

FIRS' Public Notice and Guidelines on the New Transfer Pricing Regulations



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Introduction

Following the release of the Income Tax (Transfer Pricing) Regulations, 2018 (“the Regulations”), the Federal Inland Revenue Service (FIRS) has issued a Public Notice on the Regulations, and Guidelines on Transfer Pricing Documentation (“the Guidelines”) to complement the Regulations.

You can find the documents and an electronic version of the official gazette to the Regulations [here](#).

Public Notice on the Regulations

The public notice restates that the Regulations are effective from 12 March 2018 and that non-compliance will attract the penalties contained in the Regulations.

Deadline for discharging outstanding obligations

Taxpayers are required to discharge all their outstanding obligations (i.e. file TP declarations, make disclosures of controlled transactions, submit TP Documentation etc.) not later than 31 December 2018. Failure to do so will attract the full penalties contained in the 2018 TP Regulations.

Guidelines on TP Documentation

The Guidelines are intended to guide taxpayers with respect to the preparation of TP Documentation (i.e. Master file, Local file and Country by Country Report where relevant).

Exemption from TP documentation

In addition to the exemption for taxpayers with Related Party Transaction (RPT) values below ₦300 million, the Guidelines also provide exemptions where:

- taxpayers' RPTs are covered by an agreement under an Advance Pricing Agreement (APA); or
- taxpayers price their RPTs in line with the requirements of statutes or guidelines issued by the FIRS from time-to-time.

Extension of time to comply with FIRS' notices

The Guidelines state that the FIRS will not grant taxpayers more than two requests for extension of time to comply with a notice for documents (e.g. TP documentation) or meetings.

Conditions for extension of time

Making a valid request for extension

FIRS will only consider an application for extension of time to comply with a notice where:

- the request is made in writing;
- the request is addressed to the Chairman of the FIRS, for the attention of the FIRS' Head of the TP Division;
- the request is made to the FIRS before the due date of compliance indicated in the notice; and
- the taxpayer shows good cause for requesting for the extension.

Conditions under which FIRS will grant extension

The conditions necessary for an approval to be granted for extension include:

- death or serious illness of key personnel (such as managing directors, director responsible for TP, company secretary, or anyone responsible for TP) or a close relative of such a person whose input is critical to the compliance notice);
- occurrence of fire or natural disaster that seriously affects the taxpayer's operations;
- event of civil unrest which restricts public movements;
- public holidays occurring during the notice period;
- unavailability of persons or document required in a notice due to their location being outside Nigeria (this is not application for TP documentation); or
- any other genuine incident preventing taxpayers from complying with the notice.

Taxpayers will be required to provide verifiable evidence to support their claims for extension.

Approvals or refusals for extension will be conveyed in writing by the FIRS.

Timing of requests for extension

Taxpayers who wish to make requests for extension of time to provide documents or attend meetings must do so:

- not later than ten working days before the due date specified in the notice where the issue relates to TP documentation or field visit.
- not later than five working days before the due date specified in the notice, where the notice is delivered to the taxpayer within ten or more working days before the due date of compliance.
- not later than two working days before the due date specified in the notice, where the notice is delivered to the

taxpayer less than ten working days before the due date of compliance.

Takeaway

The public notice

The Public Notice indicates FIRS' intention to ensure compliance with the new TP Regulations. It also shows that the FIRS will attempt to apply the administrative penalties under the new TP Regulations to non-compliance relating to past periods.

While the legality of this is debatable, it is safer to comply and avoid a dispute all together. Taxpayers who are unable to do this should seek advice and explore the legal alternatives available to them.

The Guidelines

Although the Guidelines seem generic, taxpayers will find the information on extensions useful.

The fact that the Guidelines set out relatively strict conditions under which the FIRS will grant

extensions to taxpayers for responding to its requests means that taxpayers will now need to take all requests and notices from the FIRS very seriously in order to avoid penalties under the law.

It is noted that some of the matters for which timelines are provided attract no penalty under the law. These include requests for field visits and meetings.

With regards to safe harbours, the Guidelines do not contain any additional relief in substance as they mainly restate the specific provisions in the TP Regulations as well as the implied provisions based on a complete reading of the relevant laws.

The FIRS has stated its intention to release further guidance on the implementation of the new Regulations. Taxpayers are advised to monitor these closely and assess the impact of these guidance on their TP policies and general compliance practices.