Transfer Pricing Awareness Survey

March 2023

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Content

Foreword

Transfer pricing (TP) continues to evolve, causing amendments to existing rules, which in turn affect the local policies and regulations of jurisdictions where multinational enterprises operate. In this regard, the Nigerian TP regulatory landscape in 2022 has seen adjustments to existing TP rules, to stay up to date with ever-developing global standards.

It is imperative that taxpayers keep abreast of recent developments and changes to local TP requirements to ensure continued compliance and avoid the stiff penalties that may arise as a result of non-compliance with established regulations. Also, in a bid to achieve operations in line with global best practices, especially for MNEs with presence across multiple jurisdictions, it is important that taxpayers are aware of changes in the TP landscape as they become implemented.

In 2022, we conducted a TP survey to assess taxpayers' consciousness of their TP compliance obligations, changes in regulatory policies, recent experiences with TP audits and their preparedness to respond to enquires that may be raised by tax authorities. We are pleased to present the findings from the sixth edition of our survey, which had about 50 respondents from all the major sectors of the Nigerian economy.

From the feedback received, we observed a consistent level of TP compliance with the relevant regulations by the respondents as in previous years as well as a slight decrease in the awareness and use of the electronic filing platform. Also, in respect of the Income Tax (Country-by-Country Reporting) Regulations, there is a high level of awareness and compliance as taxpayers in Nigeria are quickly embracing the changes in the ever-evolving TP landscape.

Most of the respondents were unaware of the withdrawal of the Country-by-Country secondary filing suspension by the Federal Inland Revenue Service (FIRS) in Nigeria. This may largely be because they were not impacted by the initial suspension in 2021. We also noted that most respondents are not conversant with the latest developments in the OECD's BEPS initiative.

A significant share of respondents reported that supply chain was the aspect of their business operations that was most impacted by the lingering effects of the COVID-19 pandemic, as opposed to the prior year's survey where revenue was highlighted as the most-affected aspect. Most businesses have recorded recovery from the pandemic, with 18% reporting an increase in revenue post-pandemiac.

Remarkably, a large proportion of the respondents had either ongoing or completed TP audits. The respondents, however, now believe that the pace of the TP audits have slowed down. This might be because, compared to prior years, more respondents are in the reconciliation/dispute resolution stage of the TP audits – which is often the longest period of a typical TP audit being handled by the FIRS.

It is our hope that this edition of the survey will serve as an invaluable resource material on TP from both Nigerian and global contexts. We trust that readers will find the data and insights provided beneficial as they seek to improve their organizations' TP compliance and audit process.

We acknowledge and thank all the participants in this year's survey. And we earnestly look forward to your involvement in future editions.

We encourage our readers to provide feedback on the publication and take part in subsequent editions of the survey. You can send your comments on the survey, or indicate your interest to participate in future surveys, via an email to KPMGTPSurvey@kpmg.com.

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Abbreviations

BEPS	Base Erosion and Profit Shifting
CbCR	Country by Country Reporting
DRP	Decision Review Panel
FIRS	Federal Inland Revenue Service
G20	International forum for the governments and central bank governors from 19 countries and the European Union
GTPS	Global Transfer Pricing Services
IDR	Information and Documents Request
IF	Inclusive Framework
MNE	Multinational Enterprise
OECD	Organisation for Economic Cooperation and Development
SEP	Significant Economic Presence
TP	Transfer Pricing
UN	United Nations

Overview of TP Regime in Nigeria

Background

The TP regime officially began in Nigeria with the release and implementation of the Income Tax (Transfer Pricing) Regulations No. 1, 2012. Since then, the TP practice has evolved and is still evolving. In 2018, the FIRS published revised TP regulations and issued guidelines to close some gaps in the tax laws and promote better understanding and compliance with the regulations.

The TP compliance requirements in the revised regulations – the Income Tax (Transfer Pricing) Regulations, 2018 – align with the three-tier documentation approach recommended by the Organization for Economic Cooperation and Development (OECD). As such, taxpayers are required to maintain a master file and local file as well as the Country-by-Country (CbC) report. The latter is applicable where the taxpayer's consolidated group revenue is not less than the specified threshold. The Regulations also introduced stiff penalties for acts of non-compliance.

Overview of TP compliance requirements

The revised TP Regulations and the Income Tax (Country-by-Country Reporting) Regulations require taxpayers to prepare the following documents in order to achieve full compliance with the TP requirements in Nigeria:

i. **Master File:** The master file provides an overview of the global business operations of the Multinational Enterprise (MNE) Group to which a taxpayer belongs, including the nature of its global business operations, its overall TP policies, and its global allocation of income and economic activity.

ii. **Local File:** The local file is expected to disclose detailed information on the enterprise's related-party transactions such as an overview of the company, related-party relationships, related parties' information, overview of controlled transactions, contracts or agreements, controlled transactions flow, functional asset and risk analysis, intangibles involved, financial data, segmented data, details of tax information (tax rates, treatments and jurisdictions) and information on changes in related-party relationships which occurred during the financial year (FY).

iii. **TP Returns:** The revised TP Regulations also require a connected person to file annual TP returns. The TP returns consist of the TP Declaration and Disclosure forms. The TP Declaration form contains general information relating to a company, such as the details of the company secretary and tax consultants, shareholding structure, details of company directors and information on all connected parties. The TP Disclosure form, on the other hand, contains information on the nature and value of controlled transactions for the period, the method used to analyse the controlled transactions, the name and tax jurisdiction of the connected parties involved in the controlled transactions and other general financial information on the company and the group.

iv. **Country-by-Country Reporting (CbCR):** The CbCR Regulations require Nigeria-headquartered MNE Groups with consolidated revenue of ₦160 billion or above to file the CbC report with the FIRS. On the other hand, Nigeria-resident members of MNE Groups headquartered outside Nigeria, are required to notify the FIRS of the identity and tax jurisdiction of the entity that will be responsible for filing the CbC report where the Group has a consolidated revenue of €750 million or its near equivalent in the domestic currency of the jurisdiction of the Ultimate Parent Entity (UPE) or Surrogate Parent Entity (SPE).

Where the UPE or SPE of an MNE Group is not tax resident in Nigeria and the CbCR has not been implemented in the jurisdiction where the UPE or SPE is tax resident, or where such jurisdiction has no relevant exchange of information agreement with Nigeria, the Nigerian constituent entity will be required to carry on a secondary filing. This involves the submission of a copy of the CbC report to the FIRS in Nigeria.

Penalty for non-compliance

1 Failure to submit TP Declaration form within statutory period

₦10 million in the first instance plus ₦10,000 for every day in which the failure continues

2 Failure to submit updated TP Declaration form

₦25,000 for every day in which the failure continues

3 Failure to submit TP Disclosure form

Higher of ₦10 million or 1% of value of undisclosed controlled transactions in the first instance plus ₦10,000 for every day in which the failure continues

4 Failure to appropriately disclose related-party transaction

Higher of ₦10 million or 1% of value of omitted controlled transactions in the first instance plus ₦10,000 for every day in which the failure continues

5 Incorrect disclosure of controlled transactions

Higher of ₦10 million or 1% of the value of the incorrectly disclosed controlled transactions

6 Failure to provide TP documentation within the stipulated period.

Higher of ₦10 million or 1% of the total value of all controlled transactions in the first instance plus ₦10,000 for every day in which the failure continues

7 Failure to file CbC report within the statutory deadline.

₦10 million in the first instance plus ₦1million for every month in which the failure continues

8 Filing incorrect or false report

₦10 million.

9 Failure to notify the FIRS of the entity that will file the CbC report within the statutory period

₦5 million in the first instance plus ₦10,000 for every day in which the failure continues

TP audit process

TP audits usually commence with an Information and Documents Request (IDR) sent by the FIRS to selected companies based on the outcome of the tax authorities’ internal TP risk assessment. The selected taxpayer has 21 days to respond to the FIRS upon receipt of an IDR. The FIRS may also request the taxpayer to make a presentation on the processes, procedures and operations of the company. The aim is to enable the FIRS to have a better understanding of the business of the taxpayer. This presentation is usually done at the FIRS’ office.

The next phase after the IDR and presentation involves field visit and interview sessions with key personnel of the company being audited. The tax authorities would seek to validate the facts and declarations presented in the TP documentation/local file during the interview sessions. After the field visit, the FIRS would issue an audit report highlighting their key findings. Where tax authorities disagree with a taxpayer on their understanding of relevant facts, the tax authorities may make TP adjustments, resulting in additional tax liabilities. In a situation where the taxpayer disagrees with adjustments made by the FIRS, the TP dispute resolution process can be used to resolve the areas of differences.

Recent developments in the TP landscape

The Nigerian tax and regulatory landscape recorded notable developments in 2022, some of which have direct impact on the achievement of TP compliance by taxpayers. We have highlighted below, the recent events in the Nigerian TP space:

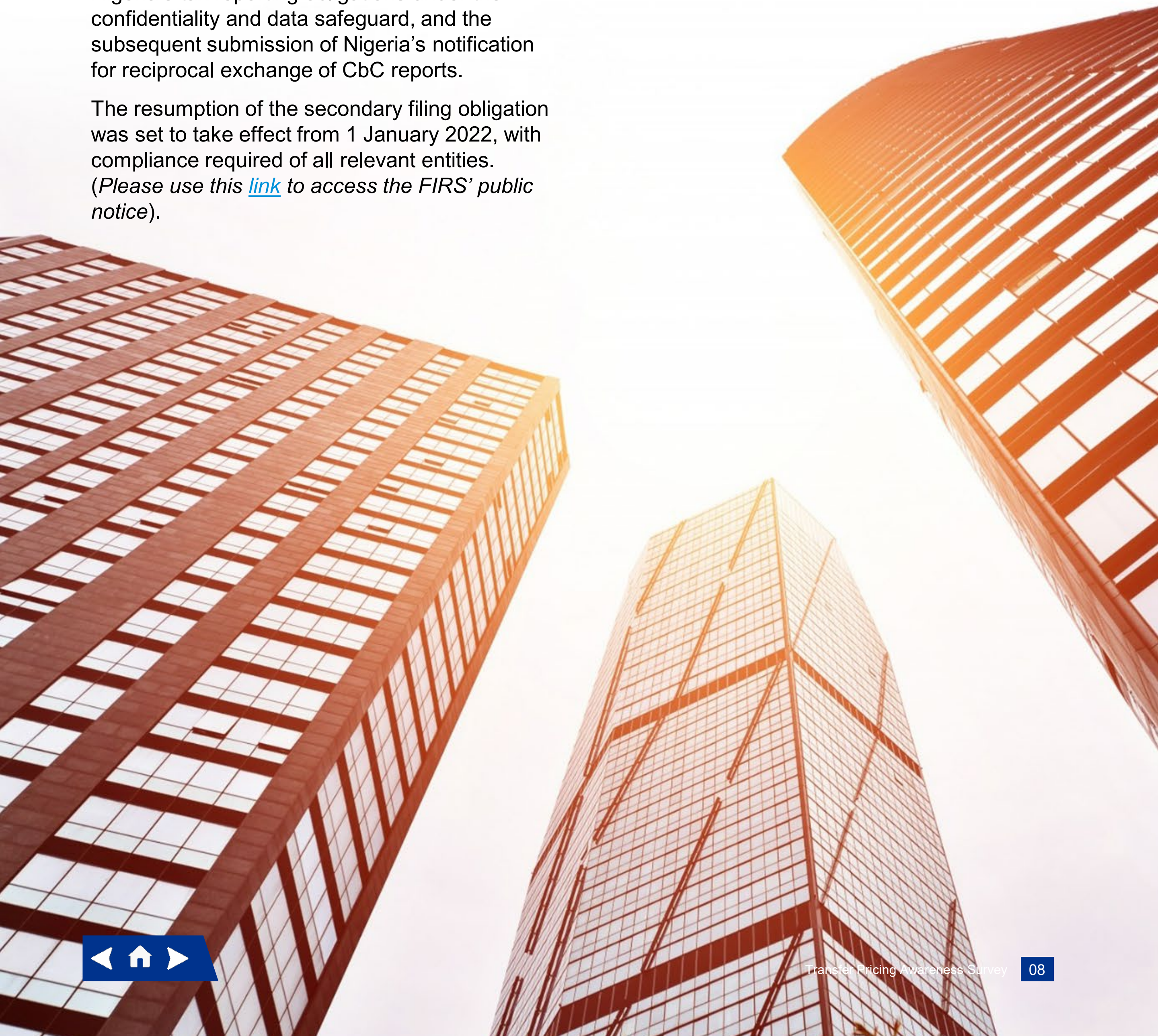
1. Withdrawal of the FIRS' suspension of implementation of Regulation 4 of the Income Tax (Country-by-Country Reporting) Regulations, 2018

   The FIRS issued a public notice on 4 January 2022 reinstating the previously suspended secondary filing requirement of non-parent entities i.e., Nigerian subsidiaries and permanent establishments of MNEs. The reversal of the previous suspension stemmed from the review of Nigeria's tax reporting obligations under the confidentiality and data safeguard, and the subsequent submission of Nigeria's notification for reciprocal exchange of CbC reports.

   The resumption of the secondary filing obligation was set to take effect from 1 January 2022, with compliance required of all relevant entities. (*Please use this link to access the FIRS' public notice*).

2. The issuance of Shared Services Arrangements Guidelines by the Central Bank of Nigeria (CBN)

   In May 2021, the CBN issued a circular to banks and other financial institutions on compliance with its Guidelines on Shared Services Arrangements. The guidelines were designed to provide guidance to banks and other financial institutions under the regulatory purview of the CBN, on the initiation and evaluation of shared service arrangements and other incidental matters. Financial institutions such as commercial banks, merchant banks, financial holding companies, etc. were required to adhere to the guidelines with effect from 1 June 2022. *(Please use this link to access the CBN's circular).*



3. Developments in BEPS Action Plans

   In October 2021, members of the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (Inclusive Framework) agreed on a two-pillar solution to reform the international tax framework in response to the challenges of digitalisation of the economy. However, Nigeria was one of the countries that opted out of the IF statement.

   In May 2022, the FIRS explained that its refusal to participate in the two-pillar solution is because it does not serve the interest of the nation and local laws and regulation have been implemented to address the taxation of the digital economy (via the SEP regime). Accordingly, it is expected that MNEs with operations in Nigeria will continue to be assessed to tax based on existing local laws.

   On 11 July 2022, the OECD Secretariat published a progress report on Amount A for public review. The report stated the work done since the introduction of the October 2021 Statement and lays out the essential operational provisions on Amount A in the form of domestic rules. The OECD consistently sought feedback and comments from stakeholders during the year and held public consultation meetings in September 2022. The OECD also issued a public consultation document on Amount B in December 2022.

   The Commentary on “Global Anti-Base Erosion” (GloBE) Rules was released in March 2022 and a public consultation held in April 2022. Work on the GloBE Implementation Framework has reportedly begun. This framework will be used to establish a peer review process, produce additional administrative guidance, agree on a common filing and information exchange architecture, develop safe harbours to reduce compliance costs, and provide capacity building and technical support to tax administrations.

4. Updates to the OECD’s Guidelines for MNEs and Tax Administrations 2022

   The OECD in 2022, published the updated TP Guidelines for MNEs and Tax Administrations 2022. This revision contains guidance to MNEs on the application of the transactional profit split method, guidance for tax administrations on the application of the approach to hard-to-value intangibles, and guidance on financial transactions. Further technical guidance was also released by the OECD in March 2022 on the global minimum tax rate proposed as part of the two-pillar solution to address the challenges arising from the digitaliation of the economy.

Consciousness of TP Requirements

Increased level of awareness of TP compliance requirements

Based on the survey results, 88% of the respondents have a reasonable level of awareness of the TP requirements in Nigeria. 43% of the respondents indicated a high level of awareness as against 45% last year; while about 45% of the respondents indicated an average level of awareness of TP compliance requirements compared to 51% in 2021.

It is evident that taxpayers are making considerable effort to ensure compliance with the TP Regulations: About 84% of the survey respondents have filed their TP returns since inception i.e., 2013 till date. On the other hand, 14% of the respondents have met the TP filing obligation for some years. This is 3% more than in prior year.

The survey also shows that 96% of the respondents have their TP documentation in place for some or all relevant years. Only 2% of the respondents have never filed a TP return while 4% have never prepared TP documentation since the inception of TP in Nigeria.

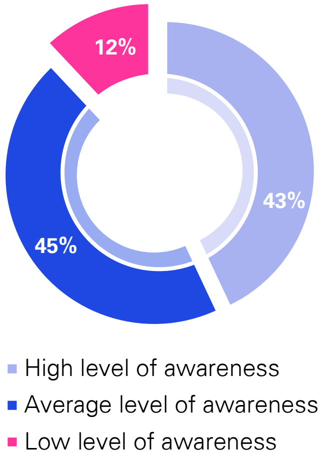


Chart 1: What is your level of awareness of the TP compliance requirements in Nigeria?

The findings of the survey indicate an increased level of compliance with relevant provisions of the TP Regulations. However, this does not necessarily mean that taxpayers are more aware of recent developments in the TP space and the potential impact of these changes on their activities. Therefore, taxpayers are encouraged to apprise themselves of new TP developments and assess their current TP arrangements in order to mitigate potential TP exposure arising from these developments.

Internal TP policies are a useful tool for offering direction when pricing controlled transactions and proving adherence to the arm's length principle. Of the 69% respondents who have internal TP policies, 94% of them have fully implemented their TP policies, whilst 80% of them have reviewed the TP policies to account for new transactions or economic changes. This is an indication of the respondents' level of TP audit preparedness, as taxpayers with internal TP policies are more likely to achieve a positive outcome in the event of a TP audit.

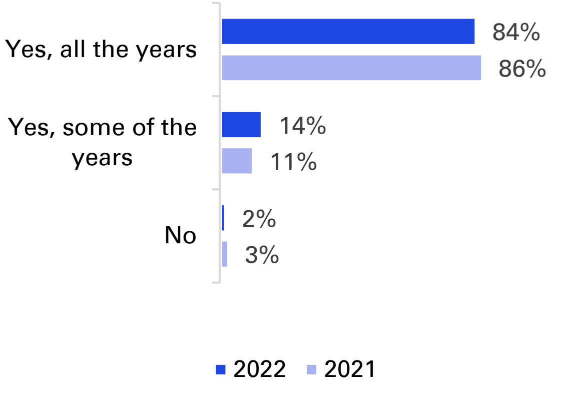


Chart 2: Has your company filed TP returns annually since the 2013 financial year?

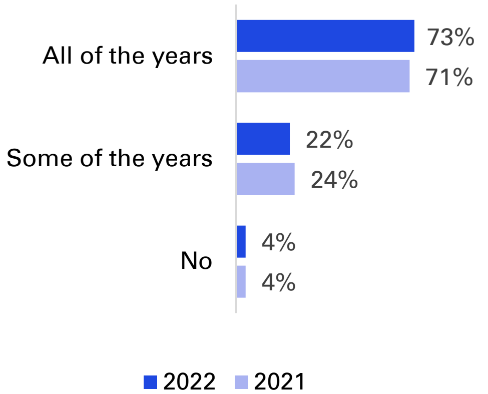


Chart 3: Has your company prepared contemporaneous TP documentation annually since the 2013 financial year?

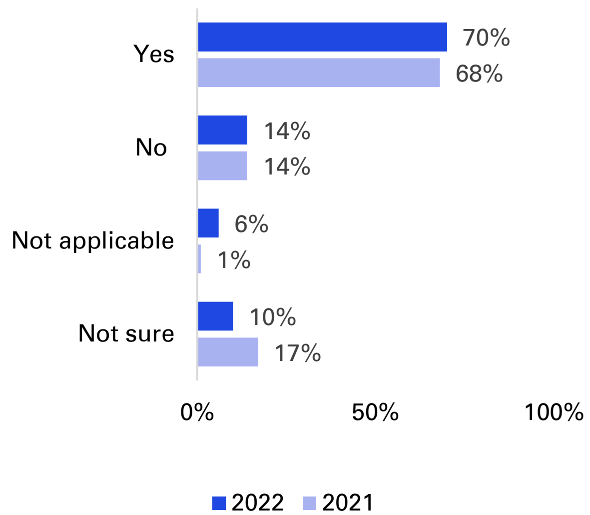


Chart 4: Does your company have an internal TP Policy that guides your transactions with your related parties?

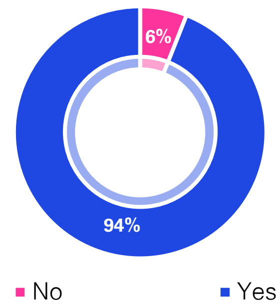


Chart 5: If yes, have you fully implemented your internal TP policy?

Country-by-Country Reporting (CbCR) – ongoing compliance

Majority of the respondents provided a positive response when questioned about their compliance with the CbCR Regulations. However, 10% of respondents specified that they were unsure of the CbCR Regulations, whilst 12% indicated that they were uncertain if the CbCR Regulations applied to their organization.

The survey findings indicate that taxpayers are more aware of the CbCR obligations now than in prior years, although further taxpayer education is still needed in the area of compliance. Companies are also advised to proactively review their current structure in order to ascertain their obligations with a view to reducing exposure to penalties.

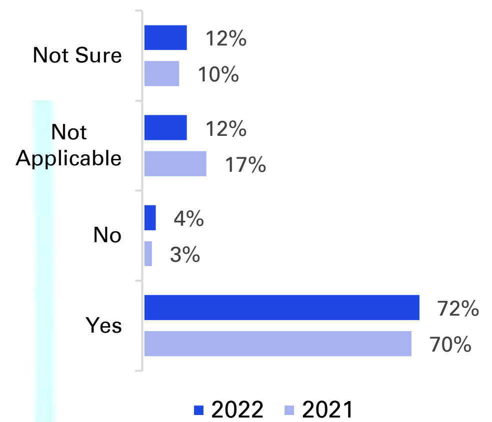


Chart 6: Has your company complied with the Country-by-Country Reporting Regulations?

With respect to the withdrawal of secondary filing, the result indicates that only 31% of the respondents are aware of the FIRS' withdrawal.

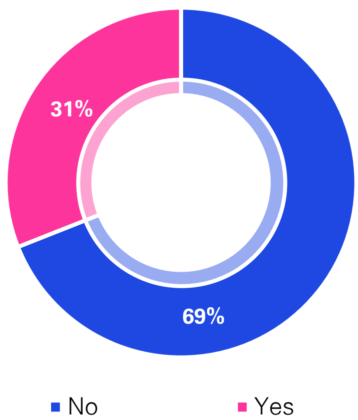


Chart 7: Are you aware of the FIRS' withdrawal of the CbC Report filing suspension?

Electronic Transfer Pricing Platform

Since March 2020, the FIRS has adopted the filing of TP returns on the Electronic Transfer Pricing Platform (e-TP portal), thus discontinuing the physical filing of TP documents. In this regard, companies are required to register with the FIRS before they can file their returns online.

According to the survey, only 86% of the respondents are aware of the e-TP portal. 78% of these respondents have registered and 72% are certain of having filed their latest returns on the e-TP portal.

The survey shows that 91% of the respondents had a good user experience while using the e-TP portal, while 9% found it difficult to navigate through the platform.

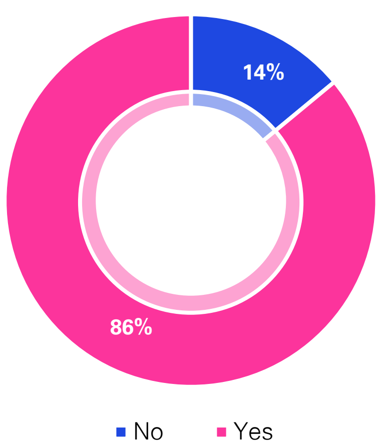


Chart 8: Are you aware of the FIRS' electronic TP filing platform?

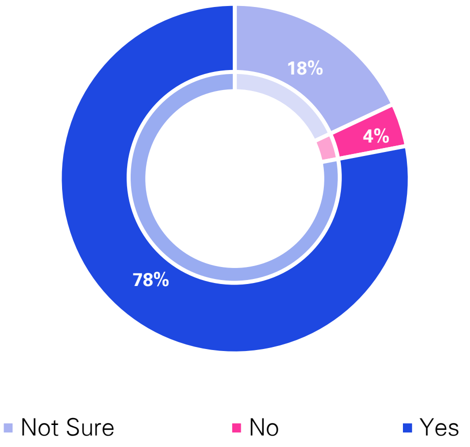


Chart 9: Is your company registered on the e-TP filing platform?

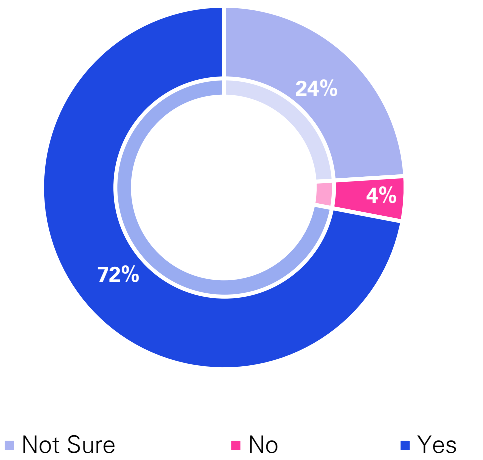


Chart 10: If yes, did your company file its latest TP returns on the portal?

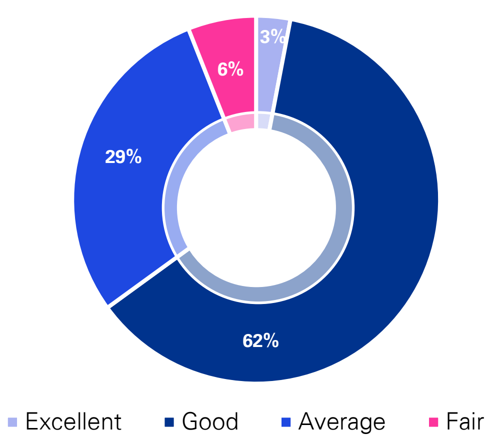


Chart 11: How would you rate the ease of using the e-TP portal?

Awareness of Base Erosion and Profit Shifting (BEPS) 2.0

According to the survey results, majority of the respondents are unaware of the OECD's initiative to reform the international tax framework, referred to as BEPS 2.0. Out of the 39% that indicated knowledge of BEPS 2.0, 32% agree with Nigeria's position on the initiative, 5% disagree with the position, whilst 63% are undecided about it.

The survey also reveals that 26% of the respondents are aware of the latest updates regarding BEPS 2.0.

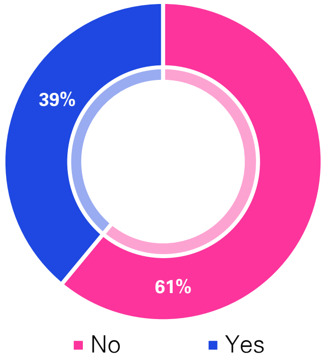


Chart 12: Are you aware of the OECD's initiative referred to as BEPS 2..0?

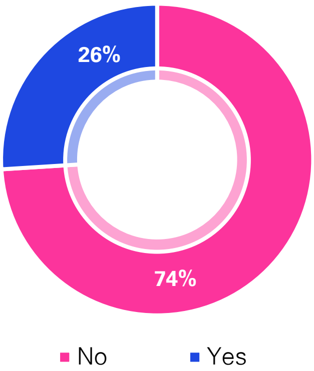


Chart 14: Are you aware of the latest updates regarding BEPS 2.0?

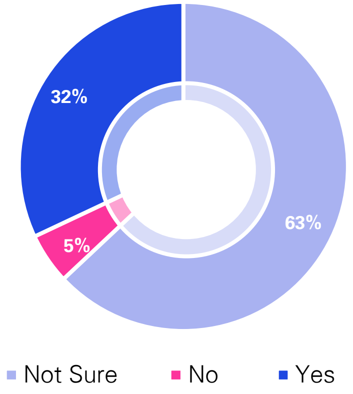


Chart 13: If yes, do you agree with Nigeria's position on the BEPS initiative?

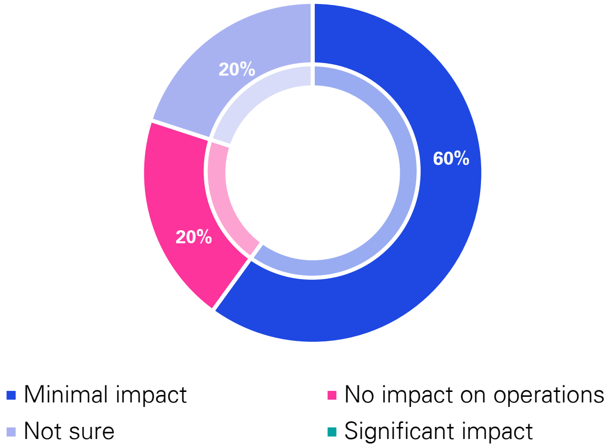


Chart 15: How do you think this would impact the operations of your company when implemented?

Aligning financial statements disclosures with source documents

The survey results show that 94% of the respondents have procedures to guarantee the accuracy of controlled transactions disclosed in the financial statements. This is 10% more than the figure for last year

A taxpayer's financial statements are the first reference point for the FIRS in assessing the taxpayer's related-party transactions. It is, therefore, imperative for companies to ensure that the related-party disclosures on their financial statements are accurate to avoid incurring penalties for inaccurate disclosures.

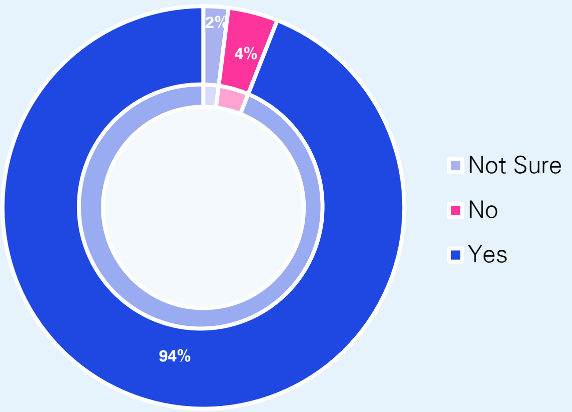


Chart 16: Do you have a procedure to ensure that related-party disclosures in your company's financial statements are complete and accurate?

TP Risk Assessment & Audit Experience

TP risk assessment

When asked to identify their biggest TP challenges, about 39% of the respondents indicated that TP audit is the biggest challenge they see, followed by the recognition of transactions with TP risks. This is somewhat expected considering the invasive and complex nature of many TP audits and the associated risk of TP adjustments.

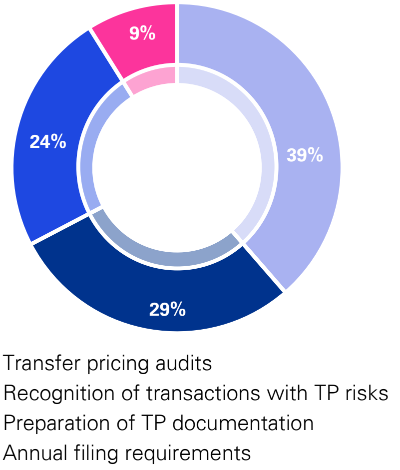


Chart 17: What have you identified as the biggest TP challenge the company faces?

TP audit experience

43% of the survey respondents have not been selected for a TP audit, and only 12% of them have completed their TP audit exercise.

According to the survey, 54% of the respondents whose organisations are currently undergoing TP audits are in the reconciliation/dispute resolution stage, while 14% are in the field visit stage. This shows that a significant number of the audits that were in the information and document request stage as well as field audit stage in the previous year have now progressed to the dispute resolution stage.

Based on our findings, it seems that the FIRS has deployed more resources to the conduct of TP audits since the publication of our last survey results, as about half of the respondents with ongoing TP audits had received audit correspondence from the FIRS within the last 12 months.

Notwithstanding the above, 75% of the respondents with ongoing or completed TP audit exercises consider the pace of the audit to be slow or very slow, while 25% consider the audit pace to be adequate, fast or very fast, compared to 46% in the last survey.

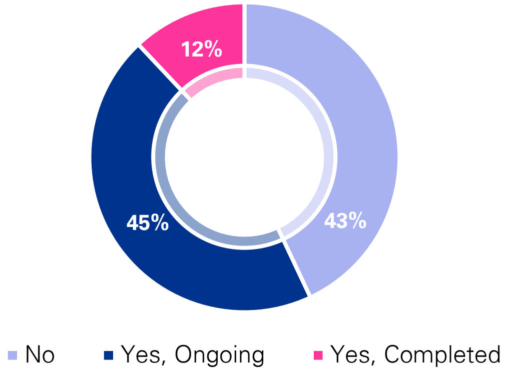


Chart 18: Has your company undergone a TP audit?

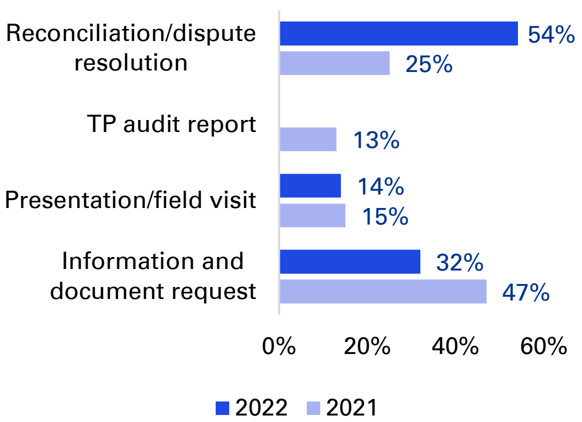


Chart 19: What stage is your company in the TP audit process?

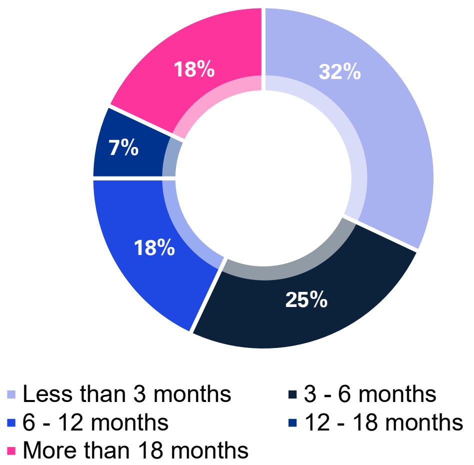


Chart 20: How long has it been since the last correspondence on the audit?

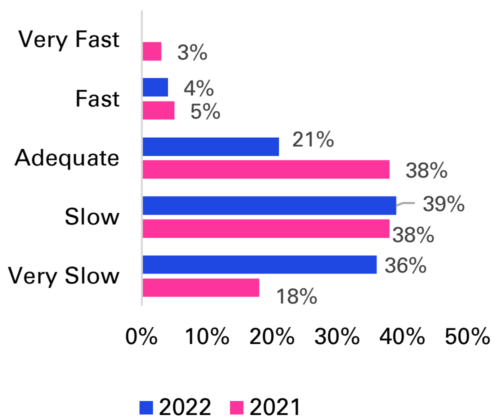


Chart 21: What is your view on the pace of the TP audit exercise?

FIRS' stance on audit may be changing…

Based on the result of the survey, 4% of the respondents are of the opinion that the FIRS are not aggressive in their approach to the audit exercise. On the other hand, 57% consider the FIRS' approach to be moderate, while 25% of the respondents believe that the FIRS are very aggressive.

Following the close-out of the audit exercise, 25% of the respondents indicated that an additional tax assessment was raised by the FIRS. Majority of the respondents that have not been issued any assessment are either at the IDR stage or the field audit stage.

As in prior years, respondents indicated that they would prefer to resolve TP disputes using less adversarial approach.

57% of the respondents would rather resolve their TP disputes through reconciliation and negotiation, while about 4% of the respondents indicated that they would consider the option of going to court. It can be observed that, although the FIRS' stance is considered moderate during TP audits, taxpayers still consider a peaceful and conciliatory approach as the best option for resolving disputes.

Majority of the respondents opted for the use of external TP advisors during an aggressive TP audit. 22% of the respondents preferred to sort the TP audit in-house without the assistance of external advisors, while 8% are not sure if they would immediately engage external advisors as this would depend on the circumstances surrounding the audit exercise.

The survey also revealed that 27% of the respondents consider that their company's record-keeping procedure is excellent in the event of a TP audit by the FIRS.

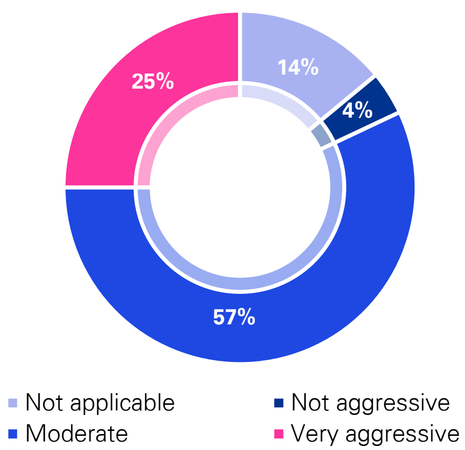


Chart 22: What was/is the FIRS' stance during the TP audit?

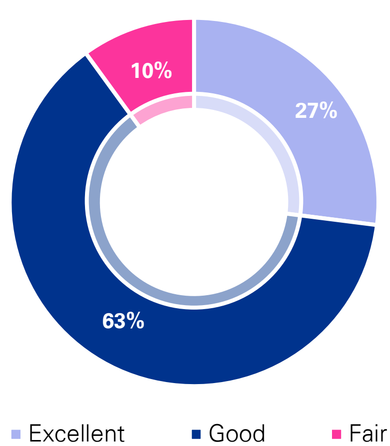
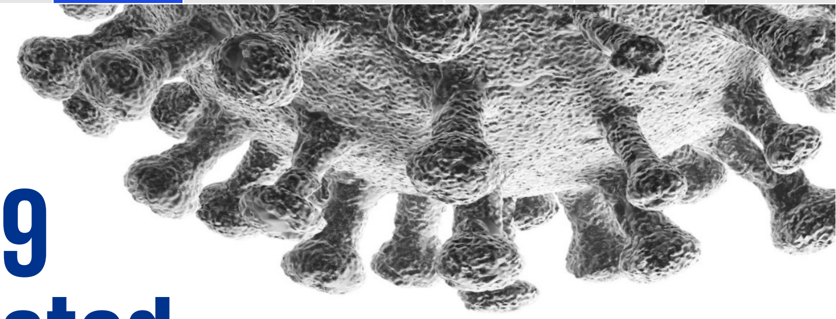


Chart 23: How would you assess your company's record-keeping procedure to ensure the availability of relevant documentation in the event of a TP audit by the FIRS?



Post COVID-19 Effect on Related Party Transactions

Post-COVID-19 impact on business

Respondents were tasked with evaluating their company's post-pandemic recovery, with special consideration for the major implications of the epidemic on related-party transactions and general business operations, in order to assess businesses' recovery from the economic effects of the covid-19 pandemic.

According to the survey, 39% of respondents indicated that their business was making a gradual recovery from the impact of the pandemic. 18% of the respondents had recorded an increase in business performance when compared to the pre-pandemic years.

In relation to business growth, most of the respondents stated that supply chain, revenue and profitability were the most impacted aspects of their business. Only 16% felt the impact on their cash flow.

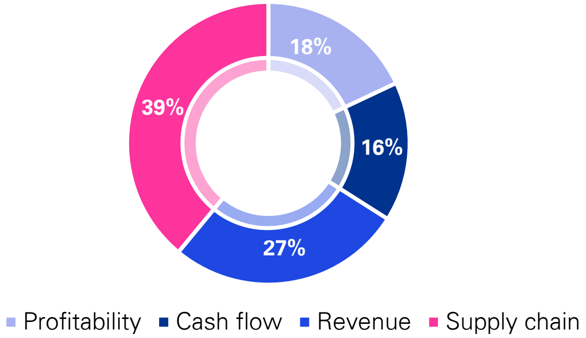


Chart 24: What aspect of your business operations has been impacted the most by COVID-19 pandemic?

Businesses have begun to recover from the pandemic since the initial outbreak in 2020. 45% of the respondents have experienced significant boost in revenue, 29% in supply chain and 14% in cash flow.

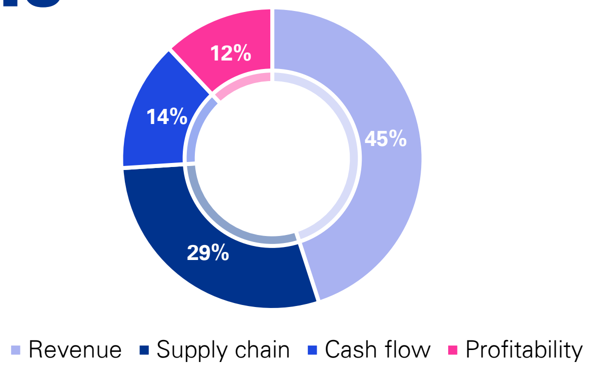


Chart 25: What aspect of your business operations has made the most significant recovery from the impact of the COVID-19 pandemic?

Related-party contracts

A significant share (76%) of the respondents have not made amendments to their related-party contracts since the COVID-19 pandemic. Only 18% have managed to make the necessary amendments to their related-party contracts to better manage the impact of COVID-19 on their operations.

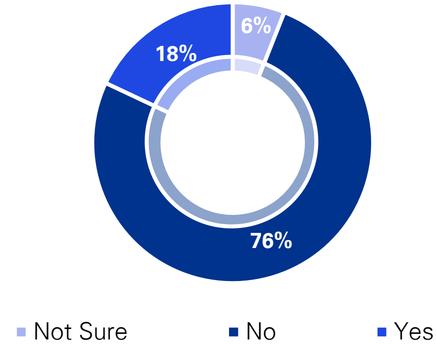


Chart 26: Has your company made any amendments to related-party contracts to better manage the impact of COVID-19 on your operations?

Regulatory Issues

Impact of Non-Tax Regulatory bodies' policies/directives

The survey results show that majority of businesses regard the impact of policies/directives by non-tax regulatory bodies as either medium or low. The impact of such policies/directives were viewed as high by only 4% of the respondents.

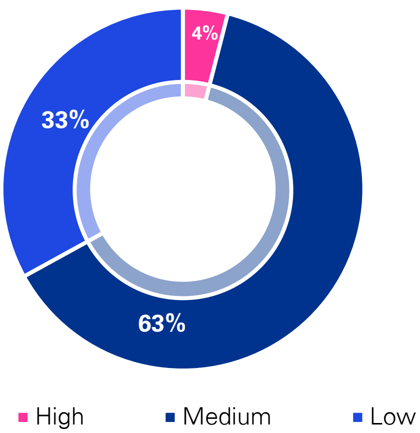


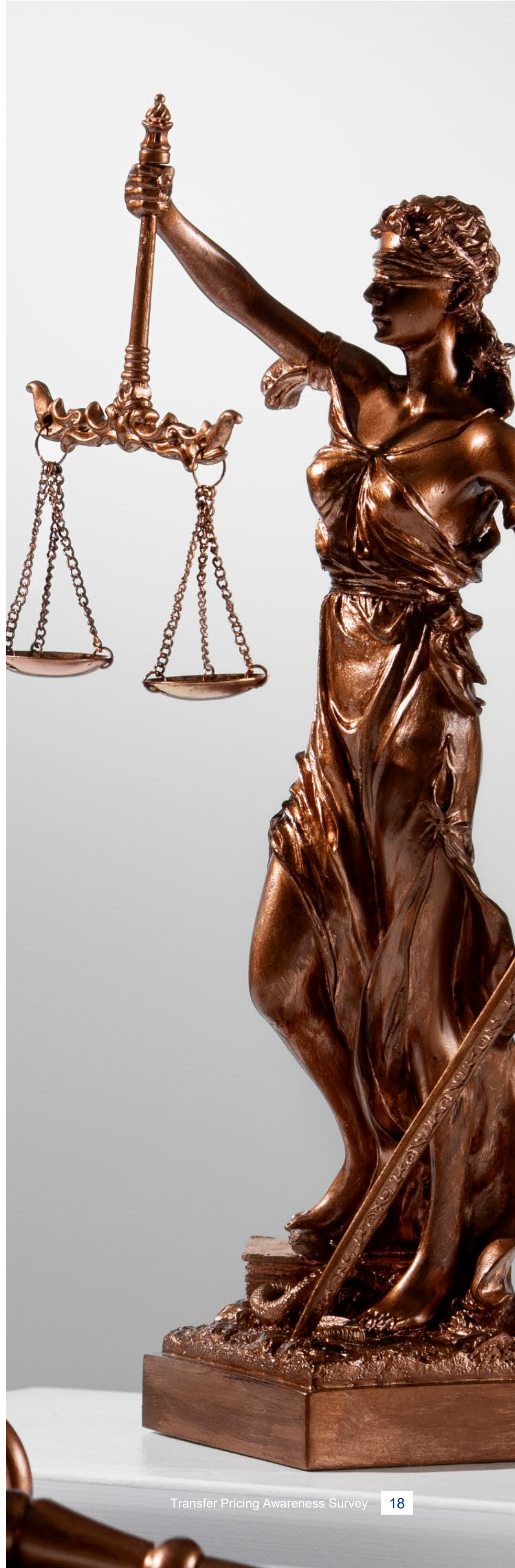
Chart 27: How do you rate the impact of the policies/directives of non-tax regulatory bodies (CBN, NCC, NOTAP etc.) on the TP compliance of your business?

CBN's directive on shared services

The CBN's directive on shared services was published in May 2021 with an implementation date of 1 June 2022. About 37% of the respondents indicated that they are aware of the CBN's directive on shared services while 22% indicated that they were unaware of it.

In addition, 50% of the respondents who indicated that they were aware of the directive held the opinion that the directive would result in an increased compliance burden on financial institutions; while 39% were of the view that the implementation of the guidelines is a welcome development and a necessary step to protect the tax base of affected Nigerian entities.

Also, 67% of those whose businesses were likely to be impacted by the directive believed that the directive would lead to a significant change in the structuring of shared service arrangements.



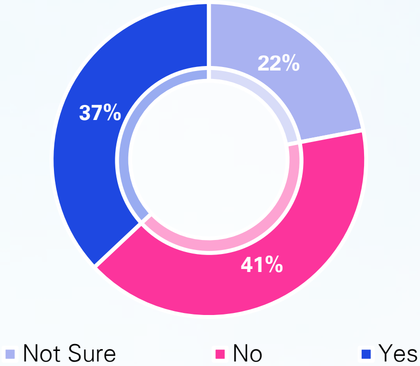


Chart 28: Are you aware of the CBN's directive on shared services for financial institutions and its compliance requirements?

Chart 29: If yes, what do you think about its potential impact?

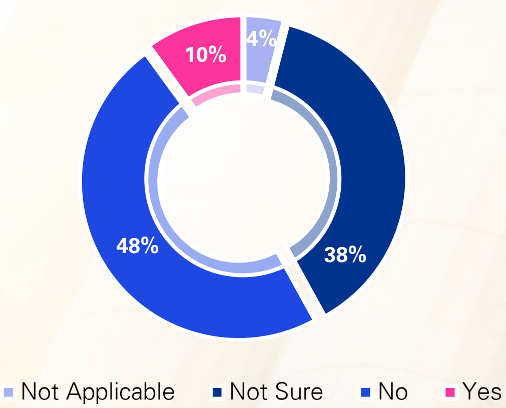


Chart 30: Does the CBN's directive on shared services have any effect on your company's related party transactions?

CBN's directive on shared services cont'd

With respect to awareness of the penalties for non-compliance with the CBN's directive on shared services, 60% of the respondents are not aware of the penalties for non-compliance. 23% of the respondents are aware of the penalties and only 17% are not sure of the penalties for non-compliance.

This could be as a result of the non-applicability of the directive to their business operations.

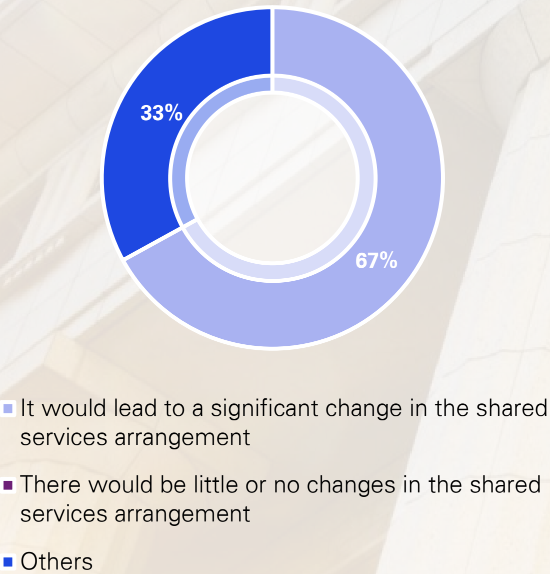


Chart 31: To what degree does the directive affect your company?

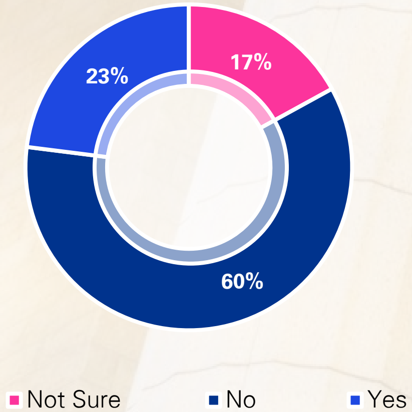


Chart 32: Are you aware of the penalties for non-compliance with the CBN's directive on shared services?

Global TP Services

Global TP guidelines are being remodeled, with the modification of existing rules to guide the tax reporting operations of MNEs across jurisdictions, and exploration of various dispute resolution mechanisms to address TP issues and audits decisions by tax authorities.

In January 2022, the OECD published the updated Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2022. The 2022 edition of the Guidelines includes revised guidance on the application of the transactional profit split method, guidance for tax administrations on the application of the approach to hard-to-value intangibles, as well as guidance on financial transactions. In line with the updated guidelines, the OECD announced that consistency changes had also been made to the Guidelines. In March 2022, the OECD released further technical guidance on the 15% global minimum tax rate agreed in October 2021 as part of the two-pillar solution to address the tax challenges arising from the digitization of the economy.

Keeping track of the fast-changing TP landscape can be challenging. Global businesses must contend with an even more complex environment, one that includes comprehensive TP Regulations, stricter documentation requirements, calls for greater transparency, efficient audit procedures, and stiffer penalties for non-compliance.

Above all, creating an effective TP strategy entails proactive planning, implementation, risk management, documentation and dispute resolution. Taxpayers need to understand the global perspective, but also be able to combine it with local expertise and orientation in putting together a coherent and defensible TP policy which is responsive enough to adapt to the constant changes that businesses experience.

In line with global and local developments, it is imperative that taxpayers maintain a robust understanding of the changes in compliance requirements and ensure proper positioning to adjust to new developments. KPMG is positioned to assist clients to design sustainable compliance frameworks and adapt to the ever-evolving TP landscape.

KPMG approach

In today's post-BEPS world, TP has been transformed. Companies face new reporting and information sharing challenges and the need for a global narrative.

KPMG's Global Transfer Pricing Services (GTPS) practice includes a core TP group of more than 2,000 professionals representing 48 member firms around the world. The practice includes an extensive network of former government officials and is composed of economists, tax practitioners and financial analysts with years of experience.

KPMG firms can help companies develop and implement economically supportable transfer prices, document the policies and outcome, and respond to questions raised by the tax authorities. With KPMG's global network providing access to TP professionals around the world, the GTPS practice is well equipped to provide the local experience and global context that multinationals need to thrive in today's environment.

How clients can benefit

Professionals in the KPMG GTPS network help clients make difficult decisions about prioritizing limited resources every day. Navigating the proliferation of BEPS-driven requirements with a finite budget requires careful risk tiering and consideration. It also requires a focus on process and technology.

Member firm clients can benefit from a technology-enabled, risk-based approach by:

- Reducing controversy
- Limiting double taxation
- Increasing the likelihood of favourable outcomes when controversies arise
- Aligning tax goals with business objectives
- Reducing the amount of time and corporate resources spent on TP.

Transfer Pricing Life Cycle and Services

Refreshed Global Principles for a Responsible Tax Practice

The key focus of the KPMG tax practices is supporting our clients. In all areas of our work, we apply uncompromising professional standards. KPMG's Global Principles for a Responsible Tax Practice[1] are the foundation of expected standards and conduct. KPMG has defined a set of refreshed principles to guide its tax practice, which is highlighted below:

01 Be supported by a valid basis in law.

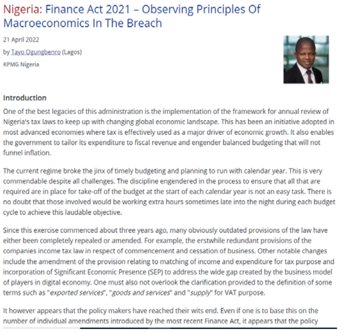
02 Be based on the assumption that all material facts will be known to tax authorities and all relevant disclosure requirements are properly made.

03 Be tailored to the particular circumstances of our clients, address any requirements of substance and purpose, and consider the intention of the legislators.

04 Clearly explain the technical merits and sustainability of relevant options available to our clients.

05 Consider any reputational risk and the impact on stakeholders and communities where these are practical to assess.

Thought Leadership



Nigeria: Finance Act 2021 – Observing Principles Of Macroeconomics In The Breach

21 April 2022

by Tayo Ogungbenro (Lagos)

KPMG Nigeria

Introduction

One of the best legacies of this administration is the implementation of the framework for annual review of Nigeria's tax laws to keep up with changing global economic landscape. This has been an initiative adopted in most advanced economies where tax is effectively used as a major driver of economic growth. It also enables the government to tailor its expenditure to fiscal revenue and engender balanced budgeting that will not funnel inflation.

The current regime broke the jinx of timely budgeting and planning to run with calendar year. This is very commendable despite all challenges. The discipline engendered in the process to ensure that all that are required are in place for take-off of the budget at the start of each calendar year is not an easy task. There is no doubt that those involved would be working extra hours sometimes late into the night during each budget cycle to achieve this laudable objective.

Since this exercise commenced about three years ago, many obviously outdated provisions of the law have either been completely repealed or amended. For example, the erstwhile redundant provisions of the companies income tax law in respect of commencement and cessation of business. Other notable changes include the amendment of the provision relating to matching of income and expenditure for tax purpose and incorporation of Significant Economic Presence (SEP) to address the wide gap created by the business model of players in digital economy. One must also not overlook the clarification provided to the definition of some terms such as "*exported services*", "*goods and services*" and "*supply*" for VAT purpose.

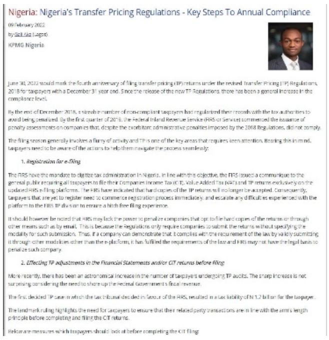
It however appears that the policy makers have reached their wits end. Even if one is to base this on the number of individual amendments introduced by the most recent Finance Act, it appears that the policy

1. Finance Act 2021 – Observing Principles of Macroeconomics in the Breach

by Tayo Ogungbenro

In this article, the author highlights some amendments introduced by the Finance Act 2021 that run counter not only to the canons of taxation enunciated by Adams Smith more than a century ago, but also breach basic principles of macroeconomics. You can read the full article at: https://www.mondaq.com/nigeria/financial-services/1185392/finance-act-2021-observing-principles-of-macroeconomics-in-the-breach

Tayo Ogungbero



Nigeria: Nigeria's Transfer Pricing Regulations - Key Steps To Annual Compliance

09 February 2022

by Gali Aka (Lagos)

KPMG Nigeria

June 30, 2022 would mark the fourth anniversary of filing transfer pricing (TP) returns under the revised Transfer Pricing (TP) Regulations, 2018 for taxpayers with a December 31 year end. Since the release of the new TP Regulations, there has been a general increase in the compliance level.

By the end of December 2018, a sizeable number of non-compliant taxpayers had regularized their records with the tax authorities to avoid being penalized. By the first quarter of 2019, the Federal Inland Revenue Service (FIRS or Service) commenced the issuance of penalty assessments on companies that, despite the exorbitant administrative penalties imposed by the 2018 Regulations, did not comply.

The filing season generally involves a flurry of activity and TP is one of the key areas that requires keen attention. Bearing this in mind, taxpayers need to be aware of the actions to help them navigate the process seamlessly:

1. *Registration for e-filing*

The FIRS have the mandate to digitize tax administration in Nigeria. In line with this objective, the FIRS issued a communique to the general public requiring all taxpayers to file their Companies Income Tax (CIT), Value Added Tax (VAT) and TP returns exclusively on the updated FIRS e-filing platforms. The FIRS have indicated that hard copies of the TP returns will no longer be accepted. Consequently, taxpayers that are yet to register need to commence registration process immediately, and escalate any difficulties experienced with the platform to the FIRS TP division to ensure a hitch free filing experience.

It should however be noted that FIRS may lack the power to penalize companies that opt to file hard copies of the returns or through other means such as by email. This is because the Regulations only require companies to submit the returns without specifying the modality for such submission. Thus, if a company can demonstrate that it complies with the requirement of the law by validly submitting it through other modalities other than the e-platform, it has fulfilled the requirements of the law and FIRS may not have the legal basis to penalize such company.

2. *Effecting TP adjustments in the Financial Statements and/or CIT returns before filing*

More recently, there has been an astronomical increase in the number of taxpayers undergoing TP audits. The sharp increase is not surprising considering the need to shore up the Federal Government's fiscal revenue.

The first decided TP case in which the tax tribunal decided in favour of the FIRS, resulted in a tax liability of N 1.7 billion for the taxpayer.

The landmark ruling highlights the need for taxpayers to ensure that their related party transactions are in line with the arm's length principle before completing and filing the CIT returns.

Below are measures which taxpayers should look at before completing the CIT filing:

2. Nigeria's Transfer Pricing Regulations – Key Steps to Annual Compliance

by Gali Aka

In the article, the author explains the obligation of Companies to adhere to the provisions of the transfer pricing regulations and the need to achieve compliance. The author also presents a summary of the revised Transfer Pricing Regulations 2018, and the impact of the amendments on the operations of taxpayers.

You can read the full article at: Nigeria's Transfer Pricing Regulations - Key Steps To Annual Compliance - Tax Authorities - Nigeria (mondaq.com)

Gali Aka

Daily Tax Report: International

Impact of Proposed Changes to Article 9 of OECD Model Tax Convention

By Omojo Okwa and Akaoma Osele

Feb. 2, 2022, 9:00 AM

Omojo Okwa and Akaoma Osele of KPMG explain the proposed changes to the commentary on Article 9 of the OECD Model Tax Convention and analyze the potential implications for multinational enterprises, as well as how international tax authorities may react.

Article 9 of the Organization for Economic Cooperation and Development (OECD) Model Tax Convention (the Convention) is the foundation of the transfer pricing (TP) concept applied by international tax systems. It fulfills the arm's length principle that allows for a comparison between controlled and uncontrolled transactions relating to the taxation of profits of associated enterprises.

According to the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (OECD Guidelines) and the UN Practical Manual on Transfer Pricing for Developing Countries (UN Manual), enterprises are associated if one of the entities is directly or indirectly involved in the management, control, or capital of the other entity, or if one person from one of the entities participates directly or indirectly in the management, capital, or control of both entities.

The proposed change to the commentary on Article 9 (associated enterprises), as it relates to the implementation of domestic laws on interest deductibility, was developed by working parties 1 (a subgroup of the OECD Committee on Fiscal Affairs (CFA) in charge of the Model Tax Convention) and 6 (a CFA subgroup responsible for work on the taxation of multinational enterprises, covering TP matters), in collaboration with G-20 subcommittees.

This article analyzes the proposed change to the commentary on Article 9 which addresses profit adjustments that may be made for tax reasons in related party transactions that are not conducted on an arm's-length basis. It also discusses the implications and effects of these proposed changes, as well as how foreign tax systems may react to them.

3. Impact of Proposed Changes to Article 9 of OECD Model Tax Convention

by Omojo Okwa and Akaoma Osele

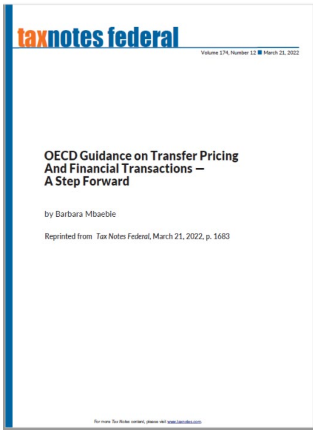
In the article, the authors explain the proposed changes to the commentary on Article 9 of the OECD Model Tax Convention and analyze the potential implications for multinational enterprises, as well as how international tax authorities may react.

The article was published in Bloomberg Tax of 2 February 2022.

You can read the full article at: Impact of Proposed Changes to Article 9 of OECD Model Tax Convention (bloombergtax.com)

Omojo Okwa

Akaoma Osele



taxnotes federal

Volume 174, Number 12 ■ March 21, 2022

OECD Guidance on Transfer Pricing
And Financial Transactions —
A Step Forward

by Barbara Mbaebie

Reprinted from *Tax Notes Federal*, March 21, 2022, p. 1683

For more *Tax Notes* content, please visit www.taxnotes.com.

4. OECD Guidance on Transfer Pricing and Financial Transactions – A Step Forward

by Barbara Mbaebie

In the article, the author examines the OECD's guidelines on the transfer pricing aspects of financial transactions and their implications for developing countries.

The article was published in Tax Notes Federal of 21 March 2022.

You can read the full article at: OECD Guidance on Transfer Pricing and Financial Transactions — A Step Forward (taxnotes.com)

Barbara Mbaebie

Nigeria: A Nation Without 'Pillars': Nigeria's Rejection Of The OECD's Two-Pillar Solution

29 September 2022

by Barbara Mbaebie (Lagos) and Atinuke Oseni (Lagos)

KPMG Nigeria

Introduction

"Unfair", "Unreliable", "Concerning" these were the echoes that followed the Executive Chairman of the Federal Inland Revenue Service (FIRS), Mohammad Nami's speech at the Chartered Institute of Taxation of Nigeria 2022 Annual Tax Conference as he addressed Nigeria's rejection of the Organisation for Economic Co-operation and Development (OECD)'s two-pillar approach (Onu, 2022; FIRS, 2022). Shortly thereafter, the FIRS issued a Public Notice on 23 May 2022 underscoring its position that the two-pillar solution to the taxation of the digital economy is not in the country's best interest (FIRS, 2022).

Prior to the release of the OECD's two-pillar approach, and in response to increasing globalization, economies around the world sought effective media to ensure that the huge amounts of profits being made by these multinational enterprises (MNEs) were being fairly allocated amongst the jurisdictions in which the companies derive the income. Upon thorough investigation, tax authorities in various jurisdictions discovered that these MNEs were taking advantage of the differing tax systems and eroding the profit bases of countries with relatively higher tax rates by shifting profits to countries with lower tax rates . The developing economies, especially, were receiving the brunt of these exploitative tax planning strategies due to their heavy dependency on corporate taxes. The OECD estimates that a shocking $240 billion is lost annually due to tax avoidance by MNEs (OECD, 2021).

Perceiving the severity of this issue, in 2013, the OECD formulated the Inclusive Framework on Base Erosion and Profit Shifting (BEPS) as an "international collaboration to end tax avoidance". The framework contained fifteen (15) measures intended to "tackle tax avoidance, improve coherence of international tax rules and ensure a more transparent tax environment". This culminated in the 2015 BEPS Action 1 report titled, "*Addressing the tax challenges of the digital economy*". In a bid to remain relevant and keep with the present times, members of the OECD/G20 Inclusive Framework on BEPS agreed to a two-pillar solution to address the

5. A Nation without Pillars: Nigeria's Rejection of the OECD's Two-Pillar Solution

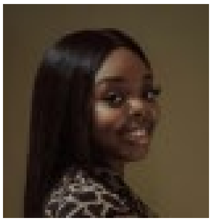
by Barbara Mbaebie and Atinuke Oseni

This article discusses Nigeria's position on the adoption of the OECD's two pillar approach and critically analyses Nigeria's "pillar-less" approach to the OECD's framework on Base Erosion and Profit Shifting (BEPS) as an "International collaboration to end tax avoidance".

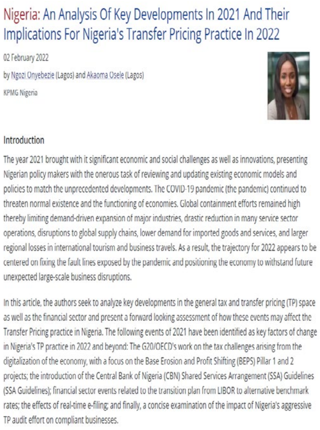
You can read the full article at:

https://www.mondaq.com/nigeria/tax-authorities/1234860/a-nation-without-pillars39-nigeria39s-rejection-of-the-oecd39s-two-pillar-solution

Barbara Mbaebie



Atinuke Oseni



Nigeria: An Analysis Of Key Developments In 2021 And Their Implications For Nigeria's Transfer Pricing Practice In 2022

02 February 2022

by Ngozi Onyebezie (Lagos) and Akaoma Osele (Lagos)

KPMG Nigeria

Introduction

The year 2021 brought with it significant economic and social challenges as well as innovations, presenting Nigerian policy makers with the onerous task of reviewing and updating existing economic models and policies to match the unprecedented developments. The COVID-19 pandemic (the pandemic) continued to threaten normal existence and the functioning of economies. Global containment efforts remained high thereby limiting demand-driven expansion of major industries, drastic reduction in many service sector operations, disruptions to global supply chains, lower demand for imported goods and services, and larger regional losses in international tourism and business travels. As a result, the trajectory for 2022 appears to be centered on fixing the fault lines exposed by the pandemic and positioning the economy to withstand future unexpected large-scale business disruptions.

In this article, the authors seek to analyze key developments in the general tax and transfer pricing (TP) space as well as the financial sector and present a forward looking assessment of how these events may affect the Transfer Pricing practice in Nigeria. The following events of 2021 have been identified as key factors of change in Nigeria's TP practice in 2022 and beyond: The G20/OECD's work on the tax challenges arising from the digitalization of the economy, with a focus on the Base Erosion and Profit Shifting (BEPS) Pillar 1 and 2 projects; the introduction of the Central Bank of Nigeria (CBN) Shared Services Arrangement (SSA) Guidelines (SSA Guidelines); financial sector events related to the transition plan from LIBOR to alternative benchmark rates; the effects of real-time e-filing; and finally, a concise examination of the impact of Nigeria's aggressive TP audit effort on compliant businesses.

6. An Analysis of Key Developments in 2021 and their Implications for Nigeria's Transfer Practice in 2022

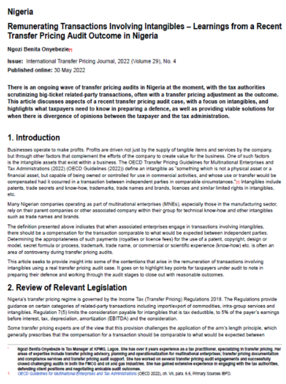
by Ngozi Onyebezie and Akaoma Osele

In this article, the authors seek to analyze key developments in the general tax and transfer pricing (TP) space as well as the financial sector and present a forward-looking assessment of how these events may affect the Transfer Pricing practice in Nigeria.

You can read the full article at: https://www.mondaq.com/nigeria/tax-authorities/1157020/an-analysis-of-key-developments-in-2021-and-their-implications-for-nigeria39s-transfer-pricing-practice-in-2022

Ngozi Onyebezie

Akaoma Osele



Nigeria

Remunerating Transactions Involving Intangibles – Learnings from a Recent Transfer Pricing Audit Outcome in Nigeria

Ngozi Benita Onyebezie*

Issue: International Transfer Pricing Journal, 2022 (Volume 29), No. 4

Published online: 30 May 2022

There is an ongoing wave of transfer pricing audits in Nigeria at the moment, with the tax authorities scrutinizing big-ticket related-party transactions, often with a transfer pricing adjustment as the outcome. This article discusses aspects of a recent transfer pricing audit case, with a focus on intangibles, and highlights what taxpayers need to know in preparing a defence, as well as providing viable solutions for when there is divergence of opinions between the taxpayer and the tax administration.

1. Introduction

Businesses operate to make profits. Profits are driven not just by the supply of tangible items and services by the company, but through other factors that complement the efforts of the company to create value for the business. One of such factors is the intangible assets that exist within a business. The OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (2022) (OECD Guidelines (2022)) define an intangible as "something which is not a physical asset or a financial asset, but capable of being owned or controlled for use in commercial activities, and whose use or transfer would be compensated had it occurred in a transaction between independent parties in comparable circumstances."[1] Intangibles include patents, trade secrets and know-how, trademarks, trade names and brands, licences and similar limited rights in intangibles, etc.

Many Nigerian companies operating as part of multinational enterprises (MNEs), especially those in the manufacturing sector, rely on their parent companies or other associated company within their group for technical know-how and other intangibles such as trade names and brands.

The definition presented above indicates that when associated enterprises engage in transactions involving intangibles, there should be a compensation for the transaction comparable to what would be expected between independent parties. Determining the appropriateness of such payments (royalties or licence fees) for the use of a patent, copyright, design or model, secret formula or process, trademark, trade name, or commercial or scientific experience (know-how) etc. is often an area of controversy during transfer pricing audits.

This article seeks to provide insight into some of the contentions that arise in the remuneration of transactions involving intangibles using a real transfer pricing audit case. It goes on to highlight key points for taxpayers under audit to note in preparing their defence and working through the audit stages to close out with reasonable outcomes.

2. Review of Relevant Legislation

Nigeria's transfer pricing regime is governed by the Income Tax (Transfer Pricing) Regulations 2018. The Regulations provide guidance on certain categories of related-party transactions including import/export of commodities, intra-group services and intangibles. Regulation 7(5) limits the consideration payable for intangibles that is tax deductible, to 5% of the payer's earnings before interest, tax, depreciation, amortization (EBITDA) and the consideration.

Some transfer pricing experts are of the view that this provision challenges the application of the arm's length principle, which generally prescribes that the compensation for a transaction should be comparable to what would be expected between

* Ngozi Benita Onyebezie is Tax Manager at KPMG, Lagos. She has over 8 years experience as a tax practitioner, specializing in transfer pricing. Her areas of expertise include transfer pricing advisory, planning and operationalization for multinational enterprises; transfer pricing documentation and compliance services and transfer pricing audit support. She has worked on several transfer pricing audit engagements and successfully closed challenging audits in both the FMCG and oil and gas industries. She has gained extensive experience in engaging with the tax authorities, defending client positions and negotiating amicable audit outcomes.

1\. *OECD Guidelines for Multinational Enterprises and Tax Administrations* (OECD 2022), ch. VII, para. 6.6, Primary Sources IBFD.

7. Remunerating Transactions involving Intangibles – Learnings from a Recent Transfer Pricing Audit Outcome in Nigeria

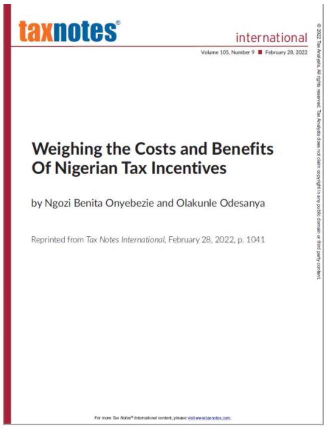
by Ngozi Onyebezie

Ngozi Onyebezie

In the article, the author discusses aspects of a recent transfer pricing audit case, with a focus on intangibles, and highlights what taxpayers need to know in preparing a defense, as well as providing viable solutions for when there is divergence of opinions between the taxpayer and the tax administration.

The article was published in International Transfer Pricing Journal of 30 May 2022.

.You can read the full article at: Remunerating Transactions Involving Intangibles – Learnings from a Recent Transfer Pricing Audit Outcome in Nigeria | IBFD



taxnotes® international

Volume 105, Number 9 ■ February 28, 2022

Weighing the Costs and Benefits Of Nigerian Tax Incentives

by Ngozi Benita Onyebezie and Olakunle Odesanya

Reprinted from *Tax Notes International*, February 28, 2022, p. 1041

For more *Tax Notes*® *International* content, please visit www.taxnotes.com.

8. Weighing the Costs and Benefits of Nigerian Tax Incentives

by Ngozi Onyebezie and Olakunle Odesanya

Ngozi Onyebezie

Olakunle Odesanya

In the article, the authors review Nigeria's tax incentives, considering their costs and benefits, and address the shortcomings of specific incentives.

The article was published in Tax Notes International of 28 February 2022.

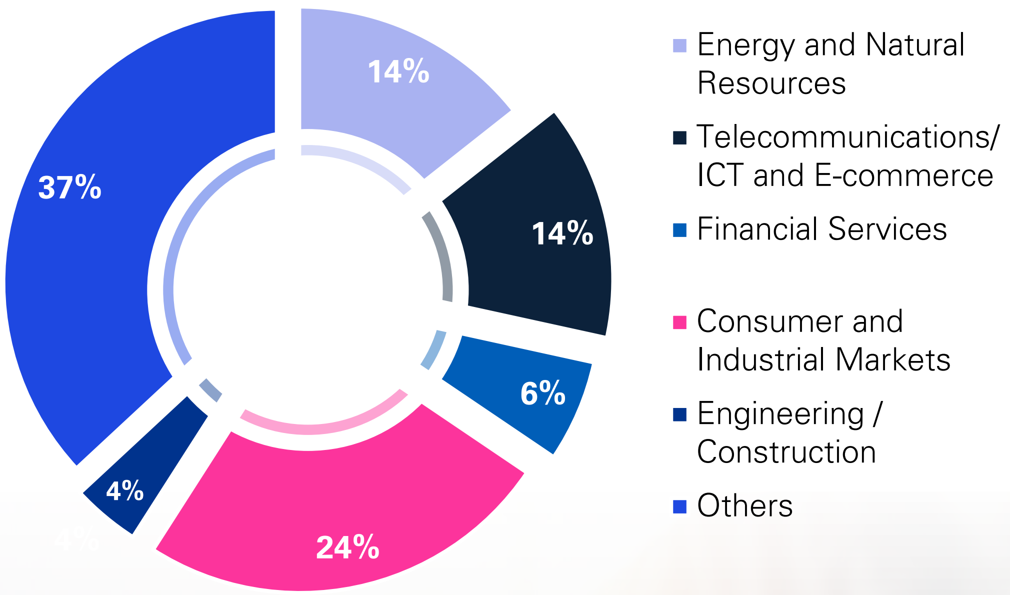
.You can read the full article at: Weighing the Costs and Benefits of Nigerian Tax Incentives | Tax Notes

About the Survey

This report presents our findings from the 2022 TP Awareness Survey conducted by KPMG Nigeria. The survey was administered on 49 persons who were mainly in the Chief Financial Officer, Head of Finance, Tax Director and Tax Manager cadres, and were directly/ultimately responsible for managing the tax function in leading organisations across major industry sectors in Nigeria.

The survey elicited responses in respect of TP compliance, TP risk assessment, TP audit, TP controversy and dispute resolution.

The distribution of our respondents across the sectors is illustrated below:



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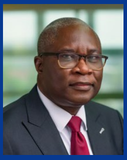

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