

FIRS ISSUES GUIDELINES ON MUTUAL AGREEMENT PROCEDURE IN NIGERIA



As a show of its commitment to the OECD BEPS Action 14 on Making Dispute Resolution Mechanisms More Effective, Nigeria, through the Federal Inland Revenue Service (“FIRS”), recently released its domestic Mutual Agreement Procedure guidelines - the “Guidelines on Mutual Administrative Procedure (MAP) in Nigeria” dated 21st February, 2019 (“the FIRS MAP Guidelines”). The purpose of the FIRS MAP Guidelines is to provide guidance to all taxpayers along with their representatives, advisers and other stakeholders on the procedure for accessing Mutual Agreement Procedure (“MAP”) as a means of dispute resolutions pursuant to the Double Taxation Agreements (“DTA”) between Nigeria and other countries.

MAP is a process by which residents of Contracting States under a DTA seek to resolve tax disputes arising from the treaty, by administrative means through designated representatives known as the “competent authority” in the respective Contracting States.

OECD members and members of the BEPS Inclusive Framework, of which Nigeria is one, have committed to a minimum standard of ensuring that they publish their MAP profiles which should include competent authority details, links to domestic MAP guidelines and other useful jurisdiction-specific information regarding the MAP process.

Nigeria currently has effective DTAs with the United Kingdom, Belgium, Canada, China, the Czech Republic, France, the Netherlands, Pakistan, the Philippines, Romania, Spain, Slovakia and South Africa respectively, and each of these agreements has a MAP provision.

The provision for MAP in the DTA between Nigeria and the UK, for instance, states that where a resident of a Contracting State considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with this Agreement, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation not in accordance with the Agreement.

The “Competent Authority” for purposes of the FIRS MAP Guidelines is the Minister of Finance or his authorised representative, who is the Executive Chairman of the FIRS (referred to as “Delegated Competent Authority”).

As stated in the FIRS MAP Guidelines, the assistance of the Nigerian competent authority may be sought on issues relating to transfer pricing, dual residence status,

withholding tax, determination of the existence of a permanent establishment and characterisation or classification of income for tax purposes. It is important to note, however, that a MAP negotiation process is strictly between the Competent Authority of the Nigerian government and the competent authority of the government of the relevant treaty partner. There is generally no direct taxpayer involvement other than to provide information and assist in fact-finding. The taxpayer may be invited by the Competent Authority to make a presentation.

Persons entitled to approach the FIRS under the MAP are residents of Nigeria and non-Nigerian residents who may be subject to tax in Nigeria. The timeline within which a MAP must be initiated is contained in the relevant DTA and where none exists the FIRS will determine the applicable time line. Nonetheless, a MAP request must be presented to the FIRS within three years from when the action giving rise to taxation not in accordance with the treaty was taken.

The FIRS MAP Guidelines require a taxpayer seeking a MAP to carry out a pre-filing consultation with the FIRS to enable the FIRS to determine whether the issue(s) presented by the taxpayer merits a MAP. Where the FIRS is of the opinion that the issues raised by the taxpayer merit a MAP, the FIRS will inform the taxpayer to submit a formal written request for MAP to the FIRS. The information to be provided by the taxpayer are set out in the FIRS MAP Guidelines. The FIRS has an obligation to keep all information supplied to it under a MAP request confidential. Where a taxpayer invokes a MAP from the FIRS, it is required to suspend all the other remedies which the taxpayer has under the laws. If the taxpayer is not satisfied with a MAP ruling after determination by the FIRS, it could approach the tax tribunal and courts for legal redress. Where a court has determined a tax matter, it becomes final and binding, and the taxpayer can no longer invoke a MAP. There have been significant concerns among taxpayers (especially multinational enterprises, expatriates working in Nigeria and non-resident entities earning income from Nigeria or entering into business relationships with Nigerian companies) regarding their tax liability in Nigeria including the interpretation and application of DTA provisions. The FIRS MAP Guidelines provides the means to resolve some of those issues administratively in hopefully, what can be considered a timely and efficient manner.

The FIRS MAP Guidelines is silent on the binding effect of a mutual agreement reached under a MAP.

This article is for general information purposes only and does not constitute legal advice. If you have any questions or require any assistance or clarification on how the Guidelines apply to you or your business, please contact: taxteam@uubo.org.