

GOVERNMENT OF ZAMBIA

STATUTORY INSTRUMENT NO. 117 OF 2020

The Income Tax Act

(Laws, Volume 19, Cap. 323)

The Income Tax (Transfer Pricing) (Amendment) Regulations, 2020

IN EXERCISE of the powers contained in sections 97C and 97D of the Income Tax Act, the following Regulations are made:

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| <p>1. (1) These Regulations may be cited as the Income Tax (Transfer Pricing) (Amendment) Regulations, 2020, and shall be read as one with the Income Tax (Transfer Pricing) Regulations, 2000, in these Regulations referred to as the principal Regulations.</p> | <p>Title and commencement</p> <p>S.I No. 20 of 2000</p> |
| <p>(2) These Regulations shall come into operation on 1st January, 2021, and shall have effect in relation to the charge of tax for the charge year ending on 31st December, 2021, and to each subsequent charge year.</p> | |
| <p>2. Regulation 21(2) of the principal Regulations is amended by the deletion of the word “twenty” and the substitution therefor of the word “fifty”.</p> | <p>Amendment of Regulation 21</p> |
| <p>3. The principal Regulations are amended by the insertion of the following new Regulation immediately after Regulation 22:</p> | <p>Insertion of new Regulation 22A</p> |
| <p>22A. (1) For the purposes of this Regulation, unless the context otherwise requires:</p> <p>“accounting year” means an annual accounting period with respect to which the ultimate parent entity of the multi national enterprise group prepares its financial statements;</p> <p>“consolidated financial statements” means the financial statements of a multi-national enterprise group in which the assets, liabilities, income, expenses and cash flows of the ultimate parent entity and the constituent entities are presented as those of a single economic entity;</p> | <p>Submission of country-by-country report</p> |

“constituent entity” means—

- (a) a separate business unit of a multi-national enterprise group that is included in consolidated financial statements of a multi-national enterprise group for financial reporting purposes, or would be included if equity interests in the business unit of a multi-national enterprise group are traded on a public securities exchange;
- (b) a business unit that is excluded from the multi-national enterprise group’s consolidated financial statements solely on grounds of size or materiality; and
- (c) a permanent establishment of a separate business unit of a multi-national enterprise group included in paragraph (a) or (b) provided the business unit prepares a separate financial statement for that permanent establishment for financial reporting, regulatory, tax reporting, or internal management control purposes;

“excluded multi-national enterprise group” means, with respect to an accounting year of the group, a group having a total consolidated group revenue of less than seven hundred and fifty million Euros or four thousand seven hundred and ninety-five million Kwacha during the accounting year immediately preceding the reporting accounting year as reflected in the group’s consolidated financial statements for the preceding accounting year;

“group” means a collection of enterprises related through ownership or control that are required to prepare consolidated financial statements for financial reporting purposes under applicable accounting principles, or to prepare a consolidated financial statement if equity interests in any of the enterprises were traded on a public securities exchange;

“international agreement” shall mean the Multilateral Agreement for Mutual Administrative Assistance in tax matters, any bilateral or multilateral tax agreement, or any tax information exchange agreement to which the Republic is a party, and that by its terms provides legal authority for the exchange of tax information between States, including the automatic exchange of that information;

“multi-national enterprise group” means a group of associated business entities established in two or more States that is not an excluded multi-national enterprise group and includes an enterprise that is resident for tax purposes in one State and is subject to tax with respect to the business carried out through a permanent establishment in another State;

“qualifying competent authority agreement” means an agreement that—

- (a) is between authorised representatives of those States that are parties to an international agreement; and
- (b) requires the automatic exchange of country-by-country reports between the party’s States;

“reporting accounting year” means an accounting year whose financial and operational results are reflected in the country-by-country report in accordance with sub-regulation (3);

“reporting entity” means a constituent entity that is required to file a country-by-country report in a constituent entity’s State of tax residence on behalf of a multi-national enterprise group under sub-regulations (3) and (4) and includes an ultimate parent entity, a surrogate parent entity, or an entity described in sub-regulation (5);

“surrogate parent entity” means one constituent entity of the multi-national enterprise group that is appointed by a multi-national enterprise group as a sole substitute for the ultimate parent entity, to file a country-by-country report in that constituent entity’s State of tax residence, on behalf of the multi-national enterprise group, when one or more of the conditions set out in sub-regulation (5)(b) is applied;

“systemic failure” in relation to a qualifying competent authority agreement between a State and the Republic, means—

- (a) the suspension by the State of the automatic exchange of information for reasons other than those in the agreement; or
- (b) continued failure by the State to automatically submit to the Republic country-by-country reports; and

“ultimate parent entity” means a constituent entity of a multi-national enterprise group that meets the following conditions:

- (a) the constituent entity directly or indirectly owns a sufficient interest in one or more of the constituent entities of the multi-national enterprise group and it is required to prepare consolidated financial statements under accounting principles generally applied in the constituent entity’s State of tax residence, or would be required if constituent entity’s equity interests were traded on a public securities exchange in the constituent entity’s State of tax residence; and
- (b) there is no other constituent entity of that multi-national enterprise group that directly or indirectly owns an interest described in paragraph (a).

(2) An ultimate parent entity of a multi-national enterprise group that is resident for tax purposes in the Republic with an annual consolidated group revenue exceeding seven hundred and fifty million Euros or four thousand, seven hundred and ninety-five million Kwacha in the immediately preceding accounting year shall file a country-by-country report with the Commissioner-General with respect to its reporting accounting year on or before the date specified in subregulation (10).

(3) For the purposes of this regulation, a country-by-country report with respect to a multi-national enterprise group shall contain—

- (a) aggregate information with regard to each State in which the multi-national enterprise group operates relating to—
 - (i) revenue;
 - (ii) profit or loss before income tax;
 - (iii) income tax paid;
 - (iv) income tax accrued;
 - (v) stated capital;
 - (vi) accumulated earnings;
 - (vii) number of employees; and
 - (viii) tangible assets other than cash or cash equivalents; and

(b) an identification of each constituent entity of the multi-national enterprise group setting out the State of tax residence of the constituent entity, and where different from the State of tax residence, the State under the laws of which the constituent entity is organised, and the nature of the main business activity or activities of the constituent entity.

(4) The standard template of a country-by-country report shall be in the Form set out in the Schedule.

(5) A constituent entity which is not an ultimate parent entity of a multi-national enterprise group shall file a country-by-country report in accordance with sub-regulations (3) and (4) with the Commissioner-General with respect to the reporting accounting year of a multi-national enterprise group of which it is a constituent entity, on or before the date specified under subregulation (10), if the following conditions are satisfied:

(a) the entity is resident for tax purposes in the Republic;
and

(b) one of the following conditions applies:

(i) the ultimate parent entity of the multi-national enterprise group is not obligated to file a country-by-country report in its State of tax residence;

(ii) the State in which the ultimate parent entity is resident for tax purposes has a current international agreement with the Republic but does not have a qualifying competent authority agreement with the Republic at the time specified in sub-regulation (10) for filing the country-by-country report for the reporting accounting year; or

(iii) there is a system failure in the State of tax residence of the ultimate parent entity and the Commissioner-General notifies the constituent entity resident for tax purposes in the Republic.

(6) Where there is more than one constituent entity of the same multi-national enterprise group that is resident for tax purposes in the Republic and one or more of the conditions set out in sub-regulation (5)(b) applies the multi-national enterprise group may—

- (a) designate one of the constituent entities to file with the Commissioner-General the country-by-country report in accordance with sub-regulations (3) and (4) relating to a reporting accounting year on or before the date specified in sub-regulation (9); and
- (b) notify the Commissioner-General that the filing is intended to satisfy the filing requirement of the constituent entities of the multi-national enterprise group that is resident in the Republic for tax purposes.

(7) Despite the provisions of sub-regulation (6), when one or more of the conditions set out in sub-regulation (5)(b) applies, an entity described in sub-regulation (6) shall not be required to file a country-by-country report with the Commissioner-General with respect to a reporting accounting year if the multi-national enterprise group of which it is a constituent entity has made available a country-by-country report with respect to that accounting year through a surrogate parent entity that files that country-by-country report with the tax authority of its State of tax residence on or before the date specified in sub-regulation (10) and that satisfies the following conditions:

- (a) the State of tax residence of the surrogate parent entity requires the filing of a country-by-country report in accordance with sub-regulations (3) and (4);
- (b) the State of tax residence of the surrogate parent entity has a qualifying competent authority agreement with the Republic by the time specified in sub-regulation(10) for filing the country-by-country report for the reporting accounting year;
- (c) the State of tax residence of the surrogate parent entity notifies the Commissioner-General of a system failure;
- (d) the State of tax residence of the surrogate parent entity notifies the Commissioner-General in accordance with sub-regulation (8) by the constituent entity resident for tax purposes in its State that it is the surrogate parent entity; and
- (e) the Commissioner-General is notified in accordance with sub-regulation (9).

(8) A constituent entity of a multi-national enterprise group that is resident for tax purposes, in the Republic shall notify the Commissioner-General whether it is the ultimate parent entity or the surrogate parent entity, no later than the last day of the reporting accounting year of the multi-national enterprise group.

(9) Where a constituent entity of a multi-national enterprise group that is resident for tax purposes, in the Republic is not the ultimate parent entity or the surrogate parent entity, the constituent entity shall notify the Commissioner-General of the identity and tax residence of the reporting entity, no later than the last day of the reporting accounting year of the multi-national enterprise group.

(10) A country-by-country report required by these Regulations shall be filed no later than twelve months after the last day of the reporting accounting year of the multi-national enterprise group.

(11) The Commissioner-General shall use the country-by-country report for the purposes of—

- (a) assessing high-level transfer pricing risks and other base erosion and profit shifting related risks in the Republic;
- (b) assessing the risk of non-compliance by members of the multi-national enterprise group with applicable transfer pricing rules; and
- (c) where appropriate, economic and statistical analysis.

(12) Despite subregulation (11), transfer pricing adjustments by the Commissioner-General shall not be based on the country-by-country report.

(13) The Commissioner-General shall preserve the confidentiality of the information contained in the country-by-country report to the same extent that would apply if the information were provided to the Commissioner-General under the provisions of the Multilateral Convention on Mutual Administrative Assistance in Tax Matters.

4. The principal Regulations are amended by the insertion of the new Schedule immediately after regulation 23, set out in the Appendix.

Insertion of
new Schedule

DR B. K. E. NG'ANDU,
Minister of Finance

LUSAKA

30th December, 2020

[MFB/64/9/4C]

