

**Decree no. 70/2017  
of the 5<sup>th</sup> of December**

As there is a need to approve the Transfer Pricing law, under the terms of article 49 of the Corporate Tax Code, approved by Act no. 34/2007 of 31<sup>st</sup> of December, changed by Act no. 19/2013 of 23<sup>rd</sup> of September, as provided for in article 204.1.f) of the Constitution of the Republic, the Council of Ministers hereby determines as follows:

Article 1. The attached Transfer Pricing Law, which is an integral part of this Decree, is hereby approved.

Article 2. The Minister responsible for overseeing the Finance area shall establish or change the procedures that may be required to fulfil the obligations arising from this Decree.

Article 3. This Decree comes into force on the 1<sup>st</sup> of January of 2018.

Approved by the Council of Ministers of the 12<sup>th</sup> of September of 2017

May it be published.

The Prime Minister, *Carlos Agostinho do Rosário*.

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**Transfer Pricing Law**

CHAPTER I

**General provisions**

ARTICLE 1

**(Definitions)**

The definition of the terms used in this Law appears in the attached Glossary, which is an integral part thereof.

ARTICLE 2

**(Purpose)**

This Law shall regulate the transfer pricing in force within the framework of the special relations influencing the calculation of the taxable income.

ARTICLE 3

**(Scope of application)**

1. This Law shall apply to Corporate and Personal Income Tax taxable persons, residing or domiciled in Mozambican territory, who conduct transactions with resident or non-resident related parties.
2. The Law mentioned in the previous paragraph shall also apply:
  - a) To a permanent establishment conducting transactions linked to non-resident entities;

- b) To a permanent establishment located in Mozambican territory conducting transactions linked to other permanent establishments of the same entity located outside the territory;
- c) To a resident or non-resident entity with a permanent establishment located in Mozambican territory conducting transactions linked to an entity subject to a tax system that is clearly more favourable, in accordance with the Corporate Income Tax Code;
- d) To transactions made by taxable person domiciled in Mozambican territory, through an intermediary not considered as a related party, operating with another party abroad, considered as a related party to the Mozambican taxable person.

#### ARTICLE 4

##### **(General rules)**

1. In transactions between a Corporate and Personal Income Tax taxable person and any other entity, with which it has special relations, terms and conditions shall be agreed upon, accepted and practiced that are substantially identical to those that would have usually been agreed upon, accepted and practiced between independent entities, in comparable transactions.
2. The application of the forecast set out in paragraph 1 of this article must, as a general rule, be based on an individual analysis of the transactions, except in the situations listed in the following sub-paragraphs, where such analysis may be conducted on an aggregate basis or by sets of transactions, provided they are transactions so closely interlinked or ongoing that their breakdown would lead to loss of functionality or value, or when determining the price for every transaction becomes impracticable, either due to the high associated costs, or to the absence or inadequacy of information on comparable transactions:
  - a) Continued delivery of goods or services;
  - b) Cession of the right of use of intangible elements accompanied by other benefits;
  - c) Fixing prices of goods that show a functional synergy or typological identity, such as those inserted into a product line.

#### ARTICLE 5

##### **(Related party)**

For purposes of determining transfer pricing, a party is related to an entity if:

- a) Directly or indirectly, through one or more intermediaries, the party:
  - i) controls, is controlled by, or is under common control with, the entity (this includes parents, subsidiaries and fellow subsidiaries);
  - ii) has an interest in the entity that gives it significant influence over the entity; or
  - iii) has joint control over the entity.
- b) the party is an associate of the entity or a joint venture in which the entity is a venture;
- c) the party is a member of the key management personnel of the entity or 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 that is controlled, jointly controlled or significantly influenced by, or for which significant voting power vests with, directly or indirectly, any individual referred to in c) or d); or
- f) the party is in a post-employment benefit plan for the benefit of employees of the entity, or of any entity that is a related party of the entity.

## ARTICLE 6

### (Significant influence)

1. For purposes of the provisions of sub-paragraph e) of the previous article, significant influence over management decisions is deemed to exist where, namely, it occurs between:
  - a) An entity and the holders of the respective capital, or their spouses, relatives in the ascending or descending line, hold, directly or indirectly, a shareholding not less than 100% of the capital or of the voting rights;
  - b) Entities where the same capital holders, respective spouses, relatives in the ascending or descending line, hold, directly or indirectly, a shareholding not less than 100% of the capital or of the voting rights;
  - c) An entity and members of its corporate bodies, or of any administrative, managerial, or supervisory bodies, and their respective spouses, ascending and descending relatives;
  - d) Entities where most members of corporate bodies, or members of any administrative, managerial or supervisory bodies, are the same people or, if different people, are interlinked by marriage, life partnership or kinship in a direct line;
  - e) Entities linked by an equal partner or subordinate group agreement or another agreement having equivalent effect;
  - f) Companies in a controlling relationship, under the terms in which it is defined in any legislation establishing the obligation to draw up consolidated financial statements;
  - g) Entities among which, due to trade, financial, professional or legal relations amongst them that have directly or indirectly been established or applied, there are dependency situations in the course of the business activity, namely where any of the following situations arises:
    - i) The pursuit of business of one entity shall largely depend on ceding industrial or intellectual property rights or know-how held by the other entity;
    - ii) The supply of raw materials or the access to sales channels of products, goods or services by one entity shall largely depend on the other entity;
    - iii) A substantial part of the business of one entity may only be carried out with the other entity, or shall depend on the latter's decisions;
    - iv) The right to fix prices or conditions with an equivalent economic effect, pertaining to goods or services traded, provided or purchased by one entity held by the other entity, by imposition of a legal act;
    - v) By the terms and conditions of their business or legal relationship, one entity may condition the management decisions of the other entity, depending on any facts or circumstances outside the business or legal relationship itself.
2. For purposes of identifying the percentage level of an indirect participation in the equity or voting rights that the previous paragraph refers to, in any situations where no specific rules have been laid down, the ownership of shares by one company shall be equivalent, for an amount equal to or higher than 10% of its equity, to the ownership of shares by another company that is directly or indirectly dependent therefrom, or that is in a group relation with such company, and of any shares that a person may be the holder of on behalf of any of those companies.

## ARTICLE 7

**(Adjustment to taxable profit)**

1. Wherever the terms and conditions of a related-party transaction where a taxable person and a non-resident entity in Mozambican territory are involved differ from those that would usually be agreed upon, accepted or practiced between independent entities, the former must make the positive corrections, on its periodic tax return, corresponding to the tax effects attributable to such variance, so that the taxable profit that has been determined is not different from the one that would have been calculated in the absence of any special relationship.
2. After calculating the differences between the price that has been set and the comparable price that leads to an adjustment, the taxable person shall indicate the accrual to the taxable profit in its periodic tax return.
3. When the terms and conditions of a related-party transaction where a taxable person and a resident entity in Mozambican territory are involved differ from those that would usually be agreed upon, accepted or practiced between independent entities, the tax administration may make the corrections to taxable profit that may be necessary in order for the respective amount to correspond to the amount that would have been obtained should the transaction have been processed in the absence of any special relationship.
4. If the comparable price that was determined through one of the transfer pricing methods is lower than the selling prices on the export documents, the amount of the revenue recognised in accordance with such documents shall prevail, and there is no place for any compensation between them.
5. If the comparable price that was determined through one of the transfer pricing methods is higher than the selling prices on the export or purchase documents, the amount of the cost or expense recognised in accordance with such documents shall prevail, and there is no place for any compensation between them.
6. Taxable persons who have an income subject to Personal Income Tax shall make a transfer pricing adjustment in accordance with the rules of the previous paragraphs, *mutatis mutandis*.
7. In any transactions carried out between a non-resident entity and one of its permanent establishments located in Mozambican territory, or between the latter and other permanent establishments of the former, located outside Mozambican territory, the rules of the previous paragraphs shall apply.
8. The provisions of the previous paragraphs shall also apply to persons who simultaneously pursue activities that are subject and not subject to Corporate Income Tax.

CHAPTER II

**Transfer pricing determination**

SECTION I

Transfer pricing determination methods

ARTICLE 8

**(Applicable methods to determine transfer pricing)**

1. The methods used for the required adjustments for determining the taxable profit provided for in the Corporate Income Tax Code, shall be as follows:
  - a) Comparable market price method, reduced resale price method and cost-plus method;

- b) Profit split method, transactional net profit method or another appropriate method to the particular facts and circumstances of every transaction meeting the requirements of article 4.1 of this Law, when the methods mentioned in the previous sub-paragraph cannot be applied or, if they can, they do not allow for the most reliable measurement of the terms and conditions that independent entities would normally agree upon, accept or practice to be obtained.
2. In order to determine the terms and conditions that would normally be agreed upon, accepted or practiced between independent entities, the taxable person shall adopt the most suitable method for each transaction or series of transactions, in accordance with the arm's length principle and must maintain it during the financial year, for every good, right or service.
  3. The most suitable method for each transaction or series of transactions is considered to be the one likely to provide the best and most reliable estimate of the terms and conditions that would normally be agreed upon, accepted or practiced in a full competition situation.
  4. The most suitable method is the one able to provide the highest degree of compatibility between related-party transactions and non-related-party transactions and between the entities selected for the comparison, which relies on the better quality and greatest amount of information available for its proper justification and application and that implies the least number of adjustments aimed at eliminating existing differences between comparable facts and situations.
  5. Two transactions fulfil the conditions to be deemed comparable if they are substantially identical, which means that their relevant economic and financial characteristics are identical or sufficiently similar, to such an extent that any differences existing between transactions or between the companies involved therein are unlikely to significantly affect the terms and conditions that would be practiced in a normal market situation or, if they do, it is possible to undertake the required adjustments to eliminate the relevant effects caused by such differences.
  6. Where there are doubts as to the reliability of the figures obtained with the application of a certain method, the tax administration shall request the taxable person to confirm such figures by applying other methods, either individually or in combination.
  7. Should such method, or any of its calculation criteria, be disqualified by the inspection, the taxable person shall be notified to submit new calculations, within thirty days at the most, in accordance with any other method provided for in this Law.
  8. Should the method not be indicated, nor the documents submitted for confirmation of the comparable price or, if submitted, they are insufficient or inadequate to form an opinion as to price, the tax administration may determine such price based on other documents that it has, by applying one of the methods provided for in this Law.
  9. If within the scope of application of a method, the use of two or more non-related-party comparable transactions leads to a range of values ensuring a reasonable comparability degree, making corrections is not necessary, should the relevant conditions of the related-party transaction, namely price or profit margin, fall within such range.

#### ARTICLE 9

##### **(Comparability factors)**

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

- a) The specific characteristics of goods, rights or services which, being the object of each transaction, are likely to influence the price of transactions, in particular physical characteristics, quality, quantity, reliability, availability, location and level of supply of goods, negotiation, type, duration, degree of protection and anticipated benefits for the use of the right to and the nature and extent of services;
- b) The tasks performed by the entities involved in the transactions, taking into account assets used and risks taken;
- c) The contractual terms and conditions that explicitly or implicitly define how responsibilities, risks and profits are split between the parties involved in the transaction;
- d) The economic circumstances prevailing in the markets where the respective parties are operating, including their geographical location and size, the cost of labour and of capital in the markets, the competitive position of buyers and sellers, the marketing channel stage, the existence of substitute goods and services, the level of supply and demand and the degree of general market development;
- e) The strategy of companies, including, among the aspects likely to influence their normal functioning and conduct, the pursuit of research and development of new products, the degree of diversification of the activity, risk control, market penetration or share maintenance or reinforcement plans and also product or right life cycles;
- f) Other relevant characteristics concerning the transaction in question or the involved companies.

#### ARTICLE 10

##### **(Comparable market price method)**

1. The comparable market price method compares the price set in a related-party transaction with the price set in a comparable non-related-party transaction, in comparable circumstances.
2. The adoption of the comparable market price method shall require the highest degree of comparability with a focus on the object and other transaction terms and conditions and also on the functional analysis of the entities involved.
3. This method may be used, namely, in the following situations:
  - a) When the taxable person or an entity belonging to the same group undertakes a transaction of the same nature having as its object an identical or similar service or product, of similar quantity or value, and under substantially identical terms and conditions, with an independent entity in the same or in similar markets;
  - b) When an independent entity undertakes with another independent entity a transaction of the same nature having as its object an identical or similar service or product, of similar quantity or value, and under substantially identical terms and conditions, in the same or in similar markets.
4. Where a related-party transaction and a non-related-party transaction are not substantially comparable, the taxable person shall identify and quantify the effects caused by the existing differences in transfer pricing, which shall be of a secondary nature, and make the necessary adjustments to eliminate such effects, in order to calculate an adjusted price corresponding to the price of a comparable non-related-party transaction.

5. Should there not be a comparable non-related-party transaction in the financial year of the related-party transaction, a comparable non-related-party transaction may be used made up to two years immediately before the transaction, adjusted by the period's exchange variation.

#### ARTICLE 11

##### **(Reduced resale price method)**

1. The application of the reduced resale price method is based on the taxable person's resale price in a transaction conducted by an independent entity, having as object a product purchased from an entity with which it maintains special relations, from which the gross profit margin set by a third entity in a comparable transaction has been subtracted and with an equal level of commercial representation.
2. The gross profit margin shall make it possible for the taxable person to cover its selling costs and other operational costs and also provide a profit that, under normal market conditions, constitutes suitable remuneration for an independent entity, in light of the functions performed, the assets used and the risks taken.
3. When transactions are not substantially comparable in all aspects considered relevant and differences have a significant effect on gross margin, the taxable person shall make the necessary adjustments to eliminate such effect, in order to determine the cover of costs and an adjusted profit margin corresponding to those of a comparable non-related-party transaction.
4. Based on the reduced resale method, the comparable price shall be obtained by multiplying the resale price by the difference between unit and gross profit margin, according to the following formula:

$$PC = PR \times (1 - MLB)$$

Where:

PC = Comparable Price

PR = Resale Price

MLB = Gross profit margin

#### ARTICLE 12

##### **(Cost-plus method)**

1. The application of the cost-plus method is based on the amount of costs borne by a supplier of a product or service provided in a related-party transaction, to which the marketing margin in a comparable non-related-party transaction shall be added.
2. The marketing margin added to costs may be calculated taking as a benchmark the marketing margin in a comparable non-related-party transaction made by the taxable person, by an entity belonging to the same group or by an independent entity; in any of the cases, the above-mentioned entities shall perform similar functions, use the same kind of assets and take identical risks, and also, preferably, trading similar products or services with independent entities and adopt a costing system identical to the one in practice in the comparable transaction.
3. Where transactions are not comparable in all aspects that are deemed to be relevant and differences produce a significant effect on the marketing margin, the taxable person shall make the necessary adjustments to eliminate such effect, in order to determine the adjusted gross

margin corresponding to the adjusted gross margin of a comparable non-related-party transaction.

5. Based on the cost-plus method, the comparable price shall be obtained by multiplying the sold product cost by the unit sum and the marketing margin, according to the following formula:

$$PC = CPV \times (1 + MC)$$

Where:

PC = Comparable Price

CPV = Sold Product Cost

MC = Marketing margin

4. Marketing margin is considered to be the ratio between gross profit and the cost of the sold goods.

## ARTICLE 13

### (Profit split method)

1. The profit split method shall be used to split the overall profit from complex transactions or from a series of related-party transactions made in an integrated manner between involved entities.
2. The procedure for applying this method consists in determining the overall profit obtained by the involved parties in related-party transactions and, afterwards, to split it between such entities. The criterion for doing so shall be the relative value of the contribution of each entity towards undertaking the transactions, taking into consideration, for such purpose, the tasks performed, the assets used and the risks taken on by each entity, and referring to reliable external data that indicates how independent entities pursuing comparable tasks, using the same type of assets and taking on identical risks would have assessed their contributions.
3. Alternatively, the application of this method shall consist in the splitting of the overall profit from the transactions in two stages:
  - a) In the first stage, to each involved entity shall be allocated a fraction of the overall profit reflecting the appropriate remuneration likely to be obtained with the type of transactions that it carries out, determined based on comparable data on remunerations which are normally obtained by independent entities when they conduct similar transactions and taking into account the tasks performed, the assets used and the risks taken on; for this purpose, any of the remaining methods may be used;
  - b) In the second stage, the residual profit or loss between each entity shall be split, depending on the relative value of their contribution, taking into account the relevant tasks performed, the assets used and the risks taken on, by making use of the external available information that provides indications on how independent parties would share the profit or loss under similar circumstances, with the profit thus distributed being used to calculate price.
4. This method may be used whenever:
  - a) The related-party transactions show a high degree of integration, making it difficult to assess the transactions individually
  - b) The existence of intangible assets of such high value and specificity that makes it impossible to establish a suitable degree of comparability with non-related-party transactions and does not allow the application of the remaining methods.
5. Where the transactions are not comparable in all aspects deemed to be relevant, and the identified differences produce a significant effect on the profit splitting analysis, the taxable

person shall make the necessary adjustments to eliminate such effect, in order to determine the overall profit share corresponding to comparable non-related-party complex transactions or series of transactions.

#### ARTICLE 14

##### **(Transactional net profit method)**

1. The transactional net profit method is based on the calculation of the net profit margin obtained by a taxable person in a related-party transaction or series of transactions, by reference to the net profit margin obtained in a comparable non-related-party transaction made by the taxable person, by an entity belonging to the same group or by an independent entity.
2. The net profit margin shall be calculated based on a suitable indicator, such as return on total cost, return on asset and ratio between operational profit and net sales, or another indicator, according to the circumstances and characteristics of each transaction, as well as to the nature of the business.
3. Where transactions, or companies therein involved, are not comparable in all aspects deemed to be relevant and the identified differences produce a significant effect on the net profit margin of the transactions, the taxable person shall make the necessary adjustments to eliminate such effect, in order to determine the adjusted net profit margin corresponding to the adjusted net profit margin of a comparable non-related-party transaction.

#### ARTICLE 15

##### **(Calculation of charged prices)**

The charged price shall be calculated per transaction during the tax year, through the application of the weighted average of prices of such comparable transactions.

#### ARTICLE 16

##### **(Interquartile range)**

1. For the purposes of article 8.8 and the application of the methods provided for in aid article, together with paragraph 2 of this article, and in event of two or more comparable transactions being recorded, the median and the interquartile range of prices or profit margin shall be calculated.
2. If the price or profit margin defined by the taxpayer is within the interquartile range, these prices or margins shall be considered as equivalent to those agreed upon between independent parties.
3. If the agreed upon price falls outside the interquartile range, the price or profit margin used by the independent parties shall be considered as the one corresponding to the median less 5%, for the case where the price used or the profit margin is less than the amount obtained for the first quartile, or the median plus 5%, for the case where the price or the profit margin is higher than the amount obtained for the third quartile.
4. Notwithstanding the previous paragraph, where the first quartile is higher than the median value less five per cent 5%, the reduced media value of 5% shall replace the first quartile.
5. When the third quartile is less than the median value plus 5%, the median value plus 5% shall replace the third quartile.

6. If the difference between the comparable price and the used price is up to 5%, in relation to the used price, it shall not be necessary to carry out any adjustment, although the taxpayer must keep all documentation supporting the transaction.

#### ARTICLE 17

##### **(Determining the median and the interquartile range)**

1. To determine the median and the interquartile range that article 16.1 of this Law refers to, it is necessary to sort prices or profit margins in ascending order according to their value.
2. To every price or profit margin shall be allocated a whole sequential order number, starting and ending with the unit with the total number of elements making up the sample.
3. The price or profit margin order number corresponding to the median shall be obtained by adding the unit (1) to the total number of elements making up the sample of prices or profit margins, and dividing such result by two.
4. The median value shall be determined by finding the price or the profit margin corresponding to the sequential whole number of the result obtained in the previous paragraph of this article.
5. Where the result obtained in the previous paragraph is made up of a whole number and decimals, the median value shall be determined as follows:
  - a) Obtaining the difference, in absolute figures, between the price or profit margin whose order number corresponds to the whole number of the result obtained in paragraph 3 to the price or profit margin immediately higher, considering their value;
  - b) The result obtained in sub-paragraph a) of this paragraph is 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 shall be obtained by adding the unit to the order number corresponding to the median obtained in paragraph 3 of this article and by dividing the result by two.
7. The first quartile of the range shall be determined by finding the price or profit margin corresponding to the sequential whole number obtained in paragraph 6 of this article.
8. Where the result obtained in paragraph 6 of this article is made up of a whole number and decimals, the first quartile of the range shall be determined as follows:
  - a) Obtaining the difference, in absolute figures, between the price or profit margin whose order number corresponds to the whole number of the result obtained in paragraph 6 of this article, and the price or profit margin immediately higher, considering their value;
  - b) The result obtained shall be multiplied by the decimals of the result obtained in paragraph 6 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 6 of this article.
9. The position of the third quartile shall be obtained by subtracting the unit (1) from the order number corresponding to the median referred to in paragraph 3 of this article and 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 finding the price or profit margin corresponding to the sequential whole number obtained in paragraph 8 of this article.

11. Where the result obtained in paragraph 8 of this article is made up of a whole number and decimals, the third quartile of the range shall be determined by the difference, in absolute figures, between the price or profit margin whose order number corresponds to the whole number of the result obtained in paragraph 8 of this article, and the price or profit margin immediately higher, considering their 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 whose order number 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. When importing or exporting commodities, the comparable price market method shall be applied, respecting the following criteria:
  - a) The reported prices shall be compared to the prices on the national commodity exchanges and other internationally recognised exchanges, adjusted upwards or downwards in relation to the average market premium on the date of the transaction;
  - b) When applying the method mentioned in paragraph 3 of this article, the quotations of the goods on the date of the transaction shall be used;
  - c) Should there not be any quotations available for the transaction day, the immediately preceding quotations shall be used;
  - d) Should the date of the transaction not be identified, the currency conversion shall be made taking into account 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 premium amount resulting from the market evaluation, whether it be positive or negative, which shall be added to the stock market price in order to get to the price paid or received by the taxable person and variations in quality, in characteristics and in the substance content of the good that was sold or purchased shall be taken into account.
3. In the absence of a specific quotation for that good, the average market premium may also be applied to a similar good, with a reference, in a publication, to internationally recognised sectoral research institutions.
4. In addition to the premium, the commodity value may undergo adjustments corresponding to the differences between the net value received by the seller or paid by the purchaser and the variables that are taken into account in the specific quotation of the commodity at a commodities exchange or in sectoral research institutions.
5. The variables that may be taken into account in the above-mentioned adjustments are the transport cost to the port of destination and climatic influences on the characteristics of the good.
6. In case of no quotation of the goods at national or internationally recognised commodity exchanges, commodity prices may be compared with those obtained from independent data sources provided by internationally recognised sectoral research institutions.
7. It is up to the Ministers who oversee the Industry and Trade and Finance areas, whenever necessary, to update the commodities list included in the attached Glossary to this law.

## CHAPTER III

### **Agreements entered into between related entities**

#### ARTICLE 19

##### **(Cost sharing agreements)**

1. There is a cost sharing agreement when two or more entities agree to split among them the costs and risks of producing, developing or acquiring any assets, rights or services, in accordance with the criteria of proportional advantages or benefits that each party expects to secure from participating in the agreement, namely the right to use the results achieved in research and development projects without the payment of any additional consideration.
2. In the cost sharing agreement between related entities, the application of the principle mentioned in article 3 of this Law shall determine the existence of an equivalence relation between the contribution value imposed on each of the parties and the contribution value that would have been imposed or accepted by an independent entity under comparable conditions.
3. The share in total contributions which is the responsibility of each participant shall be equivalent to the share that is allocated to such participant in the overall advantages or benefits arising from the agreement, assessed from estimates of additional income to be received in the future or from cost savings which are expected. For such purpose, in case a direct and individualised assessment of the above considerations not be possible, a suitable apportionment key may be used, which takes into account the nature of the activity included in the agreement and an indicator adequately reflecting all expected advantages or benefits, namely, turnover, staff costs, added value or invested capital.
4. Where the contribution of a participant in a cost sharing agreement has no equivalent correspondence in the share that is allocated to it regarding the expected advantages or benefits, there should be suitable compensation so that the necessary balance can be restored.
5. For purposes of determining the taxable income, any contributions made by a participant in a cost sharing agreement shall be treated in accordance with the law that would be applicable to the expenses that the taxable person would incur in should the taxable person conduct those activities directly, or if the taxable person acquired, in a comparable non-related party transaction, any goods, rights or services similar to the ones that were not used under the agreement.
6. In the case of agreements on the joint acquisition of goods, rights or services, the acquisition cost debit thereon shall be increased by a margin adequate to the overhead costs of the acquiring entity.

#### ARTICLE 20

##### **(Service agreements within the group)**

1. There is a service agreement within the group when an entity that is member of a group makes available or carries out, to the other members of the group, a wide set of activities , namely of an administrative, technical, financial or commercial nature.
2. In the service agreement within the group entered into between related entities, the application of the principle mentioned in article 4 of this Law requires that the activity provided represents a service with an economic value that justifies, for the group member that is receiving such service, the payment of a price or the assumption of a responsibility that such member would be willing

to pay or to assume in relation to an independent entity or even the execution of an activity to be undertaken for itself.

3. When determining the transfer price of a service whose economic value is justified under the previous paragraph, the methods used in Chapter II shall apply, having regard to the provisions of the following sub-paragraphs:
  - a) The comparable market price shall be considered the most appropriate method when services are identical or substantially similar, regarding their nature, quality, quantity and frequency, to those services provided by independent entities or where, in the course of a normal and regular activity, such services are provided to independent entities with similar markets and under comparable terms and conditions;
  - b) The cost plus methods shall be considered the most appropriate method whenever there is no data available with sufficient quality and quantity to apply the method mentioned in the previous sub-paragraph and when, after reviewing the functions performed, assets used and risks taken on, it is possible to establish the highest degree of comparability with similar non-related party transactions;
  - c) For purposes of the previous sub-paragraph it is essential that the cost structure borne by the service provider is substantially identical to the structure of an independent entity or of an independent entity belonging to the same group in a comparable non-related party transaction, or becomes identical by carrying out the required adjustments.
4. The consideration due for the services provided within the group shall include an appropriate profit margin. For such purpose, all aspects considered pertinent need to be taken into account, namely, the economic alternatives available to the recipient of the services, the nature of the service provision activity, the relevance of such activity to the group, the relative efficiency of the service provider and any benefit that the group may derive from such activity, as well as the capacity in which the service provider is acting; the situations where the service provider is acting exclusively as an agent in the acquisition of the services from third parties on behalf of the group are distinct from those situations where the service provider is providing such services directly.
5. When determining the services price the direct method shall apply, according to which the invoiced value shall be established specifically for each type of services, whenever the respective costs are individually identifiable and quantifiable.
6. Where it is not possible to apply the direct method, the indirect method shall apply; it consists in apportioning the overall costs of the services provided to the various group entities based on a suitable apportionment key that translates the share of the services value attributable to each recipient entity and that allows a cost similar to the one independent entities would be willing to accept in a comparable non-related transaction.
7. The apportionment key mentioned in the previous paragraph shall be built based on indicators appropriately reflecting the nature and use of the services provided, and the sales volume, the gross profit margin, staff costs and produced or sold units can be accepted.

#### CHAPTER IV

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

#### ARTICLE 21

#### **(Tax documentation process)**

1. Under the terms of article 23.1 of this Law, the taxable person shall have information and documentation pertaining to the adopted policy for determining transfer pricing and maintain, in an organized manner, any elements able to prove:
  - a) Market parity under the terms and conditions agreed upon, accepted and practiced in the transactions carried out with related entities;
  - b) The selection and use of the appropriate method for determining transfer pricing that provides greater approximation to the terms and conditions practiced by independent entities that ensure the highest degree of comparability of transactions, or series of transactions, carried out with other substantially identical transactions made by independent entities in a normal market situation.
2. The tax documentation mentioned in the previous paragraph shall equally be governed by the provisions of the Corporate Income Tax Code and the respective Regulation.
3. On the annual declaration of accounting and tax information that the Corporate Income Tax Code Regulation refers to, the taxable person shall indicate the existence or non-existence, over the tax period that such declaration pertains to, of transactions with entities with which has special relations. Should such existence be declared, the taxable person shall also:
  - a) Identify the entities concerned;
  - b) Identify and declare the amount of the transactions carried out with each entity, by product or service;
  - c) Declare if a transfer pricing adjustment has been made;
  - d) Inform the transfer pricing method used.
4. The taxable persons of the Corporate Income Tax and the Personal Income Tax who in the previous financial year have not reached an annual net sales value and other income totalling 2.500,000,00MT shall be exempted from this obligation.

## ARTICLE 22

### **(Relevant information)**

In order to comply with the obligation mentioned in the previous article, the taxable person shall obtain or produce and maintain information regarding the following:

- a) Description and characterization of the special relationship situation that may be applicable to the entities which the taxable person carries out business or financial transactions or transactions of another nature with, as well as of the evolution of the corporate relationship of the bond which was the origin of the special relationship, including, if applicable, the subordinate or equal partner group agreement or another agreement of equivalent effect, or some evidence of the dependence situation that article 6.1.g) of this Law refers to;
- b) Characterization of the activity pursued by the taxable person and related entities which the taxable person carries out transactions with and, in relation to each of the latter, a detailed description, by nature of transactions, of their values recorded by the taxable person over the last five years, or for the period when they did occur, if shorter than such period, as well as, where appropriate, the availability of the company accounts of such entities;
- c) Detailed description of goods, rights or services that are the subject of related-party transactions and of the terms and conditions set out, where such information does not arise from the agreements entered into;

- d) Description of the functions performed, assets used and risks taken on, either by the taxable person or by the related entities involved in related-party transactions;
- e) Technical studies focusing on critical business areas, namely investment, financing, research and development, market and activity restructuring and reorganization , and also forecasts and budgets pertaining to the overall business and to the activity per division or product;
- f) Guidelines concerning the application of the policy adopted on transfer pricing, regardless of the form or name given to it, containing instructions on methodologies to be used, information gathering procedures, particularly internal and external comparable data, analyses to be carried out in order to assess the comparability of transactions and costing policies and profit margins practiced;
- g) Agreements and other legal acts entered into either with related entities or with independent entities, with the changes that may occur and with historical information on their enforcement. Where they do not expressly appear in existing legal instruments or where the established practice moves away from the provisions therein agreed upon, the following information shall be provided:
  - i) Definition of the scope of activity of the involved parties;
  - ii) Delivery conditions of products and involved ancillary activities, namely, after-sales services, technical assistance and guarantees;
  - iii) Price and, if necessary, respective form of calculation, and also, should such form be linked to assumptions, an indication of such assumptions and of the circumstances under which they are subject to review, a breakdown of the respective rules and a detailed explanation of multi-annual price adjustments, by pointing out the quantitative effects arising from factors linked to economic cycles;
  - iv) Agreed or expected duration and accepted termination conditions;
  - v) Penalties and the respective calculation of arrears regarding compliance or non-compliance, whatever its form, including interest on arrears.
- h) Explanation on the application of the method for determining the arm's length price in relation to each transaction per product and an indication of the reasons justifying the selection of the most suitable method;
- i) Information on comparable data used, showing, in the case of any appeal to an external entity specializing in market studies, the justification for selection, where appropriate, the technical study sheet, a sensitivity and statistical safety analysis or, in the case of an internal data source, their respective technical sheet;
- j) Details on the analyses carried out in order to assess the degree of comparability between related-party transactions and non-related party transactions and between companies involved therein, including functional and financial analyses, and on any eventually adjustments made to eliminate existing differences;
- k) Business strategies and policies, namely regarding risk, that may be likely to influence the determination of transfer pricing or the apportionment of transaction profits or losses;
- l) Any other information, data or documents deemed pertinent for determining the arm's length price, the comparability of transactions or the adjustments made.

**(Supporting documentation to pertinent information)**

1. The taxable person shall keep in an organized manner, under the terms set out for tax documentation, provided for in the Corporate Income Tax Code Regulation, the following documents:
  - a) Documentation pertaining to the policy adopted regarding transfer pricing, including the guidelines or instructions relative to their application;
  - b) Agreements and other legal acts entered into either with related entities that have special relations with such taxable person, with any changes and with historical information on their enforcement;
  - c) Documentation and information relating to those entities with which the taxable person has special relations and relating to companies and goods or services that are used as a comparison benchmark;
  - d) Functional and financial reviews and sectoral data;
  - e) Statement of production costs of goods, services or rights issued by the supplying legal person domiciled abroad;
  - f) Additional information and elements that the taxable person has taken into account for determining the terms and conditions that are usually agreed upon, accepted or practiced among independent entities and for selecting the method or methods used.
2. The information mentioned in the previous articles shall be backed up by documents produced by the taxable person or by third parties and shall report to the conducting of transactions; such documents may consist of:
  - a) Official publications, reports, studies and databases drawn up by public or private entities;
  - b) Reports on market studies conducted by renowned national or international institutions;
  - c) Price or quotation lists released by stock exchanges and commodity exchanges;
  - d) Agreements or other legal acts entered into either with related entities or with independent entities, and documentation prior to the drawing up of such agreements and respective changes or additions;
  - e) Market consultations, letters and other correspondence that contain references to the terms and conditions between the taxable person and related entities;
  - f) Other documents issued relating to the transactions carried out by the taxable person, according to the terms of the applicable tax and commercial rules.
3. When it comes to continuous transactions which began in previous financial years, taxable persons shall update the information that the previous paragraph refers to, should the facts and circumstances associated with transactions have been substantially changed.
4. Where the tax administration requests that any documents containing information in a foreign language be submitted, they must be previously translated into the Portuguese language, without prejudice of such administration, at the request of the person obliged to submitting them, waiving the translation because the knowledge of the content of such documents in the original language is accessible.

ARTICLE 24

**(Documentation pertaining to cost sharing agreements and service agreements within the group)**

1. The documentation pertaining to cost sharing agreements shall contain, among others, the following information:
  - a) Identification of participants and other related entities that will participate in the activity that is the subject of the agreement or who may come to explore or use the results of such activity;
  - b) Nature and type of activities undertaken within the agreement;
  - c) Identification and assessment criteria of each participant's share in the expected advantages or benefits;
  - d) Accountability process and methods used in cost sharing, including calculations to be made in order to determine the calculation of each participant;
  - e) Assumptions used in projections of expected benefits, frequency of revision of estimates and forecast of adjustments arising from changes to the working of the agreement or other factors;
  - f) Description of the method used to make adjustments to the contributions of participants brought about by changes to the assumptions which the agreement was based upon or by substantial changes that were therein introduced subsequently;
  - g) Expected duration of agreement;
  - h) Early allocation of responsibilities and tasks associated to the agreement activity between participants and other companies;
  - i) Procedures to enter into, and to be excluded from, an agreement by a participant under the agreement, as well as procedures aimed at terminating it and, in either of the cases, their respective consequences;
  - j) Provisions regarding compensation payments.
2. The documentation pertaining to service agreements within the group shall contain the following information:
  - a) Copy of the agreement;
  - b) Description of services covered by the agreement;
  - c) Identification of entities that are recipient of the services;
  - d) Identification of the costs that are chargeable to the services and criteria used for their respective apportionment.

## CHAPTER V

### **Correlative adjustment**

#### ARTICLE 25

##### **(Correlative adjustment)**

The tax administration may undertake the correlative adjustment where doing so results from international conventions entered into by Mozambique, under the terms and conditions provided for therein.

#### ARTICLE 26

##### **(Revision of tax situation)**

1. For purposes of the adjustment provided for in the previous article, the taxable person shall forward to the tax administration a request to review their tax situation, based on corrections made, or on an official proposal to have them made by a competent foreign tax administration, in

relation to the taxable profit of entities that are related to the taxable person; from such corrections derives, or shall derive, a double taxation not in compliance with the rules of an international convention entered into by Mozambique.

2. In addition to containing the full identification of the requesting entity, the revision request, which is not subject to essential procedural requirements, shall be accompanied by the following:
  - a) Identification of the non-resident entity which the taxable person has a special relationship with and whose corrections to the taxable income gave rise to, or are likely to give rise to, the occurrence of double taxation;
  - b) Identification of the competent foreign tax administration, under the terms of the convention on the applicable case;
  - c) Description and characterization of the special relationships between the requesting entity and all the entities concerned, as well as of the transactions made;
  - d) Identification of the fiscal periods covered by the corrections;
  - e) Accurate identification of the corrections to the taxable profit made by the competent foreign tax administration and of the amounts concerned, accompanied by the respective calculations;
  - f) Copy of the pertinent documents produced, or to be produced, by the foreign tax authority, and of the documents submitted to the latter pertaining the corrections that gave rise, or are likely to give rise, to double taxation and also copies of the correspondence on this matter accompanied, in either case, by the appropriate translation into Portuguese, if so requested by the tax administration;
  - g) Proof of tax payment issued by the tax administration;
  - h) Stating any other fact or presenting any other document which may be relevant for considering the request;
  - i) Proposal of solution or solutions tackling the issue.
3. The taxable person shall submit this revision request under the terms and within the time limit provided for in the convention applicable to the case.

#### ARTICLE 27

##### **(Approval of request)**

1. The approval of the revision request provided for in article 26.2 of this Law is dependent on the following facts:
  - a) Proof of the existence of double taxation, whether current or potential double taxation, not in compliance with the convention rules, as applicable;
  - b) Timely submission of the request;
  - c) The cooperation of the taxable person, namely, in supplying all requested documents and information related to the request and that allow the accurate determination and quantification of the adjustments to be made;
  - d) The acceptance, by the competent authorities from the other State, of the beginning of the consultation process to deal with the issue within the mutual agreement or arbitration procedures, where applicable.
2. The decision on the revision request shall be notified to the taxable person under the legally provided for terms.

## ARTICLE 28

### (Adjustment procedure)

1. For purposes of the provisions in article 25 of this Law, should the tax administration, following a revision of the tax situation of the taxable person and of the consultations made with the competent tax authorities of the other State, in relation to the applicable procedures, consider justified, in whole or in part, any corrections made by such authorities, either relating to the principle which they were based upon or to the respective amount, and after the final administrative or judicial decision pertaining to such corrections, conclude that the correlative adjustment when determining the taxable profit of the taxable person was pertinent, it must make such adjustment within 120 days from the date of the agreement secured with the authorities of the other State.
2. The adjustment to be made when determining the taxable profit of the taxable person shall report to the financial year or years when the related-party transactions which are the object of the corrections are reflected on the taxable profit, in order that the double taxation of any corrected profits may be eliminated.
3. The decision on the adjustment shall be notified to the taxable person under the legally provided for terms.

## CHAPTER VI

### Special provisions

## ARTICLE 29

### (Entities covered by differentiated tax arrangements)

1. Under the terms of article 7.8, the principle set out in article 4.1, both of this Law, shall also be complied with, *mutatis mutandis*, by the persons who simultaneously pursue activities that are subject to and not subject to the Corporate Income Tax general scheme.
2. In relation to the situation provided for in the previous paragraph, where there are variances in the allocation of the positive and negative components of the taxable profit between the activities subject to differentiated tax arrangements, the tax administration may carry out any corrections that may be necessary to eliminate such variances.

## ANNEXURE

### GLOSSARY

For purposes of this Law, the expressions below have the following meaning:

- a) **Associate** – entity bound to one or more persons by common interests;
- b) **Commodities** – primary products traded in commodity exchanges in their raw state or with a small industrialization degree, with a uniform quality, produced and traded in large numbers, from an overall view, amongst which the following stand out:
  - i. Aluminium and respective works- (SH 76);
  - ii. Coal – (SH 27.01 to 27.04);
  - iii. Cooper and respective works – (SH 74);

- iv. Tin and respective works – (SH 80);
  - v. Cast iron, iron and steel – (SH 72);
  - vi. Petroleum gas and other gaseous hydrocarbons – (SH 27);
  - vii. Manganese and respective works, including waste and residues – (SH 81);
  - viii. Gold (included platinum gold), in unwrought or semi-manufactured form, or powdered gold – (SH 71)
  - ix. Oil – SH27);
  - x. Silver (including gold or platinum plated silver), in unwrought or semi-manufactured form, or powdered silver – (SH71);
  - xi. Graphite.
- c) **Control** – power to govern the financial and operating policies of an entity or of a business activity so as to obtain benefits therefrom;
  - d) **Joint Control** – act whereby independent entities jointly manage a common entity or interest, in the form of control sharing, which is contractually agreed upon, of all strategic, financial and operational decisions of a business activity;
  - e) **Joint venture** – strategic model of a commercial partnership or an alliance among companies, based on from a simple collaboration for commercial and/or technological purposes to the merger of companies into a single company, maintaining the identity and individuality of participants as a legal person;
  - f) **Entity belonging to the same group** – entity linked to the taxable person due to a special relationship;
  - g) **Significant influence** – power to participate in the decisions concerning the financial and operational policies of the invested company or a business activity but which does not have control nor joint control over such policies, and may be obtained by owning shares, articles of incorporation or agreement;
  - h) **Intermediary** – someone whom the various interests in question do not belong to, but who carries out a legal act and who is subordinated to the guidelines of the holders of such interests;
  - i) **Family members of an individual** – individuals linked amongst themselves by a family, marriage, affinity and adoption relationship; those who are expected to influence, or be influenced by, such individuals in their business with the entity. They may include:
    - i. The spouse or person with a similar relationship of affection and the children of the individual;
    - ii. The children of the spouse or the person with a similar relationship of affection;
    - iii. Any dependents of the individual, his/her spouse or person with a similar relationship of affection.
  - j) **Transactions** – internal and external commercial and financial transactions, including those relating to tangible or intangible assets, rights or services, even if carried out under any agreement, namely cost sharing and services agreement, within the group or due to a change in the business structure in particular, when the latter involves a transfer of tangible elements or a compensation for damages or loss of profits;
  - k) **Related-party transaction** – any transaction made between related entities;
  - l) **Non-related-party transaction** – any transaction made between independent entities;

- m) **Related-parties** – entities between which there are special relationships, where one has the power to, directly or indirectly, exercise a significant influence over the decisions of the other entity;
- n) **Key management personnel** – people who have authority over and responsibility for the planning, management and control, directly or indirectly, of the entity’s activities, including any director of such entity;
- o) **Comparable price** – the price charged between independent entities that are involved in transactions comparable to the related-party transactions in question;
- p) **Transfer pricing** – the price charged in commercial transactions, including financial transactions, that involve any related entities;
- q) **Special relationship** – the relationship that exists between two entities where one has the power to, directly or indirectly, exercise a significant influence over the management decisions of the other.