

## **TRANSFER PRICE SCHEME**

### **CHAPTER I**

#### **General provisions**

##### **Article 1**

##### **Definitions**

The definition of the terms used in the present Regime is set out in the attached Glossary, which is an integral part of it.

##### **Article 2**

##### **Object**

The present Regime governs the transfer prices practiced in the context of special relations that influence in the determination of the taxable amount in the case of Income Taxes.

##### **Article 3**

##### **Scope of application**

1. The present Regime applies to the taxable persons of the Tax on the Income of Legal Persons and of Income Tax of Individuals, residing or domiciled in Mozambican territory, who carry out transactions with resident or non-resident related parties.
2. The Scheme referred to in the preceding paragraph shall also apply to:
  - a) A permanent establishment that carries out operations related to non-resident entities;
  - b) A permanent establishment located in Mozambican territory, engaged in operations linked to other stable establishments of the same entity located outside that territory;
  - c) A resident or non-resident entity with a permanent establishment located in Mozambican territory that carries out operations related 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 interposed person 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 Personal Income Tax and any other entity with which he is in a special relationship, terms and conditions shall be agreed, accepted and practiced. Substantially identical to those which would normally be agreed, accepted and practiced between independent entities in comparable operations.

2. The application of paragraph 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 which are so closely interlinked or continuous that their unbundling would lead to loss of functionality or value, or where it is impracticable to determine the price for each operation, either because of the high costs involved or because information on comparable operations:

- a) Continuous supply of goods or services;
- b) Transfer of the right to operate intangible assets accompanied by other benefits;
- c) Fixing the prices of goods which show functional complementarity or typological identity, such as those inserted in a product line.

## **Article 5**

### **Related party**

For the purposes of 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; here included relationships between parent companies and subsidiaries and between subsidiaries of the same parent company;
  - ii. Has an interest in the entity that gives it significant influence over it; or
  - iii. You have joint control over the entity.
- b) The party is an associate or a joint venture in which the entity is an entrepreneur;
- c) The party is a key member of the management of the entity or of its parent;
- d) The party is a close member of the family of any individual referred to in (a) or (c) of this Article;
- e) The party is an entity over which any individual referred to in subparagraph (c) or (d) of this Article exercises control, joint control or significant influence, or who has, directly or indirectly, a significant voting power; or
- f) The party manages a post-employment benefit plan for the benefit of the entity's employees, or any entity that is a related party to that entity.

## **Article 6**

### **Significant influence**

1. For the purposes of point e) of the previous article, it is considered that there is significant influence in the management decisions of the other, in particular, when it occurs between:

a) An entity and the owners of the respective capital, or the spouses, ascendants or descendants of these, hold, directly or indirectly, a participation of not less than 10% of the capital or the voting rights;

b) Entities in which the same owners of capital, their respective spouses, ascendants and descendants hold, directly or indirectly, a participation of not less than 10% of the capital or voting rights;

c) An entity and the members of its governing bodies, or any administrative, management, or supervisory bodies, and their respective spouses, ascendants and descendants;

d) Entities in which the majority of the members of the governing bodies, or of the members of any administrative, management, or supervisory body, are the same persons or, being different persons, are linked by marriage, de facto union or kinship in a straight line;

e) Entities bound by a subordination contract, of a parity group or other of equivalent effect;

f) Companies that are in a controlling relationship, as defined in the legislation that establishes the obligation to prepare consolidated financial statements;

g) Entities between which, due to the commercial, financial, professional or legal relations between them, directly or indirectly established or practiced, there is a situation of dependency in the exercise of their activity, in particular when any of the following situations occurs:

i. The exercise of one's activity depends substantially on the transfer of industrial or intellectual property rights or know-how held by the other;

ii. The supply of raw materials or access to channels of sale of products, goods or services by one depends substantially on the other;

iii. A substantial part of one's activity can only be carried out with the other, or depends on its decisions;

iv. The right to fix prices, or conditions of equivalent economic effect, in relation to goods or services transacted, supplied or acquired by one is, by means of a legal act, in the ownership of the other;

v. By the terms and conditions of your business or legal relationship, one can condition the management decisions of the other, depending on facts or circumstances unrelated to the business or legal relationship.

2. For the purpose of identifying the percentage level of indirect participation in the capital or voting rights referred to in the preceding paragraph, in situations where there are no specific rules defined, the ownership of shares or shares by a company equals, for the purpose of an amount equal to or greater than 10% of its capital, to the ownership of shares or shares by another company which is directly or indirectly dependent on it or is in a group relationship and shares in which a person holder of any of these companies.

## **Article 7**

### **Adjustments to taxable profit**

1. Where the terms and conditions of a related transaction involving a taxable person and an entity not resident in Mozambican territory differ from those which would normally be agreed, accepted or practiced between independent entities, the latter shall, in the periodic declaration of income, a positive correction corresponding to the tax effects attributable to that deviation, so that the taxable profit determined is not different from that found in the absence of special relations.
2. Clear differences between the price charged and the comparable price which they impose on adjustment shall be made by the taxable person, the addition to the taxable profit in the periodic declaration of income.
3. Where the terms and conditions of a related transaction involving a taxable person and an entity resident in Mozambican territory differ from those which would normally be agreed upon, accepted or practiced between independent entities, the tax administration may make the corrections to the taxable income that are necessary to match the amount that would have been obtained had the transaction been processed in the absence of special relationships.
4. If the comparable price determined by one of the transfer pricing methods is lower than the sales prices shown in the export documents, the amount of revenue recognized in accordance with the said documents shall prevail and no compensation shall be payable between them.
5. If the comparable price determined by one of the transfer pricing methods is higher than the prices given in the import or purchase documents, the amount of the cost or expense recognized in accordance with the said documents shall prevail and no compensation shall be payable between them.
6. Taxable persons who obtain income in respect of Personal Income Tax must carry out the adjustment of transfer prices in accordance with the rules set out in the preceding paragraphs, with the necessary adaptations.
7. In the operations carried out between a non-resident entity and a permanent establishment situated in Mozambican territory, or between this and other permanent establishments located outside Mozambique, the rules set forth in the preceding paragraphs shall apply.
8. The provisions of the preceding paragraphs shall also apply to persons who simultaneously carry out activities subject to and not subject to Corporate Income Tax.

## **CHAPTER II**

### **Determination of transfer prices**

## **SECTION I**

### **Methods of determining transfer prices**

#### **Article 8**

##### **Applicable methods for determining transfer prices**

1. The methods used for the necessary corrections for the determination of the taxable profit, provided for in the Corporate Income Tax Code, are as follows:

a) The method of the comparable market price, the method of the retail resale price and the method of increased cost;

b) The method of dividing profit, net operating margin method or other method appropriate to the facts and the specific circumstances of each transaction which satisfies the requirements of Article 4 (1) of this Scheme, where the methods referred to in the preceding subparagraph cannot be applied or, if so, cannot obtain the most reliable measure of terms and conditions which independent entities would normally agree, accept or practice.

2. The taxable person shall, for the purpose of determining the terms and conditions which would normally be agreed, accepted or practiced between independent entities, the most appropriate method for each operation or series of operations, in accordance with the principle of full competition, during the financial year, by good, right or service.

3. The most appropriate method for each operation or series of operations shall be that which is capable of providing the best and most reliable estimate of terms and conditions which would normally be agreed, accepted or practiced in a situation of full competition.

4. The most appropriate method is the one which proves to provide the highest degree of comparability between the linked and other unrelated transactions and between the entities selected for the comparison, which has the best quality and the greatest amount of information available for the comparison. Its adequate justification and application, and which involves the fewest adjustments in order to eliminate the differences between the facts and comparable situations.

5. Two transactions meet the conditions to be considered comparable if they are substantially identical, meaning that their relevant economic and financial characteristics are similar or sufficiently similar, so that differences between the transactions or between the undertakings involved in them do not are 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. Where there are doubts as to the reliability of the values obtained by applying a given method, the tax authorities shall request the taxable person to confirm the amounts by applying other methods, in isolation or in combination.

7. If the method or any of its calculation criteria is disqualified by the inspection, the taxable person shall be notified to submit a new calculation in accordance with any other method provided for in this Scheme within a maximum period of 30 days.

8. If the method is not indicated, neither the documents are presented for proving the comparable price or, if presented, are insufficient or inadequate to form a conviction regarding the price, the tax administration can determine it based on other documents available to it, applying one of the methods provided for in these Conditions.

9. If, in the course of applying a method, the use of two or more comparable non-linked operations leads to a range of values which ensures a reasonable degree of comparability, no correction is necessary if the relevant conditions of the operation the price or the profit margin, are within that range.

## **Article 9**

### **Comparability factors**

For the purposes of the previous article, the degree of comparability between a related transaction and an unrelated transaction shall be assessed taking into account the following factors:

(a) the specific characteristics of the goods, rights or services which, being the subject of each transaction, are liable to influence the price of operations, in particular the physical characteristics, quality, quantity, reliability, availability, location and the volume of supply of the goods, the form of negotiation, the type, the duration, the degree of protection and the benefits anticipated by the use of the right and the nature and extent of the services;

b) The functions performed by the entities involved in the operations, taking into account the assets used and the risks assumed;

c) The contractual terms and conditions that define, explicitly or implicitly, how responsibilities, risks and profits are shared between the parties involved in the operation;

(d) the economic circumstances prevailing in the markets in which the parties are operating, including their geographical location and size, the cost of labor and capital in the markets, the competitive position of buyers and sellers, the the existence of substitute goods and services, the level of supply and demand and the degree of overall market development;

e) The companies' strategy, considering, among the aspects that may influence its operation and normal conduct, the pursuit of research and development activities of new products, the degree of diversification of the activity, risk control, penetration schemes in the market or maintenance or reinforcement of the quota, as well as the life cycles of the products or rights;

(f) other characteristics relevant to the operation in question or to the undertakings concerned.

## **Article 10**

### **Comparable market price method**

1. The comparable market price method compares the price of a transaction linked to the price of a comparable unrelated transaction in comparable circumstances.
2. The adoption of the comparable market price method requires the highest degree of comparability with regard to both the object and other terms and conditions of the operation and the functional analysis of the intervening entities.
3. This method may be used inter alia in the following situations:
  - a) Where the taxable person or an entity belonging to the same group performs an operation of the same type having as its object an identical or similar service or product in a similar quantity or value and on substantially identical terms and conditions with an independent entity in the whether or not in similar markets;
  - b) Where an independent entity carries out an operation of the same nature with another independent entity which relates to a service or the like or similar product in a similar quantity or value and on substantially identical terms and conditions on the same market or markets similar.
4. Where a related transaction and a non-attached transaction are not substantially comparable, the taxable person shall identify and quantify the effects caused by the differences in transfer prices which must be of a secondary nature by making the necessary adjustments to eliminate them, in order to determine an adjusted price corresponding to the comparable non-related transaction.
5. In the absence of a comparable unrelated transaction in the economic year of the related operation, a comparable non-related transaction may be used up to two years immediately prior to the operation, adjusted for the exchange variation of the period.

## **Article 11**

### **Retail Resale Price Method**

1. The application of the resale price method shall be based on the resale price charged by the taxable person in an operation with an independent entity for the purpose of a product purchased from an entity with which he is in a special relationship, deducted from the gross profit margin practiced by a third party in a comparable operation with the same level of commercial representativeness
2. The gross profit margin shall enable the taxable person to cover his selling costs and other operating costs and also to provide a profit which, under normal market conditions, constitutes an appropriate remuneration for an independent entity, taking into account the functions 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 taxable person shall make the necessary adjustments to

eliminate such effect in order to determine the cost coverage and a margin of adjusted profit corresponding to the comparable non-related transaction.

4. On the basis of the retail resale price method, the comparable price shall be obtained by multiplying the resale price by the difference between the unit and the gross profit margin in accordance with the following formula:

**PC = PR x (1 - MLB)** Where:

PC = Comparable price

PR = Resale price

MLB = Gross profit margin

## **Article 12**

### **Cost method increased**

1. The application of the cost-plus method shall be based on the amount of costs incurred by a supplier of a product or service supplied in a related transaction, plus the marketing margin in a comparable non-attached transaction.

2. The marketing margin added to the costs may be determined on the basis of the marketing margin practiced in a comparable unliquidated transaction by the taxable person, by an entity belonging to the same group or by an independent entity. The same type of assets and assume the same risks, as well as preferentially to trade similar products or services with independent entities and to adopt a costing system similar to the one practiced in the comparable operation.

3. Where the transactions are not comparable in all material respects and the differences have a significant effect on the marketing margin, the taxable person shall make the necessary adjustments to eliminate that effect in order to determine the corresponding adjusted gross margin comparable non-related operation.

4. On the basis of the increased cost method, the comparable price is obtained by multiplying the cost of the product sold by the unit sum and the marketing margin by

according to the following formula:

**PC = CPV x (1+ MC)**

At where:

PC = Comparable price

CPV = Cost of Product Sold

MC = Marketing Margin

5. Margin is considered the gross profit ratio and the cost of the merchandise sold.



## **Article 13**

### **Profit fractionation method**

1. The profit splitting method is used to distribute the overall profit derived from complex operations or from series of related transactions carried out in an integrated manner between the intervening entities.

2. The method of application of the method consists of determining the total profit obtained by the parties involved in the related operations and then dividing them between those entities, using as a criterion the relative value of the contribution of each one to the realization of the operations, taking into account the functions performed, the assets used and the risks assumed by each and also taking as a reference reliable external data that indicate as independent entities performing comparable functions using the same type of assets and assuming the same risks would have assessed their contributions.

3. Alternatively, the application of this method consists in dividing the overall profit from two-stage operations:

a) In the first, each of the intervening entities is allocated a fraction of the total profit that reflects the appropriate remuneration that can be obtained with the type of operations that it performs, being determined from comparable data on the remunerations normally obtained by entities when carrying out similar operations and taking into account the functions performed, the assets used and the risks assumed, for which purpose any of the other methods may be used;

b) In the second part, the residual profit or loss is divided between each of the entities, depending on the relative value of their contribution, taking into account the relevant functions performed, the assets used and the risks assumed. The effect on the available external information which gives indications as to how independent parties would apportion the profit or loss in similar circumstances and the profit thus allocated be used to determine the price.

4. This method may be used where:

a) The related operations reveal a high degree of integration, making it difficult to assess operations individually;

b) The existence of such intangible assets of such high value and specificity as to make it impossible to establish an appropriate degree of comparability with non-linked transactions and not allow the other methods to be applied.

5. Where the transactions carried out are not comparable in all material respects and the differences identified have a significant effect on the analysis of the fractioning of profit, the taxable person shall make the necessary adjustments to eliminate that effect in order to determine the allocation of the overall profit corresponding to that of complex operations or series of comparable non-related operations.

## **Article 14**

### **Net operating margin method**

1. The net operating margin method is based on the calculation of the net profit margin obtained by a taxable person in a related transaction or series of transactions by reference to the net profit margin obtained in a comparable unliquidated transaction by the taxable person, by an entity belonging to the same group or by 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 to net sales, or other indicator, according to the circumstances and characteristics of each operation, as well as the nature of the activity.
3. Where the transactions or undertakings which are involved in them are not comparable in all material respects, and the differences identified have a significant effect on the net profit margin of the transactions, the taxable person shall make the necessary adjustments to eliminate such an effect, to determine the adjusted net profit margin, corresponding to that of the comparable unrelated

## **Article 15**

### **Clearance of prices charged**

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

## **Article 16**

### **Interquartile Interval**

1. For the purposes of Article 8 (8) and application of the methods set out in that Article, in conjunction with paragraph 2 of this Article, and in the case of registration of two or more comparable transactions, the and the interquartile range of prices or profit margin.
2. If the price or the profit margin defined by the taxpayer falls within the interquartile range, these prices or margins are considered 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 or margin of profit is less than the value obtained for the first quartile or the median increased by 5% in the event that the price or profit margin is greater than the value obtained for the third quartile.
4. Notwithstanding the preceding paragraph, when the first quartile is greater than the median value of five per cent 5 per cent, the median value of less than 5 per cent 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% in relation to the price charged, no adjustment is necessary, but the taxpayer shall keep the documentation proving the transaction.

## **Article 17**

### **Determination of Median and Interquartile Interval**

1. In order to determine the median and interquartile range referred to in Article 16 (1) of this Regime, it is necessary to order prices or profit margins in ascending order according to their value.

2. Each of the prices or profit margins is assigned an integer sequence number, beginning and ending in the unit with the total number of elements that make up the sample.

3. The order number of the price or profit margin corresponding to the median is obtained by adding unit (1) to the total number of elements of the sample of prices or profit margins and this result 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 formed by 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 corresponds to the whole number of the result obtained in no. 3 at the next higher price or profit margin, considering its value;

b) the result obtained in paragraph (a) of this paragraph shall be multiplied by the decimals of the result obtained in paragraph 3 of this Article and shall be added to the price or profit margin whose order number corresponds to the whole number of the result obtained in paragraph (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 paragraph 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 paragraph 6 of this Article.

8. Where the result obtained in paragraph 6 of this Article is a number consisting of integer and decimals, the first quartile of the interval shall be determined as follows:

(a) The absolute difference between the price or the profit margin, the order number of which corresponds to the whole number of the result obtained in of this article, and the immediately higher price or profit margin, considering its value.

(b) The result obtained shall be multiplied by the decimals of the result obtained in (6) of this Article and shall be added to the price or profit margin the order number of which corresponds to the whole number of the result obtained in paragraph 6 of this Article.

9. The third quartile position shall be obtained by subtracting unit (1) from the median number referred to in paragraph 3 of this Article by adding the result to the order number corresponding to the first quartile obtained in paragraph (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 paragraph 8 of this Article.

11. When the result obtained in paragraph 8 of this Article is a number consisting of integers and decimals, the third quartile of the interval is determined by the difference, in absolute values, between the price or profit margin whose order number corresponds to the number of the result obtained in paragraph 8 of this article and the immediately higher price or profit margin, considering its value.

12. The result obtained shall be multiplied by the decimals of the result obtained in paragraph 8 of this Article and shall be added to the price or profit margin the order number of which corresponds to the whole number of the result obtained in paragraph 8 of this Article.

## **SECTION II**

### **Commodities**

#### **Article 18**

##### **Provisions applicable to Commodities**

1. In the import or export of commodities, the Price Method must be applied

Comparable Market, meeting the following criteria:

a) The declared prices shall be compared with the prices on national and other internationally recognized stock exchanges, adjusted to more or less than the average market premium on the date of the operation;

b) In applying the method referred to in paragraph 3 of this Article, the quotations of the goods shall be used at the date of the transaction;

c) In the absence of quotations available for the day of the transaction, the quotations immediately preceding should be used;

d) If there is no identification of the transaction date, the currency conversion is done considering the date of acceptance of the import declaration, in the case of imports and the date of shipment of the goods, in the case of exports.

2. The value of the premium is due to a positive or negative market valuation, which must be added to the stock price to obtain the price paid or received by the taxable person and must also be considered variations in quality, characteristics and the content of the substance of the good sold or purchased.

3. In the absence of a specific quotation for the good, the average market.

## **CHAPTER III**

### **Agreements between related entities**

#### **Article 19**

##### **Cost sharing agreements**

1. There is a cost sharing arrangement where two or more entities agree to share the costs and risks of producing, developing or acquiring any goods, rights or services according to the criterion of the proportion of the advantages or benefits that each of the parties are expected to obtain from their participation in the agreement, in particular the right to use the results achieved in research and development projects without payment of any additional consideration.
2. In the cost-sharing agreement concluded between related entities, the application of the principle referred to in Article 3 of the present 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 the which would be imposed or accepted by an independent entity on comparable terms.
3. The share of the total contributions that is the responsibility of each participant shall be equal to the share allocated to it in the overall benefits or benefits resulting from the agreement as measured by estimates of the additional income to be earned in the future or the savings expected to be obtained. For this purpose, if a direct and individualized assessment of these counterparts is not possible, an appropriate allocation key should be used, taking into account the nature of the activity covered by the agreement and an indicator that adequately reflects the expected benefits or benefits, namely turnover, personnel costs, added value or invested capital.
4. Where a participant's contribution to a cost-sharing agreement does not match the share allocated to it in the expected benefits or benefits, adequate compensation must be provided in order to restore the necessary balance.
5. For the purposes of determining taxable profit, contributions made by a participant in a cost sharing arrangement shall be treated in accordance with the scheme that would apply to the expenses that the taxable person would incur if he carried out the same activities directly or if he acquired in a comparable non-related transaction, goods, rights or services identical to those used under the agreement.
6. In the case of agreements for the joint acquisition of goods, rights or services, the cost of acquiring them must be increased by a margin appropriate to the costs of the acquiring entity.

#### **Article 20**

##### **Agreements to provide services within the group**

1. There is an agreement for the provision of services within the group where a member of a group makes available or carries out for its other members a wide range of activities, including administrative, technical, financial or commercial activities.
2. In the agreement to provide services within the group concluded between entities related to the application of the principle referred to in Article 4 of the present Regime, it requires that the activity

provided constitutes a service with economic value that justifies, for the member of the group that is the recipient, the payment of a price or the assumption of a charge which the latter would be willing to pay or to assume in relation to an independent entity or to carry out an activity to be performed for itself.

3. In determining the transfer price of a service whose economic value is justified under the terms of the preceding paragraph, the methods described in Chapter II shall be used, subject to the following provisions:

a) the comparable market price method shall be considered as the most appropriate method where the services are identical or substantially similar in nature, quality, quantity and frequency, in the case of services provided by independent entities or where, as part of a normal activity are normally provided to independent entities in similar markets and on comparable terms and conditions;

b) The cost plus method shall be considered as the most appropriate method where sufficient quality and quantity data are not available to apply the method referred to in the preceding subparagraph and when, after an analysis of the functions performed, assets used and risks assumed, it is possible to establish the highest degree of comparability with similar non-related operations.

c) For the purpose of the previous paragraph, it is indispensable, in particular, that the structure of the costs borne by the provider is substantially the same as that of an independent entity or that of an entity belonging to the same group in a comparable unrelated operation, or becomes it through the realization necessary adjustments.

4. The consideration due for the services provided within the group shall include an appropriate profit margin, taking into account for that purpose all the aspects considered relevant, such as the economic alternatives available to the recipient, the nature of the activity providing the services, the relevance of that activity to the group, the relative efficiency of the service provider and any advantage that the group derives from that activity, as well as the quality of the service provider, distinguishing the situations in which it acts solely as an agent in the service. 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, the direct method must be adopted, according to which the invoiced value is established specifically for each type of service, where the respective costs are individually identifiable and quantifiable.

6. In cases where the direct method is not possible, the indirect method, which consists in allocating the overall costs of services provided by the various entities of the group on the basis of an appropriate allocation key, - part of the value of the services attributable to each of the recipient entities and allowing a cost to be obtained analogous to that which independent entities would be willing to accept in comparable non-binding operation.

7. The distribution key referred to in the preceding paragraph shall be constructed on the basis of indicators which adequately reflect the nature and use of the services provided, and may include, in particular, sales volume, gross profit margin, expenditure with personnel and units produced or sold.

## **CHAPTER IV**

### **Ancillary obligations of taxable persons**

#### **Article 21**

##### **Tax documentation process**

1. The taxable person shall have, in accordance with Article 23 (1) of this Regulation, information and documentation relating to the policy adopted for the determination of transfer prices and to maintain, on an organized basis, evidence capable of proving:

a) Market parity on 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 prices which provides a better approximation of terms and conditions applied by independent entities and which ensures the highest degree of comparability of transactions or series of transactions with other entities substantially identical transactions carried out by independent entities in the normal market situation.

2. The tax documentation process referred to in the previous number is also governed by the provisions of the Corporate Income Tax Code and its Regulations.

3. The taxable person shall indicate in the annual accounting and tax information statement referred to in the Regulation of the Corporate Income Tax Code the existence or non-existence, in the taxation period to which it relates, of transactions with entities with which it is in a situation of special relations, and, in case it declares its existence:

a) Identify the entities concerned;

b) Identify and declare the amount of operations performed with each one, by product or service;

c) To declare if a transfer price adjustment was established;

d) Inform the method of transfer price used.

4. Taxpayers of Corporate Income Tax and Personal Income Tax, which in the previous year have not reached an annual net sales and other income

2,500,000.00 MT, shall be exempt from this obligation.

#### **Article 22**

##### **Relevant information**

In order to comply with the obligation referred to in the previous article, the taxable person must obtain or produce and maintain informative elements, in particular as regards:

a) Description and characterization of the situation of special relations, applicable to entities with which it carries out commercial, financial or other operations, as well as of the evolution of the corporate

relationship of the link that constitutes the origin of the special relationship, including, if applicable the case, the subordination agreement, of a peer group or other of equivalent effect, or,

Demonstrating the dependency situation referred to in Article 6 (1) (g) of the present Regime;

b) Characterization of the activity carried out by the taxable person and related entities with which he carries out transactions and, in relation to each of them, a breakdown by nature of the transactions of the amounts recorded by the taxable person in the last five years; for the period in which they have taken place, if lower, and, where appropriate, the availability of the social accounts of those entities;

c) Detailed identification of the goods, rights or services that are the subject of the related operations, and of the terms and conditions established, when such information does not result from the contracts concluded;

d) Description of the functions performed, assets used and risks assumed, either by the taxable person or by related entities involved in the related transactions;

e) technical studies focusing on key business areas, including 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 transfer pricing policy, regardless of the form or description assigned to them, including instructions on the methodologies to be used, procedures for collecting information, in particular comparable internal data and analyzes to be carried out to evaluate the comparability of operations and the costing policies and profit margins practiced;

g) Contracts and other legal acts performed with related entities as well as with independent entities, with the modifications that occur and with historical information about their compliance, and should be provided, when not explicitly stated in the existing legal instruments or when the practice followed the following elements:

i. Definition of the scope of intervention of the parties involved;

ii. Conditions of delivery of the products and ancillary activities involved, notably namely after-sales services, technical assistance and guarantees;

iii. Price and, if necessary, the respective calculation method, and also if it is associated with assumptions, the indication of the same and the circumstances in which they are subject to revision, as well as the breakdown of the respective rules and the detailed explanation of the multi-year adjustments the quantitative effects of economic cycle factors;

iv. Duration agreed or planned and methods of extinction allowed;

v. Penalties and the respective procedure for calculating default in compliance or non-compliance, regardless of its form of manifestation, including interest for late payment;

h) An explanation of the application of the method for determining the arm's length price for each transaction by product and the reasons justifying the selection of the most appropriate method;

i) Information on the comparable data used, evidencing, in the case of an external entity specializing in market studies, the justification of the selection, where appropriate, the technical file of the studies, as



well as a sensitivity analysis and statistical security or, where the source of the data is internal, the relevant data sheet;

j) details of the analyzes carried out to assess the degree of comparability between related and non-related transactions and between the companies involved in them, including functional and financial analyzes, and any adjustments made to eliminate existing differences;

k) Business strategies and policies, in particular as regards risk, which are likely to influence the determination of transfer prices or the distribution of profits or losses of operations;

l) Any other information, data or documents considered relevant to the determination of the arm's length price, the comparability of the transactions or the adjustments made.

## **Article 23**

### **Documentation supporting relevant information**

1. The taxable person must keep the following documents organized in accordance with the tax documentation procedure set forth in the Regulation of the Corporate Income Tax Code:

a) The documentation relating to the policy on transfer pricing, including guidelines or instructions for its application;

b) Contracts and other legal acts entered into with entities that are in a situation of special relations, with the changes that occur and with information on their fulfillment;

c) The documentation and information relating to those entities with which it is in a situation of special relations and to the companies and goods or services used as a comparison;

d) Functional and financial analyzes and sectoral data;

e) Statement of costs of production of goods, services or rights, issued by the legal entity providing it, domiciled abroad;

f) Other information and elements which it has taken into account for the determination of terms and conditions normally agreed, accepted or practiced between independent entities and for the selection of the method or methods used.

2. The information referred to in the preceding articles must be supported by documents produced by the taxable person or by third parties and refer to the exercise of the operations, which may consist of:

a) Official publications, reports, studies and databases prepared by public or private entities;

b) Reports on market research carried out by recognized national or foreign institutions;

c) Price lists or quotations disclosed by stock exchanges and stock exchanges;

d) Contracts or other legal acts carried out either with related entities or with independent entities, as well as documentation prior to its preparation and the texts of modification or addition to them;

e) Market consultations, letters and other correspondence that contain references to the terms and conditions practiced between the taxable person and related entities;

f) Other documents issued in relation to transactions carried out by the taxable person, in accordance with the applicable tax and commercial rules.

3. In the case of continuing operations, beginning in previous years, the taxable persons must update the information referred to in the previous number if the facts and circumstances associated with the operations have been substantially altered.

4. Documents containing information in a foreign language, when requested to be submitted by the tax administration, must be translated in advance into Portuguese, without prejudice to this power, at the request of the obliged to present, dismiss the translation for being accessible knowledge of the content of these documents in the original language.

## **Article 24**

### **Documentation relating to cost sharing and service provision agreements within the group**

1. Documentation relating to cost-sharing arrangements shall contain, inter alia, the following information:

a) Identification of the participants and other related entities that will participate in the activity that is the object of the agreement or which will be able to explore or use the results of that activity;

(b) The nature and type of activities carried out under the Agreement;

c) Identification and bases of evaluation of the share of each participant in the expected benefits or benefits;

d) The accounting procedure and methods used to allocate costs, including calculations to determine the contribution of each participant;

e) Assumptions made in projections of expected benefits, frequency of revision of estimates and anticipation of adjustments resulting from changes in the functioning of the agreement or other facts;

f) A description of the method used to make adjustments to participants' contributions as a result of changes in the assumptions underlying the agreement or substantial changes thereafter;

g) Expected duration of the agreement;

h) Early allocation of responsibilities and tasks associated with the activity of the agreement between the participants and other companies;

i) Procedures for the accession and the exclusion of a participant from the scope of the agreement, as well as procedures designed to put an end to it and, in any case, the consequences thereof;

j) Provisions on compensatory payments.

2. The documentation relating to service provision agreements within the group shall contain the following information:

- a) Copy of the contract;
- b) Description of the services covered by the contract;
- c) Identification of the beneficiary entities of the services;
- d) Identification of the charges that are attributable to the services and criteria used for their distribution.

## **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 the tax situation**

1. For the purposes of the adjustment provided for in the previous article, the taxable person must submit an application to the tax administration for a review of his tax situation, based on corrections made, or an official proposal to make them by the competent foreign tax administration, to taxable profit of entities that are related to it, from which, or will occur, double taxation not in accordance with the rules of international agreement celebrated by Mozambique.

2. The application for review, which is not subject to essential formalities, shall, in addition to containing the complete identification of the applicant entity, be accompanied by:

- a) Identification of the non-resident entity with which the taxable person is in a situation of special relations and whose corrections to the taxable profit originated or are liable to give rise to double taxation;
- b) Identification of the competent foreign tax administration, under the terms of the agreement when applicable;
- c) Description and characterization of the special relations between the requesting entity and all the entities concerned, as well as of the operations carried out;
- d) Identification of the tax periods covered by the corrections;
- e) Accurate identification of the corrections to the taxable profit made by the competent foreign tax administration, as well as of the amounts in question, accompanied by the demonstration calculations;
- f) A copy of the relevant documents produced or to be produced by the foreign tax authority as well as those submitted to the tax authorities relating to the corrections which gave rise to or are liable to give

rise to double taxation and copies of the correspondence relating to that question, in any case, if such is requested by the tax administration, due translation into Portuguese;

g) Proof of the payment of the tax issued by the tax administration;

h) Listing any other fact or presentation of any other document relevant to the assessment of the application;

i) Proposal of solution or solutions to resolve the issue.

3. The taxable person must submit his request for revision in accordance with the terms and in the period stipulated in the agreement, where applicable.

## **Article 27**

### **Deferment of application**

1. The approval of the request for revision provided for in Article 26 (2) of these Rules depends, inter alia, on the following facts:

a) Proof of existing or potential double taxation, which is not in accordance with the rules of the agreement, where applicable;

b) Timely submission of the request;

c) The cooperation of the taxable person in particular with the supply of all documents and information requested which relate to the application and which enable the precise determination and quantification of the adjustments to be made;

d) The acceptance, by the competent authorities of the other State, of the opening of the consultation process to deal with the matter in the framework of the friendly procedure or arbitration procedure, where applicable.

2. The decision on the request for review shall be communicated to the taxable person, in accordance with the law.

## **Article 28**

### **Adjustment procedure**

1. For the purposes of Article 25 of these Regulations, where the tax administration, following a review of the taxable situation of the taxable person and the consultations established with the competent tax authorities of the other State,

in the light of the applicable procedures, to consider, in whole or in part, the corrections made by them, either on the basis of which they were based or on the amount, and, after the administrative or judicial decision has been taken, in respect of those corrections, it must be concluded within 120 days from the

date of the agreement reached with the authorities of the other State that the appropriate correlative adjustment is appropriate in determining the taxable income of the taxable person.

2. The adjustment to be made in determining the taxable income of the taxable person shall relate to the year or years in which the related transactions which are subject to the corrections are reflected in the taxable profit, so that double taxation of the adjusted profits can be eliminated.

3. The decision on the adjustment shall be notified to the taxable person in accordance with the law.

## **CHAPTER VI**

### **Special provisions**

#### **Article 29**

##### **Entities covered by differentiated tax regimes**

1. In accordance with Article 7 (8), the principle set out in Article 4 (1), both of these Rules, shall also be observed, mutatis mutandis, by persons engaged in both subject and non-subject activities to the general regime of Corporate Income Tax.

2. With regard to the situation referred to in the preceding paragraph, where there are deviations in the allocation of the positive and negative components of taxable income between activities subject to differentiated tax regimes, the tax administration may make such corrections as may be necessary to eliminate such deviations.

## **ANNEXES**

## **GLOSSARY**

For the purposes of this Regime, the following definitions shall apply:

a) Associate - entity bound by common interests to one or more persons;

(b) Commodities - commodities of primary origin, traded in commodity exchanges in the raw state or with a small degree of industrialization, of uniform quality produced and marketed in large quantities from a global point of view; among which are:

i. Aluminum and articles thereof - (HS 76);

ii. Coal - (HS 27.01 to 27.04); iii. Copper and articles thereof - (HS 74); iv. Tin and articles thereof - (HS 80);

v. Cast iron, 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 semi-manufactured forms, or in powder form (HS 71);
  - ix. Oil - (SH 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 - the power to manage the financial and operational policies of an entity or an economic activity in order to benefit from it;
- d) Joint Control - an act whereby independent entities jointly exercise the management of a common entity or interest, in the form of jointly controlled control sharing of strategic, financial and operational decisions of an economic activity;
- e) Joint venture - strategic model of commercial partnership or alliance between companies, ranging from a simple collaboration for commercial and / or technological purposes, until the 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 - that which is linked to the taxable person, by virtue of special relations;
- 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 can be obtained by possession of shares, status or agreement;
- h) Interposed person - someone to whom the interests do not belong, but who practices a legal act in the place and subordinated to the orientations of the holders of those interests;
- i) Individual members of the Family - 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. They may include:
- i. The spouse or person with similar affective relationship and the children of the individual;
  - ii. Sons of the spouse or of a person with an affective relationship;
  - iii. Dependent on the individual, spouse or person with similar affective relationship.
- j) Transactions - internal and external commercial and financial transactions, including those relating to tangible or intangible goods, rights or services, even if carried out within the framework of any agreement, including cost sharing and service provision, within the group or a change in the business structure in particular, where it involves the transfer of tangible assets or compensation for consequential damages or loss of profits;
- k) Tied operation - carried out between related entities;
- l) Non-linked transaction - carried out between independent entities;

m) Related parties - entities between which there are special relationships, in situations where one has the power to exercise, directly or indirectly, a significant influence on the management decisions of the other;

n) Key management personnel - persons having authority and responsibility for the planning, direction and control of the entity's activities, directly or indirectly, including any director of that entity;

o) A comparable price - that between independent entities involved in transactions comparable to the related transactions;

p) Transfer price - that practiced in commercial operations, including financial transactions, involving related entities;

q) Special relationship - that which exists between two entities in situations in which one has the power to exercise, directly or indirectly, a significant influence on the management decisions of the other.