

Income Tax (Transfer Pricing Documentation) Regulations, 2019

IT is hereby notified that the Minister of Finance and Economic Development has, in terms of section 90 of the Income Tax Act [*Chapter 23:11*], made the following regulations:—

*Title and date of commencement*

1. These regulations may be cited as the Income Tax (Transfer Pricing Documentation) Regulations, 2019.

(2) These regulations shall come into effect on date of publication.

*Required documents*

2. (1) A taxpayer must have in place contemporaneous documentation that verifies that the conditions in its controlled transactions for the relevant tax year are consistent with the arm's length principle.

(2) Documentation shall include—

- (a) an overview of the taxpayer's business operations (history, recent evolution and general overview of the relevant markets of reference) and organisational chart (details of business units or departments and organisational structure);
- (b) a description of the corporate organisational structure of the group that the taxpayer is a member (including details of all group members, their legal form, and their shareholding percentages) and the group's operational structure (including a general description of the role that each of the group members carries out with respect to the group's activities, as relevant to the controlled transactions);
- (c) description of the controlled transaction(s), including analysis of the comparability factors specified in paragraph 3 of the 35th Schedule to the Income Tax Act [*Chapter 23:06*];
- (d) explanation of the selection of most appropriate transfer pricing methods, and, where relevant, the selection of the tested party and the financial indicator;

- (e) comparability analysis, including; description of the process undertaken to identify comparable uncontrolled transactions; explanation of the basis for the rejection of any potential internal comparable uncontrolled transactions (where applicable); description of the comparable uncontrolled transactions; analysis of comparability of the controlled transactions and the comparable uncontrolled transactions (taking into account Paragraph 3 of the 35th Schedule to the Income Tax Act [*Chapter 23;06*]; and, details and explanation of any comparability adjustments made;
- (f) detail of any industry analysis, economic analysis, budgets or projections relied on;
- (g) details of any advance pricing agreements or similar arrangements in other countries that are applicable to the controlled transactions;
- (h) a conclusion as to consistency of the conditions of the controlled transactions with the arm's length principle, including details of any adjustment made to ensure compliance; and
- (i) any other information that may have a material impact on the determination of the taxpayer's compliance with the arm's length principle with respect to the controlled transactions.

*Language of documentation*

3. Documentation must be submitted in English language.

*Contemporaneous documentation*

4. Documentation for a relevant tax year is considered to be contemporaneous where it is in place at the statutory tax return's filing date.

*Time limit for submission of documentation*

5. Documentation shall be provided to the Commissioner within seven days of the written request being duly issued by the Commissioner.

*Power to request additional information*

6. The obligation of the taxpayer to provide this documentation is established without prejudice to the power of the Commissioner to request additional information that in the course of audit procedures the Commissioner deems necessary to carry out his or her functions.

