

Transfer Pricing Country Summary Nigeria

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Legislation

Existence of Transfer Pricing Laws/Guidelines

Regulation No 1, 2012 (Income Tax), which took effect in August 2012 regulates Transfer Pricing in Nigeria. The regulation contains provisions on the scope; compliance and regulatory protections on transfer pricing with regard to Advanced Pricing Agreements. The purpose of the regulation is to ensure appropriate taxable basis and to provide the Tax authorities with the proper tools in order to fight tax evasion. These measures are aimed at reducing the risk of economic double taxation and to provide taxable persons guidance and certainty regarding transfer pricing in Nigeria.

The Transfer Pricing provision pertain to transactions between 'Connected Taxable Persons (CTP). Per the regulation a 'Connected Taxable Person' constitutes persons, individuals, entities, companies, partnerships, joint ventures, trusts and/or associations, which also includes persons/entities as defined under 'associated enterprises' by the various Income Tax Legislations and Model Tax Convention of the OECD. And, "for purposes of applying these regulations, Permanent Establishments (PE) are treated as separate entities, and any transaction between a Permanent Establishment and its head office or other connected taxable persons are considered to be a controlled transaction."

BEPS

On October 5 2015, the Organisation for Economic Cooperation and Development (OECD) released its final Base Erosion and Profit Shifting (BEPS) package containing measures that will significantly change existing international tax rules. Regulation 11 of the Nigerian TP Regulations allows changes to the OECD Guidelines to automatically apply. Nigeria signs both the Multilateral BEPS Convention and the CRS Multilateral Competent Authority Agreement to tackle international tax avoidance and evasion on August 17, 2017. These allow jurisdictions to automatically amend existing bilateral treaties to include measures that tackle base erosion and profit shifting (BEPS) through tax treaties.

Definition of Related Party

Enterprises are considered to be associated/connected where one enterprise/person participates directly or indirectly in the management, control and capital of the other, or of both enterprises. Transactions regulated under the TP regulation include all forms of agreements relating to exchange of goods and property (tangible and intangible) and the provision of services in so far as they affect the profitability of an enterprise.

Like most African countries' Transfer Pricing regulation, Regulation No 1, 2012 pertains to every transaction between 'connected taxable persons' regardless of the sector, value, or the jurisdiction where it is conducted, suffice a Nigerian entity is a party.

Transfer Pricing Scrutiny

The Federal Inland Revenue Services (FIRS) has intensified transfer pricing audits in recent tax assessments. The TP regulations in place are **simultaneously aimed at identifying tax evasion issues and a better understanding of the taxpayers' Transfer pricing methodology**. In this respect, the Oil and Gas Industry being one of the most attractive sectors for foreign direct investment is the most scrutinized by FIRS - It contributes the highest tax revenue to the Federation. Other large multinational manufacturing companies stationed in Nigeria are also heavily monitored by the Tax Authorities.

Transfer Pricing Penalties

Nigeria has no specific Transfer pricing penalties.

Contravention of the TP regulation is penalized by virtue of the penalties enshrined in the Companies Income Tax Act (CITA), the Petroleum Profits Tax Act, Capital Gains Act, Stamp Duty Act and the Personal Income Tax Act. As outlined by CITA the following penalties apply:

- ✓ Contravention of the CITA by an offence with an unspecified penalty is punishable with a fine of N200;
- ✓ Failure to keep tax records have an additional fine of N40 for each day where such failures continue;
- ✓ Default of tax payment carries an imprisonment for up to 6 months;
- ✓ Non-compliance to the requirements to furnish tax documentation after a notice from the board may lead to the imposition of a penalty to the company of an amount equal to her previous years assessment or N2, 500 for the first month; and N500 for each subsequent month in which the failure continue;
- ✓ Erroneous returns is fined at N200 plus a double of the amount of the undercharged tax; and a
- ✓ False statements in view of obtaining a set-off, deduction or relief are punishable with a fine of N1, 000 or an imprisonment for 5 years or both.

Advance Pricing Agreement (APA)

In Nigeria, Companies can apply to FIRS for an APA; thereby avoiding periodic transfer pricing studies and audits on the affected transactions. The threshold for the possibility of an APA is a turnover of N250, 000,000 (two hundred and fifty million Naira) per year. The maximum period for the duration of each agreement is 3 years, entered into with the taxable person or the competent authority of a treaty country. The FIRS on its part has discretionary powers to accept, vary or reject the terms of each application and or may provide the basis of its acceptance, modification or rejection of the request as the case may be.

Non-compliance to the terms of the agreement; a material misrepresentation during signing of the agreement by the taxpayer and or change in the Tax Law material to the APA may rescind the agreement. The connected person may also rescind the Agreement.

Safe Harbors

Nigeria has no specific thin capitalization rules; no ratios may limit the amount of debt that may be applied to fund a resident company.

However, companies that intend to engage in banking or insurance businesses are required to have a specific minimum paid up capital, and must respect capital adequacy ratios and/or solvency margins. Resident companies that intend to employ expatriates are also required to have a minimum authorized share capital of N10million (about \$62,500 at \$1:N160), which must be issued and fully paid up.

Under a debt financing arrangement therefore, where the loan is to a related party, the interest rate must be competitive so that the interest payable will qualify as a tax-deductible expense for the Nigerian beneficiary of the loan.

Documentation And Disclosure Requirements

Tax Return Disclosures

For each year of assessment, without notice or demand by the Service, a disclosure of details of transactions subject to the Transfer pricing Regulations must be presented on a Transfer pricing Disclosure Form or on any other form prescribed by the Service.

Annual tax returns are filed in a form prescribed by the tax administration, duly signed and accompanied by audited financial statements. Each company must file a separate corporate tax return of the tax/financial year. Consolidated returns from companies in a group are not permitted. In principle, the Tax return documentation comprises:

- Audited accounts, tax and capital allowances computations and a true and correct statement in writing containing the amounts of profit from every source; and,
- Particulars with respect to profits, reliefs, and deductions material to the return as may be required by the Act.

Tax returns are due within six months after the end of the accounting year for companies in existence for more than 18 months. Newly incorporated companies must file within 18 months after the end of the first accounting period. For first time self-assessment, it must be filed not later than eight months after the accounting period. - In practice, the Tax Board under reasonable reasons may extend the date limit for filing general tax returns.

The Federal Inland Revenue Service (FIRS) issued a revised transfer pricing (TP) declaration and disclosure forms (TP forms) in January 2017. The revised TP forms include new disclosures to enable the Revenue perform more effective TP risk assessments, while some of the old disclosures which taxpayers considered to be ambiguous have been made clearer to increase compliance.

Level of Documentation

A connected taxable person needs to record in writing or on electronic devices sufficient information to clarify that the Transfer pricing transactions are consistent with the arm's length principle. The documentation must account for the complexity and volume of transactions, with adequate information substantiating the transfer price.

Record Keeping

All records and data relating to any trade carried on by the taxpayer for whom documentation and or data are provided for tax purpose must be preserved for a period of at least six (6) years from the date on which the tax return with the data relevant to their tax return was made. Preservation of tax records is primordial; upon failure to preserve the books of accounts by a taxpayer, the tax board may request for the preservation in a language, as the board considers right.

Language of Documentation

In Nigeria, the TP documentation must be presented in the English Language.

Small and Medium Sized Enterprises (SMEs)

There is no provision for 'small and medium sized enterprises' in the Companies Income Tax Act 2007 and Transfer pricing regulations 2012.

Deadline to Prepare Documentation

Entities must prepare the appropriate Transfer pricing documentation upon request. However, the FIRS require Transfer pricing documentation to be in place prior to the due date for filing the income tax return.

Deadline to Submit Documentation

In principle, the deadline to submit TP documentation is 21 days. However, upon a request by the Taxpayer, the Tax authority has the discretionary powers to extend the standard deadline.

Statute Of Limitations

There is currently no specific rule on statutes of limitations in the TP regulation; but all documents supporting tax returns must be preserved for a period of six years.

Transfer Pricing Methods

Per the regulation, 'Connected Taxable Persons' are required to adopt any of the following TP methods:

- ✓ The Comparable Uncontrolled Price Method;
- ✓ The Resale Price Method;
- ✓ The Cost Plus Method;
- ✓ Transactional Net Margin Method;
- ✓ Transactional Profit Split Method; and,

- Any other method chosen by a taxpayer and approved by the FIRS provided none of the listed methods can be reasonably applied. The method so used must give rise to a result that is consistent with the arm's length principle.

Comparables

The burden of proof that the conditions of the controlled transactions are consistent with the arm's length principle lies on the taxable person. Provision of adequate documentation consistent with the regulation to support the arm's length nature of the profits of the controlled transactions will satisfy the burden of proof.

The FIRS is empowered to review whether the TP method used by the connected person is in line with the Arm's Length Principle. Thus, in determining the arm's length price in a controlled transaction both the FIRS and the connected taxpayer can provide comparables to substantiate the Transfer Price.

This document was updated in cooperation with [Saffron](#), TPA Global Member in Nigeria.