

Nigeria

Transfer Pricing Country Profile

Updated October 2017

	SUMMARY	REFERENCE
The Arm's Length Principle		
1	<p>Does your domestic legislation or regulation make reference to the Arm's Length Principle?</p> <p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p>	<p>Companies Income Tax Act, Section 22 (2) (b)</p> <p>Regulation 4 of the Income Tax (Transfer Pricing) Regulations No.1, 2012 ("TP Regulations"). http://www.firs.gov.ng/Tax-Management/Pages/Transfer-Pricing.aspx</p>
2	<p>What is the role of the OECD Transfer Pricing Guidelines under your domestic legislation?</p> <p>The application of the provisions of the domestic transfer pricing rules is in a manner consistent with the OECD Transfer Pricing Guidelines.</p> <p>However, by the provisions of Regulation 12, where any inconsistency exist between the provisions of any applicable laws, rules, regulations, UN practical manual on Transfer pricing and the OECD TPG referred to in Regulation 11, the provisions of the relevant tax laws, shall prevail.</p>	<p>Regulation 11 of the Income Tax (Transfer Pricing) Regulations No 1, 2012.</p>
3	<p>Does your domestic legislation or regulation provide a definition of related parties? If so, please provide the definition contained under your domestic law or regulation.</p> <p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>The TP Regulations provide for the meaning of "connected taxable persons" (which have same meaning as related parties) as follows: In these Regulations, a 'connected taxable person' includes persons, individuals, entities, companies, partnerships, joint ventures, trusts or associations (collectively referred to as 'connected taxable persons') and includes the persons referred to in –</p> <p>(i) Sections 13(2)(d), 18 and 22(2)(b) of the Companies Income Tax Act, 2004 (as amended);</p> <p>(ii) Section 15(2) of the Petroleum Profit Tax Act, CAP P13, Laws of the Federation of Nigeria, 2004 (as amended);</p> <p>(iii) Section 17(3)(b) of the Personal Income Tax Act, CAP P8, Laws of the Federation of Nigeria, 2004;</p>	<p>Regulation 10 of the Income Tax (Transfer Pricing) Regulations No 1, 2012.</p> <p>http://www.firs.gov.ng/Tax-Management/Pages/Transfer-Pricing.aspx</p>

- (iv) Article 9 of the OECD Model Tax Convention;
- (v) 'associated enterprise' referred to the OECD Guidelines.

Transfer Pricing Methods

4	<p>Does your domestic legislation provide for transfer pricing methods to be used in respect of transactions between related parties?</p>	<p><input checked="" type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p>If affirmative, please check those provided for in your legislation:</p> <table border="1" style="width: 100%; text-align: center;"> <thead> <tr> <th>CUP</th> <th>Resale Price</th> <th>Cost Plus</th> <th>TNMM</th> <th>Profit Split</th> <th>Other (If so, please describe)</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;"><input checked="" type="checkbox"/></td> </tr> </tbody> </table> <p>The taxpayer may adopt any other transfer pricing method if none of the first five methods is applicable to the controlled transaction, the method results into a price that is constituent with the arm's length principle and reliable information needed in order to apply the chosen method is available.</p>	CUP	Resale Price	Cost Plus	TNMM	Profit Split	Other (If so, please describe)	<input checked="" type="checkbox"/>	<p>Regulation 5(1) of the Income Tax (Transfer Pricing) Regulations No 1, 2012.</p> <p>http://www.firs.gov.ng/Tax-Management/Pages/Transfer-Pricing.aspx</p>					
CUP	Resale Price	Cost Plus	TNMM	Profit Split	Other (If so, please describe)										
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>										
5	<p>Which criterion is used in your jurisdiction for the application of transfer pricing methods?</p>	<p>Please check all that apply:</p> <p><input type="checkbox"/> Hierarchy of methods</p> <p><input checked="" type="checkbox"/> Most appropriate method</p> <p><input type="checkbox"/> Other (if so, please explain)</p> <p>In determining the appropriateness of a transfer pricing method the following are considered: strength and weakness of the method, nature of the controlled transaction, availability of reliable information and degree of comparability of controlled transactions with comparable transactions.</p>	<p>Regulation 5(2) of the Income Tax (Transfer Pricing) Regulations No 1, 2012.</p> <p>http://www.firs.gov.ng/Tax-Management/Pages/Transfer-Pricing.aspx</p>												
6	<p>If your domestic legislation or regulations contain specific guidance on commodity transactions, indicate which of the following approaches is followed.</p>	<p><input type="checkbox"/> For controlled transactions involving commodities, the guidance contained in paragraphs 2.18-2.22 of the TPG is followed.</p> <p><input type="checkbox"/> Domestic legislation mandates the use of a specific method for controlled transactions involving commodities (if so, please explain)</p> <p><input type="checkbox"/> Other (if so, please explain)</p> <p>There is no provision in our domestic legislation or regulation specifically for commodity transactions. However, pricing of every controlled transaction is considered based on the arm's length principle, the facts and circumstances.</p>													

Comparability Analysis

7	<p>Does your jurisdiction follow (or largely follow) the guidance on comparability analysis outlined in Chapter III of the TPG?</p>	<p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>The following factors are considered to the extent that they are economically relevant to the facts and circumstances of the transactions –</p> <p>(a) the characteristics of the goods, property or services transferred or supplied; (b) the functions undertaken by the person entering into the transaction taking into account the assets used and risks assumed; (c) the contractual terms of the transactions; (d) the economic circumstances under which the transactions were undertaken; (e) the business strategies pursued by the connected taxable persons to the controlled transaction.</p>	<p>Regulation 9 of the Income Tax (Transfer Pricing) Regulations No 1, 2012.</p> <p>http://www.firs.gov.ng/Tax-Management/Pages/Transfer-Pricing.aspx</p>
8	<p>Is there a preference in your jurisdiction for domestic comparables over foreign comparables?</p>	<p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>	
9	<p>Does your tax administration use secret comparables for transfer pricing assessment purposes?</p>	<p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>	
10	<p>Does your legislation allow or require the use of an arm's length range and/or statistical measure for determining arm's length remuneration?</p>	<p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>This is not provided in the Regulations but administratively followed in practice.</p>	
11	<p>Are comparability adjustments required under your domestic legislation or regulations?</p>	<p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Where differences exist between the uncontrolled transaction and a controlled transaction under comparable circumstances, reasonably accurate adjustments are made in order to eliminate the effects of such differences, or reduce the effects of such differences, to the extent that all material differences are eliminated.</p>	<p>Regulation 9(3)(b) of the Income Tax (Transfer Pricing) Regulations No 1, 2012.</p> <p>http://www.firs.gov.ng/Tax-Management/Pages/Transfer-Pricing.aspx</p>

Intangible Property

12	Does your domestic legislation or regulations contain guidance specific to the pricing of controlled transactions involving intangibles?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
		<p>There are no specific provisions on intangibles. In considering issues of intangible, general TP rules provided in the legislation are followed. The approach to intangibles is guided by the arm's length principle as provided in the legislation.</p>	
13	Does your domestic legislation or regulation provide for transfer pricing rules or special measures regarding hard to value intangibles (HTVI)?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
14	Are there any other rules outside transfer pricing rules that are relevant for the tax treatment of transactions involving intangibles?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

Intra-group Services

15	Does your domestic legislation or regulations provide guidance specific to intra-group services transactions?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
		<p>There are no specific provisions on intra-group services. In considering intra-group services, general TP rules provided in the legislation are followed. The approach to intra-group services is guided by the arm's length principle as provided in the legislation.</p>	
16	Do you have any simplified approach for low value-adding intra-group services?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
17	Are there any other rules outside transfer pricing rules that are relevant for the tax treatment of transactions involving services?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

Cost Contribution Agreements

18	Does your jurisdiction have legislation or regulations on cost contribution agreements?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
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Transfer Pricing Documentation

19	Does your legislation or regulations require the taxpayer to prepare transfer pricing documentation?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <i>If affirmative, please check all that apply:</i> <ul style="list-style-type: none"> <input type="checkbox"/> Master file consistent with Annex I to Chapter V of the TPG <input type="checkbox"/> Local file consistent with Annex II to Chapter V of the TPG <input type="checkbox"/> Country-by-country report consistent with Annex III to Chapter V of the TPG <input checked="" type="checkbox"/> Specific transfer pricing returns (separate or annexed to the tax return) <input type="checkbox"/> Other (specify): 	Regulation 6 of the Income Tax (Transfer Pricing) Regulations No 1, 2012. http://www.firs.gov.ng/Tax-Management/Pages/Transfer-Pricing.aspx
20	Please briefly explain the relevant requirements related to filing of transfer pricing documentation (i.e. timing for preparation or submission, languages, etc.)	<p>General Requirement – A connected taxable person is expected to record, in writing or on any other electronic device or medium, sufficient information or data with an analysis of such information and data to verify that the pricing of controlled transactions is consistent with the arm’s length principle.</p> <p>Filing of TP returns – The Regulation require a connected taxable person to append to the annual tax return, a “TP Declaration Form” (to disclose ownership and management information as well as group structure) and to, for each year of assessment, make a disclosure on the “TP Disclosure Form” details of controlled transactions.</p> <p>Timing for Preparation of documentation – The documentation should be in place prior to the due date for filing the income tax return for the year in which the documented transactions occurred.</p> <p>Submission of TP documentation –TP documentation to be submitted within 21 days of request by the Service.</p> <p>The official language for purposes of TP documentation is the English.</p>	Regulation 6 of the Income Tax (Transfer Pricing) Regulations No 1, 2012. http://www.firs.gov.ng/Tax-Management/Pages/Transfer-Pricing.aspx

21	Does your legislation provide for specific transfer pricing penalties and/or compliance incentives regarding transfer pricing documentation?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Penalties are imposed based on the respective tax law affected.	
22	If your legislation provides for exemption from transfer pricing documentation obligations, please explain.	<p><u>Safe Harbour:</u></p> <p>A connected taxable person may be exempted from the requirements of the TP Regulation where –</p> <p>(a) the controlled transactions are priced in accordance with the requirement of Nigerian statutory provisions; or</p> <p>(b) the prices of connected transactions have been approved by other Government regulatory agencies or authorities established under Nigerian law and satisfactory to the tax authority to be at arm’s length.</p>	
Administrative Approaches to Avoiding and Resolving Disputes			
23	Which mechanisms are available in your jurisdiction to prevent and/or resolve transfer pricing disputes?	<p>Please check those that apply:</p> <input type="checkbox"/> Rulings <input type="checkbox"/> Enhanced engagement programs <input checked="" type="checkbox"/> Advance Pricing Agreements (APA) <ul style="list-style-type: none"> <input checked="" type="checkbox"/> Unilateral APAs <input checked="" type="checkbox"/> Bilateral APAs <input checked="" type="checkbox"/> Multilateral APAs <input checked="" type="checkbox"/> Mutual Agreement Procedures <input checked="" type="checkbox"/> Other (<i>please specify</i>): Decision Review Panel	<p>Regulation 7 of the Income Tax (Transfer Pricing) Regulations No 1, 2012.</p> <p>http://www.firs.gov.ng/Tax-Management/Pages/Transfer-Pricing.aspx</p>
		<p>A Decision Review Panel was established for the purpose of resolving any dispute or controversy arising from the application or administration of TP rules. A taxable person may, within thirty days of the receipt of assessment on TP adjustment refer the assessment to the Panel. The Panel can take decision on any adjustment or assessment and where the taxpayer is dissatisfied with the decision of the Panel he can refer the case to a court of competent jurisdiction.</p>	

Safe Harbours and Other Simplification Measures

24	Does your jurisdiction have rules on safe harbours in respect of certain industries, types of taxpayers, or types of transactions?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
		<p>The provisions on safe harbour under the TP Regulations of Nigeria are not industry specific or limited to a specified taxpayer criteria.</p> <p>A connected taxable may take advantage of the safe harbour provisions if :</p> <p>(a) the controlled transactions are priced in accordance with the requirement of Nigerian statutory provisions; or</p> <p>(b) the prices of connected transactions have been approved by other Government regulatory agencies or authorities established under Nigerian law and satisfactory to the Service to be at arm's length.</p> <p>The safe harbour provisions exempt relevant taxpayers from TP documentation requirements.</p>	
25	Does your jurisdiction have any other simplification measures not listed in this questionnaire? If so, please provide a brief explanation.	No.	
Other Legislative Aspects or Administrative Procedures			
26	Does your jurisdiction allow/require taxpayers to make year-end adjustments?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

27	Does your jurisdiction make secondary adjustments?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
		<p>There is no specific legal pronouncement on this; however, by practice, secondary adjustments are made where necessary.</p> <p>Where TP adjustments have impact on other taxes, secondary adjustments are made to properly restate the amount of that tax.</p>	
Other Relevant Information			
28	Other legislative aspects or administrative procedures regarding transfer pricing	<p>The administrative procedure that is generally follows in transfer pricing, apart from the provisions in the Regulations are:</p> <ul style="list-style-type: none"> - Risk assessment to identify and focus on potential TP risks that are high risk - Fact finding / Audit visit to substantiate facts asserted by tax payer in their documentations - Reconciliation meetings with taxpayers on findings from the Audit visit - Transfer pricing adjustment, where relevant 	
29	Other relevant information (e.g. <i>whether your jurisdiction is preparing new transfer pricing regulations, or other relevant aspects not addressed in this questionnaire</i>)	<p>As part of the project to implement BEPS outcome, Nigeria is presently updating its transfer pricing regulations.</p>	