



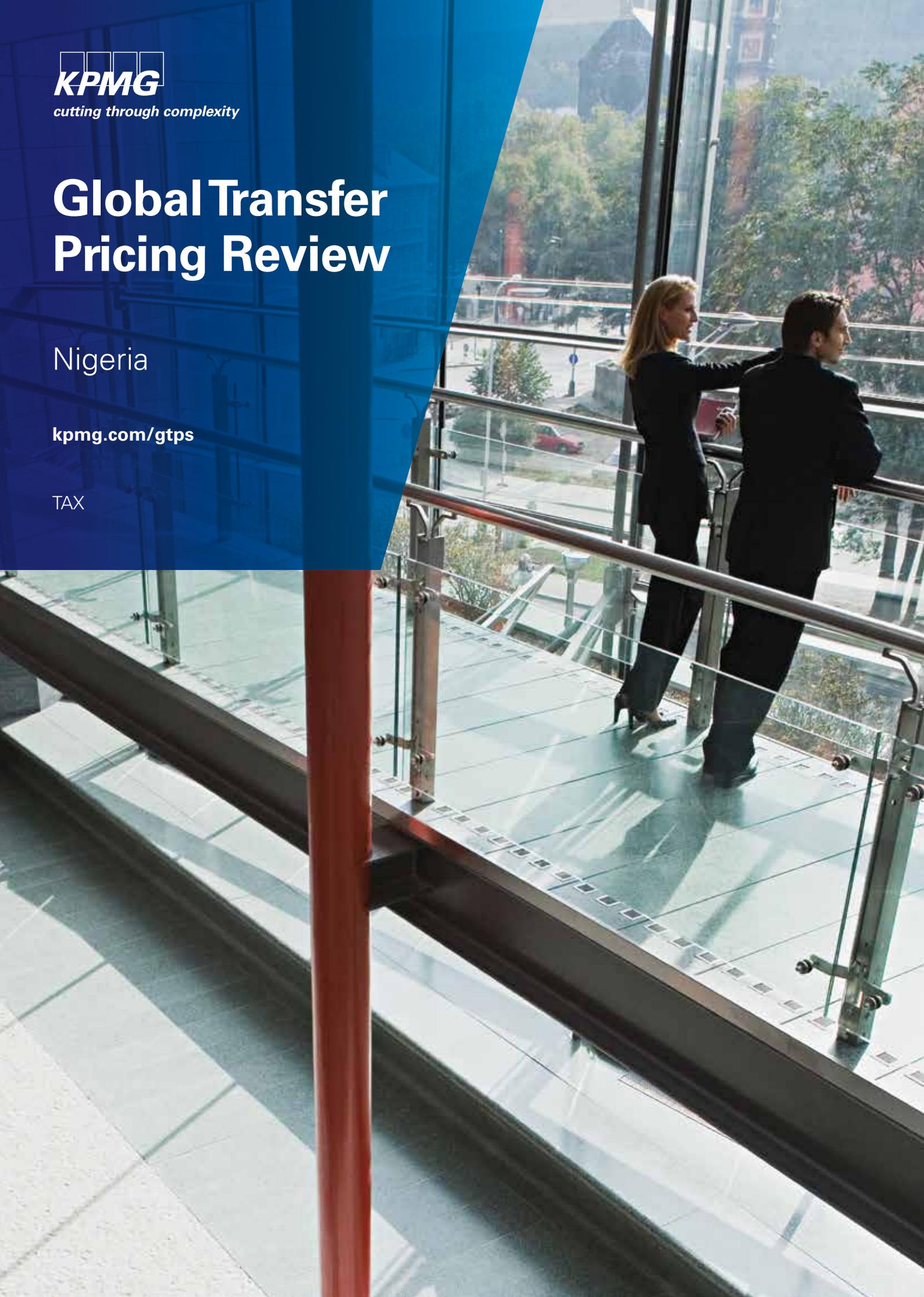
cutting through complexity

Global Transfer Pricing Review

Nigeria

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TAX



Nigeria



KPMG observation

Income Tax (Transfer Pricing) Regulations were introduced in Nigeria in 2012 and became effective on 2 August 2012. Under the Regulations, companies are required to conduct transactions with related parties at arm's length and appropriate documentation must be available to verify that the pricing of controlled transactions is consistent with the arm's length principle. Such documentation includes a transfer pricing study (which should be in place before the filing of the taxpayer's tax returns for the year of interest) and statutory forms (i.e. transfer pricing declaration form and disclosure forms) along with the tax returns.

In line with the spirit of increased transparency under the Base Erosion and Profit Shifting (BEPS) Action Plan, the Federal Inland Revenue Service (FIRS) has sent letters to some taxpayers with related party transactions to submit their Group/Global transfer pricing policies as well as Local transfer pricing policies to aid with their transfer pricing risk assessment.

Transfer pricing study snapshot

The purpose of a transfer pricing study

	Applicable	Not applicable	Required to be contemporaneous
Legal requirements			●
Protection from penalties		●	
Reduce risk of adjustment	●		
Shifts burden of proof	●		●

Basic information

Tax authority name

Federal Inland Revenue Service (FIRS).

Citation for transfer pricing rules

The Income Tax (Transfer Pricing) Regulations No. 1, 2012.

Effective date of transfer pricing rules

2 August 2012.

What is the relationship threshold for transfer pricing rules to apply between parties?

The Regulation covers all transactions entered into by connected taxable persons. Enterprises are considered to be associated where one party participates directly or indirectly in the management, control or in the capital of the other; or, the same person or persons participate directly or indirectly in the management, control or in the capital of both enterprises.

What is the statute of limitations on assessment of transfer pricing adjustments?

The Regulations do not provide for a statute of limitations on assessment of transfer pricing adjustments. However, the Companies' Income Tax Act (CITA) provides that the statute of limitation is six years except in cases of fraud, willful default, or neglect with respect to any tax payable, in which case there is no statute of limitation.

Transfer pricing disclosure overview

Are disclosures related to transfer pricing required to be submitted to the revenue authority on an annual basis (e.g. with the tax return)?

Yes. The Regulations require companies to file statutory transfer pricing forms (Declaration and Disclosure Forms) along with their annual income tax returns.

What types of transfer pricing information must be disclosed?

The transfer pricing Declaration Form requires the disclosure of general information about the reporting company's legal form and ownership structure. Specifically, companies are to provide detailed information on the following:

- particulars of the reporting company or entity
- particulars of immediate parent company
- particulars of the directors of the reporting company or entity
- major shareholders of reporting company or entity
- particulars of subsidiaries and other connected persons to the reporting entity
- particulars of external auditors, company secretary and tax consultants to the reporting company; and
- particulars of the person completing the declaration form.

The transfer pricing Disclosure Form requires the disclosure of the nature of connected transactions. Specifically, companies are to provide detailed information on the following:

- particulars of the reporting company or entity
- income from controlled transactions
- costs of controlled transactions
- transfer pricing method and documentation
- basic financial information; and
- particulars of the person completing the Disclosure Form.

What are the consequences of failure to submit disclosures?

The penalties for failure to submit disclosures are the same as the penalties for not filing tax returns, and are provided for in the income tax legislation.

Further, the failure to submit the disclosures may be a potential audit trigger and result in unilateral income adjustment by the tax authority. Any resulting additional tax liability may also be subject to both penalties and interest.

Transfer pricing study overview

Can documentation be filed in a language other than the local language? If yes, which ones?

Transfer pricing documentation are required to be filed in English Language which is the official language.

When a transfer pricing study is prepared, should its content follow Chapter V of the Organisation for Economic Co-operation and Development (OECD) Guidelines?

Yes, for all transactions. Yes. The Regulations did not provide specific information regarding the content of transfer pricing documentation. It is therefore acceptable if it follows Chapter V of the OECD Guidelines.

Does the tax authority require an advisor/tax practitioner to have specific designation in order to prepare or submit a transfer pricing study?

No.

Transfer pricing methods

Does your country follow the transfer pricing methods outlined in Chapter II of the OECD Guidelines? If exceptions apply, please describe.

Yes. In addition, if a taxpayer is of the view that none of the methods stated in Chapter II are appropriate for determining the arm's length pricing, a taxable person may apply transfer pricing methods other than those listed in the Regulations, so long as they can show that the transactions are at arm's length.

Transfer pricing audit and penalties

When the tax authority requests a taxpayer's transfer pricing documentation, are there timing requirements for a taxpayer to submit its documentation? And if so, how many days?

Yes, 21 days.

When the tax authority requests a taxpayer's transfer pricing documentation, are there timing requirements for a taxpayer to submit its documentation? Please explain.

Twenty-one days. However, upon a reasonable request, the tax authority has discretionary power to grant an extension.

If an adjustment is proposed by the tax authority, what dispute resolution options are available?

Taxpayers may approach the Decision Review Panel (DRP). The decision of the DRP on any assessment or adjustment is final and conclusive. However, where the taxpayer is dissatisfied with the decision of the DRP, it may refer the matter to a court of competent jurisdiction.

If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions?

Yes. The applicable penalty rates are as follows:

- income tax of companies — in addition to the principal tax liability chargeable at 30 percent, the law imposes penalties of 10 percent plus interest at Central Bank of Nigeria's rediscount rate
- value added tax (VAT) — in addition to the principal liability chargeable at five percent, the law imposes penalties of five percent plus interest at the commercial rate.

To what extent are transfer pricing penalties enforced?

The tax authority has discretionary power to waive part or entire penalty. Nevertheless, we observed that the tax authority currently exercise significant caution in exercising this discretion.

What defenses are available with respect to penalties?

Taxpayers can generally appeal to the tax authority's sentiments to enable them exercise this power in their favor. This could be hinged on financial position of the company, ambiguity in interpretations of tax provisions, availability of company's key officers that will take decision, among others.

What trends are being observed currently?

The tax authority has commenced rigorous audit of some selected companies. The exercise is very detailed and time consuming.

Special considerations

Are secret comparables used by tax authorities?

Not yet known.

Is there a preference, or requirement, by the tax authorities for local comparables in a benchmarking set?

Not yet known.

Do tax authorities have requirements or preferences regarding databases for comparables?

The tax authority has subscribed to Orbis database. It could therefore be inferred that they will prefer it.

Does the tax authority generally focus on the interquartile range in a TNMM analysis?

Yes, sometimes.

Does the tax authority have other preferences in benchmarking? If so, please describe.

Not yet known.

What level of interaction do tax authorities have with customs authorities?

Minimal.

Are there limitations on deductibility of management fees beyond the arm's length principle?

Yes. Management fees are deductible only if the taxpayer has obtained prior approval of the National Office for Technology Acquisition and Promotion (NOTAP) and the tax authority is satisfied that they are at arm's length.

Are management fees subject to withholding?

Yes.

Are there limitations on the deductibility of royalties beyond the arm's length principle?

Yes. Royalties are deductible only if the taxpayer has obtained prior approval of the National Office for Technology Acquisition and Promotion (NOTAP) and the tax authority is satisfied that they are at arm's length. However, NOTAP is often reluctant to grant approval where the recipient of royalties has more than 75 percent shareholding in the Nigerian subsidiary.

Are royalties subject to withholding?

Yes.

Are taxpayers allowed to file tax return numbers that differ from book numbers?

There is no express provision in this regard.

Other unique attributes?

There are safe harbor provisions in the Regulations. They provide that a taxpayer will no longer be required to prepare transfer pricing documents if the pricing arrangement is approved by relevant government agencies and the tax authority is satisfied that the transactions are at arm's length. The agencies include Department of Petroleum Resources (DPR), Central Bank of Nigeria (CBN), and, NOTAP, among others.

Tax treaty/double tax resolution

What is the extent of the double tax treaty network?

Minimal. Nigeria currently has double tax agreements with nine countries.

If extensive, is the competent authority effective in obtaining double tax relief?

Sometimes.

When may a taxpayer submit an adjustment to competent authority?

The Regulation is silent on the timing for submission of adjustments. The enabling legislation (i.e. Companies Income Tax Act 2007) however permits a taxpayer to file revised tax returns as often as necessary within six years after the accounting year-end date.

May a taxpayer go to competent authority before paying tax?

Yes.

Advance pricing agreements

What APA options are available, if any?

Unilateral, bilateral, multilateral.

Is there a filing fee for APAs?

No.

Does the tax authority publish APA data either in the form of an annual report or through the disclosure of data in public forums?

No.

Are there any difficulties or limitations on the availability or effectiveness of APAs?

Not applicable. Although the Nigerian transfer pricing Regulations provides for APAs, the tax authority is yet to commence the APA program.

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Designed by Evalueserve.

Publication name: Global Transfer Pricing Review

Publication number: 132762-G

Publication date: October 2015