**NAVIGATING TRANSFER PRICING REGULATIONS; ENSURING COMPLIANCE AND MITIGATING RISKS\***

ABSTRACT

Transfer pricing is a complex and significant aspect of international taxation and plays a crucial role in determining the allocation of profits and taxes across different jurisdictions. The concept of transfer pricing arises from the need to ensure that intercompany transactions are conducted on an arm’s length basis, as if the transactions were between unrelated parties. This principle ensures fairness and minimizes the potential for tax avoidance and profit shifting. The implications of transfer pricing extend beyond taxation, it affects trade policies, investment decisions and economic development as it deals with the allocation of profits and resources across jurisdictions. This paper addresses the problem of manipulation of intercompany transactions and pricing by MNEs to shift profits artificially and minimize tax liabilities. This not only undermines the integrity of national tax systems, but also erodes public trust in corporate responsibility. The paper further examines the role of the arm’s length principle, in ensuring that transactions between related entities within MNEs are conducted at prices akin to those between independent parties. It recommends compliance with transfer pricing regulations to avoid legal and financial consequences as non-compliance can lead to audits, penalties and reputational damage. Therefore, it is imperative for MNEs to maintain accurate documentation and conduct thorough analysis to demonstrate that their transfer pricing practices are consistent with the arm’s length principle. The doctrinal method of research is adopted, relying mostly on Policies, Regulations, Statutes and Guidelines.

**Key words:** Arm’s Length Principle, Multinational Corporations/Enterprises (MNCs and MNEs), Regulations and Transfer Pricing.

**1.1 INTRODUCTION**

Transfer pricing has emerged as a critical area of concern in International Taxation and Corporate Law. As Multinational Corporations (MNCs) expand their operations across borders, the pricing of intercompany transactions between related entities becomes an important area for tax authorities seeking to prevent profit shifting and ensure a fair distribution of taxable income. These intercompany transactions involve the transfer of goods, services and intangible assets raising the important issue of transfer pricing. Transfer pricing plays a significant role in determining how profits and taxes are allocated among different jurisdictions. By manipulating transfer prices, companies can potentially shift profits to low tax jurisdictions and minimizing their overall tax burden. Consequently, transfer pricing has become an area of great importance for tax authorities worldwide, seeking to prevent tax evasion and ensure a fair distribution of taxable profits.

To regulate transfer pricing practices and prevent abusive behaviours, countries have established regulations and guidelines that align with international standards set by organizations like the Organization for Economic Co-operation and Development (OECD). These regulations aim to provide a framework for determining transfer prices based on comparable transactions and ensuring transparency in multinational business operations. Transfer pricing is however, a complex and constantly evolving field involving economic, legal and financial considerations. It requires careful analysis, documentation and compliance with local regulations to mitigate tax related risks and maintain trust between taxpayers and tax authorities as effective transfer pricing practices can bring enormous benefits to both governments and Multinational Corporations (MNCs).

Thus, this paper addresses the legal challenge posed by the evolving nature of transfer pricing regulations and the need for MNCs, tax professionals, policy makers and anyone interested in the interplay between international business and taxation to stay informed about changes in international and local regulations to ensure compliance and avoid legal complications and also by exploring the intricacies of transfer pricing, valuable insights can be gotten into the challenges, strategies and implications associated with cross border transactions within multinational enterprises.

**1.2 THE CONCEPTS OF TRANSFER PRICING AND ARM’S LENGTH PRINCIPLE**

**1.2.1 TRANSFER PRICING**

Transfer pricing refers to the prices of goods and services that are exchanged between companies under common control[[1]](#footnote-1). Transfer pricing is the setting of the price for goods and services sold between controlled (or related) legal entities within an enterprise.[[2]](#footnote-2) For example, if a subsidiary company sells goods to a parent company, the cost of those goods paid by the parent to the subsidiary is the transfer price. In other words, the transactions between two related parties must be based on the arm’s length principle.

Simply put, transfer pricing is prices charged between companies that operate under the same ownership umbrella. The primary objective is to determine a fair and reasonable price for these transactions, aligning them with the arm’s length principle. This principle requires that intercompany transactions be priced as if the entities were independent and dealing at arm’s length with each other, reflecting market conditions[[3]](#footnote-3).

***Example***

Two subsidiaries of a multinational company, Company A and Company B operate in different counties. Company A is located in Country X and is responsible for manufacturing a high- tech component used in smartphones. Company B is located in Country Y and is responsible for assembling the final smartphones using the components provided by Company A. Now Company A sells the components to Company B for use in smartphone assembly. The challenge here is to determine a fair and arm’s length price at which Company A should sell the components to Company B. According to the arm’s length principle, the transfer price i.e the price at which Company A sells the components to Company B should be similar to what two independent companies would agree upon in a comparable transaction. In other words, it should reflect the market price for such components. Thus, a transfer price should match either what the seller would charge an independent, arm’s length customer, or what the buyer would pay an independent, arm’s length supplier.

Transfer pricing does not necessarily involve tax avoidance, as the need to set such prices is a normal aspect of how MNEs must operate. However, where the pricing does not accord with internationally applicable norms or with the arm’s length principle under domestic law, the tax administration may consider this to be “mispricing”, “incorrect pricing” or non-arm’s length pricing, and an issue of tax avoidance and evasion may potentially arise[[4]](#footnote-4).

Tax authorities usually frown upon transfer pricing aimed at tax avoidance and insist that each internal part of the firm deals with the other on “arm’s length” (market price) basis.[[5]](#footnote-5) Estimates vary as to how much tax revenue is lost by governments due to transfer mispricing.[[6]](#footnote-6)

**1.2.2 THE ARMS’S LENGTH PRINCIPLE**

The arm’s length principle is a fundamental concept in international taxation and transfer pricing that ensures that transactions between related entities within MNEs are conducted on terms that would be comparable to those negotiated between independent, unrelated parties. It has been defined as ‘a [transaction](http://www.investopedia.com/terms/t/transaction.asp) in which the buyers and sellers of a product act independently and have no relationship to each other. The concept of an [arm's length transaction](http://www.investopedia.com/video/play/arms-length-transaction/) is to ensure that both parties in the deal are acting in their own self-interest and are not subject to any pressure or [duress](http://www.investopedia.com/terms/d/duress.asp) from the other party’[[7]](#footnote-7)

It is the international transfer pricing standard that OECD member countries have agreed should be used for tax purposes by MNEs and tax administrators. It is designed to prevent profit shifting and ensure that taxable profits are appropriately allocated among different jurisdictions, thereby promoting tax fairness and preventing tax avoidance.

Thus, the arm’s length principle is currently the accepted guiding principle in choosing an acceptable transfer price under paragraph 1 of Article 9 of the OECD Model Tax Convention. It provides guidance on how the arm’s length principle should be applied in practice. It states that when conditions are made or imposed between the two entities of an MNE that differ from those that would be made between independent entities, the profits that would have accrued to one of the entities are reallocated to account for these non-arm’s length conditions[[8]](#footnote-8).

There are several reasons why OECD member countries and other jurisdictions have adopted the arm’s length principle. A major reason is that the principle provides broad parity of tax treatment for members of MNEs and independent enterprises. Because the principle puts associated and independent enterprises on a more equal footing for tax purposes, it avoids the creation of tax advantages or disadvantages that would otherwise distort the relative competitive positions of either type of entity. In so removing these tax considerations from economic decisions, the arm’s length principle promotes the growth of international trade and investment[[9]](#footnote-9).

**1.3 TRANSFER PRICING METHODS**

Transfer pricing is complex, ranging from international regulations to calculation methods which may involve many technicalities to manage The solution that tax authorities in OECD countries have adopted to reduce the probability of transfer price manipulation is to develop specific transfer pricing regulations. These regulations are based on the concept of the arm’s length standard, which requires two related parties to set the same transfer price for an intra- firm transaction as two unrelated parties would have set if they had been engaged in the same or similar transaction under the same or similar circumstances[[10]](#footnote-10).

In the arm’s length principle, the market place comprising independent entities is the benchmark for verifying the transfer prices for intra- group transactions and their acceptability for taxation purposes[[11]](#footnote-11).The OECD Guidelines[[12]](#footnote-12) defined a number of methods that can be used to determine arm’s length prices for intra- group transactions. These methods are categorized as:

1. Traditional Transaction Methods
2. Transactional Profit Methods
3. ***Traditional Transaction Methods****:* compares third- party prices, or other less direct measures such as gross margins on third party transactions, with the same measures on the transactions under review.
4. ***Transactional Profit Methods****:* it examines the overall net operating profits that arise from the intra company transactions under review. These methods are generally less precise than the traditional transaction methods but more commonly applied as a result of practical difficulties in finding suitable information for the application of the traditional transaction methods.

The OECD Guidelines prescribe that the taxpayer should select the most appropriate method. If the two methods are equally reliable, the traditional transaction method is preferred.

There are five methods in total that may be used to examine the arm’s length nature of the intra- company transaction. The methods as specified by the OECD Guidelines are[[13]](#footnote-13):

1. Comparable Uncontrolled Price Method (CUP)
2. Cost Plus Method
3. Resale Price Method
4. Profit Split Method
5. Transactional Net Margin Method
6. ***Comparable Uncontrolled Price (CUP) Method:*** it compares the price of a controlled transaction with the price of a comparable transaction between unrelated parties. The key requirement is that sufficient comparable transactions are available and can be reliably identified. This method is considered the most direct and reliable as it focuses on actual market transactions.Thus, the CUP method is appropriate where there are no material differences between the transactions being compared or where such differences exist, reasonably accurate adjustments can be made to eliminate the effects of such material differences.
7. ***Cost Plus Method (CPM):*** this method involves adding a reasonable mark-up (usually a percentage) to the costs incurred by the supplying party to determine the transfer price. The costs may include direct costs, indirect costs and an appropriate allocation of overhead expenses. The mark up should be consistent with industry standards and reflect the functions performed, risks assumed and assets employed.
8. ***Resale Price Method (RPM):*** this method is used when a related party purchases goods from an associated enterprise and resells them to unrelated customers. It determines the appropriate transfer price by applying a reasonable gross margin to the resale price of the goods. This method takes into account the functions performed, risks assumed and assets employed by the reselling party.
9. ***Profit Split Method (PSM):***  the PSM is employed when the contributions of both parties involved in a controlled transaction cannot be reliably evaluated using other methods. This method allocates profits between related parties on an analysis of their relative contributions to the overall value created by the transaction.it requires a thorough understanding of the functions performed, risks assumed and assets employed by each party.
10. ***Transactional Net Margin Method (TNMM):*** this method compares the net profit margin of a controlled transaction to a comparable uncontrolled transaction or a set of comparable transactions. It assesses the profitability of the tested party by examining the ratio of its operating profit to an appropriate base such as sales, assets, or costs. This method focuses on the relative profitability of the tested party compared to unrelated parties engaged in similar transactions.

**1.4 REGULATORY FRAMEWORK AND COMPLIANCE**

At the International level, the Organization for Economic Co-operation and Development (OECD) has developed Guidelines on Transfer Pricing to assist MNEs and Tax Administrators in the evaluation of Transfer Pricing transactions and provide an element of consistency among countries in the application of such rules.

The first Guidelines were released in 1995 and have undergone various revisions over the years. The most recent edition is the 2022 Guidelines which provide guidance on the application of the ‘arm’s length principle’ which represents the international consensus on the valuation, for income tax purposes, cross-border transactions between associated enterprises[[14]](#footnote-14).

There is also the OECD Model Convention Model which was first published in 1963, then later in 1977 following up some work already done by the League of Nations; and then after World War II by the United Nations.

The UN Model is in many respects similar to the OECD Model but the differences (such as preserving greater taxation rights to countries hosting investments) are very significant, especially for developing countries.

There has been a widespread view, historically, that the OECD Model was most appropriate for negotiations between developed countries and less suitable for capital importing on developing countries. In general, it can be said that the UN Model preserves more taxation rights to the source state (ie. Host state of investment) or capital importing country than the OECD model and the UN Model has been embraced by many developing states as the basis of their treaty policy. Some developed countries also adopt some UN Model provisions, and at times it has influenced changes to give aspects of the OECD Model a greater source country orientation[[15]](#footnote-15).

As the economy expands into every corner of the world, many national authorities are seeking more effective ways to protect their tax bases. Thus, both developed and developing countries have established transfer pricing regulations that align with international standards often based on the guidelines set by the Organization for Economic Co-operation and Development (OECD). These regulations aim to prevent base erosion and profit shifting by ensuring that transfer prices are determined through methods based on comparability and economic substance[[16]](#footnote-16).

Transfer pricing regimes are creations of domestic law, and each country are required to formulate detailed domestic legislation for implementing transfer pricing rules. The United Nations (UN) and OECD Model Conventions, the OECD Guidelines[[17]](#footnote-17) and Domestic Legislation of various countries have provided examples for the creation of transfer pricing legislation by nation states worldwide, as a response to increasing globalization of business and the concern that this may be abused to the detriment of countries without such legislation. Many other countries depend on anti-avoidance rules to deal with the most abusive forms of transfer pricing.

Nigeria has a Transfer Pricing regulation, which is known as the Income Tax (Transfer Pricing Regulations), 2018 that was issued by the Federal Inland Revenue Service (FIRS) with effect from 12th March 2018[[18]](#footnote-18). The Regulation was made under the Federal Inland Revenue Service (Establishment) Act, 2007[[19]](#footnote-19). The objectives of the Regulations are:

1. Ensure that Nigeria is able to tax on an appropriate taxable basis corresponding to the economic activities deployed by taxable persons in Nigeria, including in their transactions and dealings with associated enterprises.
2. Provide the Nigerian authorities the tools to fight tax evasion through over or under pricing of controlled transactions between associated enterprises.
3. Reduce the risk of economic double taxation
4. Provide a level playing field between multinational enterprises and independent enterprises doing business within Nigeria
5. Provide taxable persons with certainty of transfer pricing treatment in Nigeria.

In addition, the Finance Act 2019[[20]](#footnote-20) contains various tax changes, which affected transfer pricing with effect from 13th January 2020. Section 24 (a) introduced a restriction on deductibility of interest for a Nigerian company or a fixed base of a foreign company in Nigeria that has incurred any interest or deduction of similar nature where loans or debts are obtained from a foreign connected person, such interest or deduction allowed under section 24(a) of Company Income Tax Act shall be restricted to only 30% of the company’s earnings before interest, tax, depreciation and amortization.

There is also the introduction of E-TP PLAT 2.0 in March 2020[[21]](#footnote-21) by the Federal Inland Revenue Service (FIRS), this electronic filing solution allows companies with Transfer Pricing and Country by Country Reporting obligations to file their annual returns electronically. The platform eased the compliance burden on Taxpayers, allows FIRS better monitor compliance, and analyses the data provided by taxpayers in their returns.

To further, intensify efforts towards Transfer Pricing compliance, the FIRS conducts Transfer Pricing audit exercises by requesting the submission of Transfer Pricing documentation and other supporting documents. The audit focuses primarily on reviewing Transfer Pricing Returns and supporting documents to independently confirm the arm’s length nature of the related party transactions as documented in the reports[[22]](#footnote-22). In the Transfer Pricing maiden case in Nigeria, *Prime Plastichem Nigeria Ltd (PPNL) v Federal Inland Revenue Service (FIRS)[[23]](#footnote-23)*, in 2013 PPNL applied the Comparable Uncontrolled Price (CUP) method in evaluating the arm’s length nature of its purchase of petrochemical products from its offshore-related party, Vinmar Overseas Limited (VOL). In 2014, it applied the Transactional Net Margin Method (TNMM) for the same purpose. The Tax Appeal Tribunal ruled in favour of FIRS and required PPNL to pay the taxes due of about 1.7 billion naira. Dissatisfied, with the additional assessment of ₦1,738,481,875.33 issued by the FIRS arising from the TP audit of its Related Party Transaction for the 2013 and 2014 Financial Years and other grounds, PPNL approached TAT.

The Tribunal opined that the choice of the TNMM method by the FIRS rather than the CUP method used by the company in benchmarking the company’s transactions is in line with the TP Regulations and the OECD TP Guidelines based on the following reasons;

although the company used CUP method, it could not provide a suitable justification for its use, the company admitted that it changed from CUP method to TNMM in the subsequent year for a lack of reliable data, based on paragraph 5 (2) of the TP Regulations, the availability of reliable information is a necessary condition in determining the most appropriate TP method, consistency in the application of a benchmarking method is crucial according to the OECD TP Guidelines of 2010 of which the company defaulted thus the Tribunal ruled in favor of FIRS on all grounds. The Tribunal’s decision in this case reiterate the provision of Regulation 6 (10) of the TP Regulation, which places the burden of proof of the arm’s length nature of a controlled transaction on the taxable person[[24]](#footnote-24).

Compliance with transfer pricing regulations is crucial for MNCs to avoid legal and financial consequences. Non-compliance can lead to audits, penalties, double taxation and reputational damage. Therefore, it is imperative for MNCs to develop robust transfer pricing policies, maintain accurate documentation and conduct thorough analysis to demonstrate that their transfer pricing practices are consistent with the arm’s length principle.

**1.5 RISK MITIGATING STRATEGIES OF TRANSFER PRICING**

To mitigate transfer pricing risks, MNCs should adopt proactive strategies, which includes;

1. Conducting a Transfer Pricing Risk Assessment: MNCs should asses the transfer pricing risks associated with their operations, identify potential issues and develop risk management strategies accordingly. This involves analyzing the functions, assets and risks involved in intercompany transactions.
2. Documentation and Compliance: MNCs must maintain comprehensive and contemporaneous transfer pricing documentation, including functional analysis, economic analysis and benchmarking studies. This documentation demonstrates compliance with transfer pricing regulations and serves as evidence to support pricing decisions.
3. Advance Pricing Agreements (APAs): APAs provide certainty to taxpayers by allowing them to proactively agree with tax authorities on an appropriate transfer pricing methodology and pricing for a specific period. APAs reduce uncertainty, minimize disputes and provide a mechanism to manage transfer pricing risks efficiently.
4. Controversy Resolution and Dispute Avoidance: MNCs should be prepared for transfer pricing audits and potential disputes with tax authorities. Having a clear understanding of dispute resolution mechanisms, such as mutual agreement procedures and competent authority negotiations can help resolve conflicts efficiently and minimize double taxation.
5. Stay updated with Regulatory Changes: MNCs should stay informed about evolving transfer pricing regulations, including OECD Guidelines and Domestic Laws and engage with transfer pricing professionals and seeking expert advice on compliance with changing regulations and best practices.
6. Maintain a Cooperative Approach: an open and transparent communication should be maintained with tax authorities and proactively engaging in discussions while providing timely and accurate information during transfer pricing audits or disputes. Also cooperating with tax authorities can help build trust and facilitate smoother resolution of any transfer pricing related issues.
7. Develop Robust Transfer Pricing Policies: MNCs should establish clear and comprehensive transfer pricing policies that align with applicable regulations and guidelines. These policies should address the determination of transfer prices, selection of appropriate transfer pricing methods and documentation requirements.

**1.6 CONCLUSION**

In conclusion, this paper has delved into the intricate realm of transfer pricing regulations and the pivotal role of the arm’s length principle in ensuring equitable taxation within the context of MNEs. Key findings and recommendations have emerged shedding light on the dynamic landscape of transfer pricing and its implications.

*Findings:* The arm’s length principle stands as a corner stone in international taxation, seeking to replicate the outcomes of transactions between unrelated parties. It has emerged as a vital safeguard against profit shifting and unjust tax practices. The need for comprehensive documentations is crucial to substantiate the arm’s length nature of transactions. It not only demonstrates compliance but also serves as a proactive defense during tax audits, reducing the risk of penalties and adjustments. Given the intricacies involved, transfer pricing disputes are inevitable, establishing Advance Pricing Agreement (APAs) with tax authorities can provide a predetermined framework, mitigating the potential for conflicts and fostering an environment of certainty.

*Recommendation:* The complexity of transfer pricing rules, coupled with intensified scrutiny from tax authorities, necessitates a proactive and strategic approach to managing transfer pricing risks. MNE’s must first understand and analyze the transfer pricing regulations in the jurisdictions where they operate. This involves staying up-to-date with local regulations, documentation requirements and the arm’s length principle. By proactively monitoring changes in transfer pricing regulations, businesses can identify potential compliance gaps and take corrective actions in a timely manner. Collaboration and communication between tax teams, finance departments and operational units are essential for successfully navigating transfer pricing regulations, by fostering an environment of transparency and knowledge sharing, businesses can ensure a coordinated and consistent approach to transfer pricing compliance.

Regular training and awareness programs can also equip employees with the necessary understanding of transfer pricing regulations and their implications. Ultimately, a strategic and compliant approach to transfer pricing can contribute to the long-term success and sustainability of MNE’s.

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