

STATUTORY INSTRUMENT

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The Income Tax (Transfer Pricing) Regulations 2021

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**The Income Tax Act, 2000
(Act No. 8 of 2000)**

INCOME TAX (TRANSFER PRICING) REGULATIONS 2021 Short title.

In exercise of the powers conferred on the Minister responsible for finance under paragraph (b) of section 166 of the Income Tax Act, 2000, the Minister hereby makes the following regulations -

PART I- PRELIMINARY

1. In these regulations, unless the context otherwise Interpretation requires -

"Act" means the Income Tax Act 2000;

"arm's length" means a controlled transaction conducted in the same way as an uncontrolled transaction under similar circumstances and conditions and the price charged for the controlled transaction is the same when charged to an unrelated party for the same transaction under the same circumstances and conditions ;

"arm's length allocation" means an allocation of profit or loss in respect of a transaction that would have occurred between the participants in the transaction if they had been dealing at arm's length with each other;

"commodities" include agricultural produce, solid minerals, hydrocarbons, derivatives and other products or natural minerals obtained from the land or water and in general goods where quoted price exists.

"comparable transactions" mean transactions that are comparable in accordance with regulation 3;

"comparable uncontrolled price ('CUP') method" means a method in which the price charged for property or services transferred in a controlled transaction is compared with the price charged for property or services transferred in a comparable uncontrolled transaction;

"connected person", "has the same meaning as "associated person" in the Income Tax Act, 2000;

"constituent entity" means any operating entity of the MNE group, including corporations, partnerships, permanent establishments, etc;

"controlled transaction" means any transaction between associated persons;

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

"date of transaction", means the date on which goods are shipped as evidenced by the bill of lading or equivalent contemporaneous document, depending on the means of transport, unless the person provides reliable contemporaneous evidence of the actual pricing date agreed by the associated persons in the transaction and that the date accords with the date that would have been agreed if the persons had been dealing at arm's length;

"financial indicator" means-

- (a) in relation to the comparable uncontrolled price method, the price;

- (b) in relation to the cost plus method, the mark up on costs;
- (c) in relation to the resale price method, the resale margin;
- (d) in relation to a transactional net margin method, the net profit margin; or
- (e) in relation to the transactional profit split method, the division of the operating profit (or loss);

"MNE Group" means any group of associated companies having one or more business establishment in Sierra Leone.

"quoted price" means the price obtainable from an international or domestic commodity exchange market, or from recognised and transparent price reporting or statistical agencies, or from governmental price-setting agencies, or any other index, that is used as a reference by unrelated parties to determine prices in transactions between them where there is more than one recognised market and statistical or price setting agency, the National Revenue Authority may by notice specify the process for determining the most appropriate index;

"resale price method (RPM)" means a method in which the resale margin that a purchaser of property or service in a controlled transaction earns from reselling the property or service in an uncontrolled transaction is compared with the resale margin that is earned in a comparable uncontrolled purchase and resale transaction;

"transactional net margin method (TNMM)" means a method in which the net profit margin relative to the appropriate base, including costs, sales or assets that a person achieves in a controlled transaction is compared with the net profit margin relative to the same base achieved in a comparable uncontrolled transaction;

"transactional profit split method (TPSM)" means a method in which the division of operating profit (or loss) that a person achieves in a controlled transaction is compared with the division of operating profit (or loss) that would be achieved when participating in a comparable uncontrolled transaction;

"uncontrolled transaction" means any transaction between persons that are independent (that is, that are not "related persons") with respect to each other.

PART II - MECHANICS: ARMS' LENGTH STANDARD, TRANSFER PRICING METHODOLOGY AND APPLICATION

Arm's length
Standard.

2. (1) In determining whether the conditions of a controlled transaction are consistent pursuant to section 95 of the Act and the quantum of any adjustment made under that section, the standard to be applied shall be that of arm's length of an uncontrolled transaction and in accordance with these regulations.

(2) A controlled transaction meets the arm's length standard if the results of the transaction are consistent with the results that would have been realised if the same transaction was an uncontrolled transaction under the same circumstances.

(3) Where it is deemed that the controlled transaction does not meet the arm's length standard, an arm's length allocation shall be applied in conformity with section 95 of the Act.

Comparability.

3. (1) An uncontrolled transaction is comparable to a controlled transaction pursuant to section 95 of the Act where -

- (a) there is no difference between them that could materially affect the financial indicator being examined under the appropriate transfer pricing method; or
- (b) such difference exists and reasonably accurate comparability adjustment is made to the relevant financial indicator of the uncontrolled transaction in order to eliminate the effects of the difference on the comparison.

(2) In determining whether two or more transactions are comparable, the following factors shall be considered to the extent that they are economically relevant to the facts and circumstances of the transaction -

- (a) the characteristics of the property or services transferred;
- (b) the functions undertaken by each person with respect to the transactions, taking into account assets used and risks assumed;
- (c) the contractual terms of the transactions;
- (d) the economic circumstances in which the transactions take place; and
- (e) the business strategies pursued by each of the associated persons in relation to the transactions.

(3) For the purpose of determining whether two transactions are comparable, the allocation of risk between associated persons shall take into account how economically significant risk is allocated in contracts between those persons and which person -

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

Provided that in cases where the person contractually assuming the risk does not control the risk or does not have the financial capacity to assume the risk, the risk shall be allocated to the person who does control the risk and have the financial capacity to assume the risk; and for tax purposes, the person contractually assuming the risk shall not be allocated the profits associated with those risks and shall be entitled to no more than a risk-free return.

4. (1) The arm's length remuneration or price of a controlled

transaction shall be determined by applying the most appropriate transfer pricing method to the facts and circumstances of the case, providing the most reliable measures of an arm's length price under those facts and circumstances.

(2) The most appropriate transfer pricing method shall be selected from among the transfer pricing methods set out in sub-regulation (3), taking into consideration the following criterias -

- (a) the respective strengths and weaknesses of the method;
- (b) the appropriateness of the method in view of the nature of the controlled transaction, determined in particular through an analysis of the functions undertaken by each person in the controlled transaction, taking into account assets used and risks assumed;
- (c) the availability of reliable information needed to apply the selected transfer pricing method; and
- (d) the degree of comparability between the controlled and uncontrolled transactions, including the reliability of comparability adjustments, if any, that may be required to eliminate differences between them.

(3) The following shall be the transfer pricing methods for purposes of sub-regulation (1) -

- (a) the Comparable Uncontrolled Price (CUP) Method;
- (b) the Resale Price Method (RPM);
- (c) the Cost Plus Method;
- (d) the Transactional Net Margin Method; and
- (e) the Transactional Profit Split Method

(4) Where it is possible to determine an arm's length

remuneration or prices for some of the functions performed by the associated persons in connection with a controlled transaction using one of the methods as set out in paragraphs (a) (b) and (c) of sub-regulation (3) the transactional profit split method shall be applied based on the common residual profit that results once such functions are so remunerated.

(5) It shall not be necessary to apply more than one method to determine the arm's length remuneration for a given controlled transaction.

(6) A transfer pricing method other than the ones contained in sub-regulation (3) may be applied where the Commissioner has been convinced that -

- (a) none of the methods set out in sub-regulation (3) can be reasonably applied to determine arm's length conditions for the controlled transaction, and
- (b) such other method yields a result consistent with that which would be achieved by independent persons engaging in comparable uncontrolled transactions under comparable circumstances.

(7) When a method other than the methods contained in sub-regulation(3) is used it shall be established that the requirements of sub-regulation (6) have been satisfied.

5. (1) When applying a cost plus, resale price or transactional net margin method, set out under sub-regulation (3) of regulation 4 , it shall be necessary to select the party, referred to as the "tested party", to the transaction for which a financial indicator, mark-up on costs, gross margin, or net profit indicator, is tested or compared with that of the comparables in order to determine the arm's length price of a transaction under the most appropriate transfer pricing method in the circumstance so prevailed.

The Tested
Party.

(2) The selection of the tested party shall be consistent with the functional analysis of the transaction.

(3) The tested party shall be the one to which a transfer pricing method can be applied in the most reliable manner and for which the most reliable comparables can be found as it has the least complex functional analysis.

(4) Where the most appropriate transfer pricing method is a one-sided method, financial information on the tested party shall be needed in addition to the information referred to under regulation 13 irrespective of whether the tested party is a domestic or foreign entity.

(5) Where the most appropriate method is a cost plus, resale price or transactional net margin method and the tested party is the foreign entity, sufficient information shall be needed to be able to reliably apply the selected method to the foreign tested party and to enable a review by the Commissioner-General.

Combined
Controlled
Transaction.

6. If a taxpayer carries out under the same or similar circumstances two or more controlled transactions that are economically closely linked to one another or that form a continuum in a way that they cannot be reliably analysed separately, those transactions may be combined to perform the comparability analysis set out in regulation 3 and apply the transfer pricing method set out in regulation 4.

Arms's length
Range.

7. (1) An arm's length range shall be a range of relevant financial indicator produced by the application of the most appropriate transfer pricing method.

(2) The arm's length range includes the results of all comparable uncontrolled transactions and this shall be determined either on a full range or an interquartile range.

(3) The full range referred to under sub-regulation (2) can be used if the transactions meet all the following criterias-

(a) the controlled and uncontrolled transactions are "sufficiently similar"

(b) all material differences have been identified

- (c) adjustments are made to eliminate the effect of such differences

(4) Where the application of the most appropriate method results in a number of financial indicators for which the degree of comparability of each to the controlled transactions, and to each other, is uncertain, a statistical approach shall be used.

(5) Where a statistical approach referred to under sub-regulation (4) is used, the interquartile range shall be considered to be an arm's length range.

(6) A controlled transaction, or a set of controlled transactions that are combined pursuant to regulation 6 shall not be subject to an adjustment under Section 95 of the Act where the relevant financial indicator derived from the controlled transaction or set of controlled transactions and being tested under the appropriate transfer pricing method is within the arm's length range.

(7) Where the relevant financial indicator derived from a controlled transaction, or from a set of controlled transactions that are combined pursuant to regulation 6, falls outside the arm's length range, the taxable profit of the taxpayer shall be computed on the basis that the relevant financial indicator equates to the median point.

PART III-TRANSACTIONAL INFORMATION EXCHANGE, REPORTING

8. (1) The Commissioner-General may have an advance pricing arrangement program with any taxpayer to help such taxpayer to determine appropriate transfer pricing methods for transactions or arrangements the taxpayer has with non-resident persons. Advance pricing arrangement.

(2) A taxpayer may apply for an advance pricing arrangement consideration with the Commissioner General for transactions or arrangements and such taxpayer may expressly participate in with non-resident persons regardless of the size of the organization, the type or scope of its operations, or the nature of the transactions and proposed transfer pricing methodologies.

(3) The advance pricing arrangement application shall include the following information -

- (a) detailed information about the taxpayer and about the non-resident entities involved in the proposed advance pricing arrangement;
- (b) nature and scope of transactions to be covered;
- (c) appropriate transfer pricing methodologies to be employed;
- (d) period for which an advance pricing arrangement is to be effective; and
- (e) other terms and conditions,

(4) The application shall be in the format prescribed by the Commissioner General.

(5) A confirmation of a commitment in writing to accept a request for an advance pricing arrangement shall be sent by the Commissioner General within 45 days after receiving the request and shall set out the non-refundable user charge to be paid, and other terms and conditions under which the advance pricing arrangement request shall be pursued.

(6) A taxpayer may withdraw his advance pricing arrangement request at any time and neither the taxpayer nor the Commissioner General shall have any further obligation to each other after the withdrawal.

Comparable
uncontrolled
transactions.

9. (1) Sources of information on comparable uncontrolled transactions may include the following -

- (a) internal uncontrolled transactions, which are uncontrolled transactions where one of the parties to the controlled transaction is also a party to the uncontrolled transaction;
- (b) external uncontrolled transactions, which are uncontrolled transactions to which neither of the parties to the controlled transaction is a party.

(2) There shall be no hierarchy between internal and external comparables and the most reliable available uncontrolled comparables should be sought.

(3) The most common source of information includes the following -

(a) external comparables which is mostly found on commercial databases and typically contain information from public disclosures, for instance, audited company accounts required by corporate, market, financial services, or other regulators.

(b) specialised databases and publications available for mineral, agricultural, and energy products, both from specialist trade publications (which may include additional analysis and commentary), or data directly from commodities or futures exchanges.

(4) The publications referred to under paragraph (b) of sub-regulation (3) provide information on market conditions and prices, trading terms and industry developments, long-term and short-term demand and supply forecasts, including the maintenance operations or other conditions impacting output of major mines.

(5) Information concerning a comparable uncontrolled transaction may not be relied upon for the purposes of demonstrating the consistency of a transaction with Section 95 of the Act if the information on the transaction is not available to both the taxpayer and the Commissioner-General.

(6) In the absence of information on uncontrolled transactions from the same geographic market as the controlled transaction, comparable uncontrolled transactions from other geographic markets may be acceptable by the Commissioner-General.

(7) A determination of whether comparables from other geographic markets are reliable shall be made on a case-by-case basis, and by reference to the extent to which they satisfy regulation 3.

(8) Taxpayers or the Commissioner-General using the comparables from other geographical market shall assess the expected impact or geographic difference and other factors on the price, profitability and necessary adjustments for the difference, if any is made.

Commodities.

10. Notwithstanding any other provisions in these regulations where a person in Sierra Leone engages directly or indirectly in a transaction with a connected person for the export or import of commodities and in the case of -

- (a) export where the price that was agreed upon with the connected person is lower than the quoted price, the quoted price on the date of transaction, regardless of the means of transport, shall be, the sale price for the purposes of computing the taxable income of that person, unless the person so expressly provides evidence to show that adjustments are required to that quoted price to be consistent with the arm's length principle.
- (b) import, the price that was agreed upon with the connected person is higher than the quoted price, the quoted price on the date of transaction, regardless of the means of transport, shall be, the sale price for the purposes of computing the taxable income of that person, unless the person so expressly provides evidence to show that adjustments are required to that quoted price to be consistent with the arm's length principle.

Provided that in the case of goods exported from Sierra Leone that are subsequently sold by a related party to an unrelated party if the price agreed upon between that related party and the unrelated person is higher than the quoted price at the above mentioned date the agreed price in this case will be considered as the sale price for the purpose of computing the seller's taxable income in Sierra Leone unless the person provides all of the evidences needed to show that adjustments are appropriate to that sale price to be consistent with the arms length principle

11. (1) A service charge between a taxpayer and an associated person shall be considered consistent with the arm's length principle where-

Services between connected persons.

- (a) it is charged for a service that is actually rendered,
- (b) the service provides, or when rendered was expected to provide, the recipient with economic or commercial value to enhance its commercial position,
- (c) it is charged for a service that an independent person in comparable circumstances would have been willing to pay for if performed for it by an independent person, or would have performed in-house for itself, and
- (d) the amount charged corresponds to that which would have been agreed between independent persons for comparable services in comparable circumstances.

(2) A service charge made to a person shall not be consistent with the arm's length standard where it is made by an associated person solely because of the shareholder's ownership interest in one or more other group members, including for any of the following costs incurred or activities undertaken by such associated person -

- (a) costs or activities relating to the juridical structure of the parent company of the first-mentioned person, such as meetings of shareholders of the parent, issuing of shares in the parent company and costs of the parent company's supervisory board;
- (b) costs or activities relating to reporting requirements of the parent company of the first-mentioned person, including the consolidation of reports;

- (c) costs or activities related to raising funds for the acquisition of participations, unless those participations are directly or indirectly acquired by the first-mentioned person and the acquisition benefits or is expected to benefit that first-mentioned person.
- (d) Costs relating to compliance of the parent company with the relevant tax laws;
- (e) Costs which are ancillary to the corporate governance of the Multinational Enterprise.

(3) Subject to sub-regulation (4) where it is possible to identify specific services provided by a taxpayer to an associated person, the determination whether the service charge is consistent with the arm's length principle shall be made for each specific service.

(4) Where services are rendered by a taxpayer jointly to various associated persons and it is not possible to identify specific services provided to each of them, the total service charge shall be allocated among the associated persons that benefited or were expected to benefit from the services according to reasonable allocation criteria.

(5) An allocation criteria shall be viewed as reasonable where they are based on a variable that -

- (a) takes into account the nature of the services, the circumstances under which they are provided and the benefits obtained or that were expected to be obtained by the persons for which the services are intended;
- (b) relates exclusively to uncontrolled, rather than controlled, transactions; and
- (c) are capable of being measured in a reasonably reliable manner.

Transactions involving intangible property.

12. (1) The determination of arm's length conditions for controlled transactions involving the exploitation of an intangible property shall take into account the contractual arrangements and the following factors with regard to the development, enhancement, maintenance, protection and exploitation of the intangible asset-

- (a) functions performed by the person;
- (b) management and control of those functions;
- (c) contribution by the person of assets, including financial assets,
- (d) management and control regarding the contribution of assets, including financial assets;
- (e) risks assumed by that person;
- (f) management and control of those risks; and
- (g) financial capacity to assume the risks

(2) In cases where the contractual arrangements diverge from the factors set out under sub-regulation (1) regards shall be taken of those factors in determining the arm's length reward from the exploitation of the intangible.

(3) The determination of arm's length conditions for controlled transactions involving licenses, sales or other transfers of intangible property between associated persons shall take into account both the perspective of the transferor of the property and the perspective of the transferee, including in particular the pricing at which a comparable independent person would be willing to transfer the property and the value and usefulness of the intangible property to the transferee in its business.

(4) In applying sub-regulation (3) to a transaction involving the license, sale or other transfer of intangible property, consideration shall be given to any special factors relevant to the comparability of the controlled and uncontrolled transactions, including -

- (a) the expected benefits from the intangible property;
- (b) the commercial alternatives otherwise available to the acquirer or licensee derived from the intangible property
- (c) any geographic limitations on the exercise of rights to the intangible property;
- (d) the exclusive or non-exclusive character of the rights transferred; and

- (e) whether the transferee has the right to participate in further developments of the intangible property by the transferor.

(5) Certain intangibles may be considered 'hard to value intangibles' either because at the time they are transacted -

- (a) no reliable comparables exist; and
- (b) the projection of future cash flows or income expected to be derived from the intangible or right, or the assumptions used in valuing the intangible or right, are highly uncertain, making it difficult to predict the level of ultimate success of the intangible at the time of the transfer.

(6) In situations involving the transfer of hard-to-value intangibles (HTVI), the Commissioner-General may consider ex-post outcomes as presumptive evidence of the ex-ante pricing arrangements.

(7) The consideration of ex-post evidence referred to under sub-regulation 6 shall be based on a determination that such evidence is necessary to be taken into account to assess the reliability of the information on which ex-ante pricing has been based, and shall not be used as the only basis for adjustment.

Declarations. 13. (1) A taxpayer shall make a declaration of its relationship with all persons whether such persons are resident in Sierra Leone or elsewhere.

(2) The declaration referred to under sub-regulation (1) shall be in the form prescribed by the Commissioner-General from time to time and submitted along with the income tax return.

Disclosure of controlled transaction. 14. (1) For each year of assessment a taxpayer with relationships declared under sub-regulation (1) of regulation 13 shall, without notice or demand, make a disclosure of transactions that are subject to these Regulations in a format prescribed by the Commissioner-General.

(2) The disclosure referred to under sub-regulation (1) shall be in the form prescribed by the Commissioner-General from time to time and submitted along with the annual income tax return.

PART IV-TRANSFER PRICING DOCUMENTATION

Documentation.

15. (1) A taxpayer shall have in place contemporaneous documentation set out under this Part that verifies that the conditions in its controlled transactions for the relevant tax year are consistent with regulation 2.

(2) The transfer pricing documentation referred to in this regulation shall be prepared taking into account the complexity and volume of transactions.

(3) Documentation shall be submitted in the English language.

(4) Documentation for a relevant tax year shall be considered to be contemporaneous where it is in place at the statutory tax return's filing date and as prescribed under this Part.

(5) Documentation shall be provided to the Commissioner-General within 45 days of the receipt of a written request.

(6) The obligation of the taxpayer to provide this documentation shall be established without prejudice to the power of the Commissioner-General to request additional information that it deems necessary to carry out its functions.

16. Contemporaneous transfer pricing documentation shall include a master file and a local file.

Content of Documentation.

17. The master file shall provide an overview of the global business operations of the Multinational enterprises (MNE) group to which the ultimate holding company belongs, and shall include the following information -

Master file.

- (a) organizational structure ;
- (b) description of MNE's business;
- (c) intangibles;

- (d) MNE's intercompany financial activities;
- (e) Financial and tax position

Organizational
Structure.

18. Organizational structure shall include the following -

- (a) a description of the ownership structure of the taxable person with details of shares or other ownership interests held therein by other persons;
- (b) a profile of the multinational group of which the taxable person is a part along with the name, address, legal status and country of tax residence of each of the enterprises comprised in the group with whom controlled transactions have been entered into by the taxable persons, and ownership linkages among them;
- (c) a chart illustrating the global organizational structure and ownership structure of the MNE group, and the geographical locations of all constituent entities.

Description
of MNE's
Business.

19. Description of MNE's business is a broad description of the MNE and the industry in which it operates and includes the following

- (a) important drivers of business profits;
- (b) descriptions of the supply chain and main geographic markets for the group's five largest products or service offerings by turnover plus any other products or services amounting to more than five percent of group turnover and this required description could take the form of a chart or a diagram;
- (c) list and brief description of important service arrangements between constituent entities of the group, other than research and development services, including a description of the capabilities of the principal locations providing important services and transfer pricing policies for allocating service costs and determining prices to be paid for intra-group services;

- (d) functional analysis describing the principal contributions to value creation by individual constituent entities within the group, that is, key functions performed, important risks assumed, and important assets used;
- (e) description of business restructurings, industrial restructurings, transfers of functions, risks or assets occurring within the group during the fiscal year; and
- (f) description of reorganizations occurring during the fiscal year within the group, that is, changes of legal form, debt restructuring, equity acquisition, asset acquisitions, merger and divestitures.

20. Intangibles include the following -

Intangibles.

- (a) a general description of the MNE's overall strategy for the development, ownership and exploitation of intangibles, including location of principal research and development facilities, location of research and development management, and their functions, risks, assets and personnel;
- (b) list of intangibles or groups of intangibles of the MNE group that are important for transfer pricing purposes and which entities own them;
- (c) list of important agreements entered between constituent entities and their related parties related to intangibles, including cost-sharing arrangements, principal research services agreements and licence agreements
- (d) description of the group's transfer pricing policies related to research and development and intangibles; and
- (e) description of any important transfer of interests in intangibles among related parties during the fiscal year concerned, including the entities, countries, and compensations involved.

MNE's inter-
Company
financial
activities.

21. MNE's intercompany financial activities includes the following -

- (a) description of financing arrangements between members of the MNE group and important financing arrangements with unrelated parties;
- (b) the identification of any constituent entity of the MNE group that provides a central financing function for the group, including the country under whose laws the entity is organised and the state of tax residence of such entities; and
- (c) description of the MNE's general transfer pricing policies related to financing arrangements between connected persons.

Financial
and tax
positions.

22. The financial and tax positions include the following -

- (a) MNE's annual consolidated financial statements for the fiscal year concerned; and
- (b) list of the MNE group's existing unilateral advance pricing agreements, bilateral advance pricing agreements and other tax rulings relating to the allocation of income among countries.

Local file.

23. Local file shall disclose detailed information on the enterprise's related party transactions and includes the following -

- (a) overview of the enterprise;
- (b) related party relationship;
- (c) controlled transactions .

overview of
the
enterprise.

24. Overview of the enterprise includes the following -

- (a) organizational structure, including the setup, scope of responsibility and number of employees of each functional department of the enterprise;
- (b) management structure, including the parties to which each level of the management reports, and the locations in which such parties maintain their principal offices, etc.

- (c) industry description, including an overview of the industry in which the enterprise operates and its development, other major economic and legal factors affecting the industry, such as industry policies, trade restrictions, as well as key competitors;
- (d) business strategies, including the workflow, operational model and factors that contribute to value creation, etc., of each department and each operational stage of the enterprise;
- (e) financial data, including turnover, costs, expenses and profits for the different types of business and product offerings of the enterprise; and
- (f) a description of business restructurings or intangibles transfers in which the enterprise has been involved or affected by an explanation of those aspects of such transactions affecting the enterprise.

25. Related party relationship includes the following -

Related party
Relationship.

- (a) information on related parties including the name, legal representatives, composition of senior management, address of actual operation of any related party (enterprise) that directly or indirectly own shares of the enterprise and with which the enterprise has entered into transactions, as well as the name, nationality and country of residence of any related party (individual);
- (b) information on taxes of income tax nature to which the enterprise is subject, with details including types of the taxes, tax rates and applicable preferential tax treatments; and
- (c) information on changes in related party relationship of the enterprise during the fiscal year concerned.

Controlled
Transaction.

26. (1) For each category of controlled transaction in which the reporting entity is involved the following should be provided -

- (a) overview of controlled transactions
- (b) value chain analysis ;
- (c) related party equity transfer;
- (d) related party service;
- (e) compatible analysis
- (f) selection and application of transfer pricing method; and
- (g) financial information

(2) Overview of controlled transactions include the following -

- (a) detailed description of the controlled transactions stating parties involved, timing, transaction value, settlement currency, contractual terms and conditions, trading models of the controlled transactions as well as explanations of how they are similar to or different from that of uncontrolled transactions;
- (b) copies of contracts or agreements relating to the controlled transactions and their execution;
- (c) transactional flow of the controlled transactions, including the flows of information, goods and materials, and capitals, as well as explanations of how they are similar to or different from that of uncontrolled transactions;
- (d) a description of functions and risks, including the functions performed, risks assumed and assets used by the enterprise and its related parties for each category of controlled transactions;
- (e) key factors affecting the pricing of controlled transactions, including intangibles involved in the transactions and their impact on pricing, as well as location specific factors such as cost savings and market premium etc. ;

- (f) analysis on location of specific factors shall focus on aspects such as labour costs, environmental costs, market size, degree of market competition, consumer purchasing power, substitutability of goods or services, and regulatory controls, etc;
- (g) financial information on controlled transactions, including the amount involved for each related party and each category of controlled transactions, and the reporting line in the books of account and audited financial statements;
- (h) segmented data on turnover, costs, expenses and profits of controlled transactions and uncontrolled transactions; for items that could not be directly segmented and therefore have been allocated using appropriate allocation keys, information on how they are allocated and an explanation of how the allocation keys have been selected.

(3) Value chain analysis includes the following -

- (a) flow of business , goods and materials , capitals within the group including design, development, manufacturing, marketing, sales, delivery, billing and payment, consumption, after-sale service, recycling, other processes related to goods, services or other relevant underlying targets of the controlled transactions and all the parties involved;
- (b) annual financial statements of each of the parties involved in the controlled transactions for the relevant accounting year;
- (c) measurement and attribution of value creation contributed by location of specific factors;and

- (d) allocation policies and actual allocation results of the group's profits in the global value chain.
- (4) Related party equity transfer includes the following -
- (a) an overview of related party equity transfer, including background, parties involved, timing, pricing, payment method of the transfer, as well as other factors affecting the transfer;
 - (b) information on the equity transferred, including information like the equity's geographic location, timing of the transfer, methodology of the transfer, cost of the transfer, income generated from the transfer, etc; and
 - (c) due diligence report or asset valuation report or any other information pertaining to the equity transfer.
- (5) Related party services include the following -
- (a) an overview of related party services, including service providers and recipients, nature of services, characteristics, method of service delivery, pricing policies and methods, form of payments, and benefits received by each party in relation to the services provided, etc.;
 - (b) methodology for determining the service costs, service items, service amount, allocation keys, calculation process and results;
 - (c) where the enterprise and its group are involved in transactions of the same or similar nature with an unrelated party, the enterprise shall describe in detail how the transactions are similar to or different from related party transactions in pricing policies and results; and

- (d) existing advance pricing agreements and other tax rulings in the multinational enterprise group to which the enterprise is not a party and which are related to the enterprise's related party transactions.

(6) comparability analysis includes the following -

- (a) factors considered in the comparability analysis, including characteristics of the goods or services involved in the transactions, functions performed, risks assumed and assets used by each party involved, contractual terms, economic environment, business strategies, etc;
- (b) information related to the functions performed, risks assumed, and assets used by the compatible companies;
- (c) search process for comparables, data source, selection criteria and rationale for setting the criteria;
- (d) information of selected internal or external comparables uncontrolled transactions and financial information of comparables companies;
- (e) comparability adjustments and rationale for the adjustments.

(7) Selection and application of transfer pricing method includes the following -

- (a) selection of tested party and rationale for the selection;
- (b) description of the methods considered for determining the arm's length price in relation to each controlled transaction, the method selected as the most appropriate method together with explanations as to why such method was so selected;
- (c) the contribution of the enterprise to the group's overall profit or residual profit is required;

- (d) assumptions and judgment made in the process of determining arm's length prices or profits;
- (e) application of reasonable transfer pricing method and result from comparability analysis to determine the arm's length prices or profits;
- (f) other information supporting the selection of transfer pricing method; and
- (g) analysis and conclusion of whether the transfer pricing for the related party transactions complies with the arm's length principle.

(8) financial information includes the following -

- (a) the reporting entity's audited financial statements for the relevant year of assessment;
- (b) information and allocation schedules showing how the financial data used in applying the transfer pricing method may be tied to the annual financial statements;
- (c) summary schedules of relevant financial data for comparables used in the analysis and the sources from which that data was obtained.

Authentic
Documentation.

27. The information specified under this Part shall be supported by authentic documents including but not limited to the following -

- (a) official publications, reports, studies and databases from the Government of the country of residence of the connected person, or of any other country;
- (b) reports of market research studies carried out and technical publications brought out by institutions of national or international repute;

- (c) price publications including stock exchange and commodity market quotations;
- (d) published accounts and financial statements relating to the business affairs of the related enterprises;
- (e) agreements and contracts entered into with connected persons or with independent persons in respect of transactions similar to the controlled transactions;
- (f) letters and other correspondences documenting any terms negotiated between the reporting entity and the connected persons;
- (g) documents normally issued in connection with the relevant transactions under the accounting practices followed; and
- (h) any other document considered relevant to the controlled transaction or requested by the Service.

PART V- CORRESPONDING ADJUSTMENTS AND OTHER RELATED MATTERS

28. (1) Where the arrangements made in relation to a transaction between associated persons, viewed in their totality, differ from those which would have been adopted by independent persons behaving in a commercially rational manner in comparable circumstances, thereby preventing determination of a price that would be acceptable to both of the parties taking into account their respective perspectives and the options realistically available to each of them at the time of entering into the transaction, the actual transaction as structured by the taxpayer may be disregarded for the purposes of these rules, in which case the arm's length position would be as if the transaction had not occurred.

Disregarding a Controlled Transaction for Tax Purposes.

(2) In other cases, where it is deemed appropriate, the transaction shall be replaced by an alternative transaction.

Corresponding
Adjustments
for Domestic
Transactions.

29. Where an adjustment is made to the taxable income of a taxpayer in relation to domestic transaction, the Commissioner-General shall make an appropriate adjustment to the taxable income of the other party to the transaction.

Corresponding
Adjustments
for
International
Transactions.

30. (1) Where an adjustment to the conditions of transactions between a person resident in Sierra Leone and an associated person is made or proposed by a tax administration in a country other than Sierra Leone and -

- (a) this adjustment results in the taxation in that other country of an amount of income on which the person resident in Sierra Leone has already been charged to tax in Sierra Leone; and
- (b) the country making or proposing the adjustment has a treaty with Sierra Leone that reflects an intention to provide for the relief of economic double taxation,

the Commissioner-General, shall after a request is made by the person resident in Sierra Leone, examine the consistency of that adjustment with the arm's length principle pursuant to Section 95 of the Act, consulting as necessary with the competent authority of the other country.

(2) If the adjustment proposed or made by the other country is consistent with the arm's length principle both in principle and as regards the amount, the Commissioner-General shall make a corresponding adjustment to the amount of the tax charged in Sierra Leone to that person on those profits, in order to eliminate the economic double taxation that would result from the inclusion of the same profits in the taxable income of both that person and the associated person.

(3) A request made under sub-regulation (1) shall include the information necessary for the Commissioner-General to examine the consistency of the adjustment made by the tax administration of the other country with the arm's length principle, including -

- (a) the name, registered address and, where applicable, trading name(s) of the associated person;
- (b) evidence of the tax residence of the associated person;
- (c) the year in which the adjusted controlled transaction took place;
- (d) the amount of the requested corresponding adjustment and the amounts of the adjustment made by the tax administration of the other country;
- (e) evidence of the adjustment made by the tax administration of the other country and the basis for the adjustment, including details of compatibility analysis relied upon and the transfer pricing method applied;
- (f) confirmation that the associated person or 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 tax administration of the other country being reduced or reversed; and
- (g) any other information that may be relevant for examining the consistency of the adjustment with the arm's length principle.

(4) A request made under sub-regulation (1) shall be made within the applicable time period for making a request for the case to be resolved by way of mutual agreement procedure under the applicable tax treaty.

PART VI - MISCELLEANOUS

- 31 (1) Where a taxpayer fails to
- (a) make a declaration under regulation 13;
 - (b) disclose controlled transactions under regulation 14;
 - (c) make reasonable efforts to determine and use arm's length transfer prices and ensure that transfer prices of the taxpayers are adjusted in that regard;

he may be subject to penalties stipulated under Part XII of the Revenue Administration Act 2017.

(2) A taxpayer shall be deemed not to have made reasonable efforts to determine and use arm's-length transfer prices or allocations where the taxpayer has prepared or obtained and submitted records or documents that provide a description that is complete and accurate, in all material respects, and such documentation exists in the format prescribed under Regulation 15.

MADE this 27th day of January, 2021.

PATRICIA LAVERLEY
Dept. Minister of Finance

FREETOWN,
SIERRA LEONE.