

## Transfer Pricing-Nigeria

### Please describe your country Transfer Pricing Regulations.

The Nigerian Transfer Pricing Regulations (the 'Regulations') was first introduced in 2012 and revised in 2018. The Regulations are divided into 6 parts as follows:

- Part 1 – Purpose, Objective and Scope of Application;
- Part II – Compliance with Arm's Length Principle, Advanced Pricing Agreements and Corresponding Adjustments;
- Part III – Comparability Factors and Connected Persons;
- Part IV - TP Declaration, Disclosures and Documentation;
- Part V – Applicability of Documents;
- Part VI – Offences, Administrative Penalties and Dispute Resolution;
- Part VII – Supplementary and General Provisions;

The Regulations adopts the arm's length principles of the UN and OECD Model Tax Conventions on Income and Capital; OECD Transfer Pricing Guidelines for Multi-National Enterprises and Tax Administration, as well as the UN practical manual on Transfer Pricing for Developing countries.

### Who is affected? / Whom it concerns?

The Regulations apply to transactions between connected persons and shall include:

- (a) Sale and purchase of goods and services;
- (b) Sale and purchase or lease of tangible assets;
- (c) Transfer, purchase, license or use of intangible assets;
- (d) Provision of services;
- (e) Lending or borrowing money;
- (f) Manufacturing arrangements;

**Please specify the legal definition of related parties in your country.**

Under the Regulations, persons are deemed connected or related where one person has the ability to control or influence the other person in making financial, commercial or operational decisions, or where a third party has the ability to control or influence the financial, commercial or operational decisions of such persons. Furthermore, the Regulations recognizes the definition of related or connected persons as contained in the OECD Transfer Pricing Guidelines and the United Nations Transfer Pricing manual.

**Please specify the accepted Transfer Pricing Methods & Data used in your country.**

In determining whether a related party transaction is at arm's length, any of the following methods may be used:

- The Comparable Uncontrolled Price (CUP) method
- The Resale Price Method (RPM)
- Cost Plus Method (CPM)
- Transactional Net Margin Method (TNMM)
- Transactional Profit Split Method (TPSM)

There can be deviation from the foregoing methods provided a taxpayer can satisfactorily to the Federal Inland Revenue Service that none of those methods can be applied to determine that a transaction is consistent with the arm's length principle in the given case.

While Nigeria currently does not have a universal database that can be assessed to inform a Connected Persons' choice of a TP method, private firms that specialize in assessing such data through technology exist.

**Please describe the processes of Transfer Pricing Audit and Penalties.**

In Nigeria there is no special tax audit procedure designed specifically for transfer pricing. Therefore, TP audits are carried out just like any other tax audit. That said, it must be noted, that the Federal Inland Revenue Service has emphasized that contemporaneous documentation must be put place and it shall be requesting for these documents during TP audits.

The contemporaneous documentation includes

- (i) Master File and (ii) Local Files.

The Master File shall provide an overview of the global operations of the Multinational Enterprise group.

The Master File shall contain the following information:

- (i) Organisational Structure (ii) Description of the MNE's Business (iii) Intangibles (iv)MNE's intercompany financial activities (v) Financial and tax positions.

The Local File is expected to contain detailed information on an enterprise's related party transactions including the following:

- (i) Overview of the enterprise, (ii) Related party relationship (iii) Controlled Transactions.

The following are infractions and applicable penalties under the Regulations

Infraction	Penalty
Failure to file updated TP Declaration Form including a change of Directors	Daily fine of N25,000 (circa \$70).
Failure to file TP Declaration as at when due.	Lump sum fine of N10,000,000 (circa. \$28,000) + daily fine of N10,000 (circa. \$28).
Failure to disclose controlled transactions.	Whichever is higher between lump sum fine of N10,000,000 (circa. \$28,000) or 1% of value of undisclosed controlled transaction + daily fine of N10,000 (circa \$28).
Incorrect disclosure of controlled transactions	Whichever is higher between lump sum fine of N10,000,000 (circa \$28,000) or 1% of value of undisclosed controlled transactions.
Failure to provide TP documentation within 21 days of receiving FIRS' request.	Whichever is higher between lump sum fine of N10,000,000 or 1% of value of controlled transactions + daily fine of N10,000 (circa \$28).

**What are the reporting deadlines?**

Connected Persons are required to meet reporting deadlines as regards the following:

1. Declarations
2. Disclosure
3. Documentation

- A taxpayer is required to declare its relationship with all connected persons within 18 (eighteen) months after the date of incorporation or 6 (six) months after the end of the accounting year, whichever is earlier.
- A tax payer is also required to without notice or demand, make disclosure of transactions subject to TP to the Federal Inland Revenue Service. This is expected to be done within the earlier of 18 months of incorporation or 6 months after the end of the accounting year.
- A Connected Person is to maintain a master and local file. Both files are required to be maintained contemporaneously and provided upon request, to the Federal Inland Revenue Service FIRS (TP Division) within 21 (twenty-one) days. A Group whose revenue is below N300 million (0.9 million dollars) however has 90 (ninety) days to comply.

**Please list any additional unique information about transfer prices in your country.**

In the case of cross-border sale/purchase of commodities (hydrocarbons and derivatives inclusive), the relevant sale price for controlled transactions will be the sale price as obtainable among unrelated entities;

Values attributable to the following controlled transactions will be disallowed for TP purposes:

- a. Parent company charges for its shareholders' meeting;
- b. Parent company charges for the issuance of its shares;
- c. Parent company charges for its supervisory board functions;
- d. Parent company charges for its financial reporting functions including consolidation of its reports; and
- e. Fund raising costs for the acquisition of participations by a related entity.

The price of the transfer of rights in intangibles, other than by way of a true sale of intangible, is capped at 5% of Earnings before Interest, Tax, Depreciation and Amortization (EBITDA).

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