

**MINISTERIAL ORDER N° 004/07 OF 09/05/2007 GOVERNING THE IMPLEMENTATION OF THE
LAW N° 16/2005 OF 18/08/2005 ON DIRECT TAXES ON INCOME**

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MINISTERIAL ORDER N° 004/07 OF 09/05/2007 GOVERNING THE IMPLEMENTATION OF THE LAW N° 16/2005 OF 18/08/2005 ON DIRECT TAXES ON INCOME

The Minister of Finance and Economic Planning,

Given the Constitution of the Republic of Rwanda of 4 June 2003 as amended to date, especially its Articles 120,121 and 201;

Given Law N° 16/2005 of 18/08/2005 on direct taxes on income, especially in its Articles 3, 12, 17, and 30;

After consideration and approval by Cabinet in its session of 28/03/2007;

ORDERS :

CHAPTER PREMIER: GENERAL PROVISIONS

Article 1 : Scope of application

This Order governs the implementation of law n° 16/2005 of 18/08/2005 on the Direct Taxes on Income.

Article 2 : Definitions

The following definitions apply for the purpose of implementation of this Order:

- i. « **Arm's length price** » means the price that is paid on comparable transactions between independent parties.
- ii. « **Independent parties** » are persons who are not related persons.
- iii. « **Controlled transaction** » means any transaction between related persons.
- iv. « **Uncontrolled transaction** » means any transaction between independent parties.
- v. « **Comparable uncontrolled transaction** » is an uncontrolled transaction that is comparable to a controlled transaction, if one of the following conditions is met:
 - a. None of the differences (if any) between the transactions being compared or between the parties undertaking those transactions could materially affect the price in the open market; or
 - b. Reasonably accurate adjustments can be made to eliminate the material effects of such differences.

**CHAPTER II : PERSON'S
PERMANENT RESIDENCE OR
EFFECTIVE PLACE OF MANAGEMENT**

Article 3: Individuals

An individual taxpayer will be treated as a resident of Rwanda if he or she has a permanent home, such as a house, apartment or dormitory available in Rwanda, which he or she usually occupies.

If he or she does not have a permanent home available, the Tax Administration will determine where the taxpayer has his 'habitual place of abode'. This is determined according to the factual circumstances such as the person's centre of economic interest, where that person's family resides, where that person's financial interests are placed, where that person's bank accounts are held, and where his main social activities take place.

In any circumstances, an individual will have his residence in Rwanda if he or she stays in Rwanda for more than one hundred eighty three (183) days in any 12-month period, either continuously or intermittently. The individual will then be only a resident in the calendar year in which this 12-month period ends.

In calculating or determining the number of days mentioned in the preceding paragraph, the day of arrival, the day of departure and the days an individual stays over night in Rwanda shall be included.

Article 4: Entities

An entity will be treated as a resident of Rwanda if it is incorporated or formed under the laws of Rwanda.

If an entity is not incorporated or formed under the laws of Rwanda, the entity will be treated as a resident entity if it has its effective place of management in Rwanda.

The determination where an entity has its effective place of management depends on factual circumstances, such as the place of its day-to-day management, the place where the shareholder's meetings are held, the place where the books are kept, and the place where the main shareholders or directors are resident.

CHAPTER III: SIMPLIFIED ACCOUNTING RULES AND CERTIFICATION OF FINANCIAL STATEMENTS

Article 5: Simplified bookkeeping

The taxpayers referred to in Article 17 of Law N° 16/2005 of 18/08 2005 on the Direct Taxes on Income, who opt for simplified accounting system shall be required to keep the following basic records:

- i. a record of all sales (cash and credit);
- ii. a record of all purchases (cash and credit);
- iii. a record of transactions through bank account ;and
- iv. stock at the end of the period

Article 6 : The meanings of the prescribed types of records

For the purposes of Simplified Accounting Rules, the following meanings are prescribed to the types of records referred to under Article 5 of this Order:

- i. daily sales: Refers to the documented information made in a form prescribed in Appendix A to this Order. Such information concerns all trading transactions;
- ii. a record of all purchases: Refers to documented information made in a form prescribed in Appendix B to this Order. Such information concerns goods or services acquired so as to:
 - a. Constitute a stock in trade; or
 - b. Constitute a necessary expenditure
- iii. a record of cash transactions: Refers to the documented information made in a form prescribed in Appendix C to this Order. The information concerns the sale of goods or services for which payment is made in cash, the transaction being a proportion of total sales in a given period of time.
- iv. A record of transactions through bank account: Refers to documented information made in a form prescribed in Appendix D to this Order. The information concerns all transactions taking place through bank account.
- v. A record of end of period: Refers to stock counted and valued at the end of period.

Article 7 : Certification of financial statements

Taxpayers with an annual turnover of or above one billion Rwandan francs (1.000,000,000 frw), shall be obliged to have their annual tax declarations and financial statements certified by qualified professionals.

CHAPTER IV: TRANSFER PRICING RULES

Article 8 : Presumption of dealing at arm's length price

When independent parties deal with each other, the conditions of their commercial and financial relations such as the price of goods transferred or services provided and the conditions of the transfer or provision, ordinarily are determined by market forces.

When related persons deal with each other, their commercial and financial relations may not be directly affected by external market forces in the same way, although related persons often seek to replicate the dynamics of market forces in their dealings with each other.

Article 9 : Determination of arm's length price

Determination of the arm's length price is based on a comparison of the conditions in a controlled transaction with the conditions in an uncontrolled transactions.

In order for such comparisons to be useful, the economically relevant characteristics of the situations being compared must be sufficiently comparable.

Article 10 : **Methods to determine arm's length principle**

The following methods may be used in determining the arm's length price in case of related persons:

- i. the Comparable Uncontrolled Price (hereinafter 'CUP') method;
- ii. the Resale Price method;
- iii. the Cost Plus method; or
- iv. any other method that the fiscal administration deems appropriate.

Article 11: **Comparable Uncontrolled Price method**

The comparable uncontrolled price methods compares 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 in comparable circumstances.

If there is any difference between the two prices, this may indicate that the conditions of the commercial and financial relations of the related persons are not arm's length, and that the price in the controlled transaction may need to be substituted by the price in the controlled transaction.

Article 12 : **Resale Price method**

The Resale Price method begins with the price at which a product that has been purchased from a related person is resold to an independent person.

This price is then reduced by an appropriate gross margin (the resale price margin) representing the amount out of which the reseller would seek to cover its selling and other operating expenses and, in the light of the functions performed (taking into account out assets used and risks assumed), make an appropriate profit.

What is left after subtracting the gross margin can be regarded after adjustment for other costs associated with the purchase of the product (e.g. customs duties), as an arm's length price for the original transfer of property between the related persons.

The resale price margin of the reseller in the controlled transaction may be determined by reference to the resale price margin that the same reseller earns on items purchased and sold in comparable uncontrolled transactions. Also, the resale price margin earned by an independent person in comparable uncontrolled transactions may serve as a guide.

Article 13 : **Cost Plus method**

The Cost Plus method begins with the costs incurred by the supplier of property or services in a controlled transaction for property transferred or services provided to a related purchaser.

An appropriate cost plus mark up is then added to these costs, to make an appropriate profit in light of the functions performed and the market conditions. What is arrived at after adding the cost plus mark up to the above costs may be regarded as an arm's length price of the original controlled transaction.

The cost plus mark up of the supplier in the controlled transaction should be established by reference to the cost plus mark up that the same supplier earns in comparable uncontrolled transactions. In addition, the cost plus mark up that would have been earned in comparable transactions by an independent person may serve as a guide.

CHAPTER V: FINAL PROVISIONS

Article 14 : Abrogation of contrary provisions

Ministerial Orders prior and contrary to this Order are hereby repealed

Article 15 : Entry in Force

This Order shall come into force on the date of its publication in the Official Gazette of the Republic of Rwanda.

Kigali on, 09/05/2007

The Minister of Finance and Economic Planning
MUSONI James
(sé)

Seen and sealed with the Seal of the Republic:

The Minister of Justice
KARUGARAMA Tharcisse
(sé)