Transfer Pricing:

*Impact of BEPS & Other Reforms*

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Introduction
BEPS General Background
TP-Related BEPS Measures
Other Evolving Int’l Tax Issues
BEPS Related Reforms in Nigeria
Summary of CBCR Rules
Features of New TP Regulations
Closing Remarks
Feedback
**BEPS:**
A collection of strategies for exploiting gaps in tax rules to make profits “disappear” from the place of economic activities to locations where little or no real activity took place.

**Opportunity for BEPS:**
- Technological advancements
- Mismatches in tax rules
- Outdated tax rules
- Weaknesses in international tax rules

**Cure for BEPS:**
- Global tax standards for digital economy
- Eliminate mismatches in global tax rules
- Rules on base-eroding payments
- Eliminate harmful tax practices
- Increased transparency
- Effective dispute resolution
Main Objective

- Ensure that profits are taxed where economic activities that generate the profits are performed

The BEPS Project

- Structured into 15 Action Plans
- Started in 2013 and completed in 2 years
- Only G20 & OECD members participated at start

The Inclusive Framework

- Non-G20/OECD members co-opted in 2014
- Nigeria became BEPS Associate in 2015 and joined Inclusive Framework in 2016

BEPS Timelines

- Implementation (2015 – Date)
- Monitoring implementation, and measuring impacts (2015 – Date)
OECD/G20 BEPS Actions

COHERENCE

- Hybrid Mismatches (2)
- CFC Rules (3)
- Interest deduction (4)
- Harmful tax practices (5)

SUBSTANCE

- Preventing tax treaty abuse (6)
- Avoidance of PE status (7)
- Aligning TP with value creation (8-10)

TRANSPARENCY

- Measuring and monitoring BEPS (11)
- Disclosure rules (12)
- TP Documentation (13)
- Dispute Resolution (14)

Action 1 on Digital Economy span all 3 Core Principles

Action 15 on the Multilateral Instrument (MLI) span all 3 Core Principles
Results of BEPS Project

- Harmonised international tax rules
- Changes to Tax Treaty Models
- Changes to Transfer Pricing Guidelines
- Increased collaboration (BEPS Inclusive Framework, EOI, Stronger Regional Tax Bodies, etc.)
- Global war against harmful tax practices
- Wide-spread tax reforms
**Action 4**
- New interest deductibility rules

**Action 8 - 10**
- Transaction delineation
- Risk allocation
- Low value-adding inter-group services
- ALP for commodities
- Intangibles
- Hard-To-Value Intangibles
- Financial Transactions

**Action 13**
- Country-by-Country Reporting
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<th>SN</th>
<th>Issue Addressed</th>
<th>Guidance</th>
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<td>1</td>
<td>Intangibles</td>
<td>• Legal ownership is not enough condition for entitlement to remuneration</td>
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<td>• Associated entities performing value-adding activities are entitled to</td>
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<td>adequate remuneration;</td>
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<td>• Associated enterprises providing funding without assuming relevant</td>
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<td>risks to receive only “risk-free” return</td>
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<td>2</td>
<td>Commodity Transactions</td>
<td>• The applicability of CUP &amp; use of quoted prices as CUP</td>
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<td>• Transaction date for pricing to aligned to shipment date</td>
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<td>3</td>
<td>Applying Arm’s Length Principles</td>
<td>• Transactions to be delineated based on actual behaviour of parties</td>
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<td>• Contractual allocation of risks is only accepted if supported by facts</td>
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| 4  | Low value-adding intra-group services | • Definition of low value-adding activities  
• Applies the use of consistent allocation key for all recipients of the service  
• Disclosure of pooled-cost                                          |
| 5  | Cost Contribution Arrangements       | • Analytical framework for delineating actual transaction in CCA is the same as in other contractual arrangements  
• Analysis of CCA is based on actual behaviour and not on just contract terms  
• Participation is condition on enjoyment of shared-benefits          |
| 6  | TP Documentation                     | • Three-tiered approach to TP documentation                                |
Other Developments in Global Tax Space

EOI
- More jurisdictions are joining the Global Forum
- 2nd round of peer reviews commenced
- Increased signatories to Multilateral Convention
- AEOI Common Reporting Standard

2017 US Tax Reform
- Base Erosion & Anti-Abuse Tax (BEAT)
- Foreign-Derived Intangible Income (FDII)
- Global Intangible Low-Taxed Income (GILTI)

EU Non-Compliant List
- Black list (From 17 jurisdictions to 7)
- Grey list (47 Jurisdictions)

Taxation in Africa
- Tax reforms
- Increased support for African Tax Administration
- Significant move towards harmonisation
- More visibility for ATAF, WATA, etc.
Ongoing Domestic Tax Reforms

Transfer Pricing
- New TP Regulations approved
- Practice notes in progress

AEOI
- MCAA signed
- Regulations in draft
- Guidelines in draft
- ICT & other structures in progress

Tax Law Amendments
- Preparatory back-room activities in progress

CBCR
- MCAA signed
- CBCR Regulation signed
- CBCR Guidelines in progress

Nigeria MTC
- Nigeria MTC being reviewed
- Tax Treaty Policy in draft
CBCR Rules

- BEPS Model CBCR Legislation adopted
- Ultimate parent company to file CBCR with FIRS
- A resident constituent entity of MNE may file CBCR with FIRS under certain conditions
- MNE may file CBCR through Surrogate Parent Company
- CBCR must be filed within 12 months of MNE’s financial year end
- Turnover threshold for filing CBCR is ₦160 Billion
- Administrative penalties:
  - Late filing
  - Incorrect or false report
- CBCR reporting language is the English Language
TP Regulations: Additional Provisions

- Intra-group services
- Intangibles
- Allocation of risk
- Administrative penalties
  - Compliance & timelines
  - Correctness of information
- TP documentation:
  - Threshold
  - Master file & local file introduced
TP Regulations: *Other Enhancements*

- **Added Beauty:**
  - Simplified language for better clarity
  - Elegance

- **Improvements:**
  - Use of statistical approach to determine Arm’s Length Range
  - Separate rules for TP declaration & disclosures
  - Detailed rules on extension of time to provide information or make disclosures
  - Clarity of Decision Review Panel’s roles
  - More terms defined
A word for the wise ...
... because lies can withstand neither diligent nor rigorous cross-examination.

The Service is diligent in service.
Many thanks ...

... for the great privilege
Feedback Time ...