

## UPDATE ON THE 2023 FIRS GUIDELINES ON MUTUAL AGREEMENT PROCEDURE

The Mutual Agreement Procedure (“MAP”) is a means by which the competent authorities of contracting parties under a double taxation agreement (“DTA”) resolve disputes that relate to the application of the DTA. The provision for MAP is usually stated in the articles of a DTA. Nigeria has sixteen DTAs<sup>1</sup> in force as of the date of this article, and each of the DTAs provides for MAP. In February 2019, the FIRS issued the Guidelines on Mutual Administrative Procedure (the “2019 MAP Guidelines”) that set out instructions on how to request a MAP in Nigeria. In May 2023, the FIRS issued revised Guidelines on Mutual Agreement Procedure 2023 (the “2023 MAP Guidelines”). The 2023 MAP Guidelines designate the Director of the Tax Policy and Advisory Department of the FIRS as the Authorised Competent Authority in Nigeria for MAP purposes and set out provisions for the electronic submission of MAP requests.

The following are some of the notable changes introduced by the 2023 MAP Guidelines:

**Protective MAP:** This is a MAP request submitted by the taxpayer within the specified timeframe stated in the applicable DTA, but the taxpayer has expressly indicated or mutually agreed with the competent authority that the request should not be assessed until further notification is received from the taxpayer to do so.

**Incidences Requiring Competent Authority Assistance** The 2023 MAP Guidelines broaden the scope of instances where a taxpayer may request MAP. These are (i) Where there is a

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<sup>1</sup>Nigeria currently has DTAs with Italy, United Kingdom, Belgium, Pakistan, Czech Republic, Slovakia, France, Netherlands, Romania, Canada, South Africa, China, Philippines, Sweden, Spain, and Singapore.

recurring tax issue across several financial years with substantially similar facts and circumstances; (ii) Where MAP involving one treaty partner (bilateral MAP) may affect the taxable income of another state with whom Nigeria is in a DTA; (iii) Where a Nigerian taxpayer or a taxpayer resident in Nigeria is in disagreement with a competent authority on the application of an anti-abuse provision of a treaty or domestic law; (iv) Where a Nigerian taxpayer or a taxpayer resident in Nigeria is in a disagreement with a competent authority on audit adjustment or settlement; and (v) Where double taxation arises in the case where a taxpayer initiated foreign adjustments.

**Important Timelines:** The time limit for Initiating MAP Request, in cases where the applicable DTA does not specify a timeline, is 3 (three) years commencing from the date a taxpayer receives the initial notice of assessment. Failure to observe the time limit may result in the rejection of the MAP request. Where a taxpayer is requested to furnish additional information, the Guidelines stipulate a specific timeframe of 30 (thirty) days from the date of receiving the notification to comply with the request for additional information.

**Deferral of Tax Collection During MAP:** Unlike the 2019 MAP Guidelines, which did not impose any restrictions on the collection of the disputed amount of tax during a MAP request, the 2023 MAP Guidelines stipulate that tax collection will be suspended while a MAP case is pending. The suspension will only apply to the disputed portion of the tax liability. The taxpayer is still obligated to pay the portion of the tax liability that is not under dispute while the MAP process is ongoing.

**Implementation of MAP Decision:** Regarding the implementation timeframe for MAP decisions, the 2023 MAP Guidelines state that the application of timelines prescribed by domestic law is contingent upon the provisions within the relevant DTA. Where the applicable DTA does not include any timeline for the implementation of a MAP Agreement, the domestic timeline will apply.

*This update has been provided by the Tax team at Udo Udoma & Belo-Osagie. For more information about our Tax practice group offerings, please visit our website at [www.uubo.org](http://www.uubo.org) or email us at [CorpTaxTeam@uubo.org](mailto:CorpTaxTeam@uubo.org).*

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