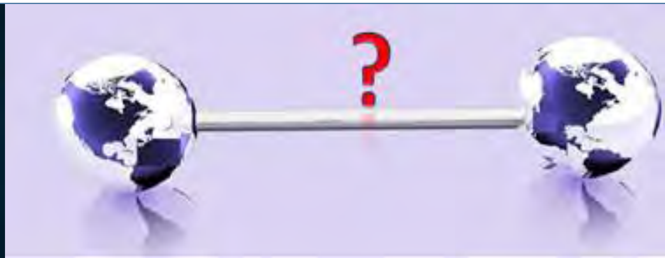
Transfer Pricing on Trade and Industry: What is to be done?

Presentation: Portfolio Committee on Trade and Industry

Presenter: Hon Member N Shivambu I Economic Freedom Fighters (EFF) I 29 April 2015

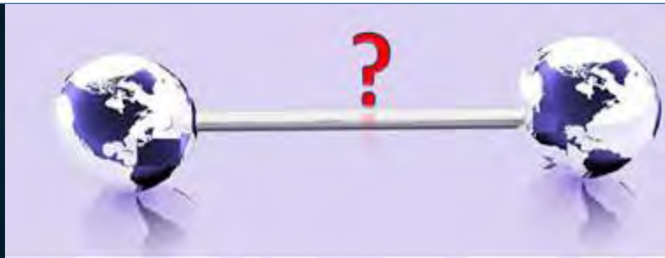




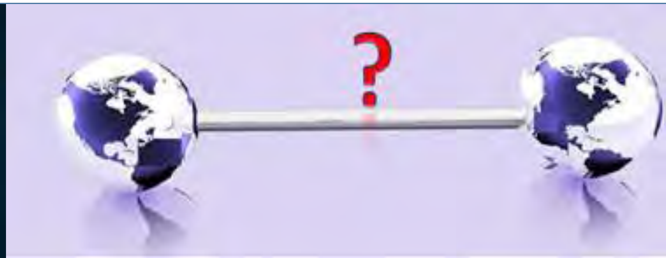
Introduction

- **<u>Purpose of the presentation</u>**: As a supplementary to the submission made to the Portfolio Committee of Trade and Industry, looking at the conceptual basis, consequences broadly speaking, government response and concrete recommendation to the problem of transfer pricing
- The purpose of the presentation will focus specifically on **<u>what is to be done?.</u>**





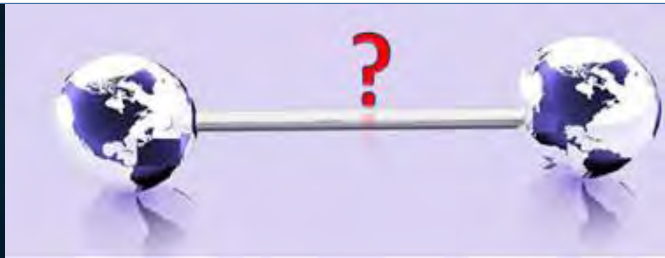
What is to be done?



Aggressive Tax Avoidance: Must be illegal

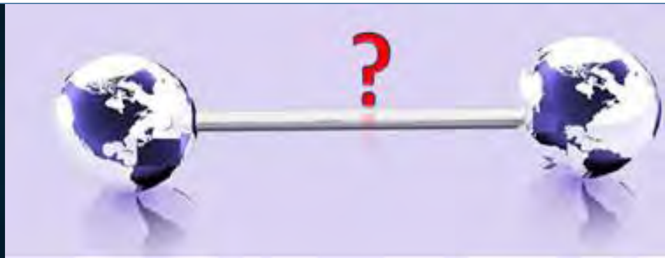
- ***<u>Transfer mispricing especially mis-invoicing, which is aggressive tax avoidance is illegal</u>***.
- Multinational Corporations (MNCs), continue to disregards country's legislation and exploit massive weaknesses. ***<u>(Action Aid, 2015:2)</u>***.
- Due to lack of inadequate legislation, transfer pricing neutrality and its practices has been abused by MNCs as early as the 1970s to increase profit for shareholders at the expense workers and developing countries economies.
- **<u>Parliament must pass an Anti-Tax Avoidance Act</u>**, which complement all other existing legislations as a first step in dealing with transfer pricing.





Additional Recommendations

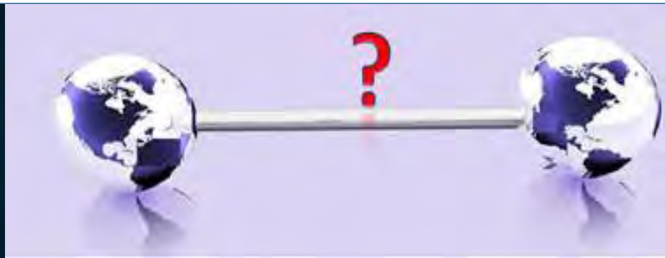




Recommendations: Political Actions

1) Parliament must set up Transfer Pricing Commission to facilitate more robust engagement on the subject, and invite international civil society organizations
2) South African Revenue Services must start building adequate internal capacity to minor the movement of quantity and quality of goods.
3) Financial Intelligence must be given a clear mandate by parliament to conduct an aggressive investigation into tax avoidance to guide proper action required.
4) South African Reserve Bank must look into a different approach from trade liberalization and loose exchange control, because that did work.

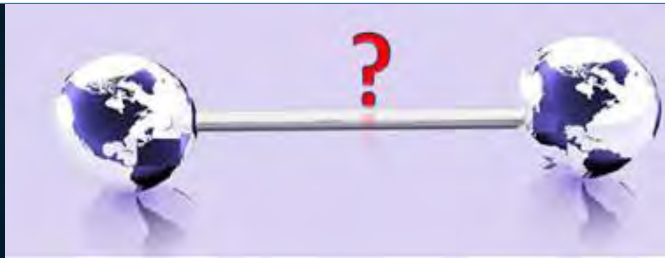




Recommendations: Economic Actions

1) State control and ownership of strategic sectors must be part of comprehensive solution to deal with transfer pricing.
2) For protection of tax revenue base, it is paramount that we nationalize mines i.e. creation of a State Owned Mining company.
3) South African Reserve Bank's mandate should include combatting the phenomenon of transfer pricing through many national and international surveillance mechanisms.
4) The Voluntary Disclosure Programme of the South African Reserve Bank should be revisited and re-conceptualized with an understanding that South Africa has suffered high volumes of illicit financial flows and transfer pricing.

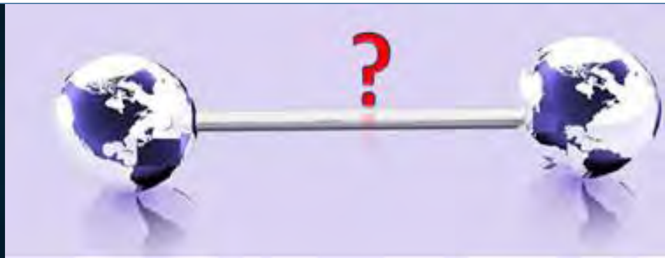




Recommendations: Technical Actions

1) Trade transactions involving tax haven jurisdictions should be treated with the highest level of scrutiny by customs, tax, and law enforcement officials; DTI a critical role player.
2) Develop a policy which should require multinational companies to publicly disclose their revenues, profits, losses, sales, taxes paid, subsidiaries, and staff levels on a country-by-country basis;
3) Governments should significantly boost customs enforcement by equipping and training officers to better detect the intentional misinvoicing of trade transactions.
4) Government authorities should adopt and fully implement all of the Financial Action Task Force's anti-money laundering recommendations;
5) Regulators and law enforcement should ensure that all of the anti-money laundering regulations, which are already on the books, are strongly enforced;
6) Tightening of border control and of goods illegally brought from South Africa's neighboring countries. This should happen through usage of scanners to scan the trucks that enter South Africa from the neighboring countries.

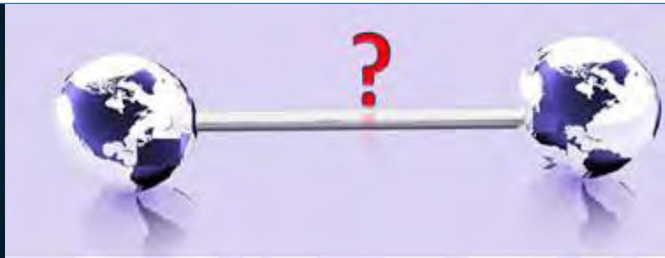




OECD’s Position on Transfer Pricing

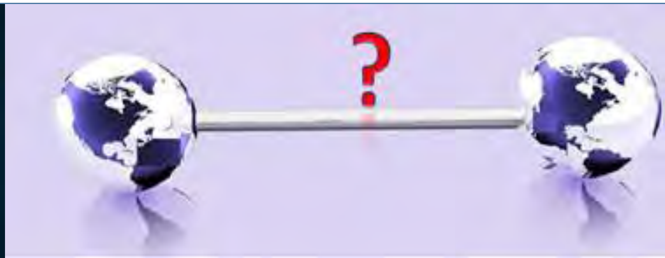
- OECD’s methods have been applied by many countries ranging from developed economies and developing economies through the OECD funded capacity building program and they have failed and continue to fail dismally.
- In most instances, the OECD’s approach to international trade and transfer pricing does not prioritise non-members, mostly developing economies in Africa, therefore to continue blindly implementing their recommended methods will not lead to any material solution for South Africa.





Sixth Method

- The sixth method is therefore a mechanism to deal with transfer pricing, which departs from the OECD methods, which have been applied in many countries over decades and failed.
- Mandating use of the sixth method has been an effective way for governments to increase the tax assessed on companies exporting commodities the Latin American regions.

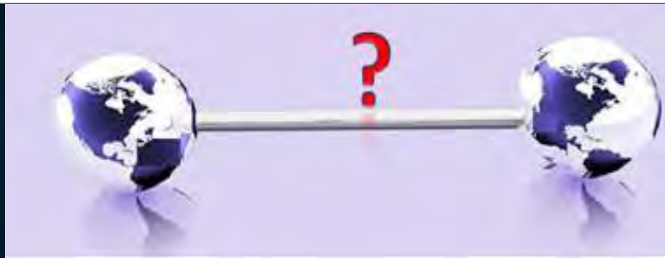


Sixth Methods: Dealing with theft

Sixth method on transfer pricing may apply specifically dealing with extractive industries and mineral wealth theft:

- Export/import transactions of tangible goods (classified as commodities) between related parties.
- The price of the tangible goods are publicly quoted in the transparent market (known as public price)
- In certain case, where a foreign intermediary in the inter-company transaction such that good do not reach the final consumer directly (triangular transactions), (PWC, 2014)

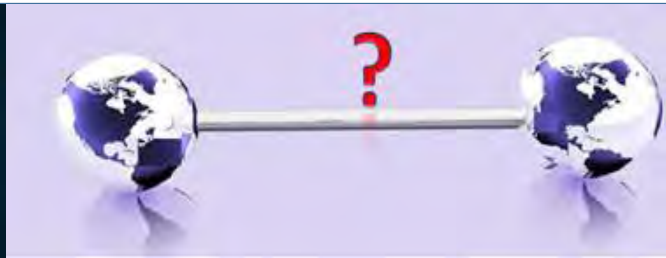




Sixth Methods: BRICS Partners

The PWC (2014) policy brief illustrates that

“Argentina in 2003 was the first country to implement the sixth method, with countries such as Ecuador and Uruguay soon following. Latin American countries have been active in adopting the sixth method in the last two years. Of the new jurisdictions in Latin America introducing transfer pricing legislation (e.g., Dominican Republic, El Salvador, Guatemala, and Chile) all but Chile introduced the sixth method and of those amending the current regulations (e.g., Brazil, Panama, Peru, and Colombia), **Brazil** and Peru adopted the sixth method. **India** also has introduced a sixth method that appears to expand the CUP method” (PWC 2014).



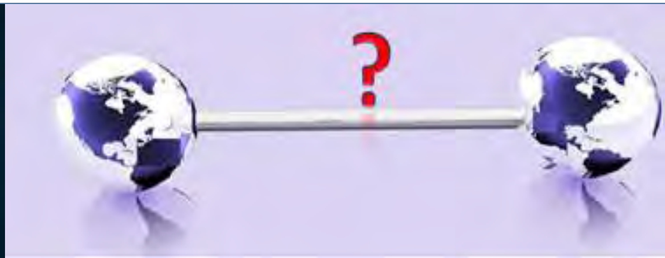
WHAT IS TO BE DONE ON SIXTH METHOD?

Study the anti-tax avoidance legislations of the following countries:

1) Argentina,
2) Brazil
3) Bolivia
4) India

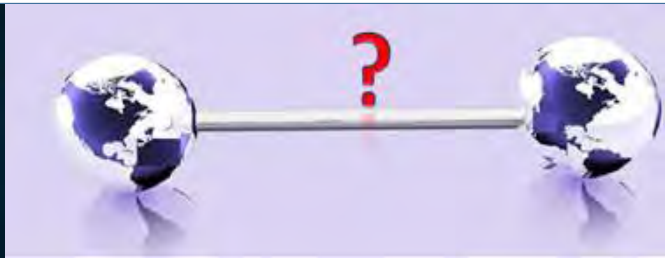
This will inform the finer details of the legislation that will prevent and combat transfer pricing and tax avoidance in South Africa.





Introduce stronger penalties to MNCs that avoid taxes and steal our resources.

- Currently, most legislations that relate to corporations and MNCs do not have strong penalties, and often abused by these corporations.
- Legislation should include the following:
  - Criminalising the Directors and Executives who engage in tax avoidance.
  - Withdrawal of operating Licences.
  - Expropriation of those companies without compensation.
  - Fines and financial penalties using a formula that penalises tax evaders.



Conclusion



COUNTRY-BY-COUNTRY
RAISING THE BAR FOR TRANSFER PRICING
RISK MANAGEMENT.
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