

STATUTORY INSTRUMENTS SUPPLEMENT
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S T A T U T O R Y I N S T R U M E N T S

2011 No. 30.

THE INCOME TAX (TRANSFER PRICING) REGULATIONS 2011

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STATUTORY INSTRUMENTS

2011 No. 30.

The Income Tax (Transfer Pricing) Regulations 2011

(Under sections 90 and 164 of the Income Tax Act cap 340)

IN EXERCISE of the powers conferred upon the Minister by section 164 of the Income Tax Act Cap. 340, these Regulations are made this 20th day of June, 2011.

PART I—PRELIMINARY

1. Title and commencement

These Regulations may be cited as the Income Tax (Transfer Pricing) Regulations 2011, and shall come into force on the 1st day of July 2011.

2. Application of Regulations

The Regulations shall apply to a controlled transaction if a person who is a party to the transaction is located in and is subject to tax in Uganda and the other person who is a party to the transaction is located in or outside Uganda.

3. Interpretation

In these Regulations, unless the context otherwise requires—

“Act” means the Income Tax Act;

“arm’s length principle” in relation to a controlled transaction, means the results of the transaction are consistent with the results that would have been realised in a transaction between independent persons dealing under the same conditions;

“associate” has the meaning given to it in section 3 of the Act;

“branch” in relation to a person—

- (a) where there is a tax treaty applicable to the person, means a permanent establishment as defined in the treaty; or

(b) in any other case, has the meaning given to it in section 78 of the Act;

“comparability factors” means the factors specified in regulation 4;

“comparable uncontrolled price method” means comparing the price charged in a controlled transaction with the price charged in a comparable uncontrolled transaction;

“comparable uncontrolled transaction” in relation to the application of a transfer pricing method to a controlled transaction, means an uncontrolled transaction which, after taking account of the comparability factors, satisfies the differences, if any, between the two transactions or between the persons undertaking the transactions which do not materially affect the financial indicator applicable under the method or where the differences do materially affect the financial indicator applicable under the method, then reasonably accurate adjustments can be made to eliminate the effects of the differences;

“controlled transaction” means a transaction between associates;

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

“financial indicator” means—

- (a) in relation to the comparable uncontrolled price method, the price;
- (b) in relation to the cost plus method, the mark up on costs;
- (c) in relation to the resale price method, the resale margin;
- (d) in relation to the transaction net margin method, the net profit margin; or

(e) in relation to the transactional profit split method, the division of profit and loss;

“person” has the meaning given to it in the Act and includes a “branch person” and “headquarters person” referred to in regulation 5;

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

“transaction” includes an arrangement, understanding, agreement, or mutual practice whether or not legally enforceable or intended to be legally enforceable, and includes a dealing between a branch of a person and another part of the person;

“transactional net margin method” means comparing the net profit margin relative to the appropriate base including costs, sales or assets that a person achieves in a controlled transaction with the net profit margin relative to the same basis achieved in a comparable uncontrolled transaction;

“transactional profit split method” means comparing the division of profit and loss that a person achieves in a controlled transaction with the division of profit and loss that would be achieved when participating in a comparable uncontrolled transaction;

“transfer pricing method” means—

- (a) the comparable uncontrolled price method;
- (b) the resale price method;
- (c) the cost plus method;
- (d) the transaction net margin method; or
- (e) the transactional profit split method;

“uncontrolled transaction” means a transaction that is not a controlled transaction.

PART II—COMPARABILITY FACTORS, BRANCH PERSONS AND OECD DOCUMENTS

4. Comparability factors

In determining whether two or more transactions are comparable the following factors shall be considered 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 the person entering into the transaction taking account of 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 associate to the controlled transaction.

5. Branch person and headquarter person

For the purposes of these Regulations—

- (a) a branch shall be deemed to be a separate and distinct person referred to as the “branch person” from the person in respect of whom it is a branch referred to as the “headquarters person”;
- (b) a branch person and headquarters person shall be deemed to be associates; and
- (c) a branch person and a headquarter person are located where their activities are located.

6. Application of OECD documents

(1) Subject to sub regulation (2), these Regulations shall be applied in a manner consistent with—

- (a) the arm's length principle in Article 9 of the OECD Model Tax Convention on Income and Capital; and
- (b) the OECD Transfer Pricing Guidelines for Multi-national Enterprises and Tax Administrations approved by the Council of the OECD for publication on 13 July 1995 (C(95)126/FINAL) as supplemented and updated from time to time.

(2) Where there is any inconsistency between the Act, these Regulations and the OECD documents referred to in sub regulation (1), the Act shall prevail.

**PART III—CONSISTENCY WITH ARM'S LENGTH PRINCIPLE,
DOCUMENTATION, ADVANCED PRICING AGREEMENTS AND
CORRESPONDING ADJUSTMENTS**

7. Consistency with the arm's length principle

(1) Where a person has entered into a transaction or a series of transactions to which these Regulations apply, the person shall determine the income and expenditures resulting from the transaction or transactions in a manner that is consistent with the arm's length principle.

(2) Where a person fails to comply with sub regulation (1), the Commissioner may make the necessary adjustments to ensure that the income and expenditures resulting from the transaction or transactions are consistent with the arm's length principle.

(3) In determining whether the result of a transaction or series of transactions is consistent with the arm's length principle, the most appropriate transfer pricing method shall be used taking into account—

- (a) the respective strengths and weaknesses of the transfer pricing methods in the circumstances of the case;
- (b) the appropriateness of a transfer pricing method having regard to the nature of the controlled transaction determined, in particular, through an analysis of the functions undertaken by each person that is a party to the controlled transaction;
- (c) the availability of reliable information needed to apply the transfer pricing methods; and

- (d) the degree of comparability between controlled and uncontrolled transactions, including the reliability of adjustments, if any, that may be required to eliminate differences.

(4) Where a person has used an appropriate transfer pricing method in accordance with sub regulation (3), the Commissioner's examination as to whether income and expenditures resulting from the person's transaction or transactions are consistent with the arm's length principle shall be based on the transfer pricing method used by the person.

(5) A person may apply a transfer pricing method other than those listed in the definition of transfer pricing method under regulation 3, if the person can establish that—

- (a) none of the listed methods can reasonably be applied to determine whether a controlled transaction is consistent with the arm's length principle; and
- (b) the method used gives rise to a result that is consistent with that between independent persons engaging in comparable uncontrolled transactions in comparable circumstances.

(6) A person who contravenes this regulation is liable on conviction to imprisonment for a term not exceeding six months or to a fine not exceeding twenty five currency points or both.

8. Documentation

(1) A person shall record, in writing, sufficient information and analysis to verify that the controlled transactions are consistent with the arm's length principle.

(2) The documentation referred to in sub regulation (1) for a year of income shall be in place prior to the due date for filing the income tax return for that year.

(3) The Commissioner may, by notice, specify the items of documentation that a person is required to keep for the purposes of this regulation.

(4) A person who fails to comply with this regulation is liable on conviction to imprisonment for a term not exceeding six months or to a fine not exceeding twenty five currency points or both.

9. Advance pricing agreements

(1) A person may request that the Commissioner enter into an advance pricing agreement to establish an appropriate set of criteria for determining whether the person has complied with the arm's length principle for certain future controlled transactions undertaken by the person over a fixed period of time.

(2) A request under sub regulation (1) shall be accompanied by—

- (a) a description of the person's activities, controlled transactions, and the proposed scope and duration of the advanced pricing agreement;
- (b) a proposal by the person for the determination of the transfer prices for the transactions to be covered by the advanced pricing agreement setting out the comparability factors, the selection of the most appropriate transfer pricing method to the circumstances of the controlled transactions; and the critical assumptions as to future events under which the determination is proposed;
- (c) the identification of any other country or countries that the person wishes to participate in the advanced pricing agreement; and
- (d) any other information which the Commissioner may require as specified in a practice note on transfer pricing.

(3) The Commissioner shall consider a request made by a person under sub regulation (1) and, after taking account of the matters specified in the request and the expected benefits from an advance pricing agreement in the circumstances of the case, the Commissioner may decide to enter into an advance pricing agreement or to reject the request.

(4) Where the Commissioner agrees to enter into an advance pricing agreement with a person, the Commissioner may—

- (a) accept the person's proposal under sub regulation (2)(b);
- (b) reject the proposal; or
- (c) modify the proposal with the person's consent.

(5) The Commissioner may enter into an advance pricing agreement with the person either alone or together with the competent authorities of the country or countries of the person's associate or associates identified under sub regulation (2)(c).

(6) Where the Commissioner approves a proposal under sub regulation (4)(a) or modifies it with the person's consent under sub regulation (4)(c), the Commissioner shall enter into an advance pricing agreement that will provide confirmation to the person that no transfer pricing adjustment will be made under regulation 7(2) to controlled transactions covered by the agreement where the transactions are consistent with the terms of the agreement.

(7) An advance pricing agreement entered into under sub regulation (5) shall apply to the controlled transactions specified in the agreement that are entered into on or after the date of the agreement and the agreement shall specify the years of income for which the agreement applies.

(8) The Commissioner may cancel an advanced pricing agreement with a person by notice in writing if—

- (a) the person has failed to materially comply with a fundamental term of the agreement;
- (b) there has been a material breach of one or more of the critical assumptions underlying the agreement;
- (c) there is a change in the tax law that is materially relevant to the agreement; or
- (d) the agreement was entered into based on a misrepresentation, mistake or omission by the person.

(9) Cancellation of an advance pricing agreement under sub regulation (8) takes effect—

- (a) in the case of sub regulation (8)(a) and (c), from the date of the notice of cancellation specified by the Commissioner in the notice of cancellation
- (b) in the case of sub regulation (8)(b), from the date that the material breach occurred; and
- (c) in the case of sub regulation (8)(d), from the date the agreement was entered into.

(10) The Commissioner shall treat as confidential any trade secrets or other commercially sensitive information or documentation provided to the Commissioner in the course of negotiating an advance pricing agreement.

10. Corresponding adjustments

Where—

- (a) an adjustment is made by a competent authority of another country with which Uganda has a double tax treaty to the taxation of a transaction or transactions of a person subject to tax in Uganda; and
- (b) the adjustment results in taxation in another country of income or profits that are also taxable in Uganda,

the Commissioner shall, upon request by the person subject to tax in Uganda, determine whether the adjustment is consistent with the arm's length principle and where it is determined to be consistent, the Commissioner shall make a corresponding adjustment to the amount of tax charged in Uganda on the income or profits so as to avoid double taxation.

Cross references

Income Tax Act Cap 340

MARIA KIWANUKA,
Minister of Finance, Planning and Economic Development.