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Dear Sir,

NEWSLETTER NO 8: NIGERIA TRANSFER PRICING (TP) RULES BECOME LAW

The Nigerian transfer pricing (TP) rules have been published with a commencement date of August 2, 2012. It is effective for basis periods beginning after the commencement date. A company with an accounting year end of December 31 will be required to have transfer pricing (TP) documentation in place for accounting periods commencing January 1, 2013.

The regulations give effect to the existing anti avoidance provisions of "arms length" and "artificial transactions" contained especially in section 17 of Personal Income Tax (PITA), section 22 of Companies Income Tax (CITA), and section 15 of Petroleum Profits Tax Act (PPTA). It aims amongst other things, to provide certainty in the tax treatment of related party transactions and will apply to both domestic and cross border transactions.

The new TP rules covers persons described as "Connected taxable persons" which is broadly defined to include individuals, permanent establishments created by head offices, subsidiaries, associates, partnerships, joint ventures and trusts to the extent that they participate directly or indirectly in the management, control or capital of another; or both of which have common control, management or shareholders.

The new TP law will require taxpayers to establish through documentation that their transfer pricing meets the arm's-length standard, and would provide for both unilateral and bilateral advance pricing agreements.

The new TP law recommends six methods one of which may be adopted by a Company to ensure compliance with the arm's length principle. There is also a requirement for a company to file an annual Declaration Form regarding Inter-company transactions with tax returns, as well as the documentations to be put in place prior to making tax returns.

Under the new law provision is made for "advance pricing agreement" also known as Safe harbour, whereby a Company may make request to FIRS to approve a set of acceptable inter-group prices for a period of time. Also a taxpayer may be exempted from the TP provisions where prices have been approved by other Government regulatory agencies.

One of the objectives listed in the new TP rules is “to provide the Nigerian authorities the tools to fight tax evasion through over or under-pricing of controlled transactions between associated enterprises.”. It is also to “provide a level playing field between multinational enterprises and independent enterprises doing business within Nigeria”, as well as “provide taxable persons with certainty of transfer pricing treatment in Nigeria”.

While the requirement to apply the arm's-length principle always has existed in the legislation of Nigeria, guidance on how to apply it has been lacking. The new transfer pricing laws provides formal guidance regarding the tax treatment of related parties’ transactions. So as to avoid or significantly minimize transfer pricing manipulation or abusive transfer pricing schemes.

The new Nigeria transfer pricing Law known as THE INCOME TAX (TRANSFER PRICING) REGULATIONS, 2012 has come to stay. We wish you and your company the best as you make every effort to comply with the provisions of the regulations. We at OR&C Tax Consultants are ready to answer your questions as well assist you to comply.

Yours faithfully,
OR&C Tax