The OECD has released the 2017 edition of its Transfer Pricing Guidelines

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Introduction

On 10 July 2017, the Organisation for Economic Co-operation and Development (OECD) released the latest edition of its *Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations* ("the Manual" or "OECD TPG").

The Manual was originally published by the OECD Council in 1995 and was subsequently updated in 1996 and 1997. Prior to the release of the 2017 edition, the last revision to the Manual was made in 2010.

The 2017 edition of the Manual reflects a number of agreed revisions based on the outcome of the OECD/G20's 2015 Base Erosion and Profit Shifting (BEPS) project. It is believed that these revisions will provide taxpayers with greater certainty and align transfer pricing (TP) outcomes with value creation.

Summary of changes

Some of the changes reflected in the 2017 edition of the Manual aimed at providing clearer guidance on the application of the arm's length principle include:

- revisions to guidance on the application of the arm's length principle (Section D of Chapter I);
- additions to Chapter II of the Manual to accommodate commodity transactions;
- revised guidance on safe harbour provisions as approved in 2013 (Chapter IV);
- revised guidance on documentation (Chapter V) to include three-tiered approach to documentation (i.e. master file, local file and country-by-country reporting);
- wholesale revision to the guidance on intangibles (Chapter VI);
- inclusion of guidance on low value-adding intra-group services (LVAS) to Chapter VII;
- revisions to Chapter VIII on cost contribution arrangements (CCAs); and
- general consistency changes to the OECD TPG.

The takeaway

Considering the fact that Sub-Regulation 11 (b) of the Nigerian TP Regulations (NTPR) stipulates that the regulations would be applied in a manner consistent with the OECD TPG, as may be updated from time-to-time, the abovementioned revisions are of immediate importance to both taxpayers and tax practitioners in Nigeria.

Revisions to the guidance on documentation would place more importance on the preparation of robust TP documentation to substantiate the arm's length nature of related party transactions. The guidance will also provide clarity on the content of a "standard" TP documentation.

Equally, recommendations emphasising substance over legal ownership of intangibles could result in re-evaluation of the remuneration allocated to counterparties based on their economic contributions.

Finally, the release of the revised guidelines makes it critical for taxpayers in Nigeria to reassess their transfer pricing practices, to ensure full compliance with best practice and the Nigerian laws.