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INFORMATION CIRCULAR

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Subject: GUIDELINES ON MUTUAL AGREEMENT PROCEDURE (MAP)

These Guidelines are issued to provide guidance to taxpayers, tax practitioners, tax officers and the general public on the procedures for accessing Mutual Agreement Procedure (MAP) as a means of resolving tax disputes pursuant to a Double Taxation Agreement of which Nigeria is a Contracting State.

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1.0 GENERAL DEFINITIONS

For the purposes of these Guidelines, unless the context otherwise requires, the term:

- a) **"Agreement"** refers to the outcome, agreed to by the Competent Authorities (CAs) under a MAP process, pursuant to a Tax Treaty;
- b) **"Authorised Competent Authority"** refers to the Director, Tax Policy & Advisory Department;
- c) **"CITA"** means the Companies Income Tax Act CAP. C21 Laws of the Federation of Nigeria 2004 (as amended) or any enactment that replaces it.
- d) **"Competent Authority"** means, for Nigeria, the Minister charged with the responsibility for Finance or his authorised representative;
- e) **"Contracting States"** means Nigeria and a Treaty Partner.
- f) **"Delegated Competent Authority"** refers to the Executive Chairman of Federal Inland Revenue Service (FIRS);
- g) **"Double Taxation Agreement"** refers to an agreement between Nigeria and another country for the avoidance or elimination of double taxation with respect to taxes on income, and for prevention of tax evasion and avoidance;
- h) **"Mutual Agreement Procedure"** refers to a process through which the CA of Nigeria and CA of a Treaty Partner consult to resolve disputes involving double taxation and the interpretation or application of the relevant Tax Treaty;
- i) **"PITA"** means the Personal Income Tax Act CAP.P8 Laws of the Federation of Nigeria 2004 (as amended) or any enactment that replaces it.
- j) **"PPTA"** means the Petroleum Profits Tax Act CAP. P13 Laws of the Federation of Nigeria 2004 (as amended) or any enactment that replaces it.

- k) **“Protective MAP”** means MAP request submitted by the taxpayer to meet the time frame permitted under the relevant tax treaty but the taxpayer has indicated or agreed with the competent authority that the request should not be examined until further notification is received from the taxpayer to do so.
- l) **“Tax Treaty”** or **“Treaty”** refers to a double taxation agreement that is in force at the material time;
- m) **“the Service”** refers to the Federal Inland Revenue Service.
- n) **“Treaty Partner”** refers to a country or jurisdiction with which Nigeria has a Tax Treaty.

Any term that is not defined in these Guidelines shall have the meaning as defined in the relevant tax law or the applicable Tax Treaty, and if undefined in those instruments, have the ordinary meaning.

2.0 INTRODUCTION

- 2.1 The Competent Authority (CA) of Nigeria is required to interact with CAs of Treaty Partners with the aim of resolving disputes arising from the interpretation or application of Tax Treaty provisions.
- 2.2 The Article on Mutual Agreement Procedure (MAP) in Nigeria’s Tax Treaties allows a taxpayer who considers that the action of one or both of the Contracting States results or will result for him in taxation that is not in accordance with the provisions of the Treaty, to present a case to the CA, irrespective of the remedies provided by the domestic laws of the Contracting States. Subject to the provisions of the relevant Tax Treaty, a taxpayer may present a case to the CA of either Contracting States or to the CA of the Contracting State he is resident. However, where the case involves non-discrimination, the case should be presented to the CA of the Contracting State where he is a national.
- 2.3 If the objection appears to the receiving CA to be justified and if the CA is not able to arrive at a satisfactory unilateral solution, the CA shall endeavour to resolve the case by mutual agreement with the CA of the other Contracting State, with a view to avoiding taxation which is not in accordance with the Treaty.
- 2.4 Subject to the provisions of the relevant Tax Treaty, the CAs shall or may also consult with each other for the purposes of resolving issues of

corresponding adjustment arising under paragraph 2 of the Article on associated enterprise of the tax treaty.

3.0 PURPOSE OF THE GUIDELINES

The purpose of these guidelines is to provide guidance on how to obtain assistance from the Nigerian CA by a taxpayer whose tax case falls within the scope of a tax treaty between Nigeria and another contracting state. This assistance is provided to taxpayers to enable resolution of tax disputes bordering on double taxation and inconsistencies in the interpretation or application of the provisions of a Tax Treaty.

The guidelines also provide additional guidance on the application for corresponding adjustments that may be required due to the application of the Article on associated enterprises in a tax treaty.

4.0 ADMINISTRATIVE PROCEDURES

4.1 WHO MAY APPLY FOR MUTUAL AGREEMENT PROCEDURE

- (1) A Nigerian resident, who considers that the actions of the tax authority of Nigeria or the other Contracting State have resulted, or will result, in taxation not in accordance with the provisions of the Tax Treaty, irrespective of the remedies provided under Nigerian domestic law.
- (2) Subject to the provisions of the relevant tax treaty, a person who is a resident of the relevant treaty partner may also apply for MAP in Nigeria.

4.2 TYPICAL SCENARIOS REQUIRING COMPETENT AUTHORITY ASSISTANCE

The following are examples of situations where a taxpayer may request for MAP assistance from Nigerian CA:

4.2.1 Transfer Pricing

A taxpayer resident in Nigeria or its related party (including a permanent establishment) resident in a treaty country may, upon a transfer pricing adjustment, be subjected to additional tax by the tax authority of that Treaty Partner. The transfer pricing adjustment may be as a result of adjustment to the price of goods or services transferred to or from the related party (or permanent establishment), or adjustment to other - related-party transactions such as cost contribution arrangements,

financial arrangements, etc. For a transfer pricing adjustment, the Nigerian taxpayer may request the CA of the Treaty partner to reduce or withdraw the adjustment, or that the Nigerian CA to make a corresponding adjustment to its taxable income in order to prevent double taxation.

4.2.2 Dual Residence Status

A Nigerian resident taxpayer may also be considered a resident of a Treaty Partner under that country's domestic law. This may create a situation of dual tax residency for that taxpayer. If the residence issue is not resolved, the taxpayer may become liable to tax on the same income in both countries. A MAP request would trigger discussions between the CAs regarding the proper application of the tie-breaker rules contained in the Article on Resident in the Tax Treaty.

4.2.3 Withholding Tax

Where withholding tax levied by a Treaty Partner on a payment to a Nigerian resident at a rate higher than that provided in the applicable Tax Treaty, the taxpayer may request a MAP.

4.2.4 Permanent Establishment

MAP may be requested where a taxpayer resident in Nigeria is charged to tax in Nigeria on an income (including income from carrying on a business in a Treaty country) and the income is also charged to tax in the other contracting state, without having a permanent establishment in that other country.

4.2.5 Characterisation or Classification of Income

Where there is uncertainty as to whether or not the Tax Treaty covers an item of income or where there is uncertainty as to the proper characterisation or classification of an item of income arising in the other jurisdiction, or lack of clear understanding of the import of a given treaty provision, a taxpayer may approach the Nigerian CA for clarification.

4.2.6 Multi-year MAP Request related to Recurring Issues

A taxpayer may request for a multi-year MAP on recurring issues or transactions, provided the facts and circumstances are substantially the same for the transactions and years concerned. Where this is verified, it will be addressed as a recurring issue and be dealt with through a single MAP case covering all the relevant tax years or similar events.

This would only be possible for each event or taxation years as may be provided in the relevant tax treaty.

4.2.7 Multilateral MAP and Advance Pricing Arrangements (APA)

Where the resolution of a bilateral case may affect or be affected by taxation of income in a third state with whom Nigeria has a tax treaty in force, the Nigerian CA shall endeavour to resolve the case by mutual agreement with the competent authority of such third State, provided that Nigerian CA and the competent authority of that third State agree within the period contained in the Treaty. In doing so, the Nigerian CA, will adopt the guidelines provided by the OECD or UN manual for handling multilateral MAP's and APA's.

4.2.8 Others

Other scenarios in which a taxpayer may seek MAP assistance are, where:

- a) there is a disagreement between the taxpayer and the tax authorities making the adjustment, on whether the conditions for the application of a treaty anti-abuse provision have been met or whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a treaty.
- b) double taxation arises in the case of bona fide taxpayer-initiated foreign adjustments.
- c) there is disagreement with an audit adjustment or audit settlement.

4.3 TIME LIMITS FOR REQUESTING ACCESS TO MAP

4.3.1 The time limit for presenting a case to CA depends upon the specific terms contained in the particular Tax Treaty under which the MAP is invoked. To this end, the relevant Tax Treaty should be consulted in every case that a MAP is desired.

4.3.2 Where the time limit for presenting a case to invoke MAP is not specified in the relevant Tax Treaty, a 3-year time limit applies.

4.3.3 The time limit commences from the first notification of the action resulting in taxation that is not in accordance with the provisions of the Tax Convention (e.g. after receipt of Notice of Assessment).

4.3.4 The time limits specified above includes cases involving corresponding adjustment of tax or income resulting from FIRS tax audit.

4.3.5 Failure to observe the time limit may result in the rejection of the MAP request.

4.4 SUBMITTING A FORMAL REQUEST

4.4.1 All formal requests for MAP should be made in writing, in the English language and properly addressed. The request may be delivered in hard copies or by email to the addresses listed in paragraph 9.0 of this Guidelines or in Nigeria's MAP Profile on <https://www.oecd.org/tax/dispute/Nigeria-Dispute-Resolution-Profile.pdf>.

4.4.2 A request for CA assistance must contain all relevant information, including:

- (1) The name, Taxpayer Identification Number (TIN), address and other relevant contact details of the taxpayer;
- (2) The name of the Treaty Partner's tax authority;
- (3) The Tax Treaty Article(s) which the taxpayer asserts are not being correctly applied, and the taxpayer's interpretation of the application of the said Article;
- (4) If the MAP is a request on a transfer pricing issue (including corresponding adjustment), the name, address (including email address) and, the TIN of the related party involved with whom the relevant transaction was carried out;
- (5) The relationship between the taxpayer and the related Treaty Partner's taxpayers involved (Taxpayers should also keep the Nigerian CA informed of any change that may occur in these relationships after the request has been filed);
- (6) The assessment years or periods involved, the amount of income and tax in dispute together with copies of the notices of assessment (if any);
- (7) A summary of the facts and analysis of the issues for which CA assistance is requested, including any specific issues raised by the Treaty Partner's tax authority or relevant tax authority in Nigeria affecting the taxpayer and the related amounts;
- (8) A statement as to whether the request for CA assistance involves issues that are currently or were previously considered as part of an Advance Pricing Agreement (APA) in Nigeria or in similar proceedings in the Treaty Partner's country;

- (9) A statement indicating whether the taxpayer has filed a notice of objection or a notice of appeal under the domestic dispute resolution framework;
- (10) If the request is made by an authorised representative, evidence of engagement to act in that capacity and a signed statement that the representative is authorised to act for the taxpayer in making the request;
- (11) Whether the MAP request was also submitted to the competent authority of the other Contracting Party.
- (12) A copy of any previous settlement or agreement reached with the Treaty Partner's tax authority, which may affect the MAP process;
- (13) Whether the MAP request was also submitted to another authority under any other instrument that provides for a mechanism to resolve treaty-related disputes.
- (14) A statement confirming that all information and documentation provided in the MAP request is accurate and that the taxpayer will assist the CA in the resolution of the issue(s) presented in the MAP request, by furnishing any further information or documentation that may be requested by the competent authority within the time stipulated.
- (15) Where the request is a protective MAP request, the person that submits the request must expressly declare that the case only needs to be examined following a further notification to do so.
- (16) Any other relevant fact.

4.4.3 The request must be signed by the taxpayer, or its authorised representative, confirming the accuracy and completeness of the facts and information presented in the request. The taxpayer is responsible for the completeness and accuracy of an information included in the request irrespective of the person who signed it.

4.4.4 Subject to the guidance and timelines provided in paragraph 4.7, the Nigerian CA may deny any request where the taxpayer has failed to provide complete and accurate information or has made any misrepresentation.

4.5 REVIEW OF THE REQUEST

4.5.1 After receiving a request for MAP, the authorised CA or his representatives will evaluate the request.

4.5.2 Where there are deficiencies in the request, the authorised CA may request the taxpayer to take remedial action.

4.5.3 When the authorised CA is of the opinion that the deficiency in the request has not or cannot be remedied or where the taxpayer has failed, neglected or refused to remedy such deficiencies, the Authorised CA may decline the request and notify the taxpayer in writing with explanations.

4.5.4. In any case, the CA of the Treaty Partner will be notified before any case is declined.

4.6 ACCEPTANCE OF A MAP REQUEST

The Nigerian CA will only accept a MAP request where:

4.6.1 The issue or transaction relates to a jurisdiction with which Nigeria has a Tax Treaty in force;

4.6.2 It is evident that the actions of one or both countries have resulted or will result in taxation not in accordance with the Tax Treaty;

4.6.3 The taxpayer notifies the Nigerian CA within the acceptable time limit provided in the relevant tax treaty;

4.6.4 The issue is not one that the Nigerian or the Treaty Partner's CA have decided, as a matter of policy, not to consider.

4.7 ADDITIONAL INFORMATION

4.7.1 Where necessary, the authorised CA may request the taxpayer to submit additional information (including documents) particularly, where the taxpayer fails to provide complete or accurate information in the MAP request.

4.7.2 Where a request for additional information is made, the taxpayer shall submit such information within 30 days from the date of receipt of the notification for additional information.

4.7.3 Where additional information required is not provided by the taxpayer within 30days, the Nigerian will send a reminder granting 7days extension from the date of the notification of the reminder.

4.7.4 Where information is still not provided after the expiration of the 7days, the CA of the treaty partner will be notified of such development and the MAP request may be rejected for lack of sufficient information, or where the MAP process has commenced, the MAP case may be closed.

4.7.5 Where such document is subsequently provided after the expiration of the required deadline, but within the time allowed for MAP case to be lodged, the case shall be treated as a fresh MAP case.

4.8 NOTIFICATION OF REQUEST TO THE CA OF THE TREATY PARTNER

Where the Nigerian CA is unable to resolve the issue on his own and a MAP is required to be initiated, he shall notify the CA of the Treaty Partner.

4.9 COMMENCEMENT OF NEGOTIATIONS

Where the two CAs have accepted the case for MAP consideration, the authorised CA shall notify the taxpayer of the commencement of MAP negotiations.

4.10 ROLE OF TAXPAYER IN MAP PROCESS

MAP negotiations between the Nigerian CA and the CA of Treaty Partners are done on government-to-government basis with limited taxpayer involvement. Taxpayer's involvement in MAP process is limited to presenting its views and assisting in the fact-finding, without participating in the negotiation process. However, the taxpayer may be invited to make presentations to the CAs, where appropriate, in order that the CAs might gain common understanding of the facts of a particular case.

4.11 RESPONSIBILITIES OF TAXPAYERS

- (1) The taxpayer is required to cooperate fully with the Nigerian CA by providing all relevant information (including documents) as and when requested.
- (2) Once a MAP request has been accepted, the taxpayer is responsible for supplying the Nigerian CA with complete and accurate information required to resolve the case. The burden is on the taxpayer to keep the Nigerian CA informed of all material changes in the information or documentation previously submitted as part of, or in connection with the request, as well as new information or documentation that becomes known or is created after the request is filed and which is relevant to the issues under consideration. Where a related party submits a separate request on the issue with Nigerian CA to the relevant Contracting State, the taxpayers must ensure that there are no discrepancies in the information provided to both CAs.

- (3) A taxpayer's failure to cooperate with the Nigerian CA during any part of the MAP process may have direct consequences on whether or not relief can be provided. Specifically, the Nigerian CA may request additional information beyond that which was requested during an audit and may also request information that was requested but not provided during an audit. It is to the taxpayer's benefit to be fully cooperative and transparent to ensure an efficient MAP process. The timely provision of requested information is essential to enable the CAs to reach an equitable and expeditious conclusion.

4.12 TAXPAYER UPDATE

The authorised CA may, as often as necessary or upon request from the taxpayer, provide updates to the taxpayer on the progress of the MAP process, provided such updates will not jeopardise the MAP process.

4.13 CONFIRMATION BY TAXPAYER BEFORE AGREEMENT

4.13.1 Where it is recognised that an Agreement will be reached with the CA of the Treaty Partner, the authorised CA shall inform the taxpayer of the contents of the proposed Agreement in writing.

4.13.2 The communication to the taxpayer shall contain a request that the taxpayer includes a statement in writing, confirming the acceptance of proposed agreement and a commitment not to initiate any further domestic remedy in respect of the case.

4.13.3 The taxpayer shall confirm acceptance of the agreement in writing not later than 14 days after the receipt of the communication, and shall include a confirmation that no further domestic remedy would be pursued in respect of the case.

4.13.4 The CA of Nigeria shall reach an Agreement with the CA of the Treaty Partner after confirmation of the taxpayer's acceptance of the proposed Agreement.

4.13.5 Each MAP request will be considered and determined based on extant laws, the merits of the facts and circumstances at the time of consideration. As such, a MAP Agreement will not create precedent for either the taxpayer or the relevant tax authority in Nigeria with regards to (re)assessments relating to subsequent years or for MAP negotiations on similar issues. Reassessment of subsequent periods shall be based on the particular law, circumstances, facts and documentary evidence existing for those years.

4.13.6 Where the request involves multiple years or multiple issues, the taxpayer cannot accept the terms of an agreement for only a part of the issues or assessment years involved, since the original request by the taxpayer would have asked for assistance in respect of all issues and assessment years involved and the CAs would have considered all the issues and years together in the negotiations.

4.13.7 Where the taxpayer is not satisfied with the agreement negotiated by the CAs, the taxpayer may reject it. Where this occurs, the Nigerian CA shall notify the counterpart CA accordingly. The case shall be considered closed and this shall be conveyed in writing to the taxpayer.

4.14 NOTIFICATION OF AN AGREEMENT

4.14.1. Where an agreement has been reached in MAP, the authorised CA shall notify the taxpayer in writing of the date and contents of the said agreement.

4.14.2. Likewise, where the CA's are unable to reach an agreement (agree to disagree) under MAP, the authorised CA shall also notify the taxpayer accordingly.

4.14.3. The authorised CA and the relevant department of FIRS or SBIRS shall take all necessary steps to put into effect the results as required by the agreement, in accordance with the applicable Tax Treaty.

4.15 TERMINATION OF MAP

4.16.1 The Nigerian CA reserves the right to propose to the counterpart CA that MAP process be terminated where:

- a) the subject for the MAP is not within the scope of MAP under the applicable Tax Treaty;
- b) the application for MAP or the attachments contains incorrect information;
- c) the taxpayer failed to provide all information necessary for MAP;
- d) retrieval of documents necessary for MAP is not possible due to lapse of time;
- e) the taxpayer has written to withdraw the MAP request or indicated that it would not accept any agreement reached by the CAs;

f) it is recognised by either CA that the MAP process would not result into an agreement; and

g) any other reason exists that is sufficient for the Nigerian CA to terminate the MAP process.

4.15.2 Where the CAs accept a proposal to terminate the MAP, the Nigerian CA shall notify the taxpayer in writing that the MAP has been terminated.

4.16 WITHDRAWAL OF A MAP REQUEST

4.16.1 A taxpayer may withdraw his request for MAP at any time before an Agreement has been reached.

4.16.2 Withdrawal of a request for MAP shall be made in writing to the Executive Chairman, FIRS with copies to the authorised CA.

4.16.3 After receiving the written confirmation for a withdrawal, the Nigerian CA shall notify the counterpart CA of the withdrawal and the MAP process shall be terminated accordingly.

5.0 INTERACTION BETWEEN MAP AND DOMESTIC APPEAL PROCESS

5.1 Presenting a case to the Nigerian CA to invoke MAP will not deprive a person from its right of appeal under relevant Nigerian tax laws. The usual procedures for appeal under the Nigerian tax laws shall apply.

5.2 However, while the domestic legal remedies are still available, the Nigerian CA will require that the taxpayer agrees to the suspension of these remedies if MAP request is accepted. Where the taxpayer is not satisfied with a MAP ruling, the taxpayer may thereafter seek remedy under the domestic dispute resolution framework.

5.3 The ruling of an administrative panel does not hinder a taxpayer from requesting for a MAP. However, where a Court of competent jurisdiction has ruled on the matter, the decision becomes binding and all parties must comply with the Court's ruling. However, the CA of the treaty partner may provide unilateral relief in that instance.

6.0 CONFIDENTIALITY OF TAXPAYER'S INFORMATION

6.1 All information obtained or generated during the MAP process is protected by the confidentiality provisions of the Nigerian Tax laws and the provisions of the applicable Tax Treaty. However, MAP rulings of a general nature may be published.

6.2 The Nigerian CA is committed to ensuring confidentiality regarding taxpayer information under the Tax Treaties and relevant laws.

7.0 TAX COLLECTION DURING MAP

Collection of tax will be suspended with respect to a pending MAP case. However, any portion of the tax liability that is not in dispute or that is not subject to MAP must be paid, notwithstanding the pending MAP process.

8.0 IMPLEMENTATION OF A MAP DECISION

After a mutual agreement is reached on a case, the agreement will be implemented by the following procedures:

8.1 Cases other than withholding tax case (including cases on corresponding adjustments):

- (1) Where the agreement has resulted in the reduction of the amount of income taxable or tax payable by the taxpayer in Nigeria, whether or not the MAP originated from Nigeria, the applicant shall present the MAP agreement to the relevant tax authority for reassessment.
- (2) Where the Agreement requires an amendment to its filed tax returns to reflect the decision reached under the Agreement, an amended returns must be filed to the relevant tax authority.
- (3) Upon the presentation of the MAP agreement, pursuant to clause (1), or the amended returns in clause (2), the relevant tax authority, shall not later than 6 months thereafter, reassess the taxpayer, with a view to reflecting or giving effect to the MAP Agreement.
- (4) Where the implementation of the MAP involves the refund of whole or part of the tax already paid by the taxpayer, the refund will be made not later than 90 days from the date of presentation of the MAP agreement to the relevant tax authority.

8.2 Withholding tax case:

- (1) Where the MAP agreement relates to withholding tax, and the agreement require the refund of all or part of the amount of tax withheld, the withholding tax agent or the taxpayer shall submit

a formal request to the relevant tax authority for a refund of overpaid Withholding Tax.

- (2) Where the MAP agreement relates to a refund of tax withheld in the other contracting state on income payable to a Nigerian taxpayer, the applicant shall make the request for such refund in accordance with the relevant procedures of the Treaty Partner.

8.3 Time Limit for Implementation of MAP Agreement

In both subparagraphs 8.1 and 8.2 above:

- (1) Where the tax treaty specifies that the agreement shall be implemented notwithstanding the time limits in the domestic law, the tax authority shall implement the MAP decision irrespective of the time limit specified in the domestic law.
- (2) Where the tax treaty does not contain the provision that allows a MAP agreement to be implemented notwithstanding the time limits in the domestic law, the tax payer must present the MAP agreement to the relevant tax authority for implementation not later than 6 years after the agreement, in line with Sections 90(1) and 91(1) of CITA, as well as Sections 83(1) and 84(1) of PITA.

9.0 HOW TO SUBMIT A MAP REQUEST

- 9.1 All formal request for MAP not involving APA should be made in writing and addressed to:

Director, Tax Policy & Advisory Department
(Authorised Competent Authority)
Federal Inland Revenue Service
3rd Floor, Revenue House Annex
26 Sokode Crescent, Wuse Zone 5
Abuja, Nigeria.

Email Address: acatreatiesandmap@firs.gov.ng;
sunday.okeowo@firs.gov.ng

and copied to:

Tax Policy & Advisory Department, FIRS
2nd Floor, Revenue House Annex
26 Sokode Crescent, Wuse, Zone 5

Abuja, Nigeria

Phone No: +2349070320115; +2348035512420

Email Address: kajesomo.kehinde@firs.gov.ng

9.2 In respect of MAP cases involving transfer pricing, the requests should be copied to:

Director, International Tax Department

3rd Floor, FIRS Building

17B, Awolowo Road,

Ikoyi, Lagos

Phone Nos: +2349070319922; +2348033093287

Email Address: abdullahi.aliyu@firs.gov.ng

10.0 FURTHER INFORMATION

For more information and enquiries, please contact:

Executive Chairman,
Federal Inland Revenue Service,
Revenue House,
No 15 Sokode Crescent,
Wuse Zone 5, Abuja.

OR

Director, Tax Policy and Advisory Department

Federal Inland Revenue Service

3rd Floor Revenue House Annex,

No 26 Sokode Crescent,

Wuse Zone 5, Abuja.

Email Address: tpld@firs.gov.ng; acatreatiesandmap@firs.gov.ng

OR

Visit our website: www.firs.gov.ng

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