

# 15 INSIGHTS ON TRANSFER PRICING IN NIGERIA

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## 1 What is Transfer Pricing?

Transfer Pricing (TP) is described as the method by which connected organisations or related parties price goods, assets, services, intellectual properties, loans, guarantees and other commercial transactions between them.

The prices paid for goods or services delivered or received have a direct impact on the profits of the seller and buyer and by implication, on tax. Unlike transactions between independent parties, related parties tend to place less emphasis on ensuring that the price charged for a transaction reflects market circumstances.

## 2 Why is the Revenue Authority (Federal Inland Revenue Service "FIRS") concerned about Transfer Pricing?

The revenue authority is more concerned with cross-border transactions because any mispricing could mean a shift of tax base from a high tax jurisdiction to a low tax jurisdiction, or even a tax haven. Thereby reducing the tax payable to the Revenue Authority. This action is referred to as "Profit Shifting"

## 3 How is transfer pricing regulated in Nigeria?

Transfer Pricing in Nigeria is regulated by The Income Tax (Transfer Pricing) Regulations 2018 (the Regulation), this regulation gives effect to the relevant provisions of the

- Personal Income Tax Act, 2004

- Companies Income Tax Act CAP C21, LFN 2004
- Petroleum Profit Tax Act Cap 13, LFN 2004
- Capital Gains Tax Act, 2004
- Value Added Tax Act, 2004

#### **4 What does the TP regulation address?**

TP regulations are designed to address cross border related parties' transactions. Although, there are instances where it will be essential to apply the regulations to a domestic related party transaction. For example, where there is a loss making entity within a profitable group, an entity has pioneer status, or related parties subject to tax at different rates, etc. As a result, there is an advantage in local groups preparing their TP policy and documentation.

#### **5 What methods are advised in TP Regulation?**

Related parties are allowed to use any of the methods listed in the regulations as a basis for the pricing of their controlled transactions. These methods, which are the same as those prescribed by the Organisation for Economic Co-operation (OECD) and the United Nation (UN), are:

- Comparable Uncontrolled Price method (CUP);
- Resale Price Minus method (RPM)
- Cost Plus method (CP)
- Transactional Profit Split method (TPS)
- Transactional Net Margin method (TNM)

#### **6 What happens if a company decides not to use any of the advised methods?**

The Regulations also allow a taxpayer to apply a method not listed in the regulations so far as the taxpayer can demonstrate that none of the prescribed methods is suitable and that the method used gives an arm's length result.

There is no specific priority of methods. Transactions must therefore, be analysed separately to ascertain the most appropriate method having regard to the nature of the transaction, class of transaction or associated persons and functions performed by such persons as well as other relevant factors.

#### **7 What does TP documentation entail?**

Connected organisations are to prepare a Master File and Local File as part of their TP documentation in addition to a detailed list of information and analysis contained in the schedule to the Regulations.

#### **8 What is the timeline for submitting TP documentation?**

Consistent with the old Regulations, documentation is expected to be in place before the due date for filing income tax returns and is to be submitted to the FIRS upon request within 21 days.

## **9 Who is exempted from maintaining TP documentation?**

Connected organizations with total related party transactions of less than ₦300 million (Grca \$840,000) may choose not to maintain the TP documentation. However, they must prepare and submit the TP documentation within 90 days from the date of receipt of a notice from FIRS.

### **TRANSFER PRICING DECLARATION AND DISCLOSURE**

## **10 What is TP declaration?**

An organisation is expected to make a declaration of all its connected organisations resident in Nigeria or elsewhere not later than 18 months after incorporation or within 6 months after the end of the accounting year whichever is earlier. An updated declaration will be required where there is a merger or acquisition of up to 20% of an entity or its parent; or any other change in the structure or arrangement of the entity.

## **11 What steps are to be taken if there is a change in an organisation's director?**

Where there is an appointment or retirement of a director of a connected organisation, a notification is to be made to the FIRS as part of the TP declaration and submitted within 6 months of the financial year end.

## **12 What is TP disclosure?**

Except with respect to a new business, the rules remain unchanged. A connected organisation is expected to make annual disclosures of related party transactions within 6 months after the end of the accounting year or no later than 18 months after incorporation, whichever is earlier.

## **13 How does the FIRS determine Arm's length nature of Intragroup charges?**

The FIRS will carry out specific tests (in addition to a price assessment) to determine the arm's length nature of intragroup charges. These would include a Benefit test and a Shareholder activity test.

## **14 What does Safe Harbour mean?**

The safe harbour provisions have been updated to state that taxpayers would be exempted from preparing TP documentation where their controlled transaction (related party transactions) are priced in accordance with specific guidelines that the FIRS may publish from time-to-time.

## 15 What are the TP Penalties?

- i. Failure to file TP declaration – N10 million in the first instance and N10,000 for every day failure continues;
- ii. Failure to file updated TP declaration/provide notification about directors – N25,000 for every day in which default continues;
- iii. Failure to file TP disclosure – the higher of N10 million or 1% of the value of related party transactions not disclosed; and N10,000 for every day in which the default continues;
- iv. Incorrect disclosure of transactions – the higher of N10 million or 1% of the value of RPT incorrectly disclosed
- v. Failure to file TP documentation upon request – the higher of N10 million or 1% of the value of RPT not disclosed; and N10,000 for every day in which the default continues
- vi. Failure to furnish information/documentation upon request – 1% of the value of each RPT for which information/document relates; and N10,000 for every day in which the default continues.

The FIRS may grant extensions to filing deadlines under certain conditions, but full penalties will apply if a taxpayer is unable to meet up with the extended timelines.

## 16 Where can I get help with Transfer Pricing Compliance?

The Chartered Institute of Taxation of Nigeria currently has in excess of 1,000 chartered or licensed tax practitioners who are able to assist with TP compliance requirements. Taxaide®'s professional personnel are among such licensed tax practitioners. Taxaide® provides a wide range of TP management and advisory services which includes:

- Advisory and preparation on the necessary TP documentations
- Preparation, assembling and filing of relevant TP returns
- Management of any TP audits and investigations
- Representation at the FIRS with regards to TP issues

For more information on TP and all tax-related issues, please do not hesitate to contact us on:

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