

**SARS RFP 23/2025**

**PROVISION OF THE TRANSFER PRICING BENCHMARKING TOOL**

**BUSINESS REQUIREMENTS SPECIFICATION**

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## SARS RFP 23/2025

### Business Requirements Specification

#### PROCUREMENT OF A TRANSFER PRICING BENCHMARKING TOOL

This document forms part of the RFP 23/2025 pack. The document sets out the business requirements that SARS has for the Provision of a Transfer Pricing Benchmarking Tool.

This document and any appendices must be read in conjunction with all other documents in the RFP pack as such documents may contain further requirements that must be taken into account by the Bidder in compiling a proposal. The Bidder is referred, in particular, but without limitation to the following documents in the RFP pack:

- RFP Main Document;
- Provision of a Transfer Pricing Benchmarking Tool.

The *Provision of a Transfer Pricing Benchmarking Tool Agreement* (to be shared with the appointed bidder) sets out the provisions of the agreement under which SARS intends contracting with the successful Bidder(s).

## 1 USAGE OF TERMS IN THIS DOCUMENT

### 1.1 References to Other Documents in the RFP Pack

Underlined and italicised names are references (or short names) to other documents in the RFP Pack. The Bidder is referred to the *RFP Main Document* for the table of documents and their short names.

The capitalised terms in this document appearing in the glossary table below will have their corresponding meanings. The Bidder is referred to the *RFP Main Document* for the use and meaning of capitalised terms generally in the RFP pack.

## 1.2 Glossary Table

TERM	DESCRIPTION
<b>Affected transaction</b>	Is defined in section 31(1) and includes any transaction, operation, scheme, agreement or understanding which has been directly or indirectly entered into or effected between or for the benefit of either or both a resident and a non-resident which are connected persons/ associated enterprises in respect to each other and where any of the term or condition agreed upon are different from any term or condition that would have existed had those persons been independent persons dealing at arm's length.
<b>Associated enterprises</b>	As defined in section 31 of the ITA.
<b>BEPS</b>	Base Erosion and Profit Shifting.
<b>BEPS Action plans</b>	Base Erosion and Profit Shifting Actions 1 to 15.
<b>Bidder/Tenderer/Supplier</b>	A person or company responding to this RFP.
<b>Connected person</b>	A connected person as defined in terms of section 1 of the ITA.
<b>CPM</b>	Cost Plus Method.
<b>CUP</b>	Comparable Uncontrolled Price Method.
<b>DEMPE</b>	Development, Enhancement, Maintenance, Protection and Exploitation of an Intangible.
<b>Intangible</b>	Intangible is intended to address something, which is not a physical asset, or a financial asset, which is capable of being owned or controlled for use in commercial activities, and whose use or transfer, would be compensated had it occurred in a transaction between independent parties in comparable circumstances. Rather than focussing on accounting or legal definitions, the thrust of a transfer pricing analysis in a case involving intangibles should be the determination of the conditions that would be agreed upon between independent parties for a comparable transaction. The most well-known types of intangibles are copyrights, patents, trademarks, and trade secrets.

<b>ITA</b>	Income Tax Act 58 of 1962, as amended.
<b>Material deviation</b>	<p>A deviation which, in SARS' opinion, would</p> <p>a) Detrimentially affect the scope, quality, or performance of the services identified in the RFP;</p> <p>b) Change SARS or the Bidder's risks and responsibilities under the RFP: or</p> <p>Affect the competitive position of other Bidders presenting responsive tenders, if it was to be rectified.</p>
<b>MAP</b>	Mutual Agreement Procedure.
<b>MNE</b>	Multinational Entities.
<b>NACE</b>	Nomenclature of Economic Activities.
<b>OECD</b>	Organisation for Economic Cooperation and Development.
<b>PLIs</b>	Profit level indicators.
<b>Reporting</b>	This involves reporting on all the data relating to traceability events, fiscal marking, markings applied at licensed facilities, tax stamp management, etc. that may be required by SARS. The specific reporting requirements and authorisations to other parties must be defined by SARS.
<b>Responsive tender</b>	A response that conforms to all the terms, conditions, and specifications of the tender documents without material deviation or qualification.
<b>RPM</b>	Resale Price Method.
<b>SARS</b>	South African Revenue Service.
<b>Secure</b>	Ability of a solution to resist to virtual or physical, internal or external attacks.
<b>SIC</b>	The Standard Industrial Classification.
<b>Solution Provider</b>	A third-party organisation external to SARS, which is engaged by SARS to design, build, implement, manage and support the transfer pricing tool/database solution.
<b>The Solution</b>	Refers to the transfer pricing tool/database that will be used by SARS

	to conduct comparability studies to enable SARS to effect transfer pricing adjustments in terms of section 31 of the ITA.
<b>TNMM</b>	Transactional Net Margin Method.
<b>TPSM</b>	Residual Profit Split Method.

### 1.3 Mandatory and Directory Requirements

Bidders are advised to read the business requirements as set out in this document with care. Where SARS has specified a mandatory requirement, (i.e. where the business requirement, by the context; present verbs such as 'must'; 'will'; 'shall' etc.; or explicit instruction indicates that it is mandatory) the Bidder must build and price its solution accordingly. If a proposal fails to meet or does not address a mandatory requirement, the proposal may, at SARS's discretion, be disqualified at any stage of the evaluation process as being non-responsive.

Directory requirements (i.e. where the business requirement, by the context; present verbs such as 'may'; 'should'; 'can' etc.; or explicit instructions indicate that it is directory) are requirements that SARS does not regard as mandatory.

## 2 BACKGROUND

The term transfer pricing describes the process by which entities set the prices at which they transfer goods or services between each other.

The transfer prices adopted by a multinational have a direct bearing on the proportional profit it derives in each country in which it operates. If a non-arm's value (inadequate or excessive consideration) is paid for the transfer of goods or services between the members of a MNE, the income calculated for each of those members will be inconsistent with their relative economic contributions. This distortion will impact on the tax revenues of the relevant tax jurisdictions in which they operate.

Since South Africa's re-emergence in the international market, there has been a marked expansion of international trade and commerce, with wide-ranging changes in volume and complexity. An increasing proportion of this international activity is carried on between members of MNEs. As the globalisation of business activity continues to accelerate, protecting the South African tax base is vital to South Africa's wealth and development.

Exchange controls historically provided some protection against the more significant manipulation of transfer prices to transfer profits to lower tax jurisdictions. In anticipation of the relaxation of exchange controls and the envisaged adverse effect on the South African tax base, section 31 was introduced into the Act in 1995.

Section 31 deals with transfer pricing and thin capitalisation rules. These provisions are designed to prevent the erosion of the South African tax base through the mispricing or incorrect characterisation of cross-border transactions between connected persons/associated enterprises.

The Commissioner may adjust the consideration, for tax purposes, if the actual price is either less or greater than the price that would have been set if the supply or acquisition of goods or services had occurred between independent parties on an arm's length basis. The Commissioner may use the amount so determined, in the determination of the taxable income of the South African entity to the transaction.

Section 31, therefore, provides a mechanism by which the Commissioner adopts the internationally accepted "arm's length principle" for taxation purposes as the basis for ensuring that the South African fiscus receives its fair share of tax. This is achieved by adjusting the consideration in the determination of taxable income based on the conditions which would have existed between unconnected/independent persons or non-associated enterprises under comparable circumstances.

Transfer pricing is a legitimate and necessary feature of the commercial activities of MNEs. However, where the transfer prices between the associated enterprises do not accord with internationally applicable norms, they can distort the allocation of profit among the countries in which a multinational enterprise operates. When transfer pricing artificially shifts profits out of a country it, primarily, denies the country essential tax revenue. Such profit shifting can also have much wider implications: tax avoidance by high-profile corporate taxpayers will be perceived as "unfair" by citizens and may undermine the legitimacy and credibility of the wider tax system, thus discouraging compliance by all taxpayers. These are issues faced by developing and developed countries alike.

Most double tax treaties also incorporate the arm's length principle as the basis for allocating profits (and thus taxes) between associated enterprises. The arm's length principle provides broad parity of tax treatment for transactions between associated enterprises and those between independent enterprises. Implementation of the principle is intended to create equality of treatment between members of a group of companies (which may gain tax advantages through non-arm's length pricing) and independent enterprises. It also provides an

objective standard that attempts to replicate market results. By helping to level the playing field, and by virtue of the fact that it represents an international standard, the arm's length principle helps reduce distortions to international trade and investment.

In enforcing the arm's length principle, many Tax Administrations report uncertainties and difficulties in conducting comparability analyses. A key issue raised by developing countries, in particular, is the scarcity in some parts of the world of the financial data necessary to carry out a comparability analysis (i.e. benchmarking study). Such issues can affect taxpayers and tax administrations alike. Tax Administrations may face difficulties in implementing their rules, which, in turn, will affect their tax revenues.

In many developing countries, challenges to obtaining information are not limited to specific or highly complex transactions, such challenges exist in all industries. For many resource-rich developing countries, a lack of data on the pricing of certain commodities is of particular concern.

In order to determine if a transaction between connected persons / associated entities is at arm's length, a benchmarking study would need to be conducted using a reliable comparable database.

A common concern of developing economies in the implementation of transfer pricing regimes relates to difficulties in accessing information on "comparables": data on transactions between independent parties used in the application of the arm's length principle.

A benchmarking study is the most critical part of any transfer pricing analysis contained in a compliance or policy document and is mainly used to test the arm's length nature of the connected persons transactions.

The purpose of benchmarking studies is to determine the general conditions surrounding the transactions conducted by third parties on a given market. Such studies help elicit a range of values, i.e. the so-called arm's length range. Statistically, the arm's length range is typically defined within the boundaries of a lower quartile and upper quartile and is the range of values of price or profit attached to the comparable transactions between comparable unrelated parties.

When a transfer price determined by a taxpayer for a transaction under review (or the profitability derived by taxpayer from such transaction) is not found to be in the applicable arm's length range, SARS will determine the arm's length price or margin with reference to such



an arm's length range, derived through conducting a benchmarking study on a database containing relevant and reliable independent comparable data.

Managing transfer pricing risk remains critical in an increasingly aggressive environment. SARS has continued to focus on transfer pricing and is currently involved in several major audits that could lead to substantial adjustments. The tool is at the centre of auditing and raising any transfer pricing tax assessment. **Put simply, a comprehensive Transfer Pricing tax audit is not possible without a benchmarking study or tool.**

An effectively resourced Transfer Pricing Unit is thus integral in order to ensure a successful and sustained tax compliance focus. Transfer pricing is one of the key areas of focus, particularly after the BEPS Action plan and the impact that BEPS has on developing countries. BEPS is a major significance for developing countries due to the heavy reliance on corporate income tax, particularly from MNEs. In order to ensure that SARS issues accurate and defensible Transfer Pricing assessments, it is critical that these assessments are based on external comparables that are derived from a well-established, comprehensive and reputable database.

Based on the SARS strategy, the objectives for Bidders is to provide SARS with:

- A complete solution which can provide reliable comparable data;
- Software used locally and internationally by tax administrations, multilateral organisations such as the OECD and multinational companies;
- Produce benchmarking studies that can be defended in court or during litigation and audits;
- A database that encompasses all industry types on a global basis;
- Public and private company data, which include updated financial information;
- Industry wide searches;
- Comprehensive corporate structures which will assist in determining independence of the companies;
- Comprehensive and reliable data for pricing intra group licencing agreements (royalties), through application of the CUP; and
- Comprehensive and reliable data for determining independent arm's length profit margins, through application of the RPM, CPM and TNMM (utilising various PLIs) for benchmarking intra group services as well as manufacture and / or distribution of goods.

The tool will significantly improve the capacity of SARS in:

1. Revenue collection.
2. Improving the reliability of the adjustments raised.

### **3 GENERAL REQUIREMENTS FOR THE SERVICES**

#### **3.1 Solution Design Overview**

It is envisaged that following award of the tender and subsequent contract, a detailed design phase will be undertaken to define specific business requirements and functional specifications based on the appointed Bidder's proposed solution. The solution design described in this document is meant as a guide for potential Bidders to understand SARS general and technical requirements and prepare their responses accordingly. The solution design considers SARS's current transfer pricing situation, the associated risks and SARS strategic direction to mitigate such risks.

Scope of Solution Design:

The scope of the software/database is required to provide an end-to-end solution for benchmarking studies or providing comparable data to enable SARS to perform benchmarking studies on transactions between connected persons/ associated enterprises, where one of the entities is a tax resident.

### **4 MANDATORY, TECHNICAL SPECIFICATIONS AND REQUIREMENTS**

Bidders are advised to consult Section 7 of the **SARS RFP 23-2025 1-1 Main Document**, which outlines comprehensive requirements for the services expected from the solution provider, as well as the criteria for evaluation and scoring where applicable. Solution providers should reference the information provided in the **SARS RFP 23-2025 1-1 Main Document** as a framework when preparing their submissions, ensuring that all specified features and functionalities are addressed in detail. Proposals must adhere to the prescribed structure and be organised according to the main headings indicated within the technical evaluation criteria.