

Legal Alert – January 2014 – Invisible Trades and Fees Remittances Regulations

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Legal News

The Income Tax (Transfer Pricing) Regulations No. 1, 2012 ("TPR") took effect with tax returns that have their basis period beginning after August 2012.

The Federal Inland Revenue Service of Nigeria ("FIRS") has accordingly requested all connected persons affected by the TPR to submit their company's Group Transfer Pricing Policy on the pricing of transactions between or among members within the group, or of persons connected with members within a group, in order to avoid a breach of the TPR, and the penalties that attach to such breach.

Lagos State No Smoking in Public Places Bill

The Lagos State House of Assembly has passed a Bill into Law prohibiting smoking in public places in Lagos State. There are fines and terms of imprisonment prescribed for any contravention of this Law.

Legal Alert - Invisible Trades - Fees Remittances Regulations

The repeal of the Exchange Control Act, in furtherance of the liberalisation of trade in Nigeria, is not however a free regime for the remittance of fees arising from invisible trades like royalty payments for the use of Trademarks, Patents, other Intellectual Property Rights, or technical advisory services.

One of the Compliance Regulation, on this subject of the remittance of income earned from invisible trades, is the Central Bank of Nigeria Monetary, Credit, Foreign Trade and Exchange Policy Guidelines for fiscal years 2012/2013 ("foreign trade and exchange guidelines") which provides trench-holds for the maximum range of fees that can be remitted under invisible trade transactions.

Range of Fees for Invisible Trade Transactions

The recommended range of fees that can be remitted for the use of intellectual property rights - like trademarks, patents, know-how, etc must be between 0.50 to 5.00 per cent of the net sales or profit before tax ("PBT") of the licensee company.

For Hotel services, the recommended range of remittable fees for incentive fees must not exceed 8.00 per cent of the Gross Operating Profit ("GOP") of the Hotel, while the basic fee shall not exceed 3.00 per cent of the Hotel's net sales.

Fees paid for Technical Services must not be tied to the net sales of the Nigerian company. In its stead, such fees can only be settled on a per diem, man-hours, man-day or man-month basis.

Annual Technical Support Fees paid to a Information Technology Licensor can only range between 15.00 to 23.00 per cent as Licensee Fees for a period not exceeding three (3) years.

Remittable Consultancy Fees are restricted to projects requiring very high technology content which content is not otherwise available locally. The allowable remittable consultancy fees, for these kinds of consultancy services, shall not exceed a maximum amount of 5.00 per cent of the project's costs.

Technology Transfer Agreements

Where there is a Technology Transfer Agreement ("TTA"), such Agreement must be submitted to the National Office for Technology Acquisition and Promotion ("NOTAP"), for registration, within sixty (60) days of its execution.

The recommended range of remittable fees that is provided for in the NOTAP 2011 "Revised Guidelines for the Registration and Monitoring of Technology Transfer Agreements ("NOTAP Revised Guidelines") are similar to those in the CBN Foreign Trade and Exchange Guidelines. For example, and depending on the nature and extent of the management services, the management service fees are required to range from 1-5% of the PBT. For Hotels managed by an international chain, the range of fees is 1-2% of net sales for management/marketing/advertising fees.

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