

S.I. 73 of 2023

BUSINESS TAX ACT

(Cap 20)

Business Tax (Transfer Pricing Documentation) Regulations, 2023

Arrangement of Regulations

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SCHEDULE

S.I. 73 of 2023**BUSINESS TAX ACT***(Cap 20)***Business Tax (Transfer Pricing Documentation) Regulations, 2023**

In exercise of the powers conferred by section 80 of the Business Tax Act, the Minister responsible for finance makes the following Regulations —

Citation and commencement

1.(1) These Regulations may be cited as the Business Tax (Transfer Pricing Documentation) Regulations, 2023.

(2) These Regulations shall come into operation on the 1st day of January, 2024.

Interpretation

2. In these Regulations unless the context otherwise requires —

“Act” means the Business Tax Act;

“associates” means associates as defined under section 2 of the Act;

“controlled arrangement” means —

(a) an arrangement between associates, including an arrangement attributed to a permanent establishment of one or both of the associates; and

(b) an arrangement between a person and a permanent establishment of that person, as though that arrangement was between associates.

“permanent establishment” means a permanent establishment as defined under section 2A of the Act;

“person” means a person as defined under section 2 of the Act;

“tax year” means the tax year as defined under section 2 of the Act;

“uncontrolled arrangement” means an arrangement entered into by persons or permanent establishments that are wholly independent of each other.

Obligations in relation to transfer pricing documentation

3.(1) A person that enters into a controlled arrangement under section 54 (1) of the Act and has an annual turnover that exceeds SR1,000,000 shall prepare documentation in accordance with subregulation (2) that would verify that the conditions in its controlled arrangements for the relevant tax year are consistent with the arm's length principle, for the purpose of computing the measure of taxable profit for that tax year.

(2) Transfer pricing documentation under subregulation (1) shall provide —

- (a) an overview of the person's business operations, including history, recent evolution and general overview of the relevant markets of reference, and an organisational chart including details of business units or departments and organisational structure;
- (b) a statement of the corporate organisational structure of the group of entities of which the person is a member, including details of all the group's operational members, their legal forms, and their shareholding percentages;
- (c) a statement of the group's operational structure, including a general description of the role that each of the members carries out with respect to the group's activities, as relevant to the controlled arrangements, including the job title, role and location of key decision makers;

- (d) general written description of the person's business including —
 - (i) a description of the global supply chain for the goods or service offerings with which the person is involved which the required description could take the form, or include, a chart or diagram;
 - (ii) a list and brief description of important service arrangements between members of the group, other than research and development services, including a description of the capabilities of the principal locations providing important services and transfer pricing policies for allocating services costs and determining prices to be paid for intra-group services;
 - (iii) a brief written functional analysis describing the principal contributions to value creation by each associate in the supply chain, as relevant to the controlled arrangements, that is, key functions performed, important risks assumed, and important assets used; and
 - (iv) a description of important business restructuring arrangements, acquisitions and divestitures occurring during the fiscal year;
- (e) a list of the person's key competitors in Seychelles;
- (f) a detailed description of the controlled arrangements, the context in which such arrangements took place, and the counterparties to the arrangements;
- (g) a conclusion as to the consistency of the actual conditions of the controlled arrangements with the arm's length principle;

- (h) a summary of the person's financial accounts for the tax year concerned: if audited statements exist they should be supplied and if not, existing unaudited statements should be supplied;
- (i) the name of the author, company name if employed by a company, of the transfer pricing documentation and the date of finalisation and approval; and
- (j) any other documentation or information that is necessary for determination of the person's compliance with the arm's length principle, with respect to the controlled arrangements having regard to the guidance on documentation in the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations.

(3) A person under subregulation (1) shall, upon request of the Commissioner General, furnish to the Commissioner General the relevant transfer pricing documentation, within 21 days from the date of the request.

(4) The obligation of a person to provide documentation is established without prejudice to the power of the Commissioner General to request additional information that in the course of audit procedures it is deemed necessary.

Obligations in relation to additional documentation

4.(1) A person shall, in addition to preparing the transfer pricing documentation under regulation 3(1) for all controlled arrangements between associates, document those controlled arrangements in accordance with regulation 3(2) and the Schedule, if —

- (a) the total value of all controlled arrangements is more than 10% of the person's turnover for a tax year; or
- (b) the total value of all controlled arrangements for a tax year exceeds an amount equivalent to SR50,000,000.

(2) A person who is a member of a multinational enterprise group and whose consolidated turnover is greater than EUR 100 million shall, in addition to the transfer pricing documentation under subregulations 3(1) and 3(2), prepare a masterfile in accordance with the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations.

Keeping of documents and information

5.(1) A person shall keep, retain and maintain transfer pricing documentation for seven years after the end of the period in which the controlled arrangements took place.

(2) A person shall keep, retain and maintain information pertaining to the transfer pricing documentation prepared in accordance with this regulation, for seven years after the end of the tax year in which the controlled arrangements took place.

Language of the transfer pricing documentation

6. The transfer pricing documentation shall be submitted in English, French or Creole.

Additional tax for failure to furnish documentation

7. A person who, without reasonable cause, fails to furnish the Transfer Pricing Documentation in accordance with regulation 3(3) is liable for an amount of additional tax of SR75,000 plus SR2,500 for each week or part of a week that the failure continues.

Additional tax for providing false or misleading documentation or information

8. A person who, in purported compliance with regulations 3(3), knowingly provides to the Commissioner General any documentation or information that is false or misleading shall be liable to an additional tax of 5 per cent of that person's annual turnover.

Additional tax for failure to keep, retain and maintain relevant documents, information or records

9. A person who knowingly or recklessly fails to keep, retain and maintain relevant documents, information or records as required under regulation 5 shall be liable to an additional tax of no less than SR10,000 for small businesses, SR50,000 for a medium businesses and SR100,000 for large businesses.

SCHEDULE

(Regulation 4)

DOCUMENTS OR INFORMATION FOR DISCLOSURES

For all controlled arrangements in which a person is involved, such person shall disclose, having regard to the guidance on documentation in the OECD Transfer Pricing Guidelines for Multinational Enterprises —

- (a) copies of all intercompany agreements concluded by the person;
- (b) a detailed functional analysis of the controlled arrangements between associates, including details of functions performed, assets used and risks assumed by each party;
- (c) a comparability analysis, including, a description of the process undertaken to identify comparable uncontrolled arrangements; description of the comparable uncontrolled arrangements; analysis of comparability of the controlled arrangement(s) and the comparable uncontrolled arrangements; and, details and explanation of any comparability adjustments made;
- (d) a summary of financial information used in applying the transfer pricing method;
- (e) an indication of which party to the arrangement is selected as the tested party, if applicable, and an explanation of the reasons for this selection;

- (f) a summary of the important assumptions made in applying the transfer pricing method and reasons for the rejection of other methods;
- (g) details of any industry analysis, economic analysis, budgets or projections relied on;
- (h) details of any advance pricing agreements or similar arrangements in other countries that are applicable to the controlled arrangements; and
- (i) the name of the author, company name if employed by a company, of the disclosures in this Schedule and the date of finalisation and approval.

MADE this 29th day of September, 2023.

**NAADIR HASSAN
MINISTER OF FINANCE
NATIONAL PLANNING AND TRADE**
