Global Transfer Pricing Landscape

Nigeria

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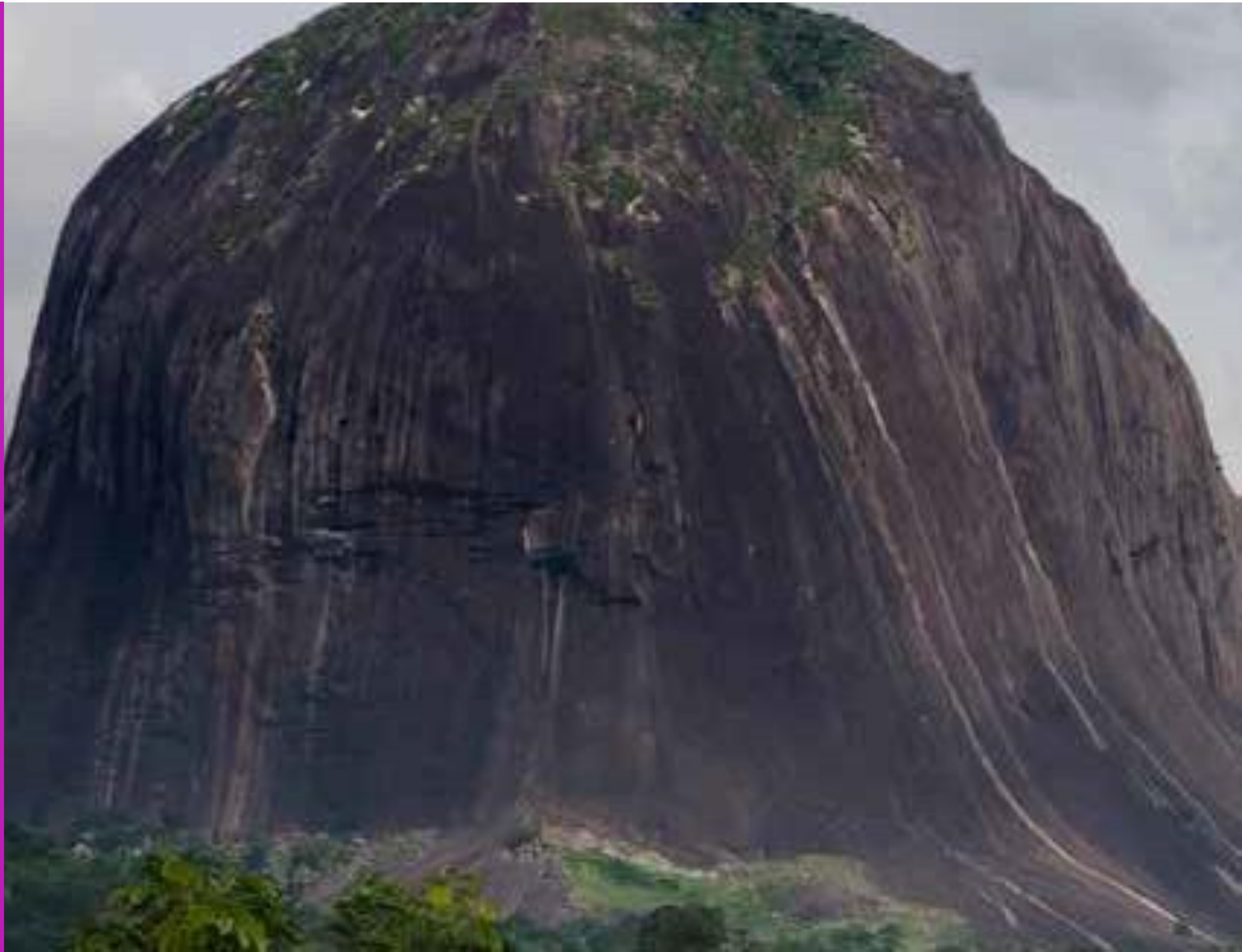

Highlights

2012

Nigeria introduces Income Tax (transfer pricing) regulations, 2012 for the first time.

2013

Federal Inland Revenue Service established transfer pricing division.

2014

Nigeria begins audit under newly introduced transfer pricing regulations.

2018

Income Tax (transfer pricing) regulations, 2012 revoked and replaced by Income Tax (transfer pricing) regulations, 2018.

2018

Nigeria introduces Income Tax (Country by Country Reporting) regulations, 2018 and corresponding guidelines.

Introduction

The Income Tax (Transfer Pricing) Regulations, 2018 (New Regulations) was introduced by Nigeria's Federal Inland Revenue Service (Tax Authority/FIRS). The New Regulations are applicable to financial years beginning after 12 March 2018.

The New Regulations shall replace Income Tax (Transfer Pricing) Regulations, 2012 (Old Regulations).

The New Regulations recognize the arm's length principle provided in the Organisation for Economic Co-operation and Development (OECD) guidelines and the United Nation (UN) transfer pricing manual. However, in case of inconsistency with the domestic law, the provisions of relevant domestic law shall prevail.

Applicability

The regulations shall apply to transactions between "connected persons" and shall include:

a. sale and purchase of goods and services;

b. sales, purchase or lease of tangible assets;

c. transfer, purchase, license, or use of intangible assets;

d. provision of services;

e. lending or borrowing of money;

f. manufacturing arrangements; and

a. any transaction, which may affect profit or loss, or any other matter incidental to, connected with, or pertaining to the transactions referred to in paragraphs (a) to (f) of this regulation.

Furthermore, Permanent Establishment(PE) and its head office are considered as separate entities who are connected persons and any transaction or dealing between a PE and its head office, or other connected persons shall be considered as a controlled transaction.

Connected persons

Persons are deemed to be connected when one person has the ability to control or influence the other person, either by himself or a third person has the ability to control or influence both such persons, in making:

- Financial decisions; or
- Commercial decisions; or
- Operational decisions.

It also includes persons who are related, associated, or connected to one another as defined in certain other taxation laws of Nigeria, OECD transfer pricing guidelines, and UN transfer pricing manual.

Arm's length principle

Where a connected person has entered into a transaction or transactions to which these regulations apply, then such a person is required to ensure that the taxable profits, resulting from such transaction/transactions, are consistent with the arm's length principle.

The transaction will be at arm's length if the conditions of the transaction are similar to those that would have been otherwise applicable 'between' independent persons in case if comparable transactions were carried out under comparable circumstances.

Transfer Pricing Methods

One of the following transfer pricing methods shall be applied to determine the arm's length price:

- Comparable Uncontrolled Price (CUP) Method
- Resale Price Method
- Cost Plus Method
- Transactional Net Margin Method
- Transactional Profit Split Method
- Any other method that may be prescribed by the Regulations

The methods, other than those listed above, can be applied if the connected person can establish, to the satisfaction of the tax authorities, that –

- None of the methods listed above can be reasonably applied;
- Method used gives rise to a result that is consistent with that between independent persons engaging in comparable uncontrolled transactions; and
- Reliable information needed to apply the chosen transfer pricing method exists

The interquartile range will be used for determining the arm's length range.

Transfer Pricing Documentation

OECD)under the Base Erosion and Profit Shifting (BEPS) Action Plan - 13, recommends three-tier documentation.

Nigeria, being the member of OECD Inclusive Framework on BEPS as well as a signatory to Multilateral Competent Authority Agreement (MCAA) on the exchange of Country by Country Report (CbCR) has also prescribed the three-tier transfer pricing documentation.

Documentation	Timeline	Applicability Threshold
1. Local File – Scope of information/details to be maintained in Nigeria are wider as compared to the OECD guidelines 2. Master File – Scope of information/details to be maintained in Nigeria is in line with the OECD guidelines	Both Local file and Master file need to be prepared/maintained contemporaneously. However, it needs to be submitted (not later than 90 days) only upon receipt of a notice from the Tax Authority.	If the total value of controlled transaction is more than or equal to 300 million NGN.
3 CbCR – Requirements in Nigeria is in line with the OECD guidelines • If the Ultimate Parent Entity (UPE) of MNE group is a resident in Nigeria – Notification and detailed CbCR needs to be filed by UPE.	later than 12 months from the last day of the Reporting Accounting Year[1] of the MNE Group, and notification to be filed not later than the last day of the Reporting Accounting Year of such an MNE group.	Consolidated group revenue is more than or equal to NGN 1,60,000 million during the Accounting Year[2] immediately preceding the Reporting Accounting Year.
If the Ultimate Parent Entity (UPE) of MNE group is a resident in Nigeria – Notification and detailed CbCR needs to be filed by UPE.	Notification to be filed not later than the last day of the Reporting Accounting Year of such MNE group	

Note: If the MNE group has more than one constituent entity resident for tax purpose in Nigeria, the MNE group may designate one such constituent entity to file CbCR and notify the Tax Authorities that this filing is intended to satisfy the filing requirement of all the Constituent Entities of such MNE Group that are resident for tax purposes in Nigeria.

Reporting and Compliance

A connected person shall declare its relationship with all connected persons whether such persons are residents in Nigeria or elsewhere in the prescribed form.

For each year of assessment, a connected person shall, without notice or demand, make disclosure of transactions that are subject to these regulations.

The above declaration and disclosure shall be made and submitted not later than:

- 18 months after the date of incorporation;
- 6 months after the end of the accounting year Whichever is earlier.

The updated declaration shall be made upon any merger/acquisition event as provided in the regulations. Furthermore, notification shall be made to tax authorities on appointment/retirement of a director of the connected person.

1. Reporting Accounting Year" means the accounting year of which its financial and operational results are reflected in the Country-by-Country Report for a particular year as defined in Regulation 7 of these Regulations;

2. Accounting Year" means an annual accounting period with respect to which the Ultimate Parent Entity of the MNE Group prepares its financial statements;

A connected person may apply, in writing, for an extension of the time provided -

- Application is submitted before the expiration of the time mentioned above
- The applicant shows good cause for its inability to comply with stipulated timelines.

<table>
<tr><th>Particulars</th><th>Penalty amount (in NGN)</th></tr>
<tr><td>Failure to file transfer pricing declaration</td><td>NGN 10 million in the first instance and NGN 10,000 for every day that the default continues</td></tr>
<tr><td>Failure to file updated transfer pricing declaration</td><td>NGN 25,000 for every day that the default continues</td></tr>
<tr><td>Failure to file transfer pricing disclosure form</td><td rowspan="2">Higher of:
• NGN 10 million; or
• 1% of the value of related party transactions not disclosed
and
• NGN 10,000 for every day that the default continues</td></tr>
<tr><td>Failure to file transfer pricing documentation on request by tax authorities</td></tr>
<tr><td>Incorrect disclosure of transactions</td><td>Higher of:
• NGN 10 million; or
• 1% of the value of related party transactions not disclosed</td></tr>
<tr><td>Failure to furnish any information/documentation upon request</td><td>1% of the value of each related party transaction for which information/documentation sought and NGN 10,000 for every day in which the default continues</td></tr>
<tr><td>Late Filing of CbCR</td><td>NGN 10 million in the first instance and NGN 1 million for every month in which the default continues</td></tr>
<tr><td>Filing of incorrect or false CbCR</td><td>NGN 10 million</td></tr>
<tr><td>Failure to provide notification specified under Regulation 6 of CbCR Regulations</td><td>NGN 5 million in the first instance and NGN 10,000 for every day that the default continues</td></tr>
</table>

Certain Specific Transactions

Intragroup services

The taxpayer is required to demonstrate that

- Intragroup services have been actually rendered
- Provision of such services has conferred an economic benefit or commercial value to the business
- An independent person in comparable circumstances would be willing to pay for it.
- Charge for the intragroup services is justifiable at arm's length.

Following costs relating to shareholder's activity shall not be charged for intra-group services such as:

- Cost relating to shareholder's meeting, issue of shares and cost of the supervisory board
- Cost relating to the reporting requirement of parent company, including consolidation of reports
- Cost relating to raising of funds

When services are rendered jointly to more than one connected persons, the total service charge shall be allocated based on reasonable allocation criteria.

Intangible property

While determining the arm's length consideration, due regard shall be given to contractual arrangements/functional analysis concerning development, enhancement, maintenance, protection, and exploitation

of intangible property.

The taxpayer is required to determine the arm's length consideration for any transfer or licensing of intangible property commensurate with:

- Future expected benefits,
- Commercial alternatives available,
- Geographic limitations on excise of rights to intangible property,
- Exclusive or non-exclusive characters of the rights transferred,
- Right to participate in the further development of intangible property, etc.

The consideration payable in the transfer of intangibles (other than alienation of an intangible) shall not exceed 5% of EBITDA and consideration derived from the commercial activity on the exploitation of intangible. The excess consideration above the specified amount shall not be allowable for a tax deduction.

Commodity transactions

In case of import or export of commodity transactions, the quoted prices for similar commodities on the date of transaction shall be considered for determining the arm's length principle. The taxpayer may provide sufficient evidence to justify the reasons why the quoted prices should be adjusted to reflect the arm's-length principle.

Capital-rich, low-function company

A capital-rich, low-function company that does not control the financial risks associated with its funding activities, for tax purposes, shall not be allocated the profits associated with those risks and will be entitled to no more than a risk-free return. The profits or losses associated with the financial risks would be allocated to the entity (or entities) that manage those risks and have the capacity to bear them.

Other Important Issues

Corresponding adjustments

Where an adjustment is made by the competent authority of another country with whom Nigeria has treaty and adjustment results in taxation in another country of income or profits that are also taxable in Nigeria, the tax authorities (upon request) may make the corresponding adjustment to the amount of tax charged in Nigeria to avoid double taxation.

Dispute resolution

Tax authorities shall set up a Decision Review panel (the Panel) to resolve any dispute or controversy.

Advance pricing agreement (APA)

A connected person may request the tax authorities to enter into an APA to establish an appropriate set of criteria for determining the arm's length principle for certain future controlled transactions. APA shall be effective for not more than three years.

Safe harbour

A connected person may be exempted from the requirements of maintenance of documentation where the controlled transactions are priced in accordance with specific guidelines that may be published by tax authorities for that purpose from time to time. No guidance has been published till date.

Summary of Transfer Pricing Requirements

Effective from

2018

Compliance Requirements

- Declaration for a relationship with connected person and disclosures for controlled transaction needs to be made for each assessment year
- Documentation needs to be submitted only upon request from the tax authorities

Penalties

Specific penalties have been introduced for transfer pricing non-compliance

Method and Preference for Comparable

Five methods as provided in OECD Guidelines. Reasonable justification to be provided for using any other method

Peculiar Features

- Branch and headquarter are considered as a separate person for this regulation
- Tax authorities may not accept custom valuation for determining the arm’s length price
- Tax authorities have the power to make the corresponding adjustment to the amount of tax charged in Nigeria to avoid double taxation

APA Regulations

APA mechanics available for the taxpayer

Safe Harbour

Detailed safe harbour regulation to be prescribed in future

BEPS/CbCR Applicability

Recently, CbCR has been introduced

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