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S.I. 21 of 2025**BUSINESS TAX ACT***(Cap.20)***Business Tax (Transfer Pricing) Regulations, 2025**

In exercise of the powers conferred by section 80 of the Business Tax Act read with section 54 of that Act, the Minister responsible for Finance, National Planning and Trade makes the following regulations —

Citation

1. These Regulations may be cited as the Business Tax (Transfer Pricing) Regulations, 2025.

Retrospective application

2. These Regulations shall be deemed to have come into operation on 1st January 2023.

Interpretation

3. For the purposes of these regulations —

“arm’s length arrangement” means an arrangement between persons that are not associates;

“arm’s length condition” shall have the same meaning assigned to that term in the Business Tax Act and for clarity purposes of these regulations it is stated that it is a condition between persons that are not associates;

“arm’s length range” means a range of figures acceptable for establishing whether the conditions of a controlled transaction are arm’s length and are derived either from applying the same transfer pricing method to multiple comparable data or from applying different transfer pricing methods;

“controlled transaction” means a transaction or arrangement between persons that are associates and controlled arrangement shall be construed accordingly;

“financial indicator” means —

- (a) the price, when the comparable uncontrolled price method is used;
- (b) the gross mark-up on direct and indirect costs of supply or production, when the cost plus method is used;
- (c) the gross margin, when the resale price method is used;
- (d) the net profit margin or operating profit margin, in relation to revenue, costs or assets, when the transactional net margin method is used; and
- (e) the division of the profit, when the profit split method is used;

“tested person” means the person to which a transfer pricing method can be applied in the most reliable manner and for which the most reliable comparable can be found;

“transfer pricing” shall have the same meaning assigned to that term in the Business Tax Act, and for clarity purposes of these regulations it is stated that it is the prices and other conditions of arrangements between associates;

“uncontrolled transaction” means a transaction or arrangement between persons that are not associates and uncontrolled arrangement shall be construed accordingly; and

“unrelated or independent persons” in relation to a person, means other persons that are not associates and are wholly independent with one another.

Purpose of regulations

4. The purposes of these regulations are —

- (a) to clarify the self-assessment nature of section 54;
- (b) to apply the arm's length principle, which is the recognised international standard on transfer pricing and reflected in Seychelles' bilateral tax conventions seeking to clarify certain aspects of section 54;
- (c) to provide guidance in respect of the interpretation of the provisions of section 54 by the Commissioner General and a person;
- (d) to provide for application of section 54 to arrangements between —
 - (i) two associates, one resident in Seychelles and the other resident in another jurisdiction;
 - (ii) two associates, both resident in Seychelles, subject to different rates of taxation;
 - (iii) different businesses of the same person resident in Seychelles;
 - (iv) a business of a person resident in Seychelles and another activity conducted by that person;
 - (v) a resident of another jurisdiction and a permanent establishment in Seychelles of that non-resident person;
 - (vi) a resident in Seychelles and a permanent establishment of an associated non-resident person, subject to different rates of taxation; and
 - (vii) a resident of another jurisdiction and an associate, where the transaction is attributable to a permanent establishment in Seychelles of the non-resident person.

- (e) to provide guidance when filing the Related Party Dealings Schedule and where relevant, the Transfer Pricing Documentation.

Consistent application with the arm's length principle

5.(1) A person's calculation of taxable income shall be on the basis that the price and other conditions of any transaction of such person with one or more associates reflect those that would be in place if such transactions had been with unrelated persons in comparable circumstances.

(2) A person and the Commissioner General of the Seychelles Revenue Commission (hereinafter referred to as the “Commissioner General”) shall determine whether the transfer pricing in a controlled transaction is consistent with the arm's length principle in such a manner as to determine any adjustment to taxable income required to be made by such person or the Commissioner General in order to comply with section 54 of the Business Tax Act (Cap. 20) (hereinafter referred to as the “Business Tax Act”).

Actual arrangement between associates

6.(1) The arm's length principle shall be applicable in respect of actual arrangements between associates as determined by a factual analysis. For the purpose of this regulation, the Commissioner General and persons shall, in conducting the factual analysis, identify the commercial or financial relations between the associates and the conditions and economically relevant factors, as specified in section 54 (16).

(2) Where an actual arrangement with an associate is not consistent with a contractual arrangement or other document relevant to the arrangement, the arm's length principle shall be applicable to such actual arrangement.

Disregarding or re characterising an arrangement

7.(1) Where an arrangement between associates differs from that which would have been entered into by unrelated persons behaving in a commercially rational manner in comparable circumstances, the actual arrangement as structured by any person may be disregarded for the purposes of these Regulations.

(2) Where the actual arrangement as structured by the person is disregarded under section 54 and this regulation, the arm's length arrangement shall be —

- (a) as if the arrangement had not occurred, if the arrangement would not have been entered into by unrelated persons behaving in a commercially rational manner in comparable circumstances; or
- (b) as if the arrangement had been structured in a way that would have been made between unrelated persons behaving in a commercially rational manner in comparable circumstances.

Disregarding or re characterising an arrangement structured as debt financing

8. An arrangement between associates that is structured as debt financing may be —

- (a) disregarded to the extent to which that financial arrangement would not have occurred between unrelated persons; or
- (b) re characterised as equity if that arrangement has the characteristics of equity.

Comparability of arrangements

9. A controlled arrangement shall be considered comparable to an uncontrolled arrangement if —

- (a) there is no difference between the controlled arrangement and the uncontrolled arrangement that would materially affect the price of those arrangements; or
- (b) there are differences, and a reasonably accurate adjustment is made to the relevant financial indicator of the uncontrolled arrangement in order to eliminate the effects of the differences.

Factors for determining comparability

10. For the purpose of determining whether two or more arrangements are comparable, the following factors shall be considered to the extent that they may affect the price or other conditions of those arrangements —

- (a) the characteristics of the property or services transferred in the arrangements;
- (b) the functions undertaken to perform by each person with respect to the arrangements, including assets used and risks assumed by such persons;
- (c) the contractual terms of the arrangements;
- (d) the economic circumstances in which the arrangements take place;
- (e) the business strategies pursued by each of the related persons in relation to the arrangements; and
- (f) the allocation of economically significant risk.

Allocation of risk

11.(1) For the purpose of determining the allocation of risk, the following factors shall be taken into consideration —

- (a) how the economically significant risk is allocated in contracts between the associates;
- (b) how the associates each actually assume such risk;
- (c) how the associates each create, control and manage that risk; and
- (d) the extent to which each associate has the financial capacity to assume the risk.

(2) Where a person conducting a controlled arrangement assumes a risk according to a contract, but does not control or manage the risk, or does not have the financial capacity to assume the risk, the risk shall be allocated to one or more associates that control and manage the risk and have the financial capacity to assume the risk.

(3) Where a person who is a party to a controlled arrangement takes no part in creating, managing or controlling a significant risk related to that arrangement, or does not have the financial capacity to assume that risk, any profit arising from that risk shall not be allocated to such person.

Intangibles

12.(1) The allocation between associates of a right to a financial return to a valuable intangible shall take into account, the contractual agreements between such associates and the following factors with regard to the development, enhancement, maintenance, protection and exploitation of the intangible asset —

- (a) the respective functions performed by the associates and the extent to which each associate manages and controls those functions;
- (b) the contribution by each associate of assets, including financial assets, and the extent to which each associate manages and controls the contribution of assets, including financial assets; and
- (c) the relevant risks assumed by each associate in respect of the intangible and the extent to which each associate manages and controls those risks, and the financial capacity of each associate to assume those risks.

(2) Where they differ, the factors specified in sub regulation (1) take precedence over the terms of a contractual agreement between associates in the determination of the allocation between those associates of a right to a financial return to a valuable intangible.

(3) Where the legal owner of a valuable intangible performs no functions in relation to the development, enhancement, maintenance, protection and exploitation of such intangible, taking into account the factors specified in sub regulation (1), that person shall be allocated no right to share in the income derived from the intangible.

Fee payable for services

13.(1) A fee payable by a person to an associate in respect of a service provided by that associate shall be considered consistent with the arm's length principle only if —

- (a) the service is actually rendered;
- (b) the service is necessary for the business of the person and provides commercial value to that person;
- (c) the person would have been willing to pay for the service if it had been provided by an independent person in comparable circumstances;
- (d) the service does not duplicate activities carried out by the person or provided by another person;
- (e) the fee does not relate to activities carried out by an associate in its capacity of shareholder or parent company or in conducting a group management function; and
- (f) the fee corresponds to that which would have been payable between independent persons in respect of a comparable service in comparable circumstances.

(2) In the event, specific services provided by an associate to a person can be identified, the arm's length principle shall apply to each such service.

(3) Where a service is provided by an associate jointly to more than one person, a proportion of the combined service fee may be allocated to the person according to reasonable allocation criteria.

Transfer pricing methods

14.(1) The application of the arm's length principle to the calculation of taxable income of a person, in relation to a controlled arrangement, shall be determined by applying the most appropriate transfer pricing method to the circumstances of the case, on the basis of a factual analysis.

(2) The approved transfer pricing methods, in identifying arm's length prices and conditions shall be —

- (a) the Comparable Uncontrolled Price Method, which compares the price of property or services transferred in a controlled transaction to the price charged for property or services transferred in one or more comparable uncontrolled transactions;
- (b) the Resale Price Method, which compares the resale margin that a purchaser of property in a controlled transaction earns from reselling that property in an uncontrolled transaction with the resale margin that is earned in one or more comparable uncontrolled purchase and resale transactions;
- (c) the Cost Plus Method, which compares the mark up on those costs directly and indirectly incurred in the supply of property or services in a controlled transaction with the mark up on those costs directly and indirectly incurred in the supply of property or services in one or more comparable uncontrolled transactions;
- (d) the Transactional Net Margin Method, which compares the net profit margin relative to an appropriate base, such as costs, sales or assets, that a person achieves in a controlled transaction with the net profit margin relative to the same base achieved in one or more comparable uncontrolled transactions;
- (e) the Contribution Profit Split Method, which —

- (i) determines the combined operating profit (or loss) derived from a controlled transaction; and
 - (ii) allocates that combined profit between the persons to the controlled transactions in accordance with that which would be the case in a comparable uncontrolled transaction.
- (f) the Residual Profit Split Method, which —
 - (i) determines the combined operating profit derived from a controlled transaction;
 - (ii) applies one of the approved methods described in paragraphs (b), (c) or (d) to one or more persons that take part in the controlled transaction, if it is possible to do so;
 - (iii) allocates a remuneration to one or more persons taking part in the controlled transaction, in accordance with those methods; and
 - (iv) allocates that residual combined profit between the persons taking part in the controlled arrangement in accordance with that which would be the case in a comparable uncontrolled transaction.

(3) Where a comparable uncontrolled arrangement is not available to apply the contribution profit split method or the residual profit split method, the allocation of combined profit between the associates to the controlled transaction may be determined on the basis of an economic analysis of the respective contribution to that profit of the persons taking part in the controlled transaction.

(4) Notwithstanding the provisions of sub regulation (2), to apply the arm's length principle, the Commissioner General may, in exceptional circumstances, allow the use of an alternative method or approach where the methods specified in sub regulation (2) are not appropriate or reliable due to the unique nature of the transaction or lack of comparability data.

Selection of the most appropriate transfer pricing method

15.(1) The most appropriate transfer pricing method shall be selected from among the transfer pricing methods specified in regulation 14 (2) taking into consideration the following criteria —

- (a) the respective strengths and weaknesses of a method in relation to the arrangement under consideration;
- (b) the circumstances, including the functions performed, assets used and risks borne by the persons;
- (c) the availability of reliable information needed to apply a method; and
- (d) the degree of comparability between the controlled and uncontrolled transactions used in applying a method, including the reliability of any adjustments to eliminate the effect of material differences between those transactions.

(2) For the purposes of sub regulation (1), the following shall be taken into consideration in the selection of the most appropriate transfer pricing method —

- (a) where a functional analysis concludes that a reliable comparable uncontrolled price is available, the comparable uncontrolled price method shall be used;
- (b) where a functional analysis concludes that the comparable uncontrolled price method is not available, and that the cost-plus method, resale price method or the transactional net margin method is available, that method shall be used; and
- (c) where a functional analysis concludes that the transfer pricing methods described in (a) and (b) are not appropriate, the contribution profit split or residual profit split method may be used.

(3) Where a person chooses to apply an alternative transfer pricing method other than the methods specified in paragraphs (a) to (f) of regulation 14(2), to evaluate whether a controlled arrangement is at arm's length, such alternative method shall be applied in accordance with the reliability considerations used to apply the other methods as listed in paragraphs (a) to (d) of sub regulation (1):

Provided that, the alternative method shall only be used if it is more reliable than any of the specified transfer pricing methods.

Selection of a tested person

16.(1) A person that is a resident of Seychelles or another jurisdiction shall be selected as a tested person when applying a cost plus method, resale price method or transactional net margin method.

(2) The tested person shall be the person to which a cost plus method, resale price method or transactional net margin method can be applied because one or more reliable comparable uncontrolled arrangements are available to test the profitability of that person in accordance with the method.

(3) Where the most appropriate method is a cost plus method, resale price method or transactional net margin method, sufficient information about comparable uncontrolled arrangements used in the transfer pricing method shall be made available to the Commissioner General to allow the Commissioner General to make the determination of the reliability of those uncontrolled arrangements.

Evaluation of a person's combined controlled arrangements

17. If a person enters into two or more controlled arrangements that are economically closely linked to each other or such controlled arrangements cannot practically be analysed separately, such arrangements may be combined for the purposes of these regulations.

Arm's length range

18.(1) An arm's length range may apply if the application of the most appropriate transfer pricing method identifies a number of uncontrolled

transactions that are all comparable, and equally comparable, to the controlled transaction. If this is the case, the arm's length range consists of the range of identified financial indicators, provided that the highest point in the range is not more than 50% greater than the lowest point in the range.

(2) Where the application of the most appropriate transfer pricing method results in a number of financial indicators derived from uncontrolled transactions, and —

- (a) the degree of comparability between the controlled transaction and the uncontrolled transactions, is uncertain; or
- (b) the highest point in the range exceeds 50% of the lowest point in the range,

a statistical approach shall be used. Where such an approach is used, the interquartile range shall be considered to be an arm's length range.

(3) A controlled transaction shall not be subject to an adjustment to taxable profits made by the Commissioner General if the relevant financial indicator derived from the controlled transaction being tested under the appropriate transfer pricing method is within the arm's length range.

(4) Where the relevant financial indicator derived from a controlled transaction falls outside the arm's length range, the taxable income of the taxpayer shall be calculated on the basis of the relevant financial indicator that is the median of the arm's length range, provided that any adjustment in the computation of taxable income does not decrease the amount of that person's taxable income, decrease the amount of withholding tax remitted by that person in Seychelles, or increase the amount of that person's tax loss, in Seychelles.

(5) For the purposes of sub regulation (4), the median of the arm's length range shall be the 50th percentile of the financial indicator figures derived from the comparable uncontrolled transactions forming the arm's length range.

Sources of Information

19.(1) The sources of information on comparable uncontrolled transactions may include —

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

(2) Information concerning a comparable external uncontrolled transaction may not be relied upon by the Commissioner General for the purposes of making an adjustment if the information concerning the transaction is not available to the person.

(3) Where a cost plus method, resale price method or transactional net margin method is used, comparables used to determine the arm's length profits of the tested party should derive first from the same region as the tested party. Where no such reliable comparables are available, comparables deriving from other economically similar markets may be used.

Application of the regulations to controlled arrangements between a person resident in Seychelles or a permanent establishment of a non-resident person and another person resident in Seychelles

20.(1) Where an adjustment is made to the taxable income or loss of a person or permanent establishment in Seychelles by the Commissioner General, during an audit, in relation to an arrangement between that person or permanent establishment and an associate that is a resident of Seychelles, the Commissioner General shall make a corresponding adjustment to the taxable income of the associate.

(2) Where an adjustment to taxable income or loss is made by a person or permanent establishment in Seychelles in relation to an arrangement between that person or permanent establishment and an associate that is a

resident of Seychelles, the associate may apply to the Commissioner General to make a corresponding adjustment to its taxable income:

Provided that, the Commissioner General shall have the discretion in granting such request for a corresponding adjustment.

(3) Persons undertaking controlled arrangements only with associates in Seychelles that are subject to the same applicable business tax rate as the person, shall not be required to lodge a Related Party Dealings Schedule or to maintain Transfer Pricing Documentation.

Application of the regulations to a permanent establishment

21.(1) In the application of these regulations to attribute profit to a permanent establishment of a non-resident person, deductions for expenses shall be restricted to the actual expenses incurred by the non-resident person for the purpose of the business of the permanent establishment, whether incurred in Seychelles or another jurisdiction.

(2) No deduction shall be made for amounts paid, or deemed to be paid, by the permanent establishment of a non-resident person to the head office of that person or any of its other officers, in respect of —

- (a) royalties, or similar payments, in respect of intangible assets;
- (b) services performed for the permanent establishment; or
- (c) interest on moneys lent to the permanent establishment, except in the case of a banking enterprise.

(3) The restriction on deductions of expenses for a permanent establishment shall not apply in respect of a reimbursement of actual expenses made for the purposes of the business of the permanent establishment.

(4) The profit attributable to a permanent establishment of a non-resident person in Seychelles shall include that derived from the sale in Seychelles by that non-resident person of goods or merchandise of the same or

similar kind as those sold through that permanent establishment and the profits derived from other business activities of that non-resident person carried on in Seychelles of the same or similar kind as those conducted by the permanent establishment.

Measure of taxable income

22. For the purposes of these regulations, if the measure of income is the amount that would have accrued to a person had arrangements with associates been conducted on an arm's length basis, the measure of such taxable income shall be in accordance with the arm's length principle.

MADE this 29th day of April, 2025.

**AHMED AFIF
VICE-PRESIDENT**
