

The Three “D”s of Transfer Pricing Compliance – Do Not Miss the Deadline!



In 2012 Nigeria issued its first Transfer Pricing Regulations, which was revised in 2018 to conform with the OECD 2017 Transfer Pricing Guidelines. The 2018 revised TP Regulations introduces significant changes that place greater compliance burden on corporate taxpayers by broadening the scope of eligibility and imposing stiff penalties for late filing. Transfer Pricing filing compliance under the revised Regulations comprises three key actions: **Declaration, Disclosure and Documentation**. Filing must be done **not later than the 31st of December 2018** and failure to comply will attract as much as N10million in penalty and N10,000 for every day of default. The cost of non-compliance is one that every eligible organisation should avoid.

Declaration

This requires a company to declare its relationship with a party that qualifies as a 'connected person' in relation to it, whether such persons are resident in Nigeria or elsewhere. Declaration is to be made in the prescribed form and submitted to the FIRS not later than 18 months after the date of incorporation or within six months after the end of the accounting year – whichever is earlier

Who is eligible?

- ☑ Any company or business entity that is part of a multinational or local group (known as “connected persons” for purposes of the Regulations)
- ☑ Persons are deemed connected where one person has the ability to control or influence the other person in making financial, commercial or operational decisions or there is a third person who has the ability to control or influence both persons in making financial, commercial, or operational decisions.
- ☑ TP declaration is mandatory for all entities that not only engage in connected persons transactions, but are connected persons for purposes of the Regulations regardless of the entity's annual turnover.

Mandatory Updates:

When any of the following events occur, the company must submit an updated declaration to the FIRS within 6 months of the end of the accounting year in which the event occurred:

- ☑ Merger of the connected person's parent with another company outside the group;
- ☑ Acquisition of up to 20% of the connected person's parent by persons not connected to the group;
- ☑ Merger of the connected person with another company;
- ☑ Acquisition of up to 20% of the person by persons not connected to the group;
- ☑ Merger or acquisition of the person by another company outside the group;
- ☑ Sale or acquisition of a subsidiary by the person;
- ☑ Any other change in the structure, arrangement of circumstances of the person not mentioned above, which influences whether or not it will be considered to be connected to another person; and
- ☑ Appointment or retirement of a director of the connected person.

Penalty for non-compliance:

- ☑ Failure to make a transfer pricing declaration will attract an administrative penalty of N10million in addition to N10,000 for every day in which the failure continues.
- ☑ Failure to submit an update or notification of any of the changes listed above will attract an administrative penalty of N25,000 for each day in which the failure continues.

Disclosure

A connected person is mandated to disclose all types of transactions that are subject to transfer pricing rules. These include sale and purchase of goods and services; sale and purchase of lease of tangible assets; transfer, purchase, license or use of intangible assets; provision of services; lending or borrowing of money; manufacturing arrangements; and any transaction which may affect profit or loss, or any other matter incidental to, connected with, or pertaining to any of these transactions. Disclosures are to be made and submitted not later than 6 months after the end of each accounting year or 18 months after the date of incorporation.

Who is eligible?

- ☑ Connected persons that undertake “controlled transactions” of any size.
- ☑ A controlled transaction, for purposes of the Regulations, means a commercial or financial transaction between connected persons.

Penalty for non-compliance:

- ☑ Failure to disclose eligible transactions within the specified period will attract a penalty of NGN10million or 1% of the value of the controlled transaction not disclosed, whichever is higher; and NGN10,000 for every day in which the failure continues.
- ☑ Penalty for incorrect disclosure of eligible transactions will attract an administrative penalty of NGN10million or 1% of the value of the controlled transactions incorrectly disclosed, whichever is higher.

Documentation

Significant changes have been introduced to the documentation obligations of eligible entities. In addition to the declarations and disclosures to be made in the prescribed form, and which are required to be submitted to the FIRS annually when a connected person is filing its tax returns, eligible connected persons are required to maintain contemporaneous documentation, which will be submitted to the FIRS only upon request by the FIRS. The contemporaneous documents comprise a master file, a local file and a country-by-country report. Only Companies whose total value of controlled transactions exceeds N300million are eligible to maintain master and local files. Regardless of these thresholds, the FIRS may request that such documentation be maintained by a company where the FIRS deems it necessary. A company that is a member of an MNE Group that has a total group revenue of NGN160 Billion and above during the accounting year immediately preceding the year of assessment is required to file a Country-by-Country Report (CbCR) in addition to maintaining a master file and a local file. A Nigerian group of companies that does not have any affiliation with a foreign company is not required to file a CbCR. Such a group is only required to file master and local files based on applicable eligibility thresholds.

Master File

The Master File provides a top-level view of the group's transfer pricing practices in their global economic, legal, financial and tax context. The Master File (MF) should provide an overview of the group's business, including the nature of its global business operations, its overall transfer pricing policies, and its global allocation of income and economic activity. The Master File should state the organisational structure; description of the group's business; information on intangibles; intercompany financial activities; and financial and tax positions

What is required?

- All connected persons are required to maintain 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.
- For eligible connected persons, the Master File must be submitted to the FIRS within 21 days of the receipt of FIRS' notice requesting for the submission of the TP documentation.
- For a connected person who is not eligible (i.e. whose total controlled transactions is less than NGN300m), but who receives a notice from the FIRS requesting for the submission of TP documentation, the Master file shall be furnished within 90 days of the receipt of such notice.
- A connected person may apply to the FIRS for an extension of time to submit the Master File. The FIRS will not consider more than two requests for extension of time in respect of a particular notice.
- The timing of requests for extension of time must conform with the notice period required by the FIRS, which are 10 working days in the case of submission of TP documentation; 5 working days in the case of provision of additional information requested ten or more working days before the due date of compliance, and 2 working days in the case of provision of additional information requested less than ten working days before the due date of compliance.

Penalty for non-compliance:

- NGN10million or 1% of the total value of all controlled transactions, whichever is higher; and NGN10,000 for every day in which the failure continues

Local File

The Local File provides more detailed

information relating to specific intercompany transactions. The Local File (LF) refers specifically to controlled transactions of the local taxpayer with associated enterprises. The information provided in the Local File and Master File helps to meet the objectives of demonstrating that the taxpayer has complied with the arm's length principle in the pricing of its related party transactions.

Information to be provided in the LF are an overview of the enterprise; Related-party relationships; and Controlled transactions. For each category of controlled transactions, the reporting entity must provide an overview of the controlled transaction; value chain analysis; related-party equity transfers; related-party services; comparability analysis; selection and application of transfer pricing method; and financial information.

What is required?

- All connected persons are required to maintain 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.
- The Local File must be submitted to the FIRS within 21 days of the receipt of FIRS' notice requesting for the submission of the TP documentation.
- For a connected person who is not eligible (i.e. whose total controlled transactions is less than NGN300m), but who receives a notice from the FIRS requesting for the submission of TP documentation, the Local file shall be furnished within 90 days of the receipt of such notice.
- A connected person may apply to the FIRS for an extension of time to submit the Local File. The FIRS will not consider more than two requests for extension of time in respect of a particular notice.
- The timing of requests for extension of time must conform with the notice period required by the FIRS, which are 10 working days in the case of submission of TP documentation; 5 working days in the case of provision of additional information requested ten or more working days before the due date of compliance, and 2 working days in the case of provision of additional information requested less than ten working days before the due date of compliance.

Penalty for non-compliance:

- N10million or 1% of the total value of all controlled transactions, whichever is higher; and N10,000 for every

day in which the failure continues

Country-by-Country Report (CbCR)

The CbCR provides aggregated information by tax jurisdiction, showing an MNE's allocation of income, income tax paid, and certain indicators of the location of economic activity among tax jurisdictions in which an MNE group operates. MNEs are required to file the CbCR that will provide annually, and for each tax jurisdiction in which they do business, the amount of revenue, profit before income tax and income tax paid or payable. The template for completing a CbCR is provided in the Income Tax (Country-by Country Reporting) Regulations, 2018.

Penalty for non-compliance:

- Failure to file a CbCR not later than 12 months after the last day of the Reporting Accounting Year of the MNE Group will attract an administrative penalty of N10million in the first instance and N1m for every month in which the default continues.
- Where a reporting entity files an incorrect or false CbCR an administrative penalty of N10m will apply.
- Where a Constituent Entity of an MNE group that is resident for tax purposes in Nigeria fails to provide the required notification, such failure will attract a penalty of N5million in the first instance and N10,000 for every day in which the default continues.

In conclusion, corporations must give detailed attention to the timelines for filing declarations, disclosures and the required documentation; the materiality of the eligibility thresholds that apply as well as the ways of implementing the documentation requirements. The duty to ensure compliance and any liability arising from non-compliance, inadequacies, defects or misstatements is for the account of the taxpayer. Organizations must therefore plan for transfer pricing compliance by developing an internal compliance manual and by training officers responsible for this key function

Should you have any questions or require clarification regarding this or any other developments, please contact the following people:



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