Transfer Pricing Country Summary
Nigeria

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1. Introduction

Prior to 2012, Nigeria had no comprehensive law governing transfer pricing. To combat tax evasion, general anti-avoidance rules (GAARs) were incorporated into Nigeria's income tax laws. GAARs were used by tax authorities to assess and regulate the pricing of inter-group transactions that appeared to be artificial or sham arrangements. The Federal Inland Revenue Service (FIRS), Nigeria's Federal tax authority, published the country's first transfer pricing regulations in August 2012. The Income Tax (Transfer Pricing) Regulations (the 2012 Regulations) sought to unify and implement the various transfer pricing provisions found in Nigerian tax laws, as well as to provide a more structured framework for assessing related-party transactions.

2. Laws & Regulations

a) References to OECD/Local Rules

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 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."

The legislative framework surrounding transfer pricing can be found in the Income Tax (Transfer Pricing) Regulations (2018), which came into effect on 12 March 2018. This Act repealed Regulation No 1 2012 which took effect in August 2012. Notably the new regulations are not only based on the OECD and UN guidelines but also on the African Tax Administration Forum's guidelines.[1] The new 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.

b) Definition of Related Party

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.

c) Nature of Transfer Pricing Documentation

The tax authorities are eager to put the recommendations of the OECD BEPS Action Plan 13 into action. The primary goal is to collect useful information and documentation that will allow the FIRS to assess potential

[1] The Law Reviews - The Transfer Pricing Law Review.

areas of aggressive tax avoidance and mitigate the risk of base erosion given the country's low tax to GDP ratio (6 percent as of 2021).

d) Tax Havens & Blacklists

Nigeria is absent as more than 130 countries finalize a global agreement on multinational corporation taxation, with a minimum of 15% corporation tax agreed upon.
The deal was disclosed by the Organization for Economic Cooperation and Development (OECD).
The agreement to enact a 15% minimum corporate tax rate was proposed by the United States, which has long sought ways to reduce incentives for companies to shift profits abroad in order to reduce their tax bills.

e) 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.

f) Audit Practice

The transfer pricing units are expected to carry out all TP audit activities. The audit teams are expected to include both senior and lower-level officers. Tax officers from the core tax audit department may also be involved.
Because the FIRS has yet to complete any major TP audits, no matters have been designated as controversial. Controversies are expected to erupt over the following issues:

- dealing with controlled transactions for which the taxpayer has obtained NOTAP approval;
- payment of management and technical fees;
- controlled transactions involving subcontract agreements; and
- the attribution of assets, risk, and functions for the taxation of a PE, etc.

3. Transfer Pricing Documentation

a) 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.

b) Industry Analysis

By identifying value drivers for the relevant industry, a first indication of the level of profitability common in the industry is being given.

c) Company Analysis

A description of the management structure of the local entity, a local organisation chart, and a description of the individuals to whom local management reports and the country(ies) in which such individuals maintain their principal offices.
A detailed description of the business and business strategy pursued by the local entity including an indication whether the local entity has been involved in or affected by business restructurings or intangibles transfers in the present or immediately past year and an explanation of those aspects of such transactions affecting the local entity.

d) Functional Analysis

In conducting a functional analysis, an assessment is made of the significant activities and responsibilities that are performed by the related parties relevant to the Intercompany Transactions under review, the tangible and intangible assets that are employed and the risks that are borne in undertaking the business activities. Such an assessment is consistent with the recommendations that have been made in the OECD Guidelines at paragraph 1.51.

e) Choice of Transfer Pricing Method

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.

f) Economic Analysis – Benchmark Study

Finding and selecting closely comparable companies is an important part of the Transfer Pricing (TP) documentation process. Only comparable, independent companies can truly establish the arm's length nature of the under consideration intercompany transactions.
Benchmark analysis refers to the process of locating comparable companies and the arm's length price they pay or charge on similar transactions. Benchmark analysis in TP documentation is mostly done with commercial databases of publicly available financial data on companies. However, if the chosen TP method is Comparable Uncontrolled Price (CUP), a commercial TP database may not be required.
There is currently no commercial database of companies for Nigeria and other developing countries due to a lack of publicly available information. As a result, there is a reliance on foreign commercial databases for benchmarking transactions in developing countries.

g) Inter-company (IC) Legal Agreement

Although an Inter-company legal agreement formalizes the business and financial relationship between group entities, the legal agreements have a lower ranking since the OECD 2017 Guidelines made the ''conduct of parties'' the prevailing concept.

h) Financial Statements

The Nigerian Federal Executive Council approved 1 January 2012 as the effective date for the convergence of Nigerian accounting standards with International Financial Reporting Standards on July 28, 2010. (IFRS). The

Council directed the Nigerian Accounting Standards Board (NASB), which is overseen by the Nigerian Federal Ministry of Commerce and Industry, to take any additional actions required to put the Council's approval into effect.
The Nigerian Accounting Standards Board (NASB) announced a staged implementation of IFRS on September 3, 2010, as follows:

- Publicly traded companies and significant public interest entities are expected to adopt IFRS by January 1, 2012.
- Other entities in the public interest are expected to adopt IFRS by January 1, 2013.
- Small and medium-sized businesses are expected to adopt the IFRS for SMEs by January 1, 2014.

Micro-sized entities can use either the IFRS for SMEs or the United Nations Conference on Trade and Development's Small and Medium-sized Entities Guidelines on Accounting (SMEGA) Level 3. (UNCTAD).
The Financial Reporting Council (FRC) of Nigeria was established in June 2011 to replace the NASB as the entity responsible for setting financial reporting standards in Nigeria. The FRC has issued regulatory guidance (link to FRC website) requiring Nigerian entities to make certain choices when applying IFRS 1 First-time Adoption of International Financial Reporting Standards. This guidance also requires all entities using IFRS to make an explicit and unqualified statement of IFRS compliance.

i) Production Process for TP Relevant Returns, Documents, Forms and Financials

In the chart below, the existence of the filing requirements with the details of which format is used, the latest filing date, notification requirement and its deadline, thresholds to be applied in case it exists, and the required languages are demonstrated. This information can be seen respectively for CIT, master file, local file, CbCR, local forms, annual accounts and segmented P&L documentations.

	Prepare or File?	Format	Deadline	Notification Deadline*	Threshold* (Yes/No)	Local Language (Yes/No)*(If "No", it can be filed in English)
Corporate Income Tax	File	OECD based format	6 months after the company's year end	N/A	N/A	No
Master File	Prepare	OECD XML	Exceed 300million : 21 days upon request of tax authority Below 300million : 90 days after request of tax authority	Yes - 90 days	Yes[2]	No

[2] oecd-cbc-masterfile-implementierung-englisch.pdf 47.

Local File	Prepare[3]	OECD XML[4]	Exceed 300million : 21 days upon request of tax authority Below 300million : 90days after request of tax authority	Yes - 90 days	Yes[5]	No
CbCR	Filed	CbC MCAA	12 months	Last day of accounting year	Yes	No
TP disclosure form	File	Available on the website of the tax authorities	6 months after the end of the financial year	Yes - 21 days	No	Yes (English)
Annual Accounts	File	Local IFRS	31st of May	No	No	Yes (English)
Segmented P&L	N/A	N/A	N/A	N/A	N/A	N/A
* Nigeria has signed the MCAA agreement for the filing of CBCR.						
* Nigeria does not request as much and detailed information from smaller and less complex enterprises (SMEs included) than it does from large and complex enterprises.						

j) Mandatory Language

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

k) Notification Requirement

Regulation 9 of the CbC Regulations states that the CbC report must be filed no later than 12 months after the end of the MNE group's reporting accounting year.
According to Regulation 6 of the CbC Regulations:

- Any constituent entity of an MNE group that is tax resident in Nigeria is required to notify the FIRS, whether it is the UPE or the SPE, no later than the last day of the MNE group's reporting accounting year;

[3] Transfer Pricing Country Profile- Nigeria (oecd.org).
[4] oecd-cbc-masterfile-implementierung-englisch.pdf 47.
[5] oecd-cbc-masterfile-implementierung-englisch.pdf 47.

- When a constituent entity of an MNE group is neither the UPE nor the SPE for tax purposes in Nigeria, it is required to notify the FIRS of the identity and tax residence of the reporting entity no later than the last day of the MNE group's reporting accounting year.

To enable entities in Nigeria to provide this notification to the FIRS, a form has been developed.

The notification is due no later than the last day of the group's fiscal year-end for both categories of taxpayers. Failure to meet this deadline will result in a penalty of NGN 5 million in the first instance and NGN 10,000 for each day of lateness.

l) 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.

m) Penalties and Interest Charges

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.

Failure to provide CbC reporting on time or filling an erroneous report will result in an administrative penalty of N 10 000 000. Furthermore, for each month of outstanding documentation a penalty of N1,000,000.00 will be levied.[6] In addition a penalty is levied for the failure to provide notifications in the sum of N 10 000 for each day in default and an administrative penalty of N 5000 000.[7]

Failure to present transfer pricing documents in relation to the master file can result in either an administrative penalty of N 10 000 000 or one percent of the total value of all controlled transactions. Thereafter a penalty of N 10 000 per day in default will be levied.[8]

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[6] Transfer Pricing Country Profile- Nigeria (oecd.org) par 23: "Where a Reporting Entity fails to file the Country - by -Country Report on or before the date specified in Regulation FIRS shall impose an administrative penalty of N 10 000 000 in the first instance and N1,000,000.00 for every month in which the default continues."

[7] Ibid. "Failure To Provide Notification on whether it is the Ultimate Parent Entity or the Surrogate Parent Entity : Where a Constituent Entity of an MNE Group that is resident for tax purposes in Nigeria fails to provide the notification FIRS shall impose an administrative penalty of N 5 000 000 in the first instance and N 10 000 for every day in which the default continues."

[8] oecd-cbc-masterfile-implementierung-englisch.pdf 47 "Penalties: NGN 10 million for the first month in the case of failure to submit the documentation and NGN 10,000 for each further day in default." The OECD website provides further information.