



**FEDERAL INLAND REVENUE SERVICE  
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NIGERIA**

Information Circular

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**Subject: GUIDELINES ON ADVANCE PRICING AGREEMENTS (APAs)**

*These Guidelines are issued pursuant to Section 8(1)(u) of the FIRS (Establishment) Act 2007 (as amended) and Regulation 9(12) of the Income Tax (Transfer Pricing) Regulations 2018, to provide guidance to taxpayers, tax practitioners, tax officers and the general public on the procedure and conditions for Advance Pricing Agreement (APA) in Nigeria, as well as administration of executed APAs.*

*The Guidelines should be read with the Guidelines on Mutual Agreement Procedure (MAP) (Information Circular 2023/04).*

## Table of Contents

1.0	Introduction.....	4
2.0	Advance Pricing Agreement (APA) .....	4
3.0	Types of APA .....	4
4.0	Objectives of the APA Process .....	6
5.0	Mutual Expectations .....	6
6.0	Legal Framework for APA .....	7
7.0	Persons Covered.....	7
8.0	Operation of an APA .....	7
9.0	Term of an APA.....	8
10.0	Eligibility for an APA Application.....	9
11.0	Administration of the APA .....	9
12.0	Stages of the APA process.....	10
13.0	APA Proposal.....	11
14.0	Stage 1 – Pre-Filing Meeting .....	11
15.0	Stage 2 - Formal Application.....	13
16.0	Stage 3 - Analysis and Evaluation .....	18
17.0	Stage 4 – Negotiation and Agreement of the APA.....	20
18.0	Stage 5 - Drafting, Execution and Monitoring .....	22
19.0	Commencement of an APA .....	22
20.0	Delayed Finalisation .....	22
21.0	Rollback of APA.....	23
22.0	Annual Compliance Report .....	24
23.0	Record-Keeping Requirements.....	25
24.0	APA Renewals .....	26
25.0	Audits and APAs.....	26
26.0	Compensating Adjustments .....	27
27.0	Termination of an APA.....	27
28.0	Effective Date .....	27
29.0	Amendment or Review of Guidelines .....	27

30.0 Information and Enquiries .....	28
APPENDIX 1: Model Pre-Filing Meeting Agenda .....	29
Nature and Scope of the APA Process.....	29
Specific matters to be agreed: .....	29
APPENDIX 2: Content of Model APA Proposal .....	30
Terms of the Proposed APA. ....	31
APPENDIX 3: Model APA Case Plan .....	32
Controlled Transactions and Collateral Issues.....	36
Information/Documentation Requests and Responses.....	36
APPENDIX 4: Formal APA Application .....	37
Application for a Unilateral Advance Pricing Agreement.....	37
APPENDIX 5: Formal Application for BILATERAL/MULTILATERAL APA .....	39
APPENDIX 6: Information/Documentation Requirement for a Unilateral/Bilateral/Multilateral APA Application.....	41
APPENDIX 7: Unilateral/Bilateral/Multilateral APA Model Agreement .....	44
APPENDIX 8: Critical Assumptions.....	49
APPENDIX 9: Annual Compliance Report.....	51
APPENDIX 10: Application for Rollback of Transfer Pricing Methodology for years covering 20XX – 20XX .....	55

## 1.0 Introduction

- 1.1 Regulation 4 of the Income Tax (Transfer Pricing) Regulations 2018 and relevant tax legislation require that transactions between connected taxpayers should not differ from those obtainable in similar transactions between independent persons under comparable circumstances. In other words, the conditions imposed on such transactions shall be in accordance with the Arm's Length Principle.

## 2.0 Advance Pricing Agreement (APA)

- 2.1 An APA is an arrangement between a taxpayer(s) and a tax administration that determines, in advance of controlled transactions, an appropriate set of criteria (e.g., transfer pricing methodology, comparables, and appropriate adjustments thereto, as well as critical assumptions as to future events) 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. An APA could be unilateral, bilateral, or multilateral.
- 2.2 The APA process is voluntary and complements the various mechanisms for resolving transfer pricing (TP) disputes. It is flexible in scope, as it may cover all or part of the transfer pricing issues of a taxpayer. The discussion of transfer pricing issues in a non-adversarial environment, as envisaged under an APA process, can stimulate the free flow of information and promote mutual understanding among all parties.

## 3.0 Types of APA

The Service may enter into any of the following forms of APA with the taxpayer(s):

- 3.1 **Unilateral APA** - is an arrangement between the Service and a taxpayer concerning the appropriate transfer pricing of the covered controlled transactions. A unilateral APA does not include the participation of a tax treaty partner and the terms of the agreement may not be accepted by the tax authority of a tax treaty partner as being

arm's length. As such, Unilateral APA may not totally remove the risk of double taxation.

3.2 **Bilateral APA** - is an APA that involves a taxpayer in Nigeria, its connected persons resident in a foreign country, the Service, and the Competent Authority (CA) of that connected person. A bilateral APA, typically, is negotiated by the CAs of contracting parties under the MAP provisions of the relevant tax treaty.

3.3 **Multilateral APA** - is an APA that involves a taxpayer in Nigeria, its Connected persons resident in two or more foreign countries, the Service, 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.

3.4 A unilateral APA may be considered where:

- (i) The controlled transaction is with a jurisdiction that Nigeria does not have an existing tax treaty;
- (ii) there is an existing tax treaty but the tax treaty partner in a bilateral APA process, or all the tax treaty partners in a multilateral APA process, do not wish to participate in or continue with the process, or do not have APA programme;
- (iii) there is an existing tax treaty but the Service and the tax treaty partner(s) are unable to reach an agreement or;
- (iv) where there is an existing treaty but its provisions are not adequate, appropriate, or applicable to the APA process.

3.5 Where circumstances warrant, an application for unilateral APA may be converted to a bilateral or multilateral APA upon a request by the taxpayer subject to the agreement of the Service and the tax treaty partner(s).

3.6 A request for a bilateral or multilateral APA may be considered, where:

- (i) the controlled transaction is with jurisdiction(s) that Nigeria has a tax treaty in force;

- (ii) the treaty between Nigeria and the other jurisdiction(s) have an Article on Mutual Agreement Procedure and its provisions are adequate for the APA process; and
- (iii) a corresponding APA program exists in the other jurisdiction(s).

It should be noted that the Service strongly encourages bilateral or multilateral APAs whenever it is considered expedient.

#### **4.0 Objectives of the APA Process**

- 4.1 An effective APA process will prevent costly and time-consuming audits, and possible litigations that may arise from such transfer pricing disputes.
- 4.2 An APA process is beneficial to both the taxpayer and tax authorities as it:
  - a. provides reasonable certainty on the TP treatment of relevant transactions;
  - b. resolves transfer pricing issues for multiple years thereby ensuring effective utilisation of resources by both the taxpayer and tax authorities;
  - c. promotes consistency, and reasonableness of TP outcomes, reduce arbitrariness and prevents tax evasion;
  - d. minimises the rigors of TP audit and delivers TP outcomes based on the terms of the agreement;
  - e. reduces compliance costs over the term of the APA; and
  - f. removes the risk of double taxation in the case of a bilateral or multilateral APA.

#### **5.0 Mutual Expectations**

- 5.1 The APA process enables taxpayers to assure themselves that their controlled transactions are accepted as complying with the Arm's Length Principle. It must, however, be noted that the APA process is entirely voluntary (to the taxpayer) and must not be used as a cover for abusive tax planning or to achieve double non-taxation.
- 5.2 In order to achieve a successful outcome and notwithstanding the fact that it is a statutory process, the APA process requires the collaboration and mutual trust of all the parties, the APA is entered into on the understanding that:

- a. all parties must cooperate fully with each other, including undertaking open and ongoing dialogue in the development of the APA;
- b. each APA request will be treated on its own merits in accordance with its own facts and circumstances;
- c. each party will act transparently, in particular, each party will disclose all relevant and material facts; and
- d. each party will provide a prompt and complete response to all reasonable enquiries.

## **6.0 Legal Framework for APA**

- 6.1 Regulation 9 of the Income Tax (Transfer Pricing) Regulations 2018, provides the legal basis for a taxpayer to request for an APA. Upon an application, the Service may enter into an agreement with the connected person to determine the arm's length price (ALP) or specify the criteria by which the ALP could be determined for a controlled transaction.

## **7.0 Persons Covered**

- 7.1 For the purposes of this Guidelines, an APA may cover transactions between:
  - a. two or more connected persons;
  - b. a permanent establishment, fixed base, or any taxable presence and its head office; or
  - c. two permanent establishments, fixed bases or other taxable presence of the same person.

## **8.0 Operation of an APA**

- 8.1 The APA operates based on assumptions that are supported by facts of a proposed transaction. Determinations are made after detailed review and, to the extent appropriate, verification of the factual assumptions on which the determination of legal consequences is based. Furthermore, the APA is subject to continuous monitoring through an annual review process to confirm that facts, circumstances, and other assumptions do not change materially throughout the APA period.

- 8.2 An APA establishes the arm's length price or the methodology for determining the arm's length price for future controlled transactions. However, it may not be used to determine the future profit subject to taxation in Nigeria.
- 8.3 An APA will apply for a period not exceeding three (3) years, commencing from the start date indicated in the APA (or any other period as may be stipulated in the relevant law or Regulations). However, the agreed methodology may apply to a maximum of three (3) prior years in the case of a rollback. The taxpayer(s) must indicate the years to be covered by the APA in its application or Assurance Provided by an APA.
- 8.4 Where the taxpayer(s) has agreed to and complied with the terms of an APA, 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. Where there are no changes to all the critical assumptions and the requirements are complied with as stipulated in the APA, the Service shall not make TP adjustments on the taxable profits arising from the covered controlled transactions.
- 8.5 In the case of a unilateral APA, where the country of a connected person makes a TP adjustment to the covered transaction resulting in double taxation, the Service will endeavour to support the unilateral APA. However, the Service may deviate from the terms of the unilateral APA in order to solve an MAP negotiation with a tax treaty partner.

## **9.0 Term of an APA**

- 9.1 An APA will apply for a period not exceeding three (3) years commencing from the start date indicated in the APA (or any other period as may be stipulated in the relevant law or Regulations). However, the agreed methodology may apply to a maximum of 3 prior years in the case of a rollback.



## **10.0 Eligibility for an APA Application**

For a taxpayer to be eligible to apply for an APA, such taxpayer must:

- (i) be a company resident in Nigeria or a non-resident company having a permanent establishment, significant economic presence, or any other taxable presence in Nigeria; and
- (ii) have controlled transaction(s) of the threshold stipulated in paragraph 11.3 of these Guidelines.

## **11.0 Administration of the APA**

### **11.1 Cost of an APA Application:**

- i. A taxpayer(s) shall be responsible for all costs that are directly incurred by the Service in processing an APA application. Such costs may include the cost of engaging an expert, travel costs for field visitations, and other costs directly incurred for that particular APA.
- ii. The cost shall be payable by the taxpayer(s) to the Service as follows:
  - (a) A non-refundable deposit of \$20,000 as an application fee to cover the process; and
  - (b) Where the costs directly incurred for the APA exceed the non-refundable deposit, payment, or reimbursements of the excess cost incurred by the Service over the non-refundable deposit in (a) above.
  - (c) A non-refundable deposit of \$5,000 as a renewal fee upon application for renewal of the APA
- iii. The non-refundable deposit shall be payable after the pre-filing meeting and the communication of the acceptance of the APA proposal into the APA program. The evidence of payment shall be included in the APA application.
- iv. Any excess cost above the non-refundable deposit shall be communicated to the taxpayer(s) in writing before the agreed terms of the APA is communicated. Payment or reimbursement of the excess cost shall be made before the Service executes the final APA agreement. The evidence of payment shall be forwarded to the Service upon payment.

### **11.2 Transactions Covered by the APA**

- i. The scope of an APA includes covered controlled transactions of the taxpayer as agreed by the Service. It may cover different groups of controlled transactions, including transfers of tangible or intangible property or services.

- ii. A specific issue or limited APA will not be appropriate where the transactions covered by the application are highly interrelated with transactions not covered by the application or where there is a need to analyse transfer pricing issues in a wider context because of intentional set-offs. The Service may, nevertheless, consider an APA application which is limited to specific groups of controlled transactions provided that there is justification for such limitation.

### **11.3 Threshold**

For these Guidelines, the minimum threshold for any APA application is;

- a. the equivalent of USD 10 million for each covered controlled transaction (single transaction) for each year; or
- b. the equivalent of USD 50 million in the case of a group of covered controlled transactions (group of transactions) for each year covered in the APA.

### **11.4 APA Request**

- a. All requests for APA, including a request for a pre-filing meeting should be made in writing, addressed to the Executive Chairman for the attention of:

The Director,  
Competent Authority Department,  
Federal Inland Revenue Service,  
2ndFloor Revenue House Annex,  
No. 26 Sokode Crescent,  
Wuse Zone 5 Abuja.  
Email Address: [acatreatiesandmap@firs.gov.ng](mailto:acatreatiesandmap@firs.gov.ng).

- b. A bilateral or multilateral APA may be initiated through an application to be submitted to the CA of the treaty partner in line with the provisions of the Article on MAP in the relevant tax treaty.

## **12.0 Stages of the APA process**

The APA process has the following distinct stages:

- Stage 1: Pre-filing meeting
- Stage 2: Formal application
- Stage 3: Analysis and Evaluation
- Stage 4: Negotiations and Agreement
- Stage 5: Drafting, Execution and Monitoring

## 13.0 APA Proposal

- i. An APA proposal containing the details set out in **Appendix 2** shall be submitted to the Service for review. The pre-filing meeting may be scheduled within 30 days after the submission of an APA proposal.
- ii. The APA proposal shall include projections, correspondences, or any relevant information indicating the possible value of the transaction(s) intended to be covered by the APA.
- iii. The APA proposal will be discussed at a pre-filing meeting in order to ensure that both the Service and the taxpayer have a common understanding of the requirements.

## 14.0 Stage 1 – Pre-Filing Meeting

- i. A pre-filing meeting is a preliminary consultation before formally submitting an APA application. This meeting is mandatory.
- ii. The purpose of the pre-filing meeting is to enable the taxpayer and the APA team to assess the possibility of successful completion of the APA. It allows the Service to make an informed decision as to whether the application should be filed. It is an opportunity to clarify the expectations of both sides. The model pre-filing meeting agenda is set out in **Appendix 1**.
- iii. The issues to be discussed in the pre-filing meeting include:
  - a. the nature and scope of the proposed APA;
  - b. the specific matters to be agreed such as the transfer pricing method(s), determination of ALP;
  - c. the APA process, including case plan, filing of the APA application, negotiation process, and conclusion;
  - d. confirm if the APA would be unilateral, bilateral or multilateral; and
  - e. identify collateral issues (if any), as well as the treatment or approach to be adopted in addressing such issues.
- iv. Once the scope of the proposed APA has been agreed, changes to it can only be made in exceptional circumstances, including:
  - a. changes to the controlled transactions;
  - b. emergence of new issues of significant tax risk;
  - c. new issues that are raised by the CA of the tax treaty partner(s) in the case of a bilateral or multilateral APA.
  - d. any material changes in economic circumstances relating to the covered controlled transactions.

- v. Any change to the scope of the APA must be agreed between the Service and the taxpayer. If an agreement cannot be reached on the scope of the APA, the Service shall not continue with the process.
- vi. The Service requires full disclosure of all material facts relating to the covered controlled transactions and will not accept to hold a pre-filing meeting without sufficient information about the taxpayer and its operations.
- vii. A pre-filing meeting binds neither the taxpayer nor the Service to agree to an APA. The meeting is not an indication or proof of filing of an APA application or that the application is in process. Furthermore, statements or representations, (oral or written) made by either the taxpayer or the Service are informal and, as such, are not binding on the parties.
- viii. Pre-filing meetings for an APA request may commence not later than 6 months before the date of submission of the APA application (i.e., for an APA application intended to be submitted on 1 January 2025, the pre-filing meetings should commence no later than 1 July 2024). In the case of bilateral or multilateral APA, the time requirements of the tax treaty partner(s) should be taken into consideration.
- ix. Where an APA application does not reflect the Service's understanding of the discussions at the pre-filing stage or any relevant document is not included, the applicant will be informed in writing of this fact and the applicant may be required to make amendments to the application within a specified time before proceeding with the APA process. Where such amendments are not made within 30 days to the satisfaction of the Service, the application may be rejected.
- x. In the case of Unilateral APA, where the Service is satisfied that the application and the accompanying documents are consistent with the discussions at the pre-filing stage, the application may be accepted, and an acknowledgment will be sent to the applicant in this regard.
- xi. In the case of a bilateral or multilateral APA application, the Service shall notify the CA(s) of the relevant tax treaty partner(s) of their interests in participating in the APA process, and to agree on a timetable for the APA process.

- xii. Where a taxpayer(s) APA application is accepted into the APA process, the taxpayer will be notified in writing. The letter of acceptance will state that the APA application is accepted. Where an APA request is not accepted into the APA process, the Service shall provide the reasons for that decision in writing.
- xiii. The formal application for an APA should be submitted only after there is agreement with the Service on the scope of the APA, as well as any collateral issue and its treatment.

## **15.0 Stage 2 - Formal Application**

- i. Where the Service agrees to an APA process with taxpayer(s), the taxpayer(s) shall submit a formal APA application within the timeframe agreed at the pre-filing stage. The APA application shall set out the scope of the APA and the approach to the treatment of the collateral issues based on the agreement reached at the pre-filing stage. A copy of the formal APA application shall also be submitted to the tax treaty partner(s) concerned in the case of a bilateral or multilateral APA. A model of the formal APA application is provided in **Appendices 4 and 5**.
- ii. The APA application shall provide a detailed scope of the APA and how the identified collateral issues, if any, are to be addressed. Information to be provided in the APA application shall include:
  - (a) the transactions, products, businesses or arrangements that will be covered;
  - (b) all relevant entities to the controlled transactions involved;
  - (c) the type of APA
  - (d) all tax treaty partners of Nigeria which have been requested to participate (if any);
  - (e) detailed functional analysis including industry analysis;
  - (f) clear value chain analysis;
  - (g) details of the proposed TP Method (TPM), the justifications for the proposed method and reasons for rejecting other methods;
  - (h) the terms and conditions governing the application of the TPM including the critical assumptions;
  - (i) information and documentation as agreed in the pre-filing meeting which may be updated as the need arises; and

- (j) any further information or documentation that may be of assistance to the progress of the APA application.
- iii. All documentation shall be clearly labelled, indexed, and referenced.
- iv. The Service may request additional information while processing the application.
- v. Upon the filing of the formal APA application, all subsequent correspondences and representations shall be made through the team handling the APA application. The taxpayer will be informed of the name and contact details of the APA team lead upon the commencement of the APA process.
- vi. Correspondences in this respect may include email, video conferencing, or face-to-face meetings with the tax treaty partner(s), where significant issues need to be resolved in a confidential manner.

### **15.1 Documents to be submitted with an APA Application;**

1. In addition to the documents and information specified in **Appendix 6**, the following documents and information should accompany an APA request:
  - (i) a case plan;
  - (ii) a Power of Attorney (if represented)
  - (iii) any other relevant information that the Service may require to complete its processing of the APA application.
  - (iv) a signed declaration statement as provided in Appendix 10 (IV) of this guideline.
2. The items listed in paragraph 1 is indicative of the general information or documentation required in a typical APA process; as such, it is neither exhaustive nor prescriptive.
3. Where the records or documents to be produced are voluminous, the taxpayer(s) may agree with the Service that they need not be submitted with the APA application, but the documents must be described, referenced and have their location stated in the application. The taxpayer must also undertake that the documents will be made available upon request by the Service.
4. The Service will take the decision on Unilateral APA applications whereas the decision, in the case of bilateral or multilateral APA application, will be by agreement of the Service and the other tax treaty partner(s).

5. Where a taxpayer(s) APA application is accepted into the APA process, the taxpayer will be notified. The letter of acceptance will state that the APA application is accepted. Where an APA request is not accepted into the APA process, the Service shall provide the reasons for that decision.

## **15.2 APA Case Plan**

- i. After the pre-filing meetings and the acceptance of the Unilateral APA application, the applicant is required to provide a draft APA case plan which will be discussed and agreed upon with the APA team. The APA case plan should contain a structured timeline and work plan jointly developed by the Service and the taxpayer. A model APA case plan is given in **Appendix 3**.
- ii. In the case of a bilateral or multilateral APA application, after a formal APA case plan is received, the Service will endeavour to agree on the timetable for the APA process with the tax treaty partner.
- iii. The case plan will set out the information or documentation required by the Service, the date it is required, and the cooperation required in the process of gathering information.
- iv. The Service and the applicant shall endeavour to adhere to the timeline and the work plan. Where it becomes necessary to alter the plan, especially, as a result of changes in the scope of the APA, collateral issues, etc, the Service will seek agreement with the tax treaty partner(s) and the applicant shall amend the APA case plan to reflect those changes.

## **15.3 Other Information/Documentation Requirements**

- i. The extent of information or documentation necessary to determine the appropriate arm's length outcome will depend on the facts and circumstances of each case. Other information or documentation required by the Service to determine an APA application will be provided by the applicant as set out in **Appendix 3** at the applicant's cost and within the agreed timeframe.
- ii. In the case of a bilateral/multilateral APA, the taxpayer shall inform the Service of the information or documentation requested by the tax treaty partner(s) in relation to the APA application. The taxpayer must ensure that the Service is provided with copies of any information or documentation

supplied to the tax treaty partner(s) in a timely manner, whether supplied by itself or by a connected person, to effectively synchronize the process.

- iii. All documents submitted should be in the English language or in any other language accompanied by an English translation.

#### **15.4 Collateral Issues**

A collateral issue is an issue that is material and relevant to or is capable of affecting the outcome of the APA such as legal or administrative issues, tax treaty issues, or tax avoidance issues. It is not the same as ancillary or administrative issues integrally linked with the transfer pricing issues. Collateral issues, if any, may be processed in parallel with the APA where possible.

#### **15.5 Treatment of Collateral Issues**

- i. Where a collateral issue is identified, the Service and the taxpayer will seek to agree during the pre-filing stage on how the collateral issues would be addressed.
- ii. Where a collateral issue arises for which, there is no established position, the Service may, whilst ensuring confidentiality of the taxpayer's transactions, seek expert advice.
- iii. There may be circumstances where the issue to be considered has implications to a particular class of transactions or arrangements, or taxpayers. This may mean that the APA would progress in parallel with the development of the Service's position.

#### **15.6 Critical Assumptions**

- i. An APA will define the critical assumptions that are very significant in relation to the covered controlled transactions. They can be any fact about the taxpayer, an affiliate, a third party, an industry or general economic conditions. An assumption is critical where its change may significantly affect the appropriateness of the substantive terms of the APA or the basis upon which it was agreed. Critical assumptions that should be considered include those items listed in **Appendix 8**.
- ii. All parties shall seek to identify existing facts, including reasonable probabilities, at the formal application stage. This is critical to an effective APA process since any changes may materially affect the suitability of the transfer pricing methodology or its application.



- iii. This information should be identified, disclosed and included by the taxpayer as critical assumptions in the APA agreement and ensure that the facts which form the basis of such agreement remain the same during the entire term of the APA.

### **15.7 Breach of Critical Assumptions**

- i. A taxpayer is required to notify the Service immediately it becomes aware that a change in the critical assumptions has, may have, or may occur. The Service may request for proof or explanation in order to determine:
  - (a) if a change has indeed occurred,
  - (b) when it occurred,
  - (c) the significance of the change that occurred to the APA, and
  - (d) any adjustment that may be required in order to preserve the APA.
- ii. Where the taxpayer fails to notify the Service that a change in the critical assumptions has occurred and the Service becomes aware of such breach, the Service may terminate the APA.
- iii. If there is a breach of a critical assumption, and an agreement on a revised transfer pricing methodology cannot be reached after discussion with the taxpayer and, where applicable, the tax treaty partner(s), the Service may terminate the APA.
- iv. The Service will assess whether the taxpayer could reasonably have been expected to foresee or anticipate the event or circumstances at the time the APA was signed, and whether the agreed transfer pricing methodology has sufficiently taken this into account.
- v. In some cases, a breach in a critical assumption that produces negligible effects as established by the Service may not require any change in the APA. In such situations, the APA may still apply for its remaining term.
- vi. Where the APA is revised, the effective date of the revision will be stated in the revised APA. The revision of an APA will not extend the tenure of the original APA.

- vii. If an APA cannot be revised, the APA will be terminated. The termination will take effect from the beginning of the year in which the event giving rise to the change in circumstances occurred.

### **15.8 Time-frame for Concluding an APA**

- i. Upon the acceptance of a taxpayer's APA formal application, the Service will endeavour to conclude the process as follows:
  - (i) in the case of a unilateral APA, within 24 months; and
  - (ii) in the case of a bilateral or multilateral APA, within 36 months.
- ii. The actual time taken to complete an APA will depend on the followings:
  - (i) progress of negotiations with CAs of the tax treaty partner(s),
  - (ii) timely provision of relevant information and documents by the taxpayer to the Service; and
  - (iii) the complexity of the issues.

### **15.9 Acceptance or Rejection of the APA Application**

1. The Service will consider every application and decide whether or not to accept an APA application. The Service shall notify the taxpayer(s) of the decision taken accordingly.
2. Upon acceptance of a taxpayers APA application into the APA programme the taxpayer shall receive written notification. For bilateral or multilateral APA; the relevant CA shall also be notified.
3. Where an APA request is not accepted into the APA process, the Service shall provide the reasons for the rejection.

## **16.0 Stage 3 - Analysis and Evaluation**

### **16.1 Analysis and Evaluation of Information and Documentation Provided in APA Application**

- i. Upon acceptance of the formal APA application, the Service will analyse and evaluate the data submitted. The Service may contact the taxpayer to discuss and clarify the information or documentation submitted. If necessary, the Service will request for further information or documentation considered relevant to the application.

- ii. Where the Service agrees to pursue a unilateral APA with an applicant, the APA team will negotiate with the applicant concerning all aspects of the APA process, including possible subsequent revisions, terminations, and renewal.
- iii. In the case of a Bilateral or Multilateral APA, there will be a mutual exchange of briefs between the CA of Nigeria and the CAs of the tax treaty partners concerning the APA process, including possible subsequent revisions, terminations, and renewal, in accordance with the relevant tax treaties.
- iv. Where the APA team forms an evaluation different from that contained in the taxpayer's application, it will discuss its evaluation with the taxpayer and seek a mutually acceptable agreement with the taxpayer on its position. In a Bilateral or Multilateral APA, the Competent Authorities will exchange their position papers, setting out their views on the evaluation of the APA request.

## **16.2 Use of Subject Matter Experts**

- i. Where the Service is of the view that the assistance of an expert is required in certain areas, the Service will seek the assistance of an expert. Any person to be engaged as an expert must:
  - a) possess adequate academic or professional qualifications and experience in the relevant field where the advice is being sought;
  - b) not be engaged in advisory work that is more than ancillary or incidental to the main activities of the taxpayer within 3 years prior to the APA request for which he is to be engaged as an expert;
  - c) not have served as a tax official in the tax authority of Nigeria or that of the relevant tax treaty partners within 3 years prior to the APA request for which he is to be engaged as an expert; and
  - d) not have provided tax, accounting, audit, or related services to the applicant or its associates within 3 years prior to the APA request for which he is to be engaged as an expert.
- ii. The expert may be required to comment on the adequacy of the taxpayer(s)'s economic study and address the questions and concerns of the Service and that of the tax treaty partner(s). He may provide an opinion on whether the proposed business arrangement is the most appropriate.
- iii. The expert's opinion will not bind the Service but it shall be taken into consideration in its decisions. Where the expert's opinion is adopted by the

Service, it would be considered as the opinion of the Service. This, however, would not be binding on the taxpayer(s) or the tax treaty partner(s), in accepting or rejecting the ruling.

- iv. The expert will have access to relevant information provided under the APA process, having due regard to the area in which the advice is being sought, the confidentiality and conflict of interest considerations, and subject to the secrecy provisions as contained in the tax laws.
- v. Where the Service is relying on the opinion of an expert, where possible, the Service may share the advice of the expert with the taxpayer(s) or the CA of the tax treaty partner(s). Share of the expert advice will depend on the position of the Service in respect of the advice and whether or not the expert's report contains confidential third-party information.

## **17.0 Stage 4 – Negotiation and Agreement of the APA**

APA negotiation involves the examination of the taxpayer's proposals, gathering and analysis of material facts, evaluation of available data including the involvement of each connected party in respect of the controlled transactions and discussion of findings, inferences, and decisions taken with the taxpayers and the CA of the treaty partner in the case of a bilateral/multilateral APA.

### **17.1 Negotiations under Unilateral APA**

- a. In the case of the unilateral APA, the Service will prepare the draft of agreed APA terms in consultation with the applicant. The purpose of the draft APA terms is to ensure that the taxpayer and the Service have a common understanding of the issues to be agreed in the APA.
- b. The Service will inform the taxpayer of the resolution of the collateral issues. The resolution of collateral issues will not form part of the content of the APA. In most circumstances, the collateral issues need to be resolved prior to finalising the APA.

### **17.2 Negotiations with tax treaty partner(s)**

- i. At the commencement of the APA process, the taxpayer should ensure that its overseas connected person(s) meet the APA application requirements of the tax treaty partner(s). Each tax treaty partner will respectively undertake an evaluation and analysis of the case from its perspective and may contribute information or insights not known to the Service or take different positions in relation to the appropriate transfer pricing indices.

- ii. The Authorised CA of Nigeria may liaise directly with the tax treaty partner(s) to discuss or clarify specific issues in respect of the bilateral or multilateral APA; or exchange position papers setting out its views under the MAP Article of the relevant tax treaty.
- iii. The authorised CA of Nigeria will negotiate its preferred terms and conditions for the APA with the other tax treaty partner(s) to reconcile any difference to produce mutually agreeable terms and conditions for the APA.
- iv. The Service will inform the taxpayer if the negotiations break down because:
  - (a) the APA application is not accepted by the other treaty partner(s);
  - (b) agreement on the scope of the APA cannot be reached;
  - (c) the taxpayer withdraws its application; or
  - (d) the Service or other treaty partner(s) withdraw from the APA process;
- v. Where the APA negotiation breaks down, any request made to the Service by a taxpayer(s) for a review of the decision of the Service on the processing of the APA application may be referred to the Decision Review Panel set up under Regulation 21 of the Income Tax (Transfer Pricing) Regulations 2018 or a body that replaces it.
- vi. Where it is recognised that an agreement which differs from the initial position of the Service may be reached with the CA of the tax treaty partner(s), the Service shall communicate the fact to the taxpayer(s). The communication shall contain a request that the taxpayer(s) includes a statement in writing, confirming the acceptance of the agreed terms and conditions of the APA.
- vii. The taxpayer(s) shall confirm acceptance of the agreed terms and conditions of the APA in writing not later than 30 days after the receipt of the communication from the Service, failure of which the APA application may be rejected.
- viii. After the confirmation, the Service and the tax treaty partner(s) shall finalise the terms and conditions of the APA.

## **18.0 Stage 5 - Drafting, Execution and Monitoring**

- i. APA is a document setting out the terms of the agreement signed by the applicant and the Service, and it is binding on all the parties.
- ii. In the case of a unilateral APA, where the taxpayer(s) accepts the negotiated terms, the Service will agree with the applicant. The Service will communicate the agreed terms of the APA to the taxpayer(s) in writing. The form of the APA is as provided in the Model Unilateral/Bilateral/Multilateral APA Implementation Agreement in **Appendix 7**.
- iii. In the case of a bilateral or multilateral APA, where the taxpayer(s) accepts the negotiated terms, the Service will enter into a bilateral or multilateral agreement with the tax treaty partner(s). The Service will communicate the agreed terms of the APA to the taxpayer in writing. The form of the APA is as provided in the Model Unilateral/Bilateral/Multilateral APA Implementation Agreement in **Appendix 7**.
- iv. The principal officer of the taxpayer(s) is required to sign a copy of the APA and return it to the Service for sign-off.

## **19.0 Commencement of an APA**

- i. The commencement date of an APA will be the date indicated in the APA, which corresponds to the beginning of the financial year indicated in the taxpayer's application or a mutually agreed financial year. The specific requirements of the relevant tax treaty partner(s) shall be taken into account.
- ii. The duration of the APA shall not exceed three (3) years or the tenure stipulated in the relevant legislation).

## **20.0 Delayed Finalisation**

- i. If finalisation of an APA application is delayed beyond the expected duration from the taxpayer(s)'s requested commencement date, the Service will normally seek to specify a later commencement date for the APA. However, the Service will seek to preserve the three (3) years duration of an APA or the tenure stipulated in the relevant legislation.
- ii. Where a later commencement date is specified for the APA, the methodology agreed in the APA may be rolled back to the prior year(s) covered by the original application. In the case of a bilateral or multilateral

APA, the same treatment will be accorded to the taxpayer upon agreement with the CA(s) of the tax treaty partner(s).

## **21.0 Rollback of APA**

- i. A rollback of APA means the application of the elements agreed in an APA to controlled transactions carried out prior to the coming into force of the APA. The rollback shall not exceed (3) three years, immediately preceding the commencement of the APA.
- ii. As regards the rollback years, the APA may specify the ALP or specify the manner in which ALP shall be determined. The manner of determining ALP in the rollback years with respect to any controlled transaction will be the same as the manner agreed in the APA.

### **21.1 Conditions for Rollback**

The following are the conditions for rollback;

- a. The controlled transactions are the same as the controlled transactions to which the APA applies;
- b. All relevant tax returns for the relevant rollback years have been filed;
- c. The taxpayer(s) must apply to the Service, in the prescribed form (**Appendix 10**), requesting for a rollback.
- d. Rollback application should cover only years not under audit in which the controlled transactions have taken place.
- (v) Any cost incurred by the Service in processing a request for a rollback of the APA shall be borne by the taxpayer.

### **21.2 Limitation of Rollback Request**

Rollback provisions shall not apply to controlled transactions on which a court of competent jurisdiction or a tax tribunal has issued a ruling on the appropriate ALP at any time before or after the signing of the APA.

### **21.3 Prior Year Transfer Pricing Issues**

- a. Prior year transfer pricing issues will be treated as collateral issues to the APA. The principles developed in an APA should provide the basis for resolving issues in prior years' audit, as well as past years not yet under audit. This will depend on the availability of all relevant information in

respect of the prior years and the changes in the taxpayer(s)'s circumstances.

- b. Where the provision of information for an APA results in an adjustment to a prior year's income tax returns, the adjustment will be treated as though the taxpayer(s) had made a voluntary disclosure, provided that an audit has not already been commenced, or the Service had not previously contacted the taxpayer(s) or their representatives with respect to the prior year's returns.
- c. Where an audit has not commenced, additional tax, if any, will generally be calculated based on voluntary disclosure made by the taxpayer in relation to each prior year. In such cases, penalties will not apply but interest will apply. However, where audit has commenced, the penalties will apply to additional tax assessed in line with the law.

In summary, the following principles are incorporated into the practice for APA rollbacks:

- a. the Service will not give an undertaking that years prior to an APA will not be audited;
- b. there may be situations where the principles developed in an APA might provide a basis for resolving issues for prior years;
- c. prior year adjustments resulting from an APA request will be treated as though the taxpayer(s) has made a voluntary disclosure, provided that compliance activity has not commenced or been notified;

## **22.0 Annual Compliance Report**

- i. The taxpayer, as part of the APA process, 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 to demonstrate compliance with the terms of the APA. The list of the documents and other information to be included in the ACR can be found in **Appendix 9**.
- ii. The taxpayer must complete the ACR form in **Appendix 9** for each year of the APA. This should be supported by a financial analysis of compliance with the APA, as well as detailed information on any compensating adjustments made. In the completed ACR form, the principal officer shall



make a declaration that the facts presented in the report are true, accurate, and complete.

- iii. The ACR shall be submitted for each accounting period covered by the APA and shall be due for filing on the due date of filing the annual company income tax returns.
- iv. When reviewing the ACR, the Service may request further information to clarify the contents of the ACR or to verify that the taxpayer(s) has complied with the terms of the APA. If the taxpayer fails to supply the additional information requested within 21 days of receiving the request from the Service, or any additional time the Service may allow, the Service may terminate the APA. Where the Service is satisfied that the taxpayer has complied with the terms of the APA, the Service will send a letter of acknowledgment of receipt to the taxpayer.
- v. If it becomes known that an ACR was false or misleading, an acknowledgment letter of receipt will not prevent any other follow-up actions by the Service.
- vi. If a taxpayer fails to comply with the annual reporting requirements, the Service will not be bound by the APA and may consider terminating the APA.
- vii. Possible consequences of not complying with the annual reporting requirements or failing to supply additional information on request in relation to an ACR will be stated in the APA as a condition of its discontinuance.

### **23.0 Record-Keeping Requirements**

- i. The taxpayer must retain all records relied upon in concluding the APA, including those used in applying for the APA, as well as documentation or supporting information provided in the ACR for six (6) years after the end of the APA period.
- ii. As a term or condition of the APA process, the Service will require taxpayer(s) to keep the records listed in **Appendix 6**. Upon a written request by the Service, the records shall be made available to the Service no later than 30 days of receiving the request.

## **24.0 APA Renewals**

- i. An APA may be renewed with the agreement of all relevant parties including the tax treaty partner(s), where applicable. A request for renewal of an APA shall follow the same procedure and documentation that apply to the initial APA request.
- ii. The taxpayer must apply for renewal, at least, 9 months before the expiration of the APA for which renewal is sought.
- iii. When requesting for the renewal of an APA, the taxpayer must establish, to the satisfaction of the Service, that there is compliance with the terms of the APA, and that all material facts were disclosed and properly stated.
- iv. Where the renewal involves material changes to the terms of the existing APA, then a new APA process must be negotiated.
- v. An APA may be renewed for a maximum term of 3 years or as stipulated in the relevant legislation.

## **25.0 Audits and APAs**

- i. Notwithstanding the existence of an APA, the controlled transactions of a taxpayer in any year may be audited. However, only issues that are not subject to an APA may be covered in the audit.
- ii. A taxpayer may apply for an APA notwithstanding an ongoing tax audit exercise. Such application for APA shall only be in respect of transactions that are not the subject of the ongoing tax audit. Furthermore, the receipt of a taxpayer's application for an APA shall not result to the discontinuation or postponement of an audit.
- iii. An audit and the negotiation of an APA are separate processes. Each will be resolved separately unless the facts and circumstances of the APA and the audit years are sufficiently similar such that the outcome of the APA may be seamlessly applied to the audit issues without delaying either process.
- iv. The audit of issues relevant to an APA may be held in abeyance where all parties agreed that the APA will enable speedy completion of the audit.

- v. Where an audit has been wholly or partially suspended, the Service may, with written notice to the taxpayer(s), recommence the audit.
- vi. Where an audit has been wholly or partially suspended pending the outcome of an APA, any information obtained through the APA process shall not constitute voluntary disclosure. As such, any additional tax arising from the audit shall attract penalty and interest in line with extant legislation.

## **26.0 Compensating Adjustments**

The APA process envisages the use of compensating adjustments, where the actual result of the tested party falls outside the agreed price or result but is within the critical assumption boundaries. The APA will specify the price, result, or point in the range to which a compensating adjustment should be made (**refer to Appendix 7**).

## **27.0 Termination of an APA**

- a. In line with regulation 9(8) of the TP Regulations, the Service may give notice of termination of an APA to a taxpayer. Similarly, a taxpayer may, in line with regulation 9(9) of the TP Regulations, give a notice of termination of the APA to the Service.
- b. In relation to regulation 9(8)(d) of the TP Regulations, tax shelters, offshore structures, or any other tax arrangement or schemes directly or indirectly related to the controlled transactions must not be omitted from disclosure; all information or facts relating to such must be disclosed to the Service during the APA process.
- c. The termination of an APA shall take effect as specified under regulation 9(11) of the TP Regulations.

## **28.0 Effective Date**

The effective date of these Guidelines is 1st January 2025.

## **29.0 Amendment or Review of Guidelines**

The Service may, at any time, review, withdraw, amend, replace or publish an updated version of these guidelines.

### **30.0 Information and Enquiries**

For information or enquiry on any provision of these Guidelines, please contact:

Director, Competent Authority Department  
Federal Inland Revenue Service  
2nd Floor Revenue House Annex,  
No. 26 Sokode Crescent,  
Wuse Zone 5, Abuja.

Email Address: [acatreatiesandmap@firs.gov.ng](mailto:acatreatiesandmap@firs.gov.ng)

Visit our website: [www.firs.gov.ng](http://www.firs.gov.ng)

Email: [enquiries@firs.gov.ng](mailto:enquiries@firs.gov.ng)

Telephones: 09074444441, 09074444442, 09072111111, 0907377777.

## **APPENDIX 1: Model Pre-Filing Meeting Agenda**

The APA proposal and process will be discussed in detail so that its purpose will be understood by the taxpayer(s) (i.e. the most appropriate transfer pricing methodology will be established to arrive at the arm's length outcome or profits in relation to the covered controlled transactions).

The agenda should include the following matters. As a guide, the following details should be of relevance though the list below is not meant to be exhaustive or prescriptive:

### **Nature and Scope of the APA Process**

- (a) confirmation of the non-binding nature of the pre-filing meeting;
- (b) key issues of the APA process:
  - purpose of the APA process;
  - mutual expectations;
  - stages of the APA process;
  - exchange of information and communication;
- (c) identify collateral issues, if any;

### **Specific matters to be agreed:**

- unilateral, bilateral or multilateral APA;
- new or renewal APA;
- the term of the APA.

## **APPENDIX 2: Content of Model APA Proposal**

The content of the APA proposal and the extent of the necessary supporting information/documentation will depend on the facts and circumstances of each case. As a guide, the following information should be of relevance, though the list below is not meant to be exhaustive or prescriptive:

- name and tax residence of the taxpayer(s) and permanent establishments involved in the transactions or arrangements.
- information regarding the global organizational structure of the group of the applicant.
- explanation of how the Nigerian operations fits into the global structure of the group.
- the roles of the Nigerian entities within the global value chain, including functional and risk profile.
- accurate delineation of the controlled transaction(s).
- the transactions, products, businesses or arrangements that will be covered by the proposal (including, if applicable, a brief explanation of why not all the transactions, products, businesses or arrangements of the connected persons involved in the request have been included).

Where there are intangibles and intellectual property issues, the following matters need to be considered:

- (i) particular problems encountered when examining comparability because of the specialised nature or uniqueness of the property;
- (ii) if the property is protected by trademarks, registrations, copyrights or confidentiality agreements or requirements;
- (iii) the existence, identification, documentation, development and nature of the property as well as the determination of the remuneration for its use;

The taxpayer(s) must make a full disclosure of details, where the Service is undertaking or has undertaken an audit, on how any provisions of the Income Tax (Transfer Pricing) Regulation apply to:

- (i) the taxpayer(s) (including those residents in Nigeria);

- (ii) an arrangement similar to the arrangement, which is the subject of the APA proposal, during any period for which the proposed APA would apply were the APA to be concluded; and
- (iii) the other tax jurisdiction or jurisdictions which have been requested to participate (if any).

### **Terms of the Proposed APA.**

- Transactions to be covered by the proposed APA.
- A description of the proposed transfer pricing methodology and details of information and analyses supporting that methodology, e.g., identification of comparable prices or margins and expected range of results, etc.
- The critical assumptions underpinning the proposal and a discussion of the effect of changes in those assumptions or other events, such as unexpected results, which might affect the continuing validity of the proposal.
- The accounting periods or tax years to be covered.
- General description of market conditions (e.g., industry trends and the competitive environment).
- How compensating adjustments or variations should be made to the results
- A discussion of, and demonstration of compliance with, any pertinent domestic law, tax treaty provisions, OECD or UN guidelines that relate to the proposal.
- Any other information which may have a bearing on the current or proposed transfer pricing methodology and the underlying data for any party to the request.

The list provided above is not intended to be exhaustive nor prescriptive.

## APPENDIX 3: Model APA Case Plan



### FEDERAL INLAND REVENUE SERVICE

#### Advance Pricing Arrangement (APA)

#### Model APA Case Plan

Taxpayer(s)' Name:	Connected Persons NIG Ltd
File Number:	FIRS/ITD/BTAM/APA/TIN
Period Subject to APA:	20xx- 20xx
APA Team:	APA team leader, contact telephone number
Taxpayer(s)' Contacts:	Connected Persons Nig. contact, contact telephone number
Authorized Representative Contacts:	Firm, contact name, position and telephone number
Type of APA:	Unilateral, Bilateral or Multilateral
<b>Activity</b>	<b>Date</b>

<p><b>Stage 1: Pre-filing</b></p> <p><b>Stage 2: Formal application</b></p> <p>The taxpayer(s) submits the formal APA application, including all information/ documentation discussed at the pre-filing stage.</p> <p>In the case of bilateral or multilateral APA, the CA(s) notifies the tax treaty</p>	
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<p>partner(s) of submission of the APA application.</p> <p>The taxpayer(s) prepares and provides information/documentation for resolution of collateral issues, if any.</p> <p>The Service commences proposed processes for resolution of collateral issues (if any) in parallel with the APA process wherever possible.</p> <p>The taxpayer(s) ensures its foreign entities meet(s) the requirements of the APA process in the tax treaty partner(s) jurisdiction(s).</p> <p>The Service and the taxpayer(s) finalise and agree on the APA case plan.</p>	
<p><b>Activity</b></p>	<p><b>Date</b></p>

<p><b>Stage 3: Analysis and evaluation</b></p> <p>The APA team starts to evaluate the APA application and undertake relevant fieldwork.</p> <p>The APA team requests further information/documentation:</p> <p>(a) the APA team sends information/documentation request;</p> <p>(b) the taxpayer(s) responds.</p> <p>The Service considers expert advice.</p>	
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<p>The APA team clarifies with the taxpayer(s) the facts or the interpretation of the outcome.</p> <p>The APA team develops a position.</p> <p>The APA team coordinates the resolution of collateral issues.</p>	
<p><b>Activity</b></p>	<p><b>Date</b></p>

<p><b>Stage 4: Negotiation and Agreement</b></p> <p>The APA team informs the taxpayer(s) of the resolution of the collateral issues. The collateral issues usually need to be resolved prior to agreement of the APA terms.</p> <p>The APA team develops the draft APA terms including the transfer pricing methodology, critical assumptions and compensating adjustments.</p> <p>The APA team makes an endeavour to reach agreement on the APA terms with the taxpayer(s).</p> <p>The Service formalises the agreement with the tax treaty partner(s) in consultation with the taxpayer(s) (assuming that agreement is reached):</p> <p>The negotiations;</p> <p>The taxpayer(s) accepts the agreement and notifies the Service of its acceptance in writing.</p>	
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Activity	Date
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<p><b>Stage 5: Drafting, Execution and Monitoring</b></p> <p>For unilateral APAs:</p> <p>The Service provides the taxpayer(s) with a final version of the APA.</p> <p>The taxpayer(s) signs the final APA and returns it to the Service.</p> <p>The Service signs the APA so that it is fully executed. The Service provides a copy of the fully executed APA to the taxpayer(s).</p> <p>For bilateral/multilateral APAs</p> <p>The CAs reaches an agreement on the bilateral/multilateral APA with the tax treaty partner(s).</p> <p>The Service confirms the terms of the bilateral/multilateral APA with the taxpayer(s) in a letter or similar document.</p> <p>The Service provides the taxpayer(s) with a final version of the APA.</p> <p>The principal officer signs the final APA and returns it to the Service.</p>	
Activity	Date

## Controlled Transactions and Collateral Issues

<b>Controlled transactions (CT)</b>	<b>Process for resolution</b>
Description of CT	
CT 1:	
CT 2:	
CT 3:	
Add additional rows as required	
<b>Collateral issues (CI)</b>	
Description of CI	
CI 1:	
CI 2:	
CI 3:	
Add additional rows as required	

## Information/Documentation Requests and Responses

<b>Information/documentation request (IDR)</b>	<b>Date of request</b>	<b>Date of response</b>
Description of IDR and relevance		
IDR 1:		
IDR 2:		
IDR 3:		
Add additional rows as required		

## APPENDIX 4: Formal APA Application

Director, Competent Authority Department  
Federal Inland Revenue Service  
2nd Floor Revenue House Annex,  
No. 26 Sokode Crescent,  
Wuse Zone 5, Abuja.  
Email Address: [acatreatiesandmap@firs.gov.ng](mailto:acatreatiesandmap@firs.gov.ng)

### Application for a Unilateral Advance Pricing Agreement

In accordance with paragraph 50 & 51 of FIRS' Guidelines on Advance Pricing Agreements (APAs), I hereby formally apply for an Advance Pricing Agreement (APA) between the Service and taxpayer below:

#### (I) Connected Persons

Name and tax residence of each connected person(s):

Connected Person (F1): \_\_\_\_\_ tax resident<sup>1</sup> of:  
\_\_\_\_\_

Connected Person (F2): \_\_\_\_\_ tax resident<sup>1</sup> of:  
\_\_\_\_\_

Connected Person (F3): \_\_\_\_\_ tax resident<sup>1</sup> of:  
\_\_\_\_\_

*(Note <sup>1</sup>: Explain how the claimed tax residence status is determined and furnish supporting documentary evidence such as tax residence certificates.)*

#### (II) Covered Controlled Transactions

Description of each controlled transaction:

(a) CT1

(b) CT2

(c) CT3

#### (III) Authorized Representative

Representative's name:

Position:

Telephone number:



## **APPENDIX 5: Formal Application for BILATERAL/MULTILATERAL APA**

Director, Competent Authority Department  
Federal Inland Revenue Service  
2nd Floor Revenue House Annex,  
No. 26 Sokode Crescent,  
Wuse Zone 5, Abuja.  
Email Address: [acatreatiesandmap@firs.gov.ng](mailto:acatreatiesandmap@firs.gov.ng)

### **Application to Initiate Bilateral/Multilateral APA)**

I hereby apply to initiate a Bilateral/Multilateral APA between the taxpayer and the Service and the competent authority(ies) of the other jurisdiction(s). The details and issues are given below.

#### **(I) Relevant Double Taxation Agreement(s)**

Long title of the double taxation agreement(s).

#### **(II) Connected Persons**

Name and tax residence of each taxpayer(s):

Connected Person F1: \_\_\_\_\_ Tax resident<sup>1</sup> of:  
\_\_\_\_\_

Connected Person F2: \_\_\_\_\_ Tax resident<sup>1</sup> of:  
\_\_\_\_\_

Connected Person F3: \_\_\_\_\_ Tax resident<sup>1</sup> of:  
\_\_\_\_\_

*(Note <sup>1</sup>: Explain how the claimed tax residence status is determined and furnish supporting documentary evidence such as tax residence certificates.)*

#### **(III) Covered Controlled Transactions**

Description of each controlled transaction:

(a) CT1

(b) CT2

(c) CT3





## **APPENDIX 6: Information/Documentation Requirement for a Unilateral/Bilateral/Multilateral APA Application**

*The list provided below is not intended to be exhaustive nor prescriptive. It is indicative of the information/documentation requirements for a typical APA. The actual requirements will be reviewed and notified to the applicant on a case-by-case basis.*

- A statement of the names and addresses of all connected persons or parties to the APA.
- Details of the connected person's group of which the taxpayer(s) is a member, including details of the ownership structure (i.e., an organizational chart).
- Details of the principal businesses and the places where such businesses are conducted.
- Confirmation of whether the proposal is a bilateral or multilateral APA and the reasons for the choice.
- The tax residence of the applicant, the connected persons or parties to be covered by the APA and the jurisdictions in or between which they conduct business.
- Information on other APA(s) filed on similar transactions

### **Industry Analysis**

- A description of the industry and the market in which the taxpayer(s) operates.
- An explanation of the taxpayer(s)' position in the industry, including a list of major competitors.

### **Terms of the APA**

- Envisaged term to be covered by the APA.

### **Covered Controlled Transactions**

- A description of the size, nature or characterisation and value of the covered controlled transactions.
- General information on any other controlled transactions not intended to be covered by the APA and reasons for their exclusion.

- Descriptions of the key agreements between the connected persons, whether written or otherwise relating to the proposed covered transactions.
- Details of any significant transfer pricing arrangements or practices.

### **Functional Analysis**

- A description of the taxpayer(s)' business.
- Details of the economically significant functions performed by each party to the covered controlled transactions, assets used in the process and risks assumed, with a focus on the key value drivers relevant to the dealings.

### **Selection and Application of the Transfer Pricing Methodology**

- A description of the proposed transfer pricing methodology and the reasons why that method is the most appropriate methodology.
- Explanation of the transfer pricing method, which is presently used to test or set the transfer prices of covered controlled transactions. If a method that is not listed in the Income Tax (Transfer Pricing) Regulations 2018 is used, state the method used to set their prices and the justification why such a method is deemed appropriate.
- A description of the most appropriate profit level indicator and the reasons for its selection, where appropriate.
- Sufficient data to apply the transfer pricing methodology and to demonstrate that the outcome produced is arm's length.
- The proposed source of comparable data and the key characteristics or criteria to be met by any uncontrolled transaction in order to be regarded as potentially comparable.
- A description of the proposed comparables and an analysis of the key comparability factors between the comparables and the tested party.
- Details and calculation of any proposed adjustments to the comparables' results.
- The proposed arm's length result or range, which results from the application of the transfer pricing methodology.
- Likely or forecast outcomes from the proposed methodology (including sensitivity analysis) during the term of the APA.

- The process by which any necessary adjustments to the taxpayer(s)'s actual results may be made during the APA (compensating adjustments).

## **Others**

- The tax and financial position of all connected persons involved in the APA for the last 3 years, including sales, cost of goods sold, operating expenses, profit before taxes, assets, liabilities, number of employees and any other relevant data.
- Information on forecast/budgeted financial position during the APA period.
- A description of any events critical to the taxpayer(s)'s business operations and their ability to achieve specified results under the proposed APA (i.e. critical assumptions).
- Information on non-covered issues that might reasonably have impact on the controlled transaction and reasons why such issues are not covered by the APA.
- any other relevant information that the Service may require to complete its analysis of the APA request.

## **APPENDIX 7: Unilateral/Bilateral/Multilateral APA Model Agreement**

### **Parties to the Agreement**

The parties to this implementation agreement, which is subject to the Guidelines for APA and the terms and conditions below, are: Federal Inland Revenue Service and XXX Ltd. of XXX (Connected Person NIG).

### **Bilateral/Multilateral APA**

The Bilateral/Multilateral APA is: the APA signed by the Service and the Competent Authority(ies) of XXX (and YYY) on \_\_\_\_\_, the terms of which have been notified to Connected Person NIG on \_\_\_\_\_.

### **Years/Periods Covered by the Bilateral/Multilateral APA**

The term of the APA is three years commencing on 1 January 20XX and concluding on 31 December 20XX (or any other period as may be stipulated in the relevant law or Regulations from time to time).

### **Covered Controlled Transactions**

Connected Person NIG imports, markets and distributes XXXX into the Nigerian market.

Transactions between Connected Person NIG and Connected Person F (a taxpayer(s) incorporated in XXX and carrying on business in XXX), which are covered by the application of the transfer pricing methodology in paragraphs 7 and 8 are:

Purchase of products from Connected Person F;

Purchase of parts and accessories from Connected Person F; and

Provision of warranty Service to end users by Connected Person NIG on behalf of Connected Person F.

### **Agreed Transfer Pricing Methodology**

The consideration given by Connected Person NIG for property acquired from Connected Person F is calculated in accordance with the Arm's Length Principle.

The methodology for applying the Arm's Length Principle is the XXX. The profit level indicator (PLI) to be used is: XXX

The methodology shall be applied in the following manner:

This methodology shall allow Connected Person NIG to achieve an annual return in the range of XX% to YY% in the income years from 201X to 201X.

Calculation of the annual return shall be made by reference to the EBIT margin of Connected Person NIG, as defined below:

EBIT is defined as net profit before interest, dividend income, gains/losses on sale of fixed assets, restructuring expenses, other non-operating items and income tax, calculated in accordance with the International Financial Reporting Standards (IFRS).

Sales shall mean total sales less returns and allowances calculated in accordance with IFRS.

### **Procedures for Compensating Adjustments**

Connected Person NIG will make compensating adjustments at the end of the basis period for each year of assessment to reflect the application of the Arm's Length Principle in the form of an adjustment.

#### **Shortfall**

If Connected Person NIG's actual EBIT margin is less than XX % (i.e. the lower boundary of the arm's length range described above), there shall be deemed to exist a "shortfall" in the compensation earned by Connected Person NIG by an amount equal to the difference between Connected Person F's actual EBIT margin and XX % in any year of the APA.

#### **Excess**

If Connected Person NIG's actual EBIT margin is greater than YY % (the upper boundary of the arm's length range described above), there shall be deemed to exist an "excess" in the compensation earned by Connected Person NIG by an amount equal to the difference between Connected Person F's actual EBIT margin and YY % in any year of the APA.

### **Compensating Adjustment**

In the event of any shortfall in any one year, the deduction for purchases or services shall be reduced by such an amount as is sufficient to produce an EBIT margin of XX%. Any adjustment will be reflected in Connected Person NIG's tax returns. In the event of any excess in any one year, the deduction for purchases or service fees shall be increased by such an amount as is sufficient to produce an EBIT margin of YY%.

## Annual Compliance Reporting

Connected Person NIG shall submit an Annual Compliance Report to the Service, in such form as the Service may prescribe, at the same time when it files the annual transfer pricing returns.

The Annual Compliance Report shall include the following:

- A copy of the audited financial statements of Connected Person NIG for the relevant APA year.
- Calculations of the assessable profits including full details of all tax reconciliation adjustments for the relevant APA year.
- Reconciliation of the amount of controlled transactions covered by the APA and the corresponding amounts in the statutory financial statements for the relevant APA year.
- Completed ACR Form as stipulated in **Appendix 9**.
- Information and computations necessary to ascertain the outcome of the transfer pricing methodology for the covered controlled transactions between Connected Person NIG and Connected Person F for the APA year, demonstrating the extent of compliance with the transfer pricing methodologies and other terms and conditions of the APA.
- An analysis of any compensating adjustment required under the APA, and a detailed description of the manner in which the adjustment was effected.
- A description of any material changes in financial or tax accounting methods or principles employed for the APA year in respect of the covered controlled transactions, which differ from the financial or tax accounting methods employed and reflected in the APA request, and if there were no such material changes in Connected Person NIG's opinion, an affirmative statement to that effect.
- A description of any new controlled transaction of a material amount that are not covered by the existing terms and conditions of the APA.
- A statement as to whether Connected Person NIG has operated within the critical assumptions detailed in paragraph 18 of this APA.

- A statement demonstrating how Connected Person NIG is actively targeting the agreed EBIT margin range in the setting of transfer prices.
- Audited financial statements of connected persons to the controlled transactions.
- A confirmation that the record-keeping requirements has been complied with.
- A confirmation that tax shelters, offshore structures and tax schemes were not established in the ACR period to participate directly or indirectly in the covered controlled transactions.

The Annual Compliance Report shall be sent to:

Director, Competent Authority Department  
Federal Inland Revenue Service  
2nd Floor Revenue House Annex,  
No. 26 Sokode Crescent,  
Wuse Zone 5, Abuja.  
Email Address: [acatreatiesandmap@firs.gov.ng](mailto:acatreatiesandmap@firs.gov.ng)

The Service will review the Annual Compliance Report and, if necessary, may request further information that is reasonably needed to clarify the contents of the Report or to verify that Connected Person NIG has complied with the terms and conditions of the APA.

If Connected Person NIG fails to provide the Annual Compliance Report or supply the additional information requested within a reasonable time, the Service may terminate the APA.

### **Confidentiality**

The Service recognises that the secrecy provisions in Section 39 and 50 of the FIRS (Establishment) Act 2007 and the Exchange of Information Article in the relevant double taxation agreement will apply to safeguard the information obtained for the purpose of the APA process.

### **Record Retention**

Connected Person NIG agrees to retain all supporting data referred to in the annual compliance report and all records relied upon in concluding this APA for a period of 6 years after the end of the APA period. Connected Person NIG shall upon request make the APA records available to the Service within 21 days of receiving a written request from the Service. If Connected Person NIG fails to

provide the aforesaid records within the stated time or any additional time the Service may allow, the Service may terminate the APA.

### **Implementation**

In continuation of the transparent relationship between the Service and the Connected Person NIG established under this agreement, Connected Person NIG should approach the Service as soon as possible if any event occur that affect the APA. In the event that difficulties, disputes or differences of opinion occur in the implementation of the APA, the Service and Connected Person NIG will endeavour to resolve them promptly.

### **Omissions and False or Misleading Statements**

The Service may terminate this APA or revise the APA, where Connected Person NIG makes a statement that is false or misleading or deliberately omits from a statement any matter or thing without which the statement is false or misleading in either the APA application or any other submission, report, information, or documentation regarding or supporting the APA application.

Signed by:

Signed by:

Name:

Name:

Designation: (any designated officer of the Service)  
Principal

Designation: (must be a  
Officer)

For Federal Inland Revenue Service  
NIG

For Connected Person

Date:

Date:



## **APPENDIX 8: Critical Assumptions**

### **Critical Assumptions**

The ability of the transfer pricing methodology to accurately reflect the Arm's Length Principle of future transactions is based on the critical assumptions

For the purpose of this agreement, the following matters represent the critical assumptions:

- Connected Person NIG's business activities, functions performed, assets employed, risks assumed and financial accounting methods and classifications shall remain materially the same as those described in the APA documentation provided.
- There will be no changes or factors materially impacting the industry in which Connected Person NIG operates.
- There will be no changes to Connected Person NIG's product or customer base that may materially impact on the Nigerian business.
- There will be no changes to any governmental regulations, controls or mechanisms that may materially impact the Nigerian business.

### **Breach of Critical Assumptions**

Connected Person NIG agrees to notify the Service when it becomes aware that a breach of critical assumptions has taken place. If Connected Person NIG becomes aware of such a breach during the year giving rise to the event, then Connected Person NIG will advise the Service of the change as soon as possible during that year. If Connected Person NIG becomes aware of the change subsequent to the end of the year giving rise to it, then it will advise the Service of the change as soon as possible after it becomes aware of the change.

A breach of a critical assumption will result in a review of the terms of the APA and may lead to termination of the APA.

Critical assumptions will vary depending on the APA itself, but it is possible that assumptions will need to be made about some of the following areas:

- assumptions about the relevant domestic tax law and treaty provisions;

- assumptions about tariffs, duties, import restrictions and government regulations;
- assumptions about economic conditions, market share, market conditions, end-selling price, and sales volume;
- assumptions about the nature of the functions performed and risks assumed of the connected persons involved in the transactions;
- assumptions about exchange rates, interest rates, credit rating and capital structure;
- assumptions about management or financial accounting and classification of income and expenses; and
- assumptions about the connected persons that will operate in each jurisdiction and the form in which they will do so.

## APPENDIX 9: Annual Compliance Report



### FEDERAL INLAND REVENUE SERVICE

Advance Pricing Arrangement

### Annual Compliance Report

#### (I) Advance Pricing Arrangement (APA) and Annual Compliance Report (ACR) Particulars

Parties to APA:

APA reference number:

Connected Person submitting ACR:

Year/Period covered by ACR:

#### (II) Details of Actual Results (Read the instruction notes before completing this section)

	Items	CT 1	CT 2	CT3
1.	Controlled transaction (CT)			
2.	Breach of critical assumptions? (Yes/No)			
3.	Tax jurisdiction involved			
4.	Agreed transfer pricing methodology			
5.	Agreed profit level indicator			
6.	Agreed point or range			
7.	Actual result achieved			

8.	Compensating adjustment (+/- US\$m)			
9.	Result after compensating adjustment			
10.	Compensating adjustment has been reflected in the tax return? (Yes/No)			
11.	Controlled transaction amount			
12.	Underlying transaction			
13.	Underlying transaction value			

### **(III) Documents/information to be included as part of the ACR**

Attach/Include the following documents/information:

- All appropriate information and computations that clearly show how the selected transfer pricing methods were applied.
- Audited financial statements (if not submitted as part of the tax return).
- Audited financial statements of connected persons to the covered controlled transactions.
- Consolidated financial statement of the Group.
- Reconciliation statements of all adjustments made between the net profit in the financial statements and the assessable profits disclosed in the tax return.
- Any other appropriate document or information necessary to validate the basis of the calculation.
- Any other documents/information that are required to be included in the ACR as specified in the relevant Unilateral/Bilateral/Multilateral APA Implementation Agreement.



Instruction notes for completing Part (II) of the ACR

Item 1	Describe each of the controlled transactions covered by the APA (e.g. cost of goods sold, Services, royalty, etc.). Use additional sheets if more than 3 CTs are involved.
Item 2	Provide the details of breach in a separate attachment and the proposed course of action if there has been a breach of the critical assumptions.
Item 3	State the tax jurisdiction(s) with which the taxpayer(s) has dealing for each CT.
Item 4	State the agreed transfer pricing methodology for each CT.
Item 5	State the agreed Profit Level Indicator (PLI) for each CT.
Item 6	State the agreed point or range for each CT.
Item 7	State the actual result achieved and the actual PLI achieved for each CT.
Item 8	If a compensating adjustment is required, state the amount and indicate whether it is a payment into (+) or a payment out of (-) Nigeria. Evidence must be provided to show that any compensating adjustments can be tracked on both sides of the CT.
Item 9	If a compensating adjustment is necessary, state the result after the adjustment has been made.
Item 10	Indicate how the adjustment is reflected in the tax return (e.g. purchases, sales, reconciliation statement, etc.)
Item 11	Give the actual value of the CT after compensating adjustments.
Item 12/13	Provide details of the underlying transactions and their value. In the case of cost of goods sold, this will be the actual value of the CT shown in Item 11.

## **APPENDIX 10: Application for Rollback of Transfer Pricing Methodology for years covering 20XX – 20XX**

Director, Competent Authority Department  
Federal Inland Revenue Service  
2nd Floor Revenue House Annex,  
No. 26 Sokode Crescent,  
Wuse Zone 5, Abuja.  
Email Address: [acatreatiesandmap@firs.gov.ng](mailto:acatreatiesandmap@firs.gov.ng)

### **Application for Renewal of Transfer Pricing Methodology for years covering 20XX – 20XX**

I hereby apply for a renewal for years covering 20XX - 20XX. The controlled transactions are the same as the controlled transactions to which the APA applies between Connected Person NIG and connected persons. The details and issues are given below.

#### **(I) Connected Persons**

Name and Tax Residence of each connected person:

Connected Person	F1:	_____	Tax resident <sup>1</sup>	of:
_____				
Connected Person	F2:	_____	Tax resident <sup>1</sup>	of:
_____				
Connected Person	F3:	_____	Tax resident <sup>1</sup>	of:
_____				

*(Note <sup>1</sup>: Explain how the claimed tax residence status is determined, and furnish supporting documentary evidence such as tax residence certificates.)*

**(II) Covered Controlled Transactions**

Description of each controlled transaction:

- (a) CT1
- (b) CT2
- (c) CT3

**(III) Authorized Representative**

Representative's name:

Position:

Telephone number:

**(IV) Agreement, Understanding and Declaration**

I agree that no liability shall rest upon the Government, the Service or any other public officer in respect of the bona fide exercise of any power or performance of any duty under and in accordance with the Guidelines for APA.

I understand that my agreement would not affect the right of objection against an assessment or right of appeal to the courts under the provisions Regulation 21(8) of the Income Tax (Transfer Pricing) Regulations 2018 and paragraphs 13(1), 17(1) & 23 of the Fifth Schedule of the FIRS (Establishment) Act.

I agree that all documents and information submitted to the Service for the APA application may be provided to the competent authority(ies) of the relevant tax treaty partner(s) for processing the APA, in the case of bilateral/unilateral APA.

I declare that I have examined the APA application, including the connected person's documents, and to the best of my knowledge and belief, the facts presented in support of the application are true, complete, and accurate.

Name of Connected Person NIG:

\_\_\_\_\_

Signature of Principal Officer:

\_\_\_\_\_

Name and Designation of Principal Officer:

\_\_\_\_\_

Date: \_\_\_\_\_