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NIGERIA**

Information Circular

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**Subject: GUIDELINES ON TRANSFER PRICING
DOCUMENTATION**

These Guidelines are issued to provide guidance to the general public and, in particular, connected taxable persons, otherwise known as related parties or associated enterprises, all taxpayers, taxpayers' representatives or advisers, all other stakeholders and tax officers on Transfer Pricing Documentation requirements in Nigeria.

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1.0 Introduction

- 1.1 Sections 15 of the Personal Income Tax Act, 22 of the Companies Income Tax Act, 17 of the Petroleum Profits Tax Act and 20 of the Capital Gains Tax Act empowers the Federal Inland Revenue Service (“FIRS” or “the Service”) to disregard any disposition or make necessary adjustments if transactions between connected persons appear to be artificial or fictitious - that is, not at arm’s length.
- 1.2 In order to give effect to the above provisions, the Service published the Income Tax (Transfer Pricing) Regulations, 2018 pursuant to section 61 of the Federal Inland Revenue Service (Establishment) Act No. 13 of 2007.
- 1.3 Regulation 16 of the Income Tax (Transfer Pricing) Regulations, 2018 requires connected taxable persons to record, in writing or on any other electronic device or medium, sufficient information or data with an analysis of such information and data to verify that the pricing of controlled transactions are consistent with the arm’s length principle.
- 1.4 These guidelines are provided in order to assist relevant taxpayers in the development of records that are adequate for the Service to verify that pricing of controlled transactions are consistent with the arm’s length principles. According to the OECD, *a well-prepared documentation will give tax administrations some assurance that the taxpayer has analysed the positions it reports on tax returns, has considered the available comparable data, and has reached consistent transfer pricing position.*¹
- 1.5 This Guideline is prescriptive with respect to TP documentation that should be developed, maintained and submitted in order to demonstrate that pricing of controlled transactions were done in accordance with the arm’s length principles.

¹ OECD Final Report on BEPS Action 13: Transfer Pricing Documentation and Country-by-Country Reporting

2.0 Objectives Of Transfer Pricing Documentation Requirements

2.1 The requirement for connected taxable persons to maintain transfer pricing documentation are for the purposes of achieving the following objectives:

- a) ensure that taxpayers give appropriate consideration to transfer pricing requirements in establishing prices and other conditions for transactions between associated enterprises, and in reporting the income derived from such transactions in their tax returns;
- b) provide tax administrations with the information necessary to conduct an informed transfer pricing risk assessment; and
- c) provide tax administrations with useful information to employ in conducting an appropriately thorough audit of the transfer pricing practices of entities subject to tax in their jurisdiction, although it may be necessary to supplement the documentation with additional information as the audit progresses.

2.2 The Federal Inland Revenue Service (FIRS) considered the above objectives in developing these guidelines. Therefore, taxpayers are required to evaluate their compliance with the Transfer Pricing Regulations prior to filing tax returns.

3.0 Scope of the Guidelines

The purpose of these Guidelines is to cover the broad issues relating to the form and manner of transfer pricing documentation which connected taxable persons are required to maintain in order to demonstrate that the pricing of a controlled transaction accords with the arm's length principles.

4.0 The Duty to Prepare TP Documentation

The duty to maintain TP documentation is imposed on the taxpayer notwithstanding the fact that services of agent(s) or advisers may be procured at any point in the process of delivery. As such, any liability arising for non-compliance, inadequacies, defects or misstatements is for the account of the taxpayer.

Taxpayers are advised **not** to procure the services of any person in permanent or pensionable employment of the FIRS to develop, record, correct or submit TP documentation on its behalf.

5.0 The Three-Tiered Approach to TP Documentation

In order to achieve the objectives stated in paragraph 2 above, a standardised approach to documentation is required. Consequently, and in line with the TP Regulations, relevant taxpayers are required to adopt a three-tiered TP documentation structure as follows:

1. Master file
2. Local file, and
3. Country-by-Country reports

5.1 Master file

Generally, the master file provides a top-level view of the MNE group's transfer pricing practices in their global economic, legal, financial and tax context. Thus, the master file should provide an overview of the MNE 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 in order to enable tax administrations determine the presence of significant transfer pricing risk.

The Master file should include information covering the MNE group's organisational structure, a description of the MNE's

business or businesses, the MNE's intangibles, MNE's inter-company financial activities and tax positions. This should also include a detailed description of the Group's legal and ownership structure, geographical location of operating entities, service arrangements between members, sources of business profit, turnover, intangibles owned, all policies from the development to transfer of R&D within the group, financing arrangements, annual consolidated financial statements and tax rulings on income allocation by jurisdiction.

Taxpayers are advised to provide appropriate tools such as organisational charts, narratives, maps, handbooks containing group information, etc. so as not to leave out relevant facts and for ease of understanding.

The detailed requirements and contents of the Master file is contained in the Schedule to the Income Tax (Transfer Pricing) Regulations 2018.

5.2 Local File

The local file provides more detailed information relating to specific intercompany transactions. The local file refers specifically to controlled transactions of the local taxpayer with associated enterprises. The information provided by the Local File, in addition to that of the 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.

The local file contains the detailed description of transactions between the local entity and an associated enterprise such as the local entity's organisation structure, financial status, business description, tangible and intangible transfers and related-party relationships, details of controlled transactions, business arrangements, functional analysis, value-chain analysis, comparability analysis, and so on.

The detailed description of the contents and requirements of the Local file is contained in the Schedule to the Income Tax (Transfer Pricing) Regulations 2018.

5.3 Country-by-Country Report

The Country-by-Country Report (CBCR) provides aggregated information by tax jurisdiction, showing MNE's allocation of income, income tax paid, and certain indicators of the location of economic activity among tax jurisdictions in which the 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. MNEs are also to report their number of employees, stated capital, retained earnings and tangible assets in each jurisdiction. MNEs must identify each entity within the group doing business in a particular tax jurisdiction and provide an indication of the business activities each entity engages in. These pieces of information will assist the tax administration in carrying out high-level transfer pricing risk assessment.

The following are the criteria for determining a company that should prepare and submit annual Country-by-Country reports to the FIRS in any year of assessment:

1. It is a Nigerian Company or resident for tax purpose in Nigeria;
2. It is a member of an MNE Group that has a total group revenue of *one hundred and sixty billion Naira* (~~N~~160 Billion) and above during the Accounting Year immediately preceding the year of assessment (as reflected in the Group's Consolidated Financial Statements for that preceding Accounting Year or, as may be otherwise ascertained); and
3. It is the Parent Company of the MNE Group ("Ultimate Parent Entity") or designated by the MNE Group to file on behalf of the Group ("Surrogate Parent Entity") or has obligation for local filing of country-by-country report in Nigeria (i.e. there

is no other entity filing a country-by-country report that contains the financial information of the Nigerian entity, that will be made available to the Service).

The model template for the Country-by-country report is in the First Schedule to the **Income Tax (Country-by-Country Reporting) Regulations 2018**, while the detailed description of its contents and procedure for its completion is contained in FIRS information circular No.2018/01 "**Guidelines for Country-by-Country Reporting in Nigeria**".

6.0 Key Compliance Requirements

6.1 Contemporaneous Transfer Pricing Documentation

A taxpayer shall determine transfer prices for tax purposes in accordance with the arm's length principle based upon information reasonably available at the time of the transaction. Thus, a taxpayer must give consideration to whether the terms of its controlled transactions are appropriate for tax purposes before pricing is established, and should confirm the arm's length nature of its financial results at the time of filing its tax returns.

Within this context, contemporaneous transfer pricing documentation is to bring transfer pricing documentation into existence:

- a) when a person is developing or implementing a controlled transaction; or
- b) in any event, no later than the due date for furnishing the tax returns for the basis period of a year of assessment.

Taxpayers should take into account the volume and complexity of their business and transactions in determining the nature and extent of documentation appropriate to their particular circumstances.

6.2 Timeline for Filing TP Declaration & TP Disclosures

The due date for the submission of the TP Declaration and Disclosure Forms is as stipulated in regulations 13 and 14 of the TP Regulations, as the case may be.

6.3 Timeline for Submission of TP Documentation

- a. In the case of a company having controlled transactions of ~~₦~~300m or more, **Master File** and the **Local File** shall be furnished within **21days** of the receipt of FIRS' notice requesting for the submission of the TP documentation;
- b. In the case of a company having controlled transactions of less than ~~₦~~300m, **Master File** and the **Local File** shall be furnished within **90days** of the receipt of FIRS' notice requesting for the submission of the TP documentation

6.4 Timeline for Filing of Country-by-country reports

Without notice or request, country-by-country reports shall be filed, no later than **12 months** after the end of the relevant accounting year of the MNE group.

6.5 Extension of Time to Comply with a Notice

Only valid request for the extension of time for compliance with a notice shall be considered by the Service.

A request for extension of time is valid if, and only if, it was made in the following manner:

- a. such a request was made in writing;
- b. the request was addressed to the Executive Chairman, Federal Inland Revenue Service, for the attention of Head, Transfer Pricing;
- c. the request was submitted to the relevant Transfer Pricing office before the due date of compliance indicated on a notice; and

d. the taxpayer showed good cause for requesting the extension.

6.6 Conditions for Granting Extension of Time

a. The Service shall convey its approval or refusal of a request for extension of time to the taxpayer in writing.

b. In granting a request for extension of time, the FIRS shall take the followings into consideration:

- i. the death or serious illness of a key personnel such as the managing director, a director responsible for transfer pricing matters, company secretary, relevant transfer pricing desk officer or any other person, or a close relative of such personnel in the company whose inputs are critical to compliance with a notice;

A close relative includes spouse, children, siblings or parents of an individual or of a spouse.

- ii. where the company experienced a fire or natural disaster that seriously affects its operations during the relevant period;
- iii. where the information required is located or the person to attend a meeting is resident outside Nigeria (this does not cover notice for submission of TP Documentation);
- iv. civil unrest restricting free public movements;
- v. public holidays occurring during the period of the notice; and
- vi. any other genuine incident preventing the company from complying with the notice.

c. The company shall provide verifiable evidence to support its claims.

d. No more than two requests for extension of time shall be granted by the Service in respect of a particular notice.

6.7 Timing of Requests for Extension

Requests by a taxpayer for the extension of time within which to comply with a notice issued by the Service must be received as follows:

- a) in the case of a notice for the submission of TP documentation or notifying the taxpayer of a field visit, a request for extension of time must be received by the Service, at least, **ten** working days before the due date of compliance;
- b) in the case of notice requesting for additional information or inviting the taxpayer to attend a meeting, which notice was delivered to the taxpayer ten or more working days before the due date of compliance, a request for extension of time must be received by the Service not later than **five** working days before the due date of compliance ; and
- c) in the case of notice requesting for additional information or inviting the taxpayer to attend a meeting, which notice was delivered to the taxpayer less than ten working days before the due date of compliance, a request for the extension of time must be received by the Service not later than **two** working days before the due date of compliance with the notice.

6.8 The Language of Transfer Pricing Documentation

The language of the documentation shall be English language. However, where a taxpayer seeks to submit documentation in a language other than English language, such taxpayer shall also provide the English translation at its own expense.

6.9 Update of Transfer Pricing Documentation

The Transfer Pricing Documentation should be reviewed and updated annually in order to determine whether functional and economic analyses are still accurate and relevant; and to confirm the validity of the applied transfer pricing methodology.

6.10 Offences and Penalties

Offences and penalties will be as prescribed in the Transfer Pricing Regulations or applicable tax law.

6.11 Confidentiality of Information

The Service is committed to taking, at all times, all reasonable care to ensure that taxpayer confidentiality is maintained concerning all information (including trade secrets, scientific assets, commercially sensitive information, etc.) contained in Transfer Pricing Documentation or any document provided by the taxpayer.

7.0 Acceptability of Documentation

To ensure the acceptability of the contemporaneous transfer pricing documentation, reasonable efforts must be made to:

- Undertake a transfer pricing analysis to ascertain that transfer prices comply with the arm's length principle and reflect commercially realistic outcomes for all controlled transactions.
- Maintain documents that are applicable to the circumstances; and the taxpayer must be prepared to provide additional information or documentation not previously provided, but which may be considered relevant for the determination of the arm's length price.
- Prepare the documentation in accordance with the TP Regulations, CbC Regulations, CbC Guidelines and these Guidelines.
- Implement and review the arm's length transfer pricing policies and redesign the transfer pricing policy to accommodate any changes in the business environment.
- Avoid vague, irrelevant or inadequately-founded information.

- Consistently apply coherent and transparent approach in identifying comparable uncontrolled transactions.
- Provide detailed analysis of functions, assets, risks, market conditions and business strategies.
- Apply a transfer pricing method in accordance with the Regulations.
- Ensure that the factual, economic and empirical representations in transfer pricing documentation are group, company, product and market specific.
- Ensure that the transfer pricing documentation is accurate and precise, and matches the accounting, financial and benchmarked data or comparable.
- Avoid preparing documentation which is of relatively limited use, incomplete and does not properly support the transactions.
- Maintain adequate background documents and full records containing particulars about the factual assumptions and relevant factors that have been taken into account in working out the arm's length price.

8.0 Exemptions from Contemporaneous TP Documentation

The FIRS is mindful that preparing TP documentation may result in substantial costs. Hence, FIRS does not expect taxpayers to prepare contemporaneous TP documentation under the following situations:

- a) Where the total value of controlled transactions between the connected persons is less than *three hundred million naira*; provided that, where the Service deems it necessary, it may demand that relevant documentation shall be prepared and submitted to the Service not later than 90 days from the date of receipt of a notice from the Service;

- b) Where the related party transactions are covered by an agreement under an APA. In such a situation, the taxpayer will keep relevant documents for the purpose of preparing the annual compliance report to demonstrate compliance with the terms of the agreement and the critical assumptions remain valid;
- c) Where the related party transactions are priced in accordance with the requirement of Nigerian statutory provisions, for example, prices regulated by statute; or
- d) Any other situation mentioned in guidelines issued, from time to time, by the FIRS pursuant to regulation 22 of the Income Tax (Transfer Pricing) Regulations, 2018.

9.0 GLOSSARY OF TERMS

Capital Gains Tax Act	Capital Gains Act, Cap. C1, Laws of the Federation of Nigeria 2004.
Companies Income Tax Act	Companies Income Tax Act, Cap. C21, Laws of the Federation of Nigeria 2004.
OECD	Organization for Economic Cooperation and Development.
OECD Guidelines	OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2010.
Personal Income Tax Act	Personal Income Tax Act, Cap. P8, Laws of the Federation of Nigeria 2004.

Petroleum Profits Tax Act

Petroleum Profits Tax Act, Cap.
P13, Laws of the Federation of
Nigeria 2004.

10.0 Enquiries

All enquiries on any aspect of this circular should be directed to the office of:

Executive Chairman,
Federal Inland Revenue Service,
Revenue House,
No 20 Sokode Crescent,
Wuse Zone 5, Abuja.

Or

Director, Tax Policy and Advisory Department
Federal Inland Revenue Service
Revenue House (Annex 1),
No 15 Sokode Crescent,
Wuse Zone 5, Abuja.

Or

The Director, International Tax Department
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17B, Awolowo Road,
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