

FIRS Guidelines on Advance Pricing Agreements in Nigeria – A Game Changer ?

In the evolving global tax landscape, related-party transactions and transfer pricing (TP) have become pivotal issues for tax authorities worldwide. Recognizing the complexities and potential disputes surrounding TP, the Federal Inland Revenue Service (FIRS) recently introduced comprehensive Guidelines on Advance Pricing Agreements (APAs) through Information Circular No. 2024/006, which was published on 27 November 2024 (hereafter referred to as “the Guidelines” or “the Circular”).

The Guidelines have an effective date of 1 January 2025 and provide a structured framework for taxpayers to negotiate predetermined TP methodologies with the FIRS that would govern their proposed controlled transactions, thereby reducing uncertainties and fostering trust.

The major significance of the Guidelines is the mitigation of the risks of double taxation and prolonged TP disputes – which typically lead to significant, alleged additional tax liabilities – for multinational enterprises (MNEs) operating in Nigeria. The Guidelines also aim to promote Nigeria’s tax compliance standards in alignment with global best practices, to ensure that related-party transactions involving entities that have a taxable presence in Nigeria adhere to the Arm’s Length Principle.

This newsletter provides a detailed analysis of the structure, processes, benefits, and compliance requirements of the APA framework in Nigeria, how qualifying businesses can leverage the framework, and its implications for MNEs with operations in Nigeria. You can also read our Alert on the APA [here](#).

1. What is an Advance Pricing Agreement?

As detailed in paragraph 4.134 of the Organisation for Economic Co-operation and Development (OECD) TP Guidelines 2022, “an APA is an arrangement that determines, in advance of

controlled transactions, an appropriate set of criteria (e.g. method, comparables and appropriate adjustments thereto, critical assumptions as to future events) for the determination of the transfer pricing for those transactions over a fixed period of time. An APA is formally initiated by a taxpayer and requires negotiations between the taxpayer, one or more associated enterprises, and one or more tax administrations. APAs are intended to supplement the traditional administrative, judicial, and treaty mechanisms for resolving transfer pricing issues. They may be most useful when traditional mechanisms fail or are difficult to apply.”

The FIRS has, through the Circular, pronounced that it may enter into unilateral, bilateral or multilateral APAs with interested MNEs based on the terms discussed in the subsequent sections of this newsletter. Unilateral APAs are those signed by the FIRS and a taxpayer only, while bilateral APAs are those that can involve the Service, a taxpayer in Nigeria, its connected persons that are resident in a foreign country, and the Competent Authority (CA) in that country. Multilateral APAs, on the other hand, cover connected persons and CAs in multiple jurisdictions.

2. Eligibility Criteria and Thresholds

To qualify for an APA, a taxpayer must meet the following criteria:

- Be a Nigeria-resident company or a non-resident with a permanent establishment, significant economic presence, or any other form of taxable presence, in Nigeria.
- Have controlled transactions that are up to (the equivalent of) USD10 million annually for individual transactions or USD50 million annually for a group of transactions.

3. The APA Process

Based on the Guidelines, the five main stages in the APA process are as follows:

- **Stage 1: Pre-Filing Meeting** – This involves a mandatory consultation to determine the suitability of an APA. Discussions would include the proposed TP Methodology (TPM), scope of the APA, and identification of collateral issues.
- **Stage 2: Formal Application** – In the second stage, taxpayers would submit a comprehensive application, detailing the proposed TPM, functional and value chain analyses, critical assumptions, and supporting documentation.
- **Stage 3: Analysis and Evaluation** – Upon receipt of the application by the Service, the FIRS would evaluate the application, seek expert advice where necessary, and exchange briefs with treaty partners (for bilateral/multilateral APAs).
- **Stage 4: Negotiation and Agreement** – Just as with any contractual agreement, the terms of an APA are crucial. Thus, under this stage, the terms of the APA would be negotiated between the FIRS, taxpayers, and relevant treaty partners with a view to finalizing the APA. This stage covers the resolution of all collateral issues.
- **Stage 5: Drafting, Execution, and Monitoring** – Once the terms are agreed, the APA would be executed by all relevant parties. The Nigerian taxpayer is then required to submit an Annual Compliance Report to monitor adherence to the agreement.

4. Terms and Duration

The commencement date of an APA will be the date indicated in the APA, which would correspond to the beginning of the financial year indicated in the taxpayer's application or a mutually agreed financial year. The Guidelines provide that an APA would be valid for a maximum of three (3) years, with the option for renewal.

According to paragraph 20.0 of the Guidelines, if the finalisation of an APA application is delayed beyond the expected duration from the taxpayer's requested commencement date, the Service would normally seek to specify a later commencement date for the APA. However, the Service will seek to preserve the three-year duration of an APA or the tenure stipulated in the relevant legislation.

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 tax authorities of the tax treaty partner(s).

5. Provisions for Rollback

Upon execution of an APA with the Service, the agreed methodology or arm's length price may apply retrospectively for up to three (3) years immediately prior to the year of agreement, provided the transactions are identical to those covered by the APA.

6. Costs and Fees

According to the Guidelines, taxpayers will bear all costs associated with processing APAs, including a non-refundable application fee of USD20,000. Additional costs directly incurred by the Service for processing the APA will be reimbursed by the taxpayer.

To renew an existing APA, taxpayers must make a non-refundable deposit of USD5,000 as renewal fee upon applying for the renewal.

7. Critical Assumptions and Termination

APAs are agreed based on critical assumptions such as economic conditions, industry trends, and transaction volumes. A breach of these assumptions may lead to the revision or termination of the APA.

8. Annual Compliance Report (ACR) and Record-Keeping

Taxpayers involved in an APA with the FIRS are required to submit an ACR to the Service. The major components of this report are as follows:

- a. A form detailing the particulars of the APA and the actual financial results of the affected taxpayer for the financial year, which should be supported by a financial analysis of compliance with the APA.
- b. Audited financial statements (if not submitted as part of the tax return).
- c. Audited financial statements of connected persons to the covered controlled transactions.
- d. Consolidated financial statements of the Group.

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 Companies Income Tax returns.

The FIRS reserves the right to request further information to clarify the contents of the ACR or to verify that the taxpayer 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 tax authority may terminate the APA.

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.

9. Renewal and Termination

To renew an APA, an application for the renewal must be submitted at least nine (9) months before the APA expires. An APA may be renewed for a maximum term of 3 years or as stipulated in the relevant legislation. Significant changes to APA terms may require a new agreement.

An APA will be terminated if critical assumptions are breached, compliance requirements are unmet, or if fraudulent practices are discovered. 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.

10. TP Audits and APAs

While APAs aim to provide taxpayers with certainty and minimize disputes, they do not eliminate the possibility of audits by the FIRS. The FIRS retains the authority to audit certain aspects of a taxpayer's transactions including transactions not included in the scope of the APA and APA transactions (mainly to verify adherence to the APA), even where an APA is in place.

That being said, taxpayers can take some comfort in the provisions of paragraph 8.4 of the Guidelines, which state that, *"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."*



Commentaries

In today's highly globalized business world, MNEs are facing ever-increasing tax risks over their related-party arrangements and TP methodologies. APAs have been successfully used by several MNEs in disparate jurisdictions to navigate the minefield of TP risks and mitigate time-consuming and costly TP controversies.

Unfortunately, since the advent of TP on the continent almost three decades ago, APAs have been significantly underutilized in Africa. We, therefore, commend the FIRS for issuing the Guidelines, as the operationalization of APAs in Nigeria should reduce taxpayers' uncertainty in respect of covered controlled transactions and help to optimize the resources of both taxpayers and tax authorities. The adoption of APA has even become more relevant now given the Africa Continental Free Trade Agreement, which should help to grow African countries' economies and integrate them into the global economy.

The Guidelines provide a clear framework for taxpayers to proactively address TP issues, reduce disputes and enhance compliance in relation to eligible transactions. By offering a structured APA process, the FIRS would enable businesses to achieve certainty over multiple years, a feature that is especially attractive to MNEs.

The emphasis on bilateral and multilateral APAs demonstrates the FIRS's commitment to minimizing double taxation risks. Such agreements promote consistency across jurisdictions, benefiting both taxpayers and the FIRS by reducing the likelihood of conflicting assessments.

The inclusion of rollback provisions and critical assumptions reflects a forward-looking and adaptive approach. The ability to apply APA methodologies retrospectively (for up to three years) should encourage taxpayer confidence in the APA process.

The introduction of these Guidelines positions Nigeria as a competitive player in international tax matters. It signals a readiness to embrace sophisticated TP mechanisms and enhance Nigeria's appeal as an investment destination.

However, while the Guidelines are commendable in many respects, they also present areas of concern for taxpayers. We have highlighted some of these areas below.

a. High Application Costs

The USD20,000 non-refundable deposit for APA applications is considerably high in comparison to other countries with APA programmes. This could deter small and medium-sized enterprises (SMEs) from participating in the APA programme.

For example, the Netherlands¹, Spain² and the United Kingdom³ do not charge any fees for APA applications. This is also the case in Tanzania and Uganda. India's APA application fees are stratified based on the value of the covered international transaction, with the maximum applicable fee being INR2 million (i.e., about USD24,000), in contrast to Nigeria's minimum fee of USD20,000. South Africa's proposed APA programme, on the other hand, indicates that fees would be determined on a case-by-case basis, presumably to make APAs more inclusive.

Thus, lowering (and/or stratifying) the application fees and eligibility thresholds in the Guidelines may encourage greater participation and increase voluntary TP compliance, particularly among local businesses and SMEs.

Additionally, recharging costs incurred by the FIRS (over and above the USD20,000 deposit) in processing an APA to the taxpayer would invariably create uncertainty for interested taxpayers on the cost outlay required to successfully negotiate an APA. Beyond that, the cost recovery mechanism lends itself to abuse, and may lead to inefficiency and arbitrary expenditure – or the impression of it – by the Service, and, ultimately, increase the burden of taxpayers.

¹ <https://www.oecd.org/content/dam/oecd/en/topics/policy-sub-issues/dispute-resolution/the-netherlands-dispute-resolution-profile.pdf>

² <https://www.oecd.org/content/dam/oecd/en/topics/policy-sub-issues/dispute-resolution/spain-dispute-resolution-profile.pdf>

³ <https://www.oecd.org/content/dam/oecd/en/topics/policy-sub-issues/dispute-resolution/united-kingdom-dispute-resolution-profile.pdf>

b. Limited Scope for SMEs and Local Businesses

The annual eligibility thresholds, viz. USD10 million (approx. ₦16 billion) for single transactions and USD50 million (approx. ₦80 billion) for grouped transactions, would exclude SMEs and most local businesses.

In our experience, not many Nigerian MNEs engage in transactions of such quantum. Most Nigerian MNEs may, therefore, not meet the above annual eligibility criteria. Consequently, it may be necessary for the FIRS to lower the eligibility thresholds if it is keen on broadening participation of SMEs and local businesses.

c. Timelines for Completion and the Need for Digitization

The Guidelines stipulate timeframes of 24 months for unilateral APAs and 36 months for bilateral and multilateral APAs. In our view, the 36-month timeline for bilateral and multilateral APAs is reasonable, considering the timelines for processing such APAs in other jurisdictions.

However, the timeline for unilateral APAs is relatively long, and accelerating the APA process would likely enhance taxpayer engagement. Hence, the FIRS may consider establishing stricter internal timelines, leveraging technology, and adopting expedited review mechanisms for unilateral APAs, to reduce APA processing times.

The FIRS's digitization of tax and TP filings in recent years (through the TaxPro-Max and E-TP platform) has improved tax administration in Nigeria moderately. Hence, developing a TaxPro-Max module for the processing of APA applications and submission of ACRs should spur administrative efficiency and improve transparency.

d. Duration of APAs

Another area of concern is the maximum duration allowed for an APA by the FIRS. The Guidelines provide that any APA involving the FIRS would be valid for three (3) years, with the option for renewal.

Considering that South Africa's proposed APA programme provides for a maximum APA duration of five (5) years with the possibility of an additional three (3) years, subject to approval by the Commissioner for South African Revenue Service, the FIRS may consider increasing the initial term of APAs. This would likely increase taxpayers' uptake for APAs and give them ample time to benefit from the arrangement before it expires.

e. Administrative Capacity

The successful implementation of APAs largely depends on the FIRS's ability to manage the complex evaluation and negotiation processes involved, especially for bilateral and multilateral APAs. Considering that this is a new area of administrative responsibility for the FIRS, the Service would benefit from resourcing its team of TP experts adequately and training them to handle complex APA negotiations efficiently.

In our opinion, a reconsideration of the issues discussed above will help to drive the use of APAs in Nigeria. It will also help to enhance tax certainty, reduce compliance costs, and improve relationships between taxpayers and the FIRS, which will ultimately result in a stable and predictable tax environment.



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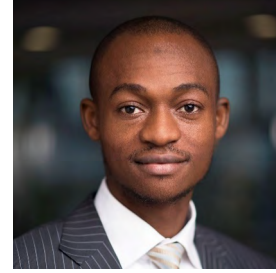
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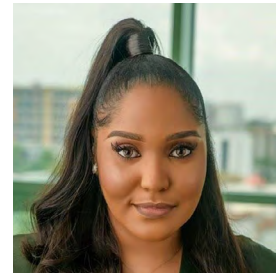
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