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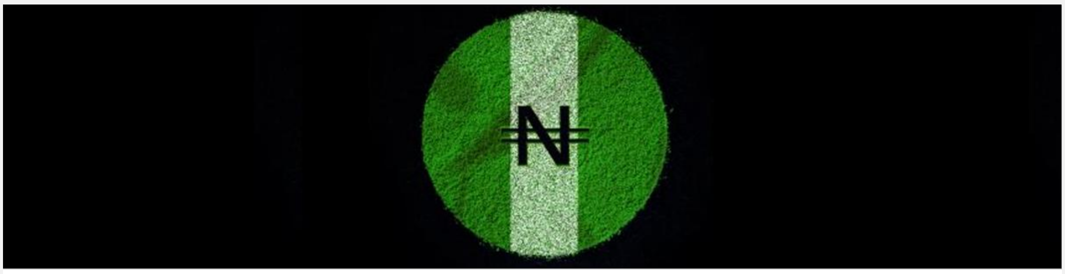
Federal Inland Revenue Service issues guidelines on advance pricing agreement

Introduction

The Federal Inland Revenue Service (FIRS), on 27 November 2024, issued the Guidelines on Advance Pricing Agreements (APAs). The Guidelines provide guidance on the procedures, conditions and administration of APAs in Nigeria. The Guidelines give effects to the provisions of APA as contained in the Income Tax (Transfer Pricing) Regulations 2018 and will become effective from 1 January 2025.

An APA is an arrangement between the taxpayer and FIRS, that determines in advance the appropriate pricing of controlled/intercompany transactions in accordance with the arm’s length principle.

It is applicable to taxpayers that are resident in Nigeria or non-resident entities that have a permanent establishment, significant economic presence or other taxable presence in Nigeria. In addition, taxpayers are required to have controlled transactions within a specific threshold in order to be eligible for an APA.



Highlights of the Guidelines

(i) Categories of APA:

The Guidelines introduced three types of APA as follows:

(a) Unilateral APA: this is an arrangement between the FIRS and a taxpayer with respect to appropriate transfer pricing of the covered controlled transactions. This APA does not include the participation of a tax treaty partner and does not remove the risk of double taxation.

(b) Bilateral APA: this APA involves a taxpayer in Nigeria, its connected person resident in a foreign country, FIRS and the Competent Authority (CA) of that connected person. It is typically negotiated by the CAs of contracting parties under a Mutual Agreement Procedure (MAP) provisions of the relevant tax treaty.

(c) Multilateral APA: this APA involves a taxpayer in Nigeria, its connected persons resident in two or more foreign countries, FIRS and the CAs of countries of residence of those connected persons. The multilateral APA is typically concluded using the MAP provisions of the relevant tax treaties and negotiated by the CAs of the relevant jurisdictions.

(ii) Duration of APA:

Each APA shall be valid for a maximum period of 3 years, commencing from the start date indicated on the APA. In the case of a rollback[1], APAs can only be rolled back for a maximum period of 3 years.

[1] A rollback involves applying the terms of an APA to controlled transactions that occurred before the APA was set up.

(iii) Operation of the APA:

The Guidelines outline the various stages of the application process: pre-filing meeting; formal application; analysis and evaluation; negotiations and agreement drafting; execution and monitoring stages. The process for the initial application shall be the same process for the renewal.

FIRS will endeavor to conclude a unilateral APA within 24 months, while bilateral and multilateral APAs will be concluded within 36 months. However, this will be subject to negotiations between the relevant parties, the availability of required documents and the complexity of the transactions involved. FIRS will notify the taxpayer in writing where an application is rejected or approved,

(iv) Cost of an APA application:

The taxpayer will bear the cost of processing an APA. A non-refundable application fee of $20,000 for the initial application process and $5,000 for renewal. Any additional cost incurred by FIRS will be communicated to the taxpayer and subsequently reimbursed by the taxpayer.

(v) Threshold for APA application:

The Guidelines provide that the threshold of a single controlled transaction to be covered under the APA will be $10 million per year or its equivalent and group of controlled transactions will be $50 million per year or its equivalent.

(vi) Audits and APAs:

The approval of an APA does not preclude FIRS from auditing the period covered by the APA. However, during an audit, the transactions covered by the APA will not be reviewed. The taxpayer will be required to maintain documents for a maximum period of 6 years after the end of the APA period.

(vii) Compliance requirement:

The taxpayer will be required to prepare and file a compliance report annually covering the period covered by the APA. The filing will be done on the due date for filing of the taxpayer’s annual transfer pricing returns.

Conclusion

In the context of increasingly complex business transactions and evolving business models, transfer pricing has become a critical area of focus for the tax authorities around the world. The aim of FIRS is to ensure that profits earned in Nigeria are taxed in the country and not shifted to other jurisdictions through complex transaction structuring.

In light of the above, there has been an upsurge in the number of TP audits in Nigeria. The issuance of the Guidelines is a step in the right direction in addressing transfer pricing issues in Nigeria and curbing practices that erode the tax base of companies operating in Nigeria.

However, the cost of applying for an APA, the threshold of transactions eligible for an APA and the duration of an APA serve as huge deterrents for companies to subscribe to the scheme. Additionally, the constant devaluation of the Naira further increases the burden for companies who would be looking to set up an APA.

Taxpayers are advised to familiarize themselves with the Guidelines and evaluate the impact and viability on their businesses.

If you require further clarification or seek to understand how this would impact your business, please reach out to ngtaxpartners@deloitte.com.

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