



TAX ADMINISTRATION JAMAICA



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# TRANSFER PRICING AGREEMENT

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PRACTICE NOTE



JUNE 4, 2018

TAX ADMINISTRATION JAMAICA  
36 TRAFALGAR ROAD, KINGSTON 10



Tax Administration Jamaica

# Transfer Pricing Agreement

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*This practice note provides comprehensive guidance on transfer pricing agreements in accordance with the Transfer Pricing Agreement Rules that were enacted in November 2015. Any taxpayer subject to the transfer pricing rules in section 17 of the Income Tax Act (ITA) of Jamaica may request a transfer pricing agreement.*

*All references herein are to the ITA and Regulations unless otherwise indicated.*

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## ***Glossary of Terms and Abbreviations***

- The following list defines various terms and abbreviations used in this practice note.

<b>ALC</b>	Arm's length consideration. A bilateral TPA entered into between TAJ and the relevant foreign competent authority of a country with which Jamaica has a DTA. It includes an agreement, under the
<b>BTPA</b>	MAP article in the relevant DTA covering certain transactions or arrangements between the taxpayer and non-resident connected person. The Competent Authority of Jamaica is the Minister responsible for Finance or his/her authorized
<b>Competent authority of Jamaica</b>	representative, i.e. the CG, who is responsible for negotiating bilateral and multilateral TPAs and resolving specific cases of double taxation not in accordance with a DTA under the MAP.
<b>CG</b>	Commissioner General of TAJ.

<b>Critical assumptions</b>	Any assumed objective criterion that would significantly affect the substantive terms of a TPA if the underlying conditions changed, whether or not the change is within the taxpayer's control. It could include any fact or condition about the taxpayer, a third party, or an industry, such as a new business strategy or mode of conducting operations, or the cessation or transfer of a business segment or entity covered by the TPA.
<b>DTA</b>	Double tax agreement.
<b>ITA</b>	<i>Income Tax Act</i> of Jamaica.
<b>MAP</b>	Mutual agreement procedure for resolving issues such as double taxation and exchange of information under the relevant DTAs.
<b>MTPA</b>	A multilateral TPA entered into between TAJ and the relevant competent authorities of two or more countries with which Jamaica has DTAs. It includes an agreement, under the MAP articles in the relevant DTAs, covering certain transactions or arrangements between the taxpayer and non-resident connected persons.
<b>OECD</b>	Organization for Economic Co-operation and Development.
<b>OECD Guidelines</b>	<i>2010 OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations.</i>
<b>PE</b>	Permanent establishment.
<b>TAJ</b>	Tax Administration Jamaica.
<b>TPM</b>	Transfer pricing method.
<b>TPA</b>	Transfer pricing agreement
<b>TPA Notice</b>	A TPA Notice is an annual report that is filed with the CG for each year of assessment covered by a TPA. The TPA Notice should be in the form specified in Section 10(3) of the TPA Rules, i.e. <i>Schedule (Rule 10(3)) - Transfer Pricing Agreement Annual Compliance Notice.</i>
<b>TPA Rules</b>	<i>Income Tax (Transfer Pricing Agreement) Rules 2015</i>
<b>TPRC</b>	Transfer Pricing Review Committee is a committee of senior TAJ officials established to provide technical oversight and strategic direction in respect of transfer pricing audit adjustments in order to achieve coherence, adherence to legislative and administrative policy, integrity, sound technical standards and effective case management.
<b>Unilateral TPA</b>	A TPA entered into between the taxpayer and TAJ that is effective for Jamaican income tax purposes only.

## Purpose

2. The purpose of this practice note is to provide guidance on the TPA programme which is designed to provide a co-operative approach for resolving transfer pricing issues on a prospective basis.

## Objective

3. The objective of this practice note is to set out the pre- and post-application stages of the TPA programme.

## Scope

4. This practice note sets out the views of TAJ on the TPA programme (see *PN-02/17, Transfer Pricing* for guidance on the application of the transfer pricing rules in Section 17 of the ITA).

## Background

5. The OECD issued the first part of its revised OECD Guidelines in July 1995. Chapter IV of the OECD Guidelines entitled "Administrative Approaches to Avoiding and Resolving Transfer Pricing Disputes" discusses TPAs. The OECD released an appendix to the OECD Guidelines in October 1999 entitled "Guidelines for Conducting Advance Pricing Arrangements under the Mutual Agreement Procedure", which was updated in 2010. The TPA programme was established in accordance with these guidelines.

## Legislation

6. This practice note should be read in conjunction with Section 17A(3) of the ITA, and the TPA Rules (see *Appendix VII – Income Tax (Transfer Pricing Agreement) Rules, 2015* below).
7. The TPA Rules are summarized as follows:
  - Section 1 deems the TPA Rules to come into force on November 24, 2015.
  - Section 2 states that a taxpayer may apply to the CG to enter into a TPA in accordance with Section 17A of the ITA:
    - Section 17A(1) empowers the CG to enter into TPAs with taxpayers for purposes of determining the ALC in respect of connected transactions.
    - Section 17A(2) provides that a TPA will determine the ALC in respect of connected transactions covered by the agreement unless such consideration is inconsistent with the TPA.
    - Section 17A(3) empowers the CG to issue rules regarding TPAs including eligibility criteria, form and manner of application, information requirements, terms and conditions of the TPA, and such other relevant information that may be considered necessary.
  - Section 3(1) states that a TPA sets out the relevant terms and conditions agreed to between the taxpayer and CG including TPM, comparables, compensating

adjustments, critical assumptions, covered transactions, term, etc. in accordance with section 17 and the Eighth Schedule to the ITA.

- Section 3(2) sets out three types of TPAs that may be entered into:
  - Unilateral TPA – agreement between the taxpayer and TAJ
  - Bilateral TPA – agreement between TAJ and a country that has a DTA with Jamaica
  - Multilateral TPA – agreement between TAJ and two or more countries that have DTAs with Jamaica
- Section 3(3) states that the mutual agreement procedure (MAP) article in a relevant DTA will apply in the case of a BTPA or MTPA.
- Section 4(1) states that a TPA will:
  - Apply to covered transactions that are carried out after the effective date of entering into the TPA; and
  - Remain in force during the years of assessment covered by the TPA – a TPA cannot extend beyond the year of assessment beginning after the date of the approved TPA term.
- Section 4(2) states that a TPA may apply to transactions that occur during the current year of assessment in which a TPA application is made, or prior to that particular year if agreed to by TAJ and the taxpayer.
- Section 4(3) states that a TPA has a maximum term of five years except as modified by a DTA.
- Section 5(1) states that a taxpayer who carries out connected transactions with connected persons may request to enter into a TPA in writing with the CG.
- Section 5(2) states that a TPA application should include the following:
  - Description of the business activities of the taxpayer and connected person;
  - Description of the connected transactions between them;
  - Proposed scope and duration of the TPA;
  - Proposal based on the arm's length principle in respect of the following:
    - Comparability factors in accordance with paragraph 3 of the Eighth Schedule;
    - Most appropriate TPM in accordance with paragraph 5 of the Eighth Schedule; and
    - Critical assumptions upon which the TPM is based vis-à-vis future events;
  - Identification of any other country or countries that the taxpayer wants to participate in the TPA; and
  - Any other information that the taxpayer may consider relevant, or the CG may request at his discretion.
- Section 5(3) requires a taxpayer to submit a TPA application in English.
- Section 6(1) states that the CG will consider a taxpayer's TPA application and make a decision on whether to accept it or not, taking into account the taxpayer's compliance history and expected benefits to TAJ of entering into a TPA.
- Section 6(2) states that the CG may reject a taxpayer's TPA application, where the CG has sufficient reason to do so.
- Section 7(1) states that a TPA entered into will include the following:

- Names and addresses of the parties;
- Connected transactions to be covered;
- Years of assessment to be covered;
- TPM agreed to and its application to the covered transactions;
- Arm's length range that is agreed to, if applicable;
- Definition of relevant terms and conditions underlying the TPM calculation;
- Accounting standards upon which the financial statements are based;
- Critical assumptions upon which the TPM is based;
- Procedures for making compensating adjustments, if necessary;
- Taxpayer's obligations to submit annual TPA reports and maintain contemporaneous transfer pricing documentation; and
- Such other information as considered necessary by the CG.
- Section 8(1) was not used.
- Section 9(1) states that the CG may:
  - Retroactively revoke a TPA if:
    - There is an error or omission attributable to the willful neglect of the taxpayer; or
    - The taxpayer failed to materially comply with the terms and conditions of the TPA.
  - Cancel a TPA for the remainder of the term if:
    - There is an error or omission not attributable to willful neglect;
    - The taxpayer failed to materially comply with the terms and conditions of the TPA;
    - There is a material breach of the critical assumptions; or
    - There is a change in tax laws relevant to the TPA.
- Section 10(1) states that TAJ may audit a taxpayer that has entered into a TPA as part of its regular tax audit programme, but, will limit the scope of the audit with respect to the covered transactions to ensuring compliance with the terms and conditions of the TPA.
- Section 10(2) requires taxpayers to submit an annual TPA report to the CG for each year of assessment covered by a TPA.
- Section 10(3) states that the annual TPA report should be in the form specified in *Schedule (Rule 10(3)) - Transfer Pricing Agreement Annual Compliance Notice* (the "Schedule").
- Section 11(1) states that the CG will ensure the confidentiality of taxpayer information that is submitted to the TAJ in the course of administering the TPA programme.
- Section 12(1) states that a TPA application must include payment of the appropriate fee:
  - JA\$ nil for unilateral TPAs.
  - JA\$10,000 for BTPAs.
  - JA\$15,000 for MTPAs.
- The Schedule requires a taxpayer to include the following information in the annual TPA report:
  - Taxpayer name,
  - Taxpayer identification number.

- Taxpayer representative name and contact information.
- TPA term (years of assessment 20xx to 20xx).
- Annual TPA report year of assessment.
- Type of TPA, i.e. unilateral, BTPA or MTPA.
- Principal foreign country/countries in the case of BTPA or MTPA.
- Whether original or renewed TPA.
- Whether TPA has been amended or changed and effective date of such event.
- Whether taxpayer complied with TPA terms and conditions.
- Whether taxpayer triggered any critical assumptions together with explanation.
- Whether any compensating adjustments are required together with explanation.
- Whether any material differences occurred in the business operations of the taxpayer in respect of the current year of assessment (including functions, risks assumed, markets, contractual terms, economic conditions, property, services and assets employed) from those described in the TPA together with explanation.
- Whether any material changes occurred in the financial or tax accounting methods or principles of the taxpayer in respect of the year of assessment from those described in the TPA together with explanation.
- Whether the tested party is the taxpayer, a non-resident connected person or both.
- Whether TPA tests are applied on annual basis, multi-year basis or term basis.
- Whether TPA provides a range, point in a range, floor only, ceiling only or other such point.
- Whether TPA provides for compensating adjustments to nearest edge, median or other such point.
- Brief statement demonstrating how the taxpayer is actively targeting the agreed ALC as part of the TPA.
- Information and computations necessary to ascertain the outcome of the TPA in respect of the covered transactions, and to demonstrate the extent of the taxpayer's compliance with the terms and conditions of the TPA.
- Information on additional items as may be considered appropriate to the particular facts and circumstances of the taxpayer vis-à-vis the TPA.
- The Schedule states that the CG will review the annual TPA report and request additional information if necessary in order to ensure that the taxpayer has complied with the terms and conditions of the TPA.
- The Schedule states that the CG may cancel the TPA if the taxpayer fails to provide the annual TPA report or supply the additional information requested on a timely basis.

## Introduction

8. A TPA (which is internationally referred to as an APA) is a negotiated agreement between a taxpayer and TAJ. It identifies, in advance, specified connected transactions covered by the agreement. The TPA sets out an appropriate set of criteria (e.g. TPM, comparables, appropriate adjustments and critical assumptions) for the determination of an ALC in accordance with the ITA, for specified connected transactions over a fixed period of time. When appropriate, TAJ may enter into a bilateral or multilateral TPA with foreign competent authorities under the MAP article of a relevant DTA (see *PN-1, Transfer Pricing* for a listing of relevant DTAs).
9. The TPA programme is a co-operative approach requiring a relationship of mutual trust between the parties to a TPA in order to achieve an effective outcome. In building that mutual trust, the expectations of each party should include:
  - Recognition that each TPA application will be treated on its merits, according to its own facts and circumstances.
  - Full co-operation in developing a TPA including undertaking open and ongoing dialogue.
  - Disclosure of all relevant and material facts and circumstances.
  - Timely and complete replies to any reasonable queries.
10. Any taxpayer may express interest in applying for a TPA, regardless of the size of the organization, the type or scope of its operations, or the nature of the transactions and proposed TPMs.
11. The scope and complexity of issues, extent of co-operation and quality of information will determine the time needed to process a TPA application. The TPA programme is flexible to adapt to the facts and circumstances of any particular case.
12. There is no legal requirement to enter into TPAs. TAJ provides TPAs as an administrative service. TAJ will consider all requests for TPAs that are in accordance with the policies and procedures set out in this practice note. TPAs benefit both taxpayers and TAJ. These benefits include long-term time savings, efficient resolution of recurring complex matters, greater certainty about transfer pricing issues, application or “roll-back” of findings to past years upon agreement between TAJ and the taxpayer, and minimization of global risk.
13. TAJ will accept TPA applications for current transactions and specified future transactions that are not hypothetical. A TPA will apply only to the taxpayer who is a party to it, and the participants, transactions, and time periods therein specified.
14. TAJ may also consider issues similar or related to transfer pricing, such as the proper attribution of income between a PE and other parts of the same entity.

15. The TPA and audit programmes of TAJ are separate and distinct programmes. Filing a TPA application will neither initiate an audit in respect of the transactions proposed to be covered by the TPA, nor will it preclude an audit into “uncovered” transactions. When a taxpayer complies with the terms and conditions of a TPA, TAJ will consider that the results of applying the agreed TPMs have satisfied the requirements in Section 17 of the ITA for the transactions and periods specified in the TPA (see *Administering TPAs* below for additional information on the subject of auditing).
16. A TPA application must be accompanied by payment of a non-refundable fee (see Section 12(1) of the TPA Rules).

### **Expression of Interest Meeting**

17. Under Section 5(1) of the TPA Rules, a taxpayer who carries out connected transactions with connected persons may request, in writing, to enter into a TPA with the CG.
18. TAJ considers an informal and non-binding discussion, i.e. an expression of interest meeting, as a pre-requisite for taxpayers contemplating a TPA application.
19. An expression of interest meeting is attended by the taxpayer and/or the taxpayer’s representatives, and TAJ to explore the suitability of a TPA, and to informally discuss the TPA programme, and the matters set out in this practice note.
20. A written authorization must be provided to TAJ, if not already done so, for each representative participating in the TPA programme. This will allow TAJ to release confidential taxpayer information to authorized representatives during the TPA programme, and examine and discuss the information with them.
21. It should be emphasized that having an expression of interest meeting does not, in and of itself, bind the taxpayer to submit a TPA application; although a taxpayer may seek assurance from TAJ that if such application is filed, the CG will not later exercise his/her right under Section 6(1) of the TPA Rules to determine that the TPA application should not proceed.

### **Rationale**

22. Taxpayers interested in applying for a TPA should contact TAJ’s representative(s) noted below in order to arrange an expression of interest meeting to:
- Ensure that the resources of the taxpayer are not wasted on an unsuitable or unnecessary application;
  - Ensure that the detailed work that is to be undertaken by the taxpayer in finalizing its TPA application under Section 5(1) of the TPA Rules is focused

- on the relevant issues;
- Discuss whether the TPA application should be unilateral or whether a bilateral or multilateral TPA (see Section 3(2) of the TPA Rules) may be a possibility, and, if so, whether that may be advantageous to the taxpayer;
  - Discuss what “other information” should be included in the TPA application (see Section 5(2)(d) of the TPA Rules);
  - Give the taxpayer the opportunity to establish how its TPA application will be handled by TAJ (see *Appendix V – Example of TPA Case Plan* below for additional information on this subject); and
  - Allow both parties to discuss timelines.

## Contacts

23. Requests for expression of interest meetings should be made jointly to:

General Manager  
Tax Administration Jamaica  
Large Taxpayer Office  
Constant Spring Revenue Service Centre  
191 Constant Spring Road  
Kingston 8  
Tel: 1 (876) 969-0000  
Fax: 1 (876) 755-3147  
E-mail: ltouser@taj.gov.jm

Chief Tax Counsel  
Tax Administration Jamaica  
Legislation, Treaties & International Tax Issues  
10<sup>th</sup> Floor, Office Centre Building  
12 Ocean Blvd.  
Kingston  
Tel: 1 (876) 967-0000

24. Unless otherwise agreed to at the expression of interest meeting, TPA applications should be made to the General Manager, Large Taxpayer Office at the address noted above.

## Information required

25. Taxpayers should be prepared to provide, in advance of an expression of interest meeting, a *Schedule 8, Declaration of Connected Person Transactions* detailing their transactions for the most recent year, assuming that Schedule 8 has not already been filed with their annual income tax return. No additional documentation is required in advance of the expression of interest meeting.

26. Taxpayers should be prepared at the expression of interest meeting to make a presentation and respond to questions on the following matters:

- The economic environment of their industry and particular place or function

within that industry (e.g. what is their market share in Jamaica or in the relevant market, and who are their main competitors).

- The nature of the transfer pricing issues intended to be covered by a TPA, and the importance to their business operations of such transactions intended to be covered.
- Any transactions it does not intend to cover in the TPA, for example:
  - Transactions that are routine and of limited economic value.
  - Transactions where it would be a straightforward exercise to identify a comparable ALC.
  - Transactions that are domestic transactions where there is, or is intended to be, no tax benefit realized regardless of the TPMs adopted (e.g. if the transactions involve two connected persons both of whom are generally profitable and who pay income tax at the same rate).
  - Transactions where the taxpayer will be able to demonstrate to the CG that such transactions are not in fact between connected persons, but instead are independent transactions (see Section 17(11) of the ITA).

## Process

27. Applications for expression of interest meetings will be accepted on a named (sometimes referred to as “cards disclosed”) basis, where the identity of the taxpayer is disclosed. This is the internationally accepted standard across jurisdictions and has proven to be most beneficial.

28. TAJ may be prepared on a case by case basis to have an “anonymized” expression of interest meeting through an advisor, but will still expect most of the information outlined in this practice note to be disclosed at the expression of interest meeting by the advisor [e.g. the industry the taxpayer is operating in, the approximate turnover and profits for the most recent accounting period, and the relative scale of the transfer pricing transactions intended to be covered (or not intended to be covered) by a TPA]. TAJ will also expect the type of information under paragraphs 25 and 26 above to the extent available to be given by the advisor. Where the approach is anonymized, TAJ will offer no assurances that a TPA application will be accepted into the TPA programme.

## Permanent establishment (PE)

29. A non-Jamaican company that operates in Jamaica through a PE (as defined in Section 2 of the ITA), may engage TAJ in expression of interest discussions in relation to transactions with its Head Office or with another PE of the same entity.

## Additional areas of discussion

30. Where appropriate and to the extent that the information is available, TAJ will be prepared to discuss:
- What TPM is contemplated for the transactions intended to be covered by a TPA.
  - When the TPA should commence and what term of agreement is

contemplated (generally three to five years).

- Whether it is interested in a “roll-back” of the TPA under Section 4(2) of the TPA Rules.
- The taxpayer should be prepared to:
- Disclose whether any audits are underway, either in Jamaica or elsewhere, which may impact a TPA negotiation.
- Confirm that submission of all tax returns and payment of all taxes is up to date in Jamaica or that suitable arrangements will be in place before the formal TPA application is submitted.

## Possible outcomes

31. In most circumstances, a TPA is likely to offer both TAJ and taxpayers a more efficient, timely and less confrontational process than an audit. However, as specified in Section 6(1) of the TPA Rules, TAJ has the right to refuse to enter into a TPA “where the Commissioner General has sufficient reasons to do so”.
32. In a “cards disclosed” expression of interest meeting, TAJ will provide written assurances within 30 working days of the expression of interest meeting that it is prepared to accept a TPA application under Section 5(1) of the TPA Rules into the TPA programme. Where TAJ considers there to be limited prospect of reaching agreement with the taxpayer’s proposal, or the central issue involves a matter that is before the courts, TAJ may advise that a TPA application will not be accepted into the programme.
33. Only in extraordinary circumstances would TAJ decline to pursue or conclude a TPA after having given written assurance that a formal application under Section 5(1) of the TPA Rules would be accepted into the TPA programme. However, where any written assurance is given that TAJ will accept a TPA application into the TPA programme, the assurance will only be binding on TAJ for a maximum period of six months after it has been given.
34. The mere acceptance of a TPA application from any taxpayer into the TPA programme does not translate into the acceptance of all the terms and conditions of the TPA application. Filing a TPA application will lead to a due diligence approach by TAJ, followed by negotiations.
35. See *Appendix I – Expression of Interest Meeting / TPA Application* below which provides additional information on this subject.

## Processing TPA Applications

### Accepting TPA applications

36. The TPA application should be submitted electronically and one copy in writing together with the application fee (see Section 12(1) of the TPA Rules) to TAJ via the contact referred to in paragraph 23 above, ideally after expression of interest

discussions have been held and TAJ has given written assurance to accept the TPA application into the TPA programme. The TPA application must be accompanied by all supporting documentation and payment of the TPA application fee.

## Application Fee

37. The application fee for various types of TPAs are as follows:
  - a. JA\$ nil for unilateral TPAs.
  - b. JA\$10,000 for BTPAs.
  - c. JA\$15,000 for MTPAs.
  
38. The TPA application should be based on the arm's length principle and detail the significant comparability factors, selection of the most appropriate TPM, and critical assumptions in respect of future events.
  
39. Supporting documentation may include details of existing TPA's, organizational structure of the taxpayer and relevant connected persons, and a description of the activities of the connected persons and connected transactions.
  
40. Submission of the TPA application will be followed by a review of the TPM proposal, presentation and clarification of the TPM proposal by the taxpayer, detailed examination of the TPM proposal by TAJ (which may include field visits), negotiation of the TPA terms and conditions, and the signing of the TPA.
  
41. TAJ will confirm its commitment to accept a TPA application by sending the taxpayer an acceptance letter usually within 30 working days after receiving the TPA application. The acceptance letter will set out the terms and conditions under which TAJ will pursue the TPA application. The taxpayer needs to identify all authorized representatives in the TPA application. TAJ may transmit all correspondence and other information electronically, if the taxpayer includes written authorization for electronic transmission of information in the TPA application.
  
42. Appendices II and III below provide examples of a TPA application and TPA acceptance letter.

## Withdrawing TPA applications

43. A taxpayer may withdraw a TPA application at any time before the completion and sign off of the TPA, without further consequence or obligation. The CG has an obligation to safeguard all trade secrets and other sensitive information or documentation presented in the course of administering the TPA programme.
  
44. If the taxpayer withdraws a TPA application, neither the taxpayer nor TAJ will have any obligations to each other. Any previous undertakings and understandings relating to the TPA application will be considered to be null and

void and have no further effect on the parties (see *Disclosure and Protection of Information* below for additional information on this matter).

## Case assignment

45. After TAJ has accepted the taxpayer's TPA application and the taxpayer has signed and returned the TPA acceptance letter (see *Appendix III – Example of TPA Acceptance Letter* below), a team will be assigned. The team leader will contact the taxpayer usually within 30 working days after receiving the signed acceptance letter to discuss any concerns the taxpayer may have. The team leader will co-ordinate further work and information requirements regarding the TPA application with the taxpayer, the connected persons, the team, and, in the case of a BTPA or MTPA, the relevant foreign competent authorities.
46. Although the team leader is responsible for the TPA, all team members participate in the various stages of the TPA programme. They help develop and resolve the case based on their background, knowledge, and experience.

## Content of TPA Applications

### General

47. The taxpayer should ensure TAJ has all the information it needs to decide on the appropriateness of the TPM proposal in the TPA application. Detailed information requirements for particular cases will be determined, on a case-by-case basis, during expression of interest and subsequent meetings.
48. Once TAJ has accepted the TPA application and the team has carried out a preliminary review, the team leader will discuss a case plan with the taxpayer, taxpayer representatives, and, in the case of a BTPA or MTPA, the relevant foreign competent authorities. See *Appendix V – Example of TPA Case Plan* below which sets out the framework of a typical case plan.
49. All documents and material provided throughout the TPA programme will be retained by TAJ, whether a TPA is concluded or withdrawn.
50. The taxpayer should provide the TPA application in acceptable electronic format via email or on suitable electronic media. The taxpayer should also provide one paper copy of all documents relating to the TPA application to the General Manager, Large Taxpayer Office at the address noted in paragraph 23 above, including documents the taxpayer sends later in response to TAJ requests or, in the case of a BTPA or MTPA, requests from the relevant foreign competent authorities.
51. All data submitted by the taxpayer should be properly labelled, indexed, and referenced in the TPA application.

52. Any information TAJ requests should be made available to it within a reasonable period of time, as mutually agreed to, from the date of the request. Otherwise, TAJ may ask the taxpayer to withdraw their TPA application, or defer or withdraw from the TPA application process.
53. The taxpayer must submit all documents in English. This requirement applies to all communications throughout the TPA programme.

## Items for inclusion

54. The TPA application must include detailed information about the taxpayer and connected persons involved in the proposed TPA. The particulars of the case will determine depth and breadth of information the taxpayer needs to submit. See *Appendix IV – TPA Application Checklist* below for a checklist that will assist in preparing a TPA application.

## Explanation of proposed TPM

55. In the TPA application, the taxpayer must identify and provide all information needed to establish the appropriateness of the proposed TPM including detailed analysis and explanations as required by the ITA, *Income Tax (Transfer Pricing Documentation) Regulations, 2015*, the current version of TAJ's practice note entitled *PN-1, Transfer Pricing* and the OECD Guidelines.
56. TAJ reserves the right to request the taxpayer to show the effect of the proposed TPM on the covered transactions by applying it consistently to previous years, or the most recent business cycle if appropriate, and to the time period that the taxpayer wants covered by the TPA, to the extent that is practicable. TAJ would make this request for the purpose of testing the appropriateness of the proposed TPM.
57. When there is no reliable historical data to show the effect of a proposed TPM on the prior or future years - for example, when the proposed TPM applies to new entities, products, processes, business segments, or activities - TAJ will work with the taxpayer during and after the expression of interest meeting to determine what alternative data may be necessary.

## Critical assumptions

58. The taxpayer must present a set of critical assumptions under which a proposed TPM would operate. The taxpayer should establish and describe them in detail in the TPA application. The taxpayer and TAJ must agree on what critical assumptions should be included in the TPA.
59. A TPA may be revised or cancelled if there is a failure to meet a critical assumption during the term of a TPA. If such a failure occurs, the taxpayer must notify TAJ in writing on a timely basis after the failure. In this notification, the taxpayer should describe and explain any failure to meet a critical assumption

and give the reasons for the failure. The parties will discuss how the TPA may be revised in light of the changed circumstances. If the TPA cannot be revised, then it may be cancelled. The decision to revise or cancel a TPA would be made after the taxpayer, TAJ and, in the case of a BTPA or MTPA, the relevant foreign competent authorities have examined and evaluated the impact of any changes in critical assumptions in respect of the TPA.

## Term

60. The taxpayer should propose an initial term for a TPA, giving appropriate consideration to the industry and transactions involved. The term of a TPA is usually three to five years, but may vary depending on the facts, circumstances, and resolution of the particular case.

## Declaration statement

61. The TPA application must include a statement signed by an authorized officer of the taxpayer in the following form:

“I declare that I have examined this TPA application, including accompanying documents, and, to the best of my knowledge, all information presented in this TPA application is complete and accurate in all material respects.”

## Case Work and Resolution

### Review, analysis, and evaluation

62. The team will review the taxpayer’s TPA application in detail, according to the case plan. While TAJ will use its best efforts to conclude cases on a timely basis, there are often factors outside of its control that may cause delays. TAJ will advise the taxpayer if it expects any unusual delay.

63. A key step in the case plan is a case review meeting involving, if possible, all participants in the TPA programme, i.e. taxpayer, TAJ and, in the case of a BTPA or MTPA, the connected persons and relevant foreign competent authorities (see *Appendix VIII – Competent Authority Considerations* for more information on the subject). The case review meeting gives all participants the opportunity to come to a common understanding of the facts and circumstances underlying the TPA application. Based on this meeting, TAJ may ask the taxpayer for additional information and explanations including additional accounting or economic analyses.

64. TAJ will analyze and evaluate the information obtained as a basis for establishing its position.

65. At the end of the review, analysis, and evaluation stage of the TPA programme,

TAJ will discuss its position with the taxpayer.

## **Negotiations and agreements**

66. In the case of a BTPA or MTPA, TAJ will communicate with the relevant foreign competent authorities and agree to a timeline when position papers should be exchanged. TAJ and the relevant foreign competent authorities will exchange position papers before beginning negotiations.
67. In the case of a BTPA or MTPA, neither the taxpayer nor connected persons will be directly involved in competent authority negotiations. However, TAJ may ask the taxpayer to be available to respond to any questions the competent authorities may have during the negotiation sessions.
68. In the case of a BTPA or MTPA, TAJ and the relevant foreign competent authorities will mutually agree on reasonable cut-off dates for receiving information. In certain circumstances, additional information may be required for clarification purposes. To speed up the negotiation stage of a BTPA or MTPA process, the taxpayer should make sure that the relevant foreign competent authorities have the same information at the same time as TAJ throughout the process.
69. In the case of a BTPA or MTPA, once competent authority negotiations have been successfully concluded, and the terms and conditions have been confirmed with the taxpayer and connected persons, TAJ will endeavor to conclude the BTPA or MTPA with the relevant foreign competent authorities according to the case plan. TAJ will then enter into an agreement with the taxpayer, which will constitute the TPA.
70. In the case of a unilateral TPA, once the terms and conditions have been confirmed with the taxpayer, TAJ will endeavor to conclude the unilateral TPA with the taxpayer according to the case plan.

## **Post-settlement**

71. TAJ will arrange a post-settlement meeting with the taxpayer to discuss terms of settlement, renewal considerations, timeliness, and any problems encountered during the TPA programme. This stage is intended to give both parties the opportunity to provide and receive feedback on their experiences and concerns, and to make sure that the TPA programme is continuously updated and improved.

## ***Bilateral and Multilateral Transfer Pricing Agreements***

72. The purpose of pursuing a BTPA or MTPA is to avoid double taxation in respect of transactions entered into between a taxpayer and non-resident connected person. If only a unilateral TPA is in place, double taxation may occur. The TPA programme achieves maximum benefits for the taxpayer when the competent

authorities of two or more countries reach a BTPA or MTPA (see *Appendix VIII – Competent Authority Considerations* for more information on the BTPA or MTPA process).

73. Where a taxpayer has a preference for a BTPA or MTPA, and there is a relevant DTA in force to permit this, TAJ cannot confirm that the relevant foreign competent authorities will be prepared to enter into a BTPA or MTPA discussions with TAJ. Most tax administrations that have TPA programmes publish guidance to taxpayers seeking a BTPA or MTPA.
74. Taxpayers applying to TAJ's TPA programme will need to consult such guidance and explore with the relevant foreign competent authorities whether they will admit an application from the taxpayer or connected person into their TPA programme. If asked to do so by the taxpayer, TAJ may be able to explore this matter on behalf of the taxpayer with the relevant foreign competent authorities.
75. TAJ levies an application fee for bilateral and multilateral TPAs (see Section 12(1) of the TPA Rules) but will be prepared to postpone charging this fee until it is clear that the relevant foreign competent authorities will entertain a BTPA or MTPA application. In the case where relevant foreign competent authorities either indicate they do not offer BTPAs or MTPAs, or will not admit an application from the taxpayer concerned, TAJ may explore with the taxpayer whether a unilateral TPA application would be beneficial.

## **Legal Effect**

76. A TPA is regarded as binding on TAJ and on the taxpayer, subject to any qualifications stated in the TPA.
77. The mere act of requesting a TPA or filing a TPA application will not, in and of itself, constitute compliance for the purposes of Section 17 of the ITA and *Income Tax (Transfer Pricing Documentation) Regulation, 2015*, with respect to the taxation years proposed to be covered under the TPA.
78. When a taxpayer complies with the terms and conditions of a TPA, TAJ will consider that the results of applying the agreed TPMs have satisfied Section 17 of the ITA and *Income Tax (Transfer Pricing Documentation) Regulation, 2015*, for the transactions and periods specified in the TPA.

## **Disclosure, and Protection of Information**

79. The confidentiality provisions of the ITA limit TAJ's rights and powers to disclose information submitted in connection with a TPA application. In the case of a BTPA or MTPA, the confidentiality provision in the relevant DTA will also apply.

## **Administering TPAs**

## Reporting

80. The taxpayer will need to file a TPA Notice according to the terms of the TPA. A TPA Notice will demonstrate the taxpayer's compliance with the terms and conditions of the TPA. A TPA Notice must cover all items included in the TPA, and any requests to revise or cancel the TPA. Each TPA is unique, and each will set out the particular requirements of the TPA Notice, such as content, scope, filing date and whether joint TPA Notices are required in the case of a BTPA or MTPA. TPA Notices may require inclusion of items included in the TPA (see *Appendix VI - Example of TPA* below).
81. The taxpayer will need to electronically file and provide one copy in writing of each TPA Notice with TAJ, within the time period specified in the TPA:

General Manager  
Tax Administration Jamaica  
Large Taxpayer Office  
Constant Spring Revenue Service Centre  
191 Constant Spring Road  
Kingston 8

82. TAJ will review the TPA Notice for any items requiring a specific response, such as a request to revise the TPA, and will contact the taxpayer if it needs further clarification or additional information included in the TPA Notice.
83. If the taxpayer does not file a TPA Notice where required, TAJ may cancel the TPA.

## Compensating adjustments

84. In the case of a BTPA or MTPA, the agreement may include a provision to permit the taxpayer and non-resident connected person to make compensating adjustments. A compensating adjustment is intended to bring recorded amounts or results of covered transactions into agreement with the amounts or results of the covered transactions as determined by the application of the TPM as set out in the BTPA or MTPA.

## Auditing

85. Notwithstanding that a TPA may be in force, TAJ will conduct its regular audit programme and examine TPAs in the course of such audits. TAJ will not re-evaluate the TPMs or other terms and conditions agreed to in a TPA. Their examination of the TPA will be limited to establishing the taxpayer's compliance with the terms and conditions of the TPA and whether:
- Material representations in the TPA application and TPA Notice remain valid.
  - The taxpayer applied the agreed TPM consistently in accordance with the terms and conditions of the TPA.

- Supporting data and calculations used in applying the agreed TPM were correct in all material respects.
- Critical assumptions underlying the TPA remain valid and relevant.

## Resolving disputes

86. If TAJ determines that any matter has not been resolved, or if the taxpayer does not agree with any proposed adjustment by the TAJ, the matter will be referred to the TPRC for final decision.

87. Resolution of disputes may include interpreting any term of a TPA, and deciding on issues such as whether a given transaction is a covered transaction, and whether the taxpayer has retained the proper records. The TPRC's decision is not subject to further internal review. If the taxpayer files tax returns in a manner inconsistent with the TPRC's decision, the TPA may be cancelled or revoked. In such case, the taxpayer may contest the adjustments through the usual objection and appeal processes outlined in the ITA as if the TPA never existed.

## Revising TPAs

88. A TPA may be revised if it is established that:

- There has been a failure to meet a critical assumption.
- There has been a change in law, including a DTA provision that modifies the Jamaican income tax treatment of any matter covered by the TPA.
- There has been a material change in the facts and circumstances.

89. If the taxpayer believes the TPA requires revision, the taxpayer should notify TAJ in writing on a timely basis. The notice should set out the reasons for the proposed revision and include supporting documentation.

90. If the taxpayer and TAJ agree on a revision to the TPA, the effective date of the amending agreement will be stated in a letter of revision. If the taxpayer fails to sign off on the revision, TAJ may cancel the TPA.

91. In the case of a BTPA or MTPA, the relevant participants in the TPA programme including the foreign competent authorities will discuss how to revise the agreement.

## Cancelling or revoking TPAs

92. TAJ may cancel a TPA if it is established that:

- The taxpayer made any material misrepresentation, mistake, or omission in the TPA application, related TPA Notices, or subsequent TPA renewal submissions, or in supplying, or failing to supply, any relevant information under this practice note.
- The taxpayer or connected persons failed to comply with any material term or condition of the TPA.
- There has been a failure to meet a critical assumption.

- There has been a change in law, including a treaty provision, that modifies the Jamaican income tax treatment of any matter covered by the TPA.
- In the case of a BTPA or MTPA, the relevant foreign competent authorities' agreement is not consistent with the TPA or has been revised, cancelled, or revoked.
- There has been a failure to conclude or sign a revised TPA, BTPA or MTPA as the case may be.

93. When TAJ cancels or revokes a TPA:

- TAJ will give the taxpayer a written statement specifying the grounds.
- In the case of a BTPA or MTPA, TAJ will inform the relevant foreign competent authorities.
- The transactions previously covered by the TPA will be subject to the provisions of the ITA after the effective date of cancellation or revocation.

94. In the case of a BTPA or MTPA, if the relevant foreign competent authorities cancel their agreement, the taxpayer should notify TAJ promptly after such action.

## Renewing TPAs

95. Requests to renew a TPA will follow the same form and procedures in effect at the time the request for renewal is made that apply to TPA applications. The taxpayer should submit with the renewal request, appropriate updated supporting documentation, similar to that required for making a TPA application.

96. Upon request, TAJ may renew the taxpayer's TPA under the same terms and when:

- TAJ is satisfied that the TPM continue to be appropriate in the circumstance;
- There have been no material changes in the facts and circumstances underlying the TPA;
- The critical assumptions remain relevant; and
- The taxpayer has demonstrated compliance with the terms and conditions of the TPA.

## Other Reference

97. This practice note relates to issues addressed by TAJ publication noted below, and complements rather than substitutes for any of the criteria, procedures, or requirements that are set out therein:

- PN-02/17 - Transfer Pricing.

98. Taxpayers are encouraged to read this practice note in conjunction with the above-noted TAJ publication.

## **Appendix I – Expression of Interest Meeting / TPA Application**

An expression of interest meeting gives the parties an opportunity to discuss:

- Specific parties and participants to be included in the TPA programme (unless the expression of interest meeting is conducted on an anonymous basis).
- Nature and scope of the transactions to be covered under the TPA.
- Data, documentation, and analyses that may be needed.
- Proposed TPMs.
- Application for a unilateral, bilateral, or multilateral TPA
- In the case of a BTPA or MTPA, countries involved, and possibility for a BTPA or MTPA among the relevant foreign competent authorities.
- TPA years to be covered.
- Possible retroactive application of the TPA.
- Use, disclosure, and protection of information obtained or generated during the TPA programme.
- TAJ team members.
- TAJ's willingness to accept the TPA request.
- Co-ordination and scheduling of the subsequent phases in the TPA programme.

A TPA application should address the following points to the extent practicable:

- Global organizational structure of the MNE and the industry in which it operates.
- Parties, participants, transactions, and transaction flows proposed to be covered.
- Transfer pricing, audit and reassessment history, and related domestic or foreign tax audit issues and status.
- History of competent authority issues, requests, and settlements.
- Reasons for requesting the TPA.
- Relevant transfer pricing policies, methodologies, practices, and accounting systems and policies.
- TPMs contemplated under the TPA and the underlying rationale.
- Impact of the proposed TPMs on taxable income.
- Relevant key interpretative or technical taxation issues.
- In the case of a BTPA or MTPA, reasons for requesting a BTPA or MTPA, countries involved, and nature and extent of previous communications with those tax administrations.
- Key individuals (including taxpayer's officials or employees and any experts, advisors, and other representatives) who will be involved throughout the TPA process.
- Other information considered pertinent.
- Written authorization(s) for each representative in the TPA programme.

## **Appendix II - Example of TPA Application Letter**

*Underlined text below indicates information pertaining to BTPA or MTPA as the case may be.*

TAXPAYER'S LETTERHEAD

[DATE]

### **PRIVATE AND CONFIDENTIAL**

General Manager  
Tax Administration Jamaica  
Large Taxpayer Office  
Constant Spring Revenue Service Centre  
191 Constant Spring Road  
Kingston 10, Jamaica

Dear General Manager:

### **Re: Transfer Pricing Agreement Application**

Further to our transfer pricing agreement (TPA) expression of interest meeting of [DATE(S)] at your offices in Kingston, this will confirm that [NAME OF THE TAXPAYER] wishes to negotiate a TPA with Tax Administration Jamaica (TAJ) for certain transactions between [NAME OF THE TAXPAYER] and [NAME OF THE CONNECTED PERSON]. As discussed, [NAME OF CONNECTED PERSON] intends to apply for a TPA with [NAMES OF THE RELEVANT FOREIGN COMPETENT AUTHORITIES] as part of a BTPA or MTPA with Jamaica.

The transactions to be covered in the TPA will be *[DESCRIBE THE COVERED TRANSACTIONS]*.

As discussed in the expression of interest meeting, we propose that the initial TPA cover a period of [NUMBER] years, specifically the taxation years ending [MONTH, DAY, 20XX, 20XX, 20XX, 20XX, etc.]. The individual(s) authorized to represent [NAME OF THE TAXPAYER] for this TPA is(are) [NAME OF THE PERSON(S), FIRM(S)]. TAJ may provide taxpayer information relating to [NAME OF THE TAXPAYER] to the above-named representative(s). Copies of all correspondence should be provided to [NAME OF THE INDIVIDUAL WHO WILL RECEIVE CORRESPONDENCE].

We understand that TAJ is agreeable to proceeding with this TPA application and that you will send an acceptance letter to [NAME OF THE TAXPAYER]. We intend to proceed with a formal TPA application as soon as possible after receiving your confirmation of acceptance.

With respect to future communications, we authorize TAJ to electronically transmit all

correspondence or other information concerning the TPA, as necessary, to all involved. We are aware that TAJ does not ensure the security of electronic communications and accept the risks inherent in sending correspondence or other information electronically. We agree not to hold TAJ or its employees liable for any damage or loss, however caused, arising out of the electronic transmission of correspondence and other information related to our TPA.

Should you have any further questions on our TPA application at this time, please contact [NAME OF THE PRIMARY CONTACT] at [TELEPHONE NUMBER].

Yours sincerely,

[NAME OF THE AUTHORIZED OFFICER OF THE TAXPAYER]  
Authorized officer of [NAME OF THE TAXPAYER]

## Appendix III - Example of TPA Acceptance Letter

*Underlined text below indicates information pertaining to BTPA or MTPA as the case may be.*

[NAME OF THE TAXPAYER]

[ADDRESS OF THE TAXPAYER]

### Attention:

Dear Madame/Sir:

**Re: [NAME OF THE TAXPAYER] Transfer Pricing Agreement (TPA) Application**

This is in response to your TPA application letter of [DATE], regarding your request for a transfer pricing agreement (TPA) involving [NAMES OF THE TAXPAYER AND CONNECTED PERSON], and [NAMES OF THE RELEVANT FOREIGN COMPETENT AUTHORITIES]. It concerns the intercompany sales of certain [TYPES OF GOODS] to [NAME OF THE COMPANY] by [NAME OF THE COMPANY] and intercompany purchases of certain [TYPES OF GOODS] from [NAME OF THE COMPANY] by [NAME OF THE COMPANY].

A TPA is designed to allow parties to agree in advance on a transfer pricing methodology (TPM) to be used to set an arm's-length consideration (ALC) for specified covered transactions, for the purposes of Section 17 of the *Income Tax Act of Jamaica and provisions in the relevant double tax agreement (DTA)*. If Tax Administration Jamaica (TAJ) enters into a BTPA or MTPA with [NAMES OF THE FOREIGN COMPETENT AUTHORITIES], the relevant taxpayers will avoid potential double taxation on transactions covered by the BTPA or MTPA according to the provisions of the DTA(s) between Jamaica and [NAMES OF THE FOREIGN COUNTRIES].

As discussed, TAJ agrees to pursue your TPA application in accordance with *PN-2, Transfer Pricing Agreements*, subject to the following additional understandings:

- You consent to the disclosure to the [NAMES OF THE FOREIGN COMPETENT AUTHORITIES] of any information in your BTPA or MTPA application for the taxation years [YEAR] through [YEAR], and any or all information later provided or generated during the pursuit of the application.
- TAJ is not obliged to conclude a unilateral TPA (BTPA or MTPA). The final terms and conditions of your TPA will depend on the facts and circumstances of your situation and will be established after TAJ has reviewed and evaluated your application. The final terms and conditions may therefore differ from those proposed in your application.

As we explained during our expression of interest meeting, you are responsible for

ensuring that TAJ has all the information we need to properly evaluate your TPA application. All information that TAJ obtains or generates during the TPA programme relates directly to your potential tax liability under the *Income Tax Act* of Jamaica. We consider this information to be provided for the purpose of administering the *Income Tax Act* of Jamaica, regardless of any statements to the contrary by you or your representatives. The rules for using and disclosing information submitted with a TPA application are set out in the confidentiality provisions of the *Income Tax Act* of Jamaica and the confidentiality provisions of the DTA(s) between Jamaica and [NAMES OF THE FOREIGN COUNTRIES].

Please show that you accept the above understandings by signing the enclosed copy of this letter in the appropriate space and returning. We will then be able to coordinate the next phase of your TPA application with you and officials of [NAMES OF THE FOREIGN COMPETENT AUTHORITIES].

Thank you for your interest in our TPA programme. We look forward to working with you.

Yours sincerely,

General Manager  
Large Taxpayer Office  
Tax Administration Jamaica

Enclosure

Agreed on this date [DATE], by:

[NAME OF THE TAXPAYER]

[NAME AND TITLE OF THE AUTHORIZED OFFICER OF THE TAXPAYER]

## Appendix IV - TPA Application Checklist

The following checklist is only a guideline. We have provided it to help you organize and prepare your TPA application. Each TPA application is unique. Individual information requirements and submission format may vary from this checklist.

Item	Notes
<b>Section I - Introduction</b>	
Taxpayer, connected persons, and representatives - names, addresses, telephone numbers, relationships	
Fiscal periods and taxpayer identification numbers of the taxpayer and connected persons	
Proposed term of the TPA including any request for roll-back application of the TPA terms and conditions to non-statute-barred taxation years	
Proposed transactions to be covered under the TPA - description of the property or services to which the proposed TPA relates	
Proposed TPM(s)	
Proposed terms and conditions, and critical assumptions, for the TPA	
Identify whether this is a request for a unilateral TPA, BTPA or MTPA	
Declaration statement	
History and background of the taxpayer	
General description of business and products/services	
Taxpayer structure, organizational arrangement, operational set-up, including major transaction flows	
Identify all other transaction flows of the taxpayer (volumes, directions and amounts) that may have an impact on the transfer pricing of the covered transactions	
Functional currency for each entity and the currency which is used for the proposed transactions to be covered under the TPA	
Accounting and costing system, policies, procedures, and practices, including any significant financial and tax accounting differences that may affect the TPMs	
<b>Section II - Functional analysis</b>	
Detailed functional analysis of the taxpayer and all connected persons with respect to the covered transactions, which may include, for example:	
Activities/Functions:	
<ul style="list-style-type: none"><li>• Research and development (R&amp;D), manufacturing, services, marketing and distribution, general and administrative</li></ul>	
Risks:	
<ul style="list-style-type: none"><li>• Technological, product, market, credit, foreign exchange, litigation</li></ul>	
Capital employed:	
<ul style="list-style-type: none"><li>• Tangible assets, working capital, intangible assets</li></ul>	
Business strategies - current and future:	
<ul style="list-style-type: none"><li>• Budget statements, projections and business plans for future period covered by proposed TPA, general business and industry trends, future direction/business strategy including R&amp;D, production, and marketing</li></ul>	

Financial and operating information, including corporate annual reports:

- Financial statements (income, balance sheet, and statement of changes in financial position) on a consolidated and unconsolidated basis for the prior five years, or the most recent business cycle as appropriate – also, provide interim statements for the most recent period prior to the date of the submission)
- Income tax returns and related supporting schedules for the prior three years including copies of all *Schedule 8, Declaration of Connected Person Transactions* where required.
- Operating data (gross and net) segmented by product line, division, unit, and geographic region for the prior five years, or the most recent business cycle as appropriate

Relevant marketing and financial studies

Copies of all relevant intercompany agreements (pricing, cost sharing, licensing, distributorship etc.)

### **Section III - Industry and market analyses**

Detailed industry analysis:

- Comprehensive description of industry as well as generally accepted industrial and commercial practices
- Identification and general profile of competitors, including respective market shares
- Industry and general business statistics, financial ratios, and analyses/studies
- Critical success factors

Detailed analysis of the markets for all countries involved

### **Section IV - Transfer pricing background**

Discussion of relevant legal considerations and requirements:

- Jamaican law
- Foreign law
- Double tax agreement between Jamaica and the foreign country

Discussion of TPMs, transfer pricing policies, and practices used by the taxpayer and non-resident connected persons for the covered transactions during the past three years, or business cycle as appropriate

Discussion of relevant rulings, TPAs / BTPAs/ MTPAs, and other similar arrangements entered into with foreign tax administrations, for transfer pricing or other valuation bases, or other taxation matters entered into by the taxpayer (or its non-resident connected persons) and Jamaican or foreign tax administrations

Discussion of relevant Jamaican income tax audit, appeals, judicial and competent authority history

Discussion of relevant foreign income tax audit, appeals, judicial and competent authority history

Discussion of unassessed taxation years (Jamaican and foreign) and related outstanding tax, legal, and other pertinent issues

### **Section V - TPM analysis**

Provide all information, including detailed analyses and explanations needed

to establish the appropriateness of a proposed TPM, in accordance with the current version of TAJ's PN-1, *Transfer Pricing*, and the OECD Guidelines Discussion and analysis of each TPM, applied or rejected, according to the hierarchy in PN-1 for each covered transaction. In particular, provide details on accepted or rejected internal comparables. Indicate assumptions, strategies, and policies that may have influenced the acceptance or rejection of each TPM.

Summary of selected TPMs and secondary TPMs, if used as a check

#### **Section VI - Impact of proposed TPMs**

Application of the proposed TPMs to the covered transactions for the three prior years' operations or the most recent business cycle, and discuss results

Application of the proposed TPMs to the time period you want the TPA to cover and discuss results

Discussion and quantification of the variance, if any, from the methodology applied in Section V above

## Appendix V - Example of TPA Case Plan

### Proposed Timetable

Activity	Target Date	Actual Date
1. Expression of interest meeting		
2. TPA application letter filing		
3. TPA acceptance letter: <ul style="list-style-type: none"><li>• Issuance of acceptance letter to the taxpayer</li><li>• Issuance of notice of acceptance to the relevant foreign competent authorities</li></ul>		
4. TPA application filing		
5. Preliminary review of the TPA application by the TAJ team: the team will list key concerns, issues, and queries in preparation for the review, analysis and evaluation stage		
6. Review, analysis, and evaluation of the TPA application: <ul style="list-style-type: none"><li>• Jamaican site visit: the team will spend time as needed to interview key personnel, discuss issues and concerns, and tour offices and plants</li><li>• Formal submission to taxpayer of questions and queries</li><li>• Response from taxpayer</li><li>• Analysis of responses and evaluation</li><li>• Joint meeting between TAJ, relevant foreign competent authorities as the case may be, taxpayer, and connected persons to give everyone a chance to agree on the facts, circumstances, and characterizations underlying the TPA request and to raise any concerns, clarify any misunderstandings, and discuss the general direction of the case and alternative approaches if appropriate</li><li>• Further queries and analyses of responses</li><li>• Review of file and evaluation of TPM</li><li>• Review of criteria for selecting comparables</li><li>• Establishment of TAJ position</li><li>• Exchange of position papers with the relevant foreign competent authorities in the case of a BTPA or MTPA</li></ul>		
7. Negotiation with the relevant foreign competent authorities of terms and conditions, critical assumptions, and TPMs in the case of a BTPA or MTPA		
8. Agreements: <ul style="list-style-type: none"><li>• Conclusion of the BTPA or MTPA with the relevant foreign competent authorities as the case may be</li><li>• Drafting of the domestic APA</li></ul>		
9. Post-settlement meeting		

**PREPARED BY:**

**DATE:**

**REVIEWED BY:**

**DATE:**

**NOTE:** These activities and milestones should be amended depending on the facts, circumstances, and requirements of each case.

## Appendix VI - Example of a TPA

The following TPA is an example only. Each TPA is unique and the terms and conditions may vary from those indicated in this appendix. Underlined text below indicates information pertaining to BTPA or MTPA as the case may be.

### TRANSFER PRICING AGREEMENT

Between

[NAME OF JAMAICAN TAXPAYER]

And

### COMMISSIONER GENERAL

This TPA is between [NAME OF JAMAICAN TAXPAYER] (the "taxpayer") and the Commissioner General, Tax Administration Jamaica (TAJ).

#### 1. BACKGROUND

The taxpayer is the [Jamaican parent/subsidiary] of [NAME OF THE CONNECTED PERSON], a [NAME OF STATE/COUNTRY] foreign corporation.  
[DESCRIBE THE BUSINESSES OF THE TAXPAYER AND THE CONNECTED PERSON]

The taxpayer and the Commissioner General (the "parties") wish to establish a transfer pricing methodology (TPM) to determine the transfer prices charged for the covered transactions that will constitute arm's length consideration (ALC) for the purposes of Section 17 of the *Income Tax Act* of Jamaica (ITA). The terms of this TPA are consistent with the related competent authority agreement reached between the Jamaican competent authority and the [NAMES OF THE RELEVANT FOREIGN COMPETENT AUTHORITIES] dated [DATE OF THE BTPA OR MTPA] pursuant to Article [NUMBER] of the [NAME OF THE RELEVANT DTAs].

The parties agree as follows:

#### 2. DEFINITIONS

For purposes of this TPA, the terms and expressions listed below shall have the following meaning:

- **ALC** – Arm's length consideration
- **Commissioner General** - The Commissioner General, TAJ, or the Commissioner General's designate.
- **Critical assumption** - Any assumed objective criterion that would significantly affect the substantive terms of the TPA if the underlying conditions changed, whether or not the change is within the taxpayer's control.

- **BTPA** - *Bilateral transfer pricing agreement.*
- **DTA** - Double tax agreement
- **ITA** - *Income Tax Act of Jamaica.*
- **MTPA** - *Multilateral transfer pricing agreement*
- **TAJ** - Tax Administration Jamaica.
- **TPA** – This transfer pricing agreement.
- **TPA application** - The taxpayer's application letter dated [DATE] for a TPA, including the TPA application and any additional representations (oral or written), information, and supporting documents presented.
- **TPA years** - All taxation years of the taxpayer to be covered by this TPA, the first one beginning on [DATE] and the last one ending on [DATE].
- **TPM** - Transfer pricing method
- **[NAME OF THE FOREIGN TAX ADMINISTRATION] TPA** - *The TPA between the [NAMES OF THE RELEVANT FOREIGN COMPETENT AUTHORITIES] and [NAME OF THE NON-RESIDENT CONNECTED PERSON] that is intended to reflect the related BTPA or MTPA between the Jamaican competent authority and the [NAMES OF THE RELEVANT FOREIGN COMPETENT AUTHORITIES] dated [DATE OF BTPA OR MTPA].*

### **3. COVERED TRANSACTIONS AND TERM**

This TPA covers the following transactions between the taxpayer and [NAME OF THE CONNECTED PERSON] for the TPA years:

- [LIST THE COVERED TRANSACTIONS]

### **4. TRANSFER PRICING METHODOLOGY AND APPLICATION**

The transfer prices charged in respect of the covered transactions shall be determined by the taxpayer in accordance with the following TPM:

- [DESCRIBE THE TPM]

Amounts used under this TPM will be calculated, expressed, and paid in [NAME OF THE CURRENCY] or the equivalent. Foreign currency will be converted in accordance with [DESCRIBE].

### **5. EFFECT OF TRANSFER PRICING AGREEMENT**

If the transfer prices charged for the covered transactions for a TPA year have been determined by the taxpayer in accordance with the TPM, and the taxpayer has complied with the terms and conditions of this TPA, TAJ will consider that those transfer prices for that year are ALC for the purposes of Section 17 of the ITA.

### **6. CRITICAL ASSUMPTIONS**

For the purposes of this TPA, the following critical assumptions apply:

- The business activities and accounting policies and practices of the taxpayer and [NAME OF THE CONNECTED PERSON] shall remain substantially the same as described in the TPA request.
- [LIST OTHER CRITICAL ASSUMPTIONS]
- If there is a failure to meet a critical assumption, the taxpayer must notify the

Commissioner General in writing within [NUMBER] days of becoming aware of the failure.

## 7. REPORTING

For each TPA year, the taxpayer shall file with the Commissioner General and the [NAME OF THE RELEVANT FOREIGN COMPETENT AUTHORITIES] an annual report describing the taxpayer's and [NAME OF THE CONNECTED PERSON]'s actual operations for the year and demonstrating the extent of the taxpayer's and [NAME OF THE CONNECTED PERSONS]'s compliance with the terms and conditions of this TPA. The annual report is to include all items called for by this TPA, and any requests to the Commissioner General to revise or cancel this TPA.

Each annual report is to include the following items:

- Copy of the relevant [audited] financial statements of the taxpayer and [NAME OF THE CONNECTED PERSON] for that TPA year.
- Copy of all management and certification letters issued to the taxpayer or to [NAME OF THE CONNECTED PERSON] by [independent auditors/accountants] with respect to their [examination/review] of operations or [audit/compilation] of the financial statements of the taxpayer and [NAME OF THE CONNECTED PERSONS] for that TPA year, pertinent to any aspect of the determination of the transfer prices with respect to the covered transactions or compliance with the terms and conditions of this TPA.
- Copy of TAJ's Schedule 8 and [equivalent forms of the [NAMES OF THE FOREIGN TAX ADMINISTRATIONS] and accompanying schedules] reporting the covered transactions for the relevant TPA year and an accounting of any differences between amounts required to be reported respectively by the taxpayer and [NAME OF THE CONNECTED PERSON] on those forms and the corresponding amounts reported by the taxpayer and [NAME OF THE CONNECTED PERSON] in their financial statements for that TPA year.
- Description of any material changes in financial or tax accounting methods or principles employed for that TPA year in respect of the covered transactions that differ from the financial or tax accounting methods employed and reflected in the TPA application, or if in the taxpayer's opinion, there were no such material changes, an affirmative statement to that effect.
- Description of any failure to meet a critical assumption, and the reasons therefor or, if there have been no such failures, a statement to that effect, as well as a statement on the continuing relevance of the critical assumptions.
- Statement identifying all material differences between the description of the taxpayer's business operations contained in the TPA application and the taxpayer's business operations for that TPA year, or if in the taxpayer's opinion there were no material differences, an affirmative statement to that effect.
- All appropriate information and computations necessary to describe and support the application of the TPM to the covered transactions and the results for that TPA year, demonstrating the compliance with the TPM.
- Analysis and accounting of any compensating adjustments or subsequent compensating adjustments required under this TPA, and the manner in which the

related payments were, or will be, made.

- Other items as may be appropriate to the particular circumstances of the taxpayer and [NAME OF THE CONNECTED PERSON].

The first annual report will also include a copy of the TPA entered into between the [NAMES OF THE RELEVANT FOREIGN COMPETENT AUTHORITIES] and [NAME OF THE NON-RESIDENT CONNECTED PERSON].

In the event that one or more TPA years have elapsed prior to the signing of this TPA, the original and two copies of each annual report are to be filed with the Commissioner General within [NUMBER] days from the date of the taxpayer's signature of this TPA.

The original and two copies of each annual report for other TPA years are to be filed with the Commissioner General and the [NAMES OF THE FOREIGN COMPETENT AUTHORITIES] no later than [NUMBER] days after the end of the relevant TPA year. Failure to comply with the annual report filing requirements, as set out above, may result in the cancellation of this TPA.

Any clarification or additional information requested by TAJ is to be supplied by the date specified or as extended by TAJ.

## **8. AUDIT**

A TAJ audit with respect to the covered transactions of a TPA year will generally be limited to verifying that:

- Terms and conditions of this TPA have been complied with.
- Material representations in the TPA application and the annual reports remain valid and accurately describe the operations of the taxpayer and [NAME OF THE CONNECTED PERSON].
- Taxpayer applied the TPM consistently in accordance with the terms and conditions of this TPA.
- Supporting data and calculations used in applying the TPM were correct in all material respects.
- Critical assumptions underlying this TPA remain valid and relevant.

If TAJ determines that any matter outlined above has not been resolved, the matter will be referred to the Commissioner General.

TAJ may, after referring the matter to the Commissioner General, propose adjustments to give effect to this TPA or propose usual and routine audit adjustments to the determination and computation of the taxpayer's income and transfer prices reported for the purposes of the covered transactions during the taxation year or years under audit as determined in accordance with this TPA. Such proposed adjustments will not affect the continuing validity or applicability of this TPA. If the taxpayer agrees with such proposed adjustments, they will be treated as compensating adjustments as set out below. If the taxpayer does not agree with the proposed adjustments, the taxpayer may refer the matter to the Commissioner General for resolution in accordance with this

TPA.

## **9. RECORD RETENTION**

In addition to its obligations under the ITA, the taxpayer must maintain sufficient books, records, and other information to enable TAJ to determine the extent of the taxpayer's compliance with this TPA.

Information requested by TAJ during a TPA audit must be made available to TAJ within [NUMBER] days of a written request. If additional time is needed, an appropriate extension of time may be granted by TAJ upon written request within this [NUMBER]-day period.

Should TAJ's request involve materials that are not in the English language, TAJ may request a translation. The translation shall be provided to TAJ within [NUMBER] days of such request. An appropriate extension of time may be granted by TAJ upon written request.

## **10. COMPENSATING ADJUSTMENTS**

In the event that one or more TPA years have elapsed and the appropriate Jamaican income tax returns have been filed prior to the signing of this TPA, amended Jamaican income tax returns shall be filed, as necessary, within [NUMBER] days from the date of the taxpayer's signature of this TPA reflecting the application of the TPM. Any resulting compensating adjustment required to bring the previously filed returns in agreement with the amounts determined by the application of the TPM for each TPA year must be paid to the appropriate entity within this period.

For TPA years that have not elapsed before the signing of this TPA, to the extent that a compensating adjustment is necessary, the taxpayer or [NAME OF THE CONNECTED PERSON], as the case may be, shall pay the required compensating adjustment within one hundred and eighty (180) days from the end of the paying entity's taxation year to which the compensating adjustment relates.

A subsequent compensating adjustment may arise when, after the filing of a tax return for a TPA year, the taxpayer or TAJ makes usual and routine adjustments (e.g., correction of mathematical errors) to the determination and computation of the transfer prices for that TPA year in accordance with this TPA. Any subsequent compensating adjustments proposed by TAJ and agreed to by the taxpayer must be paid within ninety (90) days from the date of the reassessment. *When a subsequent compensating adjustment arises as a result of a proposal by the [NAMES OF THE RELEVANT FOREIGN COMPETENT AUTHORITIES], the taxpayer will provide notice to TAJ within ninety (90) days from the date of the proposal.*

The taxable income of the taxpayer for a TPA year will take into account all compensating adjustments and subsequent compensating adjustments, as computed in accordance with this TPA, and will be used for all Jamaican income tax purposes (including foreign tax credits and withholding taxes if the underlying nature of the

adjustment requires these). A liability arising from a compensating adjustment or subsequent compensating adjustment will be deemed to accrue as of the last day of the TPA year to which it relates, and will be taken into account for interest purposes and in the computation of any required tax instalments for that TPA year or subsequent taxation years.

The taxpayer and [NAME OF THE CONNECTED PERSON] will settle compensating adjustments or subsequent compensating adjustments by [METHOD OF PAYMENT]. Payments of compensating adjustments or subsequent compensating adjustments are to be made in the currency in which payments between the taxpayer and [NAME OF THE CONNECTED PERSON] are made for the covered transactions.

## **11. DISPUTE RESOLUTION**

In accordance with the relevant procedures set out in this TPA, any dispute arising under this TPA shall be resolved by the Commissioner General who may, *inter alia*:

- Have the TAJ abide by the terms of this TPA as interpreted by the Commissioner General.
- Revise this TPA with the concurrence of the taxpayer.
- Cancel this TPA.
- Revoke this TPA.

Without limiting the generality of the foregoing, and by way of example only, disputes with respect to, *inter alia*, the interpretation of any term of this TPA, whether a given transaction is a covered transaction, whether the taxpayer has complied with the record retention requirements, and whether the TPA should be either revoked or cancelled are all disputes that shall be resolved as set out above by the Commissioner General. The Commissioner General's decision will be final. Nothing in this TPA shall be read or construed as restricting the jurisdiction of the Revenue Court of Jamaica under Section 76 of the Income Tax Act should the taxpayer wish to appeal an assessment or additional assessment for a TPA year as if this TPA had never existed.

## **12. DISCLOSURE AND PROTECTION OF INFORMATION**

TPAs and information that TAJ obtains or generates during the TPA programme, including commercially sensitive and proprietary data is provided for the purposes of administering the ITA. Consequently, the confidentiality provisions of the ITA and the DTA limit the rights and powers of TAJ to use and disclose information submitted in connection with a TPA. Accordingly, TAJ may employ information obtained or generated during the processing of this TPA in reassessing taxation years not covered by this TPA or for transactions not expressly included as part of the covered transactions under this TPA.

## **13. REVISION**

This TPA may be revised if it is established that:

- There has been a failure to meet a critical assumption.
- There has been a change in law or to the relevant DTA that modifies the Jamaican income tax treatment of any matter covered by this TPA.

- There has been a material change in circumstances, as established through the filing of annual reports or the audit by the TAJ of any of the TPA years, or any other means.

If the taxpayer believes that this TPA requires revision, the taxpayer shall notify the Commissioner General. The notice shall be filed promptly, specify the reason for the revision, and shall include supporting documentation.

The taxpayer and the Commissioner General will discuss how this TPA may be revised. If the Commissioner General and the taxpayer agree on a revised TPA, the effective date of that arrangement will be stated in the revised TPA. If the parties fail to sign a revised TPA, the Commissioner General may cancel this TPA.

*If the Commissioner General and the taxpayer agree to revise this TPA, the Jamaican competent authority will seek concurrence for the revision from the [NAMES OF THE RELEVANT FOREIGN COMPETENT AUTHORITIES]. In the event that the [NAMES OF THE RELEVANT FOREIGN COMPETENT AUTHORITIES] does not agree on the revision, the Commissioner General may:*

- *Continue to apply this TPA.*
- *Apply the revised TPA.*
- *Cancel this TPA.*

#### **14. CANCELLATION OR REVOCATION**

The Commissioner General may cancel or revoke this TPA, if it is established that:

- The taxpayer or [NAME OF THE CONNECTED PERSON] has made any material misrepresentation, mistake, or omission in the TPA application or an annual report or renewal submissions with respect to this TPA or in supplying, or failing to supply, any relevant information with respect to this TPA.
- The taxpayer or [NAME OF THE CONNECTED PERSON] failed to comply with any material term or condition of this TPA.
- There has been a failure to meet a critical assumption.
- There has been a change in law or to the relevant DTA that modifies the Jamaican income tax treatment of any matter covered by this TPA.
- There has been a failure to sign a revised TPA.

If this TPA is cancelled or revoked:

- The taxpayer will be provided with a written statement specifying the grounds for the cancellation or revocation.
- *The [NAME OF THE RELEVANT FOREIGN COMPETENT AUTHORITIES] will be informed.*
- The cancellation or revocation usually will be effective as of the beginning of the taxation year which relates to the circumstances listed in the preceding paragraph.
- This TPA will cease to be of any further force and effect with respect to the taxpayer and TAJ, as of the effective date of the cancellation or revocation.
- After the effective date of the cancellation or revocation, the transactions

previously covered by the TPA will be subject to the provisions of the ITA and the relevant DTA.

**15. CHANGE IN THE FOREIGN COMPETENT AUTHORITIES' TPA**

If the [NAMES OF THE FOREIGN COMPETENT AUTHORITIES]'s TPA is not consistent with this TPA or has been revised, cancelled, or revoked, the taxpayer shall notify the Commissioner General within [NUMBER] days of becoming aware of such inconsistency or action. After the Jamaican competent authority consults with the [NAMES OF THE RELEVANT FOREIGN COMPETENT AUTHORITIES], the Commissioner General may:

- Continue to apply this TPA.
- Revise this TPA with the concurrence of the taxpayer.
- Cancel this TPA.
- Revoke this TPA.

**16. RENEWAL**

Requests for renewal of this TPA should be directed to the Commissioner General and follow the form and procedures and comply with the requirements that apply to a TPA application that are in effect at the time the request for renewal is made.

**17. CHANGE IN LAW OR TO THE DOUBLE TAX AGREEMENT**

If there is a change in law or to the relevant DTA that modifies the Jamaican income tax treatment of any matter covered by this TPA, the new or amended law or the relevant DTA will supersede this TPA to the extent that it is inconsistent.

**18. NOTICE**

Any notices (or notifications) required by this TPA shall be made in writing.

Notices to the Commissioner General shall be addressed as follows:

Commissioner General  
Tax Administration Jamaica  
4<sup>th</sup> Floor, Petroleum Corporation of Jamaica Building  
36 Trafalgar Road  
Kingston, Jamaica

or to such other representative or address as specified by written notice to the taxpayer.

Notices to the taxpayer shall be addressed as follows:

[NAME OF THE JAMAICAN TAXPAYER]  
Attention: [NAME OF APPROPRIATE OFFICER]  
[ADDRESS OF THE TAXPAYER]

or to such other representative or address as specified by written notice to the Commissioner General.

**19. PENALTIES**

As long as this TPA remains in effect and the taxpayer complies with the terms and conditions of this TPA, no transfer pricing penalty under Section 17 of the ITA will be assessed with respect to the covered transactions.

**20. COUNTERPARTS**

This TPA may be signed in counterparts, with each counterpart deemed an original.

**21. MISCELLANEOUS**

This TPA constitutes the entire agreement between the parties and, except as otherwise provided, no written or oral understandings or representations pre-dating the signing of this TPA shall be of any effect. Except as otherwise provided, this TPA may not be varied, amended, or supplemented except by written instrument signed by the parties.

IN WITNESS WHEREOF the parties have signed this TPA on the dates indicated below.

**[NAME OF THE TAXPAYER]**

By:

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Date

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[NAME OF THE REPRESENTATIVE]  
[TITLE]

COMMISSIONER GENERAL OF TAX ADMINISTRATION JAMAICA

By:

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Date

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[NAME OF THE OFFICIAL]  
Commissioner General  
Tax Administration Jamaica

## **Appendix VII - 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 XX of XX, 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 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**

### **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 or No (If Yes, Effective Date)
- 10) Has the person complied with all TPA terms and conditions? Yes or No
- 11) Has the person triggered any critical assumptions detailed in the TPA? No or Yes  
(If Yes, attach additional statement with explanation)  
Are any compensating adjustments required under the terms of the TPA? No or 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 or 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 or 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                  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 24 of November, 2015.

Minister of Finance and Planning

## **Appendix VIII – Competent Authority Considerations**

When TAJ agrees to pursue a BTPA or MTPA with the relevant foreign competent authorities of one or more treaty partners, there will be a mutual exchange of information with those treaty partners concerning all aspects of the TPA programme, including any subsequent revisions, cancellations, revocations, or requests for TPA renewal, in accordance with the relevant DTAs.

The final TPM agreed amongst the competent authorities in a BTPA or MTPA may differ from the TPM originally proposed by the taxpayer in the TPA application. The taxpayer may reject the final TPM and withdraw the TPA application. However, if double taxation occurs as a result of the taxpayer withdrawing from the BTPA or MTPA process, the competent authorities' position to address the double taxation under the mutual agreement procedure (MAP) article of the relevant DTA may remain the same as the final TPM agreed amongst the competent authorities.

If for any reason a BTPA or MTPA has not been concluded, and taxpayer and TAJ have concluded a unilateral TPA, the taxpayer retains the right to pursue the MAP article available under the relevant DTA. However, if double taxation occurs on the transactions covered by the unilateral TPA, TAJ may, under the MAP article of the relevant DTA, deviate from the terms and conditions in the unilateral TPA to resolve the matter with the relevant foreign competent authorities. The settlement negotiated by TAJ and the foreign competent authority will prevail over the terms and conditions of the unilateral TPA entered into between TAJ and the taxpayer.

See TAJ's *PN-3, Requests for Competent Authority Consideration Under Mutual Agreement Procedures in Double Tax Agreements* for additional information regarding the mutual agreement procedure process.