

ALTERNATIVE DISPUTE RESOLUTION AND TRANSFER PRICING IN NIGERIA

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Abstract

Transfer pricing disputes which are driven by the rise in cross-border transactions and aggressive enforcement by tax authorities, are increasingly becoming critical issues in Nigeria's evolving tax landscape. However, the litigation route for resolving such disputes remains arduous, expensive, and time-consuming. As global tax systems evolve, there is a growing recognition of the need for more efficient dispute resolution mechanisms. Thus, this paper explores the viability of Alternative Dispute Resolution (ADR) as a more efficient, flexible, and cost-effective mechanism for resolving transfer pricing controversies in Nigeria. Drawing on comparative experiences from jurisdictions such as United Kingdom, South Africa, and the OECD frameworks, the paper evaluates Nigeria's existing legal and institutional frameworks for tax-related ADR, including its applicability to complex pricing matters. It further analyses the benefits and limitations of tools such as mediation, arbitration, and advance pricing agreements (APAs), while highlighting the legal reforms and capacity building needed to make ADR a practical reality. Ultimately, the paper argues that embracing ADR could decongest the courts, promote timely dispute resolution, and enhance investor confidence, positioning Nigeria more favorably in the global tax environment. The paper concludes with policy recommendations aimed at mainstreaming ADR into Nigeria's transfer pricing dispute resolution regime.

Keywords: Transfer Pricing, Alternative Dispute Resolution, Tax Disputes, Cross Border Transactions.

1. Introduction

Transfer pricing has been one of the most debated topics in international taxation, especially with the expansion of multinational corporations (MNEs) across borders and into complex intra-group transactions. Simply put, transfer pricing refers to the pricing of products, services, or intangible assets transferred between associated enterprises in the form of multinational group.¹ Such transactions would likely be targeted by tax authorities, who seek to ensure that profits are not being artificially shifted across borders in an attempt to minimize tax liability. In Nigeria, the rise in cross-border transactions and Foreign Direct Investment (FDI) has brought transfer pricing issues to the forefront of tax administration and enforcement.² This rise has also led to a spike in transfer pricing disputes, many of which end up in prolonged and costly litigation.

The traditional litigation process for settlement of tax disputes in Nigeria, and transfer pricing disputes, is generally slow, technical, expensive, and ill-equipped to the dynamic and specialist character of such disputes. The now-defunct Federal Inland Revenue Service (FIRS), which is the Nigerian tax authority, has been increasing the audit of cross-border transactions recently, resulting in substantial assessments and, controversies.³ The majority of the cases go through the Tax Appeal Tribunal (TAT) and the Federal High Court (FHC) later, which are usually overburdened and ill-equipped to handle the technicalities of international tax concepts.

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¹ OECD, *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations* (OECD Publishing, 2022) <https://www.oecd.org/content/dam/oecd/en/publications/reports/2022/01/oecd-transfer-pricing-guidelines-for-multinational-enterprises-and-tax-administrations-2022_57104b3a/0e655865-en.pdf> accessed 17 July 2025.

² IA Aniyie and O Enabulele, "Nigeria's Income Tax (Transfer Pricing) Regulations 2018: Conceptualizing the Elephant and Plucking the Goose" (2020) 64(2) *Journal of African Law* 267–286.

³ CO Nwabachili, "Reappraising the Legal Framework for Transfer Pricing in Nigeria" (2021) 2 *Law and Social Justice Review* 74.

Litigation is also mostly confrontational, and there is no spirit of cooperation needed in resolving multinational business arrangements-related disputes. Transfer pricing disputes would, based on the Organization for Economic Co-operation and Development (OECD), take several years to be settled, even in developed jurisdictions.⁴ In Nigeria, it is even longer due to inefficiencies of the judiciary, lack of technical capacity, and unwarranted adjournments. The resulting uncertainty discourages voluntary compliance as well as has negative impacts on the investment environment of Nigeria.⁵

In this context, Alternative Dispute Resolution (ADR) channels are becoming increasingly prominent as better approaches to managing transfer pricing issues. ADR, i.e., arbitration, mediation, and negotiation, is a second-level, non-formal, less procedural, and faster approach to resolving disputes. In South Africa and the United Kingdom (UK), for example, ADR has been successfully integrated into tax administration to resolve complex tax disputes beyond the courts.⁶ This has increasingly facilitated taxpayer-tax administration, reduced administrative burdens, and improved tax certainty and investor confidence.

Nigeria's institutional and legal frameworks for ADR are evolving, with acts such as the Arbitration and Mediation Act, 2023, which provide a full legislative basis for the use of ADR across areas. However, the use of ADR in tax matters, and specifically transfer pricing, is underdeveloped.⁷ Though the FIRS has evolved some tools like Advance Pricing Agreements (APAs) to preclude pricing risks in advance, these tools are in their nascent stage and are hardly used.⁸ Legal ambiguity, lack of awareness, and institutional resistance also limit the utilization of ADR in the resolution of transfer pricing disputes in Nigeria.

The objective of the paper, therefore, is to find out whether ADR can be an effective substitute for litigation as a vehicle for resolving transfer pricing disputes in Nigeria. It attempts to examine the weaknesses of the existing litigation-based system, examine the advantages and disadvantages of ADR mechanisms, and determine how well prepared the institutional and legal system in Nigeria is to implement such mechanisms in taxation. The study is also underpinned by best international practice experience and comes with policy recommendations for implementing ADR within the Nigerian tax dispute resolution system.

Lastly, the study establishes that the use of ADR in resolving transfer pricing disputes would go a long way in making tax dispute resolution more efficient and fair in Nigeria. It would also enhance confidence between the tax authorities and the business sector, reduce court backlogs, and create an investor-friendly tax environment. It is especially urgent at this time when global tax standards and cooperation are evolving, and Nigeria needs more foreign investment while protecting its tax base.

⁴ OECD, *Ibid.*

⁵ D Olike and I Olateru-Olagbegi, "Assessing the Transfer Pricing Disputes Framework in Nigeria" (2022) 43(2) *Business Law Review* 65–76.

⁶ HM Revenue & Customs, 'Alternative Dispute Resolution for Tax Disputes' (HMRC, 2023) <<https://www.gov.uk/guidance/tax-disputes-alternative-dispute-resolution-adr>> accessed 17 July 2025; South African Revenue Service (SARS), 'Dispute Resolution Process' (SARS, 2021) <<https://www.sars.gov.za/legal-counsel/dispute-resolution-judgments/dispute-resolution-process/>> accessed 17 July 2025.

⁷ T Abdulrazaq, "Fiscal Dispute Resolution (Appeal) Mechanisms" In *Cases and Materials on Nigerian Taxation* (Indian: Eastern Book Company, 2016) 55-57.

⁸ M Ongore and P Musibi, *Implementation of Advance Pricing Agreements: The Case for Low-and Lower-Middle-Income Countries*, ICTD Working Paper 220 (Institute of Development Studies, 2025) <<https://doi.org/10.19088/ICTD.2025.032>> accessed 17 July 2025.

2. Conceptual Framework

2.1 Alternative Dispute Resolution

ADR is the broad variety of procedures utilised for settling disputes other than in the formal legal courtroom or litigation system. The primary goal of ADR is to offer parties an alternative, more flexible, private, cost-saving, and time-efficient means to settle their differences. The most widely used types of ADR are negotiation, mediation, and arbitration.⁹ All of these mechanisms allow parties to avoid the normally time-consuming and expensive process of going to court and give them more control over the resolution of their disputes.

Negotiation as a form of ADR is an informal method where parties in dispute sit down to try and resolve their conflict themselves without involving the services of a third party. It is most often the first step toward resolving disputes and may end in a friendly settlement if the parties are willing to cooperate and sacrifice.¹⁰

Mediation, which is one of the ADR forms, entails an impartial third party referred to as the mediator, who facilitates communication among the disputing parties, makes them understand one another, and assists them in coming up with a mutually acceptable solution. Mediation does not involve imposing a decision but facilitating dialogue and problem-solving. Mediation is particularly convenient when the relationship between the parties must be maintained.¹¹

Arbitration, on the other hand, is a more formal process wherein the parties agree to submit their dispute to a single arbitrator or a panel of arbitrators who issue a binding decision known as an 'award'. The process is similar to that of a court proceeding but generally less formal, more confidential, and faster. The award of an arbitrator is binding and enforceable just like a court order and judgment.¹²

In Nigeria, ADR has gained increased interest with the passage of time, particularly because of the clogged court caseload and the frequent delay in the administration of justice. The Arbitration and Mediation Act, 2023, which repealed the earlier Arbitration and Conciliation Act, Cap A18 Laws of the Federation of Nigeria 2004, is the current legal framework that regulates ADR procedures. The new law seeks to enhance the effectiveness of arbitration and mediation and bring Nigeria's system to that of international standards, particularly the United Nations Commission on International Trade Law (UNCITRAL), which is one of the model laws on International Commercial Arbitration.¹³

The majority of institutions in Nigeria today offer ADR services, including the Lagos Multi-Door Courthouse (LMDC), the first court-connected ADR center on the African continent.¹⁴ Others include the Abuja Multi-Door Courthouse and the Nigerian Institute of Chartered Arbitrators. These institutions have helped promote ADR as a legitimate and viable alternative to court cases, especially in commercial disputes.

⁹ C Menkel-Meadow, "Mediation, Arbitration, and Alternative Dispute Resolution (ADR)", in *Encyclopedia of the Social & Behavioral Sciences* (Elsevier, March 2015) 3.

¹⁰ F Misra, R. Kurniawan, and E Yonnedi, "Resolving Disputed Tax Issues through an Online Negotiation Platform: The Influence of Partner Negotiation Objectives and Communication Style on Negotiation Outcome." In *Taxation in the Digital Economy* (Routledge, 2022) 288-316.

¹¹ W Haslehner, et al., (eds), *Alternative Dispute Resolution and Tax Disputes* (Elgar Publishing 2023) 13.

¹² I Adebara, 'Resolving Tax Disputes Via Arbitration: An Opinion on the Judgment of the Court of Appeal in Esso Petroleum and Production Nigeria Ltd & Snepco v NNPC' (*Mondaq*: 27 July 2020) <<https://www.mondaq.com/nigeria/litigation-mediation-arbitration/969576/>> accessed 17 July 2025.

¹³ CJ Ubanyionwu, "Novel Provisions of the Arbitration and Mediation Act, 2023" (2023) 1(2) *Frontline Bar Journal* 38-41.

¹⁴ C Umegbolu, "Speedy Dispensation of Justice: Lagos Multi-Door Courthouse (LMDC)" (2022) 8(3) *Athens Journal of Law* 279-308.

ADR is often preferred in complex business disputes, such as transfer pricing disputes, because it allows parties to choose professionals within the topic to act as mediators or arbitrators. ADR also helps preserve commercial relationships, a consideration vital in long-term business contracts. Furthermore, ADR processes are maintained confidentially, a consideration which is appropriate for companies that do not wish their internal tax and financial transactions to be made public. There has been a growing interest globally in applying ADR to settle tax disputes over the last few years. Institutions like the OECD have called on members and partner countries to adopt ADR as part of their tax administration frameworks, particularly in settling transfer pricing disputes.¹⁵

2.2 Conceptualization of Transfer Pricing

Transfer pricing is the price of goods, services, and intellectual property transferred between affiliated firms or divisions of the same MNE. When companies have operations in more than one country, they tend to purchase from and sell to their subsidiaries or associated enterprises in other countries. The prices paid for such intra-group transactions are called transfer prices.¹⁶ These transfer prices play an important role in determining how much profit is reported in each country and, thus, how much tax is paid. Transfer prices become a problem for tax authorities because MNEs usually give incentives in the form of prices in a way that will transfer profits from highly taxed nations to low-tax countries to reduce their overall tax liability. For example, a company can low-price a product from a Nigerian subsidiary to a related company in a tax haven, thereby reducing the profits (and tax base) reported in Nigeria. Government revenue loss is one potential result of such pricing manipulation.

In order to prevent this, tax administrations everywhere, including Nigeria, have instituted transfer pricing regulations compelling MNEs to price intra-group transactions as they would with unrelated third parties. The concept is known as the "arm's length principle".¹⁷ Nigeria first enacted its transfer pricing regulations in 2012 and further revised them in 2018 in order to align with the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations.¹⁸ Entities subject to Nigeria's transfer pricing regime are required to maintain and prepare documentation of how their transfer prices satisfy the arm's length principle. Functional analysis, risk assessment, and benchmarking studies are used. The documentation must be submitted to the FIRS upon demand. Failure to comply with transfer pricing regulations may result in substantial penalties and a taxable income adjustment.¹⁹

Disputes arise when tax authorities, such as the FIRS, disagree with a taxpayer's pricing agreements or reports. These disputes can result in lengthy audits, tax liability adjustments, and legal fights. Transfer price disagreements are highly technical and are more often than not expert-intensive in accounting, economics, and international tax law. The technicality of these disputes makes them challenging and expensive to resolve through the traditional court process. As a mitigation, APAs have been introduced by some countries as a step towards the prevention of disputes. An APA is an agreement between a tax authority and a taxpayer that establishes in advance how transfer pricing will be dealt with for particular transactions. While Nigeria has introduced the concept of the APAs

¹⁵ OECD, 'Dispute resolution in cross-border taxation' (OECD, 2019) <<https://www.oecd.org/tax/dispute/alternative-dispute-resolution-tax.htm>> accessed 18 July 2025.

¹⁶ OECD, Note 1.

¹⁷ PwC Nigeria, 'Nigeria Publishes New Transfer Pricing Regulations: Key Changes You Should Know About (Part 1)' (n.d.) <<https://www.pwc.com/ng/en/assets/pdf/new-tp-regulation-prt1.pdf>> accessed 18 July 2025. R Collier and JL Andrus, *Transfer Pricing and the Arm's Length Principle after BEPS* (Oxford University Press, 2017) 17.

¹⁸ Federal Inland Revenue Service, 'Income Tax (Transfer Pricing) Regulations, 2018' <<https://old.firs.gov.ng/wp-content/uploads/2021/01/Public-Notice-on-TP-Regulations.pdf>> accessed 18 July 2025.

¹⁹ *Ibid.*

into the laws of the country, implementation remains limited on account of capacity and administrative problems.²⁰

As there are more controversies as well as technicalities in transfer pricing, there is a growing desire to use ADR to resolve such cases more effectively. ADR is a more specialized, effective, as well as collaborative approach, especially when compared with court litigation that may be less suited to address advanced transfer pricing issues.

3. Transfer Pricing Disputes and Resolution Mechanisms

Transfer pricing problems are rapidly becoming a frequent occurrence in the management of tax in Nigeria, especially with the increase in MNEs in Nigeria. The implication of transfer pricing is to ensure that transactions between associated parties possess arm's length values and base erosion and profit shifting are prevented. However, the establishment of what is an arm's length transaction is typically a subject of dispute between the taxpayers and the tax authority—the FIRS. One of the earliest and most significant cases, which brought this issue to the fore, was *Prime Plastichem Nigeria Limited v. Federal Inland Revenue Services*,²¹ where the FIRS did not approve the pricing methodology adopted by the taxpayer and made additional tax assessments based on its computation. The issue was brought before the TAT, which ruled in favor of the FIRS, emphasizing the requirement to choose the appropriate method and arm's length comparable.²² The case indicates the way disputes do arise in relation to the choice of pricing methods, determining comparable transactions, and applying profit level indicators.

Another case in point is the recent decision in *Check Point Software Technologies B.V Nig Ltd v FIRS*,²³ where the issue under contention was not only transfer pricing adjustments, but also the constitutionality of administrative penalties under the Country-by-Country Reporting Regulations being imposed by the FIRS. The Tribunal declared the penalties unconstitutional due to the fact that the FIRS Board was not properly constituted between 2012 and 2020. This decision brought to light the procedural complexities in Nigeria's tax practice and its implications for transfer pricing enforcement.²⁴

Currently, Nigerian taxpayers have a number of avenues through which to settle transfer pricing issues. The first avenue open to an aggrieved taxpayer is to lodge a complaint against the assessment by the FIRS in writing. This right is codified under Section 69(1) and (2) of the Companies Income Tax Act (CITA),²⁵ which provides that a taxpayer can apply to the FIRS, notice of objection in writing, for review and reassessment of an assessment. The law mandates such notice be served within thirty days of service of notice of assessment. This requirement is particularly appropriate for transfer price determination, as cases of transfer price disputes are more likely to happen in the event of corporate income tax administration. In practice, this means that a taxpayer is supposed to act with all reasonable haste when protesting and submitting supporting evidence. Even with the need for this

²⁰ PwC Nigeria, Note 17.

²¹ *Prime Plastichem Nigeria Limited v. Federal Inland Revenue Services*, (February 2020, Tax Appeal Tribunal, Case No TAT/LZ/CIT/015/2017).

²² Andersen Tax, 'Tax Appeal Tribunal Rules on the First Transfer Pricing Case in Nigeria: Prime Plastichem Nigeria Ltd v FIRS' (2020) <<https://tpguidelines.com/nigeria-vs-prime-plastichem-nigeria-limited-february-2020-tax-appeal-tribunal-case-no-tat-lz-cit-015-2017>> accessed 18 July 2025.

²³ *Check Point Software Technologies B.V Nig Ltd v FIRS*, TAT/LZ/CIT/121/2022.

²⁴ Andersen Tax, 'Check Point Ltd v FIRS: The Potential Implications for the Nigerian Transfer Pricing Regime' (2023) <<https://ng.andersen.com/check-point-ltd-v-firs-the-potential-implications-for-the-nigerian-transfer-pricing-regime/>> accessed 18 July 2025.

²⁵ Companies Income Tax Act Cap. C21 L.F.N. 2004.

process to permit room for reasonable review, concerns exist regarding the fairness and transparency of the internal administrative review, especially in instances where the determination is made on the basis of advanced transfer pricing adjustments. The voluntary submission to the Transfer Pricing Review Panel (TPRP), consisting of FIRS officers, has also been faulted as not being objective, even against the principles of natural justice.²⁶

The TAT is now a leading forum for transfer pricing and tax dispute resolution. Constituted under the FIRS (Establishment) Act 2007,²⁷ the TAT is designed to be less formal and easier to access than the FHC. TAT proceedings can, however, be protracted, and while its decisions are binding, they are appealable to the FHC. One major drawback of this pathway is that some members of the Tribunal may have no transfer pricing experience, and this may affect the quality of TAT decisions. Also, due to delays in hearing cases and delivering judgments, the procedure in general might not achieve timely resolution.²⁸

An aggrieved taxpayer may appeal against the TAT's ruling to the FHC. Yet the litigation route is generally time-consuming, expensive, and burdensome. Judges in a court of law might also lack the technical expertise in transfer pricing, a subject matter that requires a lot of expertise in accounting, international tax, and economics. Most courts in most cases rely on expert witnesses whose testimony might be complex and subject to interpretation. All these problems generally deter taxpayers from appealing, especially where the cost of litigation is higher than the tax in dispute. In several instances, such as *Addax Petroleum Development Nigeria Ltd v FIRS*,²⁹ taxpayers have chosen to settle out of court to avoid lengthy litigation (FIRS Annual Report, 2020).³⁰

Mutual Agreement Procedure (MAP) is also a process accessible under Nigeria's tax treaties. It allows the competent authorities of the treaty partners to settle by agreement disputes concerning double taxation, especially in cross-border transfer pricing cases. Although Nigeria has signed several Double Taxation Agreements (DTAs) that include MAP provisions, notably with countries like the UK and South Africa. The Nigeria–UK DTA, for instance, contains MAP provisions under Article 24, allowing the competent authorities of both countries to consult and resolve disputes where taxation is not in accordance with the treaty, including those involving transfer pricing.³¹ Similarly, the Nigeria–South Africa DTA provides for MAP under Article 24, enabling both countries to amicably settle cases of double taxation and disagreements arising from cross-border transactions between associated enterprises.³² However, the implementation of these DTAs has been slow.

²⁶ FO Akinla, 'Dispute Resolution Under the Nigerian Transfer Pricing Regime' (*The Guardian*, 2016) <<https://guardian.ng/features/dispute-resolution-under-the-nigerian-transfer-pricing-regime/023>> accessed 18 July 2025.

²⁷ Federal Inland Revenue Service (Establishment) Act 2007.

²⁸ SA Lawal, "Tax Appeal Tribunal in Nigeria: An Interrogation of Fundamental Issues and Case for Reform" (2021) 11(1) *University of Ibadan Law Journal* 248-272.

²⁹ *Addax Petroleum Services Ltd v Federal Inland Revenue Service* (Tax Appeal Tribunal decision), discussed in NICArb, In Review: The Tax Courts and Tribunals in Nigeria (27 June 2022) <<https://blog.nicarb.org/index.php/2022/06/27/in-review-the-tax-courts-and-tribunals-in-nigeria/>> accessed 18 July 2025.

³⁰ Federal Inland Revenue Service, 'Annual Report' (2020) <[opac.nln.gov.ng/bib/16184](https://www.firs.gov.ng/bib/16184)> accessed 18 July 2025.

³¹ Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Federal Republic of Nigeria for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and Capital Gains (SI 1987/2057), entered into force 27 December 1987 (effective in Nigeria from 1 January 1988), <<https://www.gov.uk/government/publications/nigeria-tax-treaties>> and <<https://www.legislation.gov.uk/uksi/1987/2057/contents/made>> accessed 19 July 2025.

³² Agreement between the Government of the Republic of South Africa and the Government of the Federal Republic of Nigeria for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital Gains, signed 29 April 2000, entered into force 5 July 2008 (effective in Nigeria from 1 January 2009), <<https://www.gov.za/documents/notices/income-tax-act-agreement-between-south-africa-and-nigeria-avoidance-double>> accessed 19 July 2025.

Furthermore, the fact that binding arbitration is not provided for under most of Nigeria's treaties means that where problems are not solved, they cannot be ultimately solved using MAP alone. As such, MAP has not proven to be a popular or effective mechanism for solving transfer pricing disputes in Nigeria.³³

APAs are another option available to taxpayers, though APAs are a dispute prevention mechanism rather than a resolution technique. With APAs, taxpayers and the FIRS can pre-agree on the pricing methodology to apply to related party transactions. This enables certainty and avoids potential future disputes. In 2024, Nigeria launched its inaugural APA Guidelines, which provide for procedures, documentation, and approvals. Though no APA has been publicly concluded as of 2025, the framework suggests the shift to a more cooperative compliance approach. However, the success of APAs is heavily dependent on administrative capacity, trust between tax authorities and taxpayers, and access to qualified personnel to examine complex transfer pricing agreements.³⁴

In contrast with Nigeria's system, the UK's more formal and widely accepted approach to transfer pricing dispute resolution is that HMRC will typically enter into negotiations with taxpayers before issuing formal assessments. APA agreements, which are binding and enforceable, can also be agreed on by UK taxpayers. Furthermore, binding arbitration is more customary under the UK's double taxation treaties, providing a stronger incentive for early settlement. While transfer pricing disputes are occasionally addressed by UK courts, the majority of disputes are resolved via negotiation or MAP, supported by the OECD framework. In cases such as *GlaxoSmithKline v Canada Revenue Agency*,³⁵ the arm's length principle was carefully examined, and although the case occurred in Canada, it has influenced transfer pricing practice in OECD countries, including the UK.³⁶

South Africa is a further useful comparative jurisdiction. The South African Revenue Service (SARS) has more easily embraced APAs and MAP, and legislation provides for the use of ADR. Taxpayers can voluntarily engage in negotiation and mediation with SARS officials before or during the audit process. This can make dispute resolution less adversarial and faster. In the *ABC (Pty) Ltd v SARS*³⁷ case in South Africa, the Tax Court ruled on the application of the arm's length principle in a transfer pricing case involving manufacturing, in favour of applying internal comparables. What stands out in the South African model is SARS's openness to the resolution of disputes before they are escalated, through the use of flexible and law-based ADR mechanisms.³⁸

Nigeria's limited use of ADR to resolve transfer pricing disputes signals a significant gap in Nigeria's legal and administrative framework. Although Section 4 of the FIRS (Establishment) Act allows the Service to enter into agreements and arrangements for ensuring the collection of taxes, no provision is made for arbitration or mediation of tax disputes. Recent policy documents reflect a greater sensitivity to the need to include ADR mechanisms, but their adoption has been slow. The FIRS has on occasion, been open to settlement discussions, but without formal structures, such efforts are neither consistent nor transparent.³⁹

³³ OECD, Note 1.

³⁴ Osanmi et al., 'Tax Controversy 2025 - Nigeria' (*Chambers and Partners*, 2025) <<https://practiceguides.chambers.com/practice-guides/tax-controversy-2025/nigeria>> accessed 19 July 2025.

³⁵ *Canada v GlaxoSmithKline Inc.*, 2012 SCC 52, [2012] 3 SCR 3 (SCC).

³⁶ OECD, Note 1

³⁷ *ABC (Pty) Ltd v Commissioner for the South African Revenue Service* (IT14305) [2021] ZATC1; 83 SATC429 (Tax Court, 7 January 2021)

³⁸ SARS, 'Annual Performance Report 2022/2023' (SARS, 2023) <<https://www.sars.gov.za/wp-content/uploads/Docs/StratAnnualPerfplans/SARS-AR-28---Annual-Report-2022-2023.pdf>> accessed 19 July 2025.

³⁹ FO Akinla, Note 21.

The potential for ADR in resolving transfer pricing disputes in Nigeria is enormous. ADR can facilitate faster, more confidential, and less confrontational approaches to conflict resolution. Mediation, in particular, allows both parties, the tax authority and the taxpayer, to arrive at solutions acceptable to both without the rigors of court procedures. Arbitration, though not extensively used in tax disputes worldwide, can also be employed as a last resort where negotiation and mediation fail. However, for the success of ADR, there must be enabling legal frameworks, competent professionals, and institutional support. Also, the trust of taxpayers must be regained, particularly in light of suspicions surrounding the evenhandedness and autonomy of tax dispute procedures.⁴⁰

Summarily, while transfer pricing disputes in Nigeria are currently dealt with by administrative and legal procedures, such processes are usually lengthy, adversarial, and technically limited. The introduction of APAs and the gradual implementation of OECD-compliant practices indicate a willingness to change. But without a formal ADR mechanism, Nigeria will lag behind countries like the UK and South Africa, where ADR has been effectively integrated into tax administration. Nigeria must, in the future, build capacity, reform its legislation, and shift to a more collaborative model of transfer pricing dispute resolution.

4. Issues/Challenges Arising from the Current Methods of Resolution and the Use of ADR in Resolving These Disputes

Although Nigeria has set some processes to handle the cases of transfer pricing, these processes still face many problems that make them less effective. The biggest problem is that transfer pricing is such a technical and complicated issue. It often involves advanced financial and economic computations that are difficult for most judges as well as members of the tribunal to understand. This hinders the TAT or the FHC from rendering fair and informed decisions on such matters.⁴¹ The current system of dispute resolution is also cumbersome and expensive. Taxpayers take years going through the different stages of appeals, and the process is also extremely expensive. In the majority of cases, review processes in the FIRS, including the TPRP, are considered to be unfair because they are made up of FIRS staff. This gives rise to doubts about fairness and reduces the extent to which taxpayers enjoy confidence in the system.⁴²

While other countries are currently using ADR processes like mediation and arbitration to resolve tax disputes, Nigeria has not fully adopted these methods. There is no unique legislation that contains explicit provisions for the use of ADR in tax disputes, including transfer pricing. As a result, taxpayers as well as tax authorities are unclear on how to utilize ADR. People are also worried about whether terms of settlement entered into by parties under ADR will be honored by the parties thereto or will serve as conflicting precedents for upcoming cases.⁴³

The second major challenge is the lack of trained experts who are in a position to resolve transfer pricing controversies using ADR. Not any lawyer can resolve transfer pricing disputes; such a lawyer must be well-grounded in accounting, tax laws, and business operations, and Nigeria does not have enough of them at present. Without them, ADR is unable to hold ground as an alternative to lawsuits.⁴⁴

⁴⁰ OECD, Note 1.

⁴¹ SALawal, Note 28.

⁴² FO Akinla, Note 21.

⁴³ Osanmi et al., Note 31.

⁴⁴ OECD, Note 1.

Cultural tendencies also play their part. In Nigeria, lawyers and tax officials primarily choose to go to court because that is all they have ever done. They may not be believers in or understand ADR. Others are afraid that choosing ADR may be misconstrued as a sign of weakness or defeat. This state impedes the adoption and consumption of ADR in taxation.⁴⁵

Moreover, most of Nigeria's foreign tax treaties do not include binding arbitration. It is harder to seek cross-border tax disputes through the application of ADR. Others, like the UK and South Africa, have fared better. For example, the UK allows binding APAs, and South Africa allows taxpayers to negotiate with the tax authority during audits to avoid disputes. Nigeria has a lot it can learn from these countries and could improve its system.⁴⁶

In essence, the current mechanism for resolving transfer pricing disputes in Nigeria is riddled with weaknesses. The mechanism is slow, expensive, and lacks mandatory technical expertise. ADR has the potential to bridge these gaps but depends on the support of robust legislation, trained professionals, and a change in attitudes towards resolving tax disputes. Nigeria can simplify its taxation system, make it fairer and investor-friendly with these reforms.

5. Conclusion and Recommendations

5.1 Conclusion

Transfer pricing disputes in Nigeria are on the rise as businesses grow and transactions across different countries by companies are equally on the rise. The dispute arises when the tax authority and the company disagree on the prices of commodities among associated enterprises. The channels through which such a dispute is handled, such as objection, appeal to the TAT, or even litigation, are costly, time-consuming, and sometimes unfair. Most of the individuals handling such disputes do not have adequate knowledge or information on how transfer pricing works, hence making the process complicated. Additionally, taxpayers feel the system is not equitable, especially where panels are constituted only by tax authorities. The UK and South Africa have been better at using ADR mechanisms. These include arbitration and mediation, which are faster, less expensive, and less confrontational. ADR has still not been of much use in Nigeria in tax matters because there has been no legislation to support it and no trained officers who can handle such cases. But if enforced, ADR can ease the burden of courts, improve the confidence of the government and citizens, and persuade corporations to comply with tax laws. For Nigeria to harvest the benefit of ADR in the settlement of transfer pricing litigation, it has to institute the legal, institutional, and cultural changes. In conclusion, ADR is a better and faster way of settling transfer pricing litigation in Nigeria. Implemented in the right way, it has the potential to make the tax system more even and an attractive proposition to investors. The government, stakeholders, and the tax authorities need to work together to have ADR as a cost-saving and viable option in the future.

5.2 Recommendations

1. Establish a Legal Framework for ADR in Tax Disputes: Nigeria has to come up with a clear and detailed law that will allow ADR to be utilized in the settlement of tax disputes, including transfer pricing disputes. The law should clearly state how the mediation and arbitration would be done, how the enforcement of the results would be handled, and when they can be utilized. An effective legal framework will bring confidence to both taxpayers and the tax authority to utilize ADR as a fair solution.

⁴⁵ CJ Ubanyionwu, Note 13.

⁴⁶ OECD, *Ibid.*

- 2. *Build Technical Competency and Educate Experts:*** There is a need to educate professionals such as tax authorities, attorneys, accountants, mediators, and arbitrators regarding the use of ADR in transfer pricing cases. Legal and financial aspects of transfer pricing must be familiar to such professionals. Government agencies, in association with tax institutions and international organizations, can create workshops and certification courses for the development of the necessary skills.
- 3. *Build Awareness and Cultural Acceptance of ADR:*** There is a need to build awareness among Nigeria's stakeholders, such as tax authorities and business organizations, on how ADR works or why it is useful. Public awareness initiatives, seminars, and meetings with stakeholders should be held to build awareness of ADR. Promoting success stories and showcasing how ADR has worked in other nations can also build confidence and acceptability in Nigeria.
- 4. *Strengthen Institutional Support for ADR:*** The FIRS and Ministry of Finance need to create a dedicated ADR department to handle tax disputes. The department needs to consist of trained mediators and arbitrators and work in collaboration with taxpayers to sort out problems before they end up in court. Having a special team will accelerate the process and make it more efficient.
- 5. *Learn from Global Best Practices:*** Nigeria should learn from how other countries like the UK and South Africa implement ADR in tax cases. For example, they have successfully used APAs and MAPs to avoid or resolve disputes. Nigeria can learn from such experiences and adapt them to fit its own system. Pilot programs can be implemented to try out these ideas and improve on them over time.