

Nigeria Issues Guidelines on Mutual Agreement Procedure

For a deeper discussion, please contact:

Seun Adu

+234 1 271 1700 Ext 52001
seun.y.adu@pwc.com

Olanrewaju Alabi

+234 1 271 1700 Ext 54027
olanrewaju.alabi@pwc.com

Introduction

The Federal Inland Revenue Service (FIRS) has issued Guidelines on Mutual Agreement Procedure (MAP) in Nigeria and Certificate of Residency Forms for taxpayers seeking to take advantage of the MAP.

You can find the documents [here](#).

Mutual Agreement Procedure

MAP is a dispute resolution mechanism designed to resolve international tax disputes arising from inconsistent interpretations of double tax agreement (DTA) provisions, which may result in double taxation for taxpayers.

Nigeria's DTAs contain MAP provisions that enable taxpayers approach Competent Authorities (CAs) in Nigeria or those in jurisdictions of Nigeria's treaty partners to seek redress where they believe they are not being taxed in accordance with the provisions of the relevant DTA.

The MAP Guidelines

The Guidelines provide guidance to taxpayers on how to obtain assistance from the Nigerian CA; and how corresponding adjustments would be applied in the event of transfer pricing (TP) adjustments.

Scenarios requiring MAP

Taxpayers may require assistance from the CA where there are disputes relating to:

- transfer pricing adjustments;
- dual residence status;

- attribution of profits of a permanent establishment;
- levy of withholding taxes beyond what is permitted by the applicable DTA; and
- uncertainties relating to the characterisation or classification of an item of income arising from the other jurisdiction.

Request for assistance

Before submitting a MAP request, a taxpayer is required to carry out pre-filing consultations (a meeting or written correspondence) with the FIRS. This should contain a summary of the facts of the case and reasons for the MAP request. State Boards of Internal Revenue (SBIR) may also participate.

Where the outcome of the pre-filing consultation is positive, taxpayers would be expected to submit a detailed written request for consideration. A request for MAP would not affect the requirement regarding any disputed tax liability.

Timing of MAP requests

Although the timeframe for presenting a case for the CA's assistance depends on the specific terms of the DTA invoked, taxpayers are expected to present their case within 3 years of receipt of the notice of assessment.

Conditions for acceptance

The Nigerian CA will accept a MAP request where:

- the issue relates to a foreign country with which Nigeria has an in-force DTA;
- there is evidence that the actions of one or both countries will result in taxation that is not in accordance with the DTA;
- the taxpayer notifies the Nigerian CA within the acceptable timeframe;

- the issue is not one that either CA has decided not to consider as a matter of policy.

Once a request has been accepted, the Nigerian CA would try to resolve the issue on its own. Where this is not possible, the Nigerian CA will notify the CA in the other country of its intention to commence the MAP.

The taxpayer may withdraw the request for MAP at any time before an agreement has been reached between the CAs. Likewise, the Nigerian CA may terminate the MAP in certain circumstances.

Role of the taxpayer

MAP negotiations are between the CAs, as such the taxpayer's role is limited to presenting its views and facts. This may involve making presentations to the CAs, where necessary.

Notification of agreement

The Nigerian CA will notify the taxpayer in writing of any agreement that has been reached during the MAP. Where the taxpayer is not satisfied with the outcome of the MAP, the taxpayer may seek legal remedy.

If the taxpayer accepts the decision of the MAP, a request for refund of taxes or reassessment of tax to reflect the decision of the MAP must be filed by the taxpayer within 3 months of the decision, but not later than 6 years after the MAP decision.

Takeaway

The Guidelines bring Nigeria closer to international standards as it affords taxpayers an additional avenue for resolving jurisdictional double taxation tax dispute. However, considering Nigeria's limited treaty network, it remains to be seen how far reaching the impact of the MAP would be on Nigerian taxpayers.

