International Transfer Pricing: The Ethical Perspective

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Abstract

Litigations arising from issues bordering on transfer mispricing between multinational firms and their host countries have assumed a worrisome dimension in international business. Therefore, there is the need to find a lasting solution to this problem outside of the United Nation (UN), Organisation for Economic Co-operation and Development (OECD) and national guidelines. The focus of this study therefore is to examine the ethics of transfer pricing as an alternative. Library research was conducted and a review of existing literature was done. The qualitative method was adopted with the phenomenological approach to arrive at conclusions. The study reveals that transfer pricing methods though recommended by the OECD, UN and other domestic laws have not reduced the increasing cases of litigations involving transfer pricing. This study concludes that ethical consideration of transfer pricing will be a sure way to reduce transfer mispricing disputes. The study recommends the adoption of ethics in the consideration of transfer pricing methods.

Keywords: *International Transfer Pricing; Ethics; MNEs; Arm's Length Principle; Transfer Pricing Methods*

1. Introduction

Transfer pricing occupies an important centre stage in tax litigations in the international stakeholders because in many countries huge sums of revenues are lost through transfer mispricing (Ernst and Young, 2019; Kurfi, Udin, Kasuwa, 2017; Mehafdi, 2000). The delineating boundary of what constitutes a legitimate tax avoidance practice and what constitutes an unfair practice is an issue worthy of study, giving the attendant dissatisfaction and litigations around the world generated by tax avoidance in international business. Mayah (2015) reported how MTN Nigeria used transfer pricing to shift ? 23.187billion to tax havens in Mauritius and Dubai without the approval of the body mandated to oversee such transfer. This action resulted into a litigation case between the Nigerian government and MTN Nigeria. For multinational firms seeking to escape the taxman but still cleverly staying on the right side of the law, transfer pricing has been the new channel that multinational enterprises use to shift profits offshore, leaving a diminished tax base. The question begging for attentions is "how fair is this practise on stakeholders in the host country?"

In Africa, tax avoidance by multinational firms have been identified as a key factor holding the continent back (Kurfi *et al.*, 2017). This is perpetrated through transfer pricing thereby starving governments of the revenue it needs for development. There have been cases of avoidance of tax amongst Multinational Enterprises (MNEs) and this have left host countries with a depletion of legitimate revenue that otherwise should be available for national development and growth. These practices by MNEs has led to myriads of litigation cases between host countries and MNEs and consequently resulting into hostilities among nations with the consequence of a negative effect on trade across national boundaries.

Host countries no doubt provide infrastructure facilities, security, labour and a conducive environment for MNEs to thrive. One among the compensations they require from MNEs is in the form of tax revenue. Also, MNEs are set up to make profit and enhance shareholders' wealth. They have to ensure that stakeholders are compensated adequately. For instance, MNEs have to compensate providers of capital for the supply of capital, they have to adequately compensate employees for their services, provide social benefits and pay operational costs amongst others. Therefore, a high rate of tax is a course for concern by MNEs especially when other tax jurisdictions charge less tax. This gives room for the shifting of profit which eventually affects the host country negatively. The question here is, is it right to tax firms out of existence? At what point should the line be drawn? From both the MNEs and the host country's perspective it may be impossible or at best difficult to arrive at a mutually agreed perspective.

Most articles on transfer pricing focus on the technicalities of the methods and principles; only a few papers examine the ethical issues involved in transfer pricing overtly (McGee, 2010). Although this view was expressed about a decade ago, till date nothing seems to have changed. The focus of this study therefore is to examine the ethical perspective of transfer pricing with a view to ascertaining the possibility of adopting an ethical approach to transfer pricing as an alternative to the OECD, UN and other domestic laws approach which has not stopped the increase in disputes involving transfer mispricing.

The first section deals with introduction followed by a review of the concepts of transfer pricing, legal framework and transfer pricing methods, arms' length principle of transfer pricing, ethics of transfer pricing as well as the current state of empirical literature on transfer pricing. Thereafter conclusion is drawn and recommendations made.

2. Literature Review

2.1 Transfer Pricing

According to United Nations (2017) more than thirty percent of international transactions are intra-group transactions. This involves transfer of goods, capital, services and intangibles such as intellectual properties within a firm across national boundaries. This gives rise to transfer prices within an MNE group. Transfer pricing can be described as the pricing of transactions across national borders in intra-firm business (United Nations, 2017). In Economics, transfer pricing is seen as the price paid by a segment of a firm for a product, service or asset it transfers to another segment of the same organisation (United Nations, 2017).

OECD defines transfer pricing as the pricing of transactions among associated firms (OECD, 2010). Although the Nigerian tax act of 2018 did not explicitly define what constitute international transfer price, it is pertinent to note that transfer pricing occurs where there are intra-firm transactions which occurs between tax jurisdiction of a host country and that of the foreign counterpart of an MNE. Transfer pricing is a tool often used by MNEs to avoid tax payment. This practise is motivated by tax rate differential between a host country jurisdiction and that of the foreign segment of the MNE. This mostly occurs where the tax rate at home is higher than that of the foreign segment of the MNE. The MNE reduces the transfer price to the foreign segment and at the same time inflating the price of supplies by the foreign counterpart. This practise is done to shift profit to the jurisdiction where tax rate is lower to avoid tax and increase the profit of the group as a whole.

2.2 Transfer Pricing Legal Framework

Legal framework for transfer pricing varies from one jurisdiction to the other. According to Ernst and Young (2016) the proliferation of transfer pricing regulations in recent years have made it necessary for practitioners to become knowledgeable in many countries' tax laws, rulings, regulations, methods and requirements. According to United Nations (2017), the evolution of laws for harmonisation of transfer pricing started with the OECD guidelines on transfer pricing which were published first in 1995. However, this was preceded by OECD reports on transfer pricing. This occurred in 1979 and 1984. The latest for MNEs and tax administration was released in 2017 by OECD. These guidelines represented an agreement among OECD members from mostly developed countries that were already using these guidelines in their domestic transfer pricing regulations. Similarly, the United Nations in 2013 came up with a practical manual, with an update in 2017. This practical manual serves as a transfer pricing guide for developing countries due to the often expressed need by developing countries for more guidance in the administration and application of guidelines of transfer pricing (United Nations, 2017). It is pertinent to state that most countries including the US and

Nigeria developed their domestic transfer pricing guidelines from that of the OECD. Also, another transfer pricing regulation of note is that of the income tax (transfer pricing) regulation of 2018. Before this regulation came into existence, the first transfer pricing regulation in Nigeria was released in 2012 by the Federal Inland Revenue Service (FIRS). According to the regulation, the focus of the guideline is to ensure a level playing ground for MNEs and other firms doing business in Nigeria; to tax on appropriate basis the economic activities by taxable persons and provide the tax authorities with the tools to arrest tax evasion among others. The regulation also stipulated resale price, comparable uncontrolled price, cost plus, transactional, and transactional net margin methods as the allowable methods to be used in the Nigerian tax jurisdiction.

However, in 2018 the FIRS updated the transfer pricing regulation. The new guideline retained significantly the features of the 2012 regulations with a few updates that deals majorly with documentation and penalties for offenders among others. However, it seems to be bedevilled by flaws of lack of consonance between the other policies of government and the policy that underpins this legal framework (Aniyie & Enabulele, 2020). Also, making this law subservient to that of the OECD and United Nations which was developed by the developed countries is a source of concern in this study. As put by Aniyie and Enabulele (2020), the 2018 transfer pricing regulation cannot be viewed as a "Swiss army knife" that could provide Nigeria with all it requires to combat transfer pricing issues as it affects connected persons.

2.3 Transfer Pricing Methods

Transfer pricing methods should be used to scrutinize the arm's length status of profits or prices (United Nations, 2017). These methods are means by which arm's length prices are established and profits ascertained in related parties transactions. According to Federal Inland Revenue Service (FIRS) (2018), in the determination of transactions whether they accord with the arm's length principle or not, the transactions should be subjected to an assessment to ascertain their compliance with at least one of the following methods stipulated in the act which include cost plus, comparable uncontrolled price, resale price, transactional net margin, transactional profit split, and any other method which may be prescribed. It is worthy of note to state that according to the FIRS regulation, where any inconsistency arises between the provisions in its regulations and that of the OECD guidelines for multinational enterprises and tax administration and that of the UN, the OECD and UN guidelines shall prevail (FIRS, 2018).

(OECD, 2017) recognises two major classifications of transfer pricing methods. They are the traditional transaction methods and the transactional profit methods. The transfer pricing methods stipulated by the OECD are in tandem with that of the United Nations except the addition of the sixth method by the UN known as the "commodity rule" or simply the "sixth method" (United Nations, 2017). The sixth method has the common feature of using the quoted price of the commodity markets (United Nations, 2017). Also, OECD (2020) stipulates the following approaches for pricing intra-group loans: comparable uncontrolled price, loan fees and charges, cost of funds, credit default swaps, bank opinions and economic modelling. The choice of transfer pricing method is based on its appropriateness taking into cognisance the advantages and weaknesses of the OECD and UN recognised methods.

2.3.1 Cost Plus Method (CPM)

The Cost Plus Method (CPM) originates from the costs incurred by the supplier in a controlled transaction and the addition of an appropriate mark-up (OECD, 2017; United Nations, 2017; IFRS, 2018). It compares the gross profit mark-up earned by the tested party for producing the product or providing the service to the gross profit mark-ups earned by comparable firms. This method is most suitable in the manufacturing and service industries. Although this method is almost similar to the Resale Price Method (RPM), however, the comparisons are on gross profit mark-ups rather than gross profit margins.

2.3.2 Comparable Uncontrolled Price Method (CUPM)

The CUPM compares the price charged for property or services transferred in controlled transactions with the prices of property or services of a similar nature in uncontrolled transactions in comparable situations (OECD, 2017; United Nations, 2017; FIRS, 2018). To ascertain the price of similar products under the same circumstances in an uncontrolled transaction may be a challenge depending on the product or service. The CUP method seems to be suitable where an independent firm sells the same product under similar conditions as between two associated enterprises. This situation is very rare in practise. Also, considering other market factors like inflation, geographical location and cost of freight and insurance which are allowed by the United Nations, seems to pose some difficulty in the use of this method.

2.3.3 Resale Price Method (RPM)

According to OECD (2017) the resale price method considers the price at which a product that has been purchased from an associated enterprise is being resold to an independent enterprise. RPM compares the distributor's gross margin on the product sourced from associated enterprises with the gross margin that the same reseller earns on product sourced in a comparable uncontrolled transaction. Compared to the CUP method, fewer adjustments are needed to account for product differences. However, the dependability of the RPM method can be affected by the cost structure of the associate company reselling the goods. However, this method is more effective if the transaction takes place within a short time.

2.3.4 Transactional Net Margin Method (TNMM)

The Transactional Profit Methods (TPM) examines profits that arise from particular controlled transactions (OECD, 2017). This method is useful where traditional transactions methods have proved to be unreliable because of lack of comparables. TNMM examines the net profit relative to an appropriate base such as sales, cost or assets that a taxpayer realises from a controlled transaction. TNMM is advantageous in that it focuses on the tested party, and thus does not require the books and records of all parties (OECD, 2017).

2.3.5 Profit Split Method (PSM)

The Profit Split Method strives to remove the effect on profits of special conditions in a controlled transaction. This two-sided approach separates the combined profits between associated firms on an economically valid basis to reflect profits that would have been made in an arm's length transaction (OECD, 2017). Though it involves the separation of profits, it is not confined to the contribution analysis approach and the residual profit split approach (OECD, 2010). The strength of the PSM is that it can offer a solution for highly integrated operations for which a one-sided method would be unsuitable. This method is also of advantage where both parties to a transaction make unique contributions to the transaction (OECD, 2017). However, this method will not be appropriate where one party to the transaction performs only simple functions and does not make any significant unique contribution. The weakness of this method is the difficulty in its application (OECD, 2017).

2.3.6 Commodity Rule

The 'sixth method' also known as the commodity rule is especially applicable to commodity transactions (United Nations, 2017). The common feature of this rule is that they rely on quoted prices of the commodity market to price commodity transactions between associated firms. This rule is in use by several developing countries at arm's length price of import and export transactions of commodities (United Nations, 2017). Obviously, this method is preferred by most developing countries and some developed countries because of the less technicalities involved. According to the United Nations (2017), this method has received widespread application.

2.4 Arm's Length Principle and Transfer Pricing Methods

According to the United Nations (2017), intra group transactions must accord with the arm's length principle. This is in consonance with the UN Model Tax Convention Article 9 (1) which provides that all transactions between parties that are not on the same terms as would be conducted between unconnected parties should be taxed accordingly (OECD, 2017). Arm's length principle denotes international standard transfer prices that compares the price of similar transactions carried out between independent firms at arm's length (United Nations, 2017). Since arm's length principle is believed to be the panacea for solving the artificial profit shifting problem, it becomes incumbent on this study to interrogate this principle along with the methods of transfer pricing.

The acceptance of any of several methods of transfer pricing gives room for exploitation of the arm's length principle by smart entities. For example, using the stipulated methods may yield different transfer pricing results depending on the method used for inbound and outbound goods and services. This gives room for smart firms to exploit or outsmart countries with low transfer pricing expertise or low developed commodity markets. Most developing countries are not favoured in this regard. In the concluding remarks of UN guideline, it agrees with the view of this study that finding a reliable comparable pricing for goods and services and making comparability adjustments is not easy (United Nations, 2017). The question here is, is the arm's length principle really “arm's length” given the several methods that could be used even though consistent application is required?

Since the adoption of the OECD and United Nations and other national guidelines have not stem the increasing numbers of litigation in this area of tax avoidance practice, there is therefore the need to find complementary or alternative means to the transfer pricing methods.

2.5 Ethics of Transfer Pricing

Ethics is the study of moral principles and values that govern the actions and decisions of an individual or groups (Izedonmi, 2012). Morals are generally viewed as what constitute good or evil. However, the differentiation or designation of good or evil is greatly dependent on one's point of view. According to Izedonmi (2012) ethics generally is seen as standards of behaviour that tells how human beings ought to act in different situations, they may find themselves. Conrad (2018) defines business ethics as the science of morality and ethos in the economy. He views business ethics as investigating the connections between ethics and economy.

Although, it is expected that entities should be ethical in their conduct, however what constitutes ethical behaviour may not receive a consensus. This will depend on the point from which it is viewed. For example, what may be considered as ethical for an entity may be seen as unethical by the host governments. Also, what is considered as ethical by shareholders may be seen as unethical by management. Businesses should be ethical in their activities (Kamal & Jeongho, 2019). Entities should operate in stakeholders' interest and ethically respond appropriately. According to Kamal and Jeongho (2019) stakeholders include stockholders, customers, suppliers, creditors, employees, the community, host government, non-governmental organisations and the public. Therefore, ethical behaviour depends on the point from which action or inaction is viewed. The following are the major philosophical and ethical principles and theories from which ethics may be viewed: Ethical subjectivism, cultural relativism, imperative principle, utilitarian theory, principle of generalisation, deontology, virtue ethics, rights philosophy, justice philosophy amongst others (Izedonmi, 2012). Also, Rawls (1999) came up with the justice principle which advocates that economic and social risk and benefits should be fairly and equally administered to the advantage of everyone. However, this study will focus on the utilitarian philosophy, justice theory and harm principle in examining what could be considered as ethical in transfer pricing decisions because of the focus of these principles on the general well-being of the majority of stakeholders.

3. Theoretical Review

3.1 Harm Principle

John Stuart Mill posited that the only reason that right power can be exercised against the will of any member of the community against his Will, is to avert harm to others (Hotlug, 2002). According to Holtug (2002) this principle has been applied to wide ranging decisions across the world. Also, Ogunkoya (2011) opined that John Stuart Mill is of the opinion that for a viable harmonious existence and socio-political stability to exist, there is the need to define the liberty of individuals and the power of the state. Mill's harm principle is of the view that any action of man or organisations that does not bring harm to individuals or society is ethical. This study views harm principle as a moral code of conduct that can significantly reduce conflicts to the barest minimum among stakeholders' in any given society if observed by all stakeholders of society. The view of this study is that this principle significantly helps in defining what constitutes morals or ethical behaviour in the society.

Harm principle as posited by several philosophers requires that individuals should involve in any action provided it does not constitute hazard or harm to any person or group of persons. The question is what harm does transfer pricing methods present to employers of labour, shareholders, managers, government, society and other stakeholders? The question of what is "just" price is posed in different terms by liberal economists (Dembinski, 2006). Mehafdi (2000) believe that harm can be economic, physical or psychological.

3.2 Utilitarian and Justice Philosophy

The Utilitarian philosophy was proposed by Jeremy Bentham, J.S. Mill, James Mill and Henry Sidqwick (Izedonmi, 2012; Pradeep, 2018). According to Pradeep (2018), this facilitated the development of British imperialism and the foundation for racial discourse of the 19th century. This theory explains the principle of utility to mean the value of law where people are governed through "pleasure and pain". They posited that utility becomes the calculus of pleasure and pain and that the application of the utility principle will promote the greatest happiness to the greatest number by approving any action that enhances happiness.

Pradeep (2018) analysed the rationality of utilitarian philosophy in relation to feasibility and sufficiency of law to attain welfare of society and concludes that the theory is not only refreshing and exciting but relevant even today.

The justice philosophy was first published in 1971 by John Rawls, a Professor Emeritus at Harvard University and a revised edition published in 1999. Justice philosophy advocates decisions that are founded on equity, fairness and impartiality (Rawls, 1999). Justice philosophy ensures that rules must be administered fairly and impartially enforced with risks and benefits equally distributed. According to him these principles basically apply to the basic structure of society. An examination of the justice philosophy reveals that it relates to the arrangement of economic and social inequalities in such a way that they are expected to be to everyone's advantage. Therefore, injustice occurs when inequalities are not beneficial to all.

Utilitarian philosophy emphasizes the overall welfare of the majority of stakeholders. This view was proposed by Jeremy Bentham, that morality of an action should be determined solely by its consequences (Izedonmi, 2012). Utilitarian's are of the opinion that activities are justified to the extent that they enhance overall happiness. In other words, ethics should be evaluated in terms of what results in the greatest good for the majority. This view is in agreement with the justice theory which advocates that economic and social inequalities should be administered in such a way that it is to the advantage of everyone (Rawls, 1999). In the opinion of this study, the justice theory, utilitarian philosophy and the harm principle constitute the best approaches to ethics in the topic under consideration as it aligns with the nature of firms; having many stakeholders. It is therefore important that the ethical issues of transfer pricing are viewed from the harm it does to stakeholders in the host country and the other countries of operation. Also, it is equally important to view transfer pricing from the overall welfare of the majority of stakeholders and the risk and benefits it possesses to everyone.

Managers and directors of MNEs have a fiduciary obligation as agent of the shareholders to perform their stewardship responsibilities to the advantage of the firm. The primary aim of management of firms is to enhance shareholders wealth. One of the ways they can do this is by good tax planning activities. McGee (2010) holds the view that tax practitioners who fail to minimize their client's taxes are acting unethically. This view is supported by Primeaux & Stieber (1994). From the views of Primeaux & Stieber (1994), any misuse or abuse of scarce resources commonly referred to as factors of production and organized into four major categories – land, labour-time, capital, and entrepreneurship/creativity constitutes unethical behaviour.

However, Mefhafdi (2000) asserted that if transfer pricing is manipulated, it can add to a country's national debt, jeopardise its economy and social programmes and add to its population's misery. This paper shares this view but also, is of the opinion that the interest of entities and its other stakeholders should also be taken into consideration to ensure that all the entities stakeholders are commensurately compensated for their individual contribution to the existence and profitability of the firm.

The harm principle and the utilitarian philosophy of ethics should be applied to shareholders in order to ascertain if transfer pricing decisions will benefit the shareholders as well as be to the advantage of the majority of the other firms' stakeholders. According to McGee (2010) managers owe the shareholders the fiduciary responsibility to maximize their wealth. However, Mehafdi (2000) asserted that "in the realm of business ethics, there is no place for dubious transfer pricing practices, whether they are market or cost based and whether they disadvantaged an internal customer or a host government" by their activity. Also, Hansen, Crosser, and Laufer (1992) postulated that tax avoidance practice should not provide a basis for exemption from ethical behaviours. It will be to the advantage of shareholders and stakeholders if firms act according to the rules guiding transfer pricing practise. Acting according to law prevents the penalties and losses associated with damage to reputation that the business suffers if they act otherwise. Although Hansen et al. (1992) opined that obedience to rules may not necessarily be ethical, he argued that there is even the moral duty to disobey unjust laws. However, the arms' length principle of transfer pricing which is the foundation of most transfer pricing laws seeks to establish a just and fair basis for all stakeholders.

Mehafdi (2000) enumerated the damages host communities and countries suffer from multinational businesses to include; depletion of natural finite resources, environmental damage, health hazards to local workforce and wider society among the physical harm, while he listed the economic harm to include loss of tax income as a result of manipulated transfer pricing, subsidy loss and investments in foreign direct investment, increased national debt and poverty. Feelings of betrayal, mistrust in multinational firms and feelings of domination by economic colonialism were listed as part of the psychological harm a host country can suffer from MNEs.

However, McGee (2010) disagrees with Mehafdi (2000) stating that a host country is not entitled to tax revenue if a foreign company chooses not to invest in that country. He questioned if the failure of a foreign company to invest in a host country constitutes harm to that country at all using the harm principle. He argued that it is a good thing for foreign firms to use transfer pricing to circumvent capital controls. He defended his view citing transfer pricing as allowing money to be taken from a host country legally without resorting to illegal means and allowing those who own properties to transfer it as they desire thereby strengthening property rights.

However, given the divergent opinions of Mehafdi (2000) and McGee (2010) it will be beneficial to the majority of stakeholders if the utilitarian rule is adopted. This view sees investment in a foreign country as a give and take arrangement. If a foreign firm invest in a host country, there is no doubt that it will use up the natural resource of the host country and cause some measure of environmental damage and health hazards to the host society, it is therefore required that they give back to the host society through the payment of their fair share of taxes without shifting it to other countries. They should think of being good corporate citizens by embarking on social projects for the host community. The argument of McGee (2010) that a host country is not entitled to tax revenue if a foreign company does not invest in the host country is correct to the extent that he understands that there is alternative foregone, when a foreign firm do not invest in a host country. However, there will be no depletion of resources, no physical harm will occur to host communities and besides, the available human and natural resources can be deployed to the advantage of the community and country in the future. Therefore, MNEs should see their investment in other countries as a give and take arrangement and any practice to undermine this arrangement is unethical and will result in the winner taking it all, which will not be beneficial to all stakeholders.

It is the obligation of the government to provide an enabling environment for its human and corporate citizens to thrive. This includes security, infrastructures and necessary incentives for business to grow. No foreign company can thrive in a host country without the support of the host government. Therefore, the shifting of profits to other countries can be questioned on ethical grounds. The assertion of McGee (2010) that it is good that transfer pricing be used to avoid the payment of taxes may be correct from his point of view but ethically wrong. Mehafdi (2000) enumerated the transfer pricing aberrations to include; abuse of trust and hospitality by foreign companies on their host government that may have provided subsidies or other concession to encourage inward investment, foreign companies robbing local workforce of the fruits of their labour by taking advantage of cheap labour and using manipulated transfer pricing to impoverish the host country among others. However, high taxation from the government could be a disincentive for MNEs to operate ethically especially when other jurisdictions are charging less tax.

3.3 Stakeholder Theory

The word “stakeholder” appeared first in an internal memorandum at Stanford Research Institute in 1963 (Parmar, Freeman, Harrison, Purnell, & Colle, 2010). According to Parmar et al (1963) the term was meant to challenge the belief that stockholders are the only group to whom management should be responsive to. However, by the late 1970's and early 1980's scholars and those in practice started working to improve management theories. This led to the shaping of the stakeholder concept to address three interconnected problems relating to business in the 1990's, namely; the problem of value creation and trade, the problem of ethics of capitalism and the problem of managerial mind-set (Parmar et al). Stakeholder theory has the opinion that if we adopt as a unit of analysis the relationships between firms and the groups and individuals that can affect or are affected by it then a better chance to effectively deal with the three connected problems is dealt with. Harrison and Wicks (2013) argues that the notion of value has been narrowed to concentrate on economic returns. He however opined that stakeholders' theory provides an appropriate lens for viewing a more complex view of the value that stakeholders seek as well as new ways to measure it. Harrison, Sa de Abreu, and Freeman (2015) found stakeholder theory to be a useful view for addressing pertinent issues in business from an international perspective.

This theory is a popular theory in the field of management sciences because the primary aim of a firm is to maximise stakeholders' wealth. Therefore all activities of management are geared towards the benefits of all stakeholders' in the organisation. This theory is pertinent to this study because a broad group of stakeholders cutting across national boundaries are involved in MNEs. It is therefore pertinent that the welfare of internal and external stakeholders' of MNEs are considered in the transfer pricing decision taking note of the regulations, ethics and practice guiding transfer pricing decisions.

4. Empirical Review

It is pertinent to review empirically, some past studies on international transfer pricing to enhance our judgement on the subject under study.

Obasi (2015) conducted a study on the impact of transfer pricing on economic growth in Nigeria. He used time series data from 1970 to 2004 to examine foreign direct investment, economic growth, and trade mis-invoicing. The study analysed the variables collected using

Johansen cointegration and Granger causality method and found that normalised long run equilibrium indicates that transfer pricing with unemployment variable negatively related to economic growth while the short run supports the cointegration results. On impulse response function, the result showed a negative response between economic growth and transfer pricing.

Tran, Croson, and Seldon (2016) used incentivized economics experiments to test the point predictions and comparative static predictions of optimal transfer pricing models, comparing behaviour under different situations, including wholly versus partially-owned subsidiaries and different tariff and tax rates. They found that transfer prices are responsive to relative tax and tariff rates and ownership proportions.

Percevic and Hladika (2017) investigated the transfer pricing methods in related firms in Croatia. A survey was administered on a sample of related firms from the real sector in Croatia in 2008 and 2012. Results revealed that the factors related to transfer pricing are not significantly represented and understood in business practice in Croatia. The study also showed that the majority of related firms in Croatia use the cost method of selecting the transfer prices. In addition, findings showed that in 2008 the comparable uncontrolled price method was frequently used while in 2012 all OECD methods were equally used.

Liu, Schmidt Eisenlohr, and Guo (2017) in their study employed data on export transactions and corporate tax returns of UK MNEs and found out that firms used transfer prices to shift profits to low tax countries. It also discovered that transfer mispricing increased with a company's R&D intensity and that tax-motivated transfer mispricing occurred mainly in countries that are not tax havens and have low-to-medium-level corporate tax rates.

Merle, Al-Gamrh, and Ahsan (2019) studied the impact of firm size, intangible assets, leverage and effective tax rate on transfer pricing intensity. They used the French quoted companies in the CAC-40 from the period from 2012 to 2015. Regression was done and the result showed that the firm size and leverage are positively associated while intangible assets and effective tax rate are negatively associated with transfer pricing intensity.

Ernst and Young (2019) conducted a survey of 623 transfer pricing executives in 36 jurisdictions covering 17 industries. The survey found that respondents are facing more significant transfer pricing disputes compared to the past.

Kirui, Kaire, Yusuf and Jared (2020) conducted an empirical review of transfer pricing in Kenya using the multinational firms to get an insight on transfer pricing and its tax implication. The desktop review was adopted by the study. Secondary data was collected by reviewing literatures and it was found that majority used the cost-based transfer pricing.

Conclusion and Recommendation

The objective of this study is to examine the ethical perspective of international transfer pricing. From the literature reviewed, it is evident that international transfer pricing has assumed a worrisome dimension in terms of disagreements and lawsuits between MNEs and their host countries. Despite the OECD, UN and local laws of countries to ensure a reduction in transfer mispricing by the introduction of methods of transfer pricing which are arm's length driven, disputes and litigation is still on the increase. The OECD, UN and other local laws have failed to stem the growth of disputes even though the laws on transfer pricing methods are arm's length driven.

Ethics could play a critical role in ensuring the reduction of disputes between MNEs and their host countries if the harm principle, utilitarian and justice philosophy and the stakeholders' theory are borne in mind in the choice of transfer pricing methods. This is because laws may fail on moral grounds; obedience to law is not necessarily ethical. There is even the moral duty to resist unjust laws.

If ethics is considered among other factors in the choice of transfer pricing methods, then transfer mispricing will be avoided and this will consequently reduce conflicts among MNEs and their host countries and the attendant litigation costs. Although transfer pricing could constitute a major impediment to international trade when cases of litigations between host countries and MNEs arises, however it should not be allowed to create trade war or trade barriers between countries.

This study recommends the consideration of ethical philosophies such as harm principle, justice and utilitarian philosophies as well as the stakeholder theory in the choice of transfer pricing method to avoid transfer mispricing by MNEs and the conduct of empirical studies to further explore the impact of the use of ethics in international transfer pricing.

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