

Transfer pricing Documentation to be maintained by Taxpayers

Reference Number PN2012050400361

Effective Date 01/07/2012

Subject: **TRANSFER PRICING DOCUMENTATION TO BE MAINTAINED
BY TAXPAYERS.**

Tax Type:	Income Tax
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Description

The Honourable Minister of Finance, Planning and Economic Development by virtue of the powers conferred upon her under Section 164 of the Income Tax Act, Cap. 340, Laws of Uganda, issued Statutory Instrument No. 30 of 2011 titled The Income Tax (Transfer Pricing) Regulations, 2011 effective 1st July 2011. DOCUMENTATION In accordance with Sub Regulation 3 of Regulation 8 of the Regulations, the Commissioner General hereby notifies the general taxpaying public that the following documentation shall be required for transfer pricing purposes. 1. These documentation requirements shall apply to controlled transactions for Multi National Enterprises (MNEs), or 2. Controlled Transactions in aggregate equal to or exceeding 25,000 (Twenty five thousand) currency points in a year of income. Note. For purpose of this Practice Notes, MNEs are defined as enterprises that manage production, deliver services or generate sales and profits in more than one country and includes hybrid arrangements and relationships through shared shareholders. This list is neither intended to be exhaustive nor meant to apply to all types of businesses. The taxpayer should maintain documents of sufficient quality so as to accurately and completely describe the transfer pricing analysis conducted and efforts to comply with the arms length principle. Company details. i). Ownership and organizational structure showing linkages between the associated parties. This shall include:-

- a) description of the taxpayers worldwide organizational structure (including an organizational chart) covering all associated parties,
- b) The identification of participants in related party dealings ,and
- c) Brief history and any significant changes in relationships between the parties including dates of incorporation, shareholding at the time of the changes.

ii) Operational aspects of business including details of functions performed, risks assumed and assets employed relevant to the transactions.

iii) Assumptions and information regarding factors that influenced the setting of prices or the establishment of policies for the taxpayer and the related party group as a whole B.

Transaction details.

- i) A description of controlled transactions that identifies the transactions which have been

entered into, the names of the participants, the scope, type, timing, frequency of and value of transactions e.g. purchase of raw material or fixed assets, sale of finished goods, borrowing of funds, the currency of the transactions should also be stated, identification of internal data relating to the controlled transactions, terms and conditions of the transactions including copies of relevant intercompany agreements relating to the transactions such as:-

- a) technical assistance fees.
- b) management fees.
- c) Marketing fees and branding arrangements.
- d) recruitment fees, or other services provided.
- e) Royalties and licences payable.
- f) purchase or rental of equipment or other assets.
- g) handling charges.
- h) Loans, including loans advanced by a related company to

the associate through independent parties.

i) allocation of overhead expenses or any specific expenses (e.g. promotional or advertising) borne by the foreign entity or associated enterprise.

j) other forms of payment made to associates. and

k) In regard to payments made above, where the payment made by an associate to a third party will result in an offset of obligations due by the third party to an associate or non associate.

ii). Comparables: description of the comparables including, for tangible property, the physical features, availability and quality of tangible property, for services the nature and extent of the services, and for intangible property, the form of the transaction, type of intangible, the rights to use the intangible that are assigned, and anticipated benefits from use of the intangible. Also, identify factors taken into account by the taxpayer to evaluate comparability including the characteristics of the property or service transferred. The functions performed (and the significance of those functions in terms of their frequency, nature and value to the respective parties), the assets employed (taking into consideration their age, market value, location, etc.) the risks assumed (including risks such as market risk, financial risk, and credit risk). Identification of any internal comparables, adjustments made if any, criteria used in selecting comparables etc. Aggregation analysis (grouping of transactions for comparability). Extension of the analysis over a number of years with reasons for the years chosen, where relevant.

iii). Economic conditions during the time of transactions including differences surrounding controlled firms transactions and uncontrolled transactions to which it is compared in terms of:-

a) Geographical location.

b) Business plans to the extent to which Tax Type Income Tax purpose of the controlled transactions.

c) Description of internal procedures and internal controls in place at the time of controlled transactions.

- d) Economic and legal factors affecting the pricing of the taxpayer property and services.
- e) Description of intangible property potentially relevant to the pricing of the taxpayers property or services in the controlled transactions.
- f) Market size and Market share to the extent differences affect price.
- g) Regulatory framework.
- h) Description of the structure, intensity and dynamics of the relevant Industry competitive environment.
- i) Trends, risks and key players, etc.
- j) Availability of substitute goods and services.
- k) Levels of supply and demand.
- l) Any other special circumstances.

C. Determination of arms length price.

i). Description of the method selected and the reasons why it was selected (The pricing methodology adopted, showing how the arms length price is derived. Also indicate why that method is chosen over other methods and a description of the measures taken to ensure that the measure of profit for taxation purposes is derived from arms length pricing of relevant transactions. this would include. An analysis of the controlled transaction using the five(5) comparability factors as contained in Regulation 4 of the Transfer Pricing Regulations. Searches and databases and criteria used in selection of comparables including economic considerations. A description of the transactions selected as comparables, including an analysis of those transactions (using the five comparability factors) and an explanation of why the selected comparables are considered sufficiently reliable. description of any comparability adjustments considered appropriate. A description of how comparable pricing or margins is applied to the tested transaction. Intangible property, the form of the transaction, the type of intangible, the rights to use the intangible that are assigned, and the anticipated benefits from its use, Documentation of assumptions and judgments made in the course of determining an arms length outcome. Documentation of calculations made in applying the selected method and any adjustments made. Assumptions and information regarding factors that influenced the setting of prices or the establishment of any pricing policies for the taxpayer and the related party group as a whole.

ii). Functional analysis of the risks assumed (including risks such as market risk, financial risk, credit risk, foreign exchange risk, liability risk, assets employed (taking into account consideration of their age, market value, location etc) and functions performed by entity in relation to risks, assets and functions and performed by the associated entities that are party to the transaction and the significance of those functions in terms of their frequency, nature and value to the respective parties involved in or related to the transaction.

iii). Cost Contribution arrangements (CCA) including copies of the CCA agreements and relevant amendments, list of arrangement participants and beneficiaries, extent of use of CCA property by

associated parties who are non parties to CCA, duration of CCA, description of the scope of the activities to be undertaken, including any intangible or class of intangibles in existence or intended to be developed, interest of each participant, identification of benefits accruing to each party and any material differences between expectations and actual benefits and all other rights and obligations of each associated enterprise under the CCA, contribution borne by each participant, description of the method used to determine each parties share of the contribution consequences of a participant entering or withdrawing from the agreement.

iv). Management strategy/policy and/or corporate business plans to the extent they give an insight into the nature of special circumstances under which the taxpayer business is conducted, for example to enter a new market, increase share in existing market, to introduce new products into market, or to fend off increasing competition, set off transactions, distribution channel selection and management strategies that influenced determination of transfer price.

v). Where applicable, financial information relevant in comparing profit and loss between associated entities with whom the taxpayer has transactions subject to transfer pricing rules.

vi). If a comparability analysis results in a range of arms length outcomes, please document all the outcomes. Reasons for choosing that particular arms length price from the range of outcomes must be documented. If a range is used, documentation supporting the establishment of the range should be evidenced. and

vii) An explanation of the capital relationship eg. balance and source of debt and equity funding) relevant to the transactions. When to submit documents Documents pertaining to transfer pricing are NOT to be physically submitted with Return Forms, BUT must be in place prior to the due date for filing the Income Tax Return for the relevant year, must be in the English language or translated into the English language, prepared at the time the transfer price is established.

D. Summary and Conclusion

A summary and conclusion as to whether the controlled transactions comply with arms length principle and whether any transfer pricing adjustments are required.

E. Note A person who fails to comply with this regulation is liable on conviction to imprisonment for a term not exceeding six months or to a fine not exceeding twenty five currency points or both.

Allen Kagina (Mrs)
COMMISSIONER GENERAL

Authorized Signature	Designation of Signatory Commissioner
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Name of Signatory MOSES KAJUBI	Contact Number 0717440099
This notice has been issued for and on behalf of the Commissioner/Commissioner General	