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TEMPLARS Transcripts: Tax Digest

Tax Market Review

Policy and Tax Administration

- **FIRS'S Guidelines on Advance Pricing Agreements**

  Pursuant to the provisions of Section 8(1) of the FIRS (Establishment) Act 2007 and Regulation 9(12) of the Income Tax (Transfer Pricing) Regulations, 2018, the Federal Inland Revenue Service ("**FIRS**") issued the Guidelines on Advanced Pricing Agreements (the "**Guidelines**") on 27 November 2024. The APA Guidelines which came into effect on 1 January 2025 has the objective of providing guidance on the procedure and conditions for APAs in Nigeria.

Nature of APAs

Advance Pricing Agreement("**APA**") is an arrangement between a taxpayer and the FIRS, which is expected to stipulate an arm's length price or the mechanisms for determining the appropriate pricing for controlled transactions between related parties. Thus, APAs govern the pricing in regulated transfer pricing transactions, such that those transactions are deemed to have been conducted at arm's length[1].

The Guidelines provide for various forms of agreement which a taxpayer and the FIRS may enter into, for the purpose of determining the pricing methodology for controlled transactions. In this regard, the APA Guidelines identified three major forms of APAs:

[1] See generally, Article 4.0 of the APA Guidelines.

i. *Unilateral APA*: This is an APA which provides for the appropriate transfer price or mechanism for determining same in controlled transactions between related parties[2]. It does not include the participation of a tax treaty partner, and its terms may not be accepted by a tax treaty partner as being at arm's length.

ii. *Bilateral APA*: This is an APA which provides for the controlled transactions, the arm's length price or the procedure for determining same. It is usually between (i) the taxpayer and the FIRS (ii) the taxpayer's connected person in a foreign country and (iii) the tax authority of the said foreign country[3]. This form of APA is typically entered where there is a Double Tax Treaty (DTT) between Nigeria and the relevant foreign country. As such, the provisions of the APA which is entered into between the relevant foreign tax authority and the FIRS, is typically in tandem with the provisions of the Mutual Agreement Procedure (MAP) under the relevant DTT.

iii. *Multilateral APA*: This form of APA is entered between the taxpayer in Nigeria, and two or more of its connected parties in distinct countries on the one hand and the FIRS and the tax authorities of the relevant countries on the other. Like the bilateral APA, the multilateral APA is also expected to be based on the MAP provisions of the relevant DTT between Nigeria and its treaty partners.

Eligibility, Thresholds and Cost of Application:

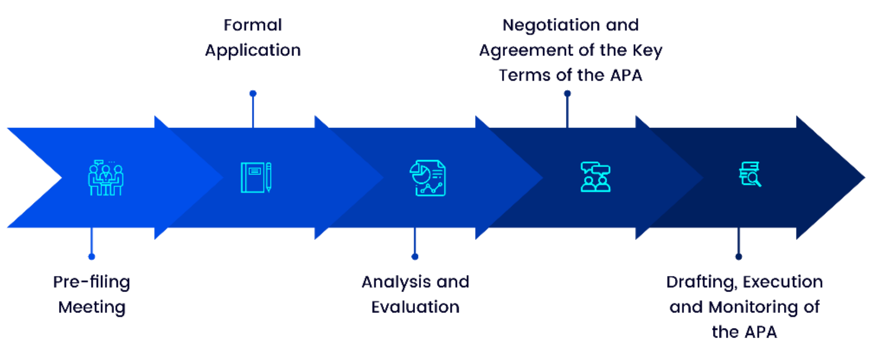
The APA Guidelines states that only persons with taxable presence in Nigeria can make an application for APA. In addition, the applicant must have a controlled transaction which meets the following thresholds:

i. US$10 million or its equivalent for each covered controlled transaction (single transaction) for each year; or
ii. US$ 50 million or its equivalent in the case of a group of covered controlled transactions[4] for each year.

With respect to the cost of application, the APA Guidelines provides that the application for new APA is a non-refundable deposit of US$20,000 while for renewals, a non-refundable deposit of US$5,000.

APA Application Process

The APA Guidelines identify the following five stages in the APA process:



APA Application Process

[2] Article 3.1 of the APA Guidelines.
[3] Article 3.2 of the APA Guidelines.
4 Article 11.3 of the APA Guidelines.

i. *Pre-filing meeting*: This is a mandatory (but non-binding) meeting where the taxpayer and the FIRS discuss the appropriateness and likelihood of an agreement being reached between both parties. The taxpayer is expected to make full material disclosures about the proposed transactions and the FIRS, in relying on such information, is expected to structure and agree on the scope and key terms of the APA. Notably, once the terms have been agreed upon, no changes will be made to the scope and key terms of the APA save in exceptional circumstances[5].

ii. *Formal Application*: Upon a successful pre-filing meeting, the taxpayer is expected to make a formal application with the relevant accompanying documentation to the FIRS within the timeframe agreed at the pre-filing stage.[6]

iii. *Analysis and Evaluation*: Upon receiving the formal application and the necessary documentation requirements, the FIRS is required to analyse and evaluate the terms and prospects of the proposed agreement with the FIRS. Where required, the FIRS may also hire the services of a subject matter expert where required[7].

iv. *Negotiation and Agreement of the Key Terms of the APA*: Following an evaluation of the terms of the APA, the parties to the agreement are expected to negotiate and agree on the key terms of the agreement[8].

v. *Drafting, Execution and Monitoring of the APA*: Once parties have successfully negotiated and by extension, reached an agreement, the APA is then drafted setting out the key terms of the agreement.

The timeline for concluding the APA process in the case of a unilateral APA, is 24 months; and in the case of a bilateral or multilateral APA, within 36 months.

Term, Renewal and Rollback

APAs are valid for a maximum period of 3 years and renewable for another maximum period of 3 years. The taxpayer is expected to make an application at least 9 months before the expiration of the APA sought to be renewed. Where the agreement sought to be renewed has material changes to its terms, the Guidelines, state that a new APA process must be initiated.

Notably, the Guidelines state that FIRS may rollback the agreed pricing methodology to prior years for a maximum period of 3 years.[9] However, APAs cannot be rolled back to controlled transactions on which a court of competent jurisdiction or a tax tribunal has issued a ruling on the appropriate arm's length price at any time before or after the signing of the APA. For rollback to be possible, (i) the controlled transaction must be the same as those covered by the APA, (ii) relevant returns for the rollback years must have been filed, (iii) the rollback will cover only years which are not under audit,

[5] Article 14.0 (iv) of the APA Guidelines.
[6] See generally, Article 15.0 of the APA Guidelines.
[7] See generally, Article 16.0 of the APA Guidelines.
[8] See generally, Article 17.0 of the APA Guidelines.
[9] Article 9.0 of the APA Guidelines.

(iv) the taxpayer must apply for rollback and (v) cost incurred by the FIRS in processing the rollback must be borne by the taxpayer.

APAs, Prior Transfer Pricing Issues and Audits

The Guidelines provides that in appropriate situations, the principles developed in an APA might provide a basis for resolving transfer pricing issues arising for prior years. Further, prior year adjustments resulting from an APA request will be treated as though the taxpayer has made a voluntary disclosure, provided that compliance activity has not commenced or been notified. Whilst penalties may not apply to additional tax for such deemed voluntary disclosure, interest will apply. Penalty will however apply to additional tax where an audit has commenced.

Further, the Guidelines provide that the existence of an APA will not preclude the FIRS from auditing the controlled transactions of a taxpayer in any year. However, only issues that are not subject to an APA may be covered in the audit.

Annual Compliance Report

As part of the APA process, the taxpayer is required to prepare and submit an Annual Compliance Report (ACR), for each year of the APA. The ACR shall contain sufficient information on actual results for the year and demonstrate compliance with the terms of the APA. The taxpayer is required to provide further information to FIRS within 21 days, upon request, failing which the FIRS may terminate the APA. The FIRS is also at liberty to terminate or not comply with the APA where the taxpayer fails to provide further information or comply with the ACR.

Conclusion

The APA Guidelines is a step in the right direction and a laudable effort of the FIRS, to bolster tax compliance of Multi-national Enterprises (MNEs) operating in Nigeria and engaging in inter-company transactions. With the APA Guidelines, MNEs can determine in advance the method for determining appropriate pricing of inter-connected transactions (Arm's Length Price) covered under the agreement between the company and the FIRS, thereby reducing the frictions and disputes with the FIRS.