



FEDERAL INLAND REVENUE SERVICE

Transfer Pricing Division

Frequently Asked Questions on Transfer Pricing

1. *What is Transfer Pricing?*

Transfer Pricing (TP) involves setting appropriate prices for goods, services, loans and intangibles supplied or transferred by one enterprise to another; both of them being members of the same group or otherwise connected. It is the pricing adopted by related parties for goods, services, intangible assets, loans and other transactions between or among themselves.

2. *Is TP another form of Tax?*

No. TP is not another form of tax; however it may affect the amount of tax payable (particularly income tax, capital gains tax or value added tax) should there be mispricing of transfers between related parties.

3. *Who sets Transfer Prices?*

It is the right of the taxable person to set the appropriate transfer price. In setting the transfer price, care must be taken to ensure that the prices accord with the arm's length principle.

4. *What is the role of the tax authority in Transfer Pricing?*

If the transfer price does not reflect open market price (arm's length price), the tax authority has the legal right to adjust the price to reflect the arm's length price (TP Adjustment).

TP adjustments usually result into additional tax liabilities which the tax authority may assess in addition to the amount of tax previously assessed.

5. *Are there rules to regulate TP in Nigeria?*

Yes. The Income Tax (Transfer Pricing) Regulations No1, 2012 (TPR) was published in the Federal Government gazette on 21st September 2012. The TPR provides the legal framework for the implementation of TP regime in Nigeria.

6. *When did the TP Regulations come into force in Nigeria?*

The TP Regulations came into force on 2nd August 2012. Consequently, any transaction between related parties occurring in the accounting period commencing after 2nd August 2012 is subject to the Regulations.

7. *What is the essence of the TP Regulations?*

The essence of the Regulation is to provide guidance on the implementation and administration of transfer pricing in Nigeria. It provides guidelines as to how arms' length pricing should be applied to transactions between related entities.

The Regulations provide guidance for the enforcement of the statutory provisions contained in section 17, Personal Income Tax Act (Cap P8, LFN 2004), section 22, Company Income Tax (CAP C21, LFN 2004), section 15, Petroleum Profits Tax Act (CAP P13, LFN 2004), section 21, Capital Gains Tax Act (CAP C1, LFN 2004) and section 5, Value Added Tax Act (CAP V1, LFN 2004) with respect to arm's length pricing of transactions between related persons.

8. *What is the scope of the Nigerian TP Regulation?*

The emphasis of the Regulations is on transactions between connected persons; which could be domestic or cross-border transactions. Transactions covered include:

- Sale and purchase of goods and services
- Sales, purchase or lease of tangible assets
- Transfer, purchase, licensing or use of intangible assets,
- Provision of services;
- Lending or borrowing of money

- Manufacturing arrangement
- Transactions between head office and permanent establishments ("PEs")
- Any transaction which affects the profits of a company whether domestic or cross-border.

9. *Are the TP Regulations applicable to all taxpayers?*

No. Transfer pricing applies only to transactions between connected taxable persons. Consequently, the TPR applies only to connected taxable persons who may be persons having common control, management or ownership; or persons who participate directly or indirectly in the management, control or capital of another.

10. *Are all taxable persons expected to file TP Returns?*

No. Not all taxable persons are required to file TP returns. TP returns are to be filed only by taxable persons who have transactions with related or connected persons (either in Nigeria or overseas). The returns are to be filed along with the annual income tax returns.

11. *Is the taxpayer expected to submit any documentation?*

Yes. The TP Regulations require taxpayers to maintain TP documentation and to provide them to the Service within 21 days of the Service making a request.

12. *What is TP Documentation?*

TP documentation is the taxpayer's justification that the transactions were conducted and priced at arms' length. They are records maintained by taxable persons as proofs that arms' length principle was followed in the pricing of transactions between related persons.

TP documentation must be maintained for each transaction as it occurs.

13. *When is TP Documentation to be maintained?*

Nigerian TP Regulations provide for *contemporaneous documentation*.

Contemporaneous documentation refers to the preparation of TP documentation at the same time that such transactions are being conducted.

14. *When is TP Documentation to be provided to the Service?*

The documentation shall be provided to the Service, on request, within 21 days of the Service making the request. Please note that taxable persons are required to start maintaining documentation from the time that the transaction is taking place.

15. *For how long must TP Documentation be maintained?*

TP Documentation must be maintained for a minimum period of 6 (six) years from the date of filing the relevant TP returns.

16. *What is TP Disclosure Form?*

Taxpayers are required to disclose details of their controlled transactions on an annual basis. The disclosure is to be made using the TP Disclosure Form.

This form should be completed and filed with the Service every year to disclose the type, volume and value of controlled transactions. The form must still be completed and filed even when there are no such controlled transactions in a year.

17. *When must the TP Disclosure Form be filed?*

Each year, TP Disclosure forms should be filed along with the relevant income tax returns on the due date of the income tax returns.

Tax returns that are rendered without the disclosure forms are deemed incomplete and would result into the imposition of penalty as prescribed by the relevant tax law.

18. *How often must the TP Disclosure Form be filed?*

TP Disclosure forms are to be completed annually and submitted along with the annual tax returns.

The TP Disclosure Form must be filed even if there are no controlled transactions in the relevant year.

19. *What is TP Declaration Form?*

TP Declaration Form is for use by companies to declare the details of the structure of their group in terms of ownership, management, control and nature of business.

The basic information to be provided on this form concerns shareholding, directorship, relationship, location of companies who are members of the same group or otherwise connected with one another and the nature of their business.

20. *When should the TP Declaration Form be filed?*

The TP Declaration Form contains information of fairly permanent nature. To this end, it is to be submitted only in the first year of rendering a TP return.

The Service may by notice request that the TP Declaration Form be filed before the due date of filing of the first TP returns. If there is no such notice from the Service the TP Declaration Form should be submitted alongside the first TP returns of the taxable person.

21. *How often should the TP Declaration Form be filed?*

The form is to be submitted once with the first TP returns of the taxable person and as often as the Service may demand subsequently. Whenever there are significant changes in the information contained in the form, the taxable person must notify the Service of such changes by completing the form again and submitting it along with the TP returns of the relevant year.

22. *What is Group TP Policy?*

Group TP Policy refers to the set of principles adopted by a group of companies upon which the pricing of intra-group transactions are based. Transfer pricing policy dictates the approach taken by the group when determining the transfer prices for the exchange of goods, services, assets, loans and intangibles among group members. Companies have different transfer pricing policies depending on the objectives being pursued.

23. *What is Domestic or Local TP Policy?*

Domestic TP Policy refers to the set of principles adopted by a company (usually in consonant with its Group TP Policy) upon which the pricing of intra-group transactions are based.

Domestic TP Policy must take into consideration the peculiarities of the TP legal framework in the country of which the entity is a resident.

24. *What is TP Policy Document?*

TP policies (group or domestic) are usually recorded and transmitted to all relevant entities in order to facilitate compliance. The medium on which the policy is recorded is referred to as the Transfer Pricing Policy Document.

25. *Are the TP Policy Documents required by the FIRS?*

Yes. Every taxable person, who is subject to the TPR, is required to document its TP Policy at both group and domestic levels and submit them to the FIRS on request.

26. *When should TP Policy Documents be submitted to the Service?*

TP Policy Documents must to be submitted to the Service within 21 days of the receipt of a notice from the Service demanding for its submission. Where no such notice was made by the Service,

TP Policy Documents must be submitted along with the first TP returns of the taxable person.

27. *How often should a TP policy document be updated?*

TP policy may last for several years if there are no material changes. However, it must be updated as often as there are material changes in business strategy and principles being used for the pricing of controlled transactions.

In the event of material changes to either the group or domestic policy, new TP policy documents reflecting the relevant changes must be submitted to the Service along with the TP returns for the relevant year.

28. *Which transactions must be disclosed in TP Returns?*

Any transaction carried out between connected parties and which may result into the accrual of cost or recognition of income by any of the parties must comply with the arms' length principle and therefore disclosed in the TP returns.

More specifically, any transaction between connected persons involving any of the followings is subject to the TPR:

- Sale and purchase of goods;
- Sales, purchase or lease of tangible assets
- Transfer, purchase, licensing or use of intangible assets,
- Provision or receipt of services;
- Lending or borrowing of money
- Manufacturing arrangement
- Transactions between head office and permanent establishments ("PEs")
- Any transaction which affects the costs or income of a company (whether domestic or cross-border).

29. *What are the contents of Annual TP Returns?*

Annual TP returns are made up of the following documents:

- i. Duly completed and signed TP Disclosure Form;
- ii. Audited Financial Statements (in detailed format);
- iii. Copy of income tax self-assessment; and
- iv. Tax computation (in detailed format) with all schedules;

These documents must be submitted annually to the Service alongside the usual income tax returns at the tax office where the taxable person's tax file is domiciled.

30. *Are there materiality thresholds for TP purposes?*

There is no materiality threshold for the application of the TP rules. All transactions with related persons must be disclosed and proved to have been priced appropriately in accordance with the arms' length principle.

31. *What TP Methods may a taxable person use?*

The Nigeria Regulations aligns with the five methods recommended by OECD and the UN to determine the arm's length price. The methods are:

- Comparable Uncontrolled Price method (CUP)
- Cost Plus Method (CPM)
- Resale Price Method (RPM)
- Transactional Net Margin Method (TNMM)
- Profit Split Method (PSM)

32. *Is the taxpayer limited to only the 5 methods?*

No. The taxpayer may use any other method provided it can prove to the satisfaction of the FIRS that:

- i. none of the five methods can be reasonably applied in its case to determine the arms' length price of the transaction; and
- ii. the method used justifies the arms' length price of the transaction.

33. *Is Safe Harbour one of the recommended TP methods?*

No. Safe Harbour is not a TP method.

34. *What is Safe Harbour?*

Safe Harbour refers to the exemption of taxable persons from maintaining and providing TP Documentation in respect of controlled transactions provided that:

- i. such transactions are priced in accordance with extant statutory provisions; or
- ii. the prices of the transactions have been approved by other government regulatory agencies to the satisfaction of the Service to be at arm's length.

35. *Can I agree transfer prices in advance with the FIRS?*

Yes. Taxpayers may enter into advance pricing agreements (APAs) with the FIRS in order to establish a set of criteria to be used in determining whether or not the person has complied with the arm's length principle for certain future controlled transaction.

The set of criteria referred to above may include the nature, volume and origin of the transaction, the transfer price, the TP method and the assumptions upon which the future transaction would be based.

36. *Are there materiality thresholds for APA purposes?*

Yes. APAs can only be made in respect of transactions having cumulating value not less than ₦250million in every year of assessment covered by the arrangement.

37. *Will there be TP audits?*

Yes. The FIRS may carry out TP examinations in order to verify that prices adopted by a company with respect to controlled transactions complied with the arm's length principle.

38. *How far back will TP audits go?*

TP audits shall apply to accounting years commencing from 2nd August 2012. To this end, relevant taxable persons must maintain TP documentation from this date onward and for a minimum period of 6 (six) years for each successive accounting period. In the event of wilful default or fraud, there may be no limit to how far back the tax authority can go in order to deal with such criminal tendencies.

39. *Is TP audit replacing regular tax audit?*

No. Regular tax audit will continue to hold in order for the Service to satisfy itself that taxable income sources have been fully and properly disclosed and that deductions allowed are wholly, reasonable, exclusively and necessarily incurred for the purposes of earning the income.

39. *Is TP audit not a duplication of the regular tax audit?*

No, TP audit is not a duplication of regular tax audit.

While regular tax audit is to verify whether or not a taxable person complied with statutory provisions with respect to proper disclosure of income and business expenses, TP audit is concerned with the pricing of transactions occurring between connected taxable persons. In other words, regular tax audit is checking to ensure full compliance with legal provisions on income and expenses, whereas TP audit is checking to ensure full compliance with open market prices (arm's length prices) for all transactions occurring with persons connected with the taxable person.

The documentation required for each type of examination is different. Regular audit would require documents to prove that the cost was indeed incurred and the prices stated while TP audit would require documents to prove that arm's length prices were adopted.

40. *How would TP disputes be resolved?*

The TPR provides for the setting up of a Decision Review Panel (DRP). The DRP's decision on an objection to a TP adjustment shall be the final position of FIRS. Thereafter, a Notice of Refusal to Amend Assessment shall be issued. The taxpayer may, however, appeal against the assessment in line with extant provisions of the tax law.

41. *Is the Decision Review Panel a court?*

No, the Decision Review Panel is not a court of law. It is an administrative organ of the Service set up by the TPR so as to promote quick and cheap dispute resolution. Its decisions are the final decisions of the Service in respect of an objection to a TP adjustment. A taxable person who is displeased with any of its decisions may challenge it at the Tax Appeal Tribunal or a court of competent jurisdiction.

42. *Where can I obtain further information on transfer pricing?*

Further information could be obtained from the following sources:

- i. The Head,
Transfer Pricing Division,
3rd Floor, FIRS Building,
17B, Awolowo Road,
Ikoyi – Lagos.
- ii. The Coordinating Director,
Field Operations Group,
Federal Inland Revenue Service,
15, Sokode Crescent,
Abuja.
- iii. The Executive Chairman,
Federal Inland Revenue Service,
15 Sokode Crescent,
Wuse Zone 5,
Abuja.
- iv. FIRS website at www.firs.gov.ng.