



TANZANIA REVENUE AUTHORITY

ISO 9001:2015 CERTIFIED

TRANSFER PRICING GUIDELINES, 2020

1ST JULY 2020

MESSAGE FROM THE COMMISSIONER GENERAL

Tanzania Revenue Authority (“TRA” or “the Authority”) is mandated to, among others, increase revenue collection in a cost-effective way, achieve the highest possible degree of voluntary tax compliance, and combat tax avoidance and fiscal evasion. The importance of this role cannot be overemphasised today, as Tanzania continues with efforts to enhance Financial Resource Mobilisation (FRM) in financing development projects. Growth in cross-border trade and investment offers enormous potential for the country to realise its FRM and related goals over time. However, this opportunity comes with accompanying challenges, mainly associated with the activities of multinational enterprises (MNEs) operating in the economy, with transfer pricing emerging as the most formidable of all.



As a technical endeavour, transfer pricing poses challenges not only to tax administrations and their governments but also to taxpayers and their advisors. To tax administrations and governments, the challenges lie in the risk of tax base erosion due to the ability of taxpayers (especially MNEs) to use transfer pricing to shift profits around in pursuit of taxation objectives. A problem that is worsened by the complexity of taxpayers’ business models and practices. To taxpayers and their advisors, transfer pricing poses a challenge in terms of the likely reaction of tax administrations to the taxpayers’ transfer pricing practices - which may include adjustments, penalties and double taxation.

In view of the foregoing, and consistent with **Regulation 16 of the Tax Administration (Transfer Pricing) Regulations 2018**, it is imperative that there is a formal guidance to all players involved, hence, these Transfer Pricing Guideline (“Guidelines”). These Guidelines serve only as practical guidance and not intended to be prescriptive or exhaustive of every transfer pricing issue that might arise, that is, each transfer pricing arrangement will be decided on its own facts and circumstances, taking into account the person’s business assumptions and commercial judgment.

These Guidelines which will be periodically reviewed and revised to keep in line with respective changes in the law and best practices, are not intended to be a substitute to the applicable laws and regulations. Concretely speaking, in cases of any conflict of interpretation between these Guidelines and any provision of the law, the latter shall prevail. It is expected that proper utilisation of these Guidelines will facilitate inclusive taxation on the part of TRA and enhanced certainty on the part of taxpayers. The ultimate outcomes being enhanced voluntary tax compliance as provided for under **Section 5(1)(e) of the Tanzania Revenue Authority Act, CAP. 399**.

“Together We Build Our Nation”

A handwritten signature in black ink, appearing to read 'Edwin Mhede', written in a cursive style.

Dr. Edwin P. Mhede, Ph.D.
COMMISSIONER GENERAL

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1. INTRODUCTION

Transfer pricing of goods, services and intangible properties involves intercompany pricing arrangements between associated persons in their transactions. When independent persons deal with each other, independent market forces shape the commercial pricing of goods, services and intangibles transacted between them. However, business transactions between associates may not always reflect the dynamics of market forces. Transfer Pricing Guidelines (henceforth “the Guidelines”) are issued to provide guidance on the application of **Tax Administration (Transfer Pricing) Regulations, 2018**.

The Guidelines may be reviewed from time to time when the need arises hence users are advised to use the updated version. Examples used in the Guidelines are for demonstrative purposes only. Thus, in dealing with actual cases, the facts and circumstances of each case must be considered before deciding on the applicability of any of the methods recommended in the Guidelines.

2. OBJECTIVE OF THE GUIDELINES

The objective of these Guidelines is to provide guidance about the procedures to be followed in the determination of arm’s length prices and provide consistency in administration of tax laws.

3. SCOPE

These Guidelines are confined to the provisions of the Tax Administration (Transfer Pricing) Regulations, 2018. It is therefore meant to provide illustrations and simplified examples on the application of the Regulations. If these Guidelines will contradict the Regulations, the later shall prevail.

4. POSITION OF THE LAW

The Income Tax Act, CAP. 332

- 4.1 Section 33 of the Act is intended to curb transfer pricing practices which may have adverse implications for the Tanzania’s tax base.
- 4.2 The measures to curb transfer pricing schemes are in essence contained in Section 33(1) which states that “in any arrangement between persons who are associates the persons shall quantify, apportion and allocate amounts to be included or deducted in calculating income between the persons as is necessary to reflect the total income or tax payable that would have arisen for them if the arrangement had been conducted at arm’s length”.

- 4.3 Section 33(2) empowers the Commissioner to make adjustments consistent where a person has failed to comply with the provisions of sub-section (1).
- 4.4 In adjusting as per Para 4.3 the Commissioner may:
- (a) Re-characterize the sources and type of any income, loss amount or payment; or
 - (b) Apportion and allocate expenditure including that referred to in Section 71 (2) incurred by one person in conducting a business to the person and the associate based on the comparative analysis of the businesses. Here it should be noted that the Commissioner may either act on (a), (b) or both.

Tax Administration (Transfer Pricing) Regulations, 2018

- 4.5 Regulation 16 of the Tax Administration (Transfer Pricing) Regulations, 2018 empowers the Commissioner to issue Transfer Pricing Guidelines.

5. THE ARM'S LENGTH PRINCIPLE

- 5.1 The arm's length principle requires that the price charged in a transaction between associated persons should be the same as that which would have been charged if such transaction was conducted between independent persons under the same or similar circumstances. This principle is enshrined under paragraph 1 of Article 9 of the Organization for Economic Cooperation and Development (OECD) Model Tax Conventions 2018 and in the United Nations (UN) Model Tax Convention 2017, which states that,

“(where) conditions are made or imposed between two (associated) enterprises in their commercial or financial relations which differ from those which would have been made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but by reason of those condition have not so accrued, may be included in the profits of that enterprise and taxed accordingly”.

- 5.2 In essence, application of the arm's length principle:
- (i) treats associated persons as if they operate as separate persons rather than as inseparable parts of a single unified business;
 - (ii) is generally based on a comparison of:-
 - (a) prices, margins, division of profits or other indicators of controlled transactions; with
 - (b) prices, margins, division of profits or other indicators of uncontrolled transactions and;

(iii) is achieved by adopting indicators of uncontrolled transactions in a place of indicators of controlled transactions where the latter is inconsistent with the former for tax purpose.

6. FUNCTIONAL ANALYSIS

6.1 In the determination of an arm's length price a person shall carry out a detailed functional analysis of all the parties participating in the controlled transaction in order to understand functions performed, assets employed and risks assumed (FAR Analysis) and determine the characterization of the person's business and the related party transaction in question.

6.2 It is crucial that a person involved in controlled transaction carry out the functional analysis to determine an arm's length price as it not only forms the basis for identifying comparable but also provides an overview of the organization, establishes important and economically significant functions, assets and risks undertaken by both the associated and independent persons.

6.3 The identified important and significant functions, assets and risks must be evaluated for each party involved in the value chain and supported with evidence.

Functions Performed

6.4 Functions are activities performed by each person in business transactions such as procurement, processing, marketing, distribution and sales. The principal functions performed by the associated person under examination should be identified first. An increase in economically significant functions performed by one person should be compensated by an increase in profitability.

6.5 Usually, when various functions are performed by a group of independent persons, the party that provides the most effort and, more particularly, the rare or unique functions would earn the most profit. For example, a distributor performing additional marketing and advertising function is expected to have a higher return from the activity than if he or she had not performed these additional functions.

6.6 The Authority shall consider the relative importance of each function in a functional analysis. The sheer number of functions performed by a particular member of a multinational group does not necessarily mean that it should derive the greater share of the profit. A party performing the most, or more, economically significant functions of the group's operations, albeit fewer functions relative to the other associated person, shall be entitled to the greater share of the profit.

Assets Employed

- 6.7 In comparing functions performed, it is also important to identify and consider the assets (tangible and intangible) that are employed, or are to be employed, in a transaction. This includes the analysis of the type of assets used (e.g. plant and equipment and valuable intangibles) and the nature of the assets used (e.g. the age, market value, location, and property right protections available).
- 6.8 Tangible assets such as property, plant and equipment are usually expected to earn long-term returns that commensurate with the business risks assumed. Profitability of a company should rightfully increase with the increase in the amount, as well as the degree, of specificity of assets employed. Quantifying these amounts whenever possible helps to determine the level of risks borne and the level of profit a company should expect.
- 6.9 Intangible assets are also expected to generate returns for the owners by way of sales or licensing. It is thus essential to identify the parties to whom the returns generated are attributable.

Risks Assumed

- 6.10 Evaluation of risks assumed is crucial in determining arm's length prices with the economic assumption that the higher the risks assumed, the higher the expected return. Controlled and uncontrolled transactions are not comparable if there are significant differences in the risks assumed, for which appropriate adjustments cannot be made.
- 6.11 A person shall identify and allocate risks between associated persons based on functions performed. Weight shall be attached to each of the identified significant risks, then attribute weights between the party which bears and/or controls the risks in the legal contractual terms and the party which bears the risks based on the economic substance of the transaction.
- 6.12 Operational risk, market risk, product risk, financial risk, risks of the success or failure of investments in research and development and many more shall be considered on an assumption that, an increased risk will be compensated by an increase in the expected return. However, this does not always mean that the actual return must necessarily also be higher, as it also depends on the degree to which the risk is actually realized.
- 6.13 Therefore, a person's allocation of risks must be consistent with the economic substance of a transaction. The best evidence, in determining whether a purported allocation of risks is consistent with the economic substance of a transaction, shall be in the parties' conduct.

Critical issue for consideration in the functional analysis

6.14 Functional analysis has to be undertaken based on the actual performance of functions as opposed to the mere allocation of responsibilities as per the contractual arrangement entered by a person and its associate or based on mere assumed responsibilities.

6.15 For the analysis to be considered appropriate it has to be supported by evidences supporting all critical claims and where appropriate the analysis has to be substantiated by quantitative figures. This is particularly essential during the discussion of functions performed by a foreign associate where the Commissioner often has limited access to information regarding its business operations. Thus, an analysis that contain unsubstantiated statements would not be considered appropriate.

6.16 The examples below provide guidance on evidences/quantification required to support statements regarding the performance of functions (taking into account risks assumed and assets used) by the parties to the controlled transaction.

(i) Procurement function

The evidences in this regard may include employees' profile (names, position, academic qualifications, and years of experience) of the employees engaged in the procurement activities, their office address and country of residence together with samples of key correspondences between the associates.

(ii) Financing function

(a) Evidences may include the sources of funds of the financier such as the accumulated profits/retained earnings over the years as depicted by the financial statements and reflected in identifiable bank accounts. The sources may also include borrowings from recognized financial institutions or even from non-financial institutions. In any case particulars of these lenders would be required.

(b) The amounts involved in the financing arrangement and evidence of receipts of funds such as bank statements would also be essential information to substantiate that indeed the associate performs the financing function.

(iii) Management function

The type of evidences highlighted on the guidance provided on the intra-group services section of these Guidelines are considered to be applicable in the case of analysis of management function claimed to be performed by an associate.

(iv) Sales and Marketing function

- (a) As regards to foreign associates claimed to perform sales and marketing related functions and assume associated risks the substantiating evidences may include employees profile, their country of residence and office address, work permits if not nationals in their country of residence, customers list and dynamics over time, critical correspondences between a person and its associate and between the associate and customers and sample invoices.
- (b) Risks connected with the performance of sales and marketing function (such as price risk) may be demonstrated by decreased profit (gross and operating) margins expected to be reflected on the associate’s financial statements.

6.17 The analysis of functions performed (taking into account assets used and risks assumed) shall be summarized and presented thereafter in a tabula form. The table would need to list all the important functions and risks and realistically assign the level of significance of each such function and risk. Also, the table would assign each of the functions and risks to the respective party to the controlled transaction that is responsible for it either partly or wholly.

6.18 The table below provides illustration on the framework to be followed in preparation of such a summary table:-

No	Functions Performed	Responsible Entity	Significance	Performance Score				
1	Production forecasting	Company A	Medium	●	●	●	●	●
2	Negotiation of prices and quantities to sell	Company A	High	●	●	●	●	○
		Company B		○	○	○	○	●
3	Concluding Sales Contracts	Company A	Medium	●	●	●	○	○
		Company B		○	○	○	●	●
4	Market Research	Company A	Low	●	●	●	●	○
		Company B		○	○	○	○	●
5	Procurement	Company A	High	●	●	●	●	●
6	Processing	Company A	High	●	●	●	●	●
7	Transport and Logistics	Company A	High	●	●	●	●	●
8	Financing	Company B	High	●	●	●	●	●

No.	Risks Assumed	Responsible Entity	Significance	Score				
1	Product Risk	Company A	Low	●	●	●	●	●
2	Quality Risk	Company A	High	●	●	●	●	●
3	Inventory Risk	Company A	Medium	●	●	●	●	●
4	Market Risk	Company A	High	●	●	●	○	○
		Company B		○	○	○	●	●

Key: The score assigned to a person for each function performed and risk assumed is presented in the scale of 1 to 5 where and connotes a scale of 1 and 0 respectively.

Characterization of business

- 6.19 In transfer pricing characterization of business generally refers to the process that begins with the thorough analysis of the person's functions performed, assets employed and risks assumed across the value chain of a controlled transaction and thereby categorizing the person's business into a category that corresponds to the functional analysis conducted.
- 6.20 Characterization of business based on a functional analysis is key in determination of an arm's length price as it helps to establish an appropriate remuneration of the persons in a controlled transaction that is commensurate with functions performed, assets employed, and risks borne.
- 6.21 Characterization is an important element in the steps towards determining the arm's length price of a controlled transaction. The most common characterizations, based on the nature of activity as well as the complexity of the operations shall include but not limited to:-
- (i) Manufacturing: fully-fledged, licensed, contract or toll;
 - (ii) Distribution: fully-fledged or limited risk;
 - (iii) Service provider.
- 6.22 For example; after conducting a thorough functional analysis of a manufacturer's business it is established that the manufacturer performs all the critical functions of the manufacturing business including processing and production, employs its assets such as production plant and assumed all major risks relating to manufacturing business. Based on the functional analysis it may be appropriate to characterize the manufacturer as a fully-fledged manufacturer.

Tested Party

- 6.23 The tested party whose profit level will be compared to the profit level of the independent persons will usually be the party for which reliable data on the most

closely comparable transactions can be identified. It is usually the person that is the least complex and that does not own valuable intangible property.

- 6.24 After carrying out a functional analysis, a person shall establish a tested party provided that it is the one to which a transfer pricing method can be applied in the most reliable manner and for which the most reliable comparable can be found.
- 6.25 In the choice of a tested party, priority shall be given to the availability of sufficient and verifiable information. As such, TRA does not accept foreign tested parties where information is neither sufficient nor verifiable
- 6.26 Without prejudice to Para 6.25, where a tested party selected is outside the United Republic of Tanzania a person shall supply all relevant information depending on a particular case which may include audited financial reports; employees profile; registration evidence of intangibles, organization chart, certification of incorporation; etc.

Selection of Transfer Pricing Method

- 6.27 The Transfer Pricing Regulations have prescribed specific methods to be applied in arriving at the arm's length price as discussed in Para 11 of the Guidelines.

Selection of Profit Level Indicator (PLI)

- 6.28 This is a statistical indicator that provides a measure of the relationship between two comparable figures and quite often in transfer pricing a person will use ratios to interpret the financial data of the tested party to that of identified comparable.
- 6.29 A person shall select a Profit Level Indicator (PLI) which measures the relationship between indicators employed to ensure greater accuracy in determining the arm's length price of a controlled transaction.
- 6.30 The selection of an appropriate PLI depends on several factors, including characterization of the business; availability of reliable comparable data; the extent to which the PLI is likely to produce a reliable measure of arm's length profit etc. Some of the more commonly used PLI include:-
- (i) Return on costs: cost plus margin and net cost plus margin.
 - (ii) Return on sales: gross margin and operating margin.
 - (iii) Return on capital employed: return on operating assets.

7.0 METHODS OF DETERMINING AN ARM'S LENGTH PRICE

- 7.1 The price applied to a transaction conducted between associated persons cannot at its face value be considered to be arm's length price. This price has to be tested to evaluate its conformity with the arm's length principle. This is normally achieved by using acceptable transfer pricing methods that help to calculate or test the arm's length nature of prices or profits used or earned in the controlled transactions.
- 7.2 In practice there are several acceptable and widely used transfer pricing methods which have to be considered in the quest to establishing whether the conditions imposed in the commercial or financial relations between associated persons are consistent with the arm's length principle. The Regulations provide for five (5) transfer pricing methods as applicable in determining the arm's length price of controlled transactions.

The Comparable Uncontrolled Price (CUP) method

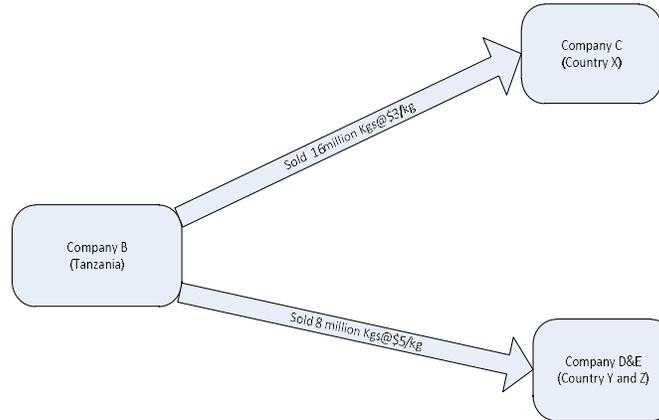
- 7.3 The CUP method is the most direct way of ascertaining an arm's length price. The method compares the price charged for goods or services transferred in a controlled transaction to the price charged for goods or services transferred in a comparable uncontrolled transaction, in comparable circumstances. A difference between the two prices may be an indication that the conditions of the commercial and financial relations of the associated persons are not arm's length, and that the price in the uncontrolled transaction may need to substitute for the price in the controlled transaction.
- 7.4 A person using the CUP method to determine transfer price must first identify all the differences between product and that of an independent person. The associated persons must then determine whether these differences have a material effect on the price, and adjust the price of products sold by the independent person to reflect these differences to arrive at an arm's length price.

Example

- 7.5 A Tanzanian Company "B", is a grower and processor of cocoa and coffee products which are predominantly produced for exports to the World market. Company B is ultimately wholly owned by an African multinational group located in Country "P" which is one of the largest African multinational groups having footprints in many African countries and beyond. The vast majority of Cocoa produced by "B" is sold to an associated company "C" which re-sells them to several independent end-customers all over the World. Company "C" is incorporated in Country X – a jurisdiction with preferential tax regime to attract sales and marketing activities. The credit terms on sales made to "C" are 90 days. Further, it is observed that company "B" also sells the Cocoa to two independent companies "D" and "E" situated in Country Y and Country Z respectively. The credit terms for sales made to the

independent parties are 30 days. As regards the volumes it is found that “B” sold 16 million kilos to company “C” and 8 million kilos to company “D” and “E” collectively. The price fetched on these sales is 3 dollars per/kg and 5 dollars per/kg respective with no material differences on the quality of the cocoa sold to the associated company “C” and the independent customers “E” and “D”.

7.6 The following diagram summarises the above arrangement



Possible application of CUP

7.6 The price of coffee sold to the independent customers (i.e. Company D and Company E) may qualify as CUP because the product sold is similar to that sold to the associated company C. However due to the differences in volume and credit terms it is expected that a thorough analysis will be conducted to evaluate the effects of these differences on the price. Accordingly, \$ 5/kg would be used as CUP but would need to undergo adjustments to cater especially for the differences in credit terms. Depending on circumstances, there may be no need for volume adjustments as the volume difference in the two transactions is somewhat immaterial. In effecting the adjustments, the 30 days may be considered as arm’s length credit terms as this is observed in the transaction conducted with independent customers. The adjustment will base on the observed 60 days’ difference which give more benefits to Company C. One possibility of making this adjustment is to charge an appropriate interest for the extra duration of 60 days given to Company C.

7.7 If we assume the interest is 10 percent per annum the adjustments in Para 7.6 may appear as follows:-

- (i) Price paid by independent customers = \$5/kg
- (ii) Credit terms adjustment = $(0.1/12) \times 2 \text{ months} \times \$5 = \$0.083$
- (iii) CUP after considering credit adjustments = $5 + 0.083 = \$5.083$
- (iv) Price paid by associate = \$3/kg
- (v) Transfer pricing adjustment per kg sold = $\$5.083 - \$3 = \$2.083$
- (vi) Total transfer pricing adjustments = $\$2.083 \times 16\text{m} = \33.33

- 7.8 In practice internal CUPs may be available only in very rare situations. As far as the illustration in Para 7.5 is concerned, Company B may be selling 100 percent of the Cocoa to its associate that subsequently re-sell to third-party customers. However, it may be observed that Cocoa is also auctioned in Country V and this auction is the second largest in the world. This auction is widely referred by growers, processors and traders to inform critical business decisions. It is observed that the quoted spot price of cocoa prevailing on the shipment date was \$5.4/kg and the critical characteristics of the cocoa exchanged and that in the controlled transaction are largely similar. Under these circumstances the price of Cocoa observed in the market could be considered as external CUP. In this respect the price in the controlled transaction would be considered not at arm's length and the person must make adjustments.
- 7.9 The total adjustments in Para 7.8 would be made based on the difference between the quoted spot price and controlled price multiplied by the volume involved in the controlled transaction save for transport charges.

Resale Price Method

- 7.10 The Resale Price Method generally is the most appropriate method where the final transaction is made to an independent distributor. The starting point in the resale price method is the price at which a product that has been purchased from an associated person is resold to an independent person.
- 7.11 The resale price is then reduced by an appropriate gross margin (the resale price margin) representing an amount from which the reseller would seek to cover its selling and other operating expenses.
- 7.12 The pricing mechanism must take into account the functions performed, assets used and risks assumed in making appropriate profit between associated persons and is obtained after subtracting the gross margin and adjusting for other costs associated with the purchase of the product (e.g. custom duties).
- 7.13 A typical adjustment may be represented as follows:-

Arm's Length Price = Resale price - (Resale price x Resale Price Margin)

Where:

* Resale Price Margin = $\frac{\text{Sales Price} - \text{Purchase Price}}{\text{Sales Price}}$

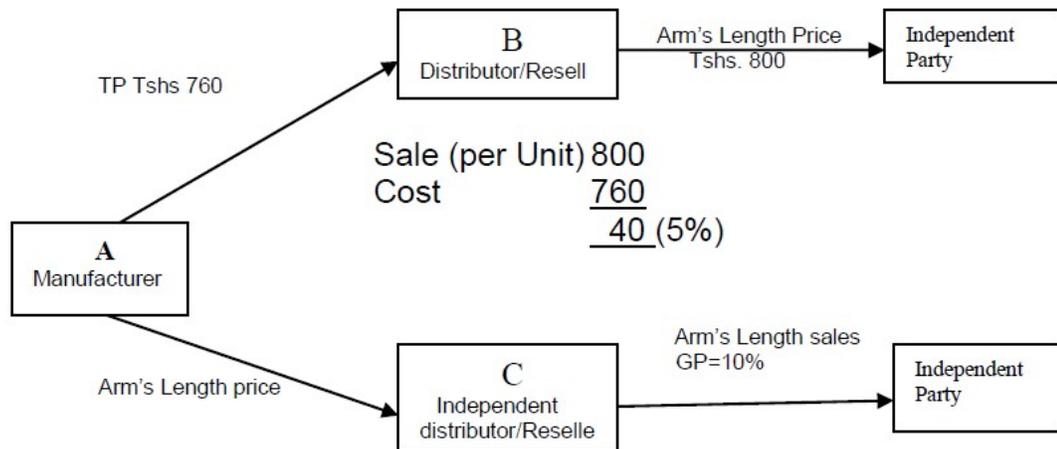
** Resale price margin must be comparable to margins earned by other independent enterprises performing similar functions, bearing similar risks and employing similar assets.

Example

7.14 Person B, a distributor, is a Tanzanian subsidiary of multinational Company A, which is located overseas. Person B distributes high quality product manufactured by Company A. Company A also sells similar product of a lower quality to an independent distributor Company C in Tanzania. The cost of product purchased from Company A by Company B is Tshs.760 per unit. Company B resells the product to independent party for Tshs.800. A functional analysis shows that Company B and Company C perform similar functions. The gross profit ratio of C was found to be 10%.

7.15 In in Para 7.14 is noted that there are product (quality) differences when comparing the controlled and uncontrolled transactions. However, since the focus of comparison is on margins the differences are not as material as they would have been if the basis of comparison were on prices. Furthermore, Company B and Company C carry out similar functions (Company C being another reseller in the same market), thus the resale price margin of 10% will be used as a basis to determine the arm’s length price for the original purchase by Company B from Company A.

7.16 Arm’s length price of product purchased (in Tshs) = $800 - (800 \times 10\%) = 720$



Cost Plus Method

7.16 The Cost-plus method requires calculation of an arm’s length consideration, by adding an appropriate mark-up to the costs incurred by the supplier of goods or services in a controlled transaction. This mark-up should provide for an appropriate profit to the supplier, in the light of the functions performed, assets used and risks assumed. This method is best suited to situations where:-

- (i) Semi-finished goods are sold between related persons,

- (ii) Related persons have concluded joint facility agreements or long-term buy-supply arrangements
 - (iii) Services are provided
- 7.17 The mark-up should ideally be determined with reference to the mark-up earned by the same supplier in uncontrolled transactions. If this is not possible, the mark-up should be determined by using the mark-up earned in comparable transactions by an independent supplier performing comparable functions, bearing similar risks and employing relatively similar assets to those of the person.
- 7.18 An uncontrolled transaction is comparable to a controlled transaction for purposes of the costs plus method if one of two conditions is met.
- (i) none of the difference between the transaction being compared or between the persons undertaking those transactions materially affect the cost plus mark up in the open market: or
 - (ii) reasonably, accurate adjustment can be made to eliminate the material effects of such differences.

Example

- 7.19 Company B, a Tanzania holding company, is responsible for the development of all the software used by its subsidiaries in Country N and Country M in the African region. It was clear from the beginning that there was a market for this kind of services in Africa. Company B also provides similar services to other customers throughout Africa. The software and hardware required by each customer differ from the software developed and hardware supplied to the subsidiaries, but the functions and processes to provide these services are comparable. An analysis of the income and costs in respect of the services provided to the independent customers indicates that costs are recovered and mark-up ranging between 22 and 25 per cent is achieved. Company B should therefore consider charging its subsidiaries at cost plus a mark-up ranging between 22 and 25 per cent for the performance of the information technology function.

Transactional Net Margin Method (TNMM)

- 7.20 The TNMM examines the net profit margin that a person realized from a controlled transaction relative to an appropriate base such as cost, sales or assets. This ratio is referred to as a profit level indicator. The profit level indicator of the tested party is compared to the profit level indicator(s) of comparable independent person.
- 7.21 Although the TNMM is classified as a transactional profit method, it is more closely aligned to the CP and RP method than to the profit split method. As with the CP

and RP methods, the TNMM focuses on the functions performed by a person. The difference is that the TNMM compares net profit rather than gross profit used in the CP and RP.

- 7.22 The TNMM is highly sensitive to the relative cost structures of the persons being compared, therefore adjustment may have to be made to reflect the relative efficiency of the firms being compared.
- 7.23 In order to maximize the reliability of the TNMM, the member of the multinational and the independent firm being compared would need to be structurally similar. In practice, firms are structurally unique and comparisons of indicators between firms will tend to be less reliable than comparisons made at the gross margin level.
- 7.24 For these reasons the Regulations recognizes that the TNMM along with the profit split method are considered to be methods of last resort as it is only applied when the traditional methods cannot be reliably applied.

Example

- 7.25 Company Z is a manufacturer of dehydrated food. Its products are distributed to its subsidiaries throughout East African region. Company Z does not sell to independent distributors at all and no comparable could be located that would allow the application of the CUP, cost plus or resale price methods. The only remaining method is thus the TNMM.
- 7.26 Research on comparable independent companies resulted in the determination of an arm's length range of 35th percentile of 15 to 60th percentile of 18. This arm's length range is determined by expressing operating profit as a percentage of the turnover. After adjustments were made for differences between Company Z and the comparable independent companies in respect of stock holding and debtor's days outstanding, the range of arm's length margins is 35th percentile of 17.5 to 60th percentile of 19. The transfer price for the sale of the dehydrated food from Company Z to its subsidiaries should thus be set at a level that will result in operating profit as a percentage of turnovers of between 17.5 and 19 per cent.

The Profit Split Method

- 7.27 The profit split method is usually applied where transactions are so integrated that they cannot be evaluated separately. Under similar circumstances, independent enterprises may decide to set up a form of partnership and agree to some form of profit split.

- 7.28 The first step in the profit split method is to identify the combined profit to be split between the associated persons in a controlled transaction. In general, combined operating profit is used, ensuring that both income and expenses of the multinational are attributed to the relevant associated person consistently.
- 7.29 That profit is then split between the persons according to an economically valid basis approximating the division of profits that would have been anticipated and reflected in an agreement made at arm's length.
- 7.30 Two alternative approaches to the profit split method are as outlined below:
- (i) Residual Profit Split Approach
 - (ii) Contribution Analysis Approach
- 7.31 Both approaches to Profit Split, the first step is to determine the combined profit attributable to the parties to the transaction. The combined profit is then allocated as follows: -
- (i) Under the residual profit split approach, each of the parties to the transaction is assigned a portion of profit according to the basic functions that it performs. The residual profit or loss is then allocated between the parties on the basis of their relative economic contribution in respect of the amount to be allocated.
 - (ii) Under the contribution analysis approach, it is generally the combined operating profit (profit before interest and tax) that is divided between the parties on the basis of the relative contribution of each party's combined gross profit.
- 7.32 However, these approaches are not necessarily exhaustive or mutually exclusive. There may be other alternative ways to split a profit to achieve a reliable arm's length result. In some circumstance, it may be appropriate to split gross profits (as opposed to operating profits) between the associated persons and then deduct the operating expenses incurred by or attributable to each relevant person.

Example

- 7.33 Mega Group is an ultimate global sugar operations headquartered in Country X. In Africa, mega operates through subsidiaries in 13 countries and the Group has established a research and development company called Megi Limited incorporated in Country Y which enters into technical agreement with 'associates' sugar manufacturers situated in those 13 countries. In Tanzania Mega operates through a 60% owned Meri (T) Limited a company incorporated and operating under the laws of Tanzania since 1999. Having confronted with alkaline soil in most of the African region, in 2005 the Group decided to commission Megi to carry out a research and

develop technology which would help Mega Group to increase sugar yield and Meri (T) Limited was to house a series of laboratory tests used in the search and development programme. It was observed that both Meri (T) Limited and Megi Limited contributed in an effort (in terms of finances, infrastructure, manpower etc.) to bring forth the technology which was registered in 2015 and licensed to the rest of the African Group members by Megi Limited.

- 7.34 While Regulation 11 (6) of the Regulations may restrict Meri (T) Limited from paying royalty on the locally developed intangible, TRA may go further to ascertain the contribution made by Meri (T) Limited in the development of the intangible. Depending on the facts the Profit Split Method may be applied to appropriately compensate Meri (T) Limited and Megi Limited arising from the licensing income to the rest of the African Group members.

8.0 THE COMPARABILITY ANALYSIS

- 8.1 According to Regulation 3, comparability analysis refers to a process of determining comparability between conditions in a *controlled transaction* and the conditions in *uncontrolled transaction* for purposes of establishing compliance with the arm's length principle.
- 8.2 In applying the transfer pricing methods on a controlled transaction, FAR analysis shall provide a person with pre-requisite information for comparison with an uncontrolled transaction which may be:-
- (i) a transaction between the person and an independent party conducted under terms and circumstances similar to the controlled transaction (internal comparable); or
 - (ii) a transaction between two independent parties under similar terms and circumstances (external comparable).

Practical Application

- 8.3 In making comparability analysis a person shall follow typical steps to arrive at comparable results which lead to a comparable conclusion.

Step 1: Comparable Period

- 8.4 Regulation 6 (3) requires that the arm's length price be determined by comparing the results of a controlled transaction with the results of uncontrolled transactions that were undertaken or carried out during the same year as the year of the person's controlled transaction.

- 8.5 Therefore, determination of an arm's length price shall start with determination of a comparable period to be covered. Comparable period is a period of one financial year or more depending on the scope of time in which the transaction is subjected under examination.
- 8.6 The requirement stated in Para 8.4 is made based on the fact that arm's length principle must be complied with contemporaneously, on a year by year basis. A contemporaneous uncontrolled transaction should provide the most reliable comparable as it is carried out in an economic environment that is similar to the economic environment of the person's controlled transaction.
- 8.7 There may be cases where data in a particular financial year does not provide the most reliable comparison, or may not readily be available depending on the industry concerned and the circumstances of the case. In such situation, the person shall endeavour to look for comparable information closer to the year under examination or so, the average of the most contemporary years not exceeding three years prior to the financial year.

Step 2: Analysis of the Person's Circumstances

- 8.8 This step shall involve a broad-based analysis of the person's circumstances. This is a crucial process in determination of an arm's length price as it forms the basis for identifying comparable (refers 6.1 and 6.2). At this step, a person shall document all specifics of the organization and its business operations as required under Regulation 7 (2), (a), (b) and (c) and identify all economically significant and relevant characteristics of both the associated persons and independent persons as required under Regulation 7 (2) (d).

Step 3: Description of the Controlled Transaction

- 8.9 A person shall provide full description of the controlled transaction. Mention and explanation of the nature, volumes and values of all controlled transaction. Mapping of economically relevant facts and characteristics of each of the transaction between associated parties with regard identified functions, assets and risks and provides the factual foundation for establishing a transfer pricing methodology consistent with the arm's length standard as required under Regulation 6(1) and 7 (2) (f).

Step 4: Identification of internal comparable

- 8.10 In circumstances where a tested party engages in both controlled transaction and uncontrolled transaction, the person shall try and identify whether the two

transactions are comparable to serve for internal CUP. The person shall provide full disclosure of the transactions and proceed with benchmark using internal comparable.

Step 5: Identification of external comparable

- 8.11 This step shall involve the determination of available sources of information on external comparable which shall include disclosure of data source and details of:
- (i) Data which may include data type and its description i.e. competitor reports, company's significant events etc.
 - (ii) Data features which may include industry snapshots, data browser, search criteria etc.

Step 6: Selection of the Appropriate Transfer Pricing Method

- 8.12 Refer Para 7.0 of these Guidelines

Step 7: Processing of Comparable Data

- 8.13 Benchmarking process which must detail key characteristics met by potential comparable in order to be regarded as comparable including:
- (i) General parameters, and;
 - (ii) Potential comparable population selection, and;
 - (iii) Detailed review and rejection summary, and;
 - (iv) Benchmarking analysis results

Step 8: Comparability Adjustments

- 8.14 In this step, the person shall make determination of and making comparability adjustments where applicable to reflect the arm's length price. In such instances, the adjustment will also be reflected by a corresponding adjustment upon request of the other party of the controlled transaction. Adjustments may be made where:-
- (i) For the supply of property or services, the consideration is less than the consideration that would have been received or receivable in an arm's length arrangement;
 - (ii) For the acquisition of property or services, the consideration is more than the consideration that would have been given or agreed to be given in an arm's length arrangement; or
 - (iii) No consideration has been charged to the associated person for the supply of property or services.
- 8.15 Losses incurred by a person for a variety of economic and business reasons such as start-up losses, market penetration strategies, and research and development failure.

However, an independent person would not endure continuous losses without taking appropriate measures to correct the situation within reasonable time, as it would contradict fundamental business objectives of making profits. The fact that an associated enterprise continuously suffers losses may be an indication that it is not being compensated fairly.

- 8.16 It is important to ensure that the controlled transaction entered into is commercially realistic and make economic sense in determining whether the losses are acceptable. A person needs also to establish that the losses are commercial in nature within the context of its characterization. In this regard, a person is expected to maintain contemporaneous documentation which outlines the non-transfer pricing factors that have contributed to the losses.
- 8.17 A contract or toll manufacturer that only carries out production as ordered by a related party, without performing functions such as operational strategy setting, product research and development and sales, is expected to maintain a consistent level of profitability. Should the manufacturer suffer from losses, it must prove that these losses are not a result of its transactions with a related party.

Step 9: Interpretation of comparability results

- 8.18 An arm's length range refers to a range of figures that are acceptable in establishing the arm's length nature of a controlled transaction. The range is derived from applying the same transfer pricing method to multiple comparable data. It is established that transfer pricing is not an exact science, and that the application of the most appropriate transfer pricing methodology may produce a range of results.
- 8.19 Regulation 6(6) requires that, where the comparability analysis is conducted on more than four comparable data, the arm's length range shall be the data point between thirty fifth percentile and sixty percentiles; otherwise where four or less comparable data is used the average of the data shall be the arm's length result.
- 8.20 Where a controlled transaction's price falls outside the arm's length range and by reason of such results erodes the tax base of a person then such results shall be adjusted to the median point of the range.

9.0 FACTORS DETERMINING COMPARABILITY

- 9.1 There are five factors governing comparability of uncontrolled transaction against controlled. Uncontrolled transaction is deemed comparable with that of a controlled transaction if the following five factors are sufficiently similar in both situations:
- (i) Characteristics of the property or services;

- (ii) Functions performed, assets employed and risks assumed (Refers Para 6.0 of these Guidelines)
- (iii) Contractual terms;
- (iv) Economic circumstances; and
- (v) Business strategies.

Characteristics of the property or services;

- 9.2 Similarity of characteristics of a product or service is of essence when comparing prices rather than profit margins between controlled and uncontrolled transactions. Characteristics that are compared should include:
- (i) in the case of tangible property: the physical features, quality and the volume of supply of property;
 - (ii) in the provision of services: the nature and extent of services; and
 - (iii) in the case of intangible property: the form of transaction (e.g. licensing or sale); type of property (e.g. patent, trademark or know how); the duration and degree of protection; and the anticipated benefits from the use of property.

Contractual terms

- 9.3 In determining the comparability of a controlled and uncontrolled transaction contractual terms are relevant as they may influence the price or margin of a transaction. Allocation of responsibilities, risks and benefits between enterprises are normally defined in a contract agreement. Any differences between the contractual terms of the transactions being examined would need to be adjusted in determining an arm's length price for the controlled transaction. The terms and conditions in a contract may include:-
- (i) The form of consideration charged or paid;
 - (ii) Sales or purchase volume;
 - (iii) The scope and terms of warranties provided;
 - (iv) Rights to updates, revisions or modifications;
 - (v) The duration of relevant licenses, contracts or other agreements, and termination or renegotiation rights;
 - (vi) Collateral transactions or ongoing business relationships between the buyer and the seller, including arrangements for the provision of ancillary or subsidiary services; and
 - (vii) Terms of credit and payment.

Economic circumstances

- 9.4 Different economic circumstances may influence variations in arm's length prices. Factors that may affect the price or margin of a transaction include:-
- (i) The geographic location of the market;

- (ii) The size of the market;
- (iii) The extent of competition in the markets;
- (iv) The level of supply and demand in the market as a whole and in particular regions;
- (v) Customer purchasing power;
- (vi) Cost of production including the costs of land, labour and capital, and transport costs;
- (vii) The level of the market (e.g. retail or wholesale);
- (viii) The date and time of transactions;
- (ix) The availability of substitute goods and services; and
- (x) The extent of government intervention e.g. whether goods compared are price controlled.

Business strategies

9.5 Business strategies must also be observed in determining comparability for transfer pricing purpose. The strategies adopted by an enterprise influence the price charged for a product. In a comparability analysis, it is necessary to evaluate whether an independent person in the same circumstances as that of a controlled person would have adopted similar strategies and if so, what rewards would have been expected. Business strategies that are relevant in determining comparability include innovation and new product development, degree of diversification, market penetration schemes, distribution channel selection, market level and location.

9.6 In the testing of arm's length price a person must thoroughly consider and evaluate all the comparability factors. However, it is essential to note that in practice some of the comparability factors may become more important (i.e. assigned more weight) and consequently need more thorough analysis than others depending on the transfer pricing method selected and applied. For example, the characteristics of a property or service and contractual terms take more weight than other factors when the CUP method is applied. Likewise, the analysis of functions performed, assets used and risks assumed is a critical comparability factor that deserve thorough consideration when TNMM is selected and applied.

10.0 DOCUMENTATION

10.1 Section 35 of the Tax Administration Act (TAA), 2015 impose an obligation for maintenance of documents by a person to which the Commissioner is entitled to access under the provisions of section 42 and 44 of the same law alongside regulation 7 (3) of the Regulations.

- 10.2 The documentation referred to in this part includes tax returns as provided for under section 37 of the TAA, 2015 or any other document required under the law to be filed with the Commissioner.

Documentation Requirements

- 10.3 Transfer Pricing documents are required to be submitted at the time of filing income tax returns in terms of Regulation 7 (3) (a) of the Regulations for a person whose transactions with associates amounts to or is above ten billion Tanzanian shillings.
- 10.4 For those persons whose transactions with an associate fall below the stipulated threshold, they have an obligation to prepare and keep the documentation before the due date of filling the returns. This is so because the Commissioner may require any person whether or not liable to tax to submit such documents at any time and within thirty days as required under regulation 7 (3) (b) of the Regulations.
- 10.5 An extension of time to submit the transfer pricing documentation for persons who falls within the threshold of ten billion may be sought by the person and granted by the Commissioner upon demonstration of good cause. However, such an extension shall not exceed the extension period for filling a return of income which is thirty days.
- 10.6 Where the Commissioner issues a notice to submit the Transfer Pricing documentation in terms of regulation 7 (3) (b) of the Regulations, no extension of time shall be granted. Instead, a procedure for penalty on account of default will be initiated because seeking for an extension demonstrates an omission to readily prepare such documentation at the date of filling the returns.
- 10.7 Where there is a default or offence touching contravention to file the returns the same shall be dealt under section 78 of the TAA, 2015 whereas a default or offence with regard to the transfer pricing documentation will be dealt under regulation 7 (4) of the Regulations.
- 10.8 In imposing an appropriate sanction on the contravention of regulation 7 of the Regulations, the normal rules of compounding of the offences under section 92 of the TAA, 2015 as to the notice to a person and compounding procedures will be adopted.
- 10.9 Should a person fail to respond to the Commissioner's notice regarding contravention of Regulation 7 of the Regulations, the criminal measures shall be initiated.

Maintenance of Records

- 10.10 Section 35 (3) of the TAA, 2015 requires every person to maintain documents for a period of five years. However, where there is an objection or appeal a person is required under section 35 (4) of the same Act to keep the documents until when the objection or the appeal is finally determined and the decision is executed.
- 10.11 A person shall maintain the documents within the United Republic of Tanzania in an official language which is either Swahili or English.
- 10.12 Where the documents are not in an official language, the person shall translate the respective documents by a translator approved by the Commissioner.

List of Documentation

- 10.13 The transfer pricing documentation submitted to the Commissioner must be contemporaneous according to the definition under regulation 3 of the Regulations. They should include documents depicting the following: -

Ownership and Organizational Structure

- 10.14 A person must portray worldwide ownership structure of the Group. In case of a multinational company the structure must include both direct and indirect ownership including all interposed persons covering all associated persons whose dealings directly or indirectly affect the pricing of the transacted goods, services or intangible.
- 10.15 Likewise, in furtherance of the above, the percentage ownership whether by individuals or entities within the Group must be reflected focusing on the country of origin for individuals or a country of incorporation (Diagram 1 refers).
- 10.16 As regards the operational structure, a person should clearly illustrate the way a person's business is organized regionally and/or globally in terms of business conduct e.g. Financing, Procurement & Logistics, HR Management, Technical services etc. Also, person should clearly illustrate how intangible (if any) are owned and/or protected. In this scenario, countries or jurisdictions where a specific goods or service originates must clearly be stated. (See Diagram 2)

Diagram 1: Ownership Structure

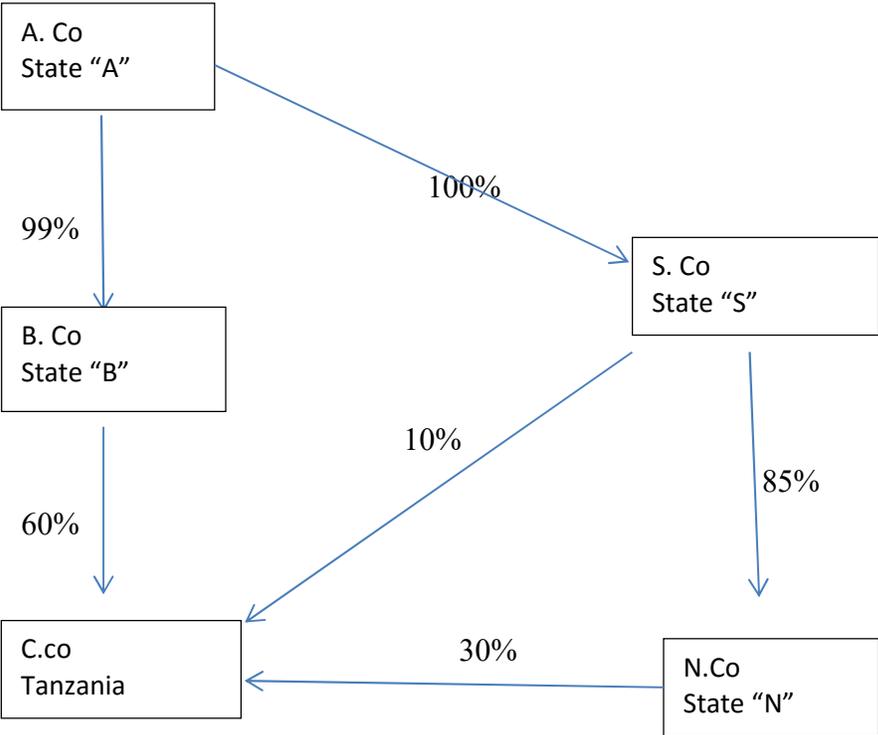
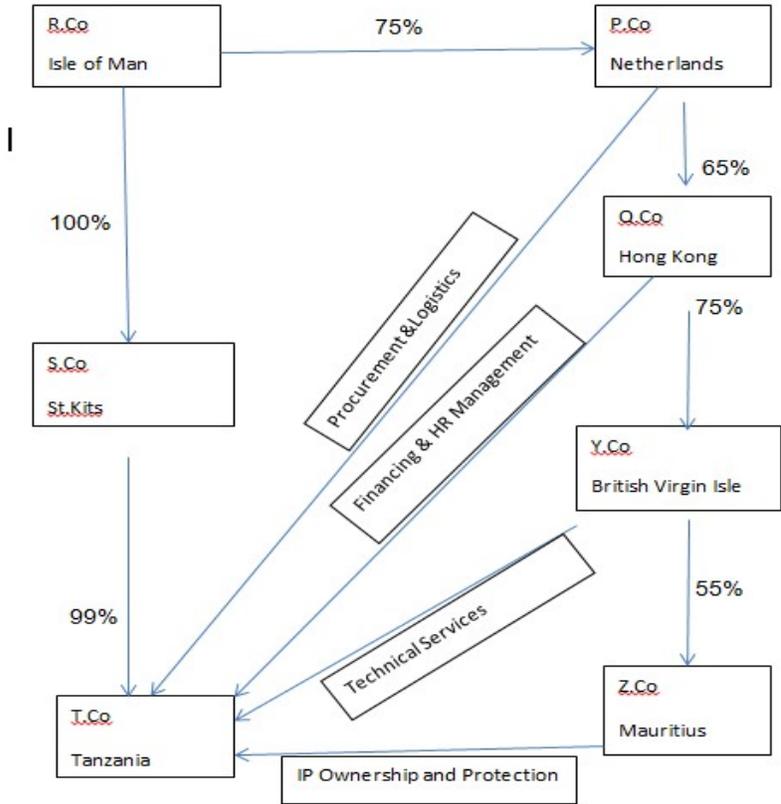


Diagram 2: Operational Structure



Nature of the business or industry and market conditions

- 10.17 Outline of the person's business including relevant recent history in five years' period, the industries operated in, analysis of the general economic and legal issues affecting the business and industry, the taxpayer's business lines and the property or services in the controlled transactions;
- 10.18 The corporate business plans to the extent of providing an insight in the nature and purpose of relevant transactions between the associates;
- 10.19 A description of the structure, intensity and dynamics of the relevant competitive environment(s).

Controlled transactions

- 10.20 Names and addresses of all associated persons, with details of the relationship with each of associated person;
- 10.21 Nature, terms (including prices) and conditions of controlled transactions (where applicable) entered into with each associate and the quantum of volume and value of each transaction. In this regard price(s) or worthiness and size or capacity of each transaction should be reflected;
- 10.22 All commercial agreements setting forth terms and conditions of transactions with associates as well as with third parties;
- 10.23 A record of any forecasts, budgets or any other financial estimates prepared by the person for the business as a whole and for each division or product separately.

Pricing policies

- 10.24 Assumptions and information regarding factors that influenced the setting of prices or the establishment of any pricing policies for the person and the related party group as a whole;
- 10.25 Relevant information regarding business strategies and special circumstances at issue, for example, intentional set-off transactions, market share strategies, distribution channel selection and management strategies that influenced the determination of transfer prices;
- 10.26 Documentation to support material factors that could affect prices or profits in arm's length dealings.

Other Comparability information

- 10.27 Details of functions performed, assets employed and risk assumed as per Para 6.0 of these Guidelines.
- 10.28 Comparability analysis referred to in Para 8.0 of these Guidelines.
- 10.29 Selection and application of the transfer pricing method referred to in Para 7.0 of these Guidelines.
- 10.30 Documents that provide the foundation for or otherwise support, or were referred to, in the development of the transfer pricing analysis.
- 10.31 Actual computational workings.
- 10.32 Index to document.

Appropriateness of Documentation

- 10.33 For the purpose of ensuring acceptability of contemporaneous transfer pricing documentation, a person should take efforts to undertake a transfer pricing analysis to ascertain that transfer prices comply with the arm's length principle and reflect commercially realistic outcomes for all controlled transactions.
- 10.34 Maintain documents that are applicable to the circumstances and be prepared to provide additional information or documentations which are not contained above, but may be relevant for determination of the arm's length price.
- 10.35 Prepare the transfer pricing documentation in accordance with regulation 7 (1) and (2) of the Regulations and these Guidelines.
- 10.36 Implement and review the arm's length transfer pricing policies and redesign the transfer pricing policy to accommodate any changes in the business environment.
- 10.37 Apply a coherent and transparent approach in identifying uncontrolled transactions.
- 10.38 Provide detailed analysis of functions, assets, risks, market conditions and business strategies.
- 10.39 Apply a transfer pricing method in accordance with regulation 5 (1) of the Regulations.

- 10.40 Ensure that the factual, economic and empirical representations in transfer pricing documentation are specifically relating to company, product and market.
- 10.41 Ensure that the transfer pricing documentation is accurate and precise, and matches the accounting, financial and benchmarked data or comparable.
- 10.42 Highlight and document any specific event that may have hindered the person's performance to warrant fact-based adjustments be considered on merits of each case.
- 10.43 Maintain adequate background documents and full records containing particulars about the factual assumptions and relevant factors that have been taken into account in working out the arm's length price.
- 10.44 Provide documentation which properly support the transactions.
- 10.45 The threshold of TZS 10 billions for filing transfer pricing documentation along with the Income Tax return provided under the Regulations, represents the value of all controlled transactions in a particular year of income.
- 10.46 The transfer pricing documentation submitted to TRA may be filed either in hard copy or in electronic form. However, TRA prefer and so recommend the documentation be submitted in electronic form.

11.0 APPLICATION OF THE OECD OR UN DOOCUMENTS

- 11.1 The Regulations recognize the application of the OECD or UN documents when construing the arm's length principle cherished under Article 9 of the two Model Tax Conventions.
- 11.2 In regard of the above, the Regulations shall be interpreted and applied consistently with the updated OECD or UN documentations governing the transaction between associates.
- 11.3 The provisions of the Regulations shall prevail over the OECD or the UN documentations in all cases where there is inconsistency between the Regulations and the said documentations.
- 11.4 The Commissioner shall have the superseding power to decide as to what constitutes the most appropriate interpretation in each circumstance when making reference to the OECD or UN documentation

12.0 SPECIAL CONSIDERATIONS FOR INTRA GROUP SERVICES

12.1 MNE groups arrange for a wide scope of services to be available to their members from within the group, in respect of administrative, technical and commercial activities. Such services may include, in particular, management, procurement, and coordination and control functions for the whole group. As a point of emphasis, the procurement services mentioned above will be treated in a manner consistent with all other intra-group services.

The Major Transfer Pricing Issues

12.2 The cost of providing such services may be borne initially by the parent, by a specially designated group member (“a group services centre”) or by another group member and then charged to the concerned members of the group. The critical issues are on the nature of intra-group services; whether the services are acceptable for taxation purposes; and how the applicable transfer prices can be determined.

Key Test Questions

12.3 The main issues in the analysis of transfer pricing for intra-group services are:-

- (i) Whether intra – group services have in fact been rendered.
- (ii) Whether the provision of such services has conferred an economic benefit or commercial value to the business that enhances its commercial position; and
- (iii) Whether the intra-group charges for such services for tax purposes are at arm’s length prices.

Confirmatory Tests and Decision Criteria

(A) Test 1: Whether intra-group services have been rendered

12.4 This question calls for a person to demonstrate to the satisfaction of the Commissioner that indeed services were rendered within the prescribed period under consideration. The demonstration would have to link what has been enumerated on the service contract between the associates and what is actually done in practice.

12.5 This is essential because what is detailed in a service contract cannot be considered as prima facie evidence that the services in questions were actually rendered. Accordingly, a person is required to demonstrate with relevant and sufficient evidences if indeed in practice the services listed on the service contract were rendered. Such evidences are expected to be provided voluntarily by the person along with the TP documentation.

- 12.6 Some of the basic evidences that are expected to be produced to the Commissioner to demonstrate the rendering of services, depending on the facts and circumstances, may include the following:-
- (i) The service provider's employees profile (i.e. names, titles or positions, academic qualifications, and work experience;
 - (ii) Details on experts' visits to support the business operations of a person (such as names, visits dates, duration and purpose for each visit, passport copies, permits, etc.);
 - (iii) Correspondences between the person and its associate (emails, telephone, work reports, etc.)
- 12.7 If a person does not provide the necessary evidences or provides only limited evidences, it may be concluded that no services were actually rendered or that only limited services were rendered. This fact will be taken into account in the determination of the fees to compensate the associate.

(B) Test 2: Whether there is conferment of economic benefit that elevates commercial position

- 12.8 This is what is commonly referred to as the benefit test and requires that the services that are proven to have been rendered should actually be adding value to the business of the recipient by enhancing the commercial position of the business. The benefits could be measured in various metrics for business performance which depending on circumstances may include cost reduction, time savings, increased competitiveness, increased market share, etc. Ultimately the benefits are expected to be reflected on the performance of the business of a person through increased profitability.
- 12.9 Closely connected to the benefit test is another analysis that should evaluate the services proved to have been rendered to determine if some of them are: (a) shareholders or custodial in nature (b) On call (c) providing incidental or passive association benefits (d) duplicative in nature. All services falling under these categories are to be disregarded.

(C) Test 3: Whether the intra-group charges are at arm's length prices

- 12.10 This is the final question to be asked and in answering it an analysis is required to test the appropriateness of the amount charged to remunerate the service provider. To carry out this analysis the mechanism used to charge the fees need be carefully and thoroughly examined.

- 12.11 For example, all fees are expected to be charged based on the actual costs incurred in rendering the services. Thus any charging mechanism that does not consider the actual costs of rendering the services (such as charging fees based on the percentage of turnover) would be rejected. In this regard the actual costs of services delivery must be provided.
- 12.12 Where the actual costs of rendering the service to a person cannot be directly determined, due to any genuine reason including centralization of functions within the group, such costs could be determined using an appropriate allocation key.
- 12.13 Lastly, an appropriate mark-up has to be determined and applied on the determined actual costs of rendering services to a person as it is considered that the actual costs plus an appropriate mark-up would sufficiently compensate the service provider.

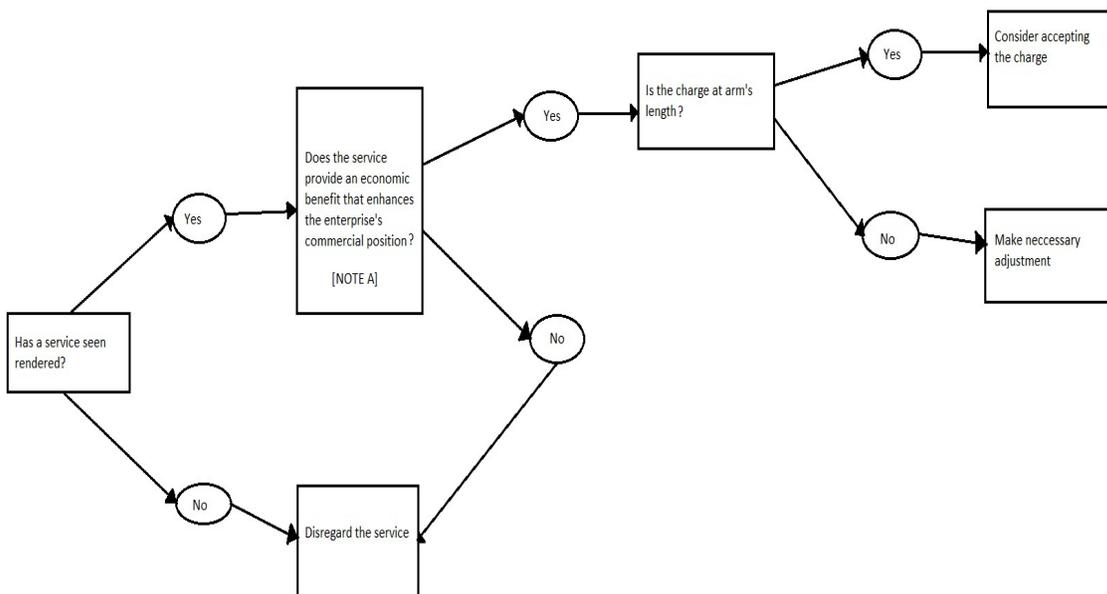
Selection and Application of Transfer Pricing Method

- 12.14 As a general rule, the proper method to determine the consideration for intra-group services shall be the cost of performing the identified and rendered intra-group services.
- 12.15 In implementation of the rule in Para 12.14 above for shared services the allocation key will be tested for its arm's lengthness

Summary of Decision Process

Figure 1 below presents a decision tree showing the test questions involved and decision criteria

Figure 1: Decision Tree



Examples of Application

12.16 URT Local Limited (ULL), a Tanzanian subsidiary of Popote World Inc. (PWI) included a deduction of Tsh.200 million for management fees in its tax return for the 2018 year of income. The accompanying transfer pricing documentation described the deduction as arising from payments made to PWI in respect of management services that PWI provides to all group members. In the same year of income ULL had also claimed of Tsh.137 million as technical support fees.

12.17 Transfer pricing audit by TRA revealed the following:

- (i) About the Tsh. 200 million charge for management fees
 - The Tsh. 200 million was charged as 3% of ULL's turnover contrary to Regulation 10 (4) of the Regulations which requires the proper method to determine the consideration for intra-group services be the cost of performing the services
 - There was no evidence that ULL needed the management services and that an independent company in comparable circumstances would be willing to pay for the services
- (ii) About the Tsh. 137 million charge for technical fees:
 - The charge was claimed in respect of IT support services purported to be provided by PWI (Country X)-another subsidiary in the PWI group.
 - All IT issues in ULL's business are handled by ULL's local IT team
 - The ULL local IT team was adequately qualified and fully responsible for IT services at ULL.

12.18 In determination of the audit case,

- (i) The Tsh. 200 million was disallowed on the ground that no service was actually rendered to ULL
- (ii) The Tsh.137 million was rejected on the basis that the purported IT support service by PWI (Country X) was a duplicate service.

13.0 SPECIAL CONSIDERATION FOR INTRA GROUP FINANCING

13.1 Among the services between associated persons are intra-group financing transactions. These may be in the form of financial assistance that includes loans, interest bearing trade credits, advance or debt and the provision of any security or guarantee. The intra-group financial transactions are subject to the arm's length principle just as other intra-group services are.

13.2 Financing services arise where:-

- (i) a person, directly or indirectly, acquires from or supplies to an associated person financial assistance for a consideration; or

- (ii) a person supplies financial assistance directly or indirectly to an associated person without consideration.

13.3 The focus of this part is on the analysis of intra-group loans, since they are the most commonly seen financial transactions in practice. However, the guidance on these transactions as well as the guidance in Para 12 on intra-group services might be relevant also for other financial transactions

Major Transfer Pricing Issues

13.4 The major issues in transfer pricing are associated with whether or not the transaction in question gives rise to a loan (accurate delineation and recognition of the actual transaction); size of the loan; as well as the nature and extent of interest deduction that are allowable (which is associated with selection and application of the most appropriate transfer pricing method).

13.5 The issues are relevant also in determining interest income for both inbound and outbound loans.

Key Test Questions

13.6 In determining an arm's length interest rate for financial assistance, a number of factors need to be considered:

- (i) Regarding conditions of the transaction a person shall ascertain
 - (a) Whether the nature and quantum of debt is justifiable
 - (b) Whether the nature (fixed or floating interest rate) and quantum of interest costs is justifiable
 - (c) How the nature and schedule of repayment of principle and interest affects pricing
 - (d) How the currency of the transactions and repayments affects payment?
 - (e) What the rate of real or effective interest implies
 - (f) Whether exists security in respect of the transactions
 - (g) Whether guarantees exist and how it affects pricing

- (ii) Regarding circumstances surrounding the transaction a person shall ascertain:
 - (a) How the credit worthiness of the borrower is determined and how it affects pricing?
 - (b) Whether the borrower has ability to obtain finance from a third party
 - (c) How the economic conditions (including capital markets, political stability, banking system, economic growth) in the jurisdiction of both the borrower and the lender affect pricing

(d) Whether a conduit transfer is involved

(iii) Regarding confirmatory tests and decision criteria, a person shall ascertain:

(a) Whether the loan was actually delivered

(b) Whether the size of the loan is at arm's length

(c) Whether utilisation of the loan is consistent with the stated purpose of the loan

(d) Whether interest charged is at arm's length.

Selection and Application of Transfer Pricing Method

13.7 The comparable uncontrolled pricing method will usually be the preferred method for determining the arm's length consideration in respect of a financial arrangement.

13.8 When ascertaining the arm's length interest rate, appropriate indices such as the Bank of Tanzania Interest Rate in force at the time, the London Inter-Bank Offered Rate (LIBOR) or specific rates quoted by banks for comparable loans can be used as a reference point. Adjustments (if any) are then made on the rates used, based on the outcome of comparability analysis to arrive at the arm's length interest rate.

Other Considerations

13.9 In the comparability analysis intra-group loans, the following principles need to be observed:

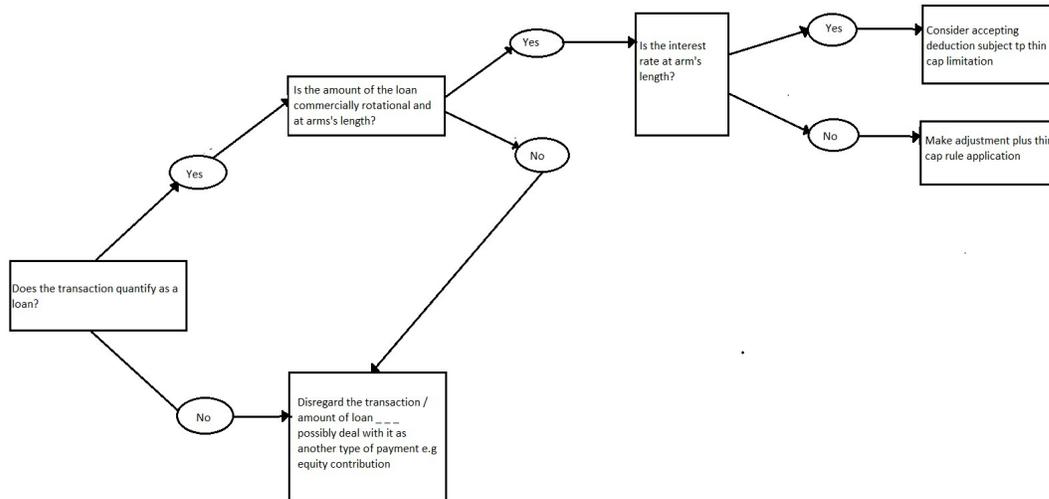
(i) The analysis should be two-sided, that is, from the perspectives of both the lender and the borrower. At arm's length, a lender will conduct a credit assessment of the borrower to make the decision on whether to provide a loan, as well as on the amount and terms of the loan. A borrower will generally assess whether the terms of the loans will meet its commercial needs and fall within its debt capacity and will need to have the capacity to make decisions relating to the risk it is purported to assume.

(ii) The analysis should be based on the actual conduct of the parties to the transaction.

(iii) Credit worthiness of the borrower may have to be on a standalone basis depending on the status of the borrower in the group

13.10 Figure 1 below presents a decision tree showing the test questions involved and decision criteria.

Figure 1: Decision Tree for Treatment of Intra-Group Service



Examples

13.11 ABC Ltd, located in Tanzania, is a subsidiary of Alpha Ltd, a company resident in Country X. ABC asks Alpha (which has available financial resources) to provide it with an intra-group loan. Upon review it becomes clear that ABC, after the loan would be in a very weak economic and financial situation. ABC might not have obtained the same debt financing from a third-party lender or, if obtained, the interest rate applied would have been too high to be accepted by ABC. TRA might consider this aspect and not accept the actual intra-group loan as delineated by Alpha and ABC. Although the decision between provision of loan or equity is a business decision of the group, the very weak economic and financial situation of ABC would make debt financing not a commercially rational decision for a third-party lender.

13.12 PQR Ltd, a Tanzanian company, receives a loan from its Country Y parent company, XYZ Plc. PQR also receives a loan from a third-party lender, with the same conditions as the ones agreed with XYZ. If the two loans are comparable (i.e. considering all the economically relevant characteristics, terms and conditions), PQR and XYZ could consider using the interest rate applied to PQR by the third-party lender to identify the arm's length intra-group interest rate.

14.0 SPECIAL CONSIDERATIONS FOR INTANGIBLE PROPERTY

- 14.1 The term intangible for the purpose of these Guidelines is intended to address something which is not a physical asset or a financial asset and which is capable of being owned or controlled for use in commercial activities and whose use or transfer would be compensated had it occurred in a transaction between independent parties in comparable circumstances. These are assets valued for their intellectual or intangible contents which can be legally protected or not.
- 14.2 Categorization of intangible properties can be made into two broad types:-
- (i) Trade intangibles such as patents created through risky and costly research and development know-how, designs and models that are used in producing a product or in providing a service; and
 - (ii) Marketing intangibles i.e. trademarks and trade name that are used in the exploitation of the products, customer lists, distribution channel and so forth.
- 14.3 Group synergies such as purchasing or borrowing power do not constitute intangibles. Similarly assembled work force, market specific conditions such as favorable weather conditions, location savings and other local market features do not constitute intangibles

Major Issues and Considerations

- 14.4 The key consideration is whether an intangible transaction conveys economic value from one associated person to another i.e. by looking into the benefit derived from the intangible. When a company demonstrates a higher than average rate of return on assets or higher than average profits for a given level of physical assets over a period of time, it indicates the likely presence of intangibles.
- 14.5 The legal rights and contractual arrangements form the starting point for any transfer pricing analysis of transactions involving intangibles.
- 14.6 The terms of a transaction may be found in written contracts, public records such as patent or trademark registrations, or in correspondence and/or other communications among the parties, however, the prices and other conditions contained in such contracts may or may not be consistent with the arm's length principle.
- 14.7 In cases where there are no written contracts in place or where written contracts exist but the actual conduct of parties to the transaction differs from the written contracts then the emphasis will be given on the substance of the transaction (actual

conduct of the parties deduced from the facts of the case) rather than its legal form (written contracts).

- 14.8 It is however highly recommended that associated persons document their decisions and intentions regarding the allocation of significant rights in intangibles.
- 14.9 Documentation of such decisions and intentions, including written agreements, should generally be in place at or before the time that associated persons enter into intangible transactions leading to their development, enhancement, maintenance, protection, or exploitation.

Key Test Questions

- 14.10 The following important questions need to be asked in analyzing intangible property;
- (i) Whether the intangible property exist i.e. has been licensed for use or transferred
 - (ii) Whether the intangible property confer economic or commercial value to the business
 - (iii) What is the role of associated persons in undertaking the DEMPE functions?
 - (iv) Whether the pricing of the intangible property is at arm's length

Existence of Intangibles

- 14.11 It is essential for a person to analyze the use or transfer of intangibles which begins with a thorough identification of the commercial or financial relations between the associated persons together with the conditions and economically relevant circumstances attaching to those relations in order that the actual transaction involving the use or transfer of intangibles is accurately delineated.
- 14.12 Intangibles that are important to consider for transfer pricing purposes are not always recognized as intangible assets for accounting purposes. For example, costs associated with developing intangibles internally through expenditures such as research and development or advertising are sometimes expensed rather than capitalized for accounting purposes and the intangibles resulting from such expenditures therefore are not always reflected on the balance sheet. Such intangibles may carry significant economic value and may need to be considered for transfer pricing purposes.
- 14.13 Basically, the arm's length principle applies to intangible property in the same way as for any other type of property, however, it is a fact that intangibles are unique in nature hence the treatment and analysis of intangible property can be complicated in

situations where the transaction may represent a number of components, both tangible and intangible, bundled together to form a single product e.g. service and intangible.

- 14.14 Such situations stated above in Paragraph 13.14 may complicate the search for reliable comparable data due to the uniqueness of the bundled product. In other cases, it may practically not be appropriate to bundle the transaction due to the non-existence of a close connection or association between the bundled service and intangible
- 14.15 For transfer pricing analysis, it may therefore be appropriate to detach the bundled transaction into a separate service and intangible components for which a separate analysis will be conducted for each individual service and intangible transactions in accordance with Regulation 10 and 11, respectively.
- 14.16 The TRA also understands that in some situations it may be difficult to segregate the bundled transaction to due to the fact that the transaction may be so closely interrelated such that it becomes difficult to separate the transaction for transfer pricing purposes. For example, some transfers of rights in software may be combined with an undertaking by the transferor to provide ongoing software maintenance services, which may include periodic updates to the software. In situations where services and transfers of intangibles are closely intertwined, determining arm's length prices on an aggregate basis may be necessary.

Adoption of the DEMPE Functions

- 14.17 In cases involving the use or transfer of intangibles, it is especially important to conduct a functional analysis of the parties involved in the transaction in respect of the activities related to the development, enhancement, maintenance, protection and exploitation of the intangibles.
- 14.18 The functional analysis helps in the identification of the roles and responsibilities of the parties as well as in the determination of appropriate remuneration based on the functions performed, assets utilized, and risks assumed in connection with the development, enhancement, maintenance, protection, and exploitation of the intangibles.
- 14.19 In order to determine arm's length conditions for the use or transfer of intangibles it is important to perform a functional and comparability analysis in accordance with the commercial or financial relations, based on identifying the intangibles and associated risks in contractual arrangements and then supplementing the analysis through examination of the actual conduct of the parties based on the functions

performed, assets used, and risks assumed, including control of important functions and economically significant risks.

- 14.20 In identifying arm's length prices for transactions among associated persons, the contributions of members of the group related to the creation of intangible value should be considered and appropriately rewarded. The determination of arm's length compensation for functional contributions should consider the availability of comparable uncontrolled transactions, the importance of the functions performed to the creation of intangible value, and the realistically available options of the persons.
- 14.21 The fact that an MNE is a legal owner of the intangible without participating in the important functions that create value of the intangible, is not sufficient to guarantee a compensation for the use the intangible.
- 14.22 For the purposes of these guidelines where associated persons other than the legal owner perform relevant functions that are anticipated to contribute to the value creation of the intangibles including incurrence of expenses and bearing of associated risks in relation to the development of intangible property, such person shall be deemed to be the owner of the intangible and should be compensated on an arm's length basis for the functions they perform

Comparability Factors

- 14.23 In applying the arm's length principle to controlled transactions involving intangible property, some special factors relevant to comparability between the controlled and uncontrolled transaction should be considered. These factors include;
- (i) The expected benefits from the intangible property (possibly determined through a net present value calculator)
 - (ii) Any commercial alternatives otherwise available to the acquirer or licensee derived from the intangible property
 - (iii) Any limitations on the geographic area in which rights may be exercised;
 - (iv) the exclusive or non-exclusive character of any rights transferred
 - (v) Whether the transferee has the right to participate in further developments of the intangible property
 - (vi) Any other factor considered relevant for the matter

Selection and Application of Transfer Pricing Method

- 14.24 The Comparable Uncontrolled Price (CUP) or Profit Split methods shall be used to determine the arm's length price for intangible transactions depending on the facts and circumstances of the case.

Excessive Marketing Costs on Marketing Intangibles

14.25 When a person who is not a legal owner of a marketing intangible undertakes marketing expenses in excess of those of a comparable independent person, the person shall be entitled to an arm's length consideration for undertaking such activities from the owner of the marketing intangible.

Locally Developed Intangibles

14.26 There shall be no deductions for royalty payments in respect to an intangible property locally developed in the United Republic of Tanzania that was initially transferred outside the United Republic of Tanzania and licensed back for use in the United Republic of Tanzania.

14.27 Notwithstanding the above, an arm's length compensation shall be provided to the initial local developer of the intangible at the time of transfer.

Further Guidance on Intangibles

14.28 The Commissioner therefore considers the guidance provided in chapter VI of the OECD Guidelines which deals specifically with intangible property highly relevant and recommends that persons and officers follow the guidance provided therein in establishing arm's length conditions in agreements with associates involving intangible property.

15.0 SPECIAL CONSIDERATION FOR COMMODITY TRANSACTIONS

15.1 The term commodity referred to under Regulation 12 encompasses physical goods for which a quoted spot price is used as a reference by independent parties in the industry to set prices in uncontrolled transactions and include grains, oil seeds, other goods obtained from the land, hydrocarbons and derivatives thereof.

Selection and Application of Transfer Pricing Method

15.2 Regulation 12 specifies that the Comparable Uncontrolled Price (CUP) method shall be the appropriate method for determining the arm's length price of controlled transactions involving the sale or purchase of commodities or similar products. This is a specific method to be applied, to the exclusion of all other methods, to transactions involving the sale or purchase of commodities within the scope of Regulation 12.

Reference Arm's Length Price

- 15.3 In controlled commodity transactions that are within the scope of Regulation 12, the daily quoted spot price of the day in which the goods are shipped will be used as the arm's length transfer price between the two associated persons for the purposes of computing taxable income in the United Republic of Tanzania.
- 15.4 If the person makes an adjustment to the quoted spot price, the person must provide all of the evidence needed including computational workings to show that adjustments are appropriate to that quoted spot price to be consistent with the arm's length principle.
- 15.5 If all such information stated in Paragraph 14.4 is not provided to the Commissioner, the daily quoted price of the day in which the goods are shipped will be used as the transfer price between the two associated persons for the purposes of computing taxable income in the United Republic of Tanzania.
- 15.6 Notwithstanding Paragraph 14.3, 14.4 and 14.5 above, the weekly or monthly average quoted prices may be used to determine the arm's length prices for certain commodity transactions depending on availability of information in the relevant markets, recognized and transparent price reporting or statistical agencies, or from governmental price setting agencies.
- 15.7 For certain commodities, where quoted prices may not be available in open markets the arm's length price for the commodity transactions shall be determined based on the general arm's length rules as prescribed by the Regulations

Quoted Spot Price

- 15.8 For the purposes of Regulation 12, quoted spot price refers to the price of the commodity in the relevant period obtained in domestic or international commodity exchange market and includes prices obtained from a recognised and transparent price reporting or statistical agencies, or from governmental price setting agencies, or from any other index that is used as a reference by unrelated parties to determine prices in transactions between them.

Transaction Date

- 15.9 For the purpose of Regulation 12, the date of the transaction shall be deemed to be the date of shipment as evidenced by the bill of lading or equivalent document depending on the means of transport.

Situations where Agreed Price is higher than Quoted Spot Price

- 15.10 Where the price agreed upon between associated persons in the export of commodities from the United Republic of Tanzania is higher than the quoted spot price, then the agreed price shall be considered as the sale price.
- 15.11 In other circumstances, in the case of goods exported from the United Republic of Tanzania that are subsequently sold by an associated person to an independent person, the price agreed upon between that associated person and the independent person (the agreed price) is higher than the quoted spot price, the agreed price in this case will be considered as the sale price for the purposes of computing the seller's taxable income in the United Republic of Tanzania.
- 15.12 In both situations stated in Paragraph 14.10 and 14.11 above, where the sale price (agreed price) cannot be reliably applied, the person should provide all of the evidence needed to show that adjustments are appropriate to that sale price to be consistent with the arm's length principle.

16.0 ADVANCE PRICING ARRANGEMENT (APA)

Aim of the APA

- 16.1 The aim of the APA is to provide persons with an opportunity to reach agreement with the TRA on the mode of application of the arm's length principle to their international related party transactions on a prospective basis, thereby resolving any uncertainty around those dealings.
- 16.2 The Commissioner may therefore enter into an agreement with a person consistency with the arm's length price for the purpose of subsection (1) of section 33 of the ITA, Cap.332 and regulation 4 of the Tax Administration (Transfer Pricing) regulations, 2018.

Scope

- 16.3 An APA will generally apply for three to five years but may be longer, for example, where the underlying transaction continues for a period exceeding five years.

Types of APAs

- 16.4 An APA can be concluded either unilaterally, bilaterally or multilaterally.

Unilateral APA

- 16.5 Where the APA process does not involve or require agreement with a tax treaty partner or involves a country with which URT does not have a taxation treaty, the

arrangement between the person and the TRA is referred to as a unilateral APA. A unilateral APA is concluded between the TRA and a person under the Commissioner's power of general administration of the income tax legislation and the person and TRA agree in writing to be bound by the terms of the APA. This does not guarantee the agreement of the tax treaty partner(s) and does not depend on that agreement or require it to be sought.

Bilateral APA

16.6 A bilateral APA is an arrangement between the TRA and a tax treaty partner concerning the transfer pricing of international related party dealings. It is concluded under the Mutual Agreement Procedure (MAP) Article of the relevant taxation treaty. Each treaty partner confirms the terms of the APA in writing through a letter or similar document with their resident person and agrees to be bound by them. A bilateral APA therefore provides certainty for persons that acting consistently with it will avoid double taxation.

Guiding Principles

16.7 There is no mandatory requirement for persons to seek an APA. However, in recognition of commercial needs, TRA may make available the APA platform to persons who are engaged in cross-border related party transactions.

16.8 For the Tanzania competent authority to accede to requests for APAs from persons and enter into such arrangements persons will be required to comply to the provisions under the MAP Article of URT's tax treaties and the Tanzanian Income Tax Act.

16.9 Persons should evaluate their own situations and weigh the pros and cons before making a request for APA.

16.10 Once an APA has been obtained and persons implement the APA according to the stated conditions, the Commissioner will not make any adjustment. However, an audit to the transaction may be carried out to ascertain compliance and obtain certainty that their transfer prices have fulfilled the arm's length price.

16.11 Persons should decide to enter into APAs in good faith and are not obliged to accept the outcome agreed between the competent authorities. The person may withdraw the application, terminate the process or reject the agreed outcome by the competent authorities.

- 16.12 Generally, TRA would accept an APA request if there is a genuine motive to obtain certainty in compliance with the arm's length price and the request relates to specific current or future transactions that are not hypothetical.
- 16.13 With regard to the appropriate period that an APA should cover, TRA is of the view that this should be addressed convincingly, based on commercial realities. The APA should only cover periods where the critical assumptions and commercial factors that have significant impact on the validity of the APA are expected to remain unchanged. This basis should also be used to guide decisions on the suitability of applying the terms of the APA to prior years (commonly known as "roll-back" of the APA).
- 16.14 TRA appreciates that the usefulness of an APA to a person may be diminished if a timely agreement cannot be reached. In this regard, TRA will do its best to expedite the APA process and reach agreement. However, the actual duration of the process would depend on the complexity of the issues involved in each case, and the response time of the parties involved

Who can apply for an APA?

- 16.15 Any person with related party transaction(s) may apply for an APA where those transactions are between:
- (i) related separate legal entities
 - (ii) a permanent establishment and its head office, or
 - (iii) two permanent establishments of the same entity or group.

How to apply for an APA

- 16.16 In the first place the person should contact the Commissioner seeking a pre-filing engagement to discuss the requirements of the proposed APA. The APA proposal to be discussed at the pre-lodgment meeting should be submitted in writing to the following address:-
- Commissioner General,
Tanzania Revenue Authority,
Postcode 28,
Edward Sokoine Drive,
11105 Mchafukoge, Ilala CBD,
P. O. Box 11491,
DAR ES SALAAM, Tanzania.
- 16.17 During the pre-filing meetings with TRA, persons should present the salient information such as the company's business model and industry information,

transactions to be covered, the period of the APA etc. If TRA is willing to accept the case for APA, the person will be advised on the necessary follow-up actions (such as the content of the application to be submitted etc.) and what is expected of the APA process (e.g. the expected timeframe for completion etc.).

- 16.18 For bilateral and multilateral APAs, persons should undertake similar meetings with the relevant foreign tax authorities and seek their agreement for an APA as well as their specific requirements with respect to the APA process. It would be helpful if persons share such information from their meetings with the foreign tax authorities with TRA.

Formal APA Submission

- 16.19 Unless TRA or the relevant foreign authorities do not agree with the APA request, persons should proceed to submit the formal APA application, which should include the following key components:
- (i) General information concerning the person such as the nature of its business and its industry environment, worldwide organizational structure, etc;
 - (ii) Details and explanation of the proposed transfer pricing methodology and analysis;
 - (iii) All information and analyses needed to produce the arm's length results for the related party transactions;
 - (iv) The set of critical assumptions under which the proposed transfer pricing methodology and analysis will operate;
 - (v) Period covered by the APA, including whether the APA would be rolled back to prior years;
 - (vi) Any other information that TRA or the other tax authorities have requested for.

Review and Negotiation of an APA

- 16.20 Upon receiving the formal submission, TRA will commence the process of seeking an APA with the relevant foreign authorities. This may include meetings with persons to seek clarifications, obtaining more information, conducting site visits, consultations and negotiations with the relevant foreign competent authorities, etc.
- 16.21 As with the MAP, the negotiation of a bilateral or multilateral APA is a government-to-government process. Hence, persons do not, as a general rule, participate in or attend as observers at the negotiations or consultations between the competent authorities but persons may be called upon to provide clarification. However, TRA would regularly update them on the outcome of the competent authority consultations and the expected time frame to complete their cases.

Post-Agreement Meeting and Implementation of APA

16.22 When an agreement is reached, TRA will meet with the person within thirty days of reaching the agreement to discuss the details and implementation of the agreement. TRA will also discuss with the person on the APA compliance and monitoring requirements and the person will notify the TRA for any year where they are not in compliance.

17.0 CORRESPONDING ADJUSTMENT

17.1 A corresponding adjustment is an adjustment made to taxable income by a foreign tax authority for purposes of eliminating instance of double taxation.

17.2 A corresponding adjustment which is not in accordance with the arm's length principle, will be denied, or only granted to the extent it accords with the arm's length principle.

17.3 In such circumstance the Commissioner will discuss the issue with the competent authority of the foreign tax authority with a view to eliminating double taxation. A request for consideration of a corresponding adjustment must be made to the Commissioner within one month from the date an adjustment was made or within such time allowable under an existing tax treaty for the case to be resolved by way of agreement procedure.

17.4 A request for consideration of a corresponding adjustment must include the information necessary for the Commissioner to examine the consistency of the adjustment made by the foreign tax authority with the arm's length principle, including:-

- (i) The name, registered address and, where applicable, trading name(s) of the connected person;
- (ii) Evidence of the tax residence of the connected person;
- (iii) The year(s) in which the adjusted controlled transaction(s) took place;
- (iv) The amount of the requested corresponding adjustment and the amounts of the adjustment made by the foreign tax authority;
- (v) Evidence of the adjustment made by the foreign tax authority and the basis for the adjustment, including details of comparability analysis relied upon and the transfer pricing method applied;
- (vi) Confirmation that the connected person party will not, or is unable to, pursue any further recourse under the domestic law of the other country that may result in the adjustment made by the foreign tax authority of the other country being reduced or eliminated;

(vii) Any other information that may be relevant for examining the consistency of the adjustment with the arm's length principle.

17.5 The request must be made in writing to the following address:-

Commissioner General,
Tanzania Revenue Authority,
Postcode 28,
Edward Sokoine Drive,
11105 Mchafukoge, Ilala CBD,
P. O. Box 11491,
DAR ES SALAAM, Tanzania.

18.0 ADJUSTMENT BY THE COMMISSIONER

18.1 The Commissioner will be required to make an adjustment in a situation where the conditions of an actual transaction differ from the arm's length conditions. Such adjustment will be made in the calculation of taxable income in a controlled transaction.

18.2 An adjustment that will be made by the Commissioner normally will arise as a result of a tax audit. If, as a result of an audit, it is established that the conditions of a controlled transaction differ from the arm's length conditions, and, as a result, profit has been understated, or losses overstated, then the adjustment to the taxable income will be made.

18.3 The Commissioner may upon application by persons may allow a person to make an adjustment to the price paid or payable whose reflection is found in the financial accounts, and thus ultimately in the calculation of taxable income.

END