



## **TP Considerations in the Extractive Sector**

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# What is Transfer Pricing?

- Transfer Pricing refers to whether transactions between associated enterprises forming part of a Multi-National Enterprise (MNE) Group for the transfer of goods, property(tangible), services and intangibles are at arm's length.
- The arm's length principle requires transactions with non-resident related parties to be made under comparable conditions and circumstances as a transactions with independent parties.
- Transfer pricing can also be used as part of an aggressive tax planning policy by a multinational enterprise group: the transfer pricing policy may be applied in such a way as to comply with the strict letter of the law, but that aggressively pushes the boundaries of what is acceptable under those laws. Some multinational enterprises may also engage in tax evasion through fraudulent transfer mis-pricing.
- TP Methodologies used depend on the nature of the transaction in question:
  - **Comparable Uncontrolled Price (CUP)**
  - **Cost Plus Profit (C+)**
  - **Profit Split Method**
  - **Transactional Net Margin Method (TNMM)**

# Legislative Framework

## Legislation

- Income Tax Act 58 of 1962
- Tax Administration Act 28 of 2011
- Customs and Excise Act 91 of 1964

## International Instruments

- Agreement on implementation of Article VII of the General Agreement on Tariffs and Trade 1994 (Customs Valuation Agreement)

## Guides

- OECD Model Tax Convention on Income and Capital
- OECD Transfer pricing Guidelines for Multi National Enterprises and Tax Administrations, 2017 Edition
- SARS Internal Guide: Transfer Pricing Audit Guide (GEN-Au-14-G04)
- SARS Compliance Strategy
- WCO Guide to Customs Valuation and Transfer Pricing, New Edition 2018
- WCO Valuation compendium case study 14.1

# Transactions

## **Typical transactions between related parties:**

- Sales and purchases
- Marketing
- Interest
- Dividends
- Technical Services
- Management Services
- Back-office Support
- Procurement Services
- Royalties
- Dividends
- Capital repayments
- IT Support

# Transfer Pricing Risk Assessment

- Are there transactions between connected parties (50% or more in equity or voting rights)?
- Are there material controlled transactions?
- Are there indications of risk?
- Is the case worth auditing?
- What are the specific risks that the audit should address?

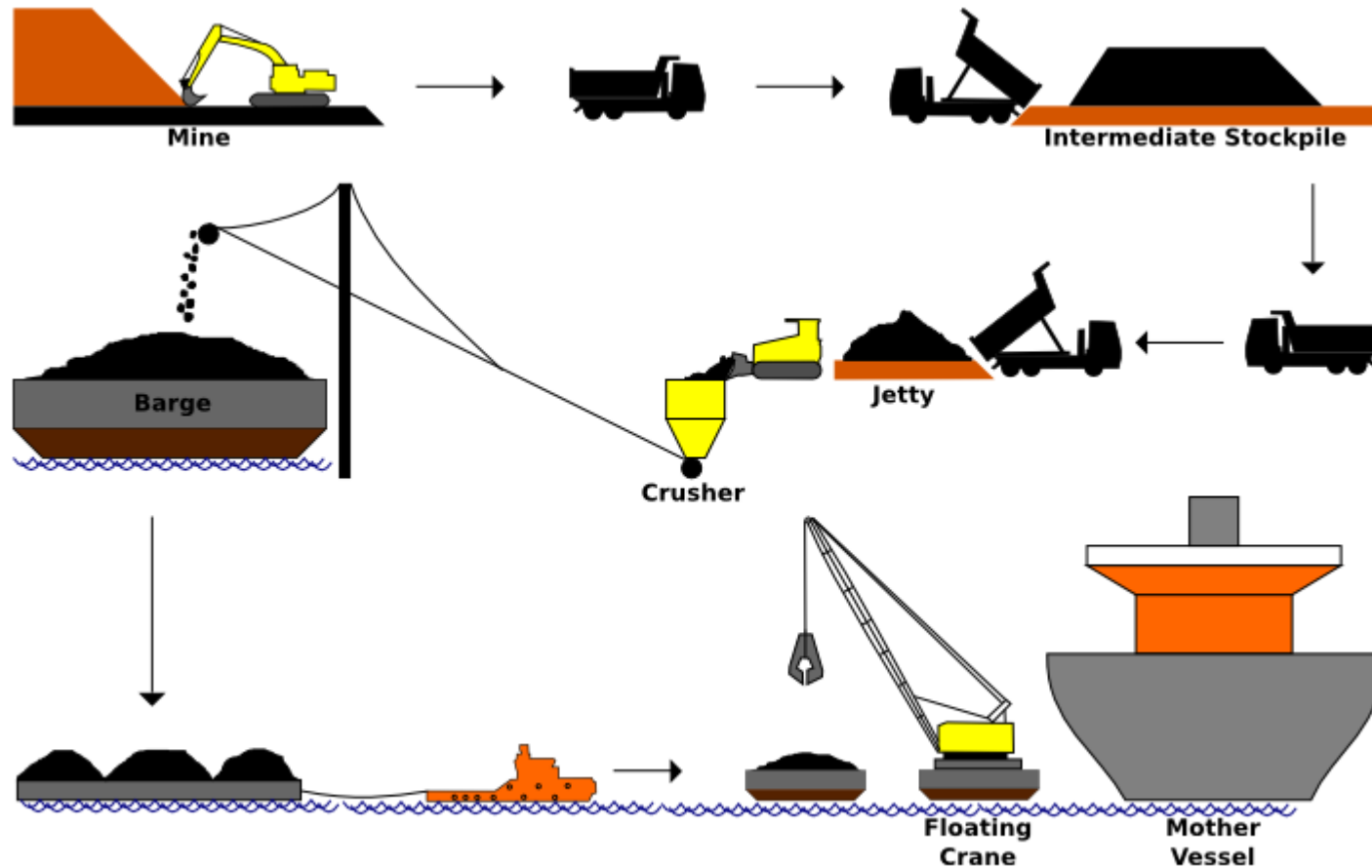


# Typical Risks

- Non-arm's length sales
- Non-arm's length purchases
- Remittance of payments to related parties
- Quantification of rewards for the development of Intellectual Property (patents and trademarks)
- Financial assistance
- Group services that are remunerated through management fees
- Centralized procurement
- Centralized Sales and sales support

# Extractive industry considerations

- Mining value chain and supply chain





# Extractive industry considerations

- Price differential between listed price of a commodity and the price charged by a related party
- Lack of availability of price information for alloys and derivative commodities and lubricants
- Remittances not accompanied by valid transactions
- IP moved to an off-shore location
- Financing arrangements
- Use of treasury hubs
- Inappropriate pricing methodologies
- Lack of comparables in mining
- Lack of comparables for services depending on the amount of diversification within the entity



*Thank you*  
*Re a leboha*  
*Re a leboga*  
*Ndza Khensa*  
*Dankie*  
*Ndi a livhuwa*  
*Ngiyabonga*  
*Enkosi*  
*Ngiyathokoza*