KPMG Tax Breakfast Seminar

Transfer Pricing:

Impact of BEPS & Other Reforms

Gbonjubola, M. O.
Federal Inland Revenue Service

Agenda

- Introduction
- BEPS General Background
- TP-Related BEPS Measures
- Other Evolving Int’l Tax Issues
- BEPS Related Reforms in Nigeria
- Summary of CBCR Rules
- Features of New TP Regulations
- Closing Remarks
- Feedback

FIRS FEDERAL INLAND REVENUE SERVICE

Base Erosion and Profit Shifting (BEPS)

BEPS:

A collection of strategies for exploiting gaps in tax rules to make profits "disappear" from the place of economic activities to locations where little or no real activity took place.

Opportunity for BEPS:

- ✓ Technological advancements
- ✓ Mismatches in tax rules
- ✓ Outdated tax rules
- ✓ Weaknesses in international tax rules

Cure for BEPS:

- ✓ Global tax standards for digital economy
- ✓ Eliminate mismatches in global tax rules
- ✓ Rules on base-eroding payments
- ✓ Eliminate harmful tax practices
- ✓ Increased transparency
- ✓ Effective dispute resolution

BEPS General Background

Main Objective

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

The BEPS Project

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

The Inclusive Framework

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

BEPS Timelines

- Development of standards (2013 – 2015)
- Implementation (2015 – Date)
- Monitoring implementation, and measuring impacts (2015 – Date)

OECD/G20 BEPS Actions

COHERENCE	SUBSTANCE	TRANSPARENCY

Action 1 on Digital Economy span all 3 Core Principles

COHERENCE	SUBSTANCE	TRANSPARENCY
Hybrid Mismatches (2)	Preventing tax treaty abuse (6)	Measuring and monitoring BEPS (11)
CFC Rules (3)	Avoidance of PE status (7)	Disclosure rules (12)
Interest deduction (4)	Aligning TP with value creation (8-10)	TP Documentation (13)
Harmful tax practices (5)		Dispute Resolution (14)

Action 15 on the Multilateral Instrument (MLI) span all 3 Core Principles

Results of BEPS Project

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

FIRS

TP-Related BEPS Issues

Action 4

- New interest deductibility rules

Action 8 - 10

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

Action 13

- Country-by-Country Reporting

Notable Changes to OECD TPG

SN	Issue Addressed	Guidance
1	Intangibles	• Legal ownership is not enough condition for entitlement to remuneration • Associated entities performing value-adding activities are entitled to adequate remuneration; • Associated enterprises providing funding without assuming relevant risks to receive only “risk-free” return
2	Commodity Transactions	• The applicability of CUP & use of quoted prices as CUP • Transaction date for pricing to aligned to shipment date
3	Applying Arm’s Length Principles	• Transactions to be delineated based on actual behaviour of parties • Contractual allocation of risks is only accepted if supported by facts

Notable Revision to OECD TPG

SN	Issue Addressed	Guidance
4	Low value-adding intra-group services	• Definition of low value-adding activities • Applies the use of consistent allocation key for all recipients of the service • Disclosure of pooled-cost
5	Cost Contribution Arrangements	• Analytical framework for delineating actual transaction in CCA is the same as in other contractual arrangements • Analysis of CCA is based on actual behaviour and not on just contract terms • Participation is condition on enjoyment of shared-benefits
6	TP Documentation	• Three-tiered approach to TP documentation

Other Developments in Global Tax Space

EOI

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

2017 US Tax Reform

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

EU Non-Compliant List

- Black list (From 17 jurisdictions to 7)
- Grey list (47 Jurisdictions)

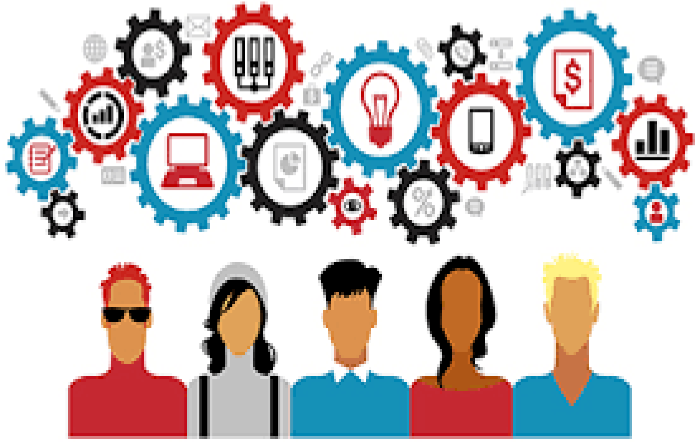
Taxation in Africa

- Tax reforms
- Increased support for African Tax Administration
- Significant move towards harmonisation
- More visibility for ATAF, WATA, etc.

Ongoing Domestic Tax Reforms

Transfer Pricing

- New TP Regulations approved
- Practice notes in progress



CBCR

- MCAA signed

CBCR Regulation signed

- CBCR Guidelines in progress

AEOI

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

Tax Law Amendments

- Preparatory back-room activities in progress

Nigeria MTC

- Nigeria MTC being reviewed
- Tax Treaty Policy in draft

CBCR Rules

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

TP Regulations: *Additional Provisions*

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

FEDERAL INLAND REVENUE SERVICE
FIRS

TP Regulations: *Other Enhancements*

- Added Beauty:
  - Simplified language for better clarity
  - Elegance
- Improvements:
  - Use of statistical approach to determine Arm's Length Range
  - Separate rules for TP declaration & disclosures
  - Detailed rules on extension of time to provide information or make disclosures
  - Clarity of Decision Review Panel's roles
  - More terms defined

A word for the wise …

FIRS
FEDERAL INLAND REVENUE SERVICE

… because lies can withstand neither diligent nor rigorous cross-examination.

The Service is diligent in service.

FIRS FEDERAL INLAND REVENUE SERVICE

Many thanks …

… for the great privilege

Feedback Time …