Transfer Pricing Awareness Survey

June 2018

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Foreword

There have been significant developments in the international tax and transfer pricing space since the publication of the Transfer Pricing (TP) Regulations in Nigeria.

In 2017, we conducted our first TP survey to gauge taxpayers' awareness of TP compliance requirements, TP risk assessment and audit preparedness. This year, we are pleased to present the findings from the second edition of our survey. For this edition of the survey, we had 56 respondents, representing the major industry sectors.

Based on the feedback provided by the respondents, the level of awareness of the TP compliance requirements appears to have improved over the past year. Also, in light of the outcomes of the Base Erosion and Profit Shifting (BEPS) project and the increased experience of the Nigeria tax authorities with respect to TP, taxpayers are doing more to appropriately plan and manage their related party transactions. This is to avoid material additional tax liabilities in the event of a TP audit.

We hope that this edition of the survey will serve as a valuable reference material on TP from both the Nigerian and International perspectives. We also trust that our readers will find the results and insights provided useful as they seek to improve their organisation's TP compliance and audit preparedness.

We acknowledge and thank all the respondents that took out time to be a part of this year's survey. We encourage our readers to provide feedback on the publication and participate in the subsequent editions of the survey. You can send your comments or indication of your interest to participate in future surveys by sending an email to KPMGTPSurvey@kpmg.com.

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Contents

Overview of Transfer Pricing Regime in Nigeria 6

The TP Structure in Organisations 8

Consciousness of TP Requirements 9

TP Risk Assessment and Audit Experience 10

Update on the Base Erosion and Profit Shifting (BEPS) Project 13

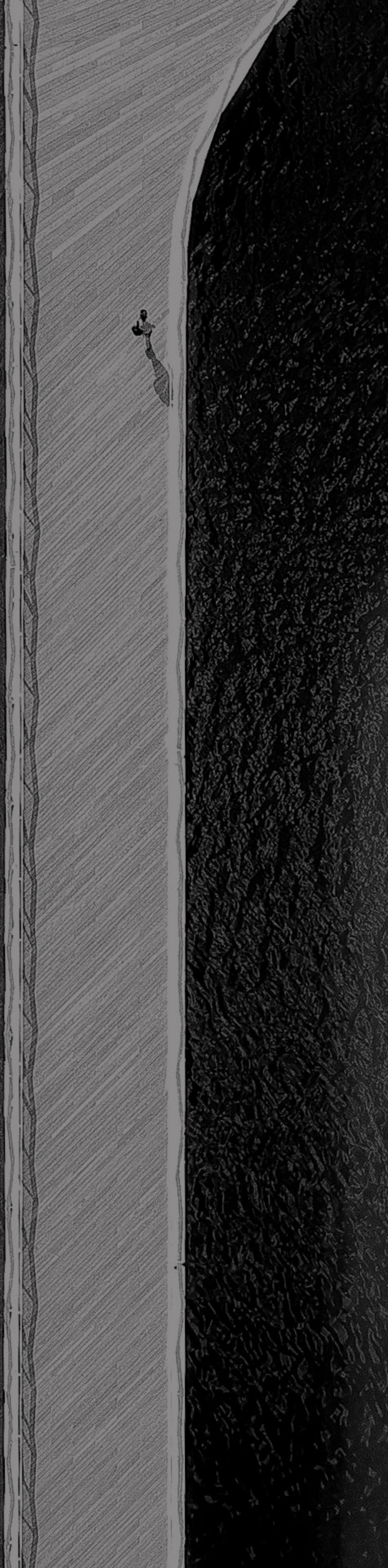
Global Transfer Pricing Services 16

Global Principles for a Responsible Tax Practice 18

Thought Leadership 20

About the Survey 22

Overview of Transfer Pricing Regime in Nigeria



Background

The Nigeria TP regime has evolved steadily since the Nigeria TP Regulations (The Regulations) became effective on 2 August, 2012. The Regulations cover all transactions between connected taxable persons.

The Regulations require that companies prepare appropriate documentation to demonstrate that their related party transactions have been conducted at arm's length. The documentation to be prepared include the TP policy, the annual TP compliance documentation report and filing of the TP statutory forms (TP declaration and disclosure forms).

TP documentation requirements

The TP Policy is an internal guide that enables companies price their related party transactions in accordance with the arm's length principle. The TP compliance report is a contemporaneous documentation that demonstrates Companies' compliance with the arm's length principle as determined in the TP policy. The TP statutory forms, which comprise the TP disclosure and declaration forms, are to be filed with the corporate tax returns. The TP disclosure form should be completed and filed with the Federal Inland Revenue Service (FIRS) annually while the declaration form is to be filed once; except where there are significant changes to the information previously declared.

The Nigeria TP Regulations, while aligning with the Organisation for Economic Cooperation and Development (OECD) TP Guidelines, also recognize the United Nations (UN) Practical Manual on TP. In addition to the five TP methods recommended for use by the OECD TP Guidelines in determining the arm's length price, a taxpayer is at liberty to use any other method, if it is of the view that none of the OECD methods is appropriate. The Regulations also empower the FIRS to prescribe any other TP method from time to time.

TP audit process

TP audits usually commence with the FIRS sending an Information and Documents Request (IDR) to selected companies based on the outcome of the tax authorities' internal TP risk assessment. A selected taxpayer has 21 days to respond to an IDR. The next phase is the presentation by the taxpayer to the tax authority, where more information is provided on the business, ownership structure, value chain, among others.

The third phase is the field visit and interview sessions with key personnel of the company. The tax authority will seek to validate the facts and declarations presented in the TP compliance documentation during the interview sessions. Where tax authorities disagree with tax payer on their understanding of relevant facts, they may make TP adjustments, resulting in additional tax liabilities.

Where the taxpayer disagrees with the TP adjustments, it may approach the Decision Review Panel (DRP). The decision of the DRP on any assessment or adjustment is final and conclusive. However, the taxpayer can appeal the decision of the DRP, based on point of law, to the Tax Appeal Tribunal* and higher courts.

Recent developments in the TP landscape

There have been some significant developments in the TP landscape. In April 2017, the UN published a new edition of the UN Practical Manual on Transfer Pricing. Also, in July 2017, the OECD released the revised edition of its TP Guidelines. The new editions of both the UN Practical Manual on Transfer Pricing and the OECD TP Guidelines incorporated the outcomes of the BEPS project relating to TP.

Another significant development is the publication of a TP Toolkit by the Platform for Collaboration on Tax (PCT). The toolkit provides more practical guidelines to developing countries on how to manage the challenge of data constraint in carrying out TP analyses. The PCT is a joint initiative of the International Monetary Fund (IMF), UN, OECD and the World Bank Group.

In line with global trends, the Federal Government of Nigeria is in the process of publishing the Country-by-Country Reporting (CbCR) Regulations. The CbCR Regulations will most likely align with the OECD Model legislation. When published, Multinational Enterprises (MNEs) {headquartered in Nigeria with consolidated revenue in excess of EUR750 million (or near equivalent in Naira as of January 2015)} will need to file CbCR with the FIRS annually.

Conclusion

The TP landscape in Nigeria has witnessed significant changes in the last one year. Most of these changes are driven by the outcomes of the BEPS project and increased knowledge of the FIRS. Taxpayers should keep abreast of developments and enhance their internal capability with a view to complying fully with the TP compliance requirements and managing potential additional tax assessments.

* The Federal Government is yet to constitute the Tax Appeal Tribunal since the expiration of the tenure of the previous one.

The TP Structure in Organisations

The need for a TP department

The survey results showed that majority of the respondents do not have dedicated TP departments. Rather, the tax and finance departments are saddled with the responsibility for TP matters. 43% of the respondents indicated that there are dedicated staff within the tax or finance departments for TP matters.

TP policies are still being driven at the group level…

70% of respondents have indicated that their TP policies are set at the group level. This is a significant decrease compared to prior year and it suggests that entities within MNE Groups are taking more responsibility for TP matters.

This may be an indication that MNEs are increasingly becoming aware of the need to incorporate the market realities of various local economies in their global TP planning and documentation.

Similarly, 19% of respondents confirmed their involvement in the setting of their organisation's TP policies. This is a doubling in the percentage of respondents over the 2017 results.

The above shoes that more tax payers are taking specific and proactive actions to address TP issues in their organisations.

Figure 1

Do you have staff dedicated to TP matters in your company?

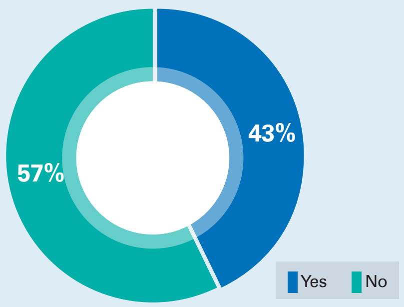


Figure 2

Which department is responsible for dealing with transfer pricing matters within your company?

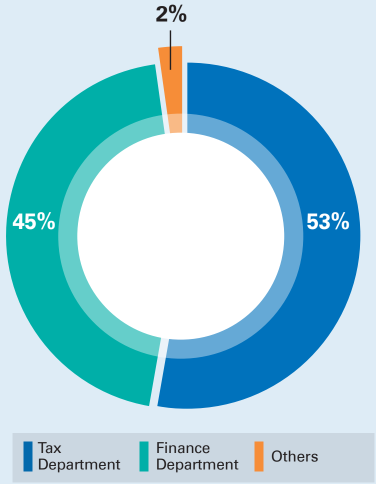
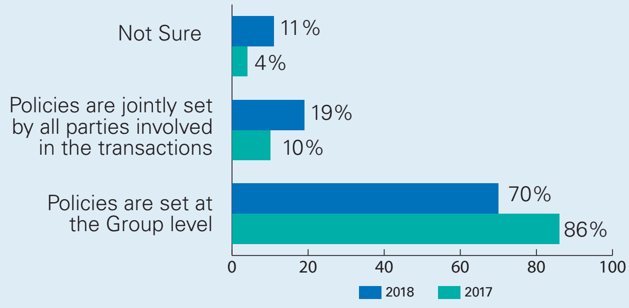


Figure 3

Who sets the policies for related party transactions in your organisation?



Consciousness of TP Requirements

Increased level of awareness of TP compliance requirements…

It is important that taxpayers are aware of TP compliance requirements, given the recent wave of TP audits and developments. The results of the survey generally indicated a high level of awareness of TP compliance requirements. Specifically, 58% of the respondents indicated a high level of awareness of TP compliance requirements compared to 38% that indicated an average level of awareness.

The level of awareness of the respondents is also reflected in the level of compliance noted in the filing of TP returns, preparation of the TP policy and annual TP compliance report. About 57% of the respondents admitted to have filed TP returns for all the years since the inception of TP. 21% had either filed for some of the years or had never filed TP returns.

There was a positive correlation between the number of respondents that had filed TP returns for all relevant years and the number that had prepared TP documentation for those years. The results of the survey showed that 57% of the respondents had filed TP returns for all relevant years while 55% had prepared contemporaneous TP documentation for the same period.

However, when compared with the results of the prior year survey, it was observed that compliance with the filing of TP returns and the preparation of TP documentation had dropped significantly by 17% and 10%, respectively. This emphasizes the need for continuous education of taxpayers on TP compliance requirements.

Figure 4

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

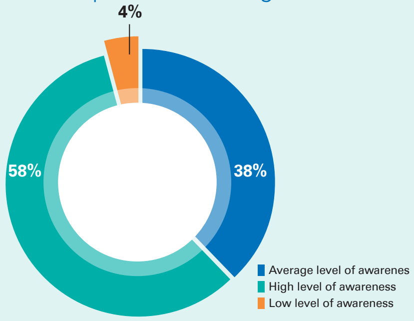


Figure 5

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

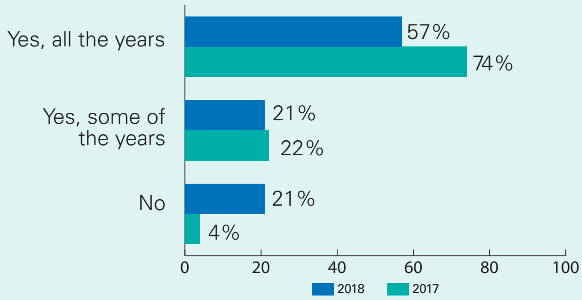


Figure 6

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

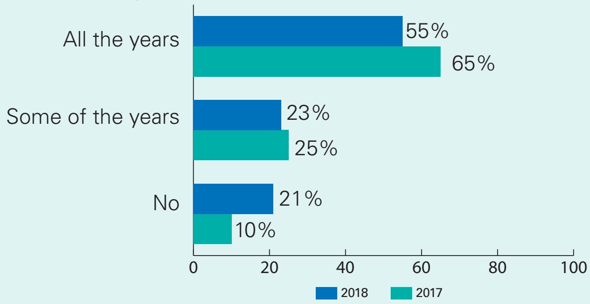
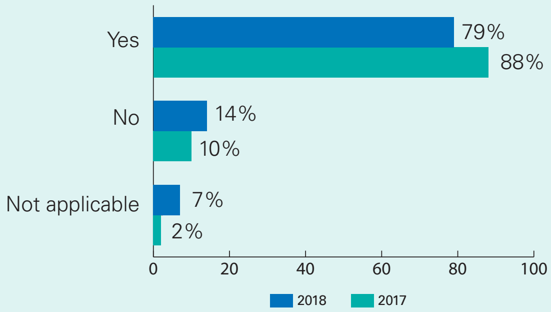


Figure 7

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



TP Risk Assessment & Audit Experience

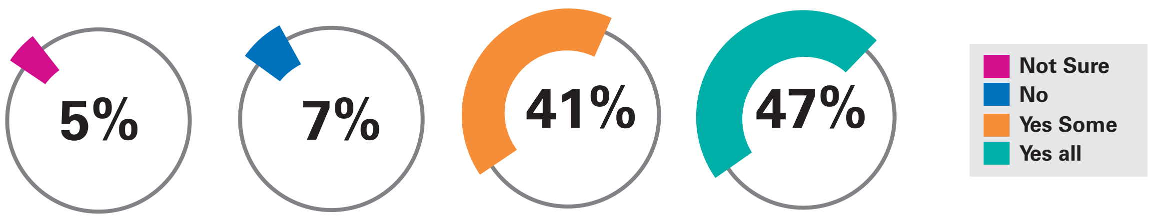
With the increased focus of the Federal Government on taxation as a major source of revenue, there has been increased pressure on the tax authorities to conduct regular tax audits and issue notices of additional assessment, where applicable, on a timely basis. This section of the survey report details the opinions of our respondents with respect to TP risk assessments and TP audit.

Existence of Intercompany agreements

From the survey results, 47% of the respondents affirmed that their organisations have contracts/agreements for all related party transactions while 41% of the respondents had contracts/agreements for some related party transactions. While this shows an appreciable understanding by taxpayers of the need to have contracts validating terms of their related party transactions, it is also important that the actual substance of the transactions aligns with (or are not materially different from) the terms of the contracts/agreements. Where the tax authorities identify that the agreements (form of transaction) do not reflect the conduct of the parties (substance of transaction), they tend to base their judgment on what they consider plausible which may maximize revenue for government, to the detriment of the taxpayer. As such, the best practice is for organisations to ensure that intercompany contracts/agreements align with the actual conduct of the parties.

Figure 8

Does your organisation have agreements or contracts for transactions with related parties?



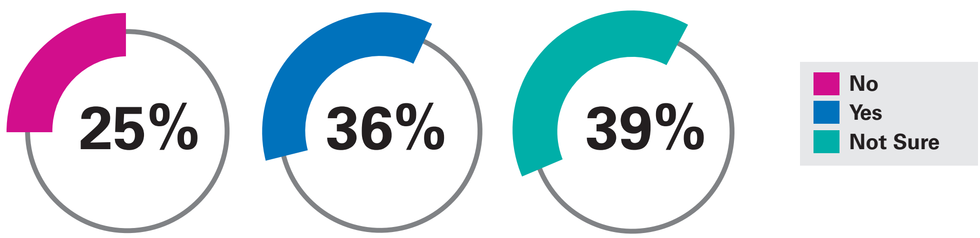
Availability of risk management policies which cover TP

According to the survey, only 36% of the respondents have a risk management policy that covers TP while 74% of the respondents either do not have one or are unsure whether their risk management policies cover TP.

The importance of having a risk management policy that covers TP cannot be over-emphasized. A risk management policy will help to spell out the procedures for identifying, reducing and/or preventing undesirable outcomes. It is, therefore, important that organizations proactively incorporate TP into their risk management policy.

Figure 9

Does your company have a risk management policy that covers TP?



TP planning in respect of new controlled transactions

45% of the respondents confirmed that they regularly engage TP specialists before setting prices for related party transactions while 12% engage TP specialists occasionally. However, 27% of the respondents indicated they were not sure if TP specialists were involved in the pricing of controlled transactions, while 16% confirmed they did not involve TP specialists in the pricing of their related party transactions.

To meet the arm's length requirement of the Nigerian TP Regulations, it is important that appropriate TP studies and benchmarking analyses are carried out before the pricing terms of the related party transactions are finalized. This will afford the taxpayer the opportunity of "getting it right" from the onset.

On a related note, only about 45% of respondents carry out an independent review of their related party transactions before issuing their financial statements. It is important that taxpayers critically review their related party transactions and test same against benchmarks to determine if the transactions were conducted at arm's length before finalizing their financial reports. Where deviations from the benchmark ranges are noted, necessary true-ups can be made before finalizing the accounts.

Figure 10

Does your company request opinions/benchmarking analysis from TP advisers before setting prices with respect to related party transactions?

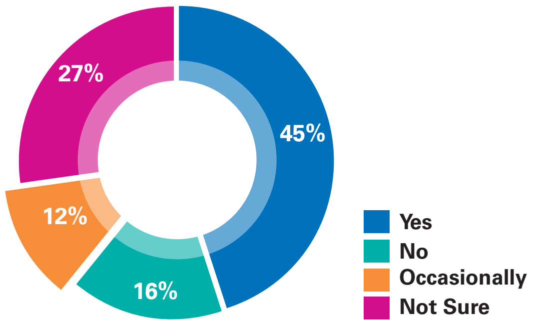
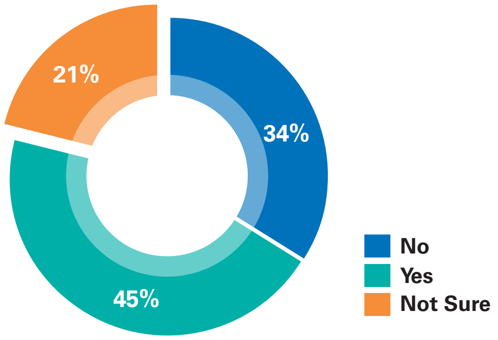


Figure 11

Do you carry out an independent review of your related party transactions before issuing the financial statements?



TP audit experience

Majority of the respondents (77%) did not receive an IDR from the FIRS in the last 12 months, while 23% received at least one IDR during the same period. From the results, it appears that there may have been a reduction in the number of IDRs issued by the FIRS in the last 12 months when compared with 39% of respondents that received IDR in the prior year survey. This may have been affected by the fact that the FIRS is currently handling several TP audits, which are yet to be concluded.

Corroborating the result noted earlier, 78% of the respondents indicated that they are yet to undergo a TP audit. While 20% are currently undergoing TP audits, only 2% have completed their TP audit. It is important to note that TP audits can be slow and painstaking. It takes about 24 months to complete a TP audit in advanced economies like the US[1] and 34 months in developing countries like India[2].

Figure 12

Has your company received an IDR from the FIRS with respect to TP in the last 12 months?

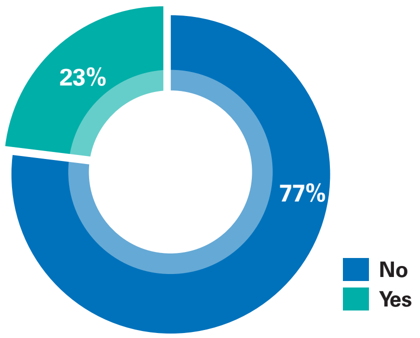
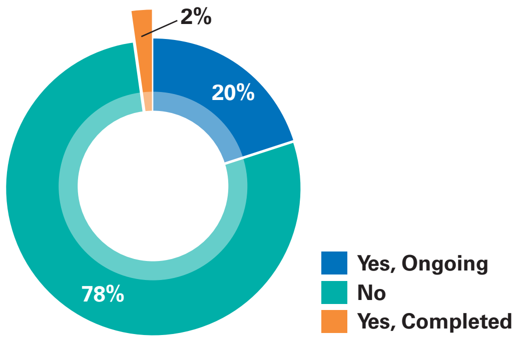


Figure 13

Is your company undergoing a TP audit?



1 https://www.irs.gov/businesses/corporations/transfer-pricing-audit-roadmap-now-available
2 https://home.kpmg.com/content/dam/kpmg/pdf/2015/10/tp-review-india-v3.pdf

FIRS' stance unchanged. Still aggressive…

Of the respondents who are currently undergoing TP audits, a significant number (78%) consider the FIRS' stance during the TP audit as aggressive. Only 22% of the respondents consider the FIRS' stance as not aggressive. The results for this year are similar to those of last year. It is our view that FIRS will take note of this by revisiting its modality for TP audits.

When asked about the materiality of the FIRS additional assessments, 38% of the companies undergoing TP audits indicated that the FIRS' assessments were material, while 62% indicated that they had not yet been assessed to additional tax liabilities. By complying with all the TP documentation requirements and proactively performing TP diagnostic reviews, companies stand a good chance of avoiding material additional assessments.

Figure 14

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

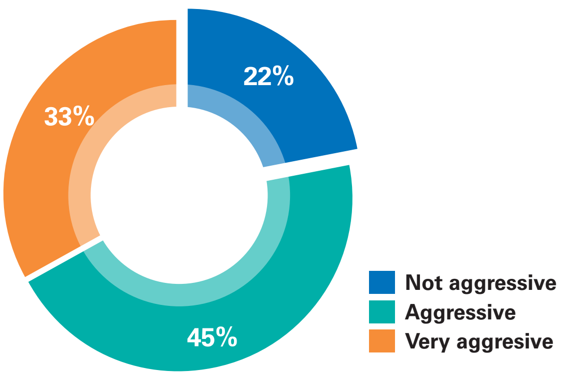
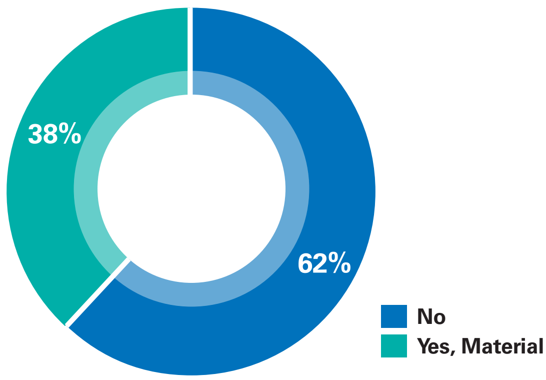


Figure 15

Did the FIRS make an assessment of additional tax liability?



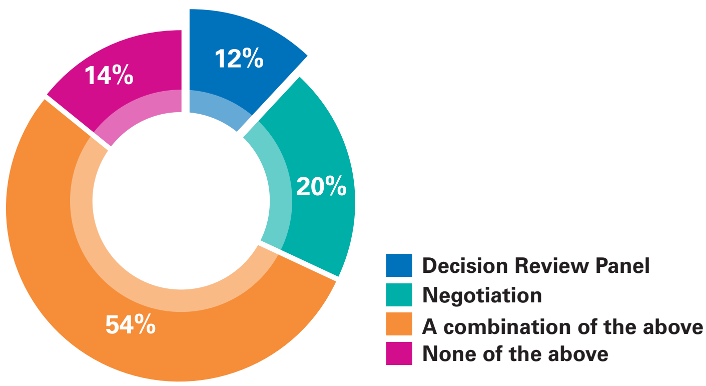
Non-adversarial approach to dispute resolution preferred

As in the prior year, respondents opted for a less adversarial approach to resolving transfer pricing disputes. 20% of the respondents would rather resolve their TP disputes through negotiation, 12% through the Decision Review Panel (DRP) and about 54% would prefer a combination of both. None of the respondents indicated that they will consider the option of going to court or paying the additional assessment outright. Although the FIRS is considered generally aggressive during TP audits, taxpayers still consider peaceful and concilliatory approach as the best option to resolve differences..

Based on the above results, the FIRS can reciprocate the preference of taxpayers for a less adversarial approach to resolving TP disputes by expediting action on the commencement of the Advanced Pricing Agreement (APA) programme. Unlike other jurisdictions, Nigeria proactively incorporated APA provisions in its TP regulations from inception. The tax authorities and taxpayers will therefore both benefit from the implementation of the APA programme. The FIRS could rely on technical expertise and inputs from its development partners, such as the World Bank Group, OECD, African Tax Administration Forum (ATAF) etc., to make its APA programme a reality.

Figure 16

What dispute resolution options will your company prefer to use if you disagree with the FIRS on key issues during a TP audit?



Update on the Base Erosion and Profit Shifting (BEPS) Project

The OECD's BEPS project has impacted the administration of TP directly and indirectly. One of the direct impacts of the BEPS project is the release of the latest OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administration (OECD TP Guidelines). The new guidelines incorporate revisions and recommendations of BEPS Actions 8 – 10 (Aligning Transfer Pricing Outcomes with Value Creation) and Action 13 (Transfer Pricing Documentation and Country-by-Country Reporting). The 2017 OECD TP Guidelines have specific guidance on commodity transactions, revised guidelines for cost contribution arrangements, analysis of risks, low value adding services, etc.

The UN Committee of Experts on International Cooperation in Tax Matters has also published the second edition of the UN Practical Manual on Transfer Pricing for Developing Countries. Similar to the OECD, the main thrust of the second edition of the manual is to bring it in conformity with the outcomes and recommendations of the BEPS project.

Nigeria is about to join the list of jurisdictions that have domesticated the Country-by-County Reporting (CbCR) recommendation of the OECD. The expectation is that the Federal Government will publish the CbCR Regulations this year with an effective date of 1 January 2018.

A major BEPS development that may impact TP indirectly is the signing and entering into force of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (MLI or Multilateral Instrument). The MLI seeks to implement the treaty-related measures produced under BEPS Action 2 (hybrid mismatch arrangements), Action 6 (treaty abuse), Action 7 (artificial avoidance of permanent establishment status) and Action 14 (dispute resolution) of the BEPS project in a quick and efficient manner, without each country having to renegotiate its existing double tax treaties.

As at May 2018, over 70 jurisdictions, including Nigeria, had signed the MLI. The MLI will enter into force globally on 1 July, 2018. When ratified by Nigeria, the MLI may have significant impact on businesses with cross-border operations within Nigeria's treaty network.

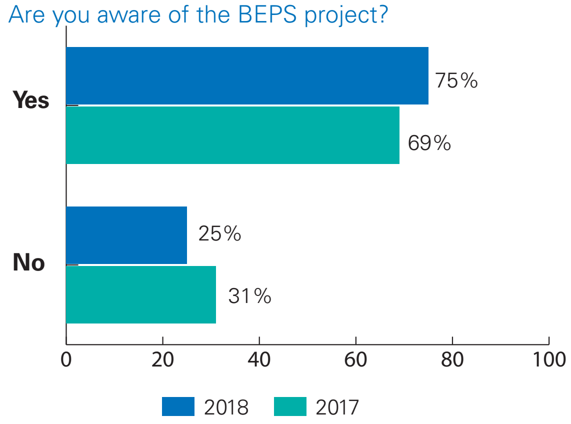
Base Erosion and Profit Shifting

Level of Taxpayers' Awareness of the BEPS Project

75% of the respondents indicated an awareness of the BEPS project. This is an increase over the prior year and it suggests that an increasing number of personnel with oversight of tax and TP are becoming aware of current global trends. As the local tax environment continues to be impacted by the BEPS project, it is important that taxpayers keep abreast of developments in this regard.

Figure 17

Are you aware of the BEPS project?



Awareness of the three-tier TP documentation approach

The survey results show that 46% of respondents are aware of the three-tier documentation recommendations of the OECD, while 54% of the respondents are not. The three-tier documentation consists of:

(i) a master file containing standardised information relevant for all MNE group members;
(ii) a local file referring specifically to material transactions of the local taxpayer; and
(iii) a CbCR containing certain information relating to the global allocation of the MNE group's income and taxes paid.

While 48% of the respondents indicated that the parent company of their organisation is required to prepare and file the CbCR, 23% indicated otherwise and 29% are unsure of this requirement. This shows that there is a need to create more awareness to enlighten taxpayers on the three-tier documentation and CbCR requirements.

Figure 18

Are you aware of the 3 –tier TP documentation approach recommended by the OECD?

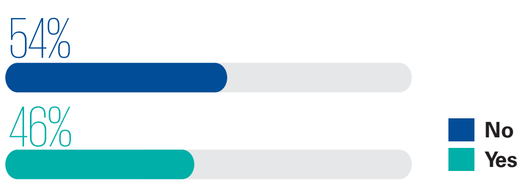
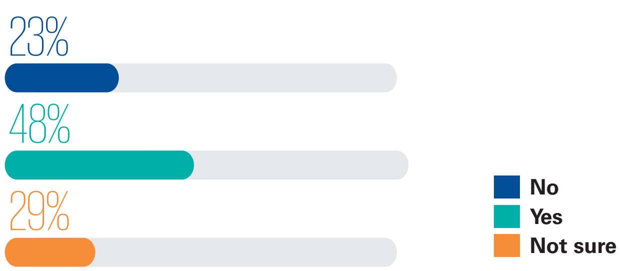


Figure 19

Is your parent company required to prepare and file country-by-country report?

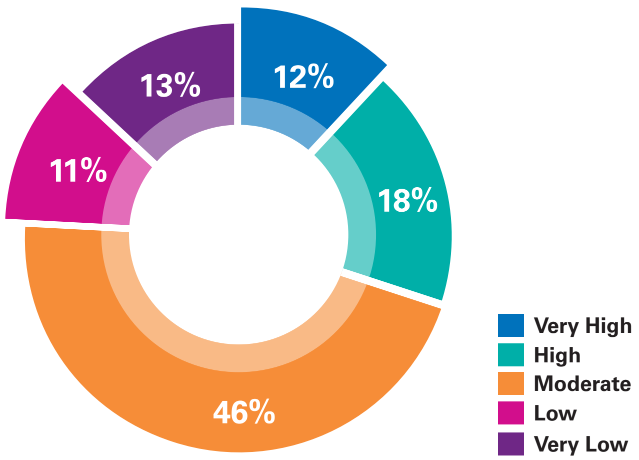


Country-by-Country Reporting – Are businesses aware of the impact of this development?

When asked to assess their awareness of the impact that the signing of the Income Tax (Country by Country Reporting) Regulations 2018 will have on their company's tax and TP requirements, 18% and 12% of the respondents consider their level of awareness as high and very high, respectively. The respondents that considered their level of awareness of this impact as moderate, low and very low were 46%, 11% and 13%. Taxpayer education is, therefore, required in this area. It is also important for companies to proactively review their TP policies in light of post-BEPS realities with a view to mitigating any TP risk exposure.

Figure 20

The Nigerian President recently signed the Income Tax (Country by Country Reporting) Regulations 2018. How do you rank your awareness of its impact on your company's tax and transfer pricing requirements.



> The survey results show that 46% of respondents are aware of the three-tier documentation recommendations of the OECD, while 54% of the respondents are unaware of this new approach to TP documentation

Global Transfer Pricing Services

The TP environment is constantly changing in terms of both risk and opportunities. In the wake of the OECD BEPS Action Points, multinational companies must be able to present cogent and globally-consistent arguments supporting their TP decisions and substantiated by thorough, authoritative analyses that reflect local rules governing their transactions. Given the increasing call for more transparency, multinationals are left facing more complexity than ever before.

Multinationals need to ensure that they stay up-to-date with the latest TP developments and best practices. In doing so, they can optimize the opportunities, global effective tax rates and ensure they remain compliant with changing guidelines and regulations, while at the same time minimizing the risks associated with TP audits. A well-designed TP policy and properly coordinated defence strategy for such a policy are basic necessities in today's dynamic commercial environment.

Keeping track of the fast-developing TP landscape is itself a challenge. From detailed TP regulations to stricter documentation requirements, the call for greater transparency, robust audit practices to harsher penalties for non-compliance, global companies must deal with an even more complex environment. Above all, ensuring an effective TP strategy means being proactive in planning, implementation, risk management, documentation and dispute resolution. Taxpayers need to understand the global perspective, but should also be able to call on expertise and insight, combined with local orientation, to be able to put together a coherent and defensible TP policy, which is responsive enough to adapt to the constant changes that businesses experience.

TP has also become a topic of public controversy on the matter of whether the current TP rules permit multinationals to pay less than their fair share of tax in some of the territories that they operate. This means that multinationals now need to evaluate their TP practices from the perspective of subjective areas like corporate reputation and public perception.

Organisations recognize that TP strategies can add significant value to business projects and help fund future growth as they look to maximize efficiencies and optimize their global tax liabilities.

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, economists, tax practitioners and financial analysts with years of experience.

KPMG firms can help companies develop and implement economically defensible 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.

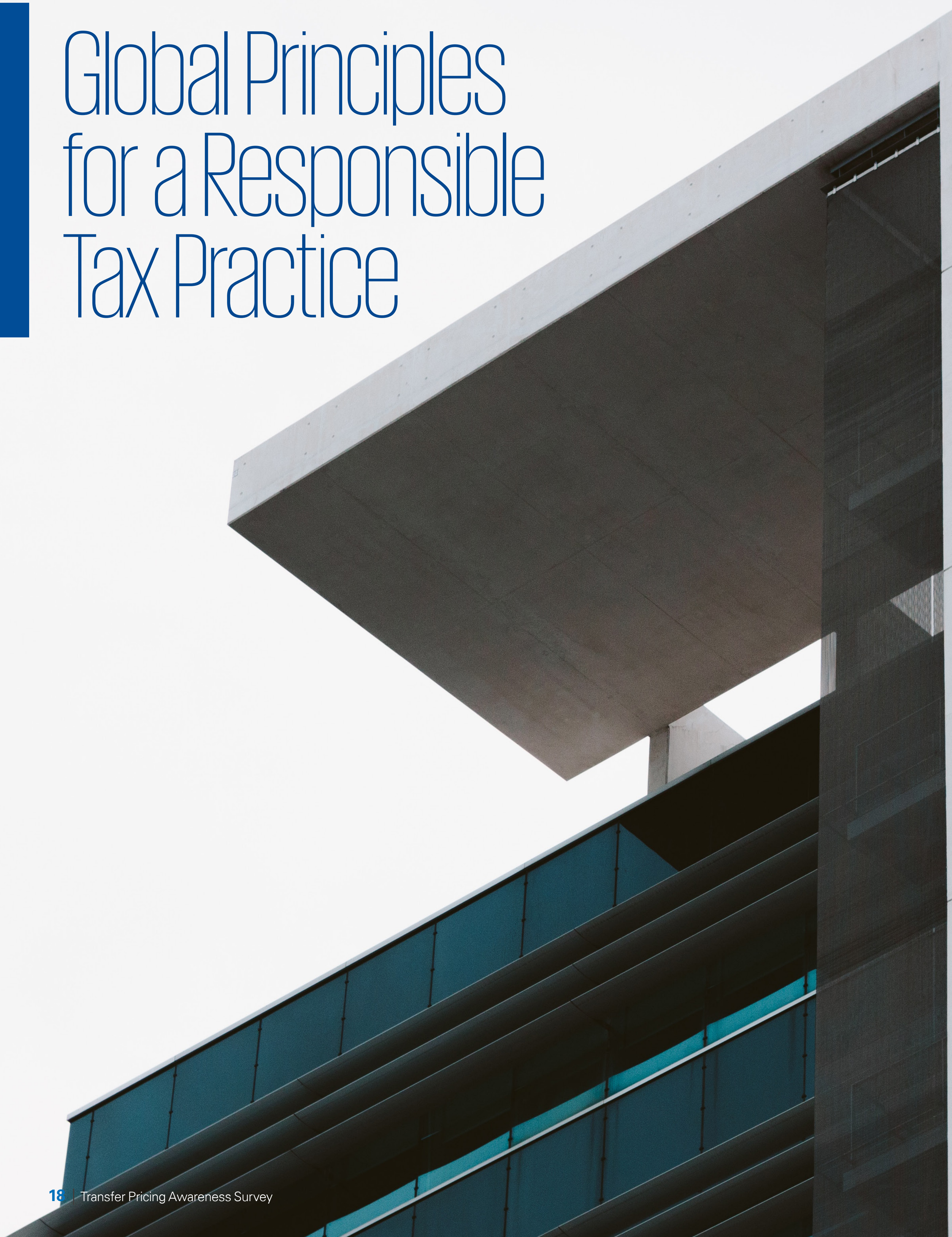
How clients can benefit

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 favorable outcomes when controversies arise
- Aligning tax goals with business objectives
- Reducing the amount of time that corporate resources need to spend on TP

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.

1	**We act lawfully and with integrity and expect the same from our people, our firms' clients, tax authorities and other parties with whom we interact. Above all else, in every respect our work shall be fully compliant with relevant legal, regulatory and professional requirements.**
2	**We are committed to providing clients with high quality tax advice tailored to their particular circumstances.**
3	**We shall explain clearly and objectively to our clients the technical merits and the sustainability of any tax advice we give.**
4	**Whenever relevant and practical to assess, we may discuss with clients any likely impact of any tax advice we give on relevant communities and stakeholders and any potential reputational risk.**
5	**We shall make recommendations to clients only where: i. we consider, at least on the balance of probabilities, that the relevant interpretation of law is correct; or ii. it otherwise clearly meets the applicable local professional standards.**
6	**We shall only advise clients to enter into, or assist them to implement, transactions or arrangements on the basis that they have any substance required by law, as well as any business, commercial or other non-tax purpose required by law.**
7	**We shall not advise clients to enter into transactions with the purpose of securing a tax advantage clearly and unambiguously contrary to the relevant legislation and shall not assist them to implement such transactions. If, in our view, the language of the legislation is uncertain, we shall consider the intention of the relevant legislators when advising clients.**
8	**We support a relationship with tax authorities aimed at building mutual trust and respect which will enable constructive dialogue and responsiveness by all parties, facilitate compliance and reduce or assist in early resolution of disputes.**
9	**We shall comply with all our disclosure requirements and advise our clients to do the same.**
10	**When advising clients on entering into transactions we shall do so on the understanding that all material facts will be known to the tax authorities.**

[1] These Principles set out the way KPMG approaches tax on a global basis. They are not intended to refer to terms of art or legislation in any specific country

Thought Leadership

Transfer Pricing in Nigeria: Last Year in Retrospect and Outlook for 2018

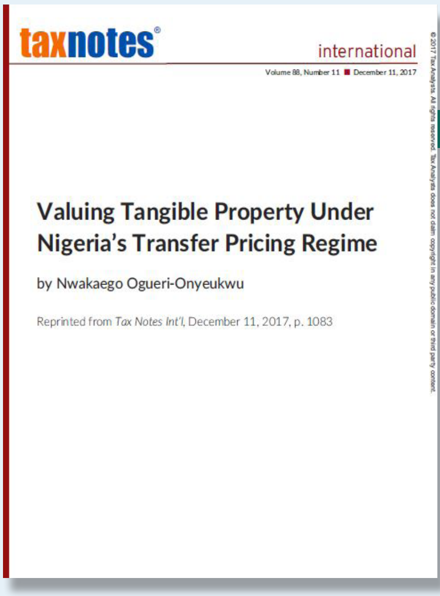
By Victor Adegite and Nwakaego Ogueri-Onyeukwu

There were significant developments in the transfer pricing landscape in Nigeria in 2017. What can Nigerian taxpayers expect to see in 2018? This article highlights some of the significant developments in 2017 and discusses the impact of these developments on the Nigeria transfer pricing landscape and on taxpayers in particular.

You can read the full article at: https://www.bna.com/tax/

Victor Adegite

Nwakaego Ogueri-Onyeukwu



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Valuing Tangible Property Under Nigeria's Transfer Pricing Regime

by Nwakaego Ogueri-Onyeukwu

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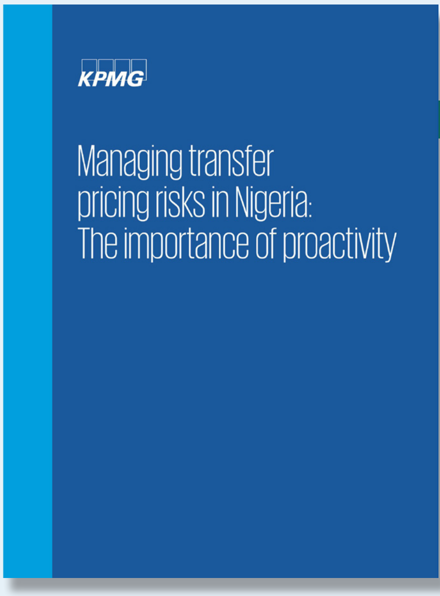
Valuing Tangible Property Under Nigeria's Transfer Pricing Regime

By Nwakaego Ogueri-Onyeukwu

When carrying out transfer pricing analyses and documenting related-party transactions, there is often a need to estimate the transfer price for tangible or intangible property. The transfer price is critical for establishing an accurate tax basis for the transferred property.

You can read the full article https://www.taxnotes.com/tax-notes-international

Nwakaego Ogueri-Onyeukwu



KPMG

Managing transfer pricing risks in Nigeria: The importance of proactivity

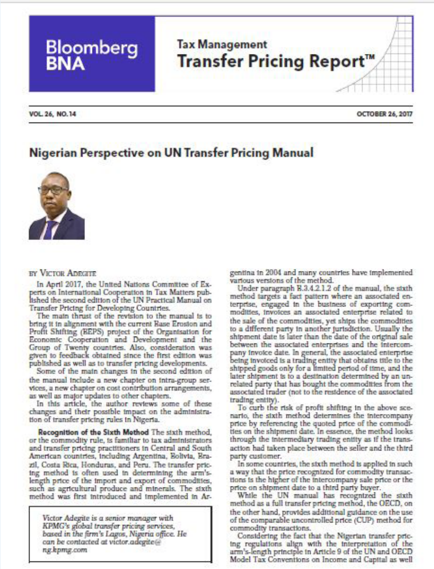
Managing Transfer Pricing Risks in Nigeria: The Importance of Proactivity

By Victor Adegite

In recent years, central governments and tax authorities around the world have paid more attention to transfer pricing. Different countries are introducing legislation, rules or regulations with detailed requirements for taxpayers (mostly companies) to document and support the application of the arm´s-length principle to their intercompany transactions.

You can read the full article at http://www.businessdayonline.com/managing-transfer-pricing-risks-nigeria-importance-proactivity/

Victor Adegite



Bloomberg BNA

Tax Management Transfer Pricing Report™

VOL. 26, NO. 14 OCTOBER 26, 2017

Nigerian Perspective on UN Transfer Pricing Manual

BY VICTOR ADEGITE

In April 2017, the United Nations Committee of Experts on International Cooperation in Tax Matters published the second edition of the UN Practical Manual on Transfer Pricing for Developing Countries.

The main thrust of the revision to the manual is to bring it in alignment with the current Base Erosion and Profit Shifting (BEPS) project of the Organisation for Economic Cooperation and Development and the Group of Twenty countries. Also, consideration was given to feedback obtained since the first edition was published as well as to transfer pricing developments.

Some of the main changes in the second edition of the manual include a new chapter on intra-group services, a new chapter on cost contribution arrangements, as well as major updates to other chapters.

In this article, the author reviews some of these changes and their possible impact on the administration of transfer pricing rules in Nigeria.

Recognition of the Sixth Method The sixth method, or the commodity rule, is familiar to tax administrators and transfer pricing practitioners in Central and South American countries, including Argentina, Bolivia, Brazil, Costa Rica, Honduras, and Peru. The transfer pricing method is often used in determining the arm's-length price of the import and export of commodities, such as agricultural produce and minerals. The sixth method was first introduced and implemented in Argentina in 2004 and many countries have implemented various versions of the method.

Under paragraph B.3.4.2.1.2 of the manual, the sixth method targets a fact pattern where an associated enterprise, engaged in the business of exporting commodities, invoices an associated enterprise related to the sale of the commodities, yet ships the commodities to a different party in another jurisdiction. Usually the shipment date is later than the date of the original sale between the associated enterprises and the intercompany invoice date. In general, the associated enterprise being invoiced is a trading entity that obtains title to the shipped goods only for a limited period of time, and the later shipment is to a destination determined by an unrelated party that has bought the commodities from the associated trader (not to the residence of the associated trading entity).

To curb the risk of profit shifting in the above scenario, the sixth method determines the intercompany price by referencing the quoted price of the commodities on the shipment date. In essence, the method looks through the intermediary trading entity as if the transaction had taken place between the seller and the third party customer.

In some countries, the sixth method is applied in such a way that the price recognized for commodity transactions is the higher of the intercompany sale price or the price on shipment date to a third party buyer.

While the UN manual has recognized the sixth method as a full transfer pricing method, the OECD, on the other hand, provides additional guidance on the use of the comparable uncontrolled price (CUP) method for commodity transactions.

Considering the fact that the Nigerian transfer pricing regulations align with the interpretation of the arm's-length principle in Article 9 of the UN and OECD Model Tax Conventions on Income and Capital as well

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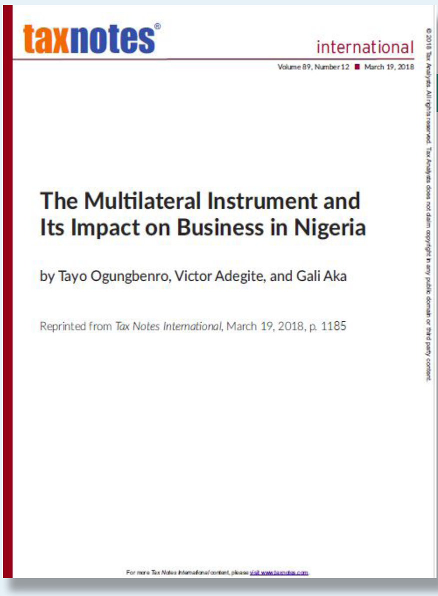
Victor Adegite



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The Multilateral Instrument and Its Impact on Business in Nigeria

by Tayo Ogungbenro, Victor Adegite, and Gali Aka

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The Multilateral Instrument and Its Impact on Business in Nigeria

By Tayo Ogungbenro, Victor Adegite and Aka Gali

The Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (the multilateral instrument, or MLI) is an effort to quickly and efficiently implement some of the measures that grew out of the OECD'S BEPS project. Specifically, it addresses the treaty-related measures covered by BEPS actions 2 (hybrid mismatch arrangements), 6 (treaty abuse), 7 (artificial avoidance of permanent establishment status), and 14 (dispute resolution).

You can read the full article https://www.taxnotes.com/tax-notes-international

Tayo Ogungbenro

Victor Adegite

Aka Gali

About the Survey

This report presents our findings from our 2018 TP Awareness Survey. The survey was administered on 56 persons, who are mainly Tax Managers/ Directors, Managing Directors/Chief Executive Officers, Chief Finance Officers and Heads of Finance 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 as well as BEPS and Country by Country reporting.

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

Consumer & Industrial Market	21%
Telecommunications/ ICT/ Ecommerce	16%
Engineering/ Construction	11%
Agriculture & Agro-allied	5%
Energy & Natural Resources	27%
Financial Services	7%
Others	13%

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