ZAMBIA REVENUE AUTHORITY

My Tax Your Tax Our Destiny

DIRECT TAXES DIVISION

GUIDANCE ON PREPARING TRANSFER PRICING DOCUMENTATION

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1.0 Foreword

These guidelines provide non-exhaustive information to taxpayers regarding the format, storage and content of Transfer Pricing Documentation. It therefore does not remove the responsibility of taxpayers to exercise due diligence in keeping records for Transfer Pricing purposes.

2.0 Introduction

The Income Tax (Transfer Pricing) (Amendment) Regulations, Statutory Instrument No. 24 of 2018 introduced a requirement to prepare and maintain Transfer Pricing documentation. However, with Transfer Pricing it is not possible to specify a comprehensive pre-defined set of documentation specifications that meet the requirements of all taxpayers and therefore the list is not exhaustive. Appropriate documentation depends on each taxpayer's industry, facts and circumstances.

The guidelines aim to cover the broad issues relating to the types and extent of documentation that taxpayers are required or advised to keep, to be able to demonstrate how their methods and prices satisfy the arm's length principle.

3.0 Legal Framework

Section 55 (2) of the Income Tax Act requires that all businesses covered by Part IX shoud retain books and records in relation to all taxes under the Act for a period of 10 years after the completion of the transaction, acts or operation to which they relate.

Section 58 of the Income Tax Act states that the Commissioner-General is authorised to request, demand, and collect from any person within Zambia, all information the Commissioner-General may deem necessary for the purposes of the Act.

Regulations 21 and 22 of the Income Tax (Transfer Pricing) (Amendment) Regulations, 2018 provide for the keeping and provision to the Commissioner General of transfer pricing documentation and records.

4.0 Objectives

There are three objectives of transfer pricing documentation that need to be met by taxpayers in line with the OECD Transfer Pricing Guidelines. These are:

- To ensure that taxpayers give appropriate consideration to transfer pricing requirements in establishing prices and other conditions for transactions between associated enterprises and in reporting the income derived from such transactions in their tax returns;

- To provide the Commissioner – General with the information necessary to conduct an informed transfer pricing risk assessment; and

- To provide the Commissioner – General with useful information to employ in conducting an appropriate thorough audit of the transfer pricing practices of taxpayers.

5.0 Documentation

The taxpayer's process of considering the transfer pricing documentation appropriate for tax purposes should be determined in accordance with the same prudent business management principles that would govern the process of evaluating a business decision of a similar level of complexity and importance. The Commissioner-General would expect taxpayers to have created, referred to and retained documentation in accordance with this principle.

In order to achieve the objectives of transfer pricing documentation, there is a three – tiered approach to transfer pricing documentation that taxpayers should adopt. The first two levels are mandatory while the third one is optional. The three tiered structure consists of-

i. A master file

This is a file containing standardised information relevant for all MNE group members. This should provide an overview of the MNE group's global business operations. The file should include information such as the groups transfer pricing policies, global allocation of income and economic activity. The master file provides a blueprint of the MNE as relevant information can be grouped in the following 5 categories:

a) The MNE groups organisational structure;
b) A description of the MNE's business;
c) The MNE's intangible assets;
d) The MNE's intercompany financial activities; and
e) The MNE's financial and tax positions.

The information in this file should be available to each country in order to assure that an appropriate overview of the MNE group's global business is provided.

ii. A Local file

A file referring specifically to material transactions of the local (Zambian) taxpayer. The local file should provide more detailed information relating to specific inter-company transactions. This file helps meet the objective of assuring that the taxpayer has complied with the arm's length principle. Required information includes relevant financial information with regards to the specific transaction, a comparability analysis and the selection and application of the most appropriate transfer pricing methods.

As a general rule, taxpayers should contemporaneously document the process they have followed and their analysis in determining transfer prices, in their efforts to comply with the arm's length principle. This should include setting out in detail why those transfer prices are considered consistent with the arm's length principle.

iii. A Country-by-Country Report

This report should contain certain information relating to the global allocation of the MNE's income and taxes paid together with certain indicators of the location of economic activity within the MNE group. This report will require reporting of aggregate tax jurisdiction-wide information relating to the global allocation of the income and location of economic activity among jurisdictions in which the MNE group operates.

Note: The Annex provides a checklist for transfer pricing documentation in relation to the three tiers above.

The Commissioner-General will require taxpayers to document what would be recorded in the ordinary course of business and in setting an arm's length transfer price as well as high-level information regarding their global business operations and transfer pricing policies that are to be made available to all relevant tax authorities. Therefore, the three tiers stated above make it possible to be able to capture this information.

In line with the Regulations, the taxpayers are now required to provide more information on transactions between related parties when submitting their income tax return. Taxpayers that are within the scope of the rules are required by law to provide information about their transfer pricing in the Related Party Transactions Schedule that constitutes part of the Income Tax Return and must be submitted to the Commissioner-General.

The Schedule includes detailed disclosures on the nature and quantum of the taxpayer's controlled transactions. In addition, taxpayers within the scope of the rules are required to keep documentation to demonstrate that their measure of assessable income complies with the arm's length principle. This documentation must be in place at the time that the income tax return is filed, and must be submitted to the Commissioner-General within 30 days of a written request being issued by the Commissioner-General.

6.0 Exclusion from requirement to prepare transfer pricing documentation

Persons that are tax resident in Zambia and not Multinational Enterprises whose turnover is below K20 million are excluded from the requirement to prepare transfer pricing documentation rules. This means that an associated business established solely in Zambia with a turnover of below K20 million is not required to prepare and maintain transfer pricing documentation. This is because they are not and do not belong to a multinational enterprise group. However, all the transfer pricing rules other than documentation rules apply to these locally established businesses.

References.

OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations, July 2017

Income Tax Act Cap 323

ANNEX

DISCLAIMER: The guidance provided below is NOT exhaustive

1. MASTER FILE

The following information should be included in the master file:

(a) Organizational Structure

(i) Chart illustrating the MNE's legal and ownership structure, geographical location of operating entities and description of MNE's business(es)

(b) Description of MNE's Business

(i) General written description of the MNE's business shall include:

- Important drivers of business profit;
- A description of the supply chain for the group's five largest products and/or service offerings by turnover plus any other products and/or services amounting to more than 5% of group turnover. The required description could take the form of a chart or a diagram;
- A list and brief description of important service arrangements between members of the MNE group, other than research and development (R&D) 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;
- A description of the main geographic markets for the group's products and services that are referred to in the second bullet point above;
- A brief written functional analysis describing the principal contributions to value creation by individual entities within the group, i.e. key functions performed, important risks assumed, and important assets used;
- A description of important business restructuring transactions, acquisitions and divestitures occurring during the fiscal year. MNE's intangibles (as defined in Chapter VI of these Guidelines)

(c) MNE's intangibles

(i) A general description of the MNE's overall strategy for the development, ownership and exploitation of intangibles, including location of principal R&D facilities and location of R&D management.

(ii) A list of intangibles or groups of intangibles of the MNE group that are important for transfer pricing purposes and which entities legally own them.

(iii) A list of important agreements among identified associated enterprises related to intangibles, including cost contribution arrangements, principal research service agreements and licence agreements.

(iv) A general description of the group's transfer pricing policies related to R&D and intangibles.

(v) A general description of any important transfers of interests in intangibles among associated enterprises during the fiscal year concerned, including the entities, countries, and compensation involved. MNE's intercompany financial activities.

(d) MNE's intercompany financial activities

(i) A general description of how the group is financed, including important financing arrangements with unrelated lenders.
(ii) The identification of any members of the MNE 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 such entities.
(iii) A general description of the MNE's general transfer pricing policies related to financing arrangements between associated enterprises.

(e) MNE's financial and tax positions

(I) The MNE's annual consolidated financial statement for the fiscal year concerned if otherwise prepared for financial reporting, regulatory, internal management, tax or other purposes.
(ii) A list and brief description of the MNE group's existing unilateral advance pricing agreements (APAs) and other tax rulings relating to the allocation of income among countries.

2. LOCAL FILE

The following information should be included in the local file:

(a) Introduction and Overview of the Local Entity

(i) A description of the management structure of the local entity, a local organization chart, and a description of the individuals to whom local management reports and the country (ies) in which such individuals maintain their principal offices.
(ii) A detailed description of the business and business strategy pursued by the local entity including an indication whether the local entity has been involved in or affected by business restructurings or intangibles transfers in the present or immediately past year and an explanation of those aspects of such transactions affecting the local entity.

(b) Key competitors.

(i) List of the local entities key competitors in the market

(c) Regulatory Framework

(i) Overview of transfer pricing rules.
(ii) Statutory rules of the relevant business sector
(iii) Overview of OECD guidelines.

(d) Controlled Transactions under review

(i) List of all controlled transactions under review

(ii) For each material category of controlled transactions in which the entity is involved, provide the following information:

- A description of the material controlled transactions (e.g. procurement of manufacturing services, purchase of goods, provision of services, loans, financial and performance guarantees, licences of intangibles, etc.); and the context in which such transactions take place.

(iii) The amount of intra-group payments and receipts for each category of controlled transactions involving the local entity (i.e. payments and receipts for products, services, royalties, interest, etc.) broken down by tax jurisdiction of the foreign payer or recipient.

(iv) An identification of associated enterprises involved in each category of controlled transactions, and the relationship amongst them.

(v) Copies of all material intercompany agreements concluded by the local entity.

Note: A copy of existing unilateral and bilateral/multilateral APAs and other tax rulings to which the local tax jurisdiction is not a party and which are related to controlled transactions described above are to be attached.

(e) Functions, Assets and Risks Analysis

(i) A detailed comparability and functional analysis of the taxpayer and relevant associated enterprises with respect to each documented category of controlled transactions, including any changes compared to prior years.

(f) Method Evaluation:

(i) Provide if relevant, an explanation of the reasons for performing a whole entity or transaction by transaction approach using a single or a multi-year analysis.

(ii) An indication of the most appropriate transfer pricing method with regard to the category of transaction and the reasons for selecting that method.

(iii) An indication of which associated enterprise is selected as the tested party, if applicable, and an explanation of the reasons for this selection.

(iv) A list and description of selected comparable uncontrolled transactions (internal or external), if any, and information on relevant financial indicators for independent enterprises relied on in the transfer pricing analysis, including a description of the comparable search methodology and the source of such information.

(v) A summary of the important assumptions made in applying the transfer pricing methodology.

(g) Economic Analysis:

(i) Details of extensive benchmark studies conducted if any (i.e search criterion-geographical location, industry description, years covered etc, selection of potential comparables, rejection matrix etc).

(ii) Summarized information about each selected comparable
(iii) Unadjusted benchmark arm's length interquartile range
(iv) A description of 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.
(v) Adjusted benchmark arm's length interquartile range if any
(vi) A description of the reasons for concluding that relevant transactions were priced on an arm's length basis based on the application of the selected transfer pricing method.
(vii) A summary of financial information used in applying the transfer pricing methodology.

(h) Financial information

(i) Annual local entity financial accounts for the fiscal year concerned. If audited statements exist they should be supplied and if not, existing unaudited statements should be supplied.
(ii) Information and allocation schedules showing how the financial data used in applying the transfer pricing method may be tied to the annual financial statements.
(iii) Summary schedules of relevant financial data for comparables used in the analysis and the sources from which that data was obtained.

3. COUNTRY-BY-COUNTRY REPORT

To be filed by the ultimate parent company of a Multi-National Enterprise tax resident in Zambia. This report will then be provided to other tax jurisdictions where the local MNE has presence through automatic exchange of information mechanism.

A. model template for the Country by Country Report

Table 1. Overview of Allocation of income, taxes and business activities by tax jursdiction

Name of the MNE group Fiscal year concerned Currency used										
Tax jurisdiction	Revenue			Profit (Loss) before Income Tax	Income Tax Paid (on Cash Basis)	Income Tax Accrued Current Year	Stated Capital	Accumulated Earnings	Number of Employees	Tangible Assest other than Cash and Cash Equivalents
	Unrelated Party	Related Party	Total							

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