

# TAT upholds TP liability of NGN 1.7bn in Prime Plastichem Vs. FIRS

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Recently, the Tax Appeal Tribunal affirmed that the additional liability of ₦1.74 billion on Prime Plastichem Nigeria Limited was legal. The decision in a transfer pricing (TP) dispute on 19 February 2020 between Prime Plastichem Nigeria Limited and Federal Inland Revenue Service.

## Background

Federal Inland Revenue Service (FIRS or the tax authority) performed a TP audit on the records of Prime Plastichem Nigeria Limited (PPNL or the Company). PPNL imports plastics and petrochemicals from a related party, Vinmar Overseas Limited (VOL), in another country. As a result, PPNL had TP obligations in Nigeria. Under the Transfer Pricing Regulations 2012, PPNL must use the right TP methods to ascertain whether the price of imported goods from VOL meets the arm's length principle.

PPNL adopted the Comparable Uncontrolled Price (CUP) method in calculating the arm's length value of imports from VOL in the TP documentation for 2013 financials. In 2014, VOL exported products to Nigeria for only PPNL. The Company had no comparable amount for the CUP method. Alternatively, PPNL used the Transactional Net Margin Method (TNMM) to estimate the price of petrochemical products. The tax authority rejected the CUP method which the Company used to determine the fair value of petrochemical imports in 2013.

FIRS applied TNMM to the controlled transactions in 2013 and 2014 accounting years. Both parties held conflicting opinions on the ideal profit level indicator and the comparables selected in the TNMM approach. PPNL then appealed to the TAT.

## The issues and TAT decision

The Tribunal settled five (5) issues between Prime Plastichem Nigeria Limited and FIRS.

### 1. Whether the Company has proved its case to the TAT before seeking reliefs from FIRS?

PPNL was unable to prove that controlled transactions with VOL were consistent with the arm's length principle in the TP Regulations. Hence, the Tribunal upheld that the Company cannot seek claims and reliefs against FIRS.

### 2. Whether FIRS' decision to apply TNMM for 2013 and 2014 on the related party transactions was legitimate and in line with the TP Regulations and OECD/UN Guidelines?

TAT affirmed PPNL was unable to justify the basis for applying CUP in 2013. The information provided was incomplete to apply the CUP. However, PPNL agreed that the prior selection of CUP was a mistake which led to the use of TNMM in 2014. Also, PPNL was unable to perform a reliable benchmarking analysis over the years. The Tribunal, therefore, ruled in favour of FIRS.

**3. Whether it was lawful for FIRS to use the Gross Profit Margin (GPM) Method as the profit level indicator (PLI)? Whether FIRS approach conforms with the TP Regulations and OECD/UN Guidelines?**

Gross Profit Margin method was the relevant PLI because FIRS proved the GPM was in line with the global standard as it considered the various factors listed by the OECD. The Tribunal agreed with FIRS position.

**4. Whether FIRS is authorized to include charges on the Company's failure to file TP returns on the due date?**

Yes. FIRS can impose interest and penalties on PPNL for late filing and payment of taxes.

**5. Whether the Decision Review Panel (DRP) conforms with the provisions of the TP Regulations, FIRS Establishment Act and Companies Income Tax Act?**

A taxpayer's receipt of an assessment from FIRS triggers the need to set-up the DRP. The provisions of the law suggest that a taxpayer may transfer a TP dispute to the DRP within thirty (30) days of collecting the assessment.

### Concluding remarks

The Nigerian tax authorities often review controlled transactions of businesses to check the benchmarking analysis and pricing method. Companies can exchange goods, services, and other transactions with related entities but at a fair price. Also, entities should carry-out a periodic review of their level of TP compliance. A copy of the decision is available [here](#).