as an extra-ministerial entity and thus all revenue matters and tax administration are vested to TRA. However, interview with TRA officials and review of 5th Corporate Plan showed that TRA rely on the government for financing, tax policy reviews as well as resources and tools to handle transfer pricing cases.

However, although TRA depends on MoFP for financing, review and formulation of tax policies, the Audit Team noted that there was no evidence of notable initiatives from TRA to MoFP seeking for support in either technical or administrative support for the purpose of enhancing controls over transfer pricing.

CHAPTER FOUR

CONCLUSION

4.1 Introduction

This chapter presents the findings on the extent to which the implementing institutions have efficiently implemented control over transfer pricing in the country's business sector. The performance was measured based on the adequacy of the transfer pricing strategies and targets; performance in implementing transfer pricing controls; monitoring of transfer pricing activities and role of MoFP in monitoring TRA's performance.

4.2 General Conclusion

TRA has generally strived to ensure that systems for enhancing tax administration are well instituted and developed. The availability of databases and software currently used to analyse transfer pricing data provide minimum conform to the effectiveness of controls over transfer pricing in the country.

The introduction of International Taxation Unit as a unit dedicated to conduct transfer pricing audits and provide transfer pricing opinions was established and is currently operational. This indicates the efforts made towards controlling transfer pricing manipulation by Multinational Corporations (MNCs).

However, TRA has not been able to ensure compliance by all MNCs towards transfer pricing compliance. As a result, TRA has not adequately used the available transfer pricing controls to minimize tax avoidance and increase tax collection through transfer pricing audits. This was due to the following shortfalls:

4.3 Specific Conclusion

4.3.1 Lack of Policy and Strategies for Controlling Transfer Pricing

TRA does not have specific policy and strategy to effectively implement controls over transfer pricing. Despite business plans which are prepared and implemented within specific financial years, yet there are no specific strategies which provide strategic goals and measures for effective implementation of transfer pricing controls.

Also, the 5th corporate plan does not adequately address transfer pricing issues in its strategic goals. The implementation matrix does not provide details for dealing with transfer pricing issues and are also not linked to the set target in respective business plan. Risk based planning and transfer pricing audit case selection is based on manual analysis other than automated systems. This make risk analysis and assessment complicated and time consuming.

4.3.2 Inadequate Capacity to Implement Transfer Pricing Controls

Despite TRA establishing ITU with a view, among others, to play a central role in transfer pricing related cases, yet TRA has not made enough efforts to capacitate its Staff as well as provide resources for dealing with transfer pricing related cases.

TRA uses software and databases in analysing transfer pricing cases, such analyses are related to comparability of prices for services and goods for the purposes of establishing prices. Meanwhile, TRA lacks updated software for price benchmarking of sector-based transactions such as Construction, Agriculture, Manufacturing and extractive industry. Nevertheless, TRA is currently piloting a software namely royalty range which will be used to benchmark prices of intangibles such as royalties, intellectual property, and management fees.

4.3.3 Insufficient Monitoring of Implementation of Transfer Pricing Controls

TRA does not monitor its transfer pricing operational activities sufficiently. This is because transfer pricing issues are not adequately featured within monitoring plans and reports.

There is limited use of KPIs in assessing performance in its transfer pricing activities such as transfer pricing audits and other transfer pricing functions. This is attributed by the fact that transfer pricing also is not featured in its database for monitoring and evaluation (TRAMED).

Also, there are no strategic measures for measuring transfer pricing activities and performance, no KPIs which are transfer pricing specific as well as perception indicators which could be derived from awareness campaigns conducted from time to time.

Awareness programme conducted by TRA do not adequately feature transfer pricing components. Very few programmes are held which featured transfer pricing in the programme.

4.3.4 Inadequate Support from MoFP to TRA in Implementation of Transfer Pricing Controls

There is limited support given to TRA by MoFP in terms of tax policies, strategies, and resources like funds and human resources for discharging transfer pricing functions. MoFP does not feel responsible for TRA functions especially on transfer pricing aspect. As a result, TRA does not have transfer pricing strategy in place.

The strategy would provide a road map in ensuring that transfer pricing targets are achieved, and their impact is evaluated towards enhancing controls over transfer pricing in the country thus increasing revenue collection once transfer pricing audits are successfully conducted.

CHAPTER FIVE

RECOMMENDATIONS

5.1 Introduction

The audit findings and conclusion highlighted some weaknesses on the implementation of controls over transfer pricing in Tanzania's business sector. The weaknesses were measured through four noted parameters, namely strategies for enhancing controls over transfer pricing, capacity for implementation of transfer pricing controls, monitoring and performance measurement of transfer pricing controls, and support and monitoring of implementation of transfer pricing by MoFP.

The National Audit Office believes that in order to improve the effectiveness of transfer pricing controls in the country, the recommendations made in this report need to be fully implemented. Implementation of the recommendations will ensure the attainment of the 3Es (Economy, Efficiency and Effectiveness) in the use of the public resources. The recommendations are specifically addressed to Ministry of Finance and Tanzania Revenue Authority.

5.2 Recommendations to Ministry of Finance and Planning

The Ministry of Finance and Planning should:

1) Ensure that TRA is given support in terms of resources such as budget, offices, enough number of staff specialized in Transfer Pricing issues and tools like laptops, reliable systems to support performance and enhance controls over activities within TRA;

2) Review and initiate the automatic exchange of information between foreign governments to enable TRA to effectively perform its transfer pricing control function;

3) Monitor and evaluate TRA's performance over time including reporting on transfer pricing performance in order to effectively implement transfer pricing control function.

5.3 Recommendations to Tanzania Revenue Authority

Tanzania Revenue Authority should:

1) Capacitate the International Taxation Unit by providing adequate staff and technology to enable it to deal with transfer pricing audits and other related reviews effectively;

2) Develop operational transfer pricing policy and strategies that will set short and long term targets to facilitate prompt implementation of transfer pricing controls in the country;

3) Develop realistic and risk-based plans for selection and handling of transfer pricing audits and issue-oriented transfer pricing cases;

4) In collaboration with MoFP enhance organisational and international coordination which will allow wide exchange of transfer pricing information;

5) Enhance and facilitate availability of sector-based databases and software that could promptly capture data for transfer pricing comparability analysis;

6) Enhance specialised transfer pricing trainings to ITU Staff with the aim of tapping the wide knowledge of transfer pricing within TRA;

7) Devise a mechanism for monitoring, evaluating and reporting on the performance of transfer pricing functions within TRA including potential revenue that would be realised as a result of transfer pricing audits; and

8) Enhance awareness to taxpayers and stakeholders such as law enforcement agencies and sector regulators to enhance voluntary compliance to transfer pricing requirements.

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APPENDICES

Appendix 1: Responses from TRA on the Issued Recommendations

This part covers the responses from Tanzania Revenue Authority. The responses are specific comments for each of the issued audit recommendations. This is detailed in **Appendices 1** below:

Specific Responses

No	Recommendation	TRA's Comment (s)	Action(s) to be taken	Time line
1.	Capacitate the International Taxation Unit by providing adequate staff and technology to enable it to specifically widely and timely deal with transfer pricing audits and other related cases;	*Management will continue to capacitate the Unit*	*Continuous*	*Continuous*
2.	Develop operational transfer pricing policy and strategies that will set short- and long- term targets to facilitate prompt implementation of transfer pricing controls in the country;	*The Operational transfer pricing policy and strategies will continue to be part of the forthcoming business plans*	***Continuous***	*Continuous*
3.	Develop realistic and risk-based plans for selection and handling of transfer pricing audits and issue-oriented transfer pricing cases;	*The current plans and selection and handling transfer pricing is already risk based*	***N/A***	*N/A*
4.	In collaboration with MoFP enhance organisational and international	*Currently, TRA through MoFP is working to ratify the multilateral*	*Follow-up of the submitted concept paper for ratification*	*Continuous*

No	Recommendation	TRA's Comment (s)	Action(s) to be taken	Time line
	coordination which will allow wide exchange of transfer pricing information;	*convention on transparency and exchange of information which will provide a broader network of exchange of information at International level*		
5.	Enhance and facilitate availability of sector- based databases and software that could promptly capture data for transfer pricing comparability analysis;	*There are no databases in the market which are sector based. Databases for transfer pricing comparability analysis are generic in nature*	***N/A***	*N/A*
6.	Enhance specialised transfer pricing trainings to ITU Staff with the aim of tapping the wide knowledge of transfer pricing within TRA;	*Management will continue to enhance trainings*	*Continuous*	*Continuous*
7.	Devise a mechanism for monitoring, evaluating and reporting on the performance of transfer pricing functions within TRA including potential revenue that would be realised as a result of transfer pricing audits;	*Noted for Implementation*	*Continuous*	*Continuous*

No	Recommendation	TRA's Comment (s)	Action(s) to be taken	Time line
8.	Enhance awareness to taxpayers and stakeholders such as law enforcement agencies and sector regulators to enhance voluntary compliance to transfer pricing requirements;	*Taxpayers' awareness programmes are already in place and the Taxpayers' Services Department*	*Continuous*	*Continuous*

Appendix 2: Audit Questions and Sub-Questions

Audit Question One	Sub-Audit Question One
1. Has TRA developed strategies, plans and targets regarding to controls over ?	*1.1 Does TRA have strategies for reduction of the abuse incidences in the country?*
	1.2 Has TRA developed effective risk-based plan for audits? Are the plans effectively implemented?
	1.3 Does the existing organisation structure support the ITU to cooperate with other TRA departments and International community when planning and execution of audits?
	1.4 Does TRA have reliable and functioning database of information for comparability analysis?
Audit Question Two	**Sub-Questions**
2. Does TRA have capacity to implement controls in place?	*2.1 Does TRA set aside budget for audits?*
	2.2 Does TRA have adequate skilled personnel to perform audits?
	2.3 Does TRA have the required equipment/tools for handling transfer pricing issues and audits?
Audit Question Three	**Sub-Question**
3. To what extent does TRA monitor the performance and impact of transfer pricing activities?	*3.1 Has TRA developed audit guidelines?*
	3.2 To what extent has TRA developed and used performance measurement framework to assess impact of audits?
	3.3 Has TRA developed key performance indicators for monitoring audits?
	3.4 Has TRA conducted awareness to taxpayers with regards to Transfer Pricing?
	3.5 Does TRA conduct an assessment to determine the impact of the implemented awareness program on transfer pricing?
	3.6 Has TRA evaluated the potential tax gain or risk resulting from regular transfer pricing audits?
	3.7 Does TRA apply available sanctions to non-compliant taxpayers?
Audit Question Four	**Sub-Question**
4. Does the Ministry of Finance and Planning provide support and monitor the perfromance of TRA in transfer	*4.1 Does MoFP monitor TRA's performance with regards to activities?*
	4.2 Does MoFP provide support to TRA to ensure coordination with other Ministries and Agencies responsible for activities is effective?

pricing activities?	

Appendix 3: Details of Reviewed Documents

Institution	Document to be reviewed	Reason(s) for interview
Ministry of Finance and Planning (MoFP)	1. Strategic Plans	• To analyse the extent to which MoFP has put in place strategies to control activities in the country; and • To analyse resources put in place in dealing with audits and other related cases.
	2. Monitoring and Evaluation Reports (2016/17 to 2019/20);	• To assess the extent of which MoFP's monitoring role of TRA's performance in related issues; • To understand how MoFP receives feedback from TRA activities.
Tanzania Revenue Authority (TRA)	1. The 4th and 5th Corporate Plans (2012/14 to 2015/16 and 2017/18 - 2022/22)	• To analyse the extent to which TRA plans its budgets for engagements/issues; • To assess whether TRA has set priorities in its corporate plan for controlling activities;
	2. Medium Term Expenditure Framework (2016/17 to 2019/20);	• Assess the extent of budget which is set aside for activities within ITU;
	3. Annual Reports (2016/18 to 2019/20)	• To assess the implementation/performance of TRA in activities with regards to its plans and targets; • To know the challenges encountered by TRA in controlling through audits and investigations;
	4. Risk Assessment Models;	• To assess how TRA conduct risk analysis before embarking on audits; • To assess whether the models are actually used or followed during planning for audits.
	5. Annual Monitoring Reports (2016/17 to 2019/20);	• To assess if TRA adequately monitors activities carried out within LTD (ITU); • To analyse whether issues raised in monitoring reports are timely addressed;

Institution	Document to be reviewed	Reason(s) for interview
		• To assess whether TRA has established / use Key Performance Indicators in monitoring activities;
	6. Staff Training Plans and Reports (2016/17 to 2019/20);	• To analyse whether TRA sets training plans and whether trainings conducted are backed up with reports; • To analyse whether TRA use trainings impact assessment to measure performance of TRA especially of ITU;
	7. Audit reports (2016/17 to 2019/20)	• To analyse the cases which are completed or still pending and the disputed adjustments/assessments resulting from audits;
	8. Tax education/awareness reports (2016/17 to 2019/20);	• To assess the extent to which transfer pricing function was featured in taxpayer education and awareness activities;

Appendix 4: List of Interviewed Officials

Institution	Officials interviewed	Reason(s) for interview
Ministry of Finance	1. Commissioner for Financial Sector Policy	• To assess the extent on which Ministry has taken initiatives to combat abuse.
	2. Director of Planning	• To assess the Ministry's capacity in planning for and monitoring of TRA's performance in related issues.
	3. Officials dealing with financial policies and economic policies	• To assess the Ministry's operational efforts in addressing issues.
Tanzania Revenue Authority (TRA)	1. Director/Deputy Director Research Policy and Planning; 2. Officials within Planning Directorate.	• To assess the extent to which TRA plans its budgets for engagements/issues; • To evaluate the effectiveness monitoring of TRA in discharging activities. • To assess the effectiveness of reporting of activities.
	3. Commissioner Large Tax Department (LTD); 4. Operational level Officials within the Division.	• To assess the actual implementation of activities carried out by the Division.
	5. Manager for International Tax Unit; 6. Officials responsible with audits	• To assess actual implementation of plans; • To assess the extent of audit cases conducted; • To evaluate how the findings from audits are effectively used to improve performance;
	7. Commissioner/Deputy Commissioner – Tax Investigation Division; 8. Officials from tax investigation Division	• To assess the extent of cases resulting from audits; • To analyse reporting of investigation results;
	9. Director Taxpayers Services and Education;	• To assess the extent in which TRA conduct awareness to taxpayers
	10. Director Human Resource and Administration; 11. Officials at operational level	• To assess whether there are trainings plans for staff dealing with audits;

Institution	Officials interviewed	Reason(s) for interview
	working within the Directorate	• To check whether trainings provided to staff are specialized ; • To assess how the Directorate use training reports to assess the performance of staff and the ITU.