

Tax Appeal Tribunal Delivers Milestone Transfer Pricing Judgment

The Tax Appeal Tribunal (TAT) delivered its first ruling on Transfer Pricing (TP) in Lagos on 19 February 2020. The delivered judgement is in the case between Prime Plastics Nigeria Limited (PPNL) v Federal Inland Revenue Service (FIRS or the Service). The TAT upheld the additional assessments made by the FIRS on PPNL which arose from the TP adjustments made by the FIRS on a transaction between PPNL and its related supplier.

PPNL is a private limited liability company which engages in the business of trading in imported plastics and petrochemicals. Following the commencement of the Income Tax (Transfer Pricing Regulations No.1 2012) (TPR) Regulation, the Appellant filed its Transfer Pricing Documentation (TPD) for 2013 and 2014. In 2013, the Appellant adopted the Comparable Uncontrolled Price (CUP) Transfer Pricing Method in determining whether the pricing of its transactions with a related company, Vinmar Overseas Limited were at arm's length. However, in 2014, due to lack of comparable to enable the Appellant to adopt the CUP method, the Appellant adopted the Transactional Net Margin Method (TNMM).

In 2016, the FIRS reviewed PPNL's submissions and issued an assessment of ₦1.74 billion. The FIRS was of the view that the Company had wrongly applied the CUP in determining the arm's length price in 2013 as the comparable data for the said year did not strongly meet the comparability requirements as provided by the TPR. Also, the FIRS stated that although the Company had used the TNMM in the 2014 FY, it had wrongly used its Operating Margin as its profit level indicator (PLI). According to the FIRS, the Company should have used its Gross Profit Margin in determining its ALP in 2013 and 2014 as this was the most appropriate PLI for the assessment of the arm's length condition in both years.

The FIRS made several adjustments to the transactions by applying the TNMM and raised an additional assessment of over N1.7 billion on PPNL which was upheld by the FIRS' Decision Review Panel (DRP).

PPNL, dissatisfied with the decision of the FIRS, filed an appeal at the TAT challenging the imposition of the additional assessments.

The major issues for determination include:

1. Whether the Appellant has proved its case before this Tribunal to be entitled to the claims and reliefs sought against the Respondent.
2. Whether the Respondent's action in benchmarking the Appellant's TP transaction with the TNMM for the 2013 and 2014 was valid and in accordance with the Transfer Pricing Regulations 2012 and the OECD/UN Guidelines.
3. Whether the Respondent's action of using the Gross Profit Margin (GPM) Method as the PLI in the instant Transfer Pricing transaction is valid and in accordance with the TP Regulations, OECD and UN Guidelines.
4. Whether the Appellant's failure to file their returns within the prescribed period required by the extant tax laws validates the penalty and interests imposed by the Respondent vis-à-vis the provisions of para 4(2) of the TP Regulations 2012, Section 55 of the Companies Income Tax Act, Cap C21LFN, 2004 and Section 32 of the Federal Inland Revenue Service (Establishment) Act 2007.
5. Whether the Defendant Decision Review Panel purportedly set up by the Respondent was in accordance with the TPR.

TAT Decision

The TAT delivered judgement in favour of the FIRS on all issues submitted and dismissed the appeal in its entirety. The tribunal relied heavily on the arguments of the FIRS and held that the TNMM was the appropriate benchmarking method for Transfer Pricing in this case. The tribunal further stated that the Company failed to provide reliable information to enable the FIRS evaluate the appropriateness of the CUP method for 2013. The Tribunal also upheld the FIRS' application of the GPM as the appropriate PLI for the said transactions. The TAT also held that the DRP had been duly set up by the FIRS. The TAT held that the FIRS has the power to disregard the TP method adopted by a taxpayer under the TP regulations and to also impose penalties enshrined in the relevant tax laws on the Company for failure to file

their returns and pay the relevant taxes when due.

Conclusion

Based on the decision of the TAT, the FIRS will become more open to conducting transfer pricing audit exercises. It is now the prerogative of all taxpayers to keep proper records and ensure that before it makes any submission, all documentation are in place.

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