

Considering and Negotiating an Advance Pricing Agreement



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Table of Contents

I. Introduction	1	V. The APA Negotiation Process	19
II. Overview of APAs	3	A. APA Strategy and Transfer Pricing Analysis	20
A. APAs Generally	3	1. Taxpayer’s APA Team	20
B. Types of APAs (Unilateral, Bilateral, Multilateral).....	3	2. Identify Taxpayer Goals.....	20
C. Small Case APAs and Abbreviated APA Requests	4	3. Conduct Transfer Pricing Analyses	20
D. APA Rollbacks	5	B. Pre-Filing Conference	20
E. The U.S. Advance Pricing and Mutual Agreement Program (APMA).....	6	1. Mandatory v. Optional.....	20
III. Impact of Recent Changes on the Decision to Pursue an APA.....	9	2. Named v. Anonymous Basis	22
A. Recent Changes to U.S. Transfer Pricing Enforcement.....	9	3. Filing the Pre-Filing Memorandum	22
1. IRS Funding	9	4. Taxpayer’s (and Representative’s) Role	22
2. IRS Litigation Success	9	5. Government’s Role	23
3. Transfer Pricing Penalties.....	9	6. Expanding to Interrelated Issues.....	23
4. Financial Reporting Scrutiny	10	C. Formal APA Request	24
B. Recent Guidance on Reviewing and Accepting APAs	11	1. Filing Deadline.....	24
C. International Compliance Assurance Program	11	2. Required Content of APA Request.....	25
IV. Considering an APA	14	3. Signatures.....	25
A. The Benefits of Certainty.....	14	4. Copies and Mailing.....	25
1. Freedom from IRC §6662 Penalties.....	14	D. Evaluation and Negotiation	25
2. Freedom from Double Tax and Transfer Pricing Adjustments.....	14	1. Opening Conference.....	25
3. No Additional Customs Exposure	14	2. APMA Team.....	26
4. No Uncertain Tax Position.....	15	3. APA Case Plan.....	27
B. Why APAs Work.....	15	4. Evaluating the Proposal.....	27
1. Voluntary Taxpayer Involvement/Commitment	15	5. Ancillary Issues.....	28
2. Taxpayer Responsibility (and Opportunity) to Provide Information	15	6. Bilateral Negotiations	28
3. Pre-Dispute Timing.....	16	7. Critical Assumptions.....	30
4. IRS APA Team Staffing.....	16	E. Administration and Renewal.....	30
5. Focused Review of Transfer Pricing Issues.....	16	1. Finalizing the APA Contract	30
C. The Taxpayer’s Business Decision.....	16	2. The APA Annual Report	31
1. General Comparison: APA Certainty v. Potential Exam.....	16	3. APA Primary Adjustments	32
2. Rollback to Resolve Prior Years	16	4. Telescoping.....	32
3. Affirmative Use of APAs.....	16	5. Conforming Adjustments.....	32
4. APA Renewal	17	6. Examination.....	34
D. Taxpayer-Specific Factors	17	7. Recordkeeping.....	34
1. Risk Tolerance	17	8. Revocation, Cancellation, or Revision of an APA..	35
2. Examination Fatigue	17	9. Renewal.....	35
3. Company’s Industry	18	VI. Conclusion.....	36
4. Participating Countries.....	18	Exhibits	37
5. Type of Issues.....	18		

I. INTRODUCTION

Each year, more countries initiate active transfer pricing enforcement, inevitably increasing the number of transfer pricing disputes. The global inventory of disputes between treaty partners, largely composed of transfer pricing issues, has nearly doubled since 2010, from 3,328 cases to 6,416 cases by the end of 2022.¹ Further, the Organisation for Economic Co-operation and Development (“OECD”) has acknowledged that the BEPS-related changes to transfer pricing, especially the country-by-country reporting (“CbCR”) requirements, have encouraged a large incremental increase in the number of transfer pricing disputes between treaty countries.² In the face of such scrutiny, multinational enterprises (“MNEs”) need an approach to obtain transfer pricing certainty. Since 1991, advance pricing agreements (“APAs”) have been that approach.³

The IRS established the first APA program in March 1991.⁴ APAs are prospective agreements between taxpayers and tax authorities that specify an arm’s length transfer pricing method and usually an arm’s length range of results for specified intercompany transactions between commonly controlled entities, including separate legal entities and permanent establishments, operating in different countries.⁵ The APA process allows the taxpayer and the IRS to avoid future transfer pricing disputes with respect to the subject matter

of the APA by entering into a prospective agreement, generally covering at least five tax years, regarding the taxpayer’s transfer prices. The agreement specifies the covered transactions, transfer pricing method, APA term (i.e., tax years covered by the APA), operational and compliance provisions, appropriate adjustments, critical assumptions regarding future events, required APA records, and annual compliance reporting responsibility. Over 75 countries have adopted an APA program or similar procedure to obtain prospective confirmation of a taxpayer’s transfer prices, with more than 85% of these jurisdictions allowing taxpayers to enter into bilateral APAs.⁶

APAs are generally recognized as a common-sense alternative to potentially costly transfer pricing examinations. A decade ago, a lack of resources and procedural challenges hampered the ability of the U.S. APA program to close APA cases in a timely manner. In 2012, the former APA Program in the IRS Office of Chief Counsel (International) was moved under the IRS Large Business & International (“LB&I”) Division and merged with the LB&I Office of Tax Treaty to form the new Advance Pricing and Mutual Agreement (“APMA”) program. New management was established, staffing was increased, and processing efficiencies were incorporated.

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¹ See [2022 Mutual Agreement Procedure Statistics](#), OECD. As of December 31, 2022, the ending inventory of cases started before January 1, 2016, is 1,012 and the ending inventory of cases started after January 1, 2016, is 5,398. New cases (cases received on or after January 1, 2016, or January 1 of the year of joining the Base Erosion and Profit Sharing (“BEPS”) Inclusive Framework) are counted using an agreed methodology that uses a common start date and allows for reconciliation of all MAP cases between members of the Inclusive Framework thus eliminating double counting. Old cases (cases received prior to January 1, 2016, or January 1 of the year of joining the BEPS

Inclusive Framework) are counted based on each reporting jurisdictions’ own methodology without a jurisdiction-by-jurisdiction breakdown and the possibility of reconciliation. Aggregate reporting for old cases therefore included double counting of cases reported by two reporting jurisdictions in their respective inventory.

² OECD (2015), *BEPS Action 14: Make Dispute Resolution Mechanisms More Effective*, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris.

³ [Rev. Proc. 91-22](#), 1991-1 C.B. 526. The current Internal Revenue Service (“IRS”) procedures for negotiating an APA are found in [Rev. Proc. 2015-41](#), 2015-35 I.R.B. 263 (“Rev. Proc. 2015-41”).

⁴ *Id.*

⁵ The APA Program was modified to address the attribution of profits to a permanent establishment. [Rev. Proc. 2008-31](#), 2008-23 I.R.B. 1133.

⁶ See [KPMG’s Global Transfer Pricing Review](#).

The IRS has begun emphasizing transfer pricing issues during the examination process, making it more important than ever for taxpayers to consider their proactive planning options. In fact, transfer pricing was listed in one of the IRS's priorities for expanded enforcement of tax compliance from large corporations in the Inflation Reduction Act ([P.L. No. 117-169](#)) Strategic Operating Plan.⁷ The emphasis on transfer pricing coincides with the IRS's focus on asserting transfer pricing penalties⁸ under Internal Revenue Code ("IRC")⁹ [§6662](#) in all cases where the applicable thresholds are met (as further discussed in [Section III.A.3](#)).¹⁰ Now, with the additional funding received through the Inflation Reduction Act,¹¹ the IRS is hiring additional specialists, particularly in APMA, to assist with the increasing case load. In the past year and a half, APMA has hired 40 new employees.¹²

As of December 31, 2023, the IRS had completed 2,424 APAs since inception and had 558 APAs pending.¹³ The IRS executed 156 APAs during the year ended December 31, 2023, consisting of 24 unilateral APAs (i.e., agreements between only the taxpayer and the IRS), 130 bilateral APAs (i.e., APAs between the IRS and the tax authority of a U.S. treaty partner), and two multilateral APAs (i.e., APAs

between the IRS and multiple tax authorities of U.S. treaty partners).¹⁴ This is more than double the amount of APAs executed during the year ended December 31, 2022 (77), which shows not only that APMA is both growing and increasing its productivity and efficiency, but also that it is developing stronger relationships with treaty partners and taxpayers alike. APMA received 167 applications during 2023, but was still able to decrease its overall inventory of pending APAs (with 558 pending as of December 31, 2023 compared to 564 pending as of December 31, 2022).¹⁵

This paper will first provide an overview of APAs, including the different types of APAs taxpayers may consider, followed by a description of the U.S. APA program – APMA. Next, it will explain the impact of recent policy or economic changes on the decision to pursuing an APA, as well as the general taxpayer motivations for seeking an APA. Then, it will outline the key factors taxpayers should consider when contemplating an APA, including its advantages and potential obstacles. Finally, the paper will provide a phase-by-phase description of the APA process, from developing a strategy to looking to renew for another term.

⁷ [Publication 3744: Internal Revenue Service Inflation Reduction Act Strategic Operating Plan \(FY2023 – 2031\)](#), Internal Revenue Service (Apr. 5, 2023) ("Large corporations have complicated, voluminous tax filings that involve a variety of tax issues such as crossborder activities, financial product issues and transfer-pricing transactions. Ensuring that large corporations pay the taxes they owe is a complex endeavor and requires significant resources and a range of specialists. We will increase audit rates and other compliance treatments, focusing on the largest corporate taxpayers where audit rates have been too low. We will use data and analytics to improve our understanding of these complex tax filings. We will pursue noncompliance through a variety of mechanisms, including audits and non-audit contacts.").

⁸ See *id.*, listing one of the key projects as needing to "[e]value and improve the administration of taxpayer penalties and consider reasonable cause exceptions where applicable to encourage voluntary compliance and resolve issues faster when appropriate."

⁹ The IRC referenced herein is the IRC of 1986, as amended (26 U.S.C. §1 et seq.) and the relevant U.S. Treasury Regulations, as amended (26 C.F.R. Part 1).

¹⁰ [Internal Revenue Manual 20.1.5.4\(2\)](#) (Aug. 31, 2021).

¹¹ See, e.g., Isabel Gottlieb, [IRS to Boost Transfer Pricing Focus With Some of Its New Funding](#), Bloomberg Daily Tax Rep. (May 18, 2023); Michael Rapoport, [IRS Says It's Hiring More to Support Advance-Pricing Growth](#), Bloomberg Daily Tax Rep. (Nov. 7, 2023).

¹² Alexander F. Peter, [Amount B Might Have a Phase 2, Bello Says](#), Tax Notes (Mar. 6, 2024).

¹³ [Announcement and Report Concerning Advance Pricing Agreements \(2023\)](#), Internal Revenue Service (Mar. 26, 2024).

¹⁴ *Id.*

¹⁵ *Id.*

II. OVERVIEW OF APAS

A. APAs Generally

In the late 1980s, the IRS increased its transfer pricing enforcement efforts and anticipated a corresponding increase in disputes with taxpayers. Taxpayer groups encouraged the IRS to consider an alternate approach to transfer pricing compliance. In response, the IRS established the world's first APA Program in 1991 and issued a revenue procedure to govern the process for obtaining APAs.¹⁶ APA programs are voluntary processes whereby taxpayers enter into prospective agreements with tax authorities to determine the arm's length pricing for cross-border intercompany transactions. By obtaining an APA, taxpayers are able to obtain certainty that their intercompany pricing is correct while reducing the burden of yearly transfer pricing documentation and potential audits.

As mentioned above, APMA was formed in 2012 and has since nearly doubled the amount of executed APAs. In 2015, the IRS published [Rev. Proc. 2015-41](#), which reflected the integration and changes made to the program. Moreover, [Rev. Proc. 2015-41](#) provides significant additional guidance and updates the procedures utilized during the past 20 years with an emphasis on front loading the process.

B. Types of APAs (Unilateral, Bilateral, Multilateral)

Taxpayers may enter into APAs with more than one tax authority under the Mutual Agreement Procedure ("MAP") article of most income tax treaties. Such APAs are referred to as "bilateral" or "multilateral" APAs, as opposed to "unilateral" APAs that involve agreements between only the IRS and the taxpayer. When a bilateral APA is available to be negotiated via the MAP process, the taxpayer must show sufficient justification for seeking a

unilateral APA to minimize taxpayer and governmental uncertainty and administrative cost.¹⁷ Specifically, if a taxpayer requests a unilateral APA to cover any issue that could be covered under a bilateral APA, the taxpayer must explain in its pre-filing memorandum (further discussed in [Section V.B](#)) why it believes that a unilateral APA is appropriate to cover that issue.¹⁸ Such reasons include that there is no income tax treaty (and therefore no APA process) available with the counter-country or that the taxpayer's proposed covered issues involve so many treaty countries that the taxpayer believes that multiple bilateral APAs or a multilateral APA would be impractical.¹⁹ Although a unilateral APA with the U.S. may provide protection from U.S.-initiated adjustments and penalties, it provides no protection from foreign-initiated adjustments and penalties.

The bilateral approach creates efficiency by involving both the U.S. and foreign tax authorities in the negotiation from the outset. In recent years, the IRS's experience is that bilateral APA requests significantly outnumber unilateral APA requests, with over 65% of total APA requests being for bilateral APAs in 2023.²⁰ To be sure, following the BEPS project, the benefit of a unilateral APA may be diminished. Action 5 of the OECD BEPS Action Plan focuses on addressing harmful tax practices more effectively, taking into account transparency and substance.²¹ To increase transparency, the BEPS project recommends a compulsory spontaneous exchange of unilateral APAs with "affected countries."²²

Multilateral APAs occur between more than two jurisdictions and can offer significant tax certainty for taxpayers that have complex structures where entities in multiple countries are involved in different parts of the value chain for the same

¹⁶ [Rev. Proc. 91-22](#), 1991-1 C.B. 526.

¹⁷ [Rev. Proc. 2015-41](#), §2.02(4)(d).

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ [Announcement and Report Concerning Advance Pricing Agreements \(2023\)](#), Internal Revenue Service (Mar. 26, 2024).

²¹ OECD (2015), [Countering Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance, Action 5-Final Report, OECD/G20 Base Erosion and Profit Shifting Project](#), OECD Publishing, Paris.

²² *Id.*

intercompany transaction or arrangement.²³ Generally, most income tax treaties are set up to accommodate bilateral or unilateral cases but the MAP article in the treaty can act as a basis for entering into multilateral agreements.²⁴ As a technical matter, a multilateral APA is effectuated through multiple bilateral APAs that contain identical terms (with regard to both the mutual agreement between the competent authorities and each local agreement between the taxpayer and its domestic competent authority).²⁵ Despite the technical limitations of the treaty network, formal discussions are jointly held between all competent authorities involved. In addition, sometimes multilateral APAs can involve multiple bilateral APAs coordinated by the taxpayer – as opposed to directly by the competent authorities – or a single bilateral APA with informal involvement of the “other” country(ies).²⁶ These can be referred to as “synthetic” multilateral APAs.

Due to the increasing complexity of businesses’ value chains and the globalization of operating models, transfer pricing issues often span more than one country: “[a]n adjustment in one jurisdiction may have consequences for the allocation/attribution of profits in a number of other jurisdictions involved in a series of controlled transactions.”²⁷ Situations that may call for a multilateral solution include: multiple principle structures; sandwich transactions; cost sharing arrangements; licenses of intangible property; exit charges; or headquarter cost allocations.²⁸ While a multilateral APA may be an effective tool in certain scenarios, it is important to communicate with the competent authorities involved and ensure a multilateral APA is possible and that each country is willing to participate before filing a request.²⁹ Many countries – including the United States,

Australia, Canada, and Japan – are known to effectuate multilateral APAs.³⁰

C. Small Case APAs and Abbreviated APA Requests

Taxpayers may be eligible for a reduced user fee (\$57,500 compared to \$121,600 for full APA requests)³¹ if the APA proposal qualifies as a Small Case APA. Specifically, an APA qualifies as a Small Case APA if:

- (i) the controlled group has sales revenues, within the meaning of [Treas. Reg. §1.482-5\(d\)\(1\)](#), of less than \$500 million in each of its most recent three back years;
- (ii) the aggregate value of the proposed covered issue(s) is not expected to exceed \$50 million in any given year of the proposed APA years;
- (iii) the aggregate value of any transfer of rights in, or rights to use, intangibles is not expected to exceed \$10 million in any given year of the proposed APA years; and
- (iv) no proposed covered issue involves intangible property arising from, or otherwise related to, an intangible development arrangement.³²

Additionally, in order to qualify for the reduced user fee, the Small Case APA must also be eligible to be filed as an abbreviated APA request.³³

Taxpayers must seek permission from APMA before filing an abbreviated APA request; an abbreviated APA request submitted without APMA’s permission will not be considered a complete APA request.³⁴ When eligible for a Small Case APA, the taxpayer does not have to submit a formal pre-filing memorandum, but can instead contact APMA informally to discuss the proposed contents of the request.³⁵ After holding informal discussions with the taxpayer, and reviewing any

²³ OECD (2023), [Manual on the Handling of Multilateral Mutual Agreement Procedures and Advance Pricing Arrangements](#), OECD Forum on Tax Administration, OECD.

²⁴ *Id.*

²⁵ Mark Horowitz, Cameron Taheri, Theresa Kolish, Thomas Bettge, and Addisen Reboulet, [Managing Multilateral Controversy](#), Tax Mgmt. Int’l J. 1, 4-5 (2021).

²⁶ *Id.*

²⁷ OECD (2023), [Manual on the Handling of Multilateral Mutual Agreement Procedures and Advance Pricing Arrangements](#), OECD Forum on Tax Administration, OECD.

²⁸ See generally Horowitz, *supra* note 25, at 6-15.

²⁹ See *id.*, at 5-6 explaining best practices when considering multilateral APAs and MAPs.

³⁰ OECD (2023), [Manual on the Handling of Multilateral Mutual Agreement Procedures and Advance Pricing Arrangements](#), OECD Forum on Tax Administration, OECD.

³¹ [Internal Revenue Bulletin 2024-1](#), Appendix A.

³² [Rev. Proc. 2015-41](#), §3.04.

³³ [Rev. Proc. 2015-41](#), §3.04(2).

³⁴ *Id.*

³⁵ *Id.*, §3.04(2)(b).

information submitted by the taxpayer, APMA will consider the applicability of the proposal and inform the taxpayer either that the abbreviated APA request will be accepted or if a complete APA request will be necessary.³⁶

Taxpayers may seek an abbreviated APA request even if they are not eligible for a Small Case APA, but are required to pay the full applicable user fee and file a mandatory pre-filing memorandum:

- 1) Stating whether the taxpayer seeks a pre-filing conference (“PFC”) and, if so, the issues the taxpayer wishes to discuss;
- 2) Proposing at least three possible dates for a PFC that normally would be at least two weeks after the date that the pre-filing memorandum is submitted;
- 3) Including covered issue diagrams;
- 4) Specifying any information, documents, or other materials the taxpayer proposes to omit from its APA request;
- 5) Presenting the taxpayer’s arguments that the information, documents, or other materials the taxpayer proposes to omit from its APA request are not necessary for APMA’s evaluation of the APA request, including if applicable the taxpayer’s arguments that the applicable law, facts and circumstances, economic conditions, proposed covered issue(s) and method(s), and other factors relevant to the proposed APA years are substantially the same as those relevant to the current APA or the competent authority resolution;
- 6) Summarizing (in the case of a proposed renewal APA) in a table the results and adjustments under the current APA, in absolute and (as applicable) percentage terms (e.g., operating margin), with comparison to any arm’s length points or ranges specified in the APA, as well as any proposed changes in terms from the current APA;
- 7) List the name and contact information for the taxpayer’s point of contact and, unless the pre-filing memorandum is submitted on an anonymous basis, provide, as necessary, a Form 2848 authorizing the point of contact to represent the taxpayer in connection with the APA request or a Form 8821 authorizing the point of contact to inspect or receive confidential tax information about the taxpayer in connection with the APA request; and
- 8) Identify all open back years of the taxpayer and which of such years, if any, are under examination by the IRS.³⁷

Although the specific content of the abbreviated APA request is not prescribed in [Rev. Proc. 2015-41](#), the abbreviated request must contain all documents reasonably needed for APMA to evaluate the request, even if some of the documents have already been submitted to the IRS.³⁸ All exhibits and documents included in or referred to in the abbreviated APA request must be explained, as necessary, in sufficient detail to make their contents readily understandable.³⁹ Before requesting permission to file the abbreviated request, taxpayers should also consider whether the documents it proposes to omit from the APA request could alternatively be provided as exhibits to the request.⁴⁰

D. APA Rollbacks

APAs are intended to provide prospective resolution of transfer pricing issues, meaning the first year of the APA term is generally the earliest year that a timely income tax return has not been filed.⁴¹ However, application of the transfer pricing method developed in an APA to open tax years not included in the APA term (“rollback”) may be an effective means of addressing unresolved transfer pricing issues. The IRS’s view is that the transfer pricing method agreed to in the APA should be applied to resolve transfer pricing issues for prior taxable years whenever feasible based on consideration of the facts, law and available

³⁶ *Id.*

³⁷ *Id.* §3.04(2)(a), referencing [Rev. Proc. 2015-41](#) §3.02(4), §3.02(6)(d).

³⁸ *Id.*, §3.04(2).

³⁹ *Id.*, §3.04(3).

⁴⁰ *Id.*, §3.04(2).

⁴¹ *Id.*, §3.03(2) (“a prospective year is a taxable year in an APA term (or a requested APA term) for which the taxpayer has filed a complete APA request, or an APA request that is considered complete ... as of a date that is no later than the applicable return date ... for that taxable year.”).

records.⁴² In the interest of efficiency, as well as sound tax administration, APMA may also consider a rollback even in the absence of a taxpayer's request,⁴³ and reserves the right to coordinate with applicable IRS offices to pursue a rollback to any or all of the taxpayer's open back years.⁴⁴ This policy does not apply to unilateral APAs in which a rollback decreases U.S. taxable income for a return filed in a taxable year not covered by the APA. Furthermore, except in unusual circumstances, APMA will not agree to cover a closed filed year with a rollback of a unilateral APA request.⁴⁵

After coordinating and collaborating with other offices within the IRS, APMA will inform the taxpayer whether its rollback request has been accepted for consideration.⁴⁶ Previously, jurisdiction over rollback years belonged to the IRS Examination team ("IRS Exam"). This change reflects that since the formation of APMA, both the APMA team and IRS Exam have the same ultimate reporting chain of command.

Rollback is appropriate when the business and economic conditions for the rollback years are consistent with those of the APA years. Rollback contemplates application of the transfer pricing method, comparable selection criteria, and financial adjustments to the rollback years, but not necessarily the application of the arm's length range developed for the prospective period in the APA. A rollback request generally should be included in the taxpayer's APA request.⁴⁷ APMA may, in its discretion, consider a later written request for a rollback.⁴⁸ In 2023, approximately 19% of executed APAs included rollback years, up from 16% in 2022.⁴⁹

Since most APAs have a prospective five-year term, the addition of a rollback term could allow a

taxpayer to cover 10 or more years of transfer pricing issues in a single negotiation process. In practice, APMA will typically seek to have at least three prospective years remaining in the APA term once the settlement is reached.⁵⁰ The average length of APAs executed in 2023 was six years, as shown in Table 1.

Table 1: Term Length of APAs Executed in 2023⁵¹

Term (Years)	APAs Executed
2	9
3	5
4	5
5	70
6	20
7	31
8	6
9	5
10	2
11	1
14	2
Average:	6 Years

While a substantial number of APAs are submitted requesting five-year terms, the competent authorities may agree to add additional years to the term to ensure a reasonable amount of prospectivity.⁵²

E. The U.S. Advance Pricing and Mutual Agreement Program (APMA)

The illustration below summarizes APMA's current organizational structure, which consists of three groups, along with Treaty Assistance & Interpretation Team,⁵³ which is not depicted in Figure 1.

⁴² *Id.*, §2.02(4)(c).

⁴³ *Id.*

⁴⁴ *Id.*, §5.02(5).

⁴⁵ *Id.*, §5.02(4).

⁴⁶ *Id.*

⁴⁷ *Id.*, §5.02(2).

⁴⁸ *Id.*

⁴⁹ [Announcement and Report Concerning Advance Pricing Agreements \(2023\)](#), Internal Revenue Service (Mar. 26, 2024).

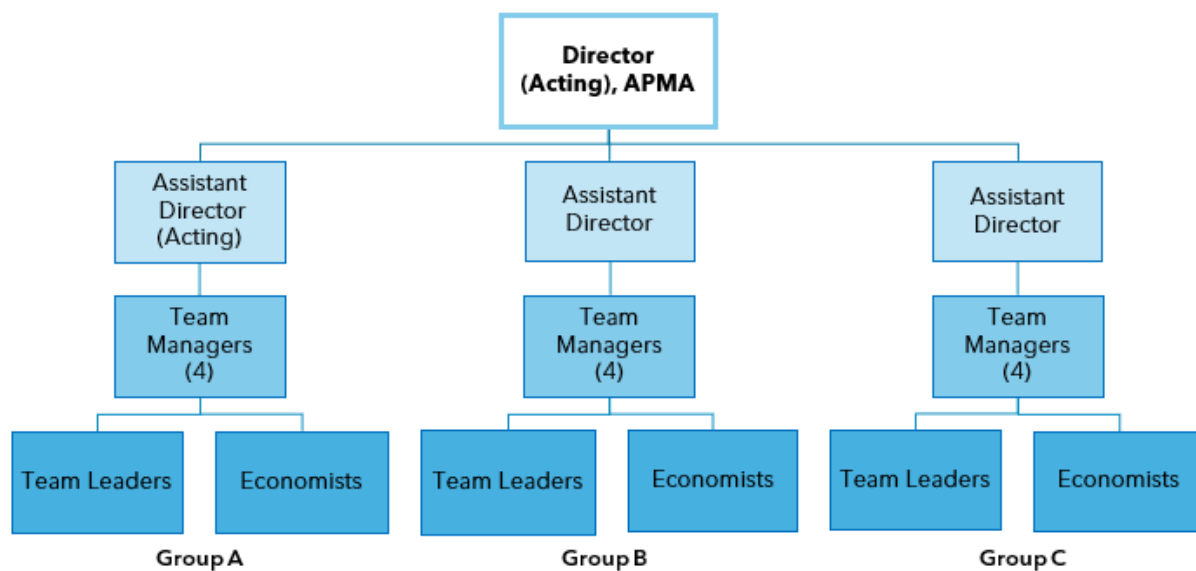
⁵⁰ [Rev. Proc. 2015-41](#), §3.08.

⁵¹ [Announcement and Report Concerning Advance Pricing Agreements \(2023\)](#), Internal Revenue Service (Mar. 26, 2024).

⁵² *Id.*

⁵³ In late 2020, the Treaty Assistance and Interpretation Team joined APMA. TAIT endeavors to resolve competent authority issues arising under all other articles of U.S. tax treaties including issues arising under U.S. tax treaties relating to estate and gift taxes. See [Advance Pricing and Mutual Agreement Program](#), Internal Revenue Service.

Figure 1: APMA Organizational Structure



As of December 31, 2023, APMA is staffed with 70 Team Leaders, 29 Economists, 12 Team Managers, and three Assistant Directors.⁵⁴

The revised APMA structure includes the following groups, which are organized by country focus:

Table 2: APMA Groups (By Country)⁵⁵

Group	Countries
Group A	China, Denmark, Finland, India, Ireland, Israel, Italy, Norway, Sweden, Switzerland, United Kingdom
Group B	Australia, Austria, Belgium, Canada, Caribbean, Eastern Europe, France, Germany, Kazakhstan, Luxembourg, Mexico, Morocco, Netherlands, New Zealand, Portugal, Puerto Rico, Russia, Spain, Venezuela
Group C	Guam, Indonesia, Japan, Korea, Philippines, South Africa, Thailand

Over the past few years, APMA has focused on expanding its workforce with an emphasis on

recruiting seasoned tax professionals. In 2023 alone, APMA increased its headcount by 15%, adding 11 Team Leaders, three Economists, and three Team Managers.⁵⁶ This trend is expected to continue in light of the additional funding the IRS received from the Inflation Reduction Act.⁵⁷ In addition to being tasked with resolving a high inventory of APAs (558 as of December 31, 2023),⁵⁸ APMA is responsible for negotiating and resolving an even larger inventory of MAP cases. APMA is currently addressing the need to reduce APA and MAP inventories.

In addition to its case resolution work, APMA has been working on process improvements to streamline the negotiation process, working on aggregate solutions such as renewing competent authority agreements on maquiladoras,⁵⁹ developing a framework to resolve India APA and MAP cases involving the provision of information technology and information technology enabled

⁵⁴ [Announcement and Report Concerning Advance Pricing Agreements \(2023\)](#), Internal Revenue Service (Mar. 26, 2024).

⁵⁵ See [Advance Pricing and Mutual Agreement Program Contact Information](#), Internal Revenue Service.

⁵⁶ [Announcement and Report Concerning Advance Pricing Agreements \(2023\)](#), Internal Revenue Service (Mar. 26, 2024).

⁵⁷ See e.g., Isabel Gottlieb, [IRS to Boost Transfer Pricing Focus With Some of Its New Funding](#), Bloomberg Daily Tax Rep. (May

18, 2023); David Lawder, U.S. IRS to hire nearly 20,000 staff over two years with \$80 billion in new funds, Thomson Reuters (Apr. 10, 2023).

⁵⁸ [Announcement and Report Concerning Advance Pricing Agreements \(2023\)](#), Internal Revenue Service (Mar. 26, 2024).

⁵⁹ See [Renewal of Competent Authority Agreement on Maquiladoras](#), Internal Revenue Service.

services by an India entity to a U.S. affiliate,⁶⁰ consulting on examinations that involve potential double tax and reacting to the potential impact of COVID-19 impact transfer pricing.

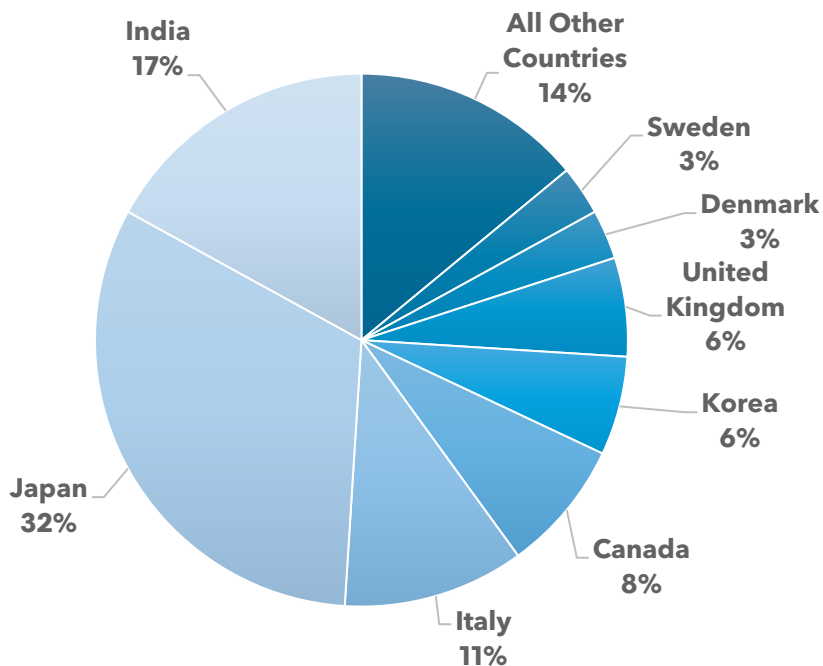
The combination of case-specific efforts and process-related projects underscores the need for APMA to continue to expand its staffing to address an ever-increasing number of transfer pricing issues.

APMA's latest annual report provided insight into the treaty partners with whom the bilateral APAs have been concluded. APAs with Japan comprised 32% of all U.S. bilateral APAs executed in 2023.⁶¹ This is attributable to the maturity of the APA programs in the U.S. and Japan and the negotiating experience of the APMA team and the competent authority team representing the National Tax Administration of Japan. India represents the second highest percentage of executed bilateral APAs in 2023 at 17%, which increased from just 8% in 2022 due to the resolution framework mentioned above.⁶²

Figure 2 presents a breakdown of the countries the IRS executed APAs with during 2023.

In February 2019, APMA received new responsibilities, as IRS Memorandum [LB&I-04-0219-001](#) revised the Internal Revenue Manual to require IRS Exam to consult with APMA when the examination could generate transfer pricing adjustments involving a country with which the U.S. has an income tax treaty, regardless of whether the taxpayer is currently involved in a U.S. MAP or APA case. At the beginning of IRS Exam's review of the taxpayer's intercompany transactions, the IRS Exam manager is required to consult with APMA on procedural and substantive matters. APMA is expected to help IRS Exam understand relevant treaty background and to provide any experience it has with the treaty partner and/or transfer pricing issues. The requirement for IRS Exam to consult with APMA during the exam process was intended to improve the efficiency and effectiveness of the resolution of transfer pricing issues. Further, such consultations give APMA the opportunity to learn from IRS Exam's experiences and use that information in APMA's MAP case negotiations.

Figure 2: Countries with IRS Executed APAs During 2023



⁶⁰ E. Miller Williams and Caroline Setliffe, [The US and India Must Resolve Advance Pricing Agreement Concerns](#), Bloomberg Daily Tax Rep. (Nov. 8, 2022).

⁶¹ [Announcement and Report Concerning Advance Pricing Agreements \(2023\)](#), Internal Revenue Service (Mar. 26, 2024).

⁶² *Id.*

III. IMPACT OF RECENT CHANGES ON THE DECISION TO PURSUE AN APA

As an alternative to the regular transfer pricing dispute process, the desirability of an APA is impacted by changes in the U.S. and global transfer pricing enforcement environment, changes in substantive international tax rules, and changes in the APA program and process.

A. Recent Changes to U.S. Transfer Pricing Enforcement

Four recent changes to the transfer pricing enforcement environment in the U.S. – IRS funding, IRS litigation success, penalties, and financial reporting scrutiny – have combined to increase the value of an APA relative to the expected outcome of the regular transfer pricing enforcement process in the U.S.

1. IRS Funding

The IRS has consistently added to its staffing around transfer pricing over the last decade and is currently using funding from the Inflation Reduction Act to increase transfer pricing enforcement. One initiative in particular – The Large Foreign-Owned Corporations Transfer Pricing Initiative – has increased the scrutiny of the U.S. subsidiaries of foreign companies that distribute goods in the U.S. The concern is that foreign-owned companies report losses or exceedingly low margins year after year through the improper use of transfer pricing to avoid reporting an appropriate amount of tax on U.S. profits. To combat these losses, a recent IRS initiative involved sending ‘compliance alerts’ ([Letter 6607](#) and [Letter 6608](#)) to approximately 180 subsidiaries of large foreign corporations to reiterate their U.S. tax obligations and encourage self-correction. An APA with rollback (as discussed in [Section II.D](#)) could be an effective way to

address all of the transfer pricing issues raised by a compliance alert, especially if that APA is bilateral.⁶³ An APA with rollback to all open years essentially guarantees that no further adjustment would be sought by the IRS, and also avoids potential transfer pricing penalties (as discussed in [Section III.A.3](#)).⁶⁴

2. IRS Litigation Success

For decades, the IRS has struggled to improve the transfer pricing examination process, case selection and coordination with IRS Chief Counsel (International). After decades without a large transfer pricing litigation win, the IRS has over the last four years achieved at least partial success in several transfer pricing cases with large, well-known taxpayers and large amounts of tax, penalties and interest.⁶⁵

3. Transfer Pricing Penalties

A change in the IRS’s assertion of transfer pricing penalties also increases the value of APAs. IRC [§§6662\(e\)](#) and [\(h\)](#) provide for 20% (in case of a substantial valuation misstatement) and 40% (in case of a gross valuation misstatement) penalties for transfer pricing adjustments made by the IRS. Historically, the IRS has not applied the penalty provisions as assertively as the statute and accompanying regulations would allow. However, recent statements by IRS executives underscore the IRS’s intention to apply these penalties more frequently than they have in the past, specifically stating that documentation must be of a sufficient quality to prevent imposition of the penalty. In fact, recently released proposed adjustments by the IRS are consistent with the IRS’s earlier stated intentions.

⁶³ See Steven C. Wrappe, [Transfer Pricing Compliance Alerts: What To Do Now](#), Tax Mgmt. Int’l J. (Feb. 5, 2024).

⁶⁴ *Id.*

⁶⁵ For example, see [Coca-Cola Co. v. Commissioner](#), T.C. Memo 2023-135; [3M Co. & Subsidiaries v. Commissioner](#), No. 5816-13., 160 T.C. No. 3 (2023) (both of which are being appealed by the taxpayer).

Under IRC [§6662](#), there are two types of penalties for adjustments made under IRC [§482](#):

- The *transactional penalty*, which may be raised when the price for any property or service claimed on the tax return is:
 - 200% or more (or 50% or less) of the price determined by IRS Exam (substantial valuation misstatement - 20% penalty);⁶⁶ or
 - 400% or more (or 25% or less) of the price determined by IRS Exam (gross valuation misstatement - 40% penalty);⁶⁷ and
- The *net adjustment penalty*, which may be raised when the net proposed adjustments made under IRC [§482](#) exceeds the lesser of:
 - \$5.0 million or 10% of taxpayer's gross receipts for the taxable year (substantial valuation misstatement - 20% penalty);⁶⁸ or
 - \$20 million or 20% of taxpayer's gross receipts for the taxable year (gross valuation misstatement - 40% penalty).⁶⁹

IRC [§6662](#) contains a reasonable cause and good faith exception (for transactional penalties) as well as the transfer pricing documentation exception (for both transactional penalties and net adjustment penalties) that allows taxpayers to avoid the penalties for transactions on which valid contemporaneous transfer pricing documentation is provided within 30 days of an IRS request.⁷⁰

In 2018, LB&I issued a directive requiring IRS Exam to consider transfer pricing penalties in all cases where the thresholds under either IRC [§6662\(e\)](#) or [\(h\)](#) are met.⁷¹ These procedures involve requesting transfer pricing documentation in order to determine whether the documentation requirement under IRC [§6662\(e\)\(3\)\(B\)](#) is met.⁷² According to the Internal Revenue Manual, when reviewing the taxpayer's transfer pricing documentation and supporting evidence, "all examiners are required to document the procedures used, information obtained, and

conclusions reached in deciding to recommend or not recommend applicable penalties during examination."⁷³ Even if the documentation requirement under IRC [§6662\(e\)\(3\)\(B\)](#) is met, the Internal Revenue Manual requires IRS Exam to obtain written supervisory approval whenever penalties are not asserted.⁷⁴ In practice, penalties are becoming increasingly asserted even when contemporaneous transfer pricing documentation is in place if IRS Exam disagrees with the taxpayer's selection or application of a transfer pricing method. Agreeing to the applicable transfer pricing method as part of an APA therefore not only avoids the possibility of a transfer pricing exam, but the assertion of transfer pricing penalties as well.

4. Financial Reporting Scrutiny

Since 2006, the Financial Accounting Standard Board ("FASB") has specifically controlled how companies identify, measure, and report uncertain tax positions ("UTPs") on their U.S. generally accepted accounting principal financial statements. Transfer pricing is considered a tax "position" for this purpose. Currently, Accounting Standards Codification ("ASC") 740, *Income Taxes*, dictates the minimum recognition threshold and measurement standards for tax positions. ASC 740 requires that all tax positions, including transfer pricing, be evaluated using a two-step process:

- First, the company can only recognize the financial statement effects of a tax position if it is more likely than not, based on the technical merits, to be sustained upon examination.
- Second, a tax position that meets the recognition threshold is measured as the largest amount of tax benefit that is greater than 50% likely to be realized upon ultimate settlement with a taxing authority that has full knowledge of all relevant information.

The increase in IRS litigation success and changed position regarding penalties in the U.S. transfer pricing enforcement environment mentioned

⁶⁶ [IRC §6662\(e\)\(1\)\(B\)\(i\)](#).

⁶⁷ [IRC §6662\(h\)\(2\)\(A\)\(i\)\(ii\)](#).

⁶⁸ [IRC §6662\(e\)\(1\)\(B\)\(ii\)](#).

⁶⁹ [IRC §6662\(h\)\(2\)\(A\)\(i\)\(iii\)](#).

⁷⁰ [IRC §6662\(e\)\(3\)\(B\)](#).

⁷¹ *Instructions for Examiners on Transfer Pricing Issue Examination Scope - Appropriate Application of IRC §6662(e) Penalties*, [LB&I-04-0118-003](#) (Jan. 12, 2018).

⁷² *Interim Instructions on Issuance of Mandatory Transfer Pricing Information Document Request (IDR) in LB&I Examinations*, [LB&I-04-0118-001](#) (Jan. 12, 2018).

⁷³ [Internal Revenue Manual 20.1.5.4\(2\)\(a\)](#) (Aug. 31, 2021).

⁷⁴ [Internal Revenue Manual 20.1.5.9.2\(3\)](#) (Aug. 31, 2021) ("Written Supervisory approval is required when the understatement is substantial whether or not the penalty is asserted.")

above could impact the measurement of a transfer price position.

The combined impact of these changes in the U.S. transfer pricing enforcement environment substantially increases the value of an APA to taxpayers.

B. Recent Guidance on Reviewing and Accepting APAs⁷⁵

On April 25, 2023, the IRS released interim guidance on review and acceptance of APA submissions in a memorandum to employees. The memorandum instructs APMA personnel on how to review and, where appropriate, accept APA requests to align LB&I processes for APAs to be consistent with IRS strategy and maximize the probability of successful, timely, and comprehensive resolution of transfer pricing issues for both taxpayers and the IRS. This guidance applies to both APA pre-filing memoranda and APA submission requests (including renewals). The guidance applies to Treaty and Transfer Pricing Operations (“TTPO”) personnel (which includes APMA) and includes the process, the criteria to be considered, and the personnel to be included in determining whether a proposed APA request likely will be most successfully treated in the APA process or in another TTPO workstream. However, the IRS does not intend for this guidance to limit or decrease the number of APA requests accepted by APMA. Instead, the IRS’s goal is to improve the quality and timeliness of the APA program by providing an early mechanism for identifying potential roadblocks to successfully concluding a proposed APA and opportunities for other paths to certainty.

Under this guidance, APMA will provide optional pre-submission review to taxpayers that wish to submit pre-filing memoranda before submitting a formal APA request. In this pre-submission review, APMA will give a preliminary opinion whether the APA workstream is well suited to successfully achieve certainty for the proposed covered transactions and whether an alternative workstream is recommended for the taxpayer to consider. The intent is to provide taxpayers with this information in advance of drafting and

submitting a formal APA request. After receiving an APA request, APMA will perform a formal review to determine whether to accept the request in full or in part. In both pre- and post-submission reviews, APMA will consider the facts and circumstances underlying the request based on several criteria, none of which is dispositive. During the review process, APMA is meant to take a broad perspective, considering whether an alternative workstream such as the International Compliance Assurance Program (“ICAP”) or a joint audit is better suited to address the taxpayer’s transfer pricing issues compared to an APA. However, the guidance reiterated that it “is not intended to limit or decrease the number of APA requests accepted by APMA.”

C. International Compliance Assurance Program

For over 30 years, the prospective procedure of choice for the most difficult transfer pricing issues has been APAs. In 2018, the OECD, in conjunction with eight countries, established a new prospective procedure to help MNEs manage transfer pricing risk. ICAP was developed to provide an efficient, effective, and coordinated framework for MNEs to obtain increased certainty on transfer pricing and other international tax issues. Like APA programs, ICAP is a voluntary program intended to provide MNEs with transfer pricing certainty. Both programs require taxpayer participation, which allows the taxpayer to proactively frame and support its transfer pricing. Both programs also involve discussions between governments, which can help prevent the adoption of unreasonable positions by involved governments on the transfer pricing issues.

The two programs also differ greatly in many respects. Whether an MNE that proactively manages its transfer pricing risks should select APA or ICAP as the most appropriate forum will depend in large part on the MNE’s goals and the potential impact of those differences on those goals. The key differences are in the degree of certainty provided, the extent of coverage allowed, the amount of costs incurred, and the intensity of resources expended.

⁷⁵ See *Interim Guidance on Review and Acceptance of Advance Pricing Agreement (APA) Submissions*, [LB&I-04-0423-0006](#) (Apr. 25, 2023).

Unlike an APA, ICAP does not provide a binding written agreement between the MNE and a government on the transfer price. Instead, the MNE receives an “outcome letter” setting out each tax administration’s views on the MNE’s transfer pricing policies. The outcome letter comes at the end of a three-stage process: the submission of the required documentation to the tax administration of the MNE group’s ultimate parent entity; a high-level review to identify other tax administrations and transactions; and an outcome letter from each participating tax administration with the results of the assessment.

The outcome letter is intended to provide the MNE with assurance that participating tax administrations do not anticipate further review of the covered risks for a defined period, thereby providing practical certainty as opposed to the legal certainty provided by an APA. When a tax administration is not able to reach such a conclusion, it may make recommendations on how to resolve the issue, including pursuit of an APA. If a tax administration concludes that further action is necessary, the information previously provided during ICAP would be used to facilitate the process. In certain cases, the ICAP process itself may be used to resolve potential issues: ICAP includes an optional issue resolution process that provides the MNE and the relevant tax administrations the opportunity to reach an agreement within ICAP on the tax treatment of a covered transaction.

Coverage involves both the number of years and transactions covered. APAs generally cover more years than ICAP, but ICAP may provide an MNE with opinions on a broader range of transactions in more countries. Under the guidelines in the OECD Handbook, ICAP covers at most four consecutive years,⁷⁶ whereas U.S. APAs average six years.⁷⁷ An ICAP assessment is expected to focus on one to

two consecutive filing periods and can also be used to provide assurance on covered risks for the two filing periods immediately following the covered periods. The transactions that can be covered under ICAP are potentially far broader than under APA. Currently, 23 countries participate in the ICAP process,⁷⁸ up from the original eight countries that started the program. Provided an MNE’s transactions involve participating countries, the transactions can be covered and reviewed. Further, the issues suitable for the ICAP program include not just transfer pricing, but also permanent establishment, hybrid mismatch arrangements, withholding taxes, and treaty benefits.

The cost and resource commitment required for ICAP are low compared to APAs. No user fee is charged, and the documentation required to be submitted generally consists of materials most MNEs will have on hand, including: basic information such as a list of the proposed covered tax administrations; the periods proposed for coverage; the identity of the main MNE entity in the jurisdiction of each proposed tax administration; a list of the categories of transactions falling within the proposed covered risks (along with their value); transfer pricing documentation studies; and a copy of the MNE’s most recent CbCR and master file, among other information.⁷⁹ In addition to providing the required documentation, taxpayers are expected to participate in meetings with the involved tax authorities. The meetings give taxpayers an opportunity to explain their intercompany pricing policies and the contents of their filing, including the CbCR.

Since the program began in 2018, ICAP has completed 20 cases.⁸⁰ The average time for completion (from submission to the outcome letter) of these 20 cases was 61 weeks,⁸¹ which is bit higher than the original target timeframe of 24-28 weeks following the MNE’s submission of required

⁷⁶ OECD (2021), [International Compliance Assurance Programme – Handbook for Tax Administrations and MNE Groups](#), OECD, Paris.

⁷⁷ [Announcement and Report Concerning Advance Pricing Agreements \(2023\)](#), Internal Revenue Service (Mar. 26, 2024).

⁷⁸ The 23 countries are Argentina, Australia, Austria, Belgium, Canada, Chile, Colombia, Denmark, Finland, France, Germany, Ireland, Italy, Japan, Luxembourg, Netherlands, Norway, Poland, Portugal, Singapore, Spain, the United Kingdom and the U.S. The OECD is continuing to work to expand the number

of participating countries, particularly in Asia, Africa and South America. See [OECD International Compliance Assurance Programme \(ICAP\)](#), OECD.

⁷⁹ See OECD (2021), [International Compliance Assurance Programme – Handbook for Tax Administrations and MNE Groups](#), OECD, Paris.

⁸⁰ OECD (2024), [International Compliance Assurance Programme – Aggregated Results and Statistics](#), OECD, Paris.

⁸¹ *Id.*

documentation (although ICAP notes the COVID-19 pandemic may have lengthened the process). This current timeline is also greater than the average time to APMA takes to execute a bilateral U.S. APA, which was approximately 44 months in 2023.⁸² So far, each request averages five participating countries that review the proposed intercompany transactions, but the process has consisted of as few as three and as many as nine.⁸³ Of all cases, 40% have resulted in each of the reviewing

authorities providing a low-risk outcome, with a majority of other cases providing a mix of low-risk and not low-risk outcomes.⁸⁴ Approximately one-third of the cases resolved issues identified during the process via an agreed upon transfer pricing adjustment, thereby avoiding an audit or potential MAP, but adjustments are not required or enforced on taxpayers that apply for ICAP.⁸⁵

⁸² [Announcement and Report Concerning Advance Pricing Agreements \(2023\)](#), Internal Revenue Service (Mar. 26, 2024); for further details, see [Table 3](#).

⁸³ OECD (2024), [International Compliance Assurance Programme - Aggregated Results and Statistics](#), OECD, Paris.

⁸⁴ *Id.*

⁸⁵ *Id.*

IV. CONSIDERING AN APA

Most taxpayers seeking an APA are interested in some form of certainty, but the value of specific types of certainty differs substantially by taxpayer. Most companies make the business decision to pursue an APA based on an expectation that the long-term costs of an APA will be lower than the cost of compliance and transfer pricing defense. However, the ease with which a company can pursue an APA and the overall benefit achieved are influenced by a number of taxpayer-specific factors.

A. The Benefits of Certainty

1. Freedom from IRC §6662 Penalties

As discussed in [Section III.A.3](#), the IRS is becoming increasingly more aggressive in its assertion of transfer pricing penalties under IRC [§6662](#). U.S. taxpayers spend substantial funds producing annual transfer pricing documentation for penalty protection; the requirements in other countries add to the expense. With the IRS's recent propensity in asserting penalties even when proper documentation is in place, but it disagrees with the taxpayer's selected method, there is no assurance that simple documentation will satisfy the requirements needed for penalty protection. However, if the taxpayer negotiates an APA, the taxpayer is only required to demonstrate compliance with the APA in its APA annual report. IRS Exam does not audit transfer pricing issues for years where an APA has been agreed to, and the APA satisfies the documentation requirement, thereby eliminating the need to annually update the economic analysis that would be necessary when conducting annual transfer pricing documentation. Taxpayers that have requested, but not yet executed, an APA generally do not prepare documentation for the proposed APA term, as the APA application is viewed as satisfying the documentation requirement needed for penalty protection until the APA is signed and executed. Absent material changes, taxpayers previously covered by an APA can rely for penalty purposes on the methodology from the APA for a few years

afterward,⁸⁶ but should look to either renew the APA for another term or resume preparing annual transfer pricing documentation.

2. Freedom from Double Tax and Transfer Pricing Adjustments

Taxpayers often experience inconsistent interpretation and enforcement of transfer pricing rules from country-to-country, with the attendant risks of adjustment and the possibility of double tax. This exposure can be prospectively eliminated with a bilateral APA; as long as the taxpayer complies with the APA, no examination in either country would produce an adjustment.

During the negotiation process, however, the competent authorities may agree to an adjustment for APA years that have passed before the agreement was reached. When a U.S. taxpayer submits a request for an APA, the first possible year that can be covered as part of the prospective period (i.e., non-rollback) is the earliest for which a tax return has not been filed. As the competent authorities may take years to negotiate the APA, one or more prospective years may have passed by the time an agreement has been reached. Therefore, as part of the final agreement, the competent authorities may agree to adjust the tested party's results for the years that have passed (including any rollback years) to align with the agreed upon result. The agreement will also include a mechanism (i.e., a conforming adjustment) for avoiding double taxation, thus still providing a benefit to the taxpayer.

3. No Additional Customs Exposure

Customs duties are assessed based upon the "dutiable value" of imported goods at the date of importation. Although Customs rules contain a number of different valuation methodologies, many companies use "transaction value" to value imported goods between related parties, which relies on the transfer price developed for tax purposes. In this situation, a downward adjustment in the price of products sold to a related party will increase the buyer's profit and decrease the

⁸⁶ [Treas. Reg. §1.6662-6\(d\)\(2\)\(ii\)\(A\)\(6\)](#).

buyer's potential duties in the importing country. An upward adjustment in the product price will decrease the buyer's profit and increase the buyer's potential duties in the importing country.

U.S. importers need to be aware of Customs issues created by transfer pricing adjustments, including the necessity to report certain changes in value to Customs and the possibility of paying additional duties plus interest. By avoiding transfer pricing adjustments arising from an examination, an APA also eliminates the administrative burden of correcting the Customs valuation.

4. No Uncertain Tax Position

Beginning in 2010, corporations have been required to report UTPs, including those related to transfer pricing, on Schedule UTP if those positions would affect U.S. federal income tax liabilities. Taxpayers have a similar financial reporting requirement under ASC 740-10 (formerly known as FASB Interpretation No. 48 (FIN48)). Taxpayers are able to achieve certainty after the resolution of an APA, and some level of certainty after filing an APA request, thereby reducing the need for UTP reporting.

B. Why APAs Work

The APA procedure was designed to supplement the traditional administrative, judicial and treaty mechanisms to resolve transfer pricing disputes. The APA process can be described as a prospective negotiation between the taxpayer and IRS (and possibly the other country(ies) involved). However, the differences between APAs and regular negotiations between the taxpayer and IRS Exam have produced a process that has been successful resolving transfer pricing issues. The following subsections describes some of the process differences and note how they have made the APA process successful.

1. Voluntary Taxpayer Involvement/Commitment

Taxpayers must choose to pursue an APA and must submit a substantial APA user fee (currently \$121,600 for a new APA and \$65,900 for a renewal APA). These hurdles ensure that any taxpayer that

submits an APA request is strongly committed to the successful resolution of its APA to realize the benefit from its user fee and efforts.

Absent appropriate taxpayer participation, APMA may terminate or suspend the APA process even after the APA has been accepted.⁸⁷ For example, APMA may choose to terminate or suspend the APA process if the taxpayer:

- Fails to include the materials required by [Rev. Proc. 2015-41](#) as part of the APA request or any other materials requested by APMA during the APA process;
- Fails to comply with the procedural requirements set forth in [Rev. Proc. 2015-41](#) after having been provided reasonable opportunity to correct (if possible) or remedy any deficiencies in the APA request or any other submission during the process; or
- Acts in a way to undermine or prejudice the APA process (e.g., refusing to extend the U.S. statute of limitations).⁸⁸

APMA may also terminate the APA process if an agreement is not reached.⁸⁹ For unilateral APAs, the negotiations are directly between APMA and the taxpayer, and therefore the APA process is immediately terminated if an agreement is not reached.⁹⁰ For bilateral and multilateral APAs, if APMA and the foreign competent authority(ies) do not reach an agreement, or the taxpayer refuses to accept the terms agreed to by the competent authorities, APMA may choose to terminate the APA or agree to execute a unilateral APA.⁹¹

APMA's decision to suspend or terminate an APA process is not subject to administrative review.⁹² APMA also has the sole power to determine whether to refund the taxpayer's user fee if the APA is terminated.⁹³

2. Taxpayer Responsibility (and Opportunity) to Provide Information

The taxpayer is required in the APA request to provide a substantial amount of up-front information that might not be required in the regular course of transfer pricing compliance. One

⁸⁷ [Rev. Proc. 2015-41](#), §4.02(1).

⁸⁸ *Id.*, citing [Rev. Proc. 2015-40](#), §7.02.

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.*, §4.02(3).

⁹³ *Id.*, §4.02(2).

taxpayer benefit from the initial APA request effort is that the taxpayer is able to initially describe the taxpayer's industry, operations, and transactions, and propose and support a transfer pricing methodology, thus allowing the taxpayer to seek a "fresh look" by the APMA team of its transfer pricing issues. The ability to initially frame the issues and have discussions with transfer pricing experts is a substantial benefit compared to the IRS examination process, which involves IRS Exam conducting its own fact finding by examiners that may not be experienced in transfer pricing matters and therefore may not understand the nuances of taxpayer's as-filed position.

3. Pre-Dispute Timing

Because APAs are prospective, taxpayers can address contentious issues with "clean hands," reducing the commitment by both parties to historic negotiating positions and eliminating the need for the governments to disgorge tax revenues already received.

4. IRS APA Team Staffing

The IRS APA team is composed of experienced personnel from APMA, while IRS Exam, IRS Appeals, and IRS Counsel personnel are also available, as necessary. This approach is intended to represent all interested IRS parties to the taxpayer's transfer pricing issues up-front, offering an effective one-stop process. Further, many of the APMA staff previously worked in private practice, and that shared perspective has been observed to help with communication and resolution.

5. Focused Review of Transfer Pricing Issues

APAs only apply to transfer pricing and ancillary issues. This single-issue focus allows APMA to build the experience of its staff and monitor all APA cases to develop consistent positions. Further, the limited issue focus reduces APMA's exposure to program growth and the attendant growing pains.

C. The Taxpayer's Business Decision

1. General Comparison: APA Certainty v. Potential Exam

The APA process is designed to be more focused and take less time than a transfer pricing examination and other dispute resolution efforts. [Rev. Proc. 2015-41](#) requires taxpayers to front-load information in the APA request that could be

expected to be requested during the APA process. The front-loading of the information is expected to expedite the APA process and save both the IRS and the taxpayer time and effort during the due diligence phase, especially compared to the regular transfer pricing enforcement process, which often involves an audit, followed by the IRS appeals process or competent authority proceedings.

Even with procedures intended to add efficiency to the APA process, pursuing an APA can be expensive, and most companies attempt to estimate the cost and effort of pursuing an APA against the risk adjusted cost and effort of the regular transfer pricing enforcement defense. From this perspective, a taxpayer that does not expect to be examined may not be able to justify pursuing an APA. To the extent a taxpayer believes itself to be at risk of an examination, the benefits of an APA are readily apparent when the cost and effort of the regular transfer pricing compliance exceed the cost and effort of an APA, including the APA user fee. Moreover, any tax authority adjustment can also carry the additional cost of penalties and interest as well as amended federal and state tax returns and Customs filings. Eliminating the need for annual transfer pricing documentation and ASC 740-10 analyses can also save taxpayers significant sums of money.

Any benefit achieved by an APA can be enhanced by rollback, renewal, or the opportunity to use the APA analysis or outcome to address similar transfer pricing issues in another country or countries.

2. Rollback to Resolve Prior Years

Although APAs are intended to provide prospective resolution of transfer pricing issues, a rollback of the transfer pricing method developed in an APA to open tax years not included in the APA term can be an effective way to address unresolved transfer pricing issues. This approach can add substantially to the attractiveness of an APA solution. However, except in unusual circumstances, APMA will not agree to cover a closed filed year with a rollback of a unilateral APA request.

3. Affirmative Use of APAs

Since the early days of APAs, a small group of large MNEs have found it useful to negotiate a bilateral APA between two experienced treaty partners to set a benchmark for the appropriate transfer price

for similar transactions with related parties in other countries. The company can then share the

bilateral APA and supporting information with any new examining country to demonstrate that the likely outcome of a principled negotiation would produce no adjustment. Geographic differences aside, the attraction of a transfer price agreed between two experienced treaty partners on

similar transactions is hard to deny. This “benchmark” approach has proven to be desirable because those very large companies had exposure with regard to similar transactions in multiple countries that actively pursue transfer pricing enforcement. In the aftermath of BEPS and the implementation of CbCR, many more companies will likely find benchmark APAs to be a desirable option. The anticipated increase in transfer pricing examinations and potential double tax following the adoption of CbCR reporting is expected to subject many new companies to transfer pricing scrutiny in multiple jurisdictions. In this environment, a benchmark APA to address similar transactions may be desirable for many more companies. Further, the Master File requires taxpayers to report any unilateral APAs or tax rulings. Thus, tax authorities in jurisdictions with Master File requirements will be more aware of the existence of a benchmark APA.

4. APA Renewal

A taxpayer may request a renewal APA using updated information. The user fee for a straightforward renewal is \$65,000 rather than \$121,600 for an initial APA, and taxpayers may request an abbreviated APA request for a renewal. If the intercompany transactions, functions, and risks remain the same, a renewal APA should take less time and require fewer resources than the original APA. Table 3 summarizes the length of

time it took for APMA to execute new APAs and renewal APAs during 2023.

However, the APMA program may scrutinize the renewal request if the taxpayer’s results during the term of the original APA were to fall consistently at the edge of the agreed upon arm’s length range.

D. Taxpayer-Specific Factors

1. Risk Tolerance

The risk tolerance of the company’s management strongly affects the decision whether to pursue an APA. Without some risk of a transfer pricing examination and dispute, company management would generally not embrace the cost and effort of the APA process. Further, given the cooperative nature of the APA process and the information requirements, companies with arguably aggressive transfer pricing positions should likely avoid the APA process. The APA process works best with taxpayers that have taken more “middle of the road” positions but still value the benefit of certainty around those positions. Some have pointed to these factors to explain the prominence of Japan-based MNEs in the APA process.

2. Examination Fatigue

“Examination fatigue” is a common driver for a company’s decision to pursue an APA. The company may have experienced multiple examination cycles in either or both countries without the development of any principle to guide its transfer pricing determinations. The taxpayer may be looking for a fresh perspective from the government and an approved approach regarding the transfer pricing issue going forward. Although IRS Exam will be involved in an APA, jurisdiction for the issue rests with the APMA program.

Table 3: Months to Complete New and Renewal APAs (2023)⁹⁴

	Unilateral APAs		Bilateral APAs		Unilateral and Bilateral	
	Average	Median	Average	Median	Average	Median
New	45.2	34.9	50.0	49.9	49.4	49.9
Renewal	30.2	25.2	36.1	33.1	34.9	31.8
New and Renewal	35.8	31.6	43.7	42.6	42.5	42.0

⁹⁴ [Announcement and Report Concerning Advance Pricing Agreements \(2023\)](#), Internal Revenue Service (Mar. 26, 2024).

3. Company's Industry

The industry in which the company operates usually has some impact upon the decision whether to pursue an APA. Some industries, notably the automotive and pharmaceutical industries, are encouraged by the inherent size, global exposure and uncertainty of transfer pricing outcomes to seek the certainty of an APA. Other industries (e.g., electronics) are encouraged by the relatively high levels of experience of the IRS APMA program and other tax authorities with the industry and its issues. Industries where the governments have little or no APA experience may be less inviting, since the initial APA in an industry may require more taxpayer time and effort to complete. Figure 3 depicts the common industries within which companies that executed U.S. APAs in 2023 operated.

4. Participating Countries

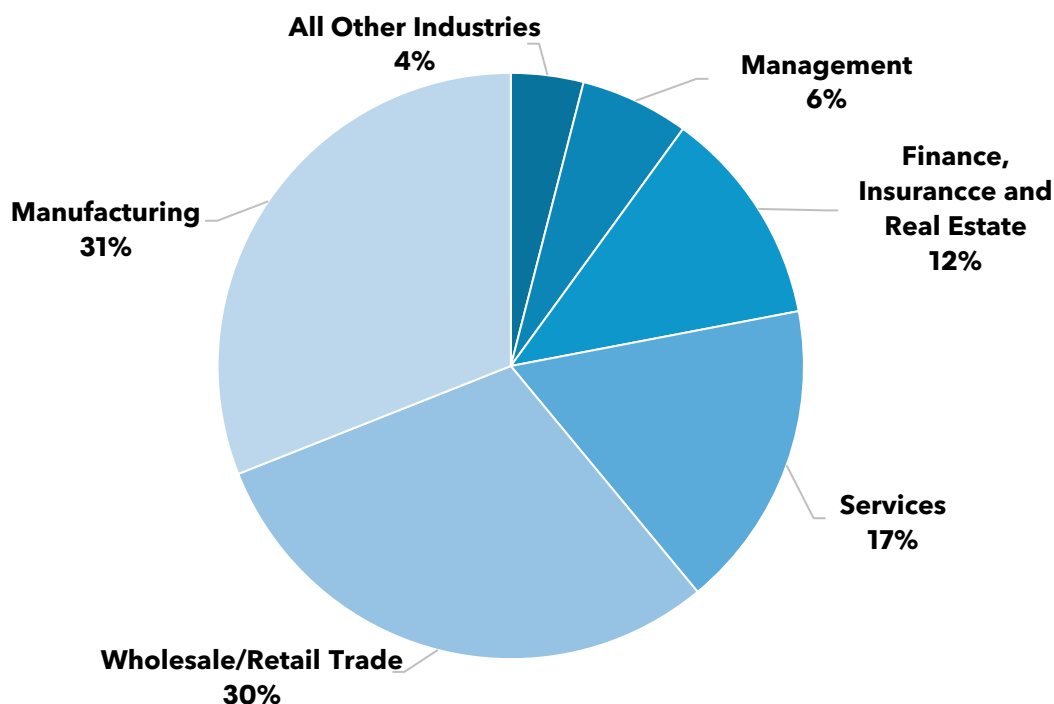
The countries participating in the APA, and the negotiating relationship between those countries, can sometimes affect the decision whether to pursue an APA. Unless an income tax treaty exists between the countries, no bilateral APA is possible (although a synthetic bilateral APA is still possible). Likewise, a true multilateral APA can only occur if

all participating countries have income tax treaties with each of the other participating countries, but a synthetic multilateral APA may be possible depending on the situation and the willingness of the countries involved. A lack of negotiating experience between the affected countries may indicate that the APA process might take longer than an APA between more experienced countries. Further, the depth of core negotiating relationships and frequency of interactions contribute to the taxpayers decision on whether to apply for an APA.

5. Type of Issues

The type of transfer pricing issue can affect the decision whether to pursue an APA and whether the APA is best dealt with bilaterally or unilaterally (or even multilaterally). Some issues, like royalty determinations, may be inherently difficult to resolve without a bilateral negotiation. A bilateral APA may be the most effective way to eliminate the exposure to a transfer pricing examination in either country. In other circumstances, the issues and likely outcome of an APA may be relatively straightforward, but the time and cost of negotiating a bilateral APA may still be cost effective because of a desire for additional certainty.

Figure 3: U.S. APAs Executed in 2023 (By Industry)



V. THE APA NEGOTIATION PROCESS

Revenue Procedure 2015-41 sets forth the procedures the taxpayer must follow to negotiate an APA. In the APA process, taxpayer's work with the IRS and foreign competent authority(ies) to reach prospective agreement regarding transfer pricing issues through negotiation. The negotiating approach employed in the APA process differs greatly from the sometimes adversarial approach employed by IRS Exam and IRS Appeals. The APA process employs cooperative and principled negotiations between the taxpayer and the IRS, and generally hold true for the negotiations between the IRS and the other competent authority.⁹⁵ Each party is expected to take reasonable positions consistent with objective standards. The taxpayer must be open to and respond to APMA's concerns and viewpoints. Ultimately, the efficiency of the APA process is due to the effective sharing of information and can be

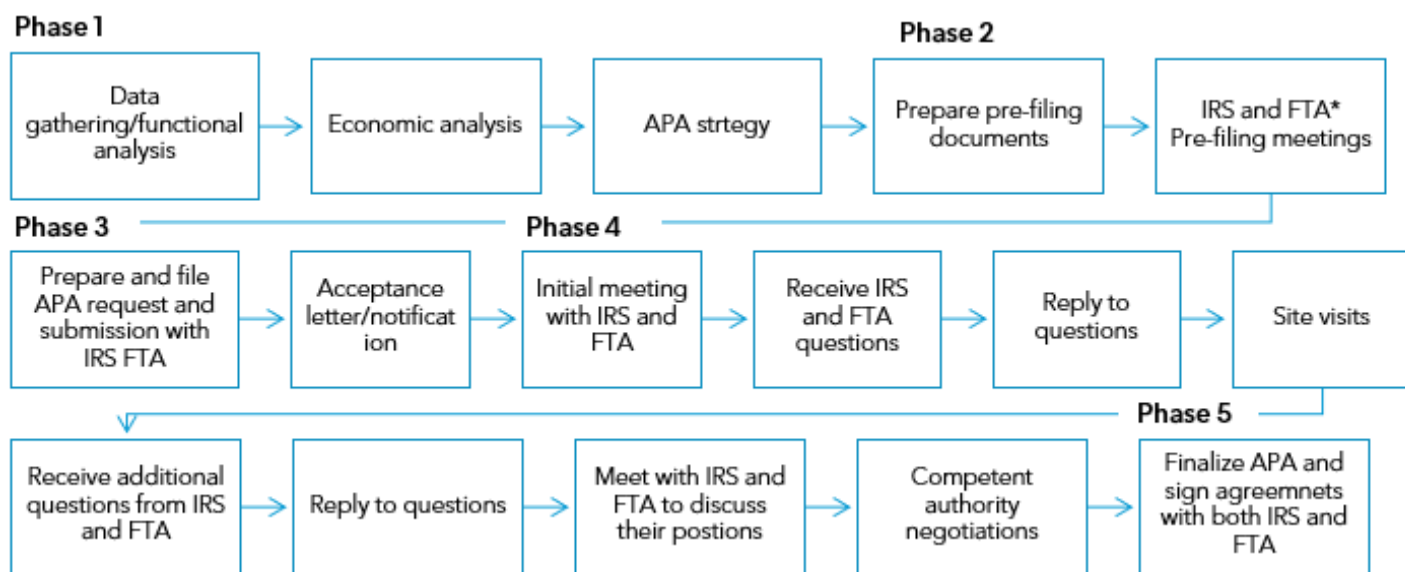
hindered when taxpayers are not forthcoming. The taxpayer's side of the APA process can be organized into phases:

- APA strategy and transfer pricing analysis;
- Pre-filing conference;
- Formal APA request;
- Evaluation and negotiation; and
- Administration and renewal.

As the APA process proceeds, the interaction between the taxpayer and the competent authorities evolves from a general discussion of the taxpayer's industry and business, to the specific intercompany transactions, to negotiations regarding the appropriate selection and application of a transfer pricing method, and finally to drafting and administering the agreement.

Figure 4 provides a summary of the typical process of obtaining a bilateral APA.

Figure 4: Bilateral APA Process Overview



⁹⁵ [Rev. Proc. 2015-41](#), §2.02.

A. APA Strategy and Transfer Pricing Analysis

1. Taxpayer's APA Team

The APA process involves a series of negotiations between professionals trained in different disciplines: legal, accounting, and economics. The taxpayer's APA team usually includes both in-house personnel and outside representatives, depending on the capabilities and availability of in-house personnel. To establish credibility for the taxpayer's position and avoid confusion regarding the taxpayer's position on various points, it is important to clearly establish specific responsibility and authority within the taxpayer's APA team, which typically looks as follows:

Lead Negotiator - *The lead negotiator is the general spokesperson and coordinator for the taxpayer's APA team. The lead negotiator delegates responsibility for specific issues to other members of the taxpayer's APA team, but bears overall responsibility for the taxpayer's negotiating position and procedural decisions. The lead negotiator needs to be a person who is authorized to practice before the IRS.*

Tax Lead - *The tax lead is responsible for the substantive correctness of the taxpayer's positions. The lead negotiator may also function as the tax lead, depending upon the complexity of the issues and the lead negotiator's familiarity with the taxpayer's operations.*

Economic Lead - *The economic lead is responsible for developing and defending the selection of the transfer pricing method, the selection of the comparables, and the adjustments to the comparables. Ideally, the economic lead will have substantial transfer pricing experience and possess the communication skills necessary to explain complicated economic issues to non-economists.*

Factual Lead - *The factual lead is responsible for educating the APMA team regarding the taxpayer's industry, organization, and transactions. The factual lead also obtains the internal information necessary to respond to subsequent factual inquiries made by the government APA team. The factual lead is often an in-house tax professional who is familiar with the transfer pricing decisions and the business reasons supporting those decisions.*

The roles described above are formal, and in practice may overlap within the taxpayer's APA team, with one person holding multiple roles.

2. Identify Taxpayer Goals

As discussed above, taxpayers can enter the APA process with several goals. To achieve those goals,

the goals should be identified and prioritized at the outset. A clear understanding and ranking of goals typically allows for more effective preparation before the APA process begins.

3. Conduct Transfer Pricing Analyses

The transfer pricing analysis performed for an APA generally requires the same or more effort and level of detail and precision than is required to produce transfer pricing documentation. In fact, should the taxpayer and the IRS fail to conclude an APA, the taxpayer can assert that the APA submission satisfies the contemporaneous documentation requirement for penalty protection purposes. Prior to the PFC (if mandatory or requested), the taxpayer should be internally aligned on the facts involved in the intercompany transaction, the proposed transfer pricing method, the preferred application of the method, and the position the tested party would be in should the taxpayer's proposal be accepted.

B. Pre-Filing Conference

1. Mandatory v. Optional

The first step in pursuing an APA is to determine whether a PFC is needed. [Rev. Proc. 2015-41](#) provides two types of PFCs: mandatory or optional. A PFC is mandatory in the following situations:

- Taxpayer seeks a unilateral APA to cover an issue that could be covered under a bilateral or multilateral APA;
- The taxpayer desires permission to file an abbreviated APA request; or
- The proposed covered issue(s) will, or could reasonably be expected to, involve:
 - The license or other transfer of intangibles in connection with development of intangibles under an intangible development arrangement;
 - A global trading arrangement;
 - A business restructuring or use of intangibles whose ownership changed as a result of a business restructuring, or

- Unincorporated branches, pass-through entities, hybrid entities, or entities disregarded for U.S. tax purposes.⁹⁶

If a PFC is mandatory, then the taxpayer must submit a pre-filing memorandum.⁹⁷ A mandatory pre-filing memorandum must identify the reason(s) the taxpayer is required to file a memorandum and must have a length and content appropriate to the size and complexity of the covered issue(s) proposed by the taxpayer. The request must primarily be in a memorandum format, but may be accompanied by diagrams, slides, spreadsheets, and similar supporting materials.⁹⁸

If a PFC is optional and the taxpayer wishes to hold the PFC, the pre-filing memorandum must also have a length and content appropriate to the substantive or procedural issues the taxpayer wishes to raise, but may be in a format chosen by the taxpayer,⁹⁹ but in practice it is generally helpful for both the taxpayer and APMA if the taxpayer's request follows the format prescribed in [Rev. Proc. 2015-41](#).

Whether mandatory or optional, APMA requests the following additional information be provided on the first page of the request:

- State if taxpayer is considering a unilateral, bilateral, or multilateral APA request;
- The foreign country or countries implicated by the APA request;
- The names of (i) Team Leaders, (ii) Economists, and (iii) Managers who participated in an immediately prior APA request and all ongoing APA requests;
- Years involved;
- Transaction amount(s);
- Taxpayer's city and state; and
- Meeting length requested.¹⁰⁰

A pre-filing memorandum must also include the following information:

- The taxpayer's name and EIN, unless the taxpayer makes a valid request for an anonymous pre-filing conference;

- Whether the taxpayer seeks a pre-filing conference (if optional) and the issues the taxpayer wishes to discuss;
- At least three possible dates during which to hold the pre-filing conference at least two weeks after the date that the pre-filing memorandum is submitted;
- Covered issue diagrams (if the pre-filing memorandum is mandatory);
- If mandatory and a taxpayer requests a unilateral APA to cover any issue that could be covered under a bilateral or multilateral APA under the applicable tax treaty(ies), the taxpayer must explain why it believes that a unilateral APA is appropriate to cover that issue;
- If mandatory and if submitted pursuant to [Rev. Proc. 2015-41](#) §3.02(4)(b) and §3.04(2)(a) to seek permission to file an abbreviated APA request, the taxpayer must (i) specify any information, documents, or other materials the taxpayer proposes to omit from its APA request, (ii) present the taxpayer's arguments that the information, documents, or other materials the taxpayer proposes to omit from its APA request are not necessary for APMA's evaluation of the APA request, including if applicable the taxpayer's arguments that the applicable law, facts and circumstances, economic conditions, proposed covered issue(s) and method(s), and other factors relevant to the proposed APA years are substantially the same as those relevant to the current APA or the competent authority resolution as the case may be, and (iii) in the case of a proposed renewal APA, summarize in a table the results and adjustments under the current APA, in absolute and percentage terms (e.g., operating margin), with comparison to any arm's length points or ranges specified in the APA, and also summarize any proposed changes in terms from the current APA;
- The name and contact information for the taxpayer's point of contact and, unless the

⁹⁶ *Id.*, §3.02(4).

⁹⁷ *Id.*

⁹⁸ *Id.*, §3.02(6).

⁹⁹ *Id.*

¹⁰⁰ *Id.*; see also [Requests for APA Pre-Filing Conferences or Consultations, APMA](#).

pre-filing memorandum is submitted on an anonymous basis, provide, as necessary, a Form 2848 authorizing the point of contact to represent the taxpayer in connection with the APA request or a Form 8821 authorizing the point of contact to inspect or receive confidential tax information about the taxpayer in connection with the APA request; and

- All open back years of the taxpayer and which of such years, if any, are under examination by the IRS and the names of IRS employees involved in the examination.¹⁰¹

APMA will notify the taxpayer whether it will accept or decline the taxpayer's request to hold a pre-filing conference.

2. Named v. Anonymous Basis

Some taxpayers may be hesitant to discuss a potential APA due to the concern that a failure to pursue an APA may trigger an examination. To accommodate such taxpayers, the IRS permits PFCs to be held with the taxpayer's representatives on an anonymous basis.¹⁰² Only optional PFCs may be held on an anonymous basis.¹⁰³ If the taxpayer has been involved or is currently involved in a difficult transfer pricing examination, there may be some tactical advantage to pursuing the PFC anonymously. If the PFC is anonymous, no representative of the district examination office will attend. Thus, the taxpayer can discuss the issues with APMA without being impacted by views IRS Exam may have already developed.

3. Filing the Pre-Filing Memorandum

Although [Rev. Proc. 2015-41](#) states that a taxpayer must submit two printed copies and one electronic copy of the pre-filing memorandum to APMA,¹⁰⁴ the IRS has been accepting electronic copies of files and also allowing for increased use of e-signatures following the COVID-19 pandemic.¹⁰⁵

The pre-filing memorandum may be sent electronically by email to Heather Snodgrass (Heather.L.Snodgrass@irs.gov) or mailed to the following address:

Deputy Commissioner (International) Large
Business and International Division Internal
Revenue Service
1111 Constitution Avenue, N.W.
SE:LB:IN:TPO:APMA:M3-370
Washington, D.C. 20224 (Attention: APMA)¹⁰⁶

4. Taxpayer's (and Representative's) Role

During the PFC, the taxpayer is expected to discuss the relevant facts and circumstances surrounding the issue(s), proposed transfer pricing method(s), terms and conditions it proposes to cover in the APA, and (if applicable) the justification for requesting to file an abbreviated APA request.¹⁰⁷ Typically, taxpayers take the opportunity presented during the PFC to explain:

- The taxpayer's history, background, and organizational structure;
- The functions performed, assets owned, and risks assumed by each of the parties to the proposed covered transaction(s);
- The proposed transfer pricing method(s) (and the previous transfer pricing method(s), if different);
- The application of the proposed transfer pricing method; and
- Any proposed data adjustments.

¹⁰¹ *Id.*

¹⁰² *Id.*, §3.02(8)(b).

¹⁰³ *Id.*

¹⁰⁴ *Id.*, §3.02(7).

¹⁰⁵ [Competent Authority Filing Modifications and APMA APA Consultations](#), Internal Revenue Service (May 11, 2020).

¹⁰⁶ [Rev. Proc. 2015-41](#), §3.02(7), citing Appendix §4; see also [Requests for APA Pre-Filing Conferences or Consultations](#), APMA.

¹⁰⁷ *Id.*, §3.02(8)(b).

5. Government’s Role

Once a pre-filing memorandum is submitted, APMA will decide whether it wishes to hold a PFC or whether the taxpayer can proceed with filing its request. If a PFC is held, APMA will generally read the pre-filing memorandum and any accompanying submissions before the PFC to become familiar with the taxpayer’s facts and proposal. The taxpayer’s presentation at the PFC further familiarizes APMA and allows them to ask general background questions. APMA can then specifically respond, based on their experience with similar cases, to the taxpayer’s proposed APA regarding the acceptability of the transfer pricing method, comparable search criteria, data adjustments, recordkeeping requirements, competent authority issues, level of requisite additional information and any other concerns. Note, however, that APMA reserves the right to

change its views and positions based on its review of the taxpayer’s complete APA request.¹⁰⁸

APMA’s acceptance of a taxpayer’s request to enter the APA program is discretionary, and APMA’s decision to decline to initiate the APA process is not subject to administrative review.¹⁰⁹

6. Expanding to Interrelated Issues

APMA may require, as a condition to continuing the APA process, that the taxpayer expand the proposed scope of its APA request to cover “interrelated matters.”¹¹⁰ These may include additional interrelated issues, additional taxable years (including potential rollback years), and/or additional treaty countries.¹¹¹ [Rev. Proc. 2015-41](#) provides the following examples of potential interrelated matters:¹¹²

Table 4: Interrelated Issue Examples

Situation	Outcome
The proposed APA involves an intercompany license of intangible property that was previously sold by the current licensee to the current licensor.	APMA may believe the license should be evaluated consistent with the analysis performed for the earlier sale.
The proposed APA involves the provision of intercompany services, wherein the service provider utilizes valuable IP that it acquired from the service recipient in an earlier year.	APMA may require the services to be valued the same way they were in connection with the restructuring.
The proposed APA involves the evaluation of a platform contribution transaction in a cost sharing arrangement under Treas. Reg. §1.482-7.	APMA may ask whether the intangible development costs under the arrangement are being properly shared.
The proposed APA covers the sale of goods from a foreign manufacturer to a U.S. distributor, which subsequently resells the goods to another related distributor in a different country (which may or may not be a treaty country).	APMA may need to evaluate the price the foreign distributor pays to the U.S. distributor before agreeing to an APA on the price paid by the U.S. distributor to the foreign manufacturer.

¹⁰⁸ *Id.*, §3.02(9) (“Statements or representations made by APMA in pre-filing conferences and informal consultations are informal and are, therefore, not binding on the IRS.”).

¹⁰⁹ *Id.*, §3.04(1); see also *Interim Guidance on Review and Acceptance of Advance Pricing Agreement (APA) Submissions*, [LB&I-04-0423-0006](#) (Apr. 25, 2023).

¹¹⁰ *Id.*, §2.02(4)(a).

¹¹¹ *Id.*

¹¹² *Id.*, §2.04(b); further examples include global trading arrangements, hybrid entities, entities disregarded for U.S. tax purposes.

With respect to interrelated matters, APMA will consider the views of the taxpayer and the applicable foreign competent authority and communicate to the taxpayer any concerns about interrelated matters and potential scope expansion at the earliest time possible.¹¹³ If APMA decides that it is not in the interest of principled, effective, and efficient tax administration to reach a resolution on the proposed issues without also resolving the interrelated matter, APMA may condition a taxpayer's acceptance, continued consideration, or resolution of the APA request upon the agreement of the taxpayer (and, if applicable, the foreign competent authority(ies)) to expand the scope of the APA.¹¹⁴

C. Formal APA Request

1. Filing Deadline

After the PFC, the taxpayer should have a good understanding of the IRS's initial reaction to its proposal and the areas of immediate concern. Based on this information, the taxpayer can begin drafting its formal APA request. The taxpayer must file the APA request within the time prescribed by statute for filing its U.S. federal income tax return for the first year of the proposed APA term.¹¹⁵ If the taxpayer receives an extension to file its federal income tax return, it must file its APA request no later than the actual filing date of the return (i.e., the extended deadline).¹¹⁶ The APA request will be considered filed on the date the required user fee is paid, provided that a substantially complete APA request is filed with the APMA Program within 120 days of payment.¹¹⁷ The APMA Director may consider extending this deadline by 30 days if the taxpayer requests such an extension before the

120-day period expires.¹¹⁸ Furthermore, the APMA Director may consider the request to have been filed on a date subsequent to its actual filing in the event APMA's evaluation of a request is delayed due to a lack of responsiveness or timeliness by the taxpayer.¹¹⁹

An additional filing deadline applies in the case of bilateral and multilateral APA requests. In order to better coordinate the timing of discussions on bilateral and multilateral APAs with foreign competent authorities, the taxpayer should file a complete bilateral or multilateral APA request (or be considered to have filed such a complete request) no later than 60 days after a corresponding bilateral or multilateral request proposing to cover substantially the same coverable issue(s) and APA years has been filed with a foreign competent authority.¹²⁰ This deadline was put into effect since some countries, such as Japan, require that an APA request be filed prior to the beginning of the first prospective year of the APA term. In that circumstance, some taxpayers previously would not file the U.S. APA request until the U.S. deadline, which could be as much as 18 months after the foreign APA request was filed. If the 60 days deadline is not met, the first APA year that otherwise would have been a prospective year will be considered a rollback year.¹²¹ If the 60-day deadline is missed by more than one year, the first two or more APA years will be considered rollback years (at APMA's discretion).¹²²

Taxpayers must pay their APA user fees electronically via <http://www.pay.gov>.¹²³ Table 5 summarizes the APA user fee requirements by APA request type.

¹¹³ *Id.*, §2.04(a).

¹¹⁴ *Id.*

¹¹⁵ *Id.*, §3.03(2).

¹¹⁶ *Id.*, §3.03(2)(a).

¹¹⁷ *Id.*, §3.03(3)(b). For example, a taxpayer's taxable year ending December 31, 2023, could be covered as prospective APA year if the user fee is paid before October 15, 2024 (or the date on which the 2023 return was actually filed, if an extension was granted) as long as a comprehensive APA request is submitted within 120 days of the date the user fee is paid.

¹¹⁸ *Id.*

¹¹⁹ *Id.*, §3.03(3)(a).

¹²⁰ *Id.*, §3.03(2)(b).

¹²¹ *Id.*

¹²² *Id.*

¹²³ The exact site at which the APA user fee should be paid is: <https://www.pay.gov/public/form/start/44568890>.

Table 5: U.S. APA Filing Fees¹²⁴

(in U.S. Dollars)	User Fee Structure (After February 1, 2024)
Regular APA Request	121,600
Renewal of APA Request (routine / non-routine)	65,900
Small Case APA Request	57,500
Renewal of Small Case APA (routine / non-routine) Request	57,500
Amending APA Request or a Completed APA	24,600

The user fee form requires the entry of the following U.S. taxpayer information:

- U.S. taxpayer name;
- Taxpayer Identification Number / Employer Identification Number;
- U.S. taxpayer address (including city, state, and zip code);
- Power of attorney / contact person's name and phone number;
- Type of agreement (unilateral, bilateral, multilateral);
- Proposed term;
- Foreign country(ies) involved; and
- Type of request (original, renewal, amendment, small case).

Taxpayers should print a copy of the receipt that is generated on the last page and include a copy of both the completed form and the receipt with the APA submission.¹²⁵

2. Required Content of APA Request

[Rev. Proc. 2015-41](#) specifies the required contents of an APA request; the exact information to include in an APA request is listed in [Exhibit 1](#).

3. Signatures

The taxpayer or the taxpayer's authorized representative must sign the APA request.¹²⁶ In light of the circumstances resulting from COVID-19,

on March 27, 2020, the IRS announced that any documents requiring signatures may be submitted with either an image of the taxpayer's signature (scanned or photographed) or the taxpayer's digital signature created using encryption techniques.¹²⁷

4. Copies and Mailing

Pursuant to guidance from the IRS Deputy Commission, Services and Enforcement, all submissions required by either [Rev. Proc. 2015-40](#), 2015 I.R.B. 236 ("Rev. Proc. 2015-40") or [Rev. Proc. 2015-41](#) may be filed electronically; paper copies are not required.¹²⁸ The IRS has worked with professional services firms to establish a secure portal for submitting documents to the IRS. However, if a taxpayer did wish to mail in their APA request, the request may be mailed to the following address:

Commissioner, Large Business and
International Division
Internal Revenue Service
1111 Constitution Avenue, N.W.
SE:LB:TTPO:APMA:K
Washington, D.C. 20224
(Attention: APMA)

D. Evaluation and Negotiation

1. Opening Conference

Upon filing a substantially complete APA request, the IRS will designate a Team Leader to oversee the processing of the request. If the taxpayer participated in a PFC before filing the APA request, the IRS will generally select the Team Leader who presided over the PFC, but this is not always the case and depends on the Team Leader's current (and projected) case load. The Team Leader will contact the taxpayer (or its representatives) once APMA has determined that the APA request is complete and that the APA process should continue.¹²⁹ In most cases, the next step in the APA process is to hold an opening conference.¹³⁰ However, depending on its experience and familiarity with the proposed covered issue(s) and

¹²⁴ [Internal Revenue Bulletin 2024-1](#), Appendix A.

¹²⁵ See [Rev. Proc. 2015-41](#), Appendix §1.03, Exhibit 8 (user fee receipt).

¹²⁶ *Id.*, Appendix §1.01.

¹²⁷ [Competent Authority Filing Modifications and APMA APA Consultations](#), Internal Revenue Service (May 11, 2020).

¹²⁸ *Id.*

¹²⁹ [Rev. Proc. 2015-41](#), §4.03(1).

¹³⁰ *Id.*

method(s) and other aspects of the APA request, the APMA team may determine that an opening conference is not needed. Generally, the APMA team will forego an opening conference only if it has no substantial disagreement with what the APA request proposes.¹³¹ If APMA decides to hold an opening conference, the Team Leader will work with the taxpayer to set a date for the conference.¹³² APMA may request that the taxpayer respond to an information request before the opening conference or be prepared to present on such questions during the opening conference.¹³³ The Team Leader may set or agree to a due date before the opening conference for such responses and may postpone the opening conference if the responses are not provided by that date.¹³⁴ After the APMA team receives the additional information from the taxpayer, it evaluates the information, focusing on determining the appropriate transfer pricing methodology and an acceptable range of results. The evaluation of the request will not constitute an examination or inspection of the taxpayer's books and records under IRC [§7605\(b\)](#) or any other IRC provision.¹³⁵

2. APMA Team

APMA's function is to develop, in collaboration with the taxpayer and consistent with sound tax administration, an opening position, negotiate that position against the position taken by the other competent authority, and eventually come to a resolution that it can recommend for approval to the APMA Director. The specific roles of the team members are as follows:

APMA Director - *The APMA Director has final discretionary authority over all APA and MAP cases and provides the ultimate sign off on all agreements and resolutions. The APMA Director is not involved in the day-to-day negotiations and analyses, but is kept informed of all major updates. Generally, the APMA Director does not get involved in the specific APA and MAP cases unless a major issue arises amongst the APMA team or with the foreign competent authority.*

APMA Assistant Directors - *The Assistant Directors act as intermediaries between their Group and the APMA Director. In this role, the Assistant Directors provide approval for issues that do not rise to the level of needing the APMA Director's attention and provide*

overall policy guidance to the Team Managers within their Group.

APMA Team Managers - *As depicted in [Section II.E](#), APMA has 12 Team Managers, four in each of the three Groups. The Team Managers are charged with reviewing the cases within their respective Groups to ensure that the arm's length standard is being applied in a consistent manner. The Team Managers are also responsible for reviewing the economic analysis derived by the Team Leaders and Economists. In addition, the Team Managers monitor the scheduling of individual cases to ensure that cases are processed in a timely manner. Team Managers also assist in resolving any differences of opinion between the Team Leaders, Economists, and IRS Exam.*

APMA Team Leaders - *The Team Leaders coordinate the IRS negotiating efforts and sets the tone of the negotiations. Team Leaders are usually attorneys or accountants. Team Leaders have extensive transfer pricing experience and have received training in interest-based negotiating methods. They work to coordinate the activities of the other IRS team members and to focus the negotiations on resolving the issues necessary to reach an agreement, applying the best method principles and a principled negotiation approach. In the context of a bilateral or multilateral APA, the Team Leader is also responsible for being the lead negotiator and communicating with the foreign competent authority.*

APMA Economists - *The APMA Economists are responsible for reviewing and critiquing the taxpayer's (and foreign competent authority's) functional and risk analysis and the proposed transfer pricing method and application (including proposed adjustments). The Economists typically suggest modifications to the taxpayer's proposed transfer pricing method, including the companies or agreements included in the analysis and any proposed adjustments (such as to account for differences in working capital). Occasionally, the Economists will suggest changes in the transfer pricing method, but this can generally be avoided by having a thorough and candid discussion during the PFC. Due to heavy caseloads, some cases will include an IRS transfer pricing economist from an office other than APMA or may not include an Economist at all. Recently, the Economists have begun to use "reference sets" or standardized sets of comparable companies when applying the comparable profits method / transactional net margin method. The IRS uses these reference sets to achieve*

¹³¹ *Id.*

¹³² *Id.*

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *Id.*, §4.07.

efficiency and manage workload, though the sets have resulted in less industry comparability.¹³⁶

IRS Exam - If the taxpayer is currently undergoing a transfer pricing examination, the IRS Exam Team Coordinator and others from IRS Exam with knowledge of the taxpayer, the taxpayer's operations, and its related party transactions may participate in portions of the APA process. IRS Exam assists APMA in obtaining a thorough understanding of the taxpayer's operations and activities, as well as evaluating whether to allow a rollback. IRS Exam will generally be provided an opportunity to review and comment on APMA's position paper in the case of a bilateral or multilateral APA, and the proposed APA in the case of a unilateral APA.

3. APA Case Plan

The APA case plan was adopted by APMA to ensure that APA cases proceed in a timely fashion. While [Rev. Proc. 2015-41](#) allows for the adoption of a case plan to facilitate efficient processing of the taxpayer's APA request,¹³⁷ this step is not always formally followed in practice. However, many APMA teams and taxpayers find case plans to be helpful to ensure the process stays on track. It can therefore be helpful to discuss the adoption of a case plan with APMA before negotiations begin and determine if a case plan (whether formal or informal) would be helpful in the particular scenario.

With or without a case plan, the APA team will endeavor to move through the APA process efficiently, given the scope and complexity of the proposed APA and the due diligence and analysis the APA team needs to undertake.¹³⁸ In preparing a case plan, APMA and the taxpayer will discuss milestones, which will depend on the nature of the covered issue(s), the quality of the APA request and any responses already provided by the taxpayer, and the further due diligence and analysis required.¹³⁹ The time estimates for these milestones as reflected in a case plan are subject to revision.¹⁴⁰ The time required to achieve milestones can be affected by various factors including: (a) the quality and timeliness of information provided by the taxpayer; (b) the need to consider interrelated matters; (c) the emergence

of unanticipated issues (for example, because of a change in the facts); (d) in the case of bilateral or multilateral APA requests, when the foreign competent authority(ies) are prepared to discuss the case; and (e) the ease with which an agreement can be reached with the taxpayer for unilateral APA requests or with the foreign competent authority(ies) for bilateral and multilateral APA requests.¹⁴¹ As a practical matter, taxpayers seldom fail to meet the case deadlines and they appreciate the ability to encourage the IRS to reach closure on preliminary issues. Formal imposition of the case plan differ amongst APMA teams.

4. Evaluating the Proposal

After digesting the taxpayer's proposal and holding the opening conference, APMA will need to determine its own positions on the issues and draft a position paper. To develop its position, APMA (and often the foreign competent authority as well) will issue due diligence questions in order to obtain a full understanding of the APA in addition to what was provided in the APA request. The due diligence questions may be issued separately or jointly by the competent authorities. Often, APMA will request updates to facts originally provided in the APA request, such as updated financial information, headcount and changes to key employees, and updated benchmarking data related to the application of the transfer pricing method. APMA may also wish to dig deeper into certain aspects of the factual analysis or have questions on ancillary issues that may have a greater impact on the intercompany transaction than deemed at first glance. APAs are most effective when there is effective collaboration between APMA and the taxpayer. Therefore, it is important for taxpayers to provide accurate and complete information to APMA in a timely manner, although APMA is often willing to work with the taxpayer on the timing of the due diligence questions in order to cut down on the burden of answering the requests.

In February 2019, APMA introduced the functional cost diagnostic model ("FCDM") that it will use to

¹³⁶ Sony Kassam, [Stay Tuned for Comparable Data Sets: IRS Official](#), Tax Mgmt. Transfer Pricing Rep. (Aug. 24, 2017).

¹³⁷ [Rev. Proc. 2015-41](#), §4.04(3).

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

evaluate certain APA submissions.¹⁴² The FCDM is intended to gather the costs related to the contributions of each party to the covered transactions. The model aggregates the costs and then requires the taxpayer to analyze the economic value contribution of the activities to which the functional costs relate. The FCDM then aggregates the costs and produces a residual profit (loss) split based on the capitalized functional costs. While the IRS has indicated that the request to use the FCDM is not an indication the IRS believes the residual profit split method to be the best method to evaluate the covered transactions, the FCDM will be used to inform the IRS's negotiating position. Our understanding is that the FCDM is intended for use in limited circumstances, though it remains to be seen how widely the IRS will utilize this tool and if it will be applied to a broader set of taxpayers.

5. Ancillary Issues

Over time, the APA process has been expanded to address issues beyond IRC [§482](#). In 2008, [Rev. Proc. 2008-31](#), 2008-1 C.B. 1133, extended the APA process to allow the IRS and taxpayers to resolve other issues arising under certain income tax treaties, the IRC, or Income Tax Regulations, for which transfer pricing principles may be relevant, such as attribution of profits to a permanent establishment under an income tax treaty, determining the amount of income effectively connected with the conduct by the taxpayer of a trade or business within the U.S., and determining the amounts of income derived from sources partly within and partly without the U.S., as well as related subsidiary issues. More recently, APAs have addressed tax issues created by U.S. tax reform (Tax Cuts and Jobs Act) enacted in December 2017, namely the base erosion and anti-abuse tax ("BEAT") under IRC [§59A](#), the global intangible low tax income ("GILTI") defined in IRC [§951A](#), and foreign derived intangible income ("FDII") defined in IRC [§250](#).

6. Bilateral Negotiations

Assuming the negotiations between the taxpayer and APMA have been successful, the next stage of a bilateral APA consists of negotiations between the treaty partners. As negotiations persist, additional due diligence requests may be made. Once APMA's position is fully formed, APMA will communicate its views on the proposed APA to the taxpayer, generally in a paper or memorandum having a length, content, and format appropriate to the scope and duration of the APA process and to the size and complexity of the proposed covered issue(s) and method(s) and other relevant facts and circumstances surrounding the case.¹⁴³ In some cases, APMA may present the paper or memorandum to the taxpayer for its comment before the APA team formally presents its views to the foreign competent authority(ies).¹⁴⁴ In other cases, the APA team may issue the paper or memorandum simultaneously to the taxpayer and to the foreign competent authority(ies).¹⁴⁵ The taxpayer would then be invited to provide its comments to both the APA team and the foreign competent authority(ies) for their discussion and consideration towards reaching a competent authority resolution.¹⁴⁶

Bilateral negotiations do not permit direct taxpayer involvement. However, the Team Leaders may share their position paper with the taxpayer and then meet to understand the taxpayer's position on the issues. These meetings are helpful for both the taxpayer and APMA, as the taxpayer is able to remain involved in the APA process and APMA has a direct line of communication whenever questions arise or further information is needed.

The Team Leader maintains regular contact with the foreign competent authority so that the process continues moving forward and both competent authorities develop a simultaneous understanding of the APA request, including the relevant facts and the proposed transfer pricing method. In addition, the taxpayer and its foreign affiliate should keep each other aware of the negotiations and communication each have with their respective competent authority, and forward any information provided to their competent

¹⁴² [Advance Pricing and Mutual Agreement Program, Functional Cost Diagnostic Model](#) (Feb. 15, 2019).

¹⁴³ [Rev. Proc. 2015-41](#), §4.04(3).

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

authority to their affiliate so that both competent authorities receive the same information and are aware of any concerns or issues that arise. If these coordination activities have gone well, the final negotiations can go smoothly and relatively quickly.

Bilateral APA negotiations are not limited to the terms of the transfer pricing method. Additional issues include exchanges of information between tax authorities on issues such as subsequent modifications, cancellations, revocations or renewals of the APA, rollback of the transfer pricing method to resolve transfer pricing issues in prior years, evaluations of the annual reports, and examinations of the taxpayer's compliance with the terms and conditions of the APA. Bilateral APAs may require simultaneous filing of annual reports with the IRS and the foreign tax administration.

Based on our experience, some treaty partners meet more frequently with the IRS than others, as shown in Table 6.

Table 6: Competent Authority Meeting Frequency

Country	Approximate # of Annual Meetings
Australia	1
Canada	2-3
China	1-2
France	2
Germany	2
India	3
Japan	3
Korea	2
Mexico	1-2
Netherlands	1-2
Switzerland	2
United Kingdom	2

In light of travel restrictions resulting from COVID-19, the IRS postponed in person competent

authority meetings during 2020. However, although in person competent authority meetings have begun to increase, the shift to a virtual environment has led to increased remote discussions between the IRS and other competent authorities, which in some cases has sped up the negotiation process.

Final agreement to the negotiated APA will be sought amongst the taxpayer, the IRS, and the foreign competent authority. If a competent authority agreement is not acceptable to the taxpayer, the taxpayer may withdraw the APA request. When competent authorities are unable to reach agreement, the IRS may attempt to negotiate a unilateral APA with the taxpayer.¹⁴⁷

A recent trend in international tax treaties is the inclusion of mandatory arbitration clauses that force the parties into binding arbitration if they have been unable to reach a mutually agreeable resolution to double taxation within a stated period of time. The arbitration clauses also provide comfort to taxpayers who now know there is an incentive for the governments to strive to reach an agreeable solution, and cases will not be allowed to languish while the governments engage in protracted negotiations. According to Nicole Welch, Director of TTPO in the LB&I Division, "[m]andatory binding arbitration is the United States' tax treaty policy and has been for some time."¹⁴⁸ Mandatory arbitration now applies in the U.S.'s treaties with Belgium, Canada, France, and Germany, and the issue is included in protocols with Japan, Spain, and Switzerland that are pending Senate ratification.¹⁴⁹ The latest OECD Model Income Tax Treaty included an arbitration clause should the MAP or APA process fail, but arbitration is not mandatory and must be requested in writing.¹⁵⁰ According to the OECD, "[a]n increasing number of tax treaties now include an arbitration provision as part of the MAP provision to supplement the MAP process in case of no agreement."¹⁵¹ The rise of these mandatory arbitration clauses has led to a greater sense of

¹⁴⁷ *Id.*, §4.02(1).

¹⁴⁸ Michael Smith, *Mandatory Arbitration Is Crucial for U.S. MAP*, IRS Official Says, Tax Notes (Mar. 11, 2024).

¹⁴⁹ [Mandatory Tax Treaty Arbitration](#), Internal Revenue Service.

¹⁵⁰ See OECD (2019), [Model Tax Convention on Income and on Capital 2017](#) (Full Version), OECD Publishing.

¹⁵¹ OECD (2023), [Manual on the Handling of Multilateral Mutual Agreement Procedures and Advance Pricing Arrangements](#), [OECD Forum on Tax Administration](#), OECD, Paris, ¶ 3.7.

urgency on the part of both the IRS and its treaty partners to work together to reach a resolution.

7. Critical Assumptions

The taxpayer requesting an APA must propose critical assumptions to support the APA. Critical assumptions are facts whose continued existence is identified in an APA as being material to the reliability of the APA's covered methods, and may relate to the taxpayer, a third party, an industry, or business and economic conditions.¹⁵² Critical assumptions might include, for example, a particular mode of conducting business operations, a particular corporate or business structure, a range of expected business volume, or the relative value of foreign currencies. One critical assumption is required by APMA for each APA and is included in the APA contract template (see [Exhibit 2](#)):

The business activities, functions performed, risks assumed, assets employed, and financial and tax accounting methods and classifications [and methods of estimation] of Taxpayer in relation to the Covered Transactions will remain materially the same as described or used in Taxpayer's APA Request. A mere change in business results will not be a material change.

If a critical assumption fails during the APA period, APMA will cancel the APA unless the parties agree to revise the APA.¹⁵³ Although taxpayers are required to include proposed critical assumptions in their APA request, as a practical matter, most critical assumptions are drafted during the final APA negotiations when the taxpayer and competent authorities, who may have differing expectations, are attempting to reach an agreement.

While most taxpayers view critical assumptions as protecting the IRS, they can also protect the taxpayer in the event unforeseen events cause the taxpayer to report a lower profitability. For example, if the IRS were concerned that large currency fluctuations could impact the taxpayer's results and the taxpayer did not believe that large fluctuations would occur, the taxpayer could agree

to a critical assumption that currency values remain within a particular range. On the other hand, a taxpayer concerned about the impact of a down economy could request a critical assumption that would allow the taxpayer to revise downward the profit expectations, if certain specific down economy triggering events occur.

Public statements by the APMA staff indicate that the IRS is taking a formal legal approach to determine whether an APA should be amended or cancelled by reason of a critical assumption being triggered. This has caused taxpayers to carefully consider the critical assumptions included in the APA.

Questions have been raised regarding the impact of recently-enacted tariffs on critical assumptions.¹⁵⁴ Under a restrictive reading of the critical assumption language in the APA template, the new tariffs are not certain to trigger a violation of a critical assumption (not entirely free from doubt). Absent a pre-existing intercompany agreement between the related parties, the tariff would generally be borne by the importer of record. To the extent the tariff cannot be passed on to customers in the form of higher prices, it would reduce the profits of the importer of record and potentially trigger an adjustment under the APA.¹⁵⁵

E. Administration and Renewal

1. Finalizing the APA Contract

After negotiations are complete and the competent authorities reach an agreement, the taxpayer has the right to accept or reject the proposed APA; it is not bound to the solution derived by the competent authorities if it finds the result to be unacceptable. Thankfully this situation does not often arise, and can be further mitigated by increased teaming and consistent communication between APMA and the taxpayer. If the taxpayer agrees to accept the negotiated result, the U.S. taxpayer will enter into an APA contract with APMA, which is generally based off the template submitted as Exhibit 15 of the APA

¹⁵² [Rev. Proc. 2015-41](#), §1.04.

¹⁵³ *Id.*, §7.06(3).

¹⁵⁴ On March 8, 2018, two proclamations were signed imposing a 25% steel and a 10% aluminum tariff on products imported into the U.S. under §232 of Trade Expansion Act of 1962. On June 20, 2018, the United States Trade Representative issued a

notice of action to impose an additional tariff of 25% on certain imports of goods with a Chinese country of origin. The final list of products currently are exposed to a tariff of 25%.

¹⁵⁵ Luis Abad, Brian Cody, and Steven Wrappe, [New Tariffs Affect Transfer Pricing Results](#), Tax Mgmt. Transfer Pricing Rep. (Oct. 25, 2018).

request, attached herein as [Exhibit 2](#). The APA becomes effective once signed by both the IRS and the taxpayer. The signatory for the taxpayer must be an authorized officer of the U.S. taxpayer who: has personal knowledge of the APA's covered issues, methods, and terms and conditions; performs duties not limited to obtaining letter rulings or determination letters from the IRS or entering into APAs; and has authorization to sign the company's income tax return.¹⁵⁶

2. The APA Annual Report

Once the APA has been executed, certain administrative procedures must be followed, including filing an annual report. The information required to be included in the APA annual report is laid out in the executed APA contract (generally as Exhibit C). According to [Rev. Proc. 2015-41](#), each APA annual report must:

- Demonstrate the taxpayer's good faith compliance with the terms and conditions of the APA, including a financial analysis reflecting the calculation of the transfer pricing method and any primary adjustments for that year(s);
- Disclose any pending requests to renew, modify, or cancel the APA;
- Identify and correct any materially false, incorrect, or incomplete information submitted during the APA process discovered during that year; and
- Include all other items required by the APA (e.g., compliance with any critical assumptions).¹⁵⁷

Although maintaining sufficient book and records and preparing the APA annual report can require significant effort on the taxpayer's work, it typically requires less effort than annual updates for transfer pricing documentation. Other information that is usually included in the APA annual reports includes statements that fully identify, describe, analyze, and explain: material changes to business operations, accounting methods, classifications, and methods of estimation; changes to the taxpayer's notice

information (i.e., contact person, address, phone number); and changes to entity classifications. The APA annual report must also include an organizational chart reflecting the ownership structure of all relevant entities and a copy of the signed APA contract. Each APA annual report must include a signed penalty of perjury statement affirming that the content of the annual report is correct to the best of the taxpayer's knowledge. The signatory of the penalties of perjury statement must meet the same requirements as those laid out above for signing the APA contract itself.

Taxpayers generally have 90 days after APA is executed to file the first APA annual report, but an alternative date can be agreed to upon request.¹⁵⁸ Depending on the length of the negotiations, multiple APA years (including rollback years) may have passed by the time the APA is executed, and therefore the first annual report may include information spanning multiple years. All future APA annual reports are generally due on the fifteenth day of the twelfth month following the close of the APA year;¹⁵⁹ for example, if a taxpayer's calendar year end is December 31, 2023, the APA annual report for that year will be due on December 15, 2024. The exact due date of the APA annual report is memorialized in the executed APA contract and can be adjusted at APMA's discretion.¹⁶⁰ APMA may grant extensions to submit the annual report upon written request from the taxpayer explaining the circumstances behind needing the extension.¹⁶¹ APMA is currently accepting electronic transmissions of the APA annual report, similar to its rules for APAs and MAPs.¹⁶²

Failure to timely file an annual report that is timely, complete, and accurate may be grounds for cancelling or revoking the APA,¹⁶³ making this step critical in the application of the APA. Once received, APMA reviews the annual report and notifies the taxpayer if they need confirmation on any item in the annual report, or if the annual report is not complete.¹⁶⁴ The taxpayer must provide the requested information by the date

¹⁵⁶ [Rev. Proc. 2015-41](#), §4.06.

¹⁵⁷ See [Rev. Proc. 2015-41](#), §7.02(1).

¹⁵⁸ *Id.*, §7.02(2).

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ *Id.*, §7.02(7).

¹⁶² [Competent Authority Filing Modifications and APMA APA Consultations](#), Internal Revenue Service (May 11, 2020).

¹⁶³ [Rev. Proc. 2015-41](#), §7.02(10).

¹⁶⁴ *Id.*, §7.02(4).

specified in the notice.¹⁶⁵ If the taxpayer realizes any information in the APA annual report was incomplete or incorrect, or there was an incorrect application of the transfer pricing method, the APA annual report must be amended within 45 days.¹⁶⁶

3. APA Primary Adjustments

If the taxpayer's results for a year covered by an APA do not come within the results dictated by the APA contract, the taxpayer will generally be required to make an adjustment to move its results to a point within the agreed range of results.¹⁶⁷ Whereas the Treasury Regulations under IRC [§482](#) ordinarily call for an adjustment to the median in the examination context (although other points within the range can be argued to be more appropriate depending on the facts and circumstances),¹⁶⁸ many APAs call for an adjustment to a nearest edge of the range (i.e., either the upper or lower quartile).¹⁶⁹ Furthermore, many APAs also allow for term tests that permit a primary adjustment to be made in the last year of the APA term if the taxpayer's results for the full APA period are outside of the agreed upon range. The taxpayer should reflect the APA primary adjustment on its timely filed return for the period in question.¹⁷⁰ If the taxpayer is unable to make the adjustments on its original return for the period, the taxpayer must reflect the adjustments on an amended return filed within 120 days of entering into the APA.¹⁷¹ APA primary adjustments are deemed to have been made on the last day of the tax year to which the adjustment applies.

4. Telescoping

Generally, a primary adjustment results in filing an amended income tax return (both federal and state) for the years to which the adjustment relates. This often causes an administrative burden on both the taxpayer and the IRS. Therefore, APMA may allow a taxpayer to put the APA (or MAP) primary adjustment into a tax return for just one year instead of amending all years to which the adjustment may apply. For example, once an APA

is agreed to, multiple APA years may have passed, during which time the taxpayer was relying on the position outlined in its APA request. Depending on the agreement reached by the competent authorities, the taxpayer may have to amend its prior tax returns to comply with the APA. Through telescoping, APMA may allow taxpayers to put the full APA primary adjustment in the return for the most recent fiscal year. The taxpayer benefits by not having to file multiple amended federal and state income tax returns, whereas the IRS avoids paying interest on cash tax for prior tax years (if applicable).

In October 2020, the IRS announced it was updating the parameters that APMA will follow when implementing resolutions it has reached in MAP and APA cases. Specifically, the updates limited "telescoping" of results of these cases into current tax years and taxpayers will generally be required to amend returns for the covered years at issue. The change was enacted to promote compliance with changes brought under the TCJA and will have an impact as the U.S. federal tax rate decreased from 35% to 21% for year beginning on or after January 1, 2018. Therefore, it is important to discuss the possibility of telescoping the adjustment with the U.S. competent authority during the negotiation stage to ensure all stakeholders' views are understood before negotiations are finalized.

5. Conforming Adjustments

APA primary adjustments often create double taxation unless there is a corresponding downward adjustment in the counter-country. [Rev. Proc. 2015-41](#) (as well as the Treasury regulations under IRC [§482](#)) anticipates this issue and provides for a solution to double tax through conforming adjustments (commonly known as secondary adjustments).¹⁷² Note that conforming adjustments only apply to adjustments based on IRC [§482](#) principles, not other issues that may be decided during an APA process (e.g., permanent establishment).¹⁷³ A conforming adjustment may

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*, §7.02(6).

¹⁶⁷ *Id.*, §7.01(1).

¹⁶⁸ See [Treas. Reg. §1.482-1\(e\)\(3\)](#).

¹⁶⁹ See [Treas. Reg. §1.482-1\(e\)\(2\)\(iii\)\(C\)](#) ("the interquartile range is the range from the 25th to the 75th percentile of the results derived from the uncontrolled comparables.").

¹⁷⁰ [Rev. Proc. 2015-41](#), §7.01(1).

¹⁷¹ *Id.*

¹⁷² *Id.*, §7.01(2)(a).

¹⁷³ *Id.*, §7.01(2).

be made, at the taxpayer's election, through one of two options:

- (i) Repatriation: which involves the actual movement of cash from one related party to the other in an amount equal to the primary adjustment;¹⁷⁴ or
- (ii) Deemed Transactions: which take the form of either a deemed distribution or deemed capital contribution, depending on the relationship between the payor and payee.¹⁷⁵

The repatriation of funds is governed by [Rev. Proc. 99-32](#), 199-2 C.B. 296 ("Rev. Proc. 99-32"), unless competent authority repatriation under Rev. Proc. 2015-40 is available.¹⁷⁶ If the taxpayer elects [Rev. Proc. 99-32](#) repatriation, the required payment can be made through an interest-bearing account receivable (when the U.S. entity's profitability was adjusted upwards) or account payment (when the U.S. entity's profitability was adjusted downward) equal to the primary adjustment.¹⁷⁷ The account receivable or account payable shall: (1) be deemed to have been created as of the last day of the taxpayer's taxable year for which the primary adjustment is made; (2) bear interest at an arms' length rate (in accordance with [Treas. Reg. §1.482-2](#)); (3) be expressed in the functional currency through which the controlled transaction was carried out; and (4) be paid within 90 days of the executed APA or treated as an offset.¹⁷⁸

For conforming adjustments made in response to APA primary adjustments, competent authority repatriation may be available in lieu of the interest-bearing repatriation procedures under [Rev. Proc. 99-32](#). The main benefit of competent authority repatriation is that the repatriation can be affected through an interest-free account, but the competent

authorities can agree to other characteristics depending on the circumstances of a particular case.¹⁷⁹ However, in order to gain the benefits of competent authority repatriation, the taxpayer must make an explicit request either in: (1) the APA request itself; or (2) a supplemental written submission before a tentative competent authority resolution is reached.¹⁸⁰

Yet even with the interest-free benefit of competent authority repatriation, repatriation is not always practical (due to cash constraints) or beneficial (depending on the parties' tax attributes) depending on a taxpayer's situation. Therefore, as an alternative, taxpayers may instead elect to treat the conforming adjustment as a deemed transaction under [Treas. Reg. §1.482-1\(g\)\(3\)\(i\)](#), which provides that:

*Appropriate adjustments must be made to conform a taxpayer's accounts to reflect allocations made under section 482. Such adjustments may include the treatment of an allocated amount as a **dividend** or a **capital contribution** (as appropriate), or, in appropriate cases ... repayment of the allocated amount without further income tax consequences.*

The treatment of the deemed transaction as a dividend or capital contribution depends on the relationship between the affiliates and which affiliate's income is being increased by the adjustment. There are three main scenarios that arise. First, if the transaction is between a parent company and its subsidiary, and the adjustment allocates additional income to the parent company, the deemed transaction is treated as a capital contribution from the parent to the subsidiary to explain the subsidiary's excess cash position. There are generally no U.S. tax consequences associated

¹⁷⁴ *Id.*

¹⁷⁵ [Treas. Reg. §1.482-1\(g\)\(3\)\(i\)](#).

¹⁷⁶ [Rev. Proc. 2015-41](#), §7.01(2)(b). Neither [Rev. Proc. 99-32](#) or competent authority repatriation is available unless: (1) the adjustment is made under IRC [§482](#); (2) no penalty under IRC [§6662\(e\)\(1\)\(B\), \(h\)](#) is applied; and (3) the adjustment is not due to fraud. See [Rev. Proc. 2015-41](#), §7.01(2)(b)-(c), citing [Rev. Proc. 99-32](#), §3.01, §3.03. In the context of an APA, these requirements are likely to be met unless the primary adjustment stems from non-transfer pricing issues (e.g., permanent establishments), in which case repatriation is not available regardless. See [Rev. Proc. 2015-41](#), §7.01(2).

¹⁷⁷ [Rev. Proc. 99-32](#), §4.01.

¹⁷⁸ *Id.*, §4.01(1)-(4). For a further discussion of offsets, see Mark R. Martin, Mark J. Horowitz, Thomas D. Bettge, and Lillie Sullivan,

A New Era for Secondary Transfer Pricing Adjustments?, Tax Notes Int'l (Aug. 24, 2020), 1033, 1036 ("Generally, offsets may be claimed for bona fide debts, distributions, and capital contributions that are made in the year when a closing agreement is executed (for IRS-initiated adjustments) or when the taxpayer files a return reporting the adjustment (for taxpayer-initiated adjustments). While an offset may also be available for debts, contributions, and distributions occurring during the tax year for which a taxpayer-initiated adjustment was made, this is the case only when an original, timely return may still be filed for that year, as no untimely or amended return can be used to claim an offset.").

¹⁷⁹ [Rev. Proc. 2015-40](#), §4.02(2)(c).

¹⁸⁰ [Rev. Proc. 2015-41](#), §7.01(2)(c).

with deemed capital contributions.¹⁸¹ Second, if the adjustment instead allocates additional income to the subsidiary, the deemed transaction is treated as a dividend to the extent of the subsidiary's earnings and profit, and will then go to basis recovery.¹⁸² Deemed dividends are generally subject to withholding tax, but may be mitigated under the applicable income tax treaty.¹⁸³ Lastly, if the transaction is between sibling companies with a common parent entity, the conforming adjustment is treated as a deemed dividend from the party receiving the increased income to the common parent, and then a capital contribution from the parent company to the party with an excess cash position. It is also important to remember that the foreign country involved in APA may not have conforming adjustment rules or may have rules that differ from those in the U.S. Therefore, it is important to carefully consider the choice between repatriation or a deemed transaction when determining the appropriate conforming adjustment, including both taxpayer's other tax attributes that may be affected.

6. Examination

A signed APA provides protection against an in-depth transfer pricing examination. The existence of an APA does not prevent an examination per se, but the IRS may still require the taxpayer to establish:

- Compliance with the APA's terms and conditions;
- Validity and accuracy of the APA annual report's material representations;
- Correctness of the supporting data and computations used to apply the transfer pricing method;
- Satisfaction of the critical assumptions; and
- Consistent application of the transfer pricing method.¹⁸⁴

However, the IRS will not reconsider the APA's transfer pricing method.¹⁸⁵ If the examination

determines that any of these elements are not satisfied, the IRS's Service Operating Division must inform the APMA Director. After consultations with the appropriate Service Operating Division personnel, APMA must then determine whether to enforce, revise, cancel, or revoke the APA.¹⁸⁶

Any other audit adjustments not involving the interpretation of the transfer pricing method that affect the determination or computation of the operating results under the APA can be made without affecting the validity of the APA.¹⁸⁷ If agreed by the taxpayer, the corresponding adjustment to the transfer pricing is made through an additional compensating adjustment and treated as a subsequent compensating adjustment. Taxpayers have the right to challenge the proposed adjustments using normal administrative and judicial procedures.¹⁸⁸

As a practical matter, IRS Exam rarely examines, or even questions, transfer pricing established by an existing APA.

7. Recordkeeping

Generally, taxpayers are required to maintain books and records sufficient to establish the correctness of their returns. In the APA context, taxpayers must maintain records sufficient to demonstrate their compliance with the terms and conditions of the APA.¹⁸⁹ As part of APA negotiations, the taxpayer and the IRS may agree to the documents that the taxpayer must maintain to demonstrate compliance. If requested during an examination, the taxpayer must produce the agreed-upon records within 30 days of the request, or as extended for good cause.¹⁹⁰

¹⁸¹ See Martin, supra note 178, at 1040 ("Whether the deemed capital contribution is from a foreign parent to a U.S. subsidiary (in the case of an adjustment increasing the foreign parent's income) or from a U.S. parent to a foreign subsidiary (in the case of an adjustment increasing the U.S. parent's income), there should generally be no significant tax consequences associated with the deemed transaction apart from an increase in the parent's basis in the subsidiary's stock.")

¹⁸² *Id.* at 1041, citing [Rev. Proc. 99-32](#), §2.0.

¹⁸³ *Id.*

¹⁸⁴ See [Rev. Proc. 2015-41](#), §7.03(1)-(2).

¹⁸⁵ *Id.*, §7.03(2).

¹⁸⁶ *Id.*, §7.06(2).

¹⁸⁷ *Id.*, §7.03(2).

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*, §7.04(1).

¹⁹⁰ *Id.*, §7.04(2).

8. Revocation, Cancellation, or Revision of an APA

Fraud, malfeasance, or disregard on the part of the taxpayer involving material facts set forth in the APA request, submissions made during the APA negotiations, or in the annual report, or lack of good faith compliance with the terms or conditions of an APA can lead to IRS revocation of the APA.¹⁹¹ The IRS can revoke the APA retroactively to the first day of the first tax year to which the APA applies.¹⁹² Revocation of the APA exposes the taxpayer to a transfer pricing examination, adjustments and penalties for all open years, and the possibility of a limitation or loss of [Rev. Proc. 99-32](#) relief. In addition, in egregious cases, the IRS may deny the taxpayer foreign tax credits under [Rev. Rul. 80-231](#) and unilateral relief under [Rev. Proc. 2015-40](#).¹⁹³

The IRS may cancel, rather than revoke, the APA due to the taxpayer's misrepresentation, mistake as to a material fact, failure to state a material fact, failure to file a timely annual report, or lack of good faith compliance with the terms and conditions of the APA.¹⁹⁴ Generally, the cancellation will be effective as of the beginning of the year in which the misrepresentation, mistake, failure to state a material fact, or noncompliance occurs.¹⁹⁵ The IRS may waive cancellation if the taxpayer can establish good faith and reasonable cause, and agrees to make the adjustments required by the IRS to correct for the misrepresentation, mistake, failure to state a material fact, or noncompliance.¹⁹⁶ Failure to meet a critical assumption, or changes in a law or treaty that supersedes and conflicts with the APA, may require a revision of the APA.¹⁹⁷ If the IRS and the taxpayer fail to reach an agreement on the revision, the IRS can cancel the APA. If the

revision relates to a bilateral APA, the revised APA is submitted by the U.S. competent authority to the foreign competent authority for its agreement with the revisions.

Cancellations are quite rare; the IRS has cancelled only 11 APAs since the inception of the program,¹⁹⁸ and has not canceled or revoke a unilateral APA since 2011¹⁹⁹ or a bilateral APA since 2008.²⁰⁰

9. Renewal

A taxpayer may request a renewal by following the same procedures that apply to an initial APA request, updating information and highlighting significant changes. [Rev. Proc. 2015-41](#) also provides that taxpayers may choose to file an abbreviated APA request for a renewal, as further discussed in [Section II.C](#).²⁰¹

As long as the functions and risks between the parties remain similar to those in the initial APA, the renewal can be granted relatively quickly with little debate or renegotiation. In 2023, renewal unilateral and bilateral APAs took, on average, 15 and 14 fewer months to conclude, respectively, than new unilateral and bilateral APAs.²⁰² However, the APMA Program may scrutinize an APA renewal request if the taxpayer's results during the term of the original APA consistently fall at the edge of the agreed upon arm's length range. Taxpayers also get the additional benefit of paying a lower user fee for renewal APAs (\$65,900) than original requests (\$121,600).²⁰³ Taxpayers are encouraged to file their requests to renew an APA no later than nine months before the end of the term of the existing APA,²⁰⁴ but APMA will not reject requests for renewals that are made outside this timeframe.

¹⁹¹ *Id.*, §7.06(1).

¹⁹² *Id.*, §7.06(6).

¹⁹³ *Id.*

¹⁹⁴ *Id.*, §7.06(2).

¹⁹⁵ *Id.*, §7.06(7).

¹⁹⁶ *Id.*, §7.06(5).

¹⁹⁷ *Id.*, §7.06(7).

¹⁹⁸ [Announcement and Report Concerning Advance Pricing Agreements \(2023\)](#), Internal Revenue Service (Mar. 26, 2024).

¹⁹⁹ [Announcement and Report Concerning Advance Pricing Agreements \(2011\)](#), Internal Revenue Service (Apr. 2, 2012).

²⁰⁰ [Announcement and Report Concerning Advance Pricing Agreements \(2008\)](#), Internal Revenue Service (Mar. 27, 2009).

²⁰¹ [Rev. Proc. 2015-41](#), §8.01.

²⁰² [Announcement and Report Concerning Advance Pricing Agreements \(2023\)](#), Internal Revenue Service (Mar. 26, 2024).

²⁰³ [Internal Revenue Bulletin 2024-1](#), Appendix A.

²⁰⁴ [Rev. Proc. 2015-41](#), §8.02.

VI. CONCLUSION

In today's global economy, value chains often span numerous countries, making transfer pricing matters increasingly complex with no straightforward solutions. Tax authorities worldwide are intensifying their focus on pricing of intercompany transactions, driven not only by the vast volume of cross-border payments, but also by the inherent ambiguity of transfer pricing, which often leads to disputes. Even when a taxpayer firmly believes its policy (e.g., selection and application of a transfer pricing method) is correct in light of the circumstances, it is not uncommon for tax authorities to disagree with the factual or economic analysis put forth. As we move forward, transfer pricing disputes are likely to proliferate further. However, APAs have proven to be effective tools in preempting disputes and providing certainty on complex issues.

Since 2010, the amount of APAs filed in the U.S. has nearly doubled, proving that APAs are becoming an increasingly attractive option. Over time, APMA has developed strong competent authority relationships with a number of treaty partners, which has furthered the effectiveness of the APA program. Additionally, with increased funding, APMA has been able to hire additional staff (both transfer pricing specialists and economists), which will help to grow the program. Taxpayers looking to avoid lengthy (and costly) exams and gain certainty for prospective years (and potentially all open years via an APA rollback) should strongly consider applying for an APA.

Exhibits

[Exhibit 1: APA Request Content](#)

[Exhibit 2: IRS Template Advance Pricing Agreement](#)

Exhibit 1: APA Request Content

(Per Rev. Proc. 2015-41)

Part 1: Executive Summary	
1.1	Identifying information: List the name, address, and taxpayer identification number(s) of each member of the proposed covered group and the Standard Industrial Classification (“SIC”) and the North American Industry Classification System (“NAICS”) codes (number and code description) of the controlled group as reported on the taxpayer’s most recently filed federal tax returns
1.2	<p>Summary of APA request: Provide an executive summary of the content of the APA request that addresses the following:</p> <p>a. Whether the taxpayer proposes a unilateral APA or a bilateral or multilateral APA, and, if applicable, the U.S. tax treaty(ies) and treaty articles governing the APA request;</p> <p>b. Whether the APA request proposes a renewal of an existing APA or the extension of a competent authority resolution from competent authority or ACAP years into APA years;</p> <p>c. The proposed prospective years and the proposed rollback years;</p> <p>d. The proposed covered issue(s) and an estimated dollar value of such issue(s) in the proposed APA years; and</p> <p>e. The proposed covered method(s), including, as applicable, the proposed tested party(ies), profit level indicator(s), and interquartile range(s)</p>
Part 2: Administrative Information	
2.1	Authorization: List the names of and contact information for all individuals authorized by a Form 2848 to represent the taxpayer in connection with the APA request and all individuals authorized by a Form 8821 to inspect or receive confidential tax information about the taxpayer in connection with the APA request, along with a designation as to which individual will serve as the point of contact for the APA team
2.2	IRS Office: Identify the IRS office having examination jurisdiction over the taxpayer, together with the name of and contact information for the taxpayer’s IRS Examination team manager if the taxpayer is under examination when the APA request is filed
2.3	<p>Filed Years: Provide a table with the following information for each member of the proposed covered group:</p> <p>a. All open filed years in the United States and the relevant treaty country(ies), whether or not such years are currently under examination by the IRS or a foreign tax authority;</p> <p>b. The expiration dates of statutes of limitations for all open filed years in the United States and in the relevant treaty country(ies)</p> <p>c. All open filed years in which a proposed covered issue or a substantially similar issue is under review by IRS Appeals or its equivalent in the relevant treaty country(ies); and</p> <p>d. All open filed years in which an actual or proposed adjustment has been made by either the IRS or a foreign tax authority relating to the proposed covered issue(s) or to substantially similar issues</p>
2.4	Request for SAP Review: If applicable, include a statement that the APA request is intended to serve as a request for SAP review for specified taxable years, pursuant to section 5.02(6) of the revenue procedure
2.5	Optional e-mail memorandum of understanding: At the taxpayer’s option, an executed memorandum of understanding in the form prescribed by APMA (as may be posted on the APMA website or otherwise available by contacting APMA) permitting APMA to communicate with the taxpayer’s authorized representatives through encrypted e-mail

Part 3: Proposed Covered Issue(s)	
3.1	Pre-filing information: Provide the following information:
	a. Whether a mandatory or optional pre-filing memorandum was filed; and
	b. Whether a pre-filing conference was held and, if so, the date of and attendees at the conference
3.2	Rollback: Provide the following information:
	a. If the taxpayer is seeking consideration of a rollback, list the proposed rollback years; and
	b. If the taxpayer is not seeking consideration of a rollback, discuss the reasons as to why a rollback is not appropriate
3.3	Background on proposed covered group: Provide background on the following points, with reference to the covered issue diagrams:
	a. The general history of the business operations of the proposed covered group and of the controlled group;
	b. The worldwide gross revenue of the controlled group in the most recent taxable year available;
	c. The functional currency of each member of the proposed covered group;
	d. For each member of the proposed covered group, any business line(s) that is (are) outside the scope of the proposed covered issue(s); and
	e. The industry in which the proposed covered group operates, including discussion of relevant macroeconomic and other industry-wide factors affecting the proposed covered group, the commercial features of the markets and geographical areas in which the proposed covered group operates, and the participants and competitors in the proposed covered group's industry
3.4	Narrative with reference to proposed covered issues in covered issue diagrams: For each proposed covered issue, provide a detailed discussion of the following, with reference to the covered issue diagrams in Exhibit 11:
	a. The functions performed by each member of the proposed covered group in relation to the proposed covered issue;
	b. The assets employed by each member of the proposed covered group in relation to the proposed covered issue;
	c. The risks assumed by each member of the proposed covered group in relation to the proposed covered issue;
	d. Transactional or commercial flows relating to the proposed covered issue(s) between and among members or business units of the proposed covered group, between members or business units of the proposed covered group and customers and other uncontrolled parties, and between members or business units of the proposed covered group and members or business units of the controlled group outside of the proposed covered group;
	e. Principal intercompany contracts or other agreements, written or otherwise, between and among members of the proposed covered group relating to the proposed covered issue(s); and
	f. Unless the proposed covered method involves a profit split (within the meaning of Treas. Reg. § 1.482-6 or Chapter II of the OECD Guidelines) between two or more members of the proposed covered group, the identity of the member of the controlled group that is proposed to be regarded as the principal in relation to the proposed covered issue, whether or not it is a member of the proposed covered group
3.5	Narrative with reference to non-proposed covered issues in covered issue diagrams: For each issue that is not a proposed covered issue, but is an issue that APMA might reasonably consider in analyzing the proposed covered issues under the principles expressed in section 2.02(4)(a), a discussion of why in the interest of principled, effective, and efficient tax administration such issue need not be a covered issue, and of the extent to which such issue should be considered in the APA process

	Rulings, determinations, and proceedings: Provide information on the following:
3.6	a. Current or expired rulings issued by a relevant foreign tax authority covering intercompany transactions or business activities of members of the proposed covered group that are similar to the proposed covered issue(s);
	b. The terms of any competent authority resolution addressing intercompany transactions or business activities of members of the proposed covered group that are similar to the proposed covered issue(s); and
	c. Any judicial or administrative proceedings in the United States or in the relevant treaty country(ies) to which any members of the proposed covered group are or have been parties involving intercompany transactions or business activities that are similar to the proposed covered issue(s)
3.7	Ancillary issues: List the ancillary issues (if any) proposed to be covered by the APA
Part 4: Proposed Covered Method(s)	
4.1	Selection and application of proposed covered method(s): Discuss the selection of the proposed covered method(s) with reference to the standards governing the selection of the “best method” under Treas. Reg. § 1.482-1(c) and, in the case of bilateral or multilateral APA requests, the selection of the “most appropriate” method under Chapter I of the OECD Guidelines, and how overall that method is applied, including the definition of the tested party(ies)
4.2	Search and screening process: Describe the research and screening process and criteria used to identify and select independent comparable agreements or independent companies or other market data upon which the proposed covered method is based, including the initial search universe, the qualitative and quantitative screens used to accept or reject potential comparable agreements or companies or other market data, the order in which different criteria were applied, the precise specification of each criterion (including for example the precise way in which multiyear averages are used, or in which requirements are applied across multiple years), and the numbers of potential comparable agreements or companies or other market data accepted and rejected at the different stages of the search and screening process
4.3	Application of proposed covered method(s): Provide a detailed explanation of (a) the data and assumptions used and (b) any adjustments made to the selected proposed comparable agreements or results of independent companies or other market data, or to the results of the tested party, such as adjustments relating to: (i) product line segregations, (ii) differences in accounting practices, (iii) differences in functions performed, assets employed, or risks assumed (especially noting working capital or other balance sheet adjustments made to the tested party(ies) or to the comparables and any differences between such adjustments and the adjustments incorporated into the APA template (as may be posted on the APMA website or otherwise available by contacting APMA), (iv) volume or scale differences, or (v) differences in economic or market conditions
4.4	Demonstration of proposed covered method(s): Provide a table summarizing the results of applying the proposed covered method(s) to the relevant members of the proposed covered group for (i) all proposed rollback years, (ii) the most recent three back years, if they are not proposed rollback years (or as many such back years as have data available, if not all have data available), (iii) the first proposed APA year, using actual data if available and otherwise using forecasted data, and (iv) other proposed APA years, using forecasted data, to the extent forecasts are available
4.5	Segmentation of financial results: If the proposed covered method(s) is (are) applied to a subset of the assets, liabilities, income, and expenses in the financial statements (see Exhibit 18), provide a segmentation of the financial statements and describe in detail (i) those items in the segmented financial statements that have been allocated or apportioned to the applicable proposed covered issue(s) and to other issues, and (ii) the method(s) of allocation or apportionment applied
Part 5: Proposed APA Terms and Conditions	
5.1	Review of Proposed APA: Provide a detailed discussion and explanation of the proposed APA terms and conditions as reflected in the draft APA submitted with the APA request (see Exhibit 15), noting, in particular, any proposed APA terms and conditions that differ from the APA terms and conditions as reflected in the model APA (see Exhibit 15)

Exhibit #	Contents
Exhibit 1	Contents of exhibits: Provide a table or similar comprehensive list of the exhibits submitted, indicating the form (printed, electronic, or both) in which they are submitted
Exhibit 2	Authorization form: Include a properly executed Form 2848 (Power of Attorney and Declaration of Representative) for all individuals authorized to represent the taxpayer in connection with the APA request or Form 8821 (Tax Information Authorization) for all individuals authorized to inspect or receive confidential tax information about the taxpayer in connection with the APA request
Exhibit 3	Protective claim: In the case of a bilateral or multilateral APA request, provide a statement affirming whether the APA request is to serve as a protective claim pursuant to section 11 of Rev. Proc. 2015-40 and, if so, include the information required by section 11.02(3) of Rev. Proc. 2015-40
Exhibit 4	Waiver of ex parte communication: If the APA request involves proposed rollback years in which the proposed covered issue(s) or a related issue is unresolved and under consideration by IRS Appeals, include a waiver, modeled on the following language, of the taxpayer's right to be present during communications between IRS Appeals and members of the APA team:
	Waiver of Ex Parte Communication: [Name of taxpayer(s)] agrees to the participation of IRS Appeals in the consideration of this APA request and hereby waives its right to be present during, or to participate in, meetings relating to the APA request or to be a party to discussions concerning the proposed covered issue(s) between IRS Appeals and members of the APA team
Exhibit 5	Consent to disclosure: In the case of a bilateral or multilateral APA request, include a declaration, dated and signed by an authorized officer of the taxpayer having personal knowledge of the facts concerning the proposed covered issue(s), that the taxpayer consents to the disclosure of the contents of the APA request – other than trade secrets, if the taxpayer so requests – to the applicable foreign competent authority(ies) within the limits contained in the U.S. tax treaty(ies) governing the APA request
Exhibit 6	Consents regarding period of limitations: Any executed consents to extend the period of limitations for assessment of tax that are required under section 2.03(3)(a) of the revenue procedure
Exhibit 7	"Penalties of perjury" declaration: Include the following "penalties of perjury" declaration:
	Under penalties of perjury, I declare that I have examined this [APA request] [supplemental submission relating to an APA request], including accompanying documents, and, to the best of my knowledge and belief, the [APA request] [supplemental submission] contains all the relevant facts relating to the [APA request] [supplemental submission], and such facts are true, correct, and complete.
	The declaration must be signed by the taxpayer on whose behalf the request is being made and not by the taxpayer's representative. The person signing for a corporate taxpayer must be an authorized officer of the taxpayer who has personal knowledge of the facts, whose duties are not limited to obtaining letter rulings or determination letters from the IRS or negotiating APAs, and who is authorized to sign the taxpayer's income tax return pursuant to section 6062 of the Code. The person signing for any non-corporate taxpayer must be an individual who has personal knowledge of the facts and who is authorized to sign in accordance with sections 6061 or 6063 of the Code, as applicable
Exhibit 8	User fee receipt: Include a copy of the receipt obtained after paying the required APA user fee (see section 3 of this Appendix)
Exhibit 9	Documents submitted to foreign competent authorities: List all documents or written submissions provided to a foreign tax authority or foreign competent authority in connection with the APA request, either prior to or concurrently with the submission of the APA request to APMA, noting the documents or written submissions for which English translations are available and any documents or written submissions provided to a foreign tax authority or foreign competent authority in connection with the APA request that are not included in the APA request submitted to APMA
Exhibit 10	Pre-filing Submissions: Include any pre-filing memoranda or other materials submitted in connection with the APA request

Exhibit #	Contents
Exhibit 11	Covered issue diagrams: Include diagrams, charts, or similar representations depicting the following information as it relates to the proposed covered issues and any interrelated matters that APMA might reasonably consider in analyzing the proposed covered issues under the principles expressed in section 2.02(4)(a), each presented in a manner similar to and with a degree of detail no less than that presented in the diagrams accompanying the case studies “Alpha” through “Foxtrot” in Joint Committee on Taxation, Present Law and Background Related to Possible Income Shifting and Transfer Pricing (JCX-37-10), July 20, 2010 (available at www.jct.gov ; see also APMA website):
	a. The controlled group’s legal structure, with clear indications as to the members of the proposed covered group;
	b. The controlled group’s tax structure, with clear indications as to, among other items, ownership relationships and tax filing characterizations of members of the proposed covered group under the Code and under applicable rules in the relevant treaty country(ies) (e.g., partnerships, branches, or disregarded entities);
	c. The controlled group’s and proposed covered group’s business units or similar organizational divisions as used for management purposes, together with a table, narrative, or other reconciliation showing the relationship between such business units and the legal entities comprising the controlled and proposed covered groups;
	d. The value chain of the proposed covered group, comprising commercial or transactional flows between and among members or business units of the proposed covered group, between members or business units of the proposed covered group and customers and other uncontrolled parties, and between members or business units of the proposed covered group and any other members or business units of the controlled group outside the proposed covered group; and
e. Organization or management charts identifying executive-level functional or occupational roles within the business units or within members of the proposed covered group that are relevant to the proposed covered issue(s) (e.g., vice president of marketing for transactions involving sales of tangible goods), together with (i) the names of individuals occupying such executive-level functional roles at the time the APA request is filed, and (ii) headcounts for the relevant business units or members of the proposed covered group	
Exhibit 12	APAs: Include a copy of the most recent APA, if any, that the taxpayer or another member of the proposed covered group has entered into with (i) the IRS, and (ii) each involved foreign tax authority, concerning transactions or other business activities within the scope of the proposed covered issue(s)
Exhibit 13	Selection process: Provide a table or similar report on the step-by-step results of applying criteria for selecting comparable agreements or independent comparable companies or other market data, including a table or matrix showing the reason(s) for rejecting agreements or independent companies or other market data (see part 4.2)
Exhibit 14	Information on selected comparables: As applicable, include a detailed discussion of the contractual terms (within the meaning of Treas. Reg. § 1.482-1(d)(3)(ii)) of selected comparable agreements, including the form of consideration charged or paid, and for APA requests in which the proposed covered method(s) involve(s) an application of the comparable profits method (as defined in Treas. Reg. § 1.482-5) or the transactional net margin method (as defined in the OECD Guidelines), include (i) unadjusted income statement data for the most recent five taxable years (or as many years as are available, if fewer than five years are available) and balance sheet data for the most recent six taxable years (or as many years as are available, if fewer than six years are available) of the selected independent comparable companies, and (ii) (if applicable) the application to such financial data of any adjustments pursuant to the proposed covered method(s) (see parts 4.3 and 4.4)
Exhibit 15	Proposed draft APA: Provide a proposed draft APA in a form substantially similar to APMA’s current model APA (as may be posted on the APMA website or otherwise available by contacting APMA), together with a “redline” version of the same showing the differences between the model APA and the proposed draft APA
	Electronic Version Only Required - For CD

Exhibit #	Contents
Exhibit 16	Application of APA template: For APA requests in which the proposed covered method involves an application of the comparable profits method (as defined in Treas. Reg. § 1.482-5) or the transactional net margin method (as defined in the OECD Guidelines), provide income statement data for the most recent five taxable years (or as many years as are available, if fewer than five years are available) and balance sheet data for the most recent six taxable years (or as many years as are available, if fewer than six years are available) for the relevant member(s) of the proposed covered group, using the APA template (as may be posted on the APMA website or otherwise available by contacting APMA)
Exhibit 17	Federal income tax filings: Provide copies of the following federal income tax forms for each of the three most recent filed years of the taxpayer:
	a. Form 1120 or applicable equivalent;
	b. Form 5471 (“Information Return of U.S. Persons With Respect to Certain Foreign Corporations”);
	c. Form 5472 (“Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business”); and
Exhibit 18	Financial statements: Provide copies of financial statements, including full income statements, balance sheets, and cash flow statements (audited, if available, and in English, if available), for each relevant member of the proposed covered group for each of the most recent three back years and specify the accounting standard used (e.g., U.S. GAAP)
Exhibit 19	Section 6662 documentation: Include a copy of the documentation prepared in consideration of section 6662(e) of the Code (and, if applicable, a copy of similar documentation filed with or subject to request by the relevant foreign tax authority(ies)) relating to intercompany transactions or business activities that are within the scope of the proposed covered issue(s) for each relevant member of the proposed covered group for each of the most recent three back years
Exhibit 20	Regulatory filings: Include a copy of the Form 10-K or similar annual SEC filing submitted for U.S. regulatory purposes by the controlled group for each of the most recent three back years
Exhibit 21	APA annual reports: For renewal APA requests, provide all APA annual reports filed with APMA with respect to the current APA
Exhibit 22	Intercompany agreements: Include copies of any written intercompany contracts or agreements between the taxpayer and other members of the proposed covered group that are within the scope of the proposed covered issue(s), with a statement of when each contract or agreement was actually executed, and a summary of any oral intercompany agreements that are material to the proposed covered issues. For proposed APAs relating to intangible development arrangements, these agreements or contracts would include, as applicable, documents forming or revising the intangible development arrangement and documents relating to use under the intangible development arrangement of rights, resources, and capabilities owned by participants or related non-participants.

Exhibit 2: IRS Template Advance Pricing Agreement

ADVANCE PRICING AGREEMENT

between

[Insert Taxpayer's Name]

and

THE INTERNAL REVENUE SERVICE

ADVANCE PRICING AGREEMENT

between

[Insert Taxpayer's Name]

and

THE INTERNAL REVENUE SERVICE

PARTIES

The Parties to this Advance Pricing Agreement (APA) are the Internal Revenue Service (IRS) and [Insert Taxpayer's Name], EIN _____.

RECITALS

[Insert Taxpayer Name] is the common parent of an affiliated group filing consolidated U.S. tax returns (collectively referred to as "Taxpayer") and is entering into this APA on behalf of itself and other members of its consolidated group.

Taxpayer's principal place of business is [City, State]. [Insert general description of Taxpayer and other relevant parties].

This APA contains the Parties' agreement on the best method for determining arm's-length prices of the Covered Transactions under I.R.C. section 482, the Treasury Regulations thereunder, and any applicable tax treaties.

{If renewal, add} [Taxpayer and IRS previously entered into an APA covering taxable years ending ____ to ____, executed on ____.]

AGREEMENT

The Parties agree as follows:

1. *Covered Transactions.* This APA applies to the Covered Transactions, as defined in Appendix A.

2. *Transfer Pricing Method.* Appendix A sets forth the Transfer Pricing Method (TPM) for the Covered Transactions.
3. *Term.* This APA applies to the APA Term, as defined in Appendix A.
4. *Operation.*
 - a. Revenue Procedure 2015-41 governs the interpretation, legal effect, and administration of this APA.
 - b. Nonfactual oral and written representations, within the meaning of sections 6.04 and 6.05 of Revenue Procedure 2015-41 (including any proposals to use particular TPMs), made in conjunction with the APA Request constitute statements made in compromise negotiations within the meaning of Rule 408 of the Federal Rules of Evidence.
5. *Compliance.*
 - a. Taxpayer must report its taxable income in an amount that is consistent with Appendix A and all other requirements of this APA on its timely filed U.S. Return. However, if Taxpayer's timely filed U.S. Return for any taxable year covered by this APA (APA Year) is filed prior to, or no later than 60 days after, the effective date of this APA, then Taxpayer must report its taxable income for that APA Year in an amount that is consistent with Appendix A and all other requirements of this APA either on the original U.S. Return or on an amended U.S. Return filed no later than 120 days after the effective date of this APA, or through such other means as may be specified herein.
 - b. *{Use or edit the following when U.S. Group or Foreign Group contains more than one member.}*
[This APA addresses the arm's-length nature of prices charged or received in the aggregate between Taxpayer and Foreign Participants with respect to the Covered Transactions. Except as explicitly provided, this APA does not address and does not bind the IRS with respect to prices charged or received, or the relative amounts of income or loss realized, by particular legal entities that are members of U.S. Group or that are members of Foreign Group.]
 - c. For each APA Year, if Taxpayer complies with the terms and conditions of this APA, then the IRS will not make or propose any allocation or adjustment under I.R.C. section 482 to the amounts charged in the aggregate between Taxpayer and Foreign Participant[s] with respect to the Covered Transactions.
 - d. If Taxpayer does not comply with the terms and conditions of this APA, then the IRS may:
 - i. enforce the terms and conditions of this APA and make or propose allocations or adjustments under I.R.C. section 482 consistent with this APA;
 - ii. cancel or revoke this APA under section 7.06 of Revenue Procedure 2015-41; or

iii. revise this APA, if the Parties agree.

e. Taxpayer must timely file an Annual Report that includes a signed “penalties of perjury” declaration for each APA Year in accordance with Appendix C and section 7.02 of Revenue Procedure 2015-41. The Annual Report may be submitted only by electronic transmission pursuant to paragraph 15 and must include an image of an original signature or a digital signature that uses encryption techniques to provide proof of original and unmodified documentation. Taxpayer must file the Annual Report for all APA Years through the APA Year ending [insert year] by [insert date]. Taxpayer must file the Annual Report for each subsequent APA Year by [insert month and day] immediately following the close of that APA Year. (If any date falls on a weekend or holiday, the Annual Report shall be due on the next date that is not a weekend or holiday.) The IRS may request additional information reasonably necessary to clarify or complete the Annual Report. Taxpayer will provide such requested information within 30 days. Additional time may be allowed for good cause.

f. The IRS will determine whether Taxpayer has complied with this APA based on Taxpayer’s U.S. Returns, the Financial Statements, and other APA Records, for the APA Term and any other year necessary to verify compliance. For Taxpayer to comply with this APA, *{use the following or an alternative}* an independent certified public accountant must render an opinion that Taxpayer’s Financial Statements present fairly, in all material respects, Taxpayer’s financial position under U.S. GAAP.

g. In accordance with section 7.04 of Revenue Procedure 2015-41, Taxpayer will (1) maintain the APA Records, and (2) make them available to the IRS in connection with an examination under section 7.03. Compliance with this subparagraph constitutes compliance with the record-maintenance provisions of I.R.C. sections 6038A and 6038C for the Covered Transactions for any taxable year during the APA Term.

h. The True Taxable Income within the meaning of Treasury Regulations sections 1.482-1(a)(1) and (i)(9) of a member of an affiliated group filing a U.S. consolidated return will be determined under the I.R.C. section 1502 Treasury Regulations.

i. *{Optional for US Parent Signatories}* To the extent that Taxpayer’s compliance with this APA depends on certain acts of Foreign Group members, Taxpayer will ensure that each Foreign Group member will perform such acts.

6. *Critical Assumptions.* This APA’s critical assumptions, within the meaning of Revenue Procedure 2015-41, section 1.04, appear in Appendix B. If any critical assumption has not been met, then Revenue Procedure 2015-41, section 7.06, governs.

7. *Disclosure.* This APA, and any background information related to this APA or the APA Request, are: (1) considered “return information” under I.R.C. section 6103(b)(2)(C); and (2) not subject to public inspection as a “written determination” under I.R.C. section 6110(b)(1). Section 521(b) of Pub. L. 106-170 provides that the Secretary of the Treasury must prepare a report for public disclosure that includes certain specifically designated information concerning all APAs, including this APA, in a form that does not reveal taxpayers’ identities, trade secrets, and proprietary or confidential business or financial information.

8. *Disputes.* If a dispute arises concerning the interpretation of this APA, the Parties will seek a resolution by the IRS's Director, Treaty and Transfer Pricing Operations, to the extent reasonably practicable, before seeking alternative remedies.

9. *Materiality.* In this APA the terms "material" and "materially" will be interpreted consistently with the definition of "material facts" in Revenue Procedure 2015-41, section 7.06(4).

10. *Section Captions.* This APA's section captions, which appear in *italics*, are for convenience and reference only. The captions do not affect in any way the interpretation or application of this APA.

11. *Terms and Definitions.* Unless otherwise specified, terms in the plural include the singular and vice versa. Appendix D contains definitions for capitalized terms not elsewhere defined in this APA.

12. *Entire Agreement and Severability.* This APA is the complete statement of the Parties' agreement. The Parties will sever, delete, or reform any invalid or unenforceable provision in this APA to approximate the Parties' intent as nearly as possible.

13. *Successor in Interest.* This APA binds, and inures to the benefit of, any successor in interest to Taxpayer.

14. *Notice.* Any notices required by this APA or Revenue Procedure 2015-41 must be in writing. Taxpayer will send notices to the IRS at:

Commissioner, Large Business and International Division
Internal Revenue Service
1111 Constitution Avenue, NW
SE:LB:TTPO:APMA:K:APMA Director
Washington, DC 20224
(Attention: APMA)

The IRS will send notices to the taxpayer at:

Taxpayer Corporation
Attn: Jane Doe, Sr. Vice President (Taxes)
1000 Any Road
Any City, USA 10000
(phone: _____)

15. *Submission by electronic transmission.* The form of electronic document transmittal will be one of the three alternatives described below. Regardless of the transmittal mode, Taxpayer must contact APMA by email at lbi.tpo.apma.feedback@irs.gov to initiate the mode.

a. *Taxpayer-Licensed Secure Portal.* APMA prefers to send and receive documents to/from taxpayers through a taxpayer-licensed secure portal as this provides the highest degree of protection.

b. *Email with encrypted attachments.* When secure portal mode is not selected, Taxpayer may send and receive documents to and from APMA by email. Before employing this document transmittal mode, an APMA employee will authenticate that Taxpayer followed initiation of the mode at the email noted above.

After authentication, Taxpayer must then submit consent to transmit encrypted documents by email in the following form:

"I consent to receive encrypted documents by email from APMA employees for the duration of this APA/MAP request."

c. *Unencrypted email.* Communication by unencrypted email is not secure, and therefore not encouraged. However, if Taxpayer chooses this mode, Taxpayer should:

i. Exclude sensitive information, including portions of Taxpayer's TIN or name, from the subject line and body of emails.

ii. Transmit any potentially sensitive information, including personally identifiable information, only via encrypted, password-protected attachments.

The User Guide at [Sign and Send Documents Electronically | Internal Revenue Service \(irs.gov\)](#) contains additional information about encrypting files and sending documents to IRS by email.

16. *Effective Date and Counterparts.* This APA is effective starting on the date, or later date of the dates, upon which all Parties execute this APA. The Parties may execute this APA in counterparts, with each counterpart constituting an original.

WITNESS,

The Parties have executed this APA on the dates below.

[Taxpayer Name in all caps]

By: _____ Date: _____, 202____
Jane Doe
Sr. Vice President (Taxes)

IRS

By: _____ Date: _____, 202____
John M. Wall
Acting Director, APMA Program

APPENDIX A
COVERED TRANSACTIONS AND TRANSFER PRICING METHOD (TPM)

1. Covered Transactions.

[Define the Covered Transactions.]

2. APA Term.

This APA applies to Taxpayer's taxable years ending _____ through _____ (APA Term).

3. TPM.

{Note: If appropriate, adapt language from the following examples.}

[The Tested Party is _____.]

- **CUP Method**

The TPM is the comparable uncontrolled price (CUP) method. The Arm's Length Range of the price charged for _____ is between _____ and _____ per unit.

- **CUT Method**

The TPM is the CUT Method. The Arm's Length Range of the royalty charged for the license of _____ is between ____% and ____% of [Taxpayer's, Foreign Participants', or other specified party's] Net Sales Revenue. [Insert definition of net sales revenue or other royalty base.]

- **Resale Price Method (RPM)**

The TPM is the resale price method (RPM). The Tested Party's Gross Margin for any APA Year is defined as follows: the Tested Party's gross profit divided by its sales revenue (as those terms are defined in Treasury Regulations sections 1.482-5(d)(1) and (2)) for that APA Year. The Arm's Length Range is between ____% and ____%, and the Median of the Arm's Length Range is ____%.

- **Cost Plus Method**

The TPM is the cost plus method. The Tested Party's Cost Plus Markup is defined as follows for any APA Year: the Tested Party's ratio of gross profit to production costs (as those terms are defined in Treasury Regulations sections 1.482-3(d)(1) and (2)) for that APA Year. The Arm's Length Range is between ____% and ____%, and the Median of the Arm's Length Range is ____%.

- **CPM with Berry Ratio PLI**

The TPM is the comparable profits method (CPM). The profit level indicator is Berry Ratio. The Tested Party's Berry Ratio is defined as follows for any APA Year: the Tested Party's gross profit divided by its operating expenses (as those terms are defined in Treasury Regulations sections 1.482-5(d)(2) and (3)) for that APA Year. The Arm's Length Range is between ___ % and ___ %, and the Median of the Arm's Length Range is ___ %.

- **CPM using an Operating Margin PLI**

The TPM is the comparable profits method (CPM). The profit level indicator is an operating margin. The Tested Party's Operating Margin is defined as follows for any APA Year: the Tested Party's operating profit divided by its sales revenue (as those terms are defined in Treasury Regulations section 1.482-5(d)(1) and (4)) for that APA Year. The Arm's Length Range is between ___ % and ___ %, and the Median of the Arm's Length Range is ___ %.

- **CPM using a Three-year Rolling Average Operating Margin PLI**

The TPM is the comparable profits method (CPM). The profit level indicator is an operating margin. The Tested Party's Three-Year Rolling Average operating margin is defined as follows for any APA Year: the sum of the Tested Party's operating profit (within the meaning of Treasury Regulations section 1.482-5(d)(4) for that APA Year and the two preceding years, divided by the sum of its sales revenue (within the meaning of Treasury Regulations section 1.482-5(d)(1)) for that APA Year and the two preceding years. The Arm's Length Range is between ___ % and ___ %, and the Median of the Arm's Length Range is ___ %.

- **Residual Profit Split Method**

The TPM is the residual profit split method. [*Insert description of routine profit level determinations and residual profit-split mechanism.*]

[*Insert additional provisions as needed.*]

4. Application of TPM.

For any APA Year, if the results of Taxpayer's actual transactions produce a [price per unit, royalty rate for the Covered Transactions] [or] [Gross Margin, Cost Plus Markup, Berry Ratio, Operating Margin, Three-Year Rolling Average Operating Margin for the Tested Party] within the Arm's Length Range, then the amounts reported on Taxpayer's U.S. Return must clearly reflect such results.

For any APA year, if the results of Taxpayer's actual transactions produce a [price per unit, royalty rate] [or] [Gross Margin, Cost Plus Markup, Berry Ratio, Operating Margin, Three-Year Rolling Average Operating Margin for the Tested Party] outside the Arm's Length Range, then amounts reported on Taxpayer's U.S. Return must clearly reflect an adjustment that brings the [price per unit, royalty rate] [or] [Tested Party's Gross Margin, Cost Plus Markup, Berry Ratio, Operating Margin, Three-Year Rolling Average Operating Margin] to the Median.

For purposes of this Appendix A, the "results of Taxpayer's actual transactions" means the results reflected in Taxpayer's and Tested Party's books and records as computed under U.S. GAAP [*insert another relevant accounting standard if applicable*], with the following adjustments:

(a) [The fair value of stock-based compensation as disclosed in the Tested Party's audited financial statements shall be treated as an operating expense]; and

(b) To the extent that the results in any prior APA Year are relevant (for example, to compute a multi-year average), such results shall be adjusted to reflect the amount of any adjustment made for that prior APA Year under this Appendix A.

5. Conforming Adjustments.

If Taxpayer makes an adjustment under paragraph 4 of this Appendix A (an “APA primary adjustment”, see Revenue Procedure 2015-41, section 7.01(1)), a conforming adjustment will be required as specified in Revenue Procedure 2015-41, section 7.01(2)(a). For this purpose, if there are multiple APA primary adjustments for an APA Year, those adjustments will first be netted to derive a net APA primary adjustment, for which a conforming adjustment will be required. In some cases, the conforming adjustment can be accomplished by a repatriation of funds as specified in Revenue Procedure 2015-41, section 7.01(2). Except as specified in this APA, conforming adjustments (including any repatriation of funds) are governed by the applicable rules under the I.R.C., including Rev. Proc. 99-32, 1992-2 C.B. 296, or successor guidance.

[Per Revenue Procedure 2015-41, section 7.01(2)(d), the APA “will specify the terms of conforming adjustments, including, but not limited to, the terms of any repatriation of funds.” Also, any deviation from the treatment under the Code (e.g., no interest on repatriation payments) must be specified in the APA, and must be pursuant to a competent authority resolution (see Revenue Procedure 2015-41, section 7.01(2)(b)).]

APPENDIX B
CRITICAL ASSUMPTIONS

This APA's critical assumptions are:

1. The business activities, functions performed, risks assumed, assets employed, and financial and tax accounting methods and classifications [and methods of estimation] of Taxpayer in relation to the Covered Transactions will remain materially the same as described or used in Taxpayer's APA Request. A mere change in business results will not be a material change.

[Insert additional provisions as needed.]

APPENDIX C
APA RECORDS AND ANNUAL REPORT

APA RECORDS

The APA Records will consist of all documents listed below for inclusion in the Annual Report, as well as all documents, notes, work papers, records, or other writings that support the information provided in such documents.

ANNUAL REPORT

The Annual Report (and each copy required by paragraph 5(e) of this APA) will include:

1. A properly completed APA Annual Report Summary in the form of Appendix E to this APA.
2. A table of contents, organized as follows:
3. Statements that fully identify, describe, analyze, and explain:
 - a. All material differences between the U.S. Group's business operations (including functions, risks assumed, markets, contractual terms, economic conditions, property, services, and assets employed) during the APA Year from the business operations described in the APA Request. If there have been no material differences, the Annual Report will include a statement to that effect.
 - b. All material differences between the U.S. Group's accounting methods and classifications, and methods of estimation used during the APA Year, from those described or used in the APA Request. If any change was made to conform to changes in U.S. GAAP (or other relevant accounting standards) Taxpayer will specifically identify the change. If there has been no material change in accounting methods and classifications or methods of estimation, the Annual Report will include a statement to that effect.
 - c. Any change to the Taxpayer notice information in paragraph 14 of this APA.
 - d. Any failure to meet any critical assumption. If there has been no failure, the Annual Report will include a statement to that effect.

- e. Whether or not material information submitted while the APA Request was pending is discovered to be false, incorrect, or incomplete.

- f. Any change to any entity classification for federal income tax purposes (including any change that causes an entity to be disregarded for federal income tax purposes) of any Worldwide Group member that is a party to the Covered Transactions or is otherwise relevant to the TPM.

- g. The following regarding any APA primary adjustments made under Appendix A for the APA Year:
 - i. The amounts of any APA primary adjustments;

 - ii. The circumstances that led to such APA primary adjustments being necessary;

 - iii. A calculation of the net APA primary adjustment as defined in Appendix A;

 - iv. A complete description of the means by which the conforming adjustment (see Appendix A) is accomplished, including:
 - A. a description of any accounts payable established in connection with a repatriation of funds pursuant to paragraph 5 of Appendix A and section 7.01(2) of Revenue Procedure 2015-41, including the entities involved and when the payables are established;

 - B. a description of any amounts paid or deemed paid (including amounts paid in satisfaction of such accounts payable), that specifies the entities involved, when the amounts are paid or deemed paid, and by what means any amounts are actually paid;

 - C. the character (such as capital, ordinary, income, expense, dividend, contribution to capital) and country source of any payments and deemed payments, and the specific affected line item(s) of any affected U.S. Return.

h. The amounts, description, reason for, and financial analysis of any book-tax difference relevant to the TPM for the APA Year, as reflected on Schedule M-1 or Schedule M-3 of the U.S. Return for the APA Year.

i. Whether Taxpayer contemplates requesting, or has requested, to renew, modify, or cancel the APA.

4. The Financial Statements, and any necessary account detail to show compliance with the TPM, including consolidating financial statements, segmented financial data, records from the general ledger, or similar information if the assets, liabilities, income, or expenses relevant to showing compliance with the TPM are a subset of the assets, liabilities, income, or expenses presented in the Financial Statements.

5. *{Use the following or the alternative prescribed by paragraph 5(f) of this APA:}* A copy of the independent certified public accountant's opinion required by paragraph 5(f) of this APA.

6. A financial analysis that reflects Taxpayer's TPM calculations for the APA Year. The calculations must reconcile with and reference the information required under item 4 above in sufficient account detail to allow the IRS to determine whether Taxpayer has complied with the TPM.

7. An organizational chart for the Worldwide Group, revised annually to reflect all ownership or structural changes of entities that are parties to the Covered Transactions or are otherwise relevant to the TPM.

8. A copy of the APA and any amendment.

9. A penalty of perjury statement, executed in accordance with Revenue Procedure 2015-41, section 7.02(8) and (9).

APPENDIX D
DEFINITIONS

The following definitions control for all purposes of this APA. The definitions appear alphabetically below:

Term	Definition
Annual Report	An APA annual report within the meaning of Revenue Procedure 2015-41, sections 1.04 and 7.02.
APA	This Advance Pricing Agreement, which is an "advance pricing agreement" within the meaning of Revenue Procedure 2015-41.
APA Records	The records specified in Appendix C.
APA Request	Taxpayer's request for this APA dated _____, including any amendments or supplemental or additional information thereto.
APA Year	This term is defined in paragraph 5(a) of this APA.
Covered Transaction(s)	This term is defined in Appendix A.
Financial Statements	Financial statements prepared in accordance with U.S. GAAP and stated in U.S. dollars.
Foreign Group	Worldwide Group members that are not U.S. persons.
Foreign Participants	[name the foreign entities involved in Covered Transactions].
I.R.C.	The Internal Revenue Code of 1986, 26 U.S.C., as amended.
Pub. L. 106-170	The Ticket to Work and Work Incentives Improvement Act of 1999.
Revenue Procedure 2015-41	Rev. Proc. 2015-41, 2015-35 IRB 263.
Transfer Pricing Method (TPM)	A transfer pricing method within the meaning of Treasury Regulations section 1.482-1(b).
U.S. GAAP	U.S. generally accepted accounting principles.
U.S. Group	Worldwide Group members that are U.S. persons.
U.S. Return	For each taxable year, the "returns with respect to income taxes under subtitle A" that Taxpayer must "make" in accordance with I.R.C. section 6012. {Or substitute for partnership: For each taxable year, the "return" that Taxpayer must "make" in accordance with I.R.C. section 6031.}
Worldwide Group	Taxpayer and all organizations, trades, businesses, entities, or branches (whether or not incorporated, organized in the United States, or affiliated) owned or controlled directly or indirectly by the same interests.

APPENDIX E
APA ANNUAL REPORT SUMMARY FORM

The APA Annual Report Summary on the next page is a required APA Record. The APA Team Leader supplies some of the information requested on the form. Taxpayer is to supply the remaining information requested by the form and submit the form as part of its Annual Report.

Internal Revenue Service	APMA Case No.	
Large Business and International Division	Reviewer	
Treaty & Transfer Pricing Operations	Team Leader	
Advance Pricing Mutual Agreement Program	Economist	
	Other APA Team Members	

APA Information

U.S. Taxpayer's Name	
U.S. Taxpayer's EIN	
U.S. Taxpayer's NAICS	
Unilateral/Bilateral/Multilateral	
Original or Renewal	
APA Common Name, if any	
APA Request Filing Date	
Date APA Executed	
APA Term (date-to-date, inclusive)	
Foreign Countr(y)ies Involved	
Annual Report Due Dates for years ending on or before [date]:	
Annual Report Due Dates for other years: [last month of tax year] 15 following close of year	
Covered Methods Summary Description	
(e.g., CPM, operating margin 2%-5%)	
Taxpayer's Principal Representative	

APA Annual Report Information:

Year(s) covered by this Annual Report		
Issues for APMA's special attention (or "None")		
Taxpayer Notice Person	Name	
<i>If necessary, include a current Form 2848 for the Notice Person</i>	Title	
	Address	
	City/State/Zip	
	Phone/Fax	
	Email	
Current Representative, if any	Name	
<i>Include a current Form 2848 for the representative</i>	Title	
	Address	
	City/State/Zip	
	Phone/Fax	
	Email	

Date Annual Report Filed (to be filled in by APMA):

About Grant Thornton LLP

Grant Thornton LLP is one of America's largest providers of audit and assurance, tax and advisory services – and the U.S. member firm of the Grant Thornton International Ltd global network.

About KPMG LLP

KPMG LLP is the U.S. firm of the KPMG global organization of independent professional services firms providing Audit, Tax and Advisory services. We trace our origin back to 1897 and since 1994 have been a limited liability partnership registered in the state of Delaware.

About Bloomberg Tax & Accounting

Bloomberg Tax & Accounting provides practitioner-driven research and technology solutions that deliver timely, strategic insights to enable smarter decisions. From our unparalleled Tax Management Portfolios to technology designed to streamline the most complex planning and compliance scenarios, we deliver essential news and analysis, practical perspectives, and software that help tax and accounting professionals around the globe mitigate risk and maximize business results.

For more information:

Call **800.372.1033**, contact your local Bloomberg Tax & Accounting representative, or visit pro.bloombergtax.com

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