



TAT Delivers its First Judgement on Transfer Pricing Regulations in Nigeria

The Tax Appeal Tribunal (TAT) sitting in Lagos on Wednesday, 19 February 2020, delivered judgment in a matter between Prime Plastics Nigeria Limited (PPNL) v. Federal Inland Revenue Service (FIRS). This judgement came as the first to be delivered on Transfer Pricing Regulations in Nigeria.

The case bordered on the compliance or otherwise of the Company with the Income Tax (Transfer Pricing) Regulations No. 1, 2012, particularly as it relates to the determination of the appropriate Transfer Pricing method as well as the Profit Level Indicator (PLI) selected for benchmarking the Company's transactions.

Case Discussion

In 2013, PPNL applied the Comparable Uncontrolled Price (CUP) method in assessing the arm's length nature of its purchase of petrochemical products from its offshore related entity, Vinmar Overseas Limited (VOL). However, in 2014, it applied the Transactional Net Margin Method (TNMM) for the same purpose.

In 2016, the FIRS carried out a review of the company's Transfer Pricing (TP) affairs and issued an assessment of ₦1.74billion (approximately USD5.7m) including penalty and interest. The FIRS disregarded the CUP method applied in 2013 and applied the TNMM for both 2013 and 2014. There was disagreement between the FIRS and the company on the right profit level indicator (PLI) to be adopted in applying the TNMM and the comparatives selected in the TNMM analysis. The parties also disagreed on the applicability of penalties and, interest and whether the Decision Review Panel (DRP) — which made the final decision on the FIRS' position — was appropriately constituted.

TAT's Decision

The TAT accepted the FIRS' position and ruled as follow:

- ✓ PPNL had not satisfied the required burden of proof to allow the TAT rule in its favour.
- ✓ The TNMM was the right method as PPNL did not provide reliable information to allow the FIRS evaluate the appropriateness of the CUP method for 2013. Furthermore, the taxpayer had been inconsistent in applying the TP methods and had also stated that the CUP was applied in error in 2013.
- ✓ The Gross Profit Method (GPM) was the right PLI to be applied in the circumstances since it was the profit indicator that was directly impacted by the intercompany transaction. It agreed with the FIRS' assertion that this was in line with global best practice.
- ✓ FIRS can impose the penalties enshrined in the law for failure to pay the relevant taxes as and when due.
- ✓ The DRP had been properly constituted by the FIRS.

Lesson for Corporate Taxpayers

TP issues are now topmost for the FIRS. It is expected that more disputes will arise, some of which will end in courts. This decision shows that the TAT will strive to appreciate some of the TP concepts that many sophisticated taxpayers take for granted. Taxpayers who must go to the TAT should ensure that their arguments are not only technically sound but also consistent, persuasive and easy for the TAT to understand in order to rule in its favour.

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