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Tax Alert

Issue No. 12.1 | December 2024

FIRS Issues Guidelines on Advance Pricing Agreements in Nigeria

The Federal Inland Revenue Service (FIRS or "the Service") has issued guidelines on the procedures and conditions for Advance Pricing Agreements (APAs) in Nigeria, as well as the administration of executed APAs. The Guidelines set out the various types of APAs that can be negotiated with the FIRS, the eligibility criteria, the objectives and stages of the APA process, the associated costs and responsibilities, and other critical operational procedures and compliance requirements.

We have highlighted the key takeaways from the Guidelines below:

1. Definition and types of APAs

The Guidelines define an APA as an arrangement between a taxpayer(s) and a tax administration that determines, in advance of controlled transactions, an appropriate set of criteria for the determination of the transfer price of those transactions that accords with the Arm's Length Principle over a fixed period based on the fulfilment of certain terms and conditions.

The Guidelines cover unilateral APAs that can be signed by the FIRS and a taxpayer, as well as bilateral APAs that can involve the Service, a taxpayer in Nigeria, its connected person(s) that are resident in a foreign country, and the Competent Authority (CA) in that country. Multilateral APAs – which cover connected persons and CAs in multiple jurisdictions – also fall within the ambit of the Guidelines.

2. Eligibility criteria and threshold for an APA application

Resident and non-resident companies that have any form of taxable presence in Nigeria are eligible to apply for an APA, provided they have a controlled transaction(s) that is:

(a) The equivalent of at least $10 million for each covered controlled transaction (single transaction) for each year; or

(b) The equivalent of at least $50 million in the case of a group of covered controlled transactions (group of transactions) for each year covered by the APA.

3. Cost of processing an APA

Based on the Guidelines, all costs that are directly incurred by the FIRS in processing an APA application would be borne by the taxpayer. In this regard, an eligible taxpayer would be required to make:

(a) A non-refundable deposit of $20,000 as an application fee to cover the process. However, where the costs directly incurred for the APA exceed the non-refundable deposit, the taxpayer would reimburse the excess cost incurred by the Service.

(b) A non-refundable deposit of $5,000 as a renewal fee upon application for the renewal of the APA.

4. Operation of an APA

Under the Guidelines, an APA can be used to establish the arm's length price or the methodology for determining the arm's length price of a prospective controlled transaction. However, it may not be used to determine the future profit subject to taxation in Nigeria.

Prior to approving an APA application, the FIRS would conduct a detailed review of the factual assumptions underlying the determination of legal consequences. The APA would also be subject to continuous monitoring through an annual review process to ensure that facts, circumstances, and assumptions do not change throughout the APA period.

An APA will apply for a maximum period of three (3) years commencing from the start date indicated in the APA. The agreed methodology may also apply to a maximum period of three (3) years prior in the case of a rollback. The years to be covered by an APA must be clearly indicated by the taxpayer in its application.

According to paragraph 8.4 of the Guidelines, once an APA has been duly signed with the FIRS, the Service will be bound administratively by the terms of the APA provided that the taxpayer complies with its requirements, and there is no deviation from the critical assumptions of the APA. In essence, where these conditions are met, the Service shall not make transfer pricing (TP) adjustments on the taxable profits arising from the covered controlled transactions.

5. Annual compliance report

As part of the APA process, a taxpayer that has successfully negotiated an APA with the FIRS is required to prepare and submit an Annual Compliance Report (ACR) for each accounting year of the APA, by the due date of filing its annual Companies Income Tax returns. The ACR should contain sufficient information on the taxpayer's actual results for the year and demonstrate compliance with the terms of the APA.

Commentaries

In today's highly globalized business world, multinational enterprises (MNEs) are facing ever-increasing tax risks over their related-party arrangements and TP methodologies. APAs have been successfully used by several MNEs in disparate jurisdictions to navigate the minefield of TP risks and mitigate time-consuming and costly TP controversies.

Unfortunately, APAs have been significantly underutilized in Africa since the advent of TP on the continent almost three decades ago. We, therefore, commend the FIRS for issuing the Guidelines, as the operationalization of APAs in Nigeria should reduce taxpayers' uncertainty in respect of covered controlled transactions and help to optimize the resources of both taxpayers and tax authorities. The adoption of APA has even become more relevant now given the Africa Continental Free Trade Agreement, which should help to grow African countries' economies and integrate them into the global economy.

However, certain provisions in the Guidelines raise some important questions. For instance, while it is important to consider APAs for transactions with significant impact on tax revenue, are the transaction threshold values in the Guidelines reasonable in the light of Nigeria's economic environment? Would the stipulated processing fees discourage businesses from using APAs? Is the maximum APA duration of three years sufficient, given the time and cost that would be expended by all relevant parties in the APA negotiation process?

The question on duration is especially apt, considering that South Africa's proposed APA programme provides for a maximum APA duration of five (5) years with the possibility of an additional three (3) years, subject to approval by the Commissioner for South African Revenue Service.

We will issue a detailed newsletter on the provisions of the Guidelines and their implications for taxpayers.

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