Tax Alert

FIRS releases Guidelines on Advance Pricing Agreements (APA)

Introduction

On 27 November 2024, the Federal Inland Revenue Service (FIRS) issued the Guidelines on Advance Pricing Agreements (APA). The Guidelines give effect to the APA provisions of the Income Tax (Transfer Pricing) Regulations, 2018 and specify the procedures and conditions for taxpayers to obtain APAs in Nigeria. The Guidelines also stipulate the processes for the administration of executed APAs.

The Guidelines will take effect from 1 January 2025. We have summarised some of the key highlights of the Guidelines below.

Overview of APAs

An APA is a voluntary agreement made between a taxpayer and a tax authority. It specifies the transfer pricing (TP) methodology to be applied in determining the arm’s length prices for intercompany transactions over a period in the future. An APA can be between the taxpayer and the FIRS (unilateral APA) or between the taxpayer and multiple tax authorities (bilateral or multilateral APA).

APAs provide certainty on the transfer pricing treatment of intercompany transactions in advance of those transactions. As such, they help to avoid costly disputes between taxpayers and tax authorities.

Threshold and eligibility criteria

Only companies with a taxable presence in Nigeria are eligible to apply for an APA in Nigeria. For the APA application to be considered by the FIRS, the intercompany transactions must meet an annual threshold of:

- $10 million or its equivalent for a single intercompany transaction; or
- $50 million or its equivalent for a group of intercompany transactions.

Cost of application

To apply for an APA, a taxpayer must make a non-refundable deposit of $20,000 to the FIRS. This payment will only be due after the FIRS has accepted the taxpayer’s APA proposal into the APA program. For APA renewals, the non-refundable deposit is $5,000.

Taxpayers will be responsible for all costs incurred by the FIRS (in excess of the non-refundable deposit) in processing an APA application. These include fees for engaging technical experts, travel costs for field visits, and other expenses.

Duration of application and approval process

Upon submitting an APA application, the FIRS will seek to conclude the process as follows:

- within 24 months for a unilateral APA; and
- within 36 months for bilateral or multilateral APAs.

Duration of agreement, renewal, and rollback

An executed APA will apply for a maximum period of 3 years from the date indicated in the APA. It may, however, be renewed for a maximum term of 3 years with the consent of the taxpayer, the FIRS, and other treaty partners if applicable.

The terms (including TP methodology) agreed in an APA can be applied to prior years (rollback) but only for a maximum of 3 years preceding the commencement date. A rollback will not be possible if the tax appeal tribunal, or a court of competent jurisdiction has issued a ruling on the arm’s length price of the relevant transaction.

TP audits and APAs

An APA does not preclude the FIRS from auditing any of the periods covered under the APA. However, in the event of an audit, only the areas or transactions not covered under the APA will be reviewed.

Also, the agreements reached under an APA may be used as a basis to resolve prior years’ TP audit issues, as well as past years not yet under audit.

When the methodology agreed under an APA is applied to past years not under audit, it will be treated as a voluntary disclosure, and any additional tax paid by the taxpayer will not be subject to penalties. However, interest will apply.

APA application process

The Guidelines outline five stages for obtaining an APA. These are: pre-filing meeting; formal application; analysis and evaluation; negotiations and agreement; and drafting, execution, and monitoring.

Each stage has its own requirements, timelines, and outcomes, which are explained in detail in the Guidelines.

Annual compliance requirements

Taxpayers that have concluded an APA with the FIRS will be required to submit an annual compliance report to the FIRS. This is to demonstrate compliance with the APA's terms and conditions. This report is due on the same date as the taxpayer's annual companies’ income tax returns.

Key takeaway

TP has been a top tax concern for many taxpayers in recent years. This concern stems from several sources, including the uncertainty and subjectivity that come with the pricing of intercompany transactions; and the materiality of the additional tax liabilities that often arise from TP disputes. The commencement of Nigeria’s APA regime will, therefore, be a welcome development for eligible taxpayers.

The inclusion of rollback provisions, and the opportunity to apply the terms of an approved APA to resolve open audit years are some of the positive features of the Guidelines. Some taxpayers may, however, find the high application thresholds and application fees to be prohibitive. In addition, the 3-year duration of APAs may be a disincentive given the time and resource investments that are often required to successfully negotiate an APA. These are issues that the FIRS should consider revisiting in the future.

For a deeper discussion, please contact any member of our team below or your usual contact with PwC Nigeria:

Contact detail

Seun Adu
Partner
seun.y.adu@pwc.com

Tiwalade Otufale
Partner
tiwalade.otufale@pwc.com

Ebunoluwa Akinnifesi
Manager
ebunoluwa.akinnifesi@pwc.com

Timilehin Akinbowale
Manager
timilehin.akinbowale@pwc.com

Contributor

Sheriff Abdulkadir
Senior Associate
sheriff.abdulkadir@pwc.com

At PwC, our purpose is to build trust in society and solve important problems. We’re a network of firms in 149 countries with more than 370,000 people who are committed to delivering quality in assurance, advisory and tax services. Find out more and tell us what matters to you by visiting us at **www.pwc.com**.

PwC refers to the PwC network and/ or one or more of its member firms, each of which is a separate legal entity. Please see www.pwc.com/structure for further details.