

GOVERNMENT OF ZAMBIA

STATUTORY INSTRUMENT NO. 20 OF 2000

**The Income Tax Act**  
(Laws, Volume 19, Cap. 323)

**The Income Tax (Transfer Pricing) Regulations, 2000**

IN EXERCISE of the powers contained in subsections (4) and (6) of section *ninety-seven C* and section *ninety-seven D* of the Income Tax Act, the following Regulations are hereby made:

- |  |   |
|--|---|
| 1. These Regulations may be cited as the Income Tax (Transfer Pricing) Regulations, 2000.  | Title   |
| 2. In these Regulations, unless the context otherwise requires—<br>“Appeals Regulations” means the Revenue Appeals Tribunal Regulations, 1998; and<br>“unit trust” has the meaning assigned to it by section <i>seventy-two</i> of the Securities Act.   | Interpretation<br>S.I. No. 143<br>of 1998<br><br>Cap. 354 |
| 3. (1) In subsection (3) of section <i>ninety-seven C</i> and in this regulation, any reference to an arrangement or agreement includes a reference—<br>(a) to a transaction, an understanding and mutual practice; and<br>(b) to an arrangement or agreement whether or not it is, or is intended to be, legally enforceable.<br><br>(2) For the purposes of subsection (3) of section <i>ninety-seven C</i> , a series of arrangements shall not be prevented from being regarded as a series of arrangements by means of which conditions have been made or imposed as between any two persons by reason of either or both of the following matters:<br>(a) that there is no arrangement in the series to which both those persons are parties; and<br>(b) that there is one or more arrangements in the series to which neither of those persons is a party. | Provisions supplementary to section 97C (3)               |

---

*Copies of this Statutory Instrument can be obtained from the Government Printer,  
P. O. Box 30136, 10101, Lusaka. Price K2,000 each.*

Participation  
in manage-  
ment, control  
or capital of  
person

4. For the purposes of section *ninety-seven C*, a person participates directly or indirectly in the management, control or capital of a second person at a particular time if, and only if, the first person is at that time—

(a) a direct participant in the second person within the meaning of regulation 5; or

(b) an indirect participant in the second person within the meaning of regulation 6 or 7.

Direct  
participants

5. (1) A person is a direct participant in a second person at any time if at that time that second person is a body corporate or partnership controlled by the first person.

(2) For the purposes of sub-regulation (1) “control”—

(a) in relation to a body corporate, means the power of a person to secure—

(i) by means of the holding of shares or the possession of voting power in or in relation to that or any other body corporate; or

(ii) by virtue of any powers conferred by the articles of association or other document regulating that or any other body corporate;

that the affairs of the first-mentioned body corporate are conducted in accordance with the wishes of that person; and

(b) in relation to a partnership, means the right to a share of more than one-half of the assets, or of more than one-half of the income, of the partnership.

Indirect  
participants

6. (1) A person is an indirect participant in a second person at a particular time if the first person would be taken to be a direct participant in the second person at that time if the rights and powers attributed to the first person included all the rights and powers specified in sub-regulation (2).

(2) The rights and powers to be attributed as specified in sub-regulation (1) to a person, in this regulation referred to as the potential participant, are—

(a) rights and powers which the potential participant—

(i) is entitled to acquire at a future date; or

(ii) will, at a future date, become entitled to acquire;

(b) rights and powers of other persons to the extent that they are rights or powers in accordance with sub-regulation (3);

(c) rights and powers of any other person with whom the potential participant is connected; and

(d) rights and powers which for the purpose of sub-regulation (1) would be attributed to another person with whom the potential participant is connected, if that connected person were himself the potential participant.

(3) For the purpose of sub-regulation (2) the rights and powers of any person are in accordance with this regulation to the extent that—

(a) they are required, or may be required, to be exercised on behalf of, under the direction of, or for the benefit of, the potential participant; and

(b) where a loan has been made by one person to another they are not confined to rights and powers conferred in relation to property of the borrower by the terms of any security relating to the loan.

(4) In paragraphs (b) to (d) of sub-regulation (2) and sub-regulation (3), the references to a person's rights and powers include references to any rights or powers which the person—

(a) is entitled to acquire at a future date; or

(b) will, at a future date, become entitled to acquire.

(5) In paragraph (d) of sub-regulation (2), the reference to rights and powers which would be attributed to a connected person if the connected person were the indirect participant includes a reference to rights and powers which, by applying that sub-regulation wherever one person is connected with another, would be so attributed to the connected person through a number of persons each of whom is connected with at least one of the others.

7. (1) A person is an indirect participant in a second person at a particular time if the first person is, at that time, a major participant in the second person, in this regulation referred to as the subordinate, and the subordinate is a body corporate or partnership.

Major  
participants

(2) For the purposes of this regulation a person is a major participant in the subordinate at a particular time if at that time—

(a) that person together with another person controls the subordinate; and

- (b) those two persons each has interests, rights and powers representing at least forty per cent of the holdings, rights and powers in respect of which they, taken together, control the subordinate:

Provided that any question whether paragraph (a) or (b) is satisfied for any two persons shall be determined after attributing to each of the persons all the rights and powers attributed to an indirect participant for the purposes of sub-regulation (1) of regulation 6.

- (3) For the purposes of sub-regulation (2) "control" has the meaning assigned to it in regulation 5.

Meaning of  
"connected  
person" and  
other  
expressions

8. (1) For the purposes of regulation 6, two persons are connected with each other if—

(a) one of them is an individual and the other is that person's spouse, a relative of that person or of that person's spouse, or the spouse of such a relative; or

(b) one of them is a trustee of a settlement and the other is—

(i) a person who in relation to that settlement is a settlor; or

(ii) a person who is connected with a person falling within sub-paragraph (i).

- (2) For the purposes of sub-regulation (1)—

"relative" means a brother, sister, ancestor or lineal descendant; and

"settlement" and "settlor" have the meaning assigned to them in section ~~nineteen~~ nineteen disregarding paragraph (ii) of that section;

- (3) References in regulations 4 to 7—

(a) to rights and powers of a person; or

(b) to rights and powers which a person is or will become entitled to acquire.

include references to rights or powers which are exercisable by that person, or when acquired by that person will be exercisable, only jointly with one or more other persons.

- (4) Regulations 4 to 7, and this regulation shall be effect as if—

(a) a unit trust were a company that is a body corporate;

(b) the rights of the participants in the unit trust were shares in the company that the trust is deemed to be;

- (c) rights and powers of a person in the capacity of a person entitled to act for the purposes of the unit trust were rights and powers of the unit trust; and
- (d) provision made or imposed as between any person in such a capacity and another person were made or imposed as between the unit trust and that other person.

9 (1) This regulation applies where a person, in this regulation referred to as "the appellant", appeals against an assessment to the Revenue Appeals Tribunal and the ground or one of the grounds of the appeal relates to the question whether section *ninety-seven A* applies in relation to any computation relevant to the assessment or whether any computation has been made in accordance with that section, and in this regulation that computation is referred to as the relevant computation.

Joinder of  
second  
taxpayer in  
certain  
appeals

(2) Where the appellant is the first taxpayer in relation to the relevant computation, the person who is the second taxpayer in relation to that computation may be joined as a party to the appeal.

(3) For the purposes of this regulation any reference to the first taxpayer or the second taxpayer shall be construed in accordance with section *ninety-seven A*.

(4) Where the grounds of appeal or one of them is that subsection (2) of section *ninety-seven A* does not apply in relation to the relevant computation, subsection (2) of section *ninety-seven A* shall be deemed to apply in determining whether any person is the first taxpayer or second taxpayer in relation to that computation for the purposes of this regulation, but not for the purposes of any appeal.

(5) A second taxpayer shall only be joined as a party to an appeal, so far as the appeal concerns the computation in relation to which that person is the second taxpayer, if that person gives notice, referred to in this regulation as a joinder notice, complying with sub-regulations (8) and (9) within thirty days of the date on which the appellant gave notice of appeal to the Registrar of the Revenue Appeals Tribunal.

(6) The second taxpayer shall give a copy of the joinder notice to the Commissioner-General and to the appellant within seven days of the date the notice is given to the Registrar.

(7) The Appeals Regulations shall apply to a joinder notice or a notice purporting to be a joinder notice and to the second taxpayer as they apply in relation to a notice of appeal lodged or purporting to be lodged in accordance with regulation 6 of the Appeals

Regulations and to the appellant, however described, subject to the following provisions:

- (a) regulation 6 of the Appeals Regulations shall not apply;
- (b) the Registrar shall not be required to copy the joinder notice to the Commissioner-General under sub-regulation (1) of regulation 7 of the Appeals Regulations;
- (c) regulation 12 of the Appeals Regulations shall apply to the copy of the joinder notice required by sub-regulation (6) in addition to the joinder notice itself;
- (d) where the appellant has appealed against the assessment on more than one ground—
  - (i) sub-regulation (1) of regulation 8 of the Appeals Regulations shall apply in relation to the second taxpayer's joinder notice separately from its application to the appellant's appeal so that the Commissioner-General shall lodge, in accordance with sub-regulation (1) or regulation 8, a separate statement of case in response to the joinder notice;
  - (ii) the Commissioner-General and the first taxpayer may produce a separate list of documents to the Registrar for the purposes of sub-regulation (1) of regulation 10 of the Appeals Regulations within seven days of being given the second taxpayer's joinder notice, and where such a list is produced, the Registrar shall copy that list, instead of the other list, to the second taxpayer in accordance with sub-regulation (2) of Regulation 10.

(8) A joinder notice given by a person complies with this sub-regulation if—

- (a) it states the name and address of that person;
- (b) it identifies the appellant in the appeal to which that person wishes to be joined;
- (c) it identifies the assessment and the computation in relation to which that person is the second taxpayer; and
- (d) it states the grounds on which the second taxpayer appeals against the assessment, so far as the assessment relates to that computation.

(9) For the purposes of paragraph (a) of sub-regulation (8) the address to be given by the second taxpayer is—

(a) if the second taxpayer carries on a business—

(i) the address of the second taxpayer's principal place of business in Zambia; or

(ii) if there is no such place, the address of the second taxpayer's principal place of business outside Zambia; or

(b) if the second taxpayer does not carry on a business—

(i) the address of the second taxpayer's only or main residence in Zambia; or

(ii) if there is no such place, the address of the second taxpayer's only or main residence outside Zambia;

and if sub-paragraph (ii) of paragraph (a) or sub-paragraph (ii) of paragraph (b) applies, the joinder notice shall include the name of a person by whom and an address at which service of documents may be effected in Zambia for the purposes of the appeal.

LUSAKA

7th February, 2000

[MFB. 103/12/1]

DR K. KALUMBA,

*Minister of Finance and Economic  
Development*

