

**DRAFT OF DECREE WHICH PASSES THE
TRANSFER PRICING REGIME**

RATIONALE

Transfer pricing is understood to mean prices charged in commercial transactions involving related entities or between sectors or parts of the same entity. In the case of prices that were not established in a competitive market, they may deviate from those that would have been agreed between unrelated entities in similar transactions.

The Corporate Income Tax Code passed by the Law no 34/2007 of 31 December, aims to correct the effect of a possible price manipulation between related entities. Therefore, transactions between these entities must be carried out under the same conditions that would be applied between independent entities, i.e., under market conditions

Indeed, the no. 1 of article 49 of the Corporate Income Tax Code (CIRPC), passed by the Law no.34/2007 of 31 December, grants powers to Tax Authority to perform adjustments deemed necessary to ascertain the taxable income or taxable profit whenever, by virtue of special relationship between the taxpayer and other entity, whether or not subject to Corporate Income Tax (IRPC), there have been laid down conditions other than those that would normally be agreed upon between independent persons, leading to the profit calculated based on accounting be different from that calculated in the absence of such relationship.

. This Draft of Transfer Pricing Regime comprises the rules for the application of the plurality of methods for the determination of terms and conditions that would normally be established in a situation of full competition and adopts the mandatory regime of referral to the most appropriate method for each operation, as shown to be more likely to produce the best estimate of an independent price and to ensure the highest degree of consistency between related transactions and transactions between independent parties, taking into account the facts and circumstances of the particular case, all available data and the relative reliability of the various methods.

Whereas the effective application of transfer pricing rules require a high degree of cooperation between taxpayers and the tax administration, there is given particular emphasis to the obligations relating to information and documentation that the taxpayer must obtain, produce and maintain to justify the policy adopted in the field of transfer pricing.

The adoption of this Regime allows not only to establish a parity in tax treatment between enterprises included in groups and independent enterprises such as neutralize certain practices of tax evasion and ensure consistent protection of domestic tax base, safeguarding tax revenues.

It is, under these terms, that the Council of Ministers is presented with the Draft of Decree approving the Transfer Pricing Regime, for consideration and approval

Maputo, August 2017



REPUBLIC OF MOZAMBIQUE
COUNCIL OF MINISTERS

Decree no. /2017

Of ___ of ___

As there is a need to pass the Transfer Pricing Regime, under the terms of article 49 of the Corporate Income Tax Code, passed by the Law No. 34/2007 of 31 December, under paragraph f) of no.1 of article 204 of the Constitution, the Council of Ministers enacts:

Article 1. It is passed the Transfer Pricing Regime, enclosed to this Decree which an integral part thereof.

Article 2. It is incumbent to the Minister who oversees the area of Finances to set or amend the procedures which are deemed necessary for and fulfillment of the obligations arising from his Decree.

Article 3. This Decree comes into force on 1st January 2018

Passed by the Council of Ministers, on..... 2017

Let it be published.

The Prime Minister,

Carlos Agostinho do Rosário

TRANSFER PRICING REGIME

CHAPTER I

General provisions

Article 1

Definitions

The definitions of the terms used in this regime appear in the Glossary enclosed to it, which is an integral part thereof.

Article 2

Object

This Regime governs the transfer pricing charged in the scope of the special relationship which influence on determination of the taxable income in case of Income Tax.

Article 3

Scope of application

1. This Regime applies to taxpayers of the Corporate Income Tax and of the Personal Income Tax, residents or domiciled in Mozambican territory, which undertake transactions with resident or non-resident related parties.
2. The aforementioned Regime is applied to:
 - a) A permanent establishment which carries out related transactions with non-resident entities;
 - b) A permanent establishment situated in Mozambican territory, which carries out transactions related to other permanent establishments of the same entity situated abroad;
 - c) An entity resident or non-resident with a permanent establishment located in Mozambican territory, which carries out related transactions to an entity subject to a clearly more favorable tax regime, under the terms of the Corporate Income Tax Code;

- d) Transactions carried out by the taxpayer domiciled in Mozambican territory, through an intermediate party not characterized as a related party, operating with another, abroad, characterized as a related party to the Mozambican taxpayer.

Article 4

General rules

1. In transactions between a taxpayer of Corporate Income Tax and of Personal Income Tax and any other entity with which it is in a special relationship, there shall be agreed upon, accepted or used terms or conditions **substantially similar to those which would usually be agreed upon, accepted or used between independent entities in comparable transactions.**
2. The application of the provisions of no. 1 of this article shall as a rule be based on an individual analysis of operations, except in the situations listed in the following paragraphs, where the analysis may be carried out on an aggregated basis or by series of transactions, provided that such transactions are so closely linked or continuous that its breakdown would lead to loss of functionality or value, or when it is unfeasible to determine the price for each transaction, whether due to the high costs associated with, either by the absence or insufficiency of information on comparable operations:
 - a) Continued supply of goods or services;
 - b) Transfer of exploitation rights of intangible elements with other benefits;
 - c) Setting of prices of goods which have functional complementary or typological identity such the ones comprised in a product line.

Article 5

Related party

For the purposes of establishing transfer pricing, a party is related to an entity if:

- a) Directly or indirectly through one or more intermediaries, the party:

- i. Control, is controlled by or under the common control of the entity; herein included relationships between parent companies and subsidiaries and between subsidiaries of the same parent company;
 - ii. It has an interest in the entity that gives it significant influence over the same;
 - iii. It has a joint control over the entity.
- b) The party is an associate or an associated enterprise in which the entity is an entrepreneur;
 - c) The party is a member of the key management personnel of the entity or of its parent company ;
 - d) The party is a close member of the family of any individual referred to in paragraphs a) or c) of this article;
 - e) The party is an entity on which any individual referred to in paragraph c) or d) of this article exercises control, joint control or significant influence, or has, a significant direct or indirect voting power; or
 - f) The party manages a post-employment benefit plan for the benefit of the entity's employees, or of any entity that is a related party to that entity.

Article 6

Significant influence

1. For the purposes of the provision of paragraph e) of the previous article, there is significant influence on the management decisions of the other, this shall be deemed to occur, namely, between:
 - a) An entity and the owners of its equity, or the spouses, ascendants or descendants thereof, holding, directly or indirectly, a shareholding not lower than 10% of the equity or voting rights
 - b) Entities in which the same equity owners, the spouses, ascendants or descendants thereof hold, directly or indirectly, a shareholding not lower than 10% of the equity or voting rights;

- c) An entity and the members of its corporate bodies, or any administration, direction, management or supervising boards, as well as the spouses, ascendants or descendants thereof;
- d) Entities in which the majority of the corporate bodies, or the members of any administration, directorate, management or supervision bodies are the same persons or, in case of different persons, are related with each other by marriage, common law marriage or direct parentage;
- e) Entities related under subordinate agreement, parity group or any other agreement of a similar nature;
- f) Enterprises having a controlling position under the terms governing such position in law stating the obligation to produce consolidated financial statements;
- g) Entities between which, by virtue of the business, financial, professional or legal relations directly or indirectly established or used between them, there is a situation of dependency in the exercise of their activity, in particular in any of the following situations:
 - i. The exercise of one's activity by one of them substantially relies on the transfer of intellectual or industrial property rights or Know-how held by the other;
 - ii. The supplying of raw material or the access to sales channels for goods, merchandise or services by one enterprises relies substantially on the other;
 - iii. A substantial part of the activity carried out by one enterprise can only take place together with the other or relies on decisions thereof;
 - iv. The right to set prices or conditions of a similar economic effect in regard to goods or services transacted, supplied or purchased by one of the enterprises, by means of a legal act on the ownership of the other;
 - v. By the terms and conditions of their commercial or legal engagement, one may influence the managing decisions of the other, owing to facts or extraneous circumstances to the commercial or legal relation.

2. For the purposes of identifying the indirect percentage level of shareholding in the equity or voting rights referred to in the previous paragraph, in situations where there

are no specific rules laid down, the ownership of shares or shares by a company equates for the purposes of an equal or greater amount than 10% of the share capital, the ownership of shares or shares by another company which is directly or indirectly dependent on it or is in a group relationship and of the shares owned by a person on behalf of any such company.

Article 7

Adjustments to taxable income

1. Where the terms and conditions of a related transaction involving a taxpayer and an entity not resident in Mozambican territory **differ from those which would normally be agreed upon**, accepted or practiced **between independent entities**, the latter shall make a positive adjustment in the periodic income tax return, which shall correspond to the tax effects attributable to that deviation, so that the taxable income determined is not different from that which would be determined in the absence of special relations
2. After the differences between the price charged and comparable price which are to be adjusted have been verified, the taxpayer shall undertake an addition to the taxable income in the periodic income tax return.
3. When the terms and conditions of a related transaction involving a taxpayer and an entity not resident in Mozambican territory differ from those which would normally be agreed upon, accepted or practiced between independent entities, the tax administration may undertake adjustments to the taxable income which are deemed necessary in order to the amount thereof corresponds to the amount that would have been processed in absence of special relationships.
4. Should the comparable price determined **through one of the transfer pricing methods** be lower than the sale prices shown in the export documents, the amount of the recognized revenue shall prevail in accordance to the mentioned documents, and there is no room for compensation among them.
5. Should the comparable price determined through one of the transfer pricing methods be greater than the sale prices shown in the import or purchasing documents, the

amount of the cost or expense recognized shall prevail in accordance to the mentioned documents, and there is no room for compensation among them.

6. The taxpayers who have income in the Personal Income Tax, should carry out the adjustment of transfer pricing in line with the rules laid down in the previous numbers *mutatis mutandis*.
7. The rules applied to in the previous numbers shall be applied in transactions carried out between a non-resident entity and one of its permanent establishment situated in the Mozambican territory, or between the latter and other permanent establishments of the former, situated abroad.
8. The provision of the previous numbers shall also apply concomitantly to the activities which are liable or not to the Corporate Income Tax.

CHAPTER II

Setting of transfer pricing

SECTION I

Methods for setting transfer pricing

Article 8

Methods used for setting transfer pricing

1. The methods used for the necessary corrections for the determination of the taxable income, provided for in the Corporate Income Tax Code, are as follows:
 - a) Comparable uncontrolled price method, resale price method and the cost-plus method;
 - b) Profit- split methods, transactional net margin method **or other method suitable to the facts and the specific circumstances of each transaction which meets the requirements of the provision of no.1 of the article 4 of this Regime**, when the methods referred to in the previous paragraphs may not be applied or, in case these are applied, do not allow to get the more reliable measure under the terms

and conditions which the independent entities would usually agree upon, accept or practice.

2. For the setting of the terms and conditions which would usually be agreed upon, accepted or practiced between independent entities, the taxpayer shall adopt the most appropriate method for each transaction or series of transactions in accordance with arm's length principle, and must keep it during its financial year, for assets, services or rights.
3. There is regarded as the most appropriate method for each transaction or series of transactions the one that is likely to provide the best and more reliable estimate of the terms and conditions which would normally be agreed upon, accepted and practiced in a fully competitive situation.
4. The most appropriate method is the one that shows to be more likely to provide the highest degree of comparability between related and unrelated transactions among the selected entities for comparison, which relies on better quality and greater quantity of information available for proper justification and application and which entails the fewest adjustments in order to eliminate the differences between the facts and comparable situations.
5. Two transactions meet the conditions to be regarded comparable if they are substantially identical, meaning that their relevant economic and financial characteristics are similar or sufficiently similar, in such a way that the differences between the transactions or between enterprises involved therein are not likely to have a significant effect on the terms and conditions which would apply in a normal market situation or, if it is so, it is possible to make the necessary adjustments to eliminate the relevant effects caused by the differences found.
6. Whenever doubts arise on the reliability of the values obtained by applying a given method, the tax administration requests the taxpayer to confirm the values by applying other methods, either alone or in combination.
7. If the method or any of its calculation criteria is disqualified by the inspection, the taxpayer must be notified to, in a term of thirty days, submit a new calculation pursuant to any other method set out in this Regime.

8. If the method is not stated, neither the documents are presented to be used as evidence of the comparable price or, if presented, these shows to be insufficient or inappropriate to form a conviction regarding the price, the tax administration shall determine it based on other documents available to it, applying one of the methods laid down in this Regime.
9. If in the scope of application of a method, the use of two or more unrelated comparable transactions lead to a range of values which ensures a reasonable degree of comparability, no adjustment will be necessary, if the relevant conditions of the related transaction, namely the price or the profit margin are within that range.

Article 9

Factors of comparability

For the purposes of the previous article, the degree of comparability between a related transaction and an unrelated transaction must be assessed bearing in mind the factors that follow:

- a) Specific characteristics of assets, services or rights, being object of each transaction, are likely to influence the price of the transactions, mainly the physical features of the property, the quality, the quantity, the reliability, the availability, the location and the volume of supply of the goods, the form of transaction, the type, the duration, the degree of protection and the anticipated benefits for the use right and the nature and extent of services;
- b) The functions performed by the stakeholders in the transactions, taking into account the assets used and risks assumed;
- c) The contractual terms and conditions which sets explicitly or implicitly how the responsibilities, risks and benefits are to be divided between the stakeholders of the transaction;
- d) The prevailing economic circumstances in the markets including the geographic location and size, cost of labour and capital in the markets, competitive position of the buyers and sellers, the availability of substitute goods and services, the level of supply and demand and the general degree of development of markets;

- e) The business strategies, comprising, among other aspects that are likely to influence its normal operation and conduct, the pursuit of research and development activities for new products, degree of diversification of the activity, risk control, market penetration schemes or maintenance or strengthen of the share and, as well as life cycle of products and rights;
- f) Other relevant characteristics in regard to the transaction at issue or to the enterprises concerned.

Article 10

Comparable uncontrolled price method

1. The comparable uncontrolled price method compares the price charged in a related transaction with the price charged in an unrelated transaction in comparable circumstances
2. The adoption of the comparable uncontrolled price method entails the highest degree of comparability affecting both the object and other terms and conditions of the transaction and the functional analysis of stakeholders.
3. This method may be used *inter alia* in the following situations:
 - a) When the taxpayer or an entity belonging to the same group carries out a transaction of the same kind having as its object a similar or identical service or product, with same quantity or value, and in terms and conditions substantially identical to an independent entity in the same or in similar markets;
 - b) When an independent entity carries out with another independent entity, a transaction of the same kind having as its object a similar or identical good or service, with same quantity or value, and in terms and conditions substantially identical, in the same or in similar markets;
4. Whenever a related transaction and an unrelated transaction are not substantially comparable, the taxpayer shall identify and quantify the effects resulted by the differences in transfer pricing, which must be of a secondary nature, making the necessary adjustments to determine an adjusted price corresponding to the comparable unrelated transaction.

5. In the absence of a comparable unrelated transaction in the financial year of the related transaction, there may be used a comparable unrelated transaction undertaken up to two years immediately prior to the undertaken transaction, adjusted for the exchange variation of the period.

Article 11

Resale price method

1. The use of the resale price method is based on the resale price charged by the taxpayer in a transaction with an independent entity, having as its object a product purchased from an entity with which there is a special relationship, minus the gross profit margin carried out by a third party in a comparable transaction with the same level of commercial representativeness.
2. The gross profit margin should enable the taxpayer to cover its selling costs and other operating costs and still provide a profit under normal market conditions, which represents for an independent entity an appropriate remuneration, taking into account the duties performed, the assets used and the risks assumed.
3. Where the transactions are not substantially comparable in all material respects and the differences have a significant effect on the gross margin, the taxpayer shall make the necessary adjustments to eliminate such effect in order to determine the coverage of the cost and the adjusted gross profit margin corresponding to the comparable unrelated transaction.
4. By reference to the resale price method, the comparable price is reached by multiplying the resale price by the difference between the unity and the gross profit margin in accordance with formula which follows:

$$PC = PR \times (1 - MLB)$$

Where:

PC= Comparable Price

PR = Resale Price

MLB.= Gross Profit Margin

Article 12

Cost-plus method

1. The use of the cost-plus method is based on the amount of costs incurred by a supplier of a given good or service in a related transaction, plus the mark-up in a comparable unrelated transaction.
2. The mark-up added to the costs shall be determined taking into account as reference the mark-up practiced in a comparable unrelated transaction carried out by the taxpayer, by an entity belonging to the same group or by an independent entity, such entities should perform similar tasks, use the same type of assets and assume the same risks, as well as preferentially trade similar goods or services with independent entities and adopt a costing system similar to that practiced in the comparable transaction.
3. Whenever the transactions are not comparable in all aspects regarded as relevant and the differences result on significant effect on the mark-up, the taxpayer must undertake the necessary adjustments as to eliminate the effect as to set out the adjusted gross margin which corresponds to the comparable unrelated transaction.
4. By reference to the cost-plus method, the comparable price is reached by multiplying the cost of goods sold, plus de unity and the mark-up in accordance with formula which follows:

$$PC = CPV \times (1 + MC)$$

Where:

PC = Comparable price

CPV = Cost of Goods Sold

MC= Mark-up

5. Mark-up is regarded as the ratio between gross profit and the cost of goods sold.

Article 13

Profit-split method

1. The profit-split method is used to distribute the overall profit derived from complex operations or series of related transactions carried out in an integrated manner between the stakeholders.
2. The application of this method lies in determining the overall profit obtained by the stakeholders in the related transactions and then divide them between those entities, based on the relative value of the contribution of each to implement the transactions, taking into account the functions performed, the risks assumed and the assets used by each and also taking as a reference reliable external data indicating that as independent entities exercising comparable functions using the same type of assets and assuming the same risks would have assessed the contributions thereof.
3. Alternatively, the application of this method consists in splitting the overall profit transactions in two phases :
 - a) In the first stage, each of the stakeholders is allocated a fraction of the overall profit that reflects the appropriate remuneration that is likely to be obtained with the type of transactions that it performs, being determined from comparable data on the remunerations normally obtained by independent entities when carry out similar operations and taking into account the functions performed, the risks assumed and the assets used, and for this purpose any of the other methods may be used;
 - b) In the second stage, the residual profit or loss is divided between each entity, depending on the relative value of its contribution, taking into account the relevant the functions performed, the risks assumed and the assets used, employing for this purpose, the available external information which provides advice on how independent parties would share the profit or loss in similar circumstances, and profit so attributed used to determine the price.
4. This method may be used provided that:
 - a) The related transactions reveal a high degree of integration, making it difficult to assess the transactions individually;

- b) The availability of intangible assets of high value and such specificity as to render it impossible to set an appropriate degree of comparability with non-related transactions and not allowing the application of other methods.
5. Where the transactions carried out are not comparable in all material aspects and the differences identified have a significant effect on the analysis of the splitting of the profit, the taxpayer must make the necessary adjustments to eliminate that effect in order to determine split of the overall profit corresponding to complex transactions or series of comparable unrelated transactions.

Article 14

Transactional net margin method

1. The transactional net margin method is based on calculation of net profit margin obtained by a taxpayer in a transaction or series of related transactions by reference to the net profit margin in a comparable unrelated transaction undertaken by the taxpayer by an entity belonging to the same group or an independent entity.
2. The net profit margin is calculated on the basis of an appropriate indicator, such as return on total cost, return on assets and the ratio of operating profit and net sales, or other indicator, according to the circumstances and characteristics of each transaction, as well as the nature of the activity.
3. Where transactions or enterprises involved therein are not comparable in all material respects, and the differences identified have a significant effect on the net profit margin of the transactions, the taxpayer shall make the necessary adjustments to eliminate such effect in order to determine the adjusted net profit margin, corresponding to that of the comparable unrelated transaction.

Article 15

Determination of prices charged

The price charged shall be determined by operation in the fiscal year by applying the weighted average prices of such comparable operations

Article 16

Interquartile range

1. For the purposes of no. 8 of article 8 and the application of the methods set forth in that article read together with no. 2 of this article, and in the case of registration of two or more comparable transactions, there shall be determined the median and the interquartile range of prices or profit margin.
2. Should the price or the profit margin set out by the taxpayer is within the interquartile range, these prices or margins are regarded as equivalent to those agreed between independent parties.
3. If the agreed price falls outside the interquartile range, the price or profit margin used by the independent parties shall be deemed to correspond to the median minus 5%, in the case where the price charged or profit margin is less than the value obtained for the first quartile or the median increased by 5% in the event that the price charged or profit margin is greater than the value obtained for the third quartile.
4. Notwithstanding the previous paragraph, when the first quartile is greater than the median value decreased by 5%, the median value decreased by 5% replaces the first quartile.
5. When the third quartile is smaller than the median increased by 5%, the median value increased by 5% replaces the third quartile.
6. If the difference between the comparable price and the price charged is up to 5% on the price charged, it is not necessary to undertake any adjustment, should however, the taxpayer maintain documentation evidencing the transaction.

Article 17

Determination of the Median and Interquartile Range

1. In order to determine the median and interquartile range referred to in no.1 of article 16 of this Regime, it is necessary to order the prices or profit margins in ascending order according to value thereof.

2. There is assigned a sequential order number to each one of the prices or profit margins, starting and finishing in the unity with the total number of elements which comprises the sample.
3. The order number of price or profit margin corresponding to the median is obtained by adding unit (1) to the total number of elements that make up the sample of prices or profit margins and this result is divided by two.
4. The median value is determined by locating the price, or the profit margin corresponding to the sequential integer of the result obtained in the preceding paragraph of this article.
5. When the result obtained in the previous number is comprised by an integer and decimals, the median value is determined as follows:
 - a) Obtain the difference in absolute values between the price or profit margin whose order number matches the integer of the result obtained in no.3 to the price or profit margin immediately higher, considering its value;
 - b) The result obtained in paragraph a) of this number shall be multiplied by the decimals of the result obtained in no.3 of this article and shall be added to the price or profit margin whose order number corresponds to the integer of the result obtained in no.3 of this article.
6. The position of the first quartile is obtained by adding the unit to the order number corresponding to the median obtained in no.3 of this article and dividing the result by two.
7. The first quartile of the range shall be determined by locating the price or profit margin corresponding to the sequential integer obtained in no. 6 of this article.
8. When the result obtained in no.6 of this article is a number comprised by an integer and decimals, the first quartile of the range is determined as follows:
 - a) Taking into account the value, the difference in absolute value is obtained between the price or the profit margin, which the order number corresponds to the integer of the result obtained in no.6 of this article, and the immediately higher price or profit margin.

- b) The result obtained shall be multiplied by the decimals of the result obtained in no.6 of this article and shall be added to the price or profit margin which the order number corresponds to the integer of the result obtained in no.6 of this article.
9. The position of the third quartile shall be obtained by subtracting the unit (1) from the order number corresponding to the median, which is referred to in no.3 of this article by adding the result to the order number corresponding to the first quartile obtained in no.5 of this article.
10. The third quartile of the range shall be determined by locating the price or profit margin corresponding to the sequential integer obtained in no.8 of this article.
11. Where the result obtained in no.8 of this article is a number comprising of integers and decimals, taking into account the value, the third quartile of the range is determined by the difference in absolute value between the price or the profit margin, which the order number corresponds to the integer of the result obtained in no.8 of this article, and the immediately higher price or profit margin.
12. The result obtained is multiplied by the decimals of the result obtained in no.8 of this article and shall be added to the price or profit margin which the order number corresponds to the integer of the result obtained in no.8 of this article.

SECTION II

Commodities

Article 18

Provisions applicable to *Commodities*

1. In the import or export of commodities, there shall be applied the Comparable Uncontrolled Price Method, according the following criteria:
- a) The prices declared are to be compared with the prices on national and other internationally recognized commodity exchanges adjusted for more or less than the average market premium on the date of the transaction ;
- b) In applying the method referred to in no.3 of this article, the quotations of the goods shall be used at the date of the transaction;

- c) If no quotations are available for the day of the transaction, the preceding quotations should be used;
 - d) If no date of operation is indicated, the change of currencies is carried out taking into account, for imports the date of acceptance of the import declaration, and for exports the date of shipment of goods.
2. The value of the premium is derived from a positive or negative market assessment, which must be added to the stock quote to obtain the price paid or received by the taxpayer and must also be considered variations in quality, characteristics and content of the substance of the goods sold or bought.
 3. In the absence of a specific quotation for the good, the average market premium can be applied to a similar good with reference in publication of institutions of sectorial research recognized internationally.
 4. In addition to the premium, the value of the commodity may undertake adjustments corresponding to the differences between the net value received by the seller or paid by the buyer and the variables that are taken into account in the specific quotation of the commodity in a commodity exchange or in sectorial research institutions.
 5. The variables that may be taken into account in the aforementioned adjustments are the cost of transport to destination port and climate influences as to the features of the good.
 6. In the event of no quotation of goods in national or internationally recognized commodity exchanges, the commodities prices can be compared with those obtained from independent data sources provided by institutions of sectorial research recognized internationally.
 7. It is incumbent upon the Ministers who oversee the areas of Industry and Commerce and Finance, whenever it is necessary, to update the list of commodities included in the Glossary Annex to this Regime.

CHAPTER III

Agreements entered into and between related entities

Article 19

Cost Sharing Agreements

1. There is a Cost Sharing agreements when two or more entities agree among them to share costs and risks of developing, producing or obtaining any assets, services or rights, according to the criterion of the proportion of the advantages or benefits that each party expects to get from its participation in the arrangement, including the right to use the results achieved in research and development projects without payment of any additional consideration.
2. In the cost sharing arrangement entered into and between the related entities, the application of the principle referred to in article 3 of this Regime, determines the existence of an equivalence relationship between the value of the contribution imposed on each of the parties to the agreement and the value of contribution required to each one of the parties of the agreement and the value of contribution that would be required or accepted by an independent entity in comparable terms.
3. The proportionate share of the total contributions that is under the responsibility of each participant shall be equal to the proportionate share allocated to it in the overall advantages or benefits arising from the agreement as measured by estimates of additional income to be earned in the future or cost savings which can be achieved, if an individual and direct assessment of those compensations is not possible, an appropriate allocation key may be used for that purposes, taking into account the nature of the activity covered by the agreement and an indicator reflecting the expected advantages or benefits, such as the turnover, personnel costs, value added or invested capital.
4. Should the contribution of a participant for a cost sharing agreement has no equivalent counterpart in part assigned to it in the advantages or expected benefits, there should be room for a proper compensation so that it is re-established the necessary balance.

5. For the purposes of determining the taxable income, the contributions made by a participant in a cost sharing agreement shall be treated pursuant to the regime that would be applicable to the expenses which the taxpayer would incur if it carried out the same activities, or if it acquired at a comparable unrelated transaction, assets, services or rights similar to those used in the scope of the agreement.
6. In the case of agreements for the joint acquisition of assets, services or rights, the debt of the cost of acquisition of these goods must be increased by a margin appropriate to the cost of the buyer's structure.

Article 20

Intra-group Services Agreements

1. There is an intra-group services agreements within the group when an entity member of a group makes available or carries out for the other members of the group a wide range of activities, namely of administrative, technical, financial or commercial nature.
2. In intra-group services arrangement or agreement entered into and between entities related to the application of the principle referred to in article 4 of this Regime, it requires that the given activity entails a service of economic value that justifies, for the member of the group which it is addressed to, the payment of a price or the assumption of a charge which the latter would be willing to pay or to undertake in respect to an independent entity or, as well as, to carry out an activity to be performed for itself.
3. As to determine the transfer pricing of a service whose economic value is justified under the terms of the aforementioned paragraph, there shall be used the methods set out in Chapter II, subject to the following provisions:
 - a) The comparable uncontrolled price method should be regarded as the most appropriate method when the services are identical or substantially similar as to its nature, quality, quantity and frequency, to those rendered by independent entities or where, in the normal course of business , are rendered to independent entities in similar markets and on comparable terms and conditions;

- b) The cost-plus method shall be regarded as the most appropriate method when no data is available with sufficient quality and quantity as to apply the aforementioned method and when, after an analysis of the functions performed, the risks assumed and the assets used, it is possible to set the highest degree of comparability with similar unrelated transactions.
 - c) For purposes of the previous paragraph is essential, inter alia, that the structure of the costs incurred by the service provider is substantially identical to that of the independent entity or to the entity belonging to the same group in a comparable unrelated transaction or come to be so by performing the adjustments required.
4. The consideration due for the services rendered within the group must include an appropriate profit margin, taking into account for this purpose, all relevant aspects, including the available economic alternatives to the recipient, the nature of the activity for rendering services, relevance of such activity to the group, the relative efficiency of the service provider and any advantage that the group derives from such activity, as well as the quality that the service provider use, and to distinguish situations in which it acts solely as an agent in the acquisition of services to third parties on behalf of the group of those in which it renders them directly.
 5. In the determination of the price of services, there should be adopted the direct method, according to which the invoiced value is specifically set for each type of service, when the respective costs are individually identifiable and likely to be quantifiable.
 6. In cases where it is impossible to apply the direct method, there should be adopted the indirect method, which consists in apportioning the overall costs of services provided by various entities of the group on the basis of an appropriate allocation key, which translates on proportionate share of the value of the services attributable to each of the recipient entities and that would lead to an analogous cost to that which the independent entities would be willing to accept in a comparable unrelated transaction.
 7. The allocation key referred to in the previous paragraph must be built on the basis of the indicators that reflect adequately the nature and use of services rendered and may

be accepted, in particular, the volume of sales, the gross profit margin, the expenses with staff and units produced or sold.

CHAPTER IV

Ancillary obligations of the taxpayers

Article 21

Tax documentation file

1. Under the terms of no.1 of article 23 of this Regime, the taxpayer shall have information and documentation in respect to the policy adopted in setting the transfer pricing and to maintain in an organised way the elements capable to be evidence:
 - a) Market parity under the terms and conditions agreed upon, accepted and practiced in transactions with related entities;
 - b) The selection and use of the appropriate method of determining transfer pricing which provides a better approximation to the terms and conditions applied by independent entities and which ensures the highest degree of comparability of transactions or series of transactions with substantially identical transactions carried out by independent entities in a normal market situation.
2. The aforementioned tax documentation file is also governed by the provisions of Corporate Income Tax Code and the Regulation thereof.
3. The taxpayer shall indicate in the annual tax and accounting return information referred to in the Regulation of the Corporate Income Tax Code, the availability or absence, in the tax period to which it relates, of transactions with entities with which are in a situation of special relationship, and if, in the case of stating the availability thereof:
 - a) To identify the entities at issue;
 - b) To identify and state the amount of the transactions undertaken with each one, by goods or services;
 - c) To state whether the price adjustment was established;
 - d) To inform the transfer pricing method applied.

4. The taxpayers of the Corporate Income Tax and Personal Income Tax that in the previous financial year have not reached an annual amount of net sales and other income of 2.5000.000, 00MT are waived from this obligation.

Article 22

Relevant information

In order to comply with the obligation referred to in the aforementioned article, the taxpayer shall get or produce and maintain information, namely in regard to the following:

- a) Description and characterization of the situation of special relationship, applicable to entities with which it carries out commercial, financial or other transactions, as well as the evolution of the corporate relationship of the link that constitutes the origin of the special relationship of peer group, including, if applicable, the subordination agreement, or other of a similar effect, or, as well, elements showing the situation of dependency referred to in paragraph g) of no.1 of article 6 of this Regime;
- b) Description of the activity carried out by the taxpayer and related entities, to which it undertakes transactions, and in regard to each one of them, an itemized description, by nature of transactions, the amounts thereof registered by the taxpayer in the last five years, or for the period that these have taken place, if under this period, where appropriate, the availability of accounts for such entities;
- c) A detailed identification of the assets, services or rights that are the subject of the related transactions, and the terms and conditions set out, when such information does not arise from the contracts entered into;
- d) Description of the functions performed, the risks assumed and the assets used either by the taxpayer or by the stakeholders involved in related transactions;
- e) Technical studies focusing on the core business areas, namely in the fields of investment, financing, research and development, market and restructuring and

reorganization of activities, as well as forecasts and budgets relating to the overall activity and activity by division or product;

- f) Guidelines on the implementation of the adopted transfer pricing policy, regardless of the form or description assigned to them, including instructions namely on the methodologies to be used, procedures for collecting information, in particular comparable internal and external data, the analyses to be carried out to assess the comparability of transactions and the costing policies and profit margins practiced;
- g) Contracts and other legal acts undertaken with related entities such as independent entities, with changes that occur and with historical information on compliance thereof, and when these changes are not expressly stated in the existing legal instruments they should be provided or when the practice followed does not comply with the agreed upon therein, as follows:
 - i. Definition of the scope of intervention of the stakeholders;
 - ii. Delivery terms of the products and ancillary activities involved, namely after-sales services, technical assistance and warranties;
 - iii. Price and, if necessary, the calculation method thereof, and also if it is associated with assumptions, the indication thereof and the circumstances in which they are subject to review as well as the discrimination of the rules and the detailed explanation of the multi-annual adjustments of price, pointing out, namely, the quantitative effects arising from factors related to economic cycles;
 - iv. Duration agreed or planned and approved ways of terminating;
 - v. Penalties and the procedure thereof for calculating the arrears in compliance or non-compliance, regardless of its form of manifestation, including arrears in interest;
- a) The explanation of the adopted method for the determination of the arm's length price in regard to each transaction by product and the rationale for the selection of the method deemed most appropriate;

- b) Information on comparable data used, showing, in the case of hiring an external entity with expertise in market research, the rationale for the choice of such entity, whenever appropriate, the specifications of the studies and, also, a sensitivity analysis and safety statistics or, where the source of the data is internal, the specifications thereof;
- c) Details on the analysis carried out as to assess the degree of comparability between related transactions and unrelated transactions and among the enterprises involved therein, including the functional and financial analyses, and about the possible adjustments carried out as to eliminate the existing differences;
- d) Strategies and business policies, namely regarding the risk, which are likely to influence the transfer pricing determination or the distribution of transactions' profits or losses;
- e) Any other information, data or documents regarded relevant for the determination of the arm's length price, for the comparability of transactions or for the adjustments carried out.

Article 23

Supporting documentation to the relevant information

1. Under the terms laid down in the tax documentation of the Regulation of the Corporate Income Tax Code, the taxpayer must keep organized the following documentation:
 - a) Documentation in respect to the policy adopted in setting the transfer pricing, including the guidelines or instructions of application thereof;
 - b) Contracts and other legal acts entered into with entities that are in situations of special relationship, with the changes that occur and with information on information on compliance thereof;
 - c) Documentation and information regarding to those entities with which it is in a situation of special relationship as well as the enterprises and the goods or services used as a term of comparison;
 - d) Functional and financial analyses and sectorial data;

- e) Statement of the production costs of the assets, services or rights, issued by the supplier legal entity, domiciled abroad;
 - f) Other information and elements taken into account for determination of the terms and conditions normally agreed upon, accepted or practiced between independent entities and for selection of method or methods used.
2. The information referred to in the aforementioned articles must be supported by documents produced by the taxpayer or by third parties and with reference to the exercise of the transactions, which may comprise of:
- a) Official journals, reports, studies and databases drafted by public or private entities;
 - b) Reports on market research conducted by recognised national or foreign institutions;
 - c) Price list or list of quotations disseminated by stock exchange and commodity exchanges;
 - d) Contracts and other legal acts undertaken either with related entities or with independent entities, as well as the documentation prior to the drafting thereof and texts of changes or amendment thereof;
 - e) Market consultation, letters and other correspondence with reference to the terms and conditions between the taxpayer and related entities;
 - f) Other documents issued in regard to transactions carried out by the taxpayer in accordance with the applicable tax and trade regulations.
3. In case of transactions of continuing nature, starting with previous financial years, the taxpayers shall update the information referred to in the previous number, if the facts and circumstances associated with the transactions have been materially changed.
4. The documents which comprise information in foreign language must be translated into Portuguese when the submission thereof is requested by the tax administration, notwithstanding the fact that, under request of the party complied to submit the translation, the tax administration may waive such submission as the knowledge thereof in the original language shows to be accessible.

Article 24

Documentation regarding cost contribution agreements and intragroup services

1. The documentation in regard to cost contribution agreements must comprise, among other, the following information:
 - a) Description of participants and other related entities involved in the activity covered by the agreement or that are expected to exploit or use the results of that activity;
 - b) The nature or type of activities carried out within de agreement;
 - c) The identification and basis of assessment of the proportionate share of each participant in the expected advantages or benefits;
 - d) The accounting procedures and methods used for sharing of costs, including the calculation to be undertaken to set each participant's contribution;
 - e) The assumptions that underlie in the forecasts of the expected benefits, frequency of review and forecasts of any adjustments arising from the changes in the operation of the agreement or in other facts;
 - f) Description of the method used to make adjustments to the contributions of the participants due to changes in the assumptions used as a basis for the agreement or substantial modifications subsequently made therein;
 - g) Expected duration of the agreement;
 - h) Anticipated allocation of responsibilities and tasks under the agreement between the participants and other enterprises;
 - i) Procedures for the accession and the exclusion of a participant under the agreement, as well as the procedures aiming at terminating the agreement and in any case the consequences thereof;
 - j) Provisions on compensatory payments;
2. Documentation regarding intragroup services must comprise the following information:
 - a) A copy of the agreement; ;
 - b) The description of services covered by the agreement;

- c) Identification of the beneficiaries of the services;
- d) Identification of the costs of the services and the criteria applied for their allocation.

CHAPTER V

Correlative adjustment

Article 25

Correlative adjustment

The tax administration may make the corresponding adjustment when this results from international conventions entered into by Mozambique under the terms and conditions set forth therein..

Article 26

Review of tax situation

1. For purposes of the adjustment set out in the previous article, the taxpayer shall submit to the tax administration, an application for review of its tax situation, based on the corrections made to the taxable income of entities which are related to it, from which occur or will occur double taxation not in accordance with the rules of international convention entered into by Mozambique, or submit an official proposal for the making of such correction by a competent foreign tax administration.
2. The application for review, which is not subject to essential formalities, apart from comprising the complete identification of the applicant entity, must be accompanied by:
 - a) Identification of the non-resident entity with which the taxpayer is in a situation of special relationship and which corrections to the taxable income have arisen or are likely to arise an occurrence of double taxation.
 - b) Identification of the competent foreign tax authority, under the terms of the convention if applicable;

- c) Description and characterization of the situation of special relationship between the applicant entity and all the entities at issue, as well as the transactions undertaken;
 - d) Identification of tax periods covered by the corrections;
 - e) Accurate identification of the corrections to the taxable income made by the competent foreign tax administration, as well as of the amounts in question, accompanied by the demonstration of calculations;
 - f) Copy of the relevant documents produced or to be produced by the foreign tax authority, as well as those filed before it, in regard to corrections which gave rise to or are liable to give rise to double taxation, as well as copies of the correspondence regarding this issue, in any case, if requested by the tax administration, together with translation thereof into Portuguese;
 - g) Proof of tax payment issued by the tax administration;
 - h) Statement of any other fact or presentation of any other document relevant to the assessment of the application;
 - i) Proposal for solution or solutions which enable the settlement of the issue.
3. The taxpayer shall submit its application for review under the terms and term laid down in the convention, if applicable.

Article 27

Acceptance of the Application

1. The acceptance of the application for review envisaged in no.2 of article 26 of this Regime relies on, mainly the following facts:
 - a) The evidence of double taxation, current or potential, not pursuant to the rules of the convention, if applicable case;
 - b) Submission of the application within the term;
 - c) The taxpayer's collaboration, namely, on the supply of all requested documentation and information in regard to the application and which allow the determination and exact quantification of the adjustments to undertake.

- d) Acceptance of the commencement of consultation process by the competent authorities of the other State as to deal with the issue under the framework of the amicable settlement procedure or arbitration procedure.
2. The decision in regard to the review of the application is notified to the taxpayer under the terms lawfully set out.

Article 28

Adjustment procedure

1. For the purposes of the provisions of article 25 of this Regime, where the tax administration, as a result of the review of the tax situation of the taxpayer and the consultation established with the competent tax authorities of the other State, within the scope of the applicable procedures find the corrections made thereto supported in whole or in part, either as to the principle used as basis thereof, or either as to the amount, and after the final administrative or judicial decision in regard to the corrections has been issued, conclude through the appropriate correlative adjustment in the determination of the taxable income of the taxpayer, shall undertake it in a term of 120 days from the date of the agreement concluded with the authorities of the other State.
2. The adjustment to be undertaken in the determination of the taxable income must refer to the financial year or financial years in which the related transactions which are object of corrections are reflected on the taxable income, so as to eliminate the double taxation of the adjusted profit.
3. The decision in regard to the review of the application is notified to the taxpayer under the terms lawfully set out.

CHAPTER VI
Special provisions

Article 29

Entities covered by special tax regimes

1. Under the terms of no.8 of the article 7, the principle set out in no.1 of article 4, both of this Regime, shall also be complied with, *mutatis mutandis*, by persons engaged with the exercise of activities subject or not subject to Corporate Income Tax.
2. In regard to the situation set forth in the foregoing paragraph, when there are deviations in the allocation of the positive and negative components of taxable income between activities subject to special tax regimes, the tax administration may make the necessary corrections to eliminate those deviations.

ANNEXURES

GLOSSARY

For the purposes of this Regime, it is understood by:

- a) **Associate** – entity linked by common interests to one or more persons;
- b) **Commodities** – products of primary origin, traded in commodity exchange in raw state or in small degree of industrialization, with uniform quality produced and traded in big quantities, on a global point of view; among which the following are highlighted: :
 - i. Aluminium and articles thereof - (HS 76);
 - ii. Coal - (HS 27.01 a 27.04);
 - iii. Copper and articles thereof - (HS 74);
 - iv. Tin and articles thereof - (HS 80);
 - v. Iron and steel – (HS 72);
 - vi. Petroleum gases and other gaseous hydrocarbons - (HS 27);
 - vii. Manganese and articles thereof, including waste and scrap - (HS 81);
 - viii. Gold (including gold plated with platinum), unwrought or in semimanufactured forms, or in powder form- (HS 71);
 - ix. Petroleum – (HS 27);
 - x. Silver (including silver plated with gold or platinum), unwrought or in semi-manufactured forms, or in powder form – (HS 71);
 - xi. Graphite.
- c) **Control** – power to manage the financial and operational policies of an entity or of an economic activity, as to get benefits thereto ;
- d) **Joint Control** – an act by which independent entities jointly exercise the management of a common entity or interest, in the form of jointly agreed control sharing of strategic, financial and operational decisions of an economic activity;

- e) **Associated enterprises** – strategic model of business partnership or alliance of companies, aiming at, from a simple collaboration for commercial and/or technological purposes, merger of companies into a single company, with the maintenance of identity and individuality as a legal entity of the participants;
- f) **Entity belonging to the same group** – the one which is linked to the taxpayer due to a special relationship;
- g) **Significant influence** – the power to participate in the decisions of the financial and operational policies of the investee or of an economic activity but which does not exercise control or joint control over those policies and may be obtained by holding shares, status or agreement;
- h) **Intermediate party** – someone to whom the interests do not belong to, but who practices a legal act in the place and subject to the orientations of the holders of those interests;
- i) **Family members of an individual** - those linked together by the relationship of kinship, marriage, affinity and adoption; those who are expected to influence, or be influenced by that individual in their dealings with the entity. These may include:
 - i. The spouse or person with a similar affective relationship and children of the individual;
 - ii. Children of the spouse or of a person with a similar affective relationship;
 - iii. Dependents of the individual, of the spouse or person with a similar affective relationship.
- j) **Transactions** – internal and external trade and financial transactions, including those which concern tangible or intangible assets, rights or services, even if carried out under any agreement, including cost-sharing and rendering of services within the group or a change of a business structure in particular, where it involves the transfer of tangible elements or compensation for consequential damages or loss of profits;
- k) **Related transaction** – conducted between related entities;
- l) **Unrelated transactions** – conducted between independent entities;

- m) **Related Parties** – entities among which there are special relationships, in situations in which one has the power to exercise a significant direct or indirect influence in the management decisions of the other;
- n) **Key management personnel** - people who have the power and responsibility for the planning, management and direct or indirect control of the entity's activities, including any director of such entity;
- o) **Comparable price** – the price charged by independent entities engaged in comparable transactions to the related transactions at issue;
- p) **Transfer pricing** – the price charged in commercial transactions, including financial transactions which engage related entities;
- q) **Special relationship** – the relationship which exists between two entities in situations in which one has the power to exercise a significant direct or indirect influence in the management decisions of the other;