

TRANSFER PRICING REGULATIONS, 2020

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In exercise of the power conferred on the Minister responsible for Finance by subsection (3) of section 31 and paragraph (a) of subsection (1) of section 127 of the Income Tax Act, 2015 (Act 896), these Regulations are made this 7th day of August, 2020.

*Preliminary***Application of Regulations**

1. These Regulations apply to

- (a) an arrangement between persons who are in a controlled relationship under the Act; and
- (b) an arrangement between persons who are regarded as being in a controlled relationship under any other tax law.

*The Arm's Length Standard***Arm's length standard**

2. (1) A person who enters into an arrangement with another person with whom that person is in a controlled relationship, shall compute the income or expenditure arising from that arrangement according to the arm's length standard.

(2) An arrangement between persons in a controlled relationship accords with the arm's length standard, if the terms of that arrangement do not differ from the terms of a comparable arrangement between independent persons.

Comparability

3. (1) An arrangement is comparable to an arrangement between persons in a controlled relationship if

- (a) there are no differences between the arrangements that could materially affect the financial indicator being examined under the appropriate transfer pricing method; or
- (b) differences exist between that arrangement and the arrangement engaged in by a person in a controlled relationship, but a reasonably accurate adjustment can be made to the relevant financial indicator being examined in order to eliminate the effect of the differences on the comparison.

(2) The Commissioner-General shall, in selecting a comparable arrangement, consider whether there exists economically relevant characteristics of the arrangements to be compared, in relation to

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- (a) the characteristics of the goods, property or services transferred;
- (b) the relative importance of functions performed by each person with respect to the arrangements, taking into account assets used and risks assumed;
- (c) the contractual terms and conditions of the arrangements;
- (d) the economic and market circumstances in which the arrangement takes place; and
- (e) the business strategies pursued by the associated persons in relation to the arrangements.

(3) In determining whether two arrangements are comparable, the allocation of risk between the associated persons shall take into account how the economically significant risks are allocated in arrangements between those persons and which person

- (a) assumes the financial risk;
- (b) performs the relevant risk control and risk mitigation functions; and
- (c) has the financial capacity to assume the risk.

(4) Where the Commissioner-General is satisfied that the person who assumes the risks under an arrangement between persons in a controlled relationship does not

- (a) control the risk, or
- (b) have the financial capacity to assume the allocated risk,

the Commissioner-General shall adjust the profits of the associated persons to reflect the actual risks assumed by the associated persons under the arrangement.

*Application of the Arm's Length Standard***Transfer pricing methods**

4. (1) For purposes of these Regulations, the transfer pricing methods approved by the Commissioner-General include the

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

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(2) A transfer pricing method specified in subregulation (1) shall be applied as specified in the First Schedule.

(3) Despite subregulation (1), the Commissioner-General may

(a) use a method other than a method stated in subregulation (1), or

(b) in writing permit a person to use a method other than a method stated in subregulation (1),

if the Commissioner-General is of the opinion that considering the nature of the arrangement, the arm's length price cannot be determined by use of a method specified in subregulation (1).

Choice of appropriate transfer pricing method

5. (1) A person who intends to enter into an arrangement with another person with whom that person has a controlled relationship shall, ensure that the price set in the arrangement is computed by the use of the most appropriate method specified in regulation 4.

(2) A person shall in choosing the most appropriate transfer pricing method consider the following factors:

(a) the respective strengths and weaknesses of the approved methods;

(b) the appropriateness of the approved transfer pricing method having regard to the nature of the controlled arrangement determined through an analysis of the functions undertaken by each person in the controlled arrangement, taking into account assets used and risks assumed;

(c) the availability of reliable information needed to apply the selected transfer pricing method; and

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

(3) Despite subregulation (1), a person who intends to enter into an arrangement with another person with whom that person has a controlled relationship may apply to the Commissioner-General for permission to use a method other than a method specified in regulation 4, if considering the nature of the arrangement, the arm's length price

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cannot be determined by that person by the use of any of the methods specified in regulation 4.

(4) A person who makes an application to the Commissioner-General under subregulation (3) shall prove to the satisfaction of the Commissioner-General that

- (a) none of the specified methods can reasonably be applied to determine arm's length conditions for the arrangement, and
- (b) the method proposed to be used yields a result consistent with that which would be achieved by independent persons engaged in a comparable independent arrangement.

(5) Where a person carries out, under the same or similar circumstances, two or more controlled arrangements that are economically closely linked with one another or that form a continuum such that they cannot reliably be analysed separately, those arrangements may be combined to

- (a) perform the comparability analysis specified under regulation 3; and
- (b) apply the transfer pricing methods specified under regulation 4.

(6) A person shall, when applying

- (a) a cost-plus,
- (b) resale price, or
- (c) transactional net margin method,

select a party, referred to as the "the tested party", to the arrangement in respect of which a financial indicator, mark-up on costs, gross margin, or net profit indicator, is tested under the most appropriate transfer pricing method under the circumstances.

(7) The choice of the tested party shall be consistent with the functional analysis of the arrangement and the characterisation of the entities.

(8) A person shall take the following into consideration in selecting a tested party:

- (a) availability of reliable and accurate data for comparison;
- (b) the party that has least complex functional analysis amongst the parties; and

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- (c) the data available can be used with minimal adjustments.
- (9) A tested party may be a domestic entity or foreign entity.

Services between persons in a controlled relationship

6. (1) The Commissioner-General shall consider a service charge between persons in a controlled relationship to be consistent with the arm's length standard, if

- (a) the charge is for a service that is actually rendered,
- (b) the service provides economic or commercial value to the recipient of the service, and
- (c) an independent person in a comparable circumstance will pay that charge for the service.

(2) A payment for a service rendered to a person by another person who is in a controlled relationship with that person is not consistent with the arm's length standard, if the payment is in respect of

- (a) ownership interest of a shareholder of the person in one or more of the companies in the group;
- (b) a service rendered in relation to the juridical structure of the parent company of the person, such as
 - (i) meetings of shareholders of the parent company,
 - (ii) issuing of shares in the parent company,
 - (iii) stock exchange listings of the parent company, and
 - (iv) costs of the supervisory board of the parent company;
- (c) a service rendered in relation to reporting requirements including financial reporting and audit of the parent company of the person such as
 - (i) the consolidation of reports,
 - (ii) the audit of the account of the subsidiary carried out exclusively in the interest of the parent company, and
 - (iii) the preparation of consolidated financial statements of the group;
- (d) a service rendered in relation to the raising of funds for the acquisition of participation and the investor relations of the parent company such as

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- (i) the communication strategy with shareholders of the parent company,
 - (ii) the service provided by the financial analysts, and
 - (iii) other stakeholders in the parent company,except where the participation is directly or indirectly acquired by the person and the acquisition benefits the person or is expected to benefit the person;
 - (e) a service which is a duplication of a service that person is already performing for itself or that is being rendered by a third party to the person, except where the duplication of the service is
 - (i) only temporary in order to achieve a reasonable business objective; or
 - (ii) undertaken to reduce the risk of the person taking a wrong business decision; and
 - (f) an incidental benefit derived by the person
 - (i) due to a service rendered by a group member exclusively to some members within the group; or
 - (ii) merely on account of the person being affiliated to the group and not in relation to any specific activity being rendered to that person.
- (3) Subject to these Regulations, where it is possible for the Commissioner-General to identify
- (a) specific services rendered by the person to other persons with whom that person is in a controlled relationship, or
 - (b) specific services rendered to the person by other persons with whom the person is in a controlled relationship,
- the Commissioner-General shall determine whether the charge for each service rendered is consistent with the arm's length standard.
- (4) The Commissioner-General shall use a reasonable allocation criterion to allocate among the persons in a controlled relationship, the total charge for a service rendered by a person to other persons in the controlled relationship, where the specific service rendered to each of the persons in the controlled relationship cannot be easily identified.

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(5) For purposes of subregulation (4), an allocation criterion is reasonable if the allocation criterion is based on a variable that

(a) takes into account

- (i) the nature of the services;
- (ii) the circumstances under which the services are provided; and
- (iii) the benefit derived or expected to be derived by the persons in the controlled relationship, from the service;

(b) relates exclusively to an arrangement between independent persons, and allows cost to be shared at arm's length; or

(c) is capable of being measured in a reasonably reliable manner.

Arrangements involving intangible property

7. (1) The Commissioner-General shall, in determining the arm's length conditions of an arrangement that involves the right to use or exploit an intangible property between persons who are in a controlled relationship, take into account

(a) the perspective of both the transferor and the transferee of the intangible property, including the price a comparable independent person will pay for the transfer of that intangible property, and

(b) the usefulness of that intangible property to the business of the transferee.

(2) In the application of the comparability analysis to an arrangement, the Commissioner-General shall consider special factors relevant to the comparable arrangement, including

(a) the benefit expected from the intangible property;

(b) the commercial alternatives otherwise available to the acquirer or licensee of the intangible property;

(c) any geographical limitation on the exercise of a right to the intangible property;

(d) the character of the right transferred, whether exclusive or non-exclusive; and

(e) whether the transferee has a right to participate in any further development made by the transferor to the intangible property.

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(3) In determining the arm's length conditions for controlled arrangements involving intangibles, the Commissioner-General shall take into account the contractual arrangements with regard to the development, enhancement, maintenance, protection and exploitation of the intangible asset and in addition the following factors:

- (a) the contribution of assets by a person including financial assets;
- (b) the management and control of assets contributed including financial assets;
- (c) the risks assumed by a person;
- (d) the management and control of those risks; and
- (e) the financial capacity to assume the risk.

(4) The Commissioner-General shall use a reasonable allocation criterion to determine the appropriate price for the exploitation of an intangible asset in cases where the contractual arrangements differ from the factors listed in subregulation (3).

Cost contribution arrangements

8. (1) The Commissioner-General shall consider a cost contribution arrangement between persons in a controlled relationship to be consistent with the arm's length standard, if the contribution of each participant is consistent with what an independent person under comparable circumstances would have agreed to contribute given the benefit that person would reasonably expect to derive from the arrangement.

(2) In determining whether a cost contribution arrangement between persons in a controlled relationship is consistent with the arm's length standard, the Commissioner-General shall take into account the following:

- (a) the contractual arrangement among the participants;
- (b) the assets contributed by each participant;
- (c) the risks assumed by each participant;
- (d) the management and control of those risks; and
- (e) the financial capacity to assume the risk.

(3) A buy-in payment made by a person to a participant in a cost contribution arrangement is consistent with the arm's length standard if the buy-in payment reflects an amount an independent person under

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comparable circumstances would have paid, given the expected benefit to be derived under the cost contribution arrangement.

(4) A buy-out payment made to a participant in a cost contribution arrangement is consistent with the arm's length standard if the buy-out payment reflects an amount an independent person under comparable circumstances would have received, given the expected benefit to be derived under the cost contribution arrangement.

(5) Where all participants to a cost contribution arrangement agree to terminate the arrangement, the interest of each participant shall be determined based on the proportionate share of contributions made by each participant to the cost contribution arrangement.

Financing arrangements

9. (1) Where a person either directly or indirectly provides a loan, credit facility or otherwise becomes a creditor of an associate of that person, and

- (a) interest or loan fees is not charged on the loan,
- (b) interest is not charged on trade payables or any other credit facility which remains unpaid for twelve months, or
- (c) interest or loan fees charged is not consistent with the arm's length standard,

the Commissioner-General shall deem appropriate interest or loan fees where none is charged or adjust the amount of interest or loan fees to reflect an amount an independent person in a comparable circumstance would have charged for providing that loan, credit facility or otherwise becoming the creditor of the associate.

(2) For purposes of determining whether interest or loan fees charged under an arrangement referred to in subregulation (1) reflects the arm's length standard, the Commissioner-General shall take into account the following:

- (a) the characteristics of the loan including
 - (i) the nature or purpose of the loan;
 - (ii) the principal amount and duration of the loan;
 - (iii) the currency in which the loan is denominated;
 - (iv) the schedule of repayment of the loan;

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- (v) the security offered for the loan;
- (vi) the level of seniority of the loan; and
- (vii) whether the interest rate is fixed or floating;
- (b) the credit risk profile of the borrower;
- (c) the economic conditions in the geographical location of the lender and borrower including the prevailing interest rate in the tax residence of the lender, creditor and the borrower for a comparable loan or credit facility to an unrelated person; and
- (d) any other relevant information.

(3) Where a person provides a financial guarantee to another person with whom that person is in a controlled relationship, the guarantee fee paid as consideration for the provision of the financial guarantee shall reflect an amount which an independent person in a comparable circumstance would have paid for the financial guarantee.

Business restructuring

10. (1) Subject to Part IV of the Act, the Commissioner-General shall consider a business restructuring arrangement between persons in a controlled relationship to be consistent with the arm's length standard if the amount received for the transfer of functions, rights, interests, assets and risks among persons in a controlled relationship reflects the amount an independent person in comparable circumstances would pay for the transfer of those functions, rights, interests, assets and risks.

(2) In determining whether a business restructuring arrangement between persons in a controlled relationship is consistent with the arm's length standard, the Commissioner-General shall carry out the following:

- (a) identify the scope, type and economic nature of the arrangements between the associated entities involved in the business restructuring;
- (b) identify the assets transferred, as well as the amount received for the transfer;
- (c) certify or if necessary, perform a functional analysis of the pre-business and post-business restructuring activities of associated entities affected by the restructuring including the

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risks assumed and functions performed by the associated entities; and

- (d) examine the consistency of the contractual terms with the outcome of the functional analysis of the associated entities taking part in the business restructuring, in order to determine the true nature of the arrangements.

*Documentation***Associated persons to file details of arrangements**

11. (1) A person who enters into an arrangement with another person with whom that person is in a controlled relationship shall for purposes of these Regulations, file a transfer pricing return not later than four months after the end of each basis period.

(2) An Ultimate Parent Entity or a Constituent Entity of a Multinational Enterprise Group that is resident for tax purposes in Ghana shall, in addition to the requirements under subregulation (1), file with the Commissioner-General not later than twelve months after the last day of the reporting fiscal year of the Multinational Enterprise Group, a Country-by-Country Report.

(3) The transfer pricing return shall be in a form prescribed by the Commissioner-General and shall include the following information:

- (a) the identity of that person and the relationship between that person and other persons in the controlled relationship;
- (b) the organisational structure of the person globally, showing the location and ownership linkages amongst associated persons;
- (c) the consolidated group revenue;
- (d) the arrangements between that person and other persons in a controlled relationship;
- (e) the principal business activities of each person in the controlled relationship and the business relationships among them;
- (f) the nature of the business in which the relevant arrangements took place, the property used and the extent of any other commercial or financial relationship;

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- (g) the monetary values of the arrangements between that person and other persons in a controlled relationship;
- (h) the calculations made and price adjustment factors considered necessary for purposes of achieving the comparability;
- (i) the transfer pricing method selected by the person to determine the arm's length value of the arrangements;
- (j) any arm's length range determined by the person and any reasons in support of that determination and the use of that range;
- (k) strategies and policies applied and information analysis relied on by the person to determine and ensure that the transaction is at an arm's length;
- (l) the consolidated financial statement of the group; and
- (m) any other information that the Commissioner-General considers relevant.

(4) Where the Commissioner-General makes a request for additional information from a person, the Commissioner-General shall, in the request, specify a reasonable time within which the information should be submitted, and the information shall be submitted within that time.

(5) The Commissioner-General shall apply sections 72 to 74 of the Revenue Administration Act, 2016 (Act 915) to a person who does not comply with a request made by the Commissioner-General under subregulation (3).

Details of documentation

12. (1) Except as otherwise provided in these Regulations, a person who enters into an arrangement with another person with whom that person has a controlled relationship shall maintain contemporaneous documentation of the arrangement engaged in by that person in each year of assessment.

(2) A person shall file with the Commissioner-General not later than four months after the end of each basis period, an electronic copy of the contemporaneous documentation regarding the arrangements engaged in by that person.

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(3) The documentation referred to in subregulation (2) shall include

- (a) a Master file; and
- (b) a Local file.

(4) The Master file referred to in paragraph (a) of subregulation (3) shall contain information on the following:

- (a) the organisational structure of the group including a chart illustrating the legal and ownership structure of the group and the geographical location of operating entities;
- (b) a description of the business of the group including a description of
 - (i) important drivers of business profit;
 - (ii) the supply chain of at least five of the largest products or service offerings of the group based on turnover and any other products or services amounting to more than five per cent of the turnover of the group;
 - (iii) important service arrangements between members of the group, other than research and development services, including a description of the capabilities of the principal locations providing important services and transfer pricing policies for allocating services costs and determining prices to be paid for intra-group services;
 - (iv) the main geographic markets for the products and services of the group that are referred to in paragraph (ii);
 - (v) the functional analysis describing the principal contributions to value creation including the key functions performed, important risks assumed and important assets used by each entity within the group; and
 - (vi) the important business restructuring arrangements, acquisitions and divestitures occurring during the fiscal year;
- (c) the intangibles of the group including a description of
 - (i) the overall strategy of the group for the development, ownership and exploitation of intangibles, including

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- location of principal research and development facilities and location of research and development management;
- (ii) the intangibles or groups of intangibles of the group that are important for transfer pricing purposes and the entities that own the intangibles;
- (iii) the agreements among associates relating to the intangibles, including cost contribution agreements, principal research service agreements and licence agreements;
- (iv) the transfer pricing policies of the group related to research and development, and intangibles; and
- (v) a general description of any important transfers of interest in intangibles among associates during the fiscal year concerned, including the entities, countries, and compensation involved;
- (d) the financial activities of the group including a description of
 - (i) how the group is financed, including important financing arrangements with unrelated lenders;
 - (ii) the members within the group that provide a central financing function for the group, including the country under whose laws the entity is organised and the place of effective management of the entity; and
 - (iii) the transfer pricing policies relating to financing arrangements between associates; and
- (e) the financial and tax positions of the group including a description of
 - (i) the audited consolidated financial statement of the group for the fiscal year concerned; and
 - (ii) the existing unilateral advance pricing agreements of the group and other tax rulings relating to the allocation of income among countries.
- (5) The Local file shall contain information on the following:
 - (a) the organisational structure of the entity in Ghana including a description of
 - (i) the management structure of the entity, an organisational chart of the entity, and a description

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- of the persons to whom local management reports and the countries in which such persons maintain their principal offices;
- (ii) the business and business strategy pursued by the entity including an indication whether the entity has been involved in or affected by business restructurings or intangibles transfers in the present or immediately preceding year and an explanation of those aspects of such transactions affecting the local entity; and
- (iii) key competitors of the entity;
- (b) the controlled arrangements of the entity in Ghana including details of
 - (i) the substantial controlled arrangements including the procurement of goods, services, loans, financial and performance guarantees, licences of intangibles and the context in which the arrangements take place;
 - (ii) the amount of intra-group payments and receipts for each category of controlled arrangements involving the local entity grouped by the tax jurisdiction of the foreign payor or recipient;
 - (iii) the associated entities involved in each category of controlled arrangements, and the relationship among the associated entities;
 - (iv) the comparability and functional analysis of the person and relevant associates with respect to each documented category of controlled arrangements, including any changes compared to prior years;
 - (v) the most appropriate transfer pricing method with regard to the category of arrangements and the reasons for selecting that method;
 - (vi) the person selected as the tested party and an explanation of the reasons for the selection;
 - (vii) the important assumptions made in applying the transfer pricing methodology;

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- (viii) the selected comparable uncontrolled arrangements, internal or external if any, and the information on relevant financial indicators for independent entities relied on in the transfer pricing analysis, including a description of the comparable search methodology and the source of the information;
 - (ix) any comparability adjustments performed, and an indication of whether adjustments have been made to the results of the tested party, the comparable uncontrolled transactions, or both;
 - (x) any reasons for concluding that the relevant arrangements were priced using the arm's length standard based on the application of the selected transfer pricing method;
 - (xi) the financial information used in applying the transfer pricing methodology; and
 - (xii) an existing unilateral, bilateral or multilateral advanced pricing arrangements and other rulings to which the Ghana Revenue Authority is not a party and which are related to controlled arrangements described above; and
- (c) the financial activities of the entity in Ghana including details of
- (i) the audited financial statement of the entity for the fiscal year concerned;
 - (ii) the allocation schedules showing how the financial data used in applying the transfer pricing method may be tied to the annual financial statement; and
 - (iii) the schedules of relevant financial data for comparables used in the analysis and the sources from which that data was obtained.

Country-by-Country Report

13. (1) An Ultimate Parent Entity of a Multinational Enterprise Group that is resident for tax purposes in Ghana shall file with the Commissioner-General a Country-by-Country Report which conforms to the requirements

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under subregulation (6) with respect to its reporting fiscal year on or before the date specified in subregulation (2) of regulation 11.

(2) A Constituent Entity which is not the Ultimate Parent Entity of a Multinational Enterprise Group shall file a Country-by-Country Report which conforms to the requirements of subregulation (6) with the Commissioner-General with respect to the Reporting Fiscal Year of the Multinational Enterprise Group of which it is a Constituent Entity, on or before the date specified in subregulation (2) of regulation 11, if the following criteria are satisfied:

- (a) the entity is resident for tax purposes in Ghana; and
- (b) one of the following conditions applies:

- (i) the Ultimate Parent Entity of a Multinational Enterprise Group is not obligated to file a Country-by-Country Report in its jurisdiction of tax residence;
- (ii) the jurisdiction in which the Ultimate Parent Entity is resident for tax purposes has a current international agreement to which Ghana is a party but does not have a Qualifying Competent Authority Agreement in effect to which Ghana is a party by the time specified in subregulation (2) of regulation 11 for filing the Country-by-Country Report for the reporting fiscal year; or
- (iii) there has been a systemic failure of the jurisdiction of tax residence of the Ultimate Parent Entity that has been notified by the Commissioner-General to the Constituent Entity resident for tax purposes in Ghana.

(3) Where more than one Constituent Entity of the same Multinational Enterprise Group are resident for tax purposes in Ghana and one or more of the conditions set out in paragraph (b) of subregulation (2) apply, the Multinational Enterprise Group may

- (a) designate one of the Constituent Entities to file the Country-by-Country Report conforming to the requirements of subregulation (6) with the Commissioner-General with respect to any reporting fiscal year on or before the date specified in subregulation (2) of regulation 11; and

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- (b) notify the Commissioner-General that the filing is intended to satisfy the filing requirement of all the constituent entities of the multinational enterprise group that are resident for tax purposes in Ghana.
- (4) Despite the provisions of subregulations (2) and (3), when one or more of the conditions set out in paragraph (b) of subregulation (2) apply, an entity described in subregulation (2) is not required to file a Country-by-Country Report with the Commissioner-General with respect to any reporting fiscal year if
 - (a) the Multinational Enterprise Group of which it is a Constituent Entity has made available a Country-by-Country Report conforming with the requirements of subregulation (6) with respect to the fiscal year through a surrogate parent entity that files that Country-by-Country Report with the tax authority of its jurisdiction of tax residence on or before the date specified in subregulation (2) of regulation 11; and
 - (b) the following conditions are satisfied:
 - (i) the jurisdiction of tax residence of the Surrogate Parent Entity requires filing of a Country-by-Country Report conforming to the requirements of subregulation (6);
 - (ii) the jurisdiction of tax residence of the Surrogate Parent Entity has a Qualifying Competent Authority Agreement in effect to which Ghana is a party by the time specified in subregulation (2) of regulation 11 for filing the Country-by-Country Report for the Reporting Fiscal Year;
 - (iii) the jurisdiction of tax residence of the surrogate parent entity has not notified Commissioner-General of a systemic failure;
 - (iv) the jurisdiction of tax residence of the surrogate parent entity has been notified in accordance with subregulation (5) by the Constituent Entity resident for tax purposes in its jurisdiction that it is the Surrogate Parent Entity; and

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(v) a notification has been provided to the Commissioner-General in accordance with subregulation (5).

(5) A Constituent Entity of a Multinational Enterprise Group that is resident for tax purposes in Ghana shall notify the Commissioner-General whether it is the Ultimate Parent Entity or the Surrogate Parent Entity, no later than twelve months after the last day of the reporting fiscal year of the Multinational Enterprise Group.

(6) Where a Constituent Entity of a Multinational Enterprise Group that is resident for tax purposes in Ghana is not the Ultimate Parent Entity nor the Surrogate Parent Entity, the Constituent Entity shall notify the Commissioner-General of the identity and tax residence of the reporting entity, no later than twelve months after the last day of the reporting fiscal year of the multinational enterprise group.

(7) For purposes of this regulation, a Country-by-Country Report with respect to a Multinational Enterprise Group is a report containing

(a) aggregate information relating to the amount of revenue, profit or loss before income tax, income tax paid, income tax accrued, stated capital, accumulated earnings, number of employees, and tangible assets other than cash or cash equivalents with regard to each jurisdiction in which the Multinational Enterprise Group operates; and

(b) an identification of each Constituent Entity of the Multinational Enterprise Group setting out the jurisdiction of tax residence of each Constituent Entity, and where different from the jurisdiction of tax residence, the jurisdiction under the laws of which the Constituent Entity is organised, and the nature of the main business activity or activities of the constituent entity.

(8) The Country-by-Country Report shall be filed in a form identical to and apply the definitions and instructions contained in the standard template issued by the Commissioner-General.

(9) The Commissioner-General shall use the Country-by-Country Report for purposes of assessing high-level transfer pricing risks and other base erosion and profit shifting related risks in Ghana, including assessing the risk of non-compliance by members of the multinational enterprise

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group with applicable transfer pricing rules, and where appropriate for economic and statistical analysis.

(10) The Commissioner-General shall preserve the confidentiality of the information contained in the Country-by-Country Report at least to the same extent that would apply if the information were provided to the Commissioner-General under the provisions of the Multilateral Convention on Mutual Administrative Assistance in Tax Matters.

*Miscellaneous Provisions***Simplified approach**

14. (1) A person who enters into an arrangement with another person with whom that person has a controlled relationship, is exempted from the requirement under subregulation (1) of regulation 12, if the monetary value of the arrangement does not exceed the Ghana Cedi equivalent of two hundred thousand United States Dollars.

(2) For the purpose of determining whether an arrangement qualifies under subregulation (1), the Commissioner-General may aggregate two or more arrangements among persons in a controlled relationship where the Commissioner-General is satisfied that the arrangements are designed in furtherance of a tax avoidance arrangement.

(3) Despite subregulation (1) of regulation 6, the Commissioner-General shall consider an amount charged for the provision of low value-adding intra-group services to be consistent with the arm's length standard, if the cost-plus method is applied to the arrangement and the amount

(a) reflects the actual cost incurred by a group member in rendering the low value-adding intra-group services specifically to another member within the group and the mark-up on the cost does not exceed three per cent; or

(b) is based on an allocation among members of the group using an appropriate allocation method, the total group cost of providing the low value-adding intra-group services to each person that receives the services and mark-up does not exceed three per cent.

(4) Intra-group services specified under subregulation (3) do not include

(a) services that constitute the core business of persons in the controlled relationship;

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- (b) research and development services;
- (c) manufacturing and production services;
- (d) purchasing activities relating to raw materials or other materials that are used in the manufacturing or production process;
- (e) sales, marketing and distribution activities;
- (f) financial transactions, unless the financial transactions are of a supportive nature and not part of the core business of the persons in the controlled relationship;
- (g) the extraction, exploration or processing of natural resources;
- (h) insurance and re-insurance; and
- (i) services of corporate senior management, other than management supervision of services that qualify as low value-adding intra-group services.

(5) A person who renders or receives low value-adding intra-group services which satisfy the conditions specified in subregulation (3) may, by a notice in writing to the Commissioner-General, elect to be exempted from the requirement under subregulation (1) of regulation 12 in relation to the mark-up applied on the cost.

(6) The notice of election specified under subregulation (5) shall be filed with the Commissioner-General within thirty days of the person entering into the arrangement.

(7) A person who makes an election under subregulation (5) shall for each basis period, attach to a transfer pricing return submitted to the Commissioner-General, the following information:

- (a) a description of the categories of low value intra-group services provided;
- (b) the identity of the beneficiaries;
- (c) the reasons justifying that each category of services constitute low value-adding intra-group services within the definition set out in regulation 17;
- (d) the rationale for the provision of services within the context of the business of the group;
- (e) a description of the benefits or expected benefits of each category of services;

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- (f) a description of the selected allocation keys and the reasons justifying that such allocation keys produce outcomes that reasonably reflect the benefits received;
- (g) the mark-up applied to the arrangement;
- (h) documentation and calculations showing the determination of the cost pool, detailed listing of all categories and amounts of relevant costs, including costs of any services provided solely to one group member; and
- (i) calculation showing the application of the specified allocation keys.

(8) A person who enters into a technology transfer agreement with another person with whom that person is in a controlled relationship may, by a notice in writing to the Commissioner-General, elect to be exempted from the requirement under subregulation (1) of regulation 12 if

- (a) the technology transfer agreement is registered with the Ghana Investment Promotion Centre; and
- (b) the amount charged for the technology transferred accords with the ranges specified in the Second Schedule.

(9) The notice of election specified under subregulation (8) shall be filed with the Commissioner-General within thirty days of the person entering into the agreement.

(10) A person who makes an election under subregulation (8) shall for each basis period, attach to a transfer pricing return submitted to the Commissioner-General, the following information

- (a) a description of the nature of the technology transferred under the arrangement;
- (b) the identity of the parties to the arrangement;
- (c) the rationale for the transfer of technology within the context of the business of the parties to the arrangement;
- (d) a description of the benefits or expected benefits of each category of technology transferred under the arrangement;
- (e) where appropriate, a description of the selected allocation keys and the reasons justifying that such allocation keys produce outcomes that reasonably reflect the benefits received; and

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(f) the amount charged for the transfer of each category technology under the arrangement.

(11) A person who makes an election under subregulations (5) and (8) is bound by that election for a period of three years, unless otherwise determined by the Commissioner-General by notice in writing.

(12) Despite subregulation (11), a person who makes an election under subregulation (5) or (8) may give notice to the Commissioner-General in writing to opt out.

(13) The Commissioner-General shall within thirty days of receiving the notice of election under subregulation (5) or (8), notify the person of the approval or otherwise of the election.

Transfer pricing audit

15. (1) The Commissioner-General may on receipt of a transfer pricing return filed under subregulation (1) of regulation 11 in respect of an arrangement, examine the amount

(a) charged to the financial statement, or

(b) credited to the financial statement,

of the person who filed the return in respect of that arrangement to determine whether the amount is within the arm's length range.

(2) The Commissioner-General shall, for purposes of subregulation (1),

(a) examine the documentation filed under subregulation (1) of regulation 12 to determine whether the most appropriate transfer pricing method has been applied to the arrangement;

(b) apply the most appropriate transfer pricing method to the arrangement where the Commissioner-General is satisfied that the person who filed the return did not apply the most appropriate transfer pricing method to the arrangement; and

(c) provide reasons for selecting a method other than the method selected by the person who filed the return.

(3) The Commissioner-General shall adjust the chargeable income of a person if the Commissioner-General is satisfied after the examination that the amount

(a) charged to the financial statement, or

(b) credited to the financial statement,

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of the person in respect of that arrangement is not consistent with the arm's length standard and that person shall pay tax on the adjusted chargeable income.

(4) Despite subregulation (1), the Commissioner-General may conduct an audit of a person even though the person has not filed a return of income.

(5) For purposes of paragraph (a) of subsection (5) of section 31 of the Act, the Commissioner-General may re-characterise a debt financing arrangement between persons in a controlled relationship as an equity financing arrangement after considering the following factors:

- (a) the presence or absence of a fixed repayment date;
- (b) whether there is an obligation to pay interest;
- (c) whether the lender has a right to enforce payment of principal and interest;
- (d) the status of the lender in comparison to regular corporate creditors;
- (e) the existence of financial covenants and security;
- (f) whether the borrower can obtain a loan from an unrelated lender;
- (g) the extent to which the loan is used to acquire capital assets; and
- (h) the opportunity for debtor to default in repayment on the due date or to seek a postponement of the date for the repayment of the loan.

Penalties and interest

16. (1) A tax due and unpaid as a result of an adjustment made by the Commissioner-General under subregulation (3) of regulations 15 is deemed to be an adjusted assessment for purposes of section 39 of the Revenue Administration Act, 2016 (Act 915).

(2) The provisions of the Revenue Administration Act, 2016 (Act 915) on extension of time to file a tax return, fraud, failure to maintain documentation, failure to file tax return, penalty for under-payment of tax, interest and offences, apply to these Regulations.

*TRANSFER PRICING REGULATIONS, 2020***Interpretation**

17. In these Regulations, unless the context otherwise requires,
“arm’s length range” means

- (a) a range of relevant indicator figures which are of equal reliability, produced by applying the most appropriate transfer pricing method to a number of comparable uncontrolled arrangements; and
- (b) where the application of the most appropriate method results in a number of financial indicators for which the degree of comparability of each to the controlled arrangements, and to each other, is uncertain, a statistical approach using a weighted average method over a three-year period shall be used, and the interquartile range shall be considered to be an arm’s length range;

“arrangement” has the meaning assigned in section 133 of the Act;

“associate” has the meaning assigned in section 133 of the Act;

“basis period” has the meaning assigned in section 18 of the Act;

“business restructuring” includes the transfer of functions, rights, interests, assets and risks among persons in a controlled relationship and may involve the

- (a) conversion of a full-fledged distributor into a limited-risk distributor, marketer, sales agent or commissionaire for a foreign associated enterprise that may operate as a principal;
- (b) conversion of a fully-fledged manufacturer, into a contract manufacturer or toll manufacturer for a foreign associated enterprise that may operate as a principal;
- (c) transfer of intangibles or rights in intangibles to a central entity within the group; or
- (d) concentration of functions in a regional or central entity with a corresponding reduction in a scope or

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- scale of functions carried out locally including procurement, sales support and supply chain logistics;
- “buy-in payment” means a payment made by a new entrant to an already active cost contribution arrangement for obtaining an interest in any results of prior activities of a cost contribution arrangement;
- “buy-out payment” means compensation that a participant who withdraws from an already active cost contribution arrangement may receive from the remaining participants for an effective transfer of an interest in the results of past activities of a cost contribution arrangement;
- “close company” has the meaning assigned in section 133 of the Act;
- “commissionaire” means an enterprise with relatively lower level of functions and risks for a foreign associated enterprise that may operate as a principal;
- “consolidated financial statements” means the financial statements of a Multinational Enterprise Group in which the assets, liabilities, income, expenses and cash flows of the Ultimate Parent Entity and the Constituent Entities are presented as those of a single economic entity;
- “Constituent Entity” means
- (a) a separate business unit of a Multinational Enterprise Group that is included in the consolidated financial statements of the Multinational Enterprise Group for financial reporting purposes, or would be so included if equity interests in such business unit of a Multinational Enterprise Group were traded on a public securities exchange;
 - (b) a business unit that is excluded from the consolidated financial statements of the Multinational Enterprise Group solely on size or materiality grounds; and
 - (c) a permanent establishment of any separate business unit of the Multinational Enterprise Group included in paragraph (a) or (b) provided the business unit prepares a separate financial statement for such

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permanent establishment for financial reporting, regulatory, tax reporting, or internal management control purposes;

“contemporaneous documentation” means information, records and other documents which exist or are brought into existence at the time the person is developing or implementing any arrangement that might raise transfer pricing issues;

“contract manufacturer” means an enterprise with relatively lower level of functions and risks;

“controlled arrangement” means any arrangement entered into by persons in a controlled relationship;

“controlled relationship” has the meaning assigned in section 128 of the Act;

“cost contribution arrangement” means a contractual arrangement among persons to share costs or risks associated with the development, production or the obtaining of intangibles, tangible assets or services, in proportion to the benefits that each participant is reasonably expected to derive from such intangibles developed, tangible assets produced or services obtained under the arrangement;

“Excluded Multinational Enterprise Group” means, with respect to a Fiscal Year of Multinational Enterprise Group, a group having total consolidated group revenue of less than two billion, nine hundred million Ghana Cedis during the Fiscal Year immediately preceding the Reporting Fiscal Year as reflected in its consolidated financial statement for the preceding Fiscal Year;

“financial guarantee” includes any arrangement in which a person undertakes to or provides indemnity to a lender or creditor in respect of a debt owed by another person;

“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;

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- (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 the operating profit and loss;
- “fiscal year” means an annual accounting period with respect to which the Ultimate Parent Entity of the Multinational Enterprise Group prepares its financial statements;
- “full-fledged distributor” means an enterprise with relatively higher levels of functions and risks;
- “full-fledged manufacturer” means an enterprise with relatively higher levels of functions and risks;
- “group” means a collection of entities related through ownership or control such that it is either required to prepare Consolidated Financial Statements or financial reporting purposes under applicable accounting principles or would be so required if equity interests in any of the entities were traded on a public securities exchange;
- “independent persons” in relation to an arrangement, means persons who are not in a controlled relationship;
- “intangible property” includes property other than a physical or financial asset which is capable of being owned or controlled for use in commercial activities, patents, software, inventions, secret formula or process, design, model, plan, trademarks, know-how or marketing intangibles;
- “International Agreement” means the Multilateral Convention for Mutual Administrative Assistance in Tax Matters, any bilateral or multilateral tax convention, or any Tax Information Exchange Agreement to which Ghana is a party, and that by its terms provides legal authority for the exchange of tax information between jurisdictions, including automatic exchange of such information;
- “know how” means undivulged technical information, whether capable of being patented or not, that is necessary for the industrial reproduction of a product or process;

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“low value adding intra-group services” means services performed by one member or more than one member of a group of entities on behalf of other members within the group which

- (a) are of a supportive nature,
- (b) are not part of the core business of the group which do not create the profit-earning activities or contribute to economically significant activities of the group, and
- (c) do not
 - (i) require the use of unique and valuable intangibles,
 - (ii) lead to the creation of unique and valuable intangibles,
 - (iii) involve the assumption or control of significant risk by the service provider, and
 - (iv) give rise to the creation of significant risk for the service provider;

“management fee” means a payment to a person other than an employee in consideration for a service of a managerial, technical or consultancy nature;

“Multinational Enterprise Group” means a group that:

- (a) includes two or more entities the tax residence for which is in different jurisdictions including an entity that is resident for tax purposes in one jurisdiction and is subject to tax with respect to the business carried out through a permanent establishment in another jurisdiction; and
- (b) is not an Excluded Multinational Enterprise Group;

“person” means an individual or entity;

“property” means tangible and intangible property;

“Qualifying Competent Authority Agreement” means an agreement that

- (a) is between authorised representatives of a jurisdiction that is a party to an International Agreement; and

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(b) requires the automatic exchange of Country-by-Country Reports between the parties to the International Agreement;

“relevant indicator” includes the price, profit margin and profit sharing ratio;

“reporting entity” means the Constituent Entity that is required to file a Country-by-Country Report in its jurisdiction of tax residence on behalf of the Multinational Enterprise Group;

“Reporting Fiscal Year” means that fiscal year that the financial and operational results of which are reflected in the Country-by-Country Report;

“royalty” has the meaning assigned in section 133 of the Act;

“Surrogate Parent Entity” means one Constituent Entity of the Multinational Enterprise Group that has been appointed by the Multinational Enterprise Group, as a sole substitute for the Ultimate Parent Entity, to file the Country-by-Country Report in the jurisdiction of tax residence of that Constituent Entity, on behalf of the Multinational Enterprise Group;

“systemic failure” with respect to a jurisdiction means that a jurisdiction has a Qualifying Competent Authority Agreement in effect with Ghana, but has suspended automatic exchange for reasons other than those that are in accordance with the terms of that Agreement or persistently fails to automatically provide to Ghana Country-by-Country Reports in its possession of Multinational Enterprise Groups that have Constituent Entities in Ghana;

“tax law” has the meaning assigned in section 108 of the Revenue Administration Act, 2016 (Act 915);

“toll manufacturer” means an enterprise with relatively lower level of functions and risks;

“uncontrolled arrangement” means any arrangement entered into between independent persons;

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“Ultimate Parent Entity” means a Constituent Entity of a Multinational Enterprise Group that meets the following criteria:

- (a) it owns directly or indirectly a sufficient interest in one or more other Constituent Entities of such Multinational Enterprise Group such that it is required to prepare Consolidated Financial Statements under accounting principles generally applied in its jurisdiction of tax residence, or would be so required if its equity interests were traded on a public securities exchange in its jurisdiction of tax residence; and
- (b) there is no other Constituent Entity of such Multinational Enterprise Group that owns directly or indirectly an interest described in (a) above in the first mentioned Constituent Entity; and

“year of assessment” has the meaning assigned in section 18 of the Act.

Revocation

18. The Transfer Pricing Regulations, 2012 (L. I. 2188) is revoked.

Transitional provision

19. Despite the revocation under regulation 18, L.I. 2188 shall continue to apply to an assessment pending under L.I. 2188 before the entry into force of these Regulations.

*TRANSFER PRICING REGULATIONS, 2020***FIRST SCHEDULE***Transfer Pricing Methods and Their Application
(regulation 4(2))*

1. **Comparable Uncontrolled Price Method** is used to determine the arm's length range by comparing the price charged for goods, property or services transferred in a controlled transaction to the price charged for property or services transferred in a comparable uncontrolled transaction.
2. **Resale Price Method** is used to determine the arm's length range by comparing the resale margin that a purchaser of goods or property in a controlled transaction earns from reselling the goods or property in an uncontrolled transaction with the resale margin that is earned in comparable uncontrolled purchase and resale transactions.
3. **Cost Plus Method** is used to determine the arm's length range by 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.
4. **Transactional Net Margin Method** is used to determine the arm's length range by comparing the net profit margin relative to an appropriate base (e.g. costs, sales, assets) that an enterprise achieves in a controlled transaction with the net profit margin relative to the same base achieved in comparable uncontrolled transactions.
5. **Transactional Profit Split Method** is used to determine the arm's length range by allocating to each associated enterprise participating in a controlled transaction the portion of common profit (or loss) derived from the transaction that an independent enterprise would expect to earn from engaging in a comparable uncontrolled transaction.

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Guidance Notes: When it is possible to determine an arm's length remuneration for some of the functions performed by the associates in connection with an arrangement using one of the approved methods described in paragraphs 1 to 4, the transactional profit split method shall be applied based on the common residual profit that results once the functions are so remunerated.

*TRANSFER PRICING REGULATIONS, 2020***SECOND SCHEDULE**

*Ranges for the Application of Safe Harbour Rules
(regulation 14(8)(b))*

1. <u>Heads</u>	<u>Ranges</u>
(a) Royalties	Not exceeding 2 percent of net profit
(b) Know-how	Not exceeding 2 percent of net profit
(c) Management or Technical Fee	Not exceeding 2 percent of net profit

2. For purposes of this Schedule, “net profit” means earnings after interest, tax, depreciation and amortisation but excluding the charge for the technology transfer.

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HON. KEN OFORI-ATTA
Minister responsible for Finance

Date of *Gazette* notification: 10th August, 2020.

Entry into force: