

THE INCOME TAX ACT

The Income Tax (Transfer Pricing Agreement) Rules, 2015

In exercise of the power conferred upon the Minister by section 17D of the Income Tax Act, and of every other power hereunto enabling, the following Rules are hereby made:-

Citation and commencement. 1. - (1) These Rules may be cited as the Income Tax (Transfer Pricing Agreement) Rules, 2015.

(2) These Rules shall be deemed to have come into operation on the day of , 2015.

Person may request transfer pricing agreement. 2. In accordance with section 17A of the Act, a person may request the Commissioner General to enter into a transfer pricing arrangement.

Criteria and types of TPAs. 3. - (1) A transfer pricing agreement or TPA between a person and the Commissioner General may determine, in advance of specified connected transactions (that is, the connected transactions covered by the agreement), an appropriate set of criteria (for example, transfer pricing method, comparables, appropriate adjustments thereto, and critical assumptions as to future events) for the determination of conditions in accordance with section 17 of the Act and the Eighth Schedule to the Act for those transactions over a fixed period of time.

(2) The types of transfer pricing agreement that may be concluded include -

- (a) unilateral transfer pricing agreement, whereby an agreement is entered into between a person and the Commissioner General concerning the application of section 17 of the Act and the Eighth Schedule of the Act to the specified connected transactions;
- (b) bilateral transfer pricing agreement, whereby a person requests that the Commissioner General enters into an agreement with a double tax convention partner concerning the application of the associated enterprises article of the relevant double tax convention to the specified connected transactions;
- (c) multilateral transfer pricing agreement, whereby a person requests that the Commissioner General reach agreement with two or more double tax convention partners concerning the application of the associated enterprises articles of the relevant double tax treaties to the specified connected transactions.

(3) Where a bilateral or multilateral transfer pricing agreement is entered into by the Commissioner General and one or more double tax convention partners, the mutual agreement (entered into based on the Mutual Agreement Procedure article of the relevant Jamaican tax convention) will be the basis for (and consistent with) the

advance pricing agreement in Jamaica.

Maximum covered period.

4. - (1) A transfer pricing agreement shall have effect with respect to the connected transactions specified therein that are carried out subsequent to the date on which it is approved and shall be valid during the tax periods indicated in the agreement, which may not extend beyond tax periods beginning after the date on which the arrangement is approved.

(2) In addition, the parties to the arrangement may determine that the effects of the agreement will apply to transactions during the tax period in progress at the time the request is presented, or to tax periods prior to the period in progress at the tax period in progress at the time the request is presented.

(3) The maximum covered period for a TPA is five years, except where the TPA concerns the implementation of a mutual agreement as set out in rule 3 (3).

Eligibility and process, transfer pricing agreement request.

5. - (1) A person who carries out connected transactions with another person may request the Commissioner General to enter into a transfer pricing agreement, in writing.

(2) The request for a transfer pricing agreement shall be accompanied by -

- (a) a description of the person's and the connected person's activities, of the controlled transactions

among them, and of the proposed scope and duration of the determination;

- (b) a proposal by the person, based on the arm's length consideration set out in section 17 of the Act, describing the comparability factors that are regarded as significant to the circumstances of the case in accordance with paragraph 3 of the Eighth Schedule to the Act, the selection of the most appropriate transfer pricing method to the circumstances of the case in accordance with paragraph 5 of the Eighth Schedule to the Act, and critical assumptions as to future events under which the determination is proposed;
- (c) an identification of any other country or countries that the person wishes to participate in the arrangements; and
- (d) any other information the person may consider relevant or the Commissioner General may prescribe.

(3) The transfer pricing agreement request shall be submitted by the person in the English language.

Acceptance or rejection of the transfer pricing agreement request.

6. - (1) The Commissioner General shall consider the request of the person and make a decision on whether or not to proceed with the request, taking account of the person's compliance with this section and of the expected benefits from a TPA in the circumstances of the case.

(2) The Commissioner General may reject the person's request to enter into a transfer pricing agreement, where the Commissioner General has sufficient reasons to do so.

Content of concluded transfer pricing agreement.

7. - (1) A concluded transfer pricing agreement shall contain the following information -

- (a) the names and addresses of the parties to the transfer pricing agreement;
- (b) the connected transactions covered by the transfer pricing agreement;
- (c) the period and years of assessment covered by the transfer pricing agreement;
- (d) the agreed transfer pricing methodology and its application to the covered connected transactions;
- (e) if applicable, the arm's length range agreed under the transfer pricing agreement;
- (f) a definition of relevant terms which have formed the basis of calculating the transfer pricing methodology;
- (g) the accounting standards on which the financial statements are based;
- (h) critical assumptions upon which the transfer pricing methodology is based;
- (i) procedures to be followed if it is necessary to make compensating adjustments;

- (j) the person's consequential obligations as a result of the transfer pricing agreement (for example, the person's obligation to submit Annual transfer pricing agreement compliance reports and the person's record-keeping requirements); and
- (k) such other information as the Commissioner General may require.

Modifications. 8. - (1) Where the Commissioner General approves the person's proposal or changes it with the person's consent, it shall formalize the determination in a transfer pricing agreement that will provide confirmation to the person that no transfer pricing adjustment will be made under these Rules to controlled transactions that are within the scope of the arrangement as long as the person follows the terms of the arrangement.

Termination. 9. - (1) Notwithstanding the provisions of these Rules, the Commissioner General -

- (a) may revoke the transfer pricing agreement, with retroactive effect, where it is established that there was a misrepresentation, mistake or omission that was attributable to the neglect or wilful default of the person, or that the person failed to materially comply with fundamental terms and conditions of the arrangement;
- (b) may cancel a transfer pricing agreement for the remaining duration of the arrangement if it is

established that there was a misrepresentation, mistake or omission that was not attributable to the neglect or wilful default of the person, or that the person failed to materially comply with a fundamental term or condition of the arrangement, or that there was a material breach of one or more of the critical assumption, or that there was a change in tax law materially relevant to the arrangement.

Transfer pricing agreement compliance report.

10. - (1) The Commissioner General may audit a person that is party to a transfer pricing agreement as part of its regular tax audit, however, with respect to the covered transactions in the transfer pricing agreement, the purpose of the audit will be limited to compliance with the provisions of the transfer pricing agreement itself.

(2) For each of the tax periods covered by the transfer pricing agreement, persons are obliged to submit to the Commissioner General a completed transfer pricing agreement annual compliance notice.

(3) The transfer pricing agreement annual compliance notice shall be in the form specified in the Schedule.

Confidentiality and use of information.

11. - (1) The Commissioner General shall insure the confidentiality of trade secrets and other sensitive information and documentation submitted to it in the course of an advance pricing arrangement proceeding.

Application fee. 12. - (1) An application for an advance pricing agreement shall be accompanied by payment of the appropriate fee prescribed below (where applicable) -

<i>Type of Application</i>	<i>Application Fee</i>
	\$
1. In the case of unilateral advance pricing agreement.	Nil
2. In the case of bilateral advance pricing agreement.	\$10,000.00
3. In the case of multilateral advance pricing agreement	\$15,000.00

SCHEDULE

(Rule 10 (3))

Transfer Pricing Agreement Annual Compliance Notice

PART I: TPA Summary Information

1. Taxpayer Name:
2. Taxpayer Registration Number:
3. Taxpayer Representative Name and Contact Information:
4. TPA Term (taxable years 20xx to 20xx):
5. This Annual Report Summary is for Taxable Year Ending:
6. Type of TPA: Unilateral Bilateral
 Multilateral
7. Principal foreign country/countries involved in TPA covered transaction(s):
8. Original TPA Renewal TPA
9. Has this TPA been amended or changed? Yes No

If Yes, Effective Date:

10. Has the person complied with all TPA terms and conditions? Yes
 No

11. Has the person triggered any critical assumptions detailed in the TPA?
 No Yes (If yes, attach additional statement with explanation)

Are any compensating adjustments required under the terms of the TPA?

No Yes (If yes, attach additional statement with explanation of compensating adjustment and where the compensating adjustment was reflected in the income tax return)

12. Are there any material differences between the person's business operations (including functions, risks assumed, markets, contractual terms, economic conditions, property, services, and assets employed) during the current TPA Year from the business operations described in the TPA request?

No Yes (If yes, attach additional statement with explanation)

13. Are there any material changes in financial or tax accounting methods or principles employed for the TPA year in respect of the covered dealings, which differ from the financial or tax accounting methods employed and reflected in the TPA request?

No Yes (If yes, attach additional statement with explanation)

PART II: Transfer Pricing Method

14. TPA Tested party is: Taxpayer Foreign Both

15. TPA tests on (check all that apply): Annual basis Multi-Year basis Term basis

16. TPA provides (check all that apply) a: Range Point
 Floor only Ceiling only Other (please specify):

17. TPA provides for adjustment (check all that apply) to:

Nearest Edge Median Other point (please specify):

Section III: Additional TPA Compliance Information

Please provide the following additional information to demonstrate compliance with the TPA referenced above:

1. A brief statement demonstrating how the Jamaican company is actively targeting the agreed transfer pricing as part of the TPA.
2. Information and computations necessary to ascertain the outcome of the TPA for the covered dealings between the person and its connected party. This includes demonstrating the extent of compliance with terms and conditions of the TPA.
3. Additional items as may be appropriate to the particular circumstances of the person as it pertains the referenced TPA.
4. The Commissioner General will review the Annual Compliance Report and, if necessary, may request further information that is reasonably needed to verify that the person referenced in this TPA Annual Report has complied with the terms and conditions of the TPA.
5. If the person fails to provide the Annual Compliance Report or supply the additional information requested within the time specified in these Rules, the Commissioner General may cancel the TPA.

Dated this 24th day of November, 2015.


Minister of Finance and Planning