**REPUBLIC OF NAURU**

# Business Tax (Transfer Pricing) Regulations 2016

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**SL No. 27 of 2016**

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Cabinet makes the following regulations under section 46 of the *Business Tax Act 2016* for the purposes of section 34 of the *Business Tax Act 2016*:

## PART 1 - PRELIMINARY

### 1 Short Title

These Regulations may be cited as the *Business Tax (Transfer Pricing) Regulations 2016.*

### 2 Commencement

(1) Subject to sub-regulation (2), these Regulations commence on 1 July 2016.

(2) The Minister may specify a later date than that specified in sub-regulation (2) for Regulation 11 to come into force.

### 3 Definitions

(1) In these Regulations:

**'Act'** means the Business Tax Act 2016;

*"**arm's length principle**"*, in relation to a controlled transaction, means that the result of the transaction is consistent with the result that would have been realised in a transaction between independent persons dealing with each other under the same or similar conditions;

*'**comparability factors**'* means the factors specified in Regulation 3;

*'**comparable uncontrolled price method**'* means the transfer pricing method under which the price charged in a controlled transaction is compared with the price charged in a comparable uncontrolled transaction;

*'**comparable uncontrolled transaction**'*, in relation to the application of a transfer pricing method to a controlled transaction, means an uncontrolled transaction that, after taking account of the comparability factors, satisfies the following:

(a) the differences, if any, between the two transactions or the between the persons undertaking the transactions do not materially affect the financial indicator applicable under the method; or

(b) if the differences referred to in paragraph (b) do materially affect the financial indicator applicable under the method, reasonably accurate adjustments can be made to eliminate the effects of such differences;

*'**controlled transaction**'* means a transaction between associates;

*'**cost plus method**'* means the transfer pricing method under which the mark up on the costs directly and indirectly incurred in the supply of property or services in a controlled transaction is compared with the mark up on those

costs directly or indirectly incurred in the supply of property or services in a comparable uncontrolled transaction;

***'financial indicator'*** means:

(a) in relation to the comparable uncontrolled price method, the price;

(b) in relation to the cost plus method, the mark up on costs;

(c) in relation to the resale price method, the resale margin;

(d) in relation to the transaction net margin method, the net profit margin; or

(e) in relation to the transactional profit split method, the division of profit and loss;

***'person'*** includes a "PE person" and "headquarters person" as defined in Regulation 4;

***'resale price method'*** means the transfer pricing method under which the resale margin that a purchaser of property in a controlled transaction earns from reselling the property in an uncontrolled transaction is compared with the resale margin that is earned in a comparable uncontrolled purchase and resale transaction;

***'transaction'*** means:

(a) a purchase and sale of goods;

(b) a purchase, sale, lease, or use of tangible property;

(c) a purchase, sale, licence, or use of intangible property;

(d) a provision of services;

(e) a provision of finance or other financial arrangement;

(f) a dealing between a permanent establishment of a person and another part of the person; or

(g) any other dealing;

***'transactional net margin method'*** means the transfer pricing method under which the net profit margin relative to the appropriate base (such as costs, sales, or assets) that a person achieves in a controlled transaction is compared with the net profit margin relative to the same basis achieved in a comparable uncontrolled transaction;

***'transactional profit split method'*** is the transfer pricing method under which the division of profit and loss that a person achieves through participation in a controlled transaction is compared with the division of profit and loss that would be achieved when participating in a comparable uncontrolled transaction;

***'transfer pricing method'*** means:

(a) the comparable uncontrolled price method;

(b) the resale price method;

(c) the cost plus method;

(d) the transaction net margin method; or

(e) the transactional profit split method; and

*'**uncontrolled transaction**'* means a transaction that is not a controlled transaction.

(2) Without limiting the generality of the definition of ***'associate'*** in the Act, in addition, two persons are associates when:

(a) one person participates, directly or indirectly, in the management, control, or capital of the other person; or

(b) the same person participates, directly or indirectly, in the management, control, or capital of both persons.

(3) For the purposes of sub-regulation (2), a person participates, directly or indirectly, in the management, control, or capital of another person when:

(a) the first-mentioned person either alone or together with an associate or associates under another application of sub-regulation (2) controls either directly or through one or more interposed persons:

(i) fifty per cent or more of the voting power in the second-mentioned person;

(ii) fifty per cent or more of the right to dividends or income entitlements payable by the second-mentioned person;

(iii) fifty per cent or more of the right to capital in the second-mentioned person; or

(b) the first-mentioned person has the practical ability to control the business decisions of the second-mentioned person.

(4) A term used in these Regulations has the same meaning as in the Act unless the context requires otherwise.

**4 Comparability factors**

In determining whether two or more transactions are comparable, the following factors are considered to the extent that they are economically relevant to the facts and circumstances of the transactions:

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

(b) the functions undertaken, assets used, and risks assumed by the parties to the transactions;

(c) the contractual terms of the transactions;

(d) the economic or market conditions in which the transactions take place;

(e) the business strategies pursued by the parties to the transaction.

**5 Permanent establishments**

(1) Subject to sub-regulation (2), for the purposes of these Regulations:

(a) a permanent establishment is deemed to be a separate and distinct person (referred to as the "PE person") from the person in respect of whom it is a permanent establishment (referred to as the "headquarters person");

(b) the PE person and headquarters person are deemed to be associates; and

(c) a PE person and a headquarters person are located where their activities are located.

(2) The Secretary may choose not to apply this Regulation if the foreign country in which the headquarters person is located does not apply the same rule as that expressed in sub-regulation (1).

**6 Relevance of OECD material to interpretation of these Regulations**

(1) Subject to sub-regulation (2), these Regulations are to be applied in a manner consistent with:

(a) the arm's length principle in Article 9 of the OECD Model Tax Convention on Income and Capital; and

(b) the Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations, as approved by the Council of the Organisation for Economic Cooperation and Development, as supplemented and updated from time to time.

(2) If there is any inconsistency between these Regulations and the OECD documents referred to in sub-regulation (1), these Regulations prevail.

**7 Application of Regulations**

(1) Subject to sub-regulation (2), these Regulations apply to a controlled transaction between:

(a) a resident person and a non-resident person;

(b) two or more resident persons; or