www.pwc.com/ng

PwC Tax Bites

The Transfer Pricing filing season is here again – 10 things that can help you avoid the stiff penalties

May 2022

If you are a taxpayer with a 31 December year-end, the deadline for filing your TP returns and having your TP documentation in place is 30 June 2022. If you don't get things right, you could face relatively stiff penalties. You can however avoid these if you are: aware of the requirements of the law; and mindful of some of the practical challenges that come up during the filing process.

Here are 10 things to keep in mind as we get into the filing season:

1. **You need to register on the TP filing platform:** TP returns are now to be filed on an online platform. As a first step, you are required to register, to be granted access to the filing platform. You can register by completing the E-TP access application form, which can be obtained from the FIRS website. Once the form is completed, the form should be submitted (electronically or physically) to the FIRS. You will usually get your log in details in about 2 to 5 days after you submit the form.

2. **TP disclosure forms should be filed annually:** You are required to (on an annual basis) disclose all related party transactions (local and cross-border), transaction values and the TP methods used in testing each transaction in the TP disclosure form.

   The TP disclosure form is filed within six months after the end of each accounting year or 18 months after the date of incorporation (whichever is earlier).

3. **An updated TP declaration should be filed on certain occasions:** The TP declaration form is used to declare a taxpayer's relationship with all its connected parties. It also contains information about the directors of the taxpayer.

   A TP declaration form is initially filed within six months after the end of the accounting year or 18 months after the date of incorporation (whichever is earlier). Subsequently, an updated TP declaration is filed within six months after the end of each accounting year, where any of the following events happen.

   a. The appointment or retirement of a director of the Company;
   b. A merger of the Company's parent with another company outside the group;
   c. Acquisition of up to 20% of the Company's parent by persons not connected to the group
   d. A merger of the Company with another company;
   e. Acquisition of up to 20% of the Company by persons not connected to the group;
   f. Merger or acquisition of the Company by another company outside the group;
   g. Sale or acquisition of a subsidiary by the Company; or
   h. Any other change in the structure, arrangement or circumstances of the Company not mentioned above, which influences whether it will be considered to be connected or not connected to another person.

4. **You will need include other documents:** You are required to attach other documents while filing your TP returns on the TP platform before the TP returns can be accepted by the FIRS. These documents include: your audited financial statements, tax computations, evidence of filing of income tax returns on TaxproMax and proof of payment of tax liabilities for the accounting period. Without these documents, it is likely that the TP returns will be rejected by the FIRS.

   If rejected, an email stating the reason(s) for rejection will be sent to your registered email address. These emails sometimes go into the spam or junk folder so you should remember to check these if the TP returns have been rejected on the TP platform and you are yet to receive an email stating the reasons why.

5. **Your information needs to be accurate:** It is imperative that the information documented on the portal is accurate as the TP regulations include administrative penalties for incorrect information.

6. **The penalties are stiff:** The TP regulations contain penalties for several offences related to the filing of the TP returns. These are:
   a. Failure to file a TP disclosure which attracts a penalty N10 million in the first instance and N10,000 for every additional day of default;
   b. Failure to file a TP declaration which attracts a penalty N10 million in the first instance and N10,000 for every additional day of default;
   c. Failure to file an updated TP declaration which attracts a penalty of N25,000 for every day the failure continues; and
   d. Incorrect disclosure of transactions which will cost you the higher of N10 million or 1% of the value of the transaction incorrectly disclosed.

7. **Anticipate challenges with the E-TP LAT:** There have been instances where taxpayers experienced delays while filing their TP returns on the portal. This is common when the filing deadline is very close. To avoid this, you should plan to file your TP returns at least a week before the deadline. This will help you avoid delays that come from the traffic on the portal because everyone is trying to file their returns on the day of the deadline.

8. **Don't forget your TP Documentation:** Companies with related party transactions are also required to prepare and maintain a TP documentation report to prove that the pricing of their controlled transactions is consistent with the arm's length principles. This report must be in place by the due date of filing the TP returns. A TP documentation report is required where the value of a taxpayer's related party transactions is at least N300 million. Where the value of the taxpayer's related party transactions is less than this threshold, the taxpayer may choose not to prepare a report until a specific request is made by the FIRS.

The TP documentation report consists of a Master file and a Local file. A Master file provides an overview of the global business operations of the Multinational Enterprise (MNE) group, to which the ultimate parent entity of the Nigerian taxpayer belongs. A Local file contains relevant details of the Nigerian taxpayers' related party transactions.

The TP documentation report is only submitted to the FIRS on request. Failure to submit the TP documentation report within the stipulated time (i.e. 21 days where the related party transactions are equal to or greater than N300 million or 90 days where the related party transactions are less than N300 million) attracts the higher of N10 million or 1% of the total value of related party transactions plus N10,000 for every additional day of default.

9. **You should maintain supporting documentation:** It is very important for you to maintain all the documents supporting your related party transactions. For ease, it is advisable that the documents are maintained as the transactions occur. Some of the documents include invoices from your related parties (and sometimes third parties), agreements/contracts, evidence of services received, correspondences, schedules etc. Such documents will typically be required and reviewed while preparing the TP documentation as well as during a TP audit.

10. **Non-compliance is expensive:** It is a lot more expensive to be non-compliant than to be compliant. In addition, non-compliant behaviour may increase the likelihood that you will be audited by the FIRS. These audits often come with significant additional tax liabilities.

Conclusion

The TP Regulations have one of the stiffest penalty regimes in Nigeria. However, many of these can easily be avoided with the right knowledge and actions. You should plan to file your TP returns at least a week before the deadline to avoid some of the issues that come with the last-minute rush. You should also ask for help from the experts if there is anything that you are unsure of.

For a deeper discussion, please contact:

Paul Imhoagene
Manager
paul.imhoagene@pwc.com

Tomiiwo Toyin-Abe
Senior Associate
Oluwatomiiwo.toyin-abe@pwc.com