

(5) Every person who engages in a transaction to which subsection (1) or (4) applies shall keep the documentation prescribed in the Thirty-Fifth Schedule to enable the Commissioner-General to ascertain whether a transaction was conducted in accordance with the arm's length principle.

(6) The Minister, after consultation with the Commissioner-General, may by notice in a statutory instrument amend or replace the Thirty-Fifth Schedule.

(7) When the Minister wishes to amend or substitute the Thirty-Fifth Schedule the Minister shall lay the draft statutory instrument amending or substituting the Thirty-Fifth Schedule before the House of Assembly, and if the House makes no resolution against the publication of the statutory instrument within the next seven sitting days after it is so laid before the House, the Minister shall cause it to be published in the *Gazette*."

5 Amendment of Third Schedule to Cap. 23:06

The Third Schedule ("Exemptions from Income Tax") to the Income Tax Act [Chapter 23:06] is amended—

(a) in paragraph 1 with effect from the 1st January, 2016, by the insertion of the following subparagraph after subparagraph (e)—

"(f) the wholly owned company of the Reserve Bank of Zimbabwe called the Zimbabwe Asset Management Corporation (Private) Limited (ZAMCO), incorporated in terms of the Companies Act [Chapter 24:03] on the 15th July, 2014."

(b) in paragraph 4 (p) by the deletion of "under a scheme approved by the Minister responsible for Labour or the Public Service";

(c) in paragraph 6 by the insertion of the following subparagraph after subparagraph (h)—

"(h1) an amount referred to in section 8(1)(r) that is received by a person who has not attained the age of fifty-five years before the commencement of the year of assessment, to the extent of the first ten thousand United States dollars or one third of such amount, whichever is the greater, of the amount of any pension commutation or annuity, which is paid to an employee on the cessation of his or her employment, where his or her employment has ceased due to retrenchment:

Provided that the exemption in this subparagraph shall apply only in respect of the first sixty thousand United States dollars of any deemed pension or annuity payable to him or her in any one year of assessment."

(d) in paragraph 10 by the insertion of the following paragraph after paragraph (q)—

"(r) deposits with a tenure of more than twelve months."

6 New Schedule inserted in Cap. 23:06

With effect from the 1st January, 2016, the Income Tax Act [Chapter 23:06] is amended by the insertion of the following Schedule—

“THIRTY-FIFTH SCHEDULE (Section 98B)

TRANSFER PRICING

Interpretation

1. In this Schedule—

“comparable transaction” means a transaction that is comparable 5
by reference to paragraph 4;

“uncontrolled transaction” means any transaction between
independent persons;

Arm’s length principle

2. The determination of whether the conditions of a controlled 10
transaction are consistent with the arm’s length principle for the purposes
of section 98B shall be made by the Commissioner-General in accordance
with this Schedule.

Comparability

3. (1) An uncontrolled transaction is comparable to a controlled 15
transaction within the meaning of section 98B(1)—

(a) when there are no differences between them that could
materially affect the financial indicator being examined
under the appropriate transfer pricing method; or

(b) when such differences exist, if a reasonably accurate 20
comparability adjustment is made to the relevant financial
indicator of the uncontrolled transaction in order to eliminate
the effects of such differences on the comparison.

(2) To determine whether two or more transactions are comparable,
the following factors shall be considered to the extent that they are 25
economically relevant to the facts and circumstances of the transactions—

(a) the characteristics of the property or services transferred;
and

(b) the functions undertaken by each person with respect to
the transactions, taking into account assets used and risks 30
assumed; and

(c) the contractual terms of the transactions; and

(d) the economic circumstances in which the transactions take
place; and

(e) the business strategies pursued by each of the associated 35
persons in relation to the transactions.

Transfer pricing

4. (1) The arm’s length remuneration of a controlled transaction shall
be determined by applying the most appropriate transfer pricing method 40
to the circumstances of the case.

(2) The most appropriate transfer pricing method shall be selected
from among the approved transfer pricing methods set out in paragraph
5(5), taking into consideration the following criteria—

(a) the respective strengths and weaknesses of the approved
methods; and 45

(b) the appropriateness of an approved method in view of the
nature of the controlled transaction, determined in particular

through an analysis of the functions undertaken by each person in the controlled transaction, taking into account assets used and risks assumed; and

- (c) the availability of reliable information needed to apply the selected transfer pricing method or other methods; and
- (d) the degree of comparability between the controlled and uncontrolled transactions, including the reliability of comparability adjustments, if any, that may be required to eliminate differences between them.

(3) It shall not be necessary to apply more than one method to determine whether the conditions of a given controlled transaction are consistent with the arm's length principle.

(4) Where a taxpayer has used an approved transfer pricing method and the selection of that method is consistent with this regulation, the examination by the Commissioner of whether the conditions of the taxpayer's controlled transactions are consistent with the arm's length principle shall be based on that transfer pricing method applied by the taxpayer.

(5) The following shall be the approved transfer pricing methods for purposes of paragraph 5(1)—

- (a) the Comparable Uncontrolled Price Method, which is the comparable uncontrolled price method consisting of comparing the price charged for property or services transferred in a controlled transaction to the price charged for property or services transferred in a comparable uncontrolled transaction; and
- (b) the Resale Price Method, which is the resale price method consisting of comparing the resale margin that a purchaser of property in a controlled transaction earns from reselling that property in an uncontrolled transaction with the resale margin that is earned in comparable uncontrolled purchase and resale transactions; and
- (c) the Cost Plus Method, which is the cost plus method consisting of comparing the mark up on those costs directly and indirectly incurred in the supply of property or services in a controlled transaction with the mark up on those costs directly and indirectly incurred in the supply of property or services in a comparable uncontrolled transaction; and
- (d) the Transactional Net Margin Method, which is the transactional net margin method consisting of comparing the net profit margin relative to an appropriate base, such as costs, sales or assets, that a person achieves in a controlled transaction with the net profit margin relative to the same base achieved in comparable uncontrolled transactions; and
- (e) the Transactional Net Margin Method, which is the transactional net margin method consisting of comparing the net profit margin relative to an appropriate base, such as costs, sales or assets, that a person achieves in a controlled transaction with the net profit margin relative to the same base achieved in comparable uncontrolled transactions; and

(f) the Transactional Profit Split Method, which is the transactional profit split method consisting of allocating to each associated person participating in a controlled transaction the portion of common profit (or loss) derived from such transaction that an independent person would expect to earn from engaging in a comparable uncontrolled transaction. When it is possible to determine an arm's length remuneration for some of the functions performed by the associated persons in connection with the transaction using one of the approved methods described in paragraph 5(5)(a) to (d), the transactional profit split method shall be applied based on the common residual profit that results once such functions are so remunerated.

(6) Where, taking account of the criteria described in paragraph 5(3), a comparable uncontrolled price method described in paragraph 5(5)(a) and an approved method described in paragraph 5(5)(b) to (e) can be applied with equal reliability, the determination of arm's length conditions shall be made using the comparable uncontrolled price method.

(7) Where, taking account of the criteria described in paragraph 5(3), an approved method described in paragraph 5(5)(a) to (c) and an approved method described in paragraph 5(5)(d) to (e) can be applied with equal reliability, the determination of arm's length conditions shall be made using the method described in paragraph 5(5)(a) to (c).

(8) It shall not be necessary to apply more than one method to determine the arm's length remuneration for a given controlled transaction.

(9) A transfer pricing method other than the approved methods contained in paragraph 5(5) may be applied where the Commissioner is satisfied that—

- (a) none of the approved methods can be reasonably applied to determine arm's length conditions for the controlled transaction; and
- (b) such other method yields a result consistent with that which would be achieved by independent persons engaging in comparable uncontrolled transactions under comparable circumstances.

(10) When a method other than the approved methods contained in paragraph 5(5) is used it shall establish that the requirements of this paragraph 5(9) have been satisfied.

(11) When applying a cost plus, resale price or transactional net margin method, provided under paragraph 5, it shall be necessary to select the party, hereinafter referred to as the "tested party", to the transaction for which a financial indicator, mark-up on costs, gross margin, or net profit indicator, is tested under the applicable transfer pricing method.

(12) The selection of the tested party should be consistent with the functional analysis of the transaction.

(13) Where a taxpayer has used a transfer pricing method to establish the remuneration of its controlled transactions and that transfer pricing method is consistent with the provisions of this paragraph 5, then

the tax administration's examination of whether the conditions of the taxpayer's controlled transactions are consistent with the arm's length principle shall be based on the transfer pricing method applied by the taxpayer.

5 *Evaluation of taxpayer's combined controlled transactions*

5. If a taxpayer carries out, under the same or similar circumstances, two or more controlled transactions that are economically closely linked to one another or that form a continuum such that they cannot reliably be analysed separately, those transactions may be combined to (i) perform
10 the comparability analysis set out in paragraph 4 and (ii) apply the transfer pricing methods set out in paragraph 5.

Arm's length range

6. (1) An arm's length range is a range of relevant financial indicator figures (e.g. prices, margins or profit shares) produced by the application
15 of the most appropriate transfer pricing method as set out in paragraph 5 to a number of uncontrolled transactions, each of which is relatively equally comparable to the controlled transaction based on a comparability analysis conducted in accordance with paragraph 4.

(2) A controlled transaction, or a set of transactions that are
20 combined according to paragraph 6 shall not be subject to an adjustment under section 98B where the relevant financial indicator derived from the controlled transaction or set of transactions and being tested under the appropriate transfer pricing method is within the arm's length range.

(3) Where the relevant financial indicator derived from a controlled
25 transaction, or from a set of transactions that are combined according to paragraph 6, falls outside the arm's length range, the Commissioner may adjust it pursuant to section 98B(1), and any such adjustment shall be to the median in the arm's length range.

(4) For the purposes of subparagraph (3), the median of the arm's
30 length range shall be the 50th percentile of the financial indicator figures derived from the comparable uncontrolled transactions forming the arm's length range. For this purpose, the 50th percentile is the lowest financial indicator figure such that at least 50 percent of the financial indicator figures are at or below the value of that figure. However, if exactly 50
35 percent of the results are at or below a financial indicator figure, then the 50th percentile is equal to the arithmetic mean of that figure and the next highest figure.

Sources of information on comparable uncontrolled transactions

7. (1) Possible sources of information on comparable uncontrolled
40 transactions that may include—

- (a) internal uncontrolled transactions, which are uncontrolled transactions where one of the parties to the controlled transaction is also a party to the uncontrolled transaction; and
45 (b) external uncontrolled transactions, which are uncontrolled transactions to which neither of the parties to the controlled transaction is a party.

(2) Information concerning a comparable external uncontrolled transaction may not be relied upon by the Commissioner for the purposes of making an adjustment under section 98B of the Income Tax Act if the information concerning the transaction is not available to the taxpayer.

(3) Information concerning a comparable uncontrolled transaction may not be relied upon by the taxpayer for the purposes of demonstrating the consistency a transaction with section 98B of the Income Tax Act if the information on the transaction is not available to the Commissioner.

(4) In the absence of information on uncontrolled transactions from the same geographic market as the controlled transaction, comparable uncontrolled transactions from other geographic markets may be accepted by the Commissioner.

(5) A determination of whether comparables from other geographic markets are reliable has to be made on a case-by-case basis, and by reference to the extent to which they satisfy paragraph 4 of this Schedule.

(6) Taxpayers using such comparables would be expected to assess the expected impact of geographic differences and other factors on the price and profitability.

Services between associated enterprises

8. (1) A service charge between a taxpayer and an associated person shall be considered consistent with the arm's length principle where—

- (a) it is charged for a service that is actually rendered; and
- (b) the service provides, or when rendered was expected to provide, the recipient with economic or commercial value to enhance its commercial position; and
- (c) it is charged for a service that an independent enterprise in comparable circumstances would have been willing to pay for if performed for it by an independent enterprise, or would have performed in-house for itself; and
- (d) its amount corresponds to that which would have been agreed between independent enterprises for comparable services in comparable circumstances.

(2) A service charge made to a person shall not be consistent with the arm's length principle where it is made by an associated person solely because of the shareholder's ownership interest in one or more other group members, including for any of the following costs incurred or activities undertaken by such associated person—

- (a) costs or activities relating to the juridical structure of the parent company of the first-mentioned person, such as meetings of shareholders of the parent, issuing of shares in the parent company and costs of the parent company's supervisory board; and
- (b) costs or activities relating to reporting requirements of the parent company of the first-mentioned person, including the consolidation of reports; and
- (c) costs or activities related to raising funds for the acquisition of participations, unless those participations are directly

or indirectly acquired by the first-mentioned person and the acquisition benefits or is expected to benefit that first-mentioned person.

5 (3) Where it is possible to identify specific services provided by a taxpayer to a associated person, the determination whether the service charge is consistent with the arm's length principle shall be made for each specific service, subject to the provisions of paragraph 8(4).

10 (4) Where services are rendered by a taxpayer jointly to various associated persons and it is not possible to identify specific services provided to each of them, the total service charge shall be allocated among the associated persons that benefit or expect to benefit from the services according to reasonable allocation criteria.

15 (5) For the purpose of this sub-regulation, allocation criteria shall be viewed as reasonable where they are based on a variable or variables that—

- 20 (a) take into account the nature of the services, the circumstances under which they are provided and the benefits obtained or that were expected to be obtained by the persons for which the services are intended; and
- (b) relate exclusively to uncontrolled, rather than controlled, transactions; and
- (c) are capable of being measured in a reasonably reliable manner.

Transactions involving intangible property

25 9. (1) The determination of arm's length conditions for controlled transactions involving licenses, sales or other transfers of intangible property between associated persons shall take into account both the perspective of the transferor of the property and the perspective of the transferee, including in particular the pricing at which a comparable independent enterprise would be willing to transfer the property and the value and usefulness of the intangible property to the transferee in its business.

30 (2) In applying the provisions of paragraph 4 to a transaction involving the license, sale or other transfer of intangible property, consideration shall be given to any special factors relevant to the comparability of the controlled and uncontrolled transactions, including—

- 35 (a) the expected benefits from the intangible property; and
- (b) any geographic limitations on the exercise of rights to the intangible property; and
- 40 (c) the exclusive or non-exclusive character of the rights transferred; and
- (d) whether the transferee has the right to participate in further developments of the intangible property by the transferor.

Corresponding adjustments for domestic transactions

45 10. (1) The determination of arm's length conditions for controlled transactions involving licenses, sales or other transfers of intangible property between associated persons shall take into account both the perspective of the transferor of the property

and the perspective of the transferee, including in particular the pricing at which a comparable independent enterprise would be willing to transfer the property and the value and usefulness of the intangible property to the transferee in its business.

(2) In applying the provisions of paragraph 4 to a transaction involving the license, sale or other transfer of intangible property, consideration shall be given to any special factors relevant to the comparability of the controlled and uncontrolled transactions, including—

- (a) the expected benefits from the intangible property; and
- (b) any geographic limitations on the exercise of rights to the intangible property; and
- (c) the exclusive or non-exclusive character of the rights transferred; and
- (d) whether the transferee has the right to participate in further developments of the intangible property by the transferor.

Corresponding adjustments for domestic transactions

11. Where an adjustment is made by the Commissioner under section 98B to the taxable income of a taxpayer in relation to domestic transaction, then, the Tax Authority shall make an appropriate adjustment to the taxable income of the other party to the transaction.

Corresponding adjustments for international transactions

12. (1) A service charge between a taxpayer and an associated person shall be considered consistent with the arm's length principle where—

- (a) an adjustment to the conditions of transactions between a person resident in Zimbabwe and an associated person is made or proposed by a tax administration in a country other than Zimbabwe; and
- (b) this adjustment results in the taxation in that other country of an amount of income on which the person resident in Zimbabwe has already been charged to tax in Zimbabwe; and
- (c) the country making or proposing the adjustment has a treaty with Zimbabwe that reflects an intention to provide for the relief of economic double taxation.

(2) The Commissioner, shall after a request is made by the person resident in Zimbabwe, examine the consistency of that adjustment with the arm's length principle provided for under section 98B, consulting as necessary with the competent authority of the other country.

(3) If the adjustment proposed or made by the other country is consistent with the arm's length principle both in principle and as regards the amount, the Commissioner shall make a corresponding adjustment to the amount of the tax charged in Zimbabwe to that person on those profits, in order to eliminate the economic double taxation that would result from the inclusion of the same profits in the taxable income of both that person and the associated person.

(4) A request under paragraph 11(1) must include the information necessary for the Commissioner to examine the consistency of the adjustment made by the tax administration of the other country with the arm's length principle, including—