GOVERNMENT OF ZAMBIA

STATUTORY INSTRUMENT NO. 24 OF 2018

The Income Tax Act
(Laws, Volume 25 Cap. 453)

The Income Tax (Transfer Pricing) (Amendment) Regulations, 2018

IN EXERCISE IN EXERCISE of the powers contained in sections 97C and 97D of the Income Tax Act, the following Regulations are made:

Title and commencement

1. These Regulations may be cited as the Income Tax (Transfer Pricing) (Amendment) Regulations, 2018, and shall be read as one with the Income Tax (Transfer Pricing) Regulations, 2000, in these Regulations referred to as the principal Regulations.

S.I. No. 20 of 2000

Amendment of regulation 2

2. Regulation 2 of the principal Regulations is amended by the insertion—

(a) in the appropriate places of the following definitions:

" appropriate allocation method " means a method that allocates total group cost among members of a group in a way that is proportional to the benefits or expected benefits to each member of the group;

" arm's length conditions " has the meaning assigned to the term in the Act;

" associated person " has the meaning assigned to the word under section 97C of the Act;

Cap. 467

" Commissioner-General " has the meaning assigned to the word in the Zambia Revenue Authority Act;

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" comparable transactions " means transactions that are comparable in accordance with regulation 11;

" comparable uncontrolled price method " means the method which consists of comparing the price charged for property or services transferred in a controlled transaction to the price charged for property or services transferred in a comparable uncontrolled transaction;

" comparability factors " means factors specified in regulation 11;

" controlled transaction " is a transaction between associated persons;

" cost contributions arrangement " means an arrangement among persons to—

(a) share the costs and risks of developing, producing or obtaining assets, services or rights; and

(b) determine the nature and extent of the interests of each participant in the results of the activity of developing, producing or obtaining the assets, services or rights;

" cost plus method " means the method which consists of comparing the mark up on those costs directly and indirectly incurred in the supply of property or services in a controlled transaction with the mark up on those costs directly and indirectly incurred in the supply of property or services in a comparable uncontrolled transaction;

" financial indicator " means in relation to the—

(a) comparable uncontrolled price method, the price;

(b) cost plus method, the mark up on costs;

(c) resale price method, the resale margin;

(d) transaction net margin method, the net profit margin; and

(e) transactional profit split method, the division of the operating profit and loss;

"information" includes a document and electronic information;

"low value added service" means a service that -

(*a*) is not provided by any member of the group to unrelated customers;

(*b*) does not use or create valuable intangible property; and

(*c*) does not involve the assumption, control or creation of significant risks;

" multi-national enterprise " means a business entity that is part of a multi-national enterprise group;

" multi-national enterprise group " means a group of associated business entities established in two or more countries;

" resale price method " means the method which consists of comparing the resale margin that a purchaser of property in a controlled transaction earns from reselling that property in an uncontrolled transaction with the resale margin that is earned in comparable uncontrolled purchase and resale transactions;

" total group costs " means the direct and indirect costs incurred by connected persons in providing the service to members of the group of companies to which a Zambia taxpayer belongs;

" transactional net margin method " means the method which consists of comparing the net profit margin relative to an appropriate base which includes costs, sales, assets that a person achieves in a controlled transaction with the net profit margin relative to the same base achieved in comparable uncontrolled transactions;

" transactional profit split method " means the method which consists of allocating to each associated person participating in a controlled transaction the portion of common profit (or loss) derived from such transaction that an independent person would expect to earn from engaging in a comparable uncontrolled transaction; and

" uncontrolled transaction " is transaction between independent persons.

Insertion of new Regulations 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22 and 23

3. The principal Regulations are amended by the insertion of the following new regulations immediately after Regulation 9:

Determination of arms length principle

10. The Commissioner-General shall cause the determination of whether the conditions of a controlled transaction are consistent with the arm's length principle specified in section 97A (2) of the Act and the quantum of any adjustment made under section 97A (3) of the Act, in accordance with the provisions of these Regulations.

Comparability

11. (1) An uncontrolled transaction is comparable to a controlled transaction within the meaning of section 97A (2) of the Act when—

(a) there are no significant differences between that uncontrolled transaction and a controlled transaction that could materially affect the financial indicator being examined under the appropriate transfer pricing method; or

(b) such differences exist, if a reasonably accurate adjustment is made to the relevant financial indicator of the controlled transaction in order to eliminate the effects of those differences on the comparison.

(2) The Commissioner-General, in causing to be determined whether two or more transactions are comparable, shall consider the following factors to the extent that they are economically relevant to the facts and circumstances of the transactions:

(a) the characteristics of the property or services transferred or supplied;

(b) the functions undertaken by each person with respect to the transactions while taking into account assets used and risks assumed;

(c) the contractual terms of the transactions;

(d) the economic circumstances in which the transactions take place; and

(e) the business strategies pursued by the person and associated person in relation to those transactions.