The New Mozambican Transfer Pricing Regime

The Corporate Income Tax Code already foresees the power of Tax Authorities to make corrections in transactions between related parties that did not comply with the arm's length principle. However, the regime is rather incipient because of the lack of guidance on its basic features.

This situation is about to change with the expected publication in the short term of detailed transfer pricing regulations to enter into force in 2018.

Specifically, the said regulation will rule on the essential elements of any legal framework of this nature, such as: *(i)* its personal and territorial scope; *(ii)* the concept of related parties and related-party transaction; (iii) the applicable transfer pricing methods; *(iv)* the comparable factors to be considered; and *(v)* the transfer pricing documentation rules.

Within the aforementioned essential elements, we highlight the following:

***(i)* Personal and territorial scope**

The regime is to be applicable to resident taxpayers (including permanent establishments) subject to Mozambican Personal Income Tax or Mozambican Corporate Income Tax within the scope of transactions with related parties, whether these are residents or non-residents for tax purposes.

***(ii)* Concept of related party**

For the purpose of this regime, we are before related parties, namely when one entity/individual:

a) Has direct or indirect control over another entity;

b) Has an interest in another entity, provided that such interest grants significant influence;[1]

c) Is associated in a joint venture in which the other entity is an investor;

d) Is member of the key management personnel of the relevant entity or its respective parent company;

e) Belongs to the close family of any individual included in a) or d).

[1] For this purpose, the term "significant influence" should cover any entity or individual that has the power to participate in the definition of the financial or operational strategy of any third party. Shareholdings equal to or higher than 10% is covered by this concept.

(iii) Transfer pricing methods

The applicable transfer pricing methods, to be determined considering which should be the most appropriate to achieve the maximum effect of arm's length principle, are the following:

a) Comparable Uncontrolled Price;

b) Resale Sale Price;

c) Cost-Plus Method;

d) Profit Split Method;

e) Transitional Net Margin; or

f) Other method deemed appropriate to assure the maximum respect of arm's length principle, considering the specific conditions of each transaction.

Furthermore, specific rules will be put in place for arrangements that are common to occur between corporate groups, such as: *(i)* cost sharing arrangements; and *(ii)* intra-group services agreements.

Additionally, the regime also contains specific dispositions regarding transfer pricing on import and export of "commodities",[2] pursuant to which the method to be adopted within this scope should be the Comparable Uncontrolled Price.

(iv) Interquartile range

The concept of interquartile range is adopted in order to determine if a transaction is made in accordance with arm's length principle.

Therefore, whenever an entity subject to transfer pricing regulation has registered two or more comparable transactions, it should determine the median and interquartile range of the practiced price/margin of profit.

As a rule, if the price/margin of profit of the transaction under examination falls between the first and third quarters, then the transfer price is said to adhere to the arm's length standard.

However, the first quartile must not be lower than the median decreased of 5% and the third quartile is replaced by the median accrued in 5% when its value is inferior to the latter.

[2] For the purpose of this regime, the term "commodities" should cover primary products traded on commodities exchanges in pure form or subject to minor manufacturing and provided that the same are produced and commercialized globally and in large amounts, which expressly includes: *(i)* aluminum and articles thereof; *(ii)* coal; *(iii)* copper and articles thereof; *(iv)* tin and articles thereof; *(v)* cast iron; iron and steel; *(vi)* petroleum gases and other gaseous hydrocarbons; *(vii)* gold; *(viii)* plate; and *(ix)* oil, among others.

(v) Documentation rules

The Entities that in the previous financial year have obtained an amount of net sales and other revenues of at least 2.500.000 MZN will have to prepare a transfer pricing file.

(vi) Corresponding adjustments

The transfer pricing regime also foresees the possibility of corresponding adjustments in international situations if that results from the treaties signed by Mozambique.

(vii) Final remarks

Despite of its merits, it is not expectable that this regime will establish the possibility of execution of Advance Pricing Agreements between economical agents and the Mozambican Tax Authorities.

We remain at your disposal shall you require any further clarification.

Fabrícia de Almeida Henriques
fahenriques@hrlegalcircle.com

Paula Duarte Rocha
pdrocha@hrlegalcircle.com