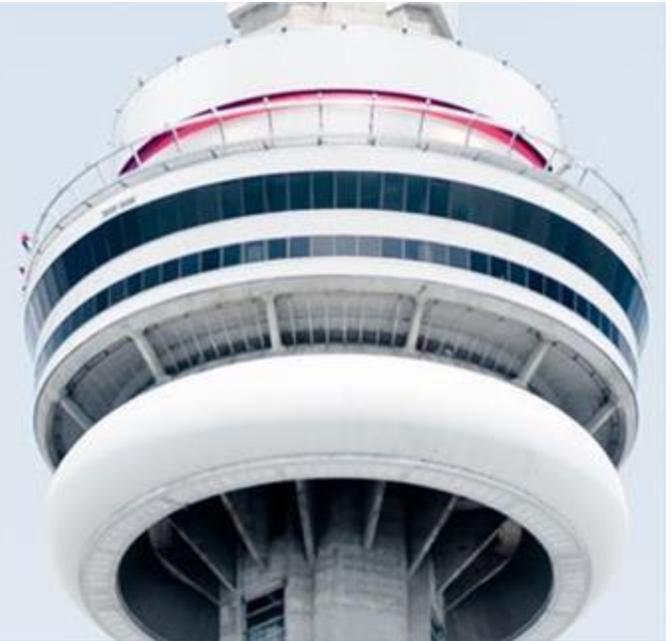




Tax Alert

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Federal Inland Revenue Service issues Guidelines on Mutual Agreement Procedure in Nigeria

On 21 February 2019, the Federal Inland Revenue Service (FIRS) released the Mutual Agreement Procedure (MAP) Guidelines (“the Guidelines”) in Nigeria. This is aimed at providing guidance and clarity on the procedures for accessing MAP as a means of dispute resolution, pursuant to the Double Taxation Agreement between Nigeria and each of its Treaty Partners.

The MAP is a well-established means through which tax administrations consult to resolve disputes regarding the application of double tax conventions. We have summarised below, key aspects of the Guidelines:

1. Application Eligibility

The Guidelines specify that a taxpayer resident in Nigeria is eligible to apply for MAP, if it considers that the actions of either or both Nigeria and its Treaty Partner's tax authorities result or will result in a taxation for it that is not in accordance with the provisions of the Tax Treaty, irrespective of the remedies provided by Nigerian domestic law. Subject to the provisions of the relevant tax treaty, a non-resident person can also make an application under these Guidelines. A MAP application can be made in respect of matters relating to:

- i. Transfer Pricing
- ii. Dual Residence status
- iii. Withholding tax
- iv. Permanent establishment
- v. Characterisation or classification of income.

2. Period of Limitation

The Guidelines stipulate that the time limit for presenting a case for Competent Authority (CA)'s assistance depends upon the specific terms as contained in the MAP article of the particular Tax Treaty under which the MAP is invoked.

Where the time limit for presenting a case to invoke MAP is not specified in the relevant Tax Treaty, the CAs of the Contracting States will agree the applicable time limit. Nonetheless, the case must be presented to the Nigerian CA within three years from the date of issuance of Notice of Assessment.

3. MAP Process

- i. Pre-filing consultation: A taxpayer seeking a MAP should first carry out a pre-filing consultation with the FIRS, which could be in the form of a meeting or in writing.
- ii. Submitting a formal request: All formal requests for MAP should be made in writing and addressed to the relevant officer of the FIRS.
- iii. Review of a MAP request: Further to the review of a MAP request, where any deficiencies are identified, the Authorised CA may request the taxpayer to take remedial action.

Also, where the Authorised CA is of the opinion that the deficiency in the request has not or cannot be remedied or where the taxpayer has failed, neglected or refused to remedy such deficiencies, the Authorised CA shall decline the request and notify the taxpayer, in writing and stating the reasons.

- iv. Acceptance of a MAP request: The Nigerian CA will accept a MAP request where the issue or transaction relates to a foreign country with which Nigeria has a Tax Treaty in force or it is evident that the actions of one or both countries have resulted or will result in taxation not in accordance with the Tax Treaty.

4. Roles of a Taxpayer during the MAP process

The Guidelines require the taxpayer to provide necessary support to the Nigerian CA in the course of the MAP process. The taxpayer is expected to be notified by the Nigerian CA when an agreement is reached by the two countries involved in the MAP process. The agreement will only be finalised upon written consent of the taxpayer.

5. Termination of the MAP process

A MAP process may be terminated where adequate, accurate and/or complete information were not provided by the taxpayer. The Nigerian CA is empowered to propose termination of a MAP process based on the shortcomings highlighted in the Guidelines.

6. Withdrawal of a MAP request

A taxpayer may withdraw its request for MAP at any time before a MAP agreement is reached. The withdrawal of a request for MAP is expected to be made in writing to the FIRS' Executive Chairman.

7. Tax collection during MAP

The Guidelines state that a request for MAP does not affect the requirement for payment of the tax liability or collection action by the relevant tax authority.

Our Comments

The issuance of the Guidelines on the MAP process is a welcome development. It provides taxpayers much needed guidance on how to resolve cases of double taxation when it arises. However, the Federal Government should expedite action on signing and ratifying more tax treaties with Nigeria's major trading partners, so as to avail taxpayers a wider tax treaty network with a view to minimising their exposure to double taxation.

Taxpayers are also encouraged to take advantage of the Guidelines and initiate pre-filing consultations with the Nigeria CA where there are unresolved double taxation matters.

Click [here](#) to download a copy of the Guidelines.

For any enquiries on the above, please contact:

Wole Obayomi

ng-fmtaxenquiries@ng.kpmg.com

[Contact Us](#)

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