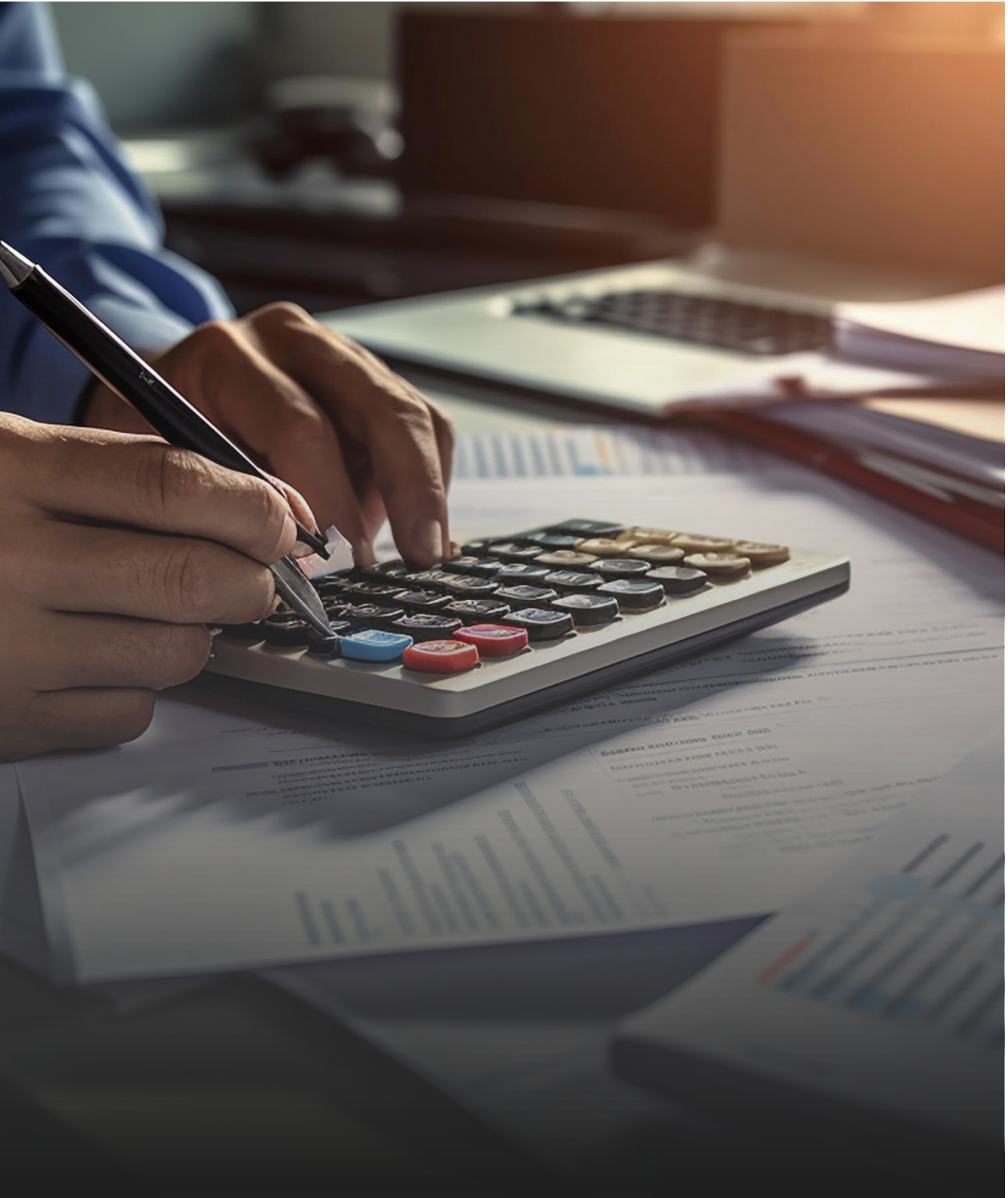


# PLANNING AHEAD:

A REVIEW OF FIRS ADVANCE PRICING  
AGREEMENTS (APA) GUIDELINES 2024.



## In this article, we examine the key provisions of the APA Guidelines, which took effect on 1 January 2025...



### Introduction

Since the commencement of the Income Tax (Transfer Pricing) Regulations in 2018 (the TP Regulations), the Advance Pricing Agreement (APA) provisions contemplated in paragraph 9 of the TP Regulations had remained dormant. It was not until 27.11.2024, that the Federal Inland Revenue Service (**FIRS or the Service**) pursuant to its powers under paragraph 9(12) of the TP Regulations and section 8(1)(u) of the FIRS (Establishment) Act 2007 (as amended) issued the Advance Pricing Arrangement Guidelines (the **APA Guidelines**) to give force to the APA provisions under the TP Regulations. It is intended that the APA Guidelines will establish the procedure for negotiating and executing an APA between the taxpayer on the one hand and the Service or competent authorities<sup>1</sup> on the other hand. Given the emphasis on regulating future controlled transactions of taxpayers and their connected parties, the APA Guidelines offer operational efficiency and a measure of reasonable certainty that will enable taxpayers to effectively plan ahead, maximise resources and reduce dispute or compliance risks.

In this article, we examine the key provisions of the APA Guidelines, which took effect on 1 January 2025, highlighting salient operational indices, comparative analysis of similar provisions in other climes, with the view of providing taxpayers, tax practitioners, tax officers and the public with the requisite knowledge to successfully navigate the APA process in Nigeria.

1. By paragraph 27 of the TP Regulations, this is a person identified as such in a Double Taxation Convention and who by that Convention is given the authority to carry out certain functions under that Convention. In Nigeria, the competent authority under the Guidelines on Mutual Agreement Procedure is the Minister of Finance or his designated representative. A similar office or person holding such office in treaty partner countries, as identified under the relevant double taxation treaties qualify as competent authority.



## Nature and Purpose of an Advance Pricing Agreement

A large amount of taxable cross-border transaction occurs amongst connected entities within a multinational entity (**MNE**). It has been reported that intra-MNE transactions make up about one-third of cross border transactions every year<sup>2</sup>, and in order to ensure that appropriate tax treatment is accorded to these transactions, MNEs are required to conform with transfer pricing rules, which ensure that transactions amongst their related parties are priced at arm's length. Determining appropriate transfer prices is usually not straight forward as this requires recognizing the applicable transfer pricing methods, analysis of the economic terms and the use of statistical database for the relevant benchmarking of the controlled transaction. Notwithstanding the fact that the principles to be followed in the determination of the appropriate transfer price are clearly stated, there may still be some subjectivity which may arise from the point of view of management, which may differ from the optic lens

from which the tax authority may view the transaction. This difference in viewpoint which may cause a disagreement between the applicable transfer pricing methodology of management vis a vis that of the tax authority thereby leading to discrepancy in the applicable transfer price leads us to the requirement of certainty as a germane factor in identifying a tax system that is excellent for business. This desire for certainty is one of the pillars that advances the cause of taxpayers entering into pre-agreed arrangement or advance agreement, on the transfer pricing methods (including factual critical assumptions<sup>3</sup>, comparable and adjustments) to be employed for controlled transactions within or among connected entities. APAs when accepted by the tax authority, ensures certainty, and reduces the risk of transaction prices being set incorrectly and of the way they are determined being challenged by tax authorities.

2. Johannes Becker, Ronald Davies, and Gitte Jakobs, 'The Economics of Advance Pricing Agreements' (2017) *Journal of Economic Behavior & Organization* 134 255-268 <https://www.sciencedirect.com/science/article/pii/S0167268116303018>

3. 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 under the APA are highlighted in Appendix 8 of the APA Guidelines 2024.

## Key Provisions of the APA Guidelines

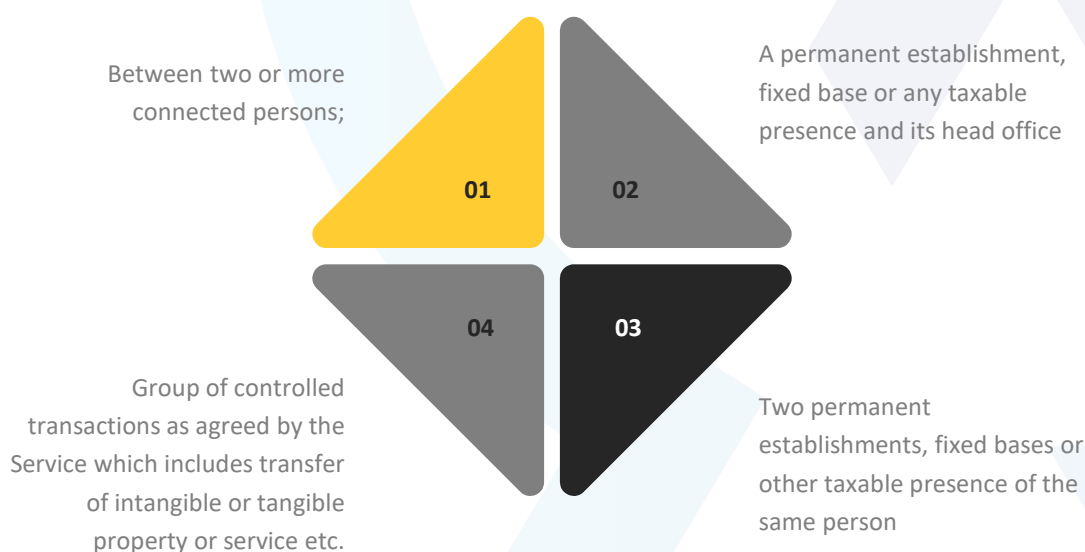
### Form of an Advance Pricing Agreement:

APA has been defined as a voluntary arrangement between a taxpayer and a tax administration that determines in advance of controlled transactions between connected parties, the appropriate set of criteria, which includes transfer pricing methodology, comparables, and appropriate adjustments thereto, as well as critical assumptions, for the determination of the transfer price of those transactions in accordance with the arm's length principle<sup>4</sup>. Thus, any taxpayer who wishes to take benefit of the APA Guidelines must initiate an APA process with the Service or competent authority as the case may be.

An APA could be **unilateral**, **bilateral** or **multilateral**<sup>5</sup>. A unilateral APA involves an arrangement between the Service and a taxpayer concerning the appropriate transfer pricing of the covered controlled transactions and precludes the participation of a tax treaty partner. As such, a unilateral APA may not eliminate the risk of double taxation as the terms of the agreement may not be accepted by the tax authority of a tax treaty partner who was not a party to the APA. A bilateral APA on the other hand involves a Nigerian taxpayer and its connected persons resident in a foreign country, on the one hand, and the Service and the competent authority of that connected person resident in a foreign country on the other hand. A multilateral APA, which is similar to a bilateral APA, involves a Nigerian taxpayer having connected persons in two or more foreign countries, the Service and the competent authorities of those foreign countries. The provisions of the 2023 Mutual Agreement Procedure (MAP) Guidelines, which are intended to be applied in conjunction with the APA guidelines, are applicable to both bilateral and multilateral APA processes given the participation of treaty partner(s).

### Scope of an APA:

Under the APA Guidelines, an APA may be applicable to the following persons<sup>6</sup> and transactions<sup>7</sup>:



4. Paragraph 2.1 of the APA Guidelines 2024.

5. Paragraph 3.0 APA Guidelines 2024

6. Paragraph 7.0 APA Guidelines 2024

7. Paragraph 11.2 APA Guidelines 2024

## Eligibility Criteria and Administration of an APA:

Upon an application addressed to the Executive Chairman of the Service,<sup>8</sup> the Service may enter into an agreement with the taxpayer to determine the Arms Length Principle (**ALP**) or specify the criteria by which the ALP could be determined. An application may also be made to the competent authority of the treaty partner in the case of bilateral and multilateral APAs<sup>9</sup>.

However, for a taxpayer to be eligible<sup>10</sup> to apply for an APA, such taxpayer must satisfy these twin conditions: the taxpayer must 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** such controlled transaction must meet the stipulated threshold<sup>11</sup> to wit:



The equivalent of

**USD\$10 million**

for each covered controlled transaction (single transaction) for each year;



The equivalent of

**USD\$50 million**

in the case of a group of covered controlled transactions (group transactions) for each year covered in the APA.

To initiate the APA process, the taxpayer must pay a non-refundable deposit of **USD\$20,000** as an application fee to cover the process<sup>12</sup>. Additionally, the taxpayer is responsible for all costs that are directly incurred by the Service in the processing of an APA application which include cost of engaging an expert, travel cost for field visitation, among others and the APA Guidelines make provision for how these costs are payable to the Service.<sup>13</sup>

## Operation of an APA:

Given the inherent nature of an APA (which is made in advance of the controlled transactions), all determinations in the APA are based on factual, critical assumptions of the proposed controlled transaction and must therefore be closely monitored and reviewed annually to ensure material conformity with these assumptions during the period of the APA.<sup>14</sup> As provided in the APA Guidelines, the APA binds the Service, therefore, the Service cannot make TP adjustments on the taxable profits arising from the covered controlled transactions, provided that the taxpayer is compliant with all terms of the APA and there is no deviation from its critical assumptions. However, if a TP adjustment is made to a controlled transaction covered under a unilateral APA by a connected person's country which then results in double taxation, the Service will support the APA but may deviate from same in order to resolve an MAP negotiation with a tax treaty partner.

8. Paragraph 11.4 APA Guidelines 2024

9. Ibid

10. Paragraph 10.0 APA Guidelines 2024

11. Paragraph 11.3 APA Guidelines 2024

12. Paragraph 11.1 ii APA Guidelines 2024

13. Paragraph 11.1 APA Guidelines 2024

14. Paragraph 8.0 of the APA Guidelines 2024

## Stages of an APA:

To clarify the APA application process, the APA Guidelines have outlined the following stages:

**Pre-filing meeting:** Preceding a pre-filing meeting is the submission of an APA proposal at least thirty (30) days before the pre-filing meeting. This proposal forms the basis of engagement at the pre-filing meeting. The objective of a pre-filing meeting is to establish preliminary consultations between the taxpayer and the tax authority, to assess the feasibility of the APA and to align expectations. The APA Guidelines provide that pre-filing meetings should occur at least six (6) months before the submission of a formal APA application.

At a pre-filing meeting, the taxpayer and the Service discuss the nature, scope, form/type, the APA process, terms, the case plan (that is a structured timeline and work plan jointly developed by the Service and the taxpayer) of the proposed APA. The parties also identify collateral issues such as legal, administrative, or tax treaty considerations which may impact the APA and agree on the approach to resolving these issues.

**Formal application:** A formal application can only be initiated after there has been an agreement with the Service as to the scope of the APA, and other collateral issues. Here, the taxpayer submits a formal application detailing the scope, type, proposed transfer pricing method, connected parties, covered controlled transactions, critical assumptions, and treatment of identified collateral issues among other relevant information. Additionally, at this stage, the taxpayer is expected to provide the draft APA case plan, and other supporting documentation as may be required by the Service for its review.

**Analysis and Evaluation:** At this stage, the Service conducts a thorough review of the submitted application and supporting documentation. Where deemed relevant, further clarification, documentation and discussions may

be required to assist the Service in making its evaluation. Where the Service reaches a different evaluation from that of the taxpayer, it shall endeavour to reach a mutually acceptable agreement with the taxpayer. It is also at this stage that the Service may engage subject matter experts, if necessary, to assess the taxpayer's proposed economic studies and methodologies and to address any concerns and issues raised by the Service. However, these expert opinions are persuasive and do not bind the Service.

**Negotiation and Agreement:** This involves the finalization of the terms and conditions of the APA. Discussions and consensus are reached by the parties where the agreed terms differ from what was originally proposed to the Service. For unilateral APAs, at this stage, the Service drafts the agreed terms of the APA in consultation with the taxpayer, including methodologies, assumptions, and compensating adjustments. For bilateral and multilateral APAs, the Service negotiates and agrees on preferred terms with tax treaty partners through their competent authorities. Where the APA negotiation breaks down at this stage, the taxpayer may refer his request for a review of the Service's decision to the Decision Review Panel set up under paragraph 21 of the TP Regulations.<sup>16</sup>

**Drafting, Execution and Monitoring:** This is the final stage of the process, where parties formalize the APA and compliance is ensured through monitoring. At this stage, the finalized terms of the APA are properly documented, and the relevant signatures are obtained from all parties involved. Subsequently, the taxpayer is expected to submit an Annual Compliance Report (ACR) demonstrating adherence to the APA, and including any compensating adjustments made.

It is pertinent to note that the above stages apply mutatis mutandis to bilateral and multilateral APAs such that all applications and supporting documentation must meet the APA application requirement of each tax treaty partner involved. The applications submitted by the taxpayer are forwarded to the competent authority or authorities of the taxpayer's connected parties who shall upon evaluation, exchange their position papers, conveying their preferred terms and conditions of the APA.

<sup>16.</sup> Paragraph 17.2(iv) of the APA Guidelines 2024

### Commencement and Duration of APAs:

The APA Guidelines provide that an APA will commence from the date specified in the APA, such date aligned to coincide with the beginning of the taxpayer's financial year or a mutually agreed financial year. An APA typically applies only for a period of three years.<sup>17</sup> However, the APA Guidelines make provision for retroactive application (rollback), therefore extending this benefit to prior years (of a maximum of 3 years<sup>18</sup>, provided that the transactions and conditions align with the provisions of the APA. This clear timeline provides businesses with certainty regarding their transfer pricing arrangements, tax obligations and ensures predictability in compliance requirements. To expedite the APA process, the APA Guidelines recommends that the unilateral APA be concluded within 24 months upon acceptance of the APA formal application by the Service; and within 36 months in the case of a bilateral or multilateral APA.<sup>19</sup> However, the actual conclusion of the APA process depends on the progress of negotiations, the supply of requested documentation, and complexity of the issues being considered.<sup>20</sup>

### Annual Compliance Report:

Taxpayers are mandated by the Guidelines to submit an Annual Compliance Report detailing actual results and demonstrating adherence to the agreed terms.<sup>21</sup> This requirement ensures continuous monitoring of the APA, fosters transparency and builds trust between taxpayers and the FIRS. Failure to comply or provide required details within the stipulated timeline of 21 (twenty-one) days of receiving the Service's request or any further period as may be allowed, can lead to termination of the APA.

### Record Keeping for APA-related Records:

To ensure that the lapse of time does not prevent assessment of APA records, taxpayers are required under the APA Guidelines to retain all APA-related records for six (6) years after the expiration of the APA.<sup>22</sup> This mandate ensures that documentation is available for review or audits, promoting accountability and facilitating dispute resolution if necessary. When required, taxpayers must provide the records within 30 (thirty) days of a written request by the Service.<sup>23</sup>

### Renewals and Termination of APA:

APAs can be renewed for an additional three years if the taxpayer demonstrates compliance with the original terms and transparency in its operations.<sup>24</sup> Taxpayers who seek to renew their APAs must apply for such renewal at least nine (9) months before the expiration of the APA. Termination provisions are also in place to address breaches, non-disclosure of material facts, or changes to critical assumptions that undermine the validity of the APA.<sup>25</sup> Notice of termination may be given by either the Service or the taxpayer subject to paragraph 9.8 and 9.9 of the TP Regulations. These mechanisms ensure that parties exercise good faith and judgement throughout the tenor of the APA.

17. Paragraph 19.0 APA Guidelines 2024

18. Paragraph 21.0 of the APA Guidelines 2024

19. Paragraph 15.8 of the APA Guidelines 2024

20. Ibid

21. Paragraph 22.0 (i) APA Guidelines 2024

22. Paragraph 23.0 (i) APA Guidelines 2024

23. Paragraph 23.0 (ii) APA Guidelines 2024

24. Paragraph 24.0 (i) APA Guidelines 2024

25. Paragraph 27.0 APA Guidelines 2024

## Audits and APAS :

The APA Guidelines provide that the existence of an APA does not shield taxpayers from audits. However, such audits will be restricted to issues which are not covered by the APA.<sup>26</sup> The APA Guidelines also permit taxpayers to apply for APAs during an ongoing audit, as long as the APA will only cover controlled transactions not being audited.<sup>27</sup> However, an audit may be wholly or partially suspended where the outcome of an APA process will impact the resolution of the audit issues. In such circumstances, information availed to the Service during the APA process is not considered voluntary disclosure and any ensuing tax liability from the audit exercise attracts interest and penalty in line with subsisting tax provisions.



## Jurisdictional Comparison of the Implementation of APA Guidelines

To gain a broader perspective of the competitiveness of the Nigerian APA Guidelines, we have undertaken a comparison of the APA Guidelines with that of other jurisdictions. This gives understanding as to how our Guidelines fare, and how they may be improved in line with international best practices already in place in other countries. Our comparison will be based on certain thematic indices covering the scope and types of APA, eligibility criteria and thresholds, as well as the timeline and administrative process.



**Uganda:** Under Uganda's Income Tax Transfer Pricing Regulations 2011 (the **Ugandan Regulations**), there are dedicated provisions govern the regulation of APAs. Although there are no standalone and/ or elaborate guidelines for APA in Uganda as seen in Nigeria, the Ugandan Regulations share some notable similarities with Nigeria's APA Guidelines.

Regarding the scope and type of APA, the Ugandan Regulations recognises that APAs may be entered into by a taxpayer either independently or in collaboration with the competent authorities of the country or countries of the taxpayer's associate or associates.<sup>28</sup> This provision indicates that an APA under the Ugandan Regulations may be unilateral, bilateral or multilateral.

26. Paragraph 25.0 (i) APA Guidelines 2024

27. Paragraph 25.0 (ii) APA Guidelines 2024

28. Paragraph 9(5) of the Ugandan Regulations

Interestingly, the Ugandan Regulations are silent on the requisite eligibility criteria and thresholds, unlike in Nigeria where there are strict thresholds that determine the qualifying controlled transactions for APA. Also, the Ugandan Regulations do not impose any application fee on applicants nor are they responsible for any administrative costs associated with the application process. As a result, the application process is more accessible and cost-free for all applicants. Further, the Commissioner is vested with wide discretionary powers to determine whether to accept or reject any proposal for APA after considering all relevant matters specified in the request as well as the expected benefits from an advance pricing agreement on a case-by-case basis.<sup>29</sup>

The Ugandan Regulations detail no timeline or any elaborate administrative process for APAs. The process is relatively straightforward, requiring a taxpayer to submit a request for an APA, followed by the Commissioner's review and subsequent approval or rejection. Similar provisions for termination or cancellation are specified under the Ugandan Regulations. Thus, in the event of that a person has failed to materially comply with a fundamental term of the APA or there has been a material breach of one or more of the critical assumptions underlying the APA, the APA will be cancelled.<sup>30</sup>



**India:** India's APA guidelines are stipulated in the country's Finance Act 2012, which provides that the Central Board of Direct Taxes (the Board) with the approval of the Central Government, may enter into an advance pricing agreement with any person, determining the arm's length price or specifying the manner in which arm's length price is to be determined, in relation to an international transaction to be entered into by that person.<sup>31</sup> Unlike the Nigerian APA Guidelines, the Indian Finance Act does not trifurcate the types of APAs that may be entered by parties. However, press releases by the Central Board of Direct Taxes indicate that the Board has entered unilateral, bilateral and multilateral APAs with taxpayers in India.<sup>32</sup>

Further, no monetary limits or thresholds are stipulated for controlled transactions covered by the APA, and the eligibility of a transaction is subject to the discretion of the Board. Although no time frame is specified under India's Finance Act 2012, the tax authorities have indicated that they will endeavour to conclude unilateral APAs within one year and bilateral or multilateral APAs within two to three years.<sup>33</sup>

29. Paragraph 9(3) of the Ugandan Regulations

30. Paragraph 9(8) of the Ugandan Regulations

31. Section 92CC of the Indian Finance Act 2012 as amended.

32. Press Information Bureau, 'India Signs 10th Bilateral Advance Pricing Agreement' (Press Release, 10 March 2023) <<https://pib.gov.in/PressReleaseframePage.aspx?PRID=2018085>> accessed 16th January 2025.

33. Deloitte. Advance Pricing Agreements: Frequently Asked Questions. September 2012.



**The United States of America (US):** APAs in the US are primarily guided by the widely published Internal Revenue Service (IRS) notice on the Procedure for Advance Pricing Agreements (the **Notice**).<sup>34</sup> This Notice provides comprehensive guidance on how taxpayers may apply for APAs, and how the IRS administers them.

The APAs are similarly categorised into unilateral, bilateral and multilateral. According to the Notice, bilateral and multilateral APAs are generally preferred over unilateral APAs because they help minimize taxpayer and governmental uncertainty while reducing administrative costs.<sup>35</sup>

In the US, there are no specific monetary thresholds for transactions eligible for an APA. This is a provision totally left at the discretion of the Advance Pricing and Mutual Agreement (APMA) Program, to evaluate whether a transaction qualifies for an APA on a case-by-case basis. This flexible approach allows for a broader range of transactions to be considered, irrespective of their monetary value. It also implies that the Advance Pricing and Mutual Agreement Program (APMA) are left with the discretion of deciding whether a transaction ought to be granted an APA.

To commence an APA process, the Notice stipulates that applicants must pay a user fee.<sup>37</sup> Typically, an APA request will cost the sum of USD\$60,000, while renewals cost USD\$35,000. To cater for relatively small businesses, the Notice introduces a “Small Case” APA application for applicants whose sales revenue fall below USD\$500 million. Hence, an entity making a Small Case application must pay an application fee of USD\$20,000 with a renewal cost of USD\$15,000. It is prudent to note that the Notice does not clearly specify whether the user



34. Internal Revenue Code § 482: Allocation of income and deductions among taxpayers.

35. Paragraph 4D of the Notice.

36. This is a program managed by the IRS.

37. See paragraph 3.05 of the Notice.



**The United Kingdom:** The Taxation (International and Other Provisions) Act 2010 (The Taxation Act) makes provisions governing APAs in the UK. Vide the Taxation Act, an APA is an agreement which is entered between an enterprise and the Commissioners of His Majesty's Revenue & Customs (**HMRC**) to determine a method for resolving pricing issues in advance of a return being made.<sup>38</sup>

The Taxation Act does not explicitly classify the APAs into unilateral, bilateral, or multilateral APAs, as applicable in Nigeria's APA Guidelines. However, the International Manual (**the Manual**)<sup>39</sup> released by the HMRC on APAs has indicated that they recognize this classification.<sup>40</sup> Similarly, the Manual expresses a preference for Bilateral and Multilateral APAs due to its likelihood of curing double taxation.

The UK does not impose thresholds on the enterprises which may enter an APA with the HMRC. The HMRC makes decisions on the eligibility of an enterprise on a case-by-case basis. However, small and medium enterprises in the UK are generally exempt from transfer pricing regulation,<sup>41</sup> therefore there may be limited transactions for which small enterprises will require an APA. The Manual provides that an APA may be requested by any UK resident business (including partnerships), non-residents with a UK permanent establishment, or UK residents trading through a foreign permanent establishment.<sup>42</sup>

Notably, the Taxation Act do not prescribe any application fee to initiate the APA process. The absence of this guarantees access to the APA, unlike in Nigeria where the high application fees may be a deterrent to entities seeking to apply to the FIRS for an APA.

In the UK, the procedure for application is similar to what is obtainable in Nigeria. The Manual outlines the process, which begins with an informal expression of interest by the prospective applicant. This expression of interest is followed by a formal application, should the HMRC indicate a willingness to consider the entity's proposal. Subsequently, the HMRC evaluates the formal application, engaging with the entity as needed for additional information and clarification and once an agreement is reached between both parties, the APA is executed.<sup>43</sup>

Typically, the timeline from the date of the formal application until execution is thirty (30) months, although the Manual states that this may last for as long as thirty-six (36) months for bilateral and multilateral applications.

38. Section 218 of the UK Taxation Act

39. INTM422040

40. HM Revenue & Customs, International Manual: INTM422030 – Advance Pricing Agreements (APAs) (Gov.uk, 27 January 2025) <https://www.gov.uk/hmrc-internal-manuals/international-manual/intm422030> accessed 28 January 2025

41. Section 166 Taxation Act

42. Paragraph 15 of the International Manual INTM422040

43. Paragraphs 20 – 38 of the International Manual INTM422040

## Significance of the APA Guidelines



The APA Guidelines hold significant importance in shaping the transfer pricing landscape in Nigeria. More particularly, the APA Guidelines provide a blueprint to be followed by taxpayers and the Service in reaching an agreement on the appropriate transfer pricing methods that will apply to the taxpayers' controlled transactions. The APA Guidelines, if enforced accordingly will prevent arbitrary transfer pricing practices both on the side of the taxpayer and the FIRS.

Since the APA process is mutually agreed to by the taxpayer, its connected parties, the Service and the competent authorities, where applicable, the likelihood of tax disputes or issues of uncertainty are reduced to the barest minimum.

Additionally, the combined reading of the APA Guidelines with the Guidelines on Mutual Agreement Procedure provide a means to resolve transfer pricing issues in advance as well as tackle complex issues inherent in high-risk transactions.

The APA Guidelines also guarantee both operational and administrative efficiency for the taxpayer and the Service. For the taxpayer, the APA Guidelines present a defined roadmap critical for investment decisions in line with the stipulated thresholds. For the Service, the risk of profit-shifting is curbed with the concomitant effect of increased revenue for the government.

Further, the APA Guidelines denotes the timeline for the conclusion of the APA process therefore recognising the time value of money and the need for an efficient APA process. Ultimately, the APA Guidelines not only fosters certainty, transparency, and collaboration in transfer pricing matters and cross-border transactions but also eliminates the possibility of double taxation, strengthens the integrity of Nigeria's tax system while creating a mutually beneficial relationship between the tax authority and taxpayers.

## Key Concerns on the APA Guidelines

### Monetary Threshold:

Apart the precondition of having taxable presence in Nigeria, the APA Guidelines prescribes a monetary threshold of \$10 Million and \$50 Million<sup>44</sup> for single and multiple covered transactions respectively per year to initiate the APA process. This is in contradiction to the practice in the UK<sup>45</sup>, US, India, and Uganda, where there are no strict financial thresholds which may preclude an entity from applying for an APA. Rather, the evaluation of the eligibility of a taxpayer for the APA process is undertaken by the tax authority on a case-by-case basis, fostering accessibility. By implication, taxpayers with transactions below the threshold are shut out of the APA process in Nigeria and denied the ensuing benefits from an APA.

### Application Fee:

Whilst many eligible taxpayers may find the non-refundable fee of \$20,000<sup>46</sup> affordable given the threshold of covered transactions contemplated by the APA guidelines, its imposition may raise questions due to the benefits mutually derived by the Service and the taxpayer. from the proposed APA. The Service may have however drawn from the practices in Germany, Portugal and other jurisdictions that impose varying application fees<sup>47</sup> as part of their APA process.

### Confidentiality:

Businesses may worry about the level of transparency required in an APA negotiation, especially if proprietary or sensitive information and documentation is involved. This becomes more pertinent as the guidelines requires submission of detailed documentation to support the APA process which does not preclude further requisition by the service. Thus, taxpayers are at risk of making detailed disclosure of internal pricing model and other sensitive information thereby exposing confidential information including business secrets during the APA process. Whilst the extant statutory provisions make copious provisions to ensure the confidentiality of taxpayer's information, nonetheless, this concern may discourage eligible taxpayers from pursuing APAs.

The Organisation for Economic Co-operation and Development (OECD) Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2022 (TP Guidelines)<sup>49</sup> also recommends adherence to confidentiality provisions in domestic laws by tax administrators in the negotiation and execution of APAs to address this inhibition.

44. This threshold is estimated to be NGN15 billion and NGN75 billion respectively at an exchange rate of NGN1,500 to \$1

45. Section 166 Taxation Act exempts small and medium enterprises from the purview of the transfer pricing regulations

46. Paragraph 11.1 ii APA Guidelines 2024

47. [https://taxation-customs.ec.europa.eu/document/download/f2ba3491-b0d7-48e2-be6d-6155cc085858\\_en?filename=APA\\_final\\_2023.pdf&preflang=en](https://taxation-customs.ec.europa.eu/document/download/f2ba3491-b0d7-48e2-be6d-6155cc085858_en?filename=APA_final_2023.pdf&preflang=en) last accessed 30th January 2025

48. Section 50 of Federal Inland Revenue Service Establishment Act (2007) as amended; Regulations 23 of the Transfer Pricing Regulations 2018; Section 40 of Personal Income Tax Act 2011 (As Amended);

49. Paragraph 4.167, Chapter IV, OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2022

### Tax Examination/Audits:

Another consideration is the risk of subsequent utilisation of disclosed information by the tax authority after an unsuccessful APA application during an audit exercise. Whilst the Guidelines has explicitly indicated that information provided by taxpayers will be considered by the Service with respect to an audit wholly or partially suspended for an APA process, the position is unclear in other circumstances such as an unsuccessful application. This uncertainty in the Guidelines make further discourage taxpayers from initiating the process. The TP Guidelines<sup>50</sup> advocates that tax administrators should discountenance information obtained through APA process during its examination of such taxpayer to foster their participation in APAs.

## Conclusion

Nigeria appears to be one of the few countries with standalone, detailed regulations specifically outlining the procedures and requirements for entering into Advance Pricing Agreements. These APA Guidelines provide a structured framework that includes clear guidance on the application process for an APA highlighting the eligibility criteria, stages of the process, rollback provisions, and compliance monitoring to mention but a few.

Looking ahead, the successful implementation of the APA Guidelines will depend on the collaborative efforts between the parties; effective administration; and adaptability to the evolving global tax landscape. For taxpayers, APAs offer an invaluable tool for planning ahead and ensuring tax certainty in a complex and dynamic environment. Taxpayers under the purview of the Guidelines should integrate appropriate monitoring processes into their business processes to ensure conformity with the terms of the executed APA. This will ensure that deviations from the critical assumptions underpinning the APA are timeously detected and where necessary brought to the attention of the service and also foster accurate submissions in its annual compliance report.

The adherence of the Service to confidentiality provisions in extant legislations will encourage interested taxpayers to explore the APA process. Global best practices outlined in the TP Guidelines, if adopted by the Service, will further ensure that the intended objectives of the Guidelines are achieved.

In sum, the APA Guidelines not only provide a proactive approach to transfer pricing compliance but also establish Nigeria as a competitive and forward-thinking jurisdiction in international taxation.

50. Paragraph 4.167, Chapter IV, OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2022

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