



FEDERAL INLAND REVENUE SERVICE
20 SOKODE CRESCENT, WUSE ZONE 5, P.M.B 33, GARKI, ABUJA, NIGERIA

Information Circular

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Subject: Guidelines on Mutual Administrative Procedure (MAP) in Nigeria

These Guidelines are issued to provide guidance to all taxpayers, taxpayers' representatives or advisers, tax officers, all other stakeholders and the general public on the procedure for accessing Mutual Agreement Procedure (MAP) as a means of dispute resolutions, pursuant to the Double Taxation Agreements between Nigeria and other countries.

1.0 INTRODUCTION

- 1.1 The Competent Authority (CA) of Nigeria is required to interact with CAs of Treaty Partners with the aim of resolving disputes arising from the interpretation or application of Tax Treaty provisions.
- 1.2 The Article on Mutual Agreement Procedure (MAP) in Nigeria's Tax Treaties allows a person who considers that the action of one or both of the Contracting States results or will result for him in taxation that is not in accordance with the provisions of the Treaty, to present a case to the CA of either Contracting States, irrespective of the remedies provided by the domestic law of the Contracting States.
- 1.3 If the objection appears to the competent authority to be justified and if the competent authority himself is not able to arrive at a satisfactory solution, the said Article further allows him to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to avoiding taxation which is not in accordance with the Treaty.

- 1.4 The Treaties also provide that CAs may consult with each other for the purposes of resolving issues of corresponding adjustment that may arise under paragraph 2 of the Article on Associated Enterprise.

2.0 PURPOSE OF THE GUIDELINES

The purpose of these guidelines is to provide guidance on obtaining assistance from the Nigerian CA by persons that fall within the scope of a subsisting tax treaty between Nigeria and any other contracting state. This assistance is provided to taxpayers in order to resolve international tax disputes involving double taxation and inconsistencies in the interpretation or application of the provisions of a Tax Treaty.

These guidelines also provide additional guidance on the application for corresponding adjustments in the event of application of the Article dealing with associated enterprises.

3.0 GENERAL DEFINITIONS

- 3.1 For the purposes of these Guidelines, unless the context otherwise requires:
- (1) The term “**Agreement**” refers to an agreement signed between CAs relating to a MAP, which is the outcome of a MAP process;
 - (2) The term “**Competent Authority**” means the Minister charged with the responsibility for Finance or his authorised representative;
 - (3) The term “**Delegated Competent Authority**” refers to the Executive Chairman of Federal Inland Revenue Service (FIRS);
 - (4) The term “**Authorised Competent Authority**” refers to the an official of the Service authorised to act in that capacity;
 - (5) The term “**Mutual Agreement Procedure**” refers to a process through which the CA of Nigeria and CA of a Treaty Partner consult to resolve disputes involving double taxation and the interpretation and application of a given Tax Treaty;
 - (6) The term “**Tax Treaty**” or “**Treaty**” refers to a double taxation agreement entered into between the Government of Nigeria

and a Treaty Partner(s) for the avoidance of double taxation and the prevention of fiscal evasion;

- (7) The term **“Treaty Partner”** refers to a country or jurisdiction with which Nigeria has a subsisting Tax Treaty.
- (8) The term **“the Service”** refers to the Federal Inland Revenue Service.
- (9) The term **“Contracting States”** means Nigeria and its treaty partner.

3.2 Any term that is not defined in these Guidelines shall have the meaning as defined in the relevant tax law or the applicable Tax Treaty.

4.0 ADMINISTRATIVE PROCEDURES

4.1 WHO MAY APPLY FOR MUTUAL AGREEMENT PROCEDURE

- (1) A Nigerian resident, who considers that the actions of either or both Nigeria and its Treaty Partner’s tax authorities result or will result for him in taxation not in accordance with the provisions of the Tax Treaty, irrespective of the remedies provided by Nigerian domestic law.
- (2) Subject to the provisions of the relevant tax treaty, a person not resident in Nigeria.

4.2 TYPICAL SCENARIOS REQUIRING COMPETENT AUTHORITY ASSISTANCE

The following are examples of taxation not in accordance with a Tax Treaty that may warrant a request for assistance to the Nigeria CA:

4.2.1 Transfer Pricing

A taxpayer resident in Nigeria or its related party (including a permanent establishment) in a treaty country may be subjected to additional tax by the tax authority of that Treaty Partner because of transfer pricing adjustment. The transfer pricing adjustment may be as a result of adjustment to the price of goods or services transferred to or from the related party (or permanent establishment), or adjustment to other inter-related party transactions such as cost

contribution arrangements, financial arrangements etc. In any of these transfer pricing adjustments, the Nigerian taxpayer may request that the Nigeria's CA grant a corresponding adjustment to its taxable income in order to prevent economic double taxation.

4.2.2 Dual Residence Status

A Nigerian resident taxpayer may also be considered to be a resident of a Treaty Partner, under that country's domestic law. This may create a situation of dual residency for the taxpayer. If the residence issue is not resolved, the taxpayer could be subject to tax on the same income in both countries. A MAP request would trigger discussions between the CAs regarding the proper application of the tie-breaker rules contained in the Article on Resident in the Tax Treaty.

4.2.3 Withholding Tax

Where a withholding tax is levied beyond what is allowed within an applicable Tax Treaty by a Treaty Partner on a payment to a Nigerian resident. Such taxation will not be in accordance with the relevant tax treaty. Accordingly, the Nigerian resident taxpayer may request the Nigerian CA or the CA of the treaty partner, as may be allowable by the treaty, to resolve the issue of non-compliance with treaty provision.

4.2.4 Permanent Establishment

Where a Nigerian resident taxpayer who is subject to tax in Nigeria on income, including income from carrying on a business in a Treaty country, is taxed by the tax authority of the Treaty Partner on the business income earned in that treaty country, despite not having a permanent establishment in that country under the Tax Treaty. The taxpayer may request the Nigerian CA to address the issue of taxation not in accordance with the Tax Treaty with the CA of the Treaty Partner.

4.2.5 Characterisation or Classification of Income

Where there is uncertainty whether the Tax Treaty covers an item of income or where there is uncertainty of the characterisation or classification of an item of income arising in the other jurisdiction, or lack of clear understanding of the import of a given treaty provision, a taxpayer may approach the Nigerian CA for clarification.

4.3 TIME LIMITS FOR REQUESTING ACCESS TO MAP

4.3.1 The time limit for presenting a case for 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. To this end, the relevant Tax Treaty should be consulted in every case.

4.3.2 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 first notification of the action resulting in taxation not in accordance with the provisions of the Tax Convention (i.e. the case must be presented not later than 3 years after Notice of Assessment).

4.3.3 The time limits specified above includes cases involving corresponding adjustment of tax or income resulting from FIRS tax audit.

4.4 PRE-FILING CONSULTATION

4.4.1 A taxpayer seeking an MAP should first carry out a pre-filing consultation with the Service, which could be in form of a meeting or via written correspondence.

4.4.2 All pre-filing consultation or request for a meeting in this regard should be directed to the authorised CA.

4.4.3 Relevant units, departments or groups of FIRS or States Boards of Internal Revenue (SBIRS) may participate in a pre-filing consultation.

4.4.4 A request for a meeting for such consultation or a written correspondence thereof should be accompanied by documents providing a summary of the taxation that is the subject of a MAP request, facts that led to such taxation and the reason for the MAP request.

4.4.5 Where the documents are in language other than English, an English translation of such document must be attached.

4.4.6. If the outcome of a pre-filing consultation merits MAP, the authorised CA shall inform the taxpayer to submit a formal request.

4.5 SUBMITTING A FORMAL REQUEST

4.5.1 All formal requests for MAP should be made in writing and addressed to the relevant officer at the addresses listed in paragraph 9.0 of this Guidelines.

4.5.2 A request for CA assistance should contain all relevant information, which include:

- (1) The name, address and Taxpayer Identification Number (TIN) of the taxpayer;
- (2) The name of the Treaty Partner's tax authority;
- (3) The Tax Treaty Article(s) which the taxpayer asserts is not being correctly applied, and the taxpayer's interpretation of the application of the Article;
- (4) If the MAP is a request for corresponding adjustment, the name, address and, the TIN of the related party involved in the other Treaty country;
- (5) The relationship between the Nigerian taxpayer and the related Treaty Partner's taxpayers involved (Taxpayers should also keep the Nigerian CA informed of any changes in these relationships that occur after the request has been filed);
- (6) The taxation years or periods involved, the amount of income and tax in dispute together with copies of the notices of assessment;
- (7) A summary of the facts and an analysis of the issues for which CA assistance is requested, including any specific issues raised by the Treaty Partner's tax authority or relevant tax authority in Nigeria affecting the Nigerian taxpayer and the related amounts;
- (8) A statement as to whether the request for CA assistance involves issues that are currently or were previously considered as part of an Advance Pricing Agreement (APA) in Nigeria or in similar proceedings in the Treaty Partner's country;
- (9) A statement indicating whether the taxpayer has filed a notice of objection or a notice of appeal;
- (10) If the request is made by an authorised representative and a consent has not already been provided for the person to act as authorised representative, a signed statement that the

representative is authorised to act for the taxpayer in making the request;

(11) A copy of any previous settlement or agreement reached with the Treaty Partner's tax authority which may affect the MAP process;

(12) Any other relevant facts.

4.5.3 The request shall be signed by the taxpayer, or its authorised representative, confirming the accuracy and completeness of the facts and information presented in the request. The taxpayer is responsible for the completeness and accuracy of an information included in the request irrespective of the signatory.

4.5.4 The Nigerian CA may deny any request where the taxpayer has failed to provide complete and accurate information or has made any misrepresentation.

4.6 REVIEW OF THE REQUEST

4.6.1 After receiving a request for MAP, the authorized CA or his representatives will evaluate the request.

4.6.2 Where there are deficiencies in the request, the authorised CA may request the taxpayer to take remedial action.

4.6.3 When 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 the reasons.

4.7 ACCEPTANCE OF A MAP REQUEST

The Nigerian CA will accept a MAP request where:

4.7.1 The issue or transaction relates to a foreign country with which Nigeria has a Tax Treaty in force;

4.7.2 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;

4.7.3 The taxpayer notifies the Nigerian CA within the acceptable time limit provided in the relevant tax treaty;

4.7.4 The issue is not one that the Nigerian or the Treaty Partner's CA have decided, as a matter of policy, not to consider;

4.8 ADDITIONAL DOCUMENTS

The authorised CA may request the taxpayer to submit additional documents where necessary.

4.9 NOTIFICATION OF REQUEST TO THE CA OF THE TREATY PARTNER

Where the Nigerian CA is unable to resolve the issue on his own and a MAP is required to be initiated, he shall notify the CA of the Treaty Partner.

4.10 COMMENCEMENT OF NEGOTIATIONS

Where the two CAs has accepted the case for MAP consideration, the authorised CA shall notify the taxpayer of the commencement of MAP negotiations.

4.11 ROLE OF TAXPAYER IN MAP PROCESS

MAP negotiations between the Nigerian CA and the CA of Treaty Partners are a government-to-government process in which there is generally no direct taxpayer involvement. Therefore, taxpayer involvement in the MAP is limited to presenting its views and assisting in the fact-finding without participating in the negotiation process. However, the taxpayer may be invited to make a presentation to the CAs, where appropriate, to ensure a common understanding of the facts of a particular case.

4.12 RESPONSIBILITIES OF TAXPAYERS

- (1) Taxpayers are expected to cooperate fully with the Nigerian CA by providing all information and documents when requested.
- (2) Once a MAP request has been accepted, the taxpayer is responsible for supplying the Nigerian CA with complete and accurate information required to resolve the case. The burden is on the taxpayer to keep the Nigerian CA informed of all material changes in the information or documentation previously submitted as part of, or in connection with the request, as well as new information or documentation that

becomes known or is created after the request is filed and which is relevant to the issues under consideration. Where a request also involves a related party making a similar request to the CA of the Treaty Partner, the taxpayers should ensure that there are no discrepancies in the information provided to both CAs.

- (3) A taxpayer's failure to cooperate with the Nigerian CA during any part of the MAP process may have direct consequences on whether relief can be provided under the MAP. Specifically, the Nigerian CA may request additional information beyond that which was requested during an audit and may also request information that was requested but not provided during an audit. It is to the taxpayer's benefit to be fully cooperative and transparent to ensure an efficient MAP process. The timely provision of requested information is essential to enable the CAs to reach an equitable and expeditious conclusion.

4.13 TAXPAYER UPDATE

The authorised CA shall, upon request from the taxpayer, or when necessary, update the taxpayer on the status of the MAP to an extent that the update does not interfere with the MAP process.

4.14 CONFIRMATION BY TAXPAYER BEFORE AGREEMENT

4.14.1 Where it is recognised that an Agreement will be reached with the CA of the Treaty Partner, the authorised CA shall inform the taxpayer of the contents of the proposed Agreement in writing. The taxpayer shall confirm in writing his acceptance.

4.14.2 The CA of Nigeria shall reach an Agreement with the CA of the Treaty Partner after confirmation of the taxpayer's acceptance of the proposed Agreement.

4.14.3 MAP Agreements are not considered precedents for either the taxpayer or the relevant tax authority in Nigeria with regards to (re)assessments relating to subsequent years or for MAP negotiations on the same or similar issue. This is because the CAs have negotiated an Agreement that takes into account the facts of the particular taxpayer, as well as differences in the provisions of the tax law in each country and effects of the economic indicators on the particular transactions at the relevant time. Reassessment of subsequent years should be based on the particular circumstances, facts and documentary evidence existing for those years.

4.14.4 Where the request involves multiple years or multiple issues, the taxpayer cannot accept the terms of an agreement for only a part of the issues or taxation years involved, since the original request by the taxpayer would have asked for assistance in respect of all issues and taxation years involved and the CAs would have considered all the issues and years together in the negotiations.

4.14.5 If a taxpayer is not satisfied with the agreement negotiated by the CAs, the taxpayer may reject it. Where this occurs, the authorised CA shall notify the CA of the Treaty Partner accordingly. The case shall be considered closed and this shall be conveyed in writing to the taxpayer.

4.15 NOTIFICATION OF AN AGREEMENT

4.15.1. Where an agreement has been reached in MAP, the authorised CA shall notify the taxpayer in writing of the date and contents of the said agreement.

4.15.2. Likewise, where the MAP has not reached an agreement, the authorised CA shall also notify the taxpayer accordingly.

4.15.3. The authorised CA and the relevant Department of FIRS or SBIRS shall take all necessary steps to put into effect the results as required by the agreement, in accordance with the applicable Tax Treaty.

4.16 TERMINATION OF MAP

4.16.1 The Nigerian CA reserves the right to propose to the CA of the Treaty Partner that MAP process be terminated under the following circumstances:

- (1) When the subject for the MAP is not within the scope of MAP under the applicable Tax Treaty;
- (2) When the application for MAP or the attachments contains incorrect information;
- (3) When the taxpayer has failed to provide all information necessary for MAP;
- (4) When retrieval of documents necessary for MAP is not possible due to lapse of time;

- (5) When the taxpayer has written to withdraw the MAP request or does not accept the proposed agreement reached by the CAs;
- (6) When it is recognised by the authorised CA that the continuation of MAP will not result in an agreement; and
- (7) Any other reason that is deemed sufficient by the authorised CA not mentioned above.

4.16.2 Where the CA of the Treaty Partner has accepted the proposal from the Nigerian CA to terminate the MAP, the authorised CA shall notify the taxpayer in writing that the MAP has been terminated.

4.16.3 Likewise, where the Nigerian CA has accepted a proposal from the CA of the Treaty Partner to terminate the MAP, the authorised CA shall notify the taxpayer in writing that the MAP has been terminated.

4.17 WITHDRAWAL OF A MAP REQUEST

4.17.1 A taxpayer may withdraw his request for MAP at any time before a MAP Agreement has been reached.

4.17.2 Withdrawal of a request for MAP shall be made in writing, stating reasons, to the Executive Chairman, FIRS with copies to the authorised CA.

4.17.3 After receiving the written confirmation for a withdrawal, the Nigerian CA shall notify the CA of the Treaty Partner of the termination of the MAP by the taxpayer.

5.0 INTERACTION BETWEEN MAP AND DOMESTIC APPEAL PROCESS

5.1 Presenting a case to the Nigerian CA to invoke MAP will not deprive a person from its right of appeal under relevant Nigerian Tax laws. The usual procedures for appeal under the Nigerian Tax laws shall apply. However, while the domestic legal remedies are still available, the Nigerian CA will require that the taxpayer agrees to the suspension of these remedies if the MAP request is accepted. Where the taxpayer is not satisfied with an MAP ruling, he may thereafter seek a legal remedy.

- 5.2 When an Administrative panel has taken a decision on a tax matter, it does not hinder the taxpayer from pursuing a MAP. However, if a court decision has been made concerning a tax matter, the decision becomes final and binding, hence the taxpayer can no longer invoke a MAP.

6.0 CONFIDENTIALITY OF TAXPAYER'S INFORMATION

- 6.1 All information obtained or generated during the MAP process is protected by the confidentiality provisions of the Nigerian Tax laws and the provisions of the applicable Tax Treaty. However, MAP rulings of a general nature may be published.
- 6.2 The Nigerian CA is committed to ensuring confidentiality regarding taxpayer information under the Tax Treaties and relevant laws.

7.0 TAX COLLECTION DURING MAP

A request for MAP does not affect the requirement to payment of the tax liability or collection action by the relevant tax authority.

8.0 IMPLEMENTATION OF A MAP DECISION

After a mutual agreement is reached on a case, the mutual agreement will be implemented by the following procedures:

8.1 *Tax cases other than withholding tax case (including cases on corresponding adjustments):*

- (1) In cases where a mutual agreement has been reached on a case regarding taxes other than a withholding tax and the Agreement has resulted in the reduction of the amount of income taxable or tax payable by the applicant in Nigeria, whether or not the MAP originated from Nigeria, the applicant shall within three months of reaching the Agreement or within such period of time as may be allowable by the Nigerian Authorised CA, but not later than six years after the MAP decision, make a request for reassessment of its filed tax return to reflect the decision contained in the Agreement.
- (2) The taxpayer shall upon request pursuant to paragraph (1) above submit an amended self-assessment returns (including

amended transfer pricing returns for cases involving corresponding adjustments) to reflect the decision reached under the Agreement.

- (3) On application by a taxpayer pursuant to paragraph (1) above, the service shall reassess the taxpayer's return with a view of reflecting or giving effect to the Agreement between the Nigerian CA and her Treaty Partners.

8.2 ***Withholding tax case:***

- (1) In cases where a mutual agreement has been reached on a case regarding withholding tax and resulted in the refund of all or part of the amount of tax withheld by a withholding tax agent in Nigeria, that withholding tax agent shall be required to submit a "Request for a Refund of Overpaid Withholding Income Taxes" to the relevant tax authority. The request shall be made within three months of reaching the Agreement or within such period of time as may be allowable by the Nigerian Authorised CA, but not later than six years after the MAP decision.
- (2) In cases where the Agreement has resulted in a refund of tax withheld by a foreign agent of a Treaty Partner to a resident or domestic corporation in Nigeria the applicant shall make the request for such refund in accordance with the relevant procedures of the Treaty Partner.

9.0 HOW TO SUBMIT A MAP REQUEST

- 9.1 All formal request for MAP not involving APA should be made in writing and addressed to:

Executive Chairman (Delegated Competent Authority),
Federal Inland Revenue Service (FIRS)
20 Sokode Crescent
Wuse Zone 5,
Abuja, FCT. Nigeria
Phone: +234 8022252990

and copied to:

Director Tax Policy & Advisory Department
(Authorised Competent Authority)

Federal Inland Revenue Service (FIRS)
Annex 1, Federal Inland Revenue Service
15 Sokode Crescent, Wuse Zone 5
Abuja, Nigeria.

Generic Email: canigeria@firs.gov.ng

- 9.2 For specific MAP cases involving transfer pricing, the requests should be copied to:

Director, International Tax Department
3rd Floor, FIRS Building
17B, Awolowo Road,
Ikoyi, Lagos.

10.0 FURTHER INFORMATION

For more information and enquiries, please contact:

Executive Chairman,
Federal Inland Revenue Service,
Revenue House,
No 20 Sokode Crescent,
Wuse Zone 5, Abuja.

Or

Director, Tax Policy and Advisory Department
Federal Inland Revenue Service
Revenue House (Annex 1),
No 15 Sokode Crescent,
Wuse Zone 5, Abuja.

Or

Visit our website: www.firs.gov.ng

Email: enquiries@firs.gov.ng

Telephones: 09074444441, 09074444442, 09072111111,
09073777777

