

IRAS SUPPLEMENTARY CIRCULAR

SUPPLEMENTARY ADMINISTRATIVE GUIDANCE ON ADVANCE PRICING ARRANGEMENTS



INLAND REVENUE
AUTHORITY
OF SINGAPORE

Published by
Inland Revenue Authority of Singapore

Published on 20 October 2008

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INTRODUCTION

Section 6 of the IRAS circular on “Transfer Pricing Guidelines” (“main circular”), issued on 23rd February 2006, provides guidance on the application of an Advance Pricing Arrangement (“APA”) with respect to transfer pricing. In this regard, an APA can be a unilateral arrangement which involves only a taxpayer and IRAS; or a bilateral or multilateral one which involves agreement between Singapore and one or more of its tax treaty partners.

2 This IRAS supplementary circular:

- (a) provides further considerations and procedures which an APA applicant should observe to facilitate firstly, the acceptance by IRAS of an APA application and secondly, the discussion and agreement by or among the competent authorities concerned;
- (b) addresses the circumstances under which IRAS may consider to allow an APA applicant’s request for the APA to apply to “roll back” years;
- (c) sets out the circumstances which warrant IRAS discontinuing with the APA process initiated for a taxpayer’s case.

CONSIDERATIONS FOR FACILITATING ACCEPTANCE AND DISCUSSION OF AN APA APPLICATION

3 The APA process is a voluntary process that is initiated by a taxpayer. The initiation of the APA process however does not suspend any examination or enforcement process that may be conducted by IRAS.

4 When initiating the APA process, the taxpayer would have recognized the advantages of seeking an APA with one or more competent authorities. It is therefore in the interest of the taxpayer to take steps to prepare well for the APA process.

5 While an APA provides many advantages, the taxpayer should not underestimate the obligations and efforts required on his part to support and see to fruition the APA process, which may prove a highly time consuming and costly exercise not only for him but also the competent authorities concerned.

6 When embarking on an APA, the taxpayer must therefore be ready to fully cooperate with the competent authorities concerned to support their consideration of the APA application. This requires, amongst other things, the taxpayer’s readiness to dedicate sufficient resources throughout the APA process to provide swift, accurate, good quality analysis of the issues that arise or may arise, as well as responses and clarifications to queries raised by the competent authorities in the process.

7 Besides dedicated resources, the taxpayer should also take appropriate active steps starting from the commencement of the APA preparation to maximize

the likelihood of acceptance, productive discussion and agreement by and/or among the competent authorities concerned. IRAS however observes that a taxpayer who avails the APA facility might not always fully appreciate the extent of resources and efforts required of him to bring this about.

8 It is critical that a taxpayer contemplating to avail the APA facility fully understands the obligations and efforts required on his part in this regard. Based on IRAS' experience in processing APA applications, particularly those involving agreement with another competent authority, a taxpayer in such circumstances should observe certain requisites and procedures if he wishes to enhance the chances of a successful APA process. The requisites and procedures which the taxpayer should observe in order to support the APA process well are explained further below.

Pre-filing of APA – Procedures

9 An APA determines in advance, an appropriate set of criteria to ascertain the transfer prices of specified related party transactions over a specified period of time ("proposed covered period"). Ideally, if a taxpayer wishes to apply for an APA for a proposed covered period, he should submit the APA application no later than 6 months before the first day of the proposed covered period. For example, if the proposed APA covered period relates to 5 years from 1 September 2009 to 31 August 2014, the taxpayer should strive to submit the APA application no later than 1 March 2009.

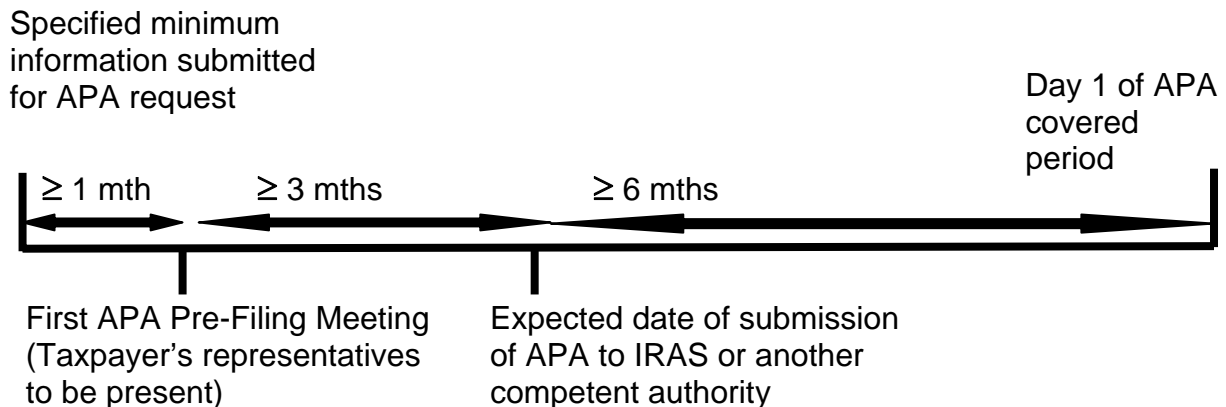
10 The taxpayer should also contact IRAS early prior to the submission of the APA application to initiate a pre-filing meeting to discuss the proposed APA application. The first pre-filing meeting with IRAS should preferably take place at least 3 months before the date the taxpayer intends to submit an APA application with IRAS and/or another competent authority. This is to allow sufficient time for IRAS to consider information provided by, or seek further details from, the taxpayer relevant to determining the feasibility of the APA application, and for the taxpayer to prepare and respond to any additional information required. Using the example in paragraph 9, the first pre-filing meeting should therefore take place no later than 1 December 2008. As it is not uncommon that more than one pre-filing meeting between IRAS and the taxpayer may be necessary, the taxpayer should provide adequate lead time for the first and subsequent pre-filing meetings as appropriate, taking into account the potential complexities surrounding the transactions covered by the APA.

11 To facilitate constructive discussion during the first pre-filing meeting, the taxpayer should provide certain minimum information to IRAS pertaining to the proposed APA at least 1 month before the meeting. Annex A lists the minimum information required by IRAS for purposes of the first pre-filing meeting.

12 The first pre-filing meeting is intended for the taxpayer to discuss face-to-face with IRAS the material aspects of the taxpayer's proposed APA application. Accordingly, IRAS requires representatives of the taxpayer who have a good depth of business knowledge and processes in relation to the APA covered transactions

and/or oversight responsibilities of the taxpayer's tax matters to participate in the first pre-filing meeting and where applicable, any subsequent pre-filing meetings upon request. At such meetings, and in fact for such applications, it is usual that the taxpayer also requests his tax agent to attend the pre-filing meeting(s) with him.

13 Graphically, the timing of the various preparatory activities up to the formal APA submission is as follows:



14 During the first pre-filing meeting, IRAS will typically request clarification or additional information to help it assess the proposed APA application. IRAS will also provide preliminary comments, including the next steps to be undertaken to progress the APA process. The first pre-filing meeting should help IRAS and the taxpayer identify critical and relevant areas of focus, and where additional information, documentation and analysis is required.

15 IRAS has on several instances received requests from tax agents representing their clients for meetings to discuss APAs contemplated by the clients on an anonymous basis. IRAS does not encourage such requests although it is prepared to meet up on this basis if there are sound reasons to do so. However, the taxpayer or tax agent concerned should recognize that the lack of critical information is likely to place severe limitations, and possibly even the validity, of any views that IRAS provides during the meeting on a proposed APA. Such meetings also do not constitute pre-filing meetings for APA applications. The taxpayer is therefore strongly advised to engage IRAS without masking his identity if he is serious about applying for an APA.

Formal APA submission – Procedures

16 Where IRAS agrees during a pre-filing meeting that the appropriate next step is for the taxpayer to submit an APA application by a specified date, which should not be less than 6 months before the first day of the proposed APA covered period, the taxpayer should take active steps to submit the APA application no later than the specified date unless otherwise extended by IRAS.

17 For bilateral and multilateral APAs, the taxpayer should submit his APA application at the same time to both IRAS and the competent authorities of the relevant foreign tax jurisdictions in all cases. Where the APA submission deadline of

the relevant foreign tax jurisdiction is earlier than 6 months before the first day of proposed APA covered period, the taxpayer should submit his APA application concurrently to IRAS and the foreign tax jurisdiction by the same earlier date. If the taxpayer fails to do so, the APA application may be rejected by IRAS.

18 The APA application submitted by the taxpayer should include all the key information components listed in paragraph 6.6.2.1 of the main circular, as further elaborated in Annex A of this supplementary circular. The taxpayer should also provide at least 3 bound hardcopies of the APA submission and a softcopy of the APA submission. Filing a complete and comprehensive APA submission is instrumental in speeding up the APA review and negotiation process.

APA review and negotiation – Considerations and Requirements

19 Upon receipt of the APA application from the taxpayer, IRAS will evaluate further the contents of the application and may seek further clarification from the taxpayer if necessary.

20 IRAS will inform the taxpayer within 1 month of the receipt of his APA application the acceptance or otherwise of the APA application. In the case of bilateral or multilateral APAs, IRAS will proceed to contact the competent authorities of the relevant foreign tax jurisdiction(s) to initiate the APA review and negotiation process if IRAS has accepted the APA application. If IRAS were to decide to decline an APA application, it would offer the taxpayer a full explanation of the grounds for declining the request.

21 The acceptance of an APA application is at the discretion of IRAS and/or other competent authorities concerned. Nonetheless, if the taxpayer has complied with the requisites and procedures pertaining to pre-filing and submission of APA application mentioned in the preceding paragraphs and IRAS has not expressed major reservation on the appropriateness of the APA application during pre-filing discussions, IRAS is unlikely to decline the APA application.

22 A taxpayer who makes an APA application should note that acceptance of an APA application does not necessarily mean that the proposed transfer pricing methodology and other variables, e.g., arm's length range, etc. put forth in the APA application will be accepted in its entirety. IRAS reserves the right to propose alternative methodologies, whether on its own, or in consultation with its treaty partner (in a bilateral or multilateral APA). IRAS may also request for a restriction or expansion to the scope of the proposed APA subsequent to the formal submission of the APA application.

23 In the course of the APA review and negotiation process, IRAS often finds it necessary to request for additional information, including different levels of segmental information relating to the APA covered transactions if not already earlier provided. The taxpayer's full cooperation and proactive support in providing the requisite information is critical to the success of the APA process. While IRAS is committed to do its best to expedite the APA review and negotiation process, the time taken by the taxpayer to respond to further information and clarification

requested by IRAS is also critical in determining the pace of progress of the APA review and negotiation process. The taxpayer concerned should take proactive steps to engage and share with IRAS on a timely basis any new facts or information which are likely to affect the outcome of the APA process.

24 In the case of bilateral or multilateral APAs, the taxpayer and/or other covered entities of the APA may also be required to submit additional information in response to queries raised by the competent authorities of foreign tax jurisdictions concerned. The taxpayer should inform IRAS when such queries are received from the relevant foreign competent authorities, and any information submitted to the relevant foreign competent authorities should be simultaneously submitted to IRAS. IRAS should also be updated on a timely basis on the discussions of any meetings that the taxpayer and/or other covered entities of the APA may hold with the relevant foreign competent authorities.

25 IRAS, on its part, will also keep the taxpayer regularly updated on the outcome of the APA review and negotiation process.

APA “ROLL BACK”

26 The taxpayer may, in some instances, request for an APA for a covered period to apply to certain prior years (commonly referred to as “roll-back” years).

27 IRAS will consider the taxpayer’s request to apply the APA to “roll-back” years only for bilateral and multilateral APAs based on the merits of the request, provided that there have been no significant changes to facts and circumstances during the “roll-back” period such that the transfer pricing methodology remains relevant to those earlier periods. Relevant documents should also be maintained to substantiate the above facts. Generally, an acceptable “roll-back” period should not exceed 2 years prior to the proposed APA covered period.

28 IRAS will not consider requests for the APA to apply “roll-back” years in the case of unilateral APAs.

DISCONTINUATION OF APA PROCESS

29 IRAS could not stress more that the success of the APA process, a highly time and resource-consuming process for IRAS, requires the taxpayer to consistently demonstrate full cooperation and active support efforts throughout the entire process. IRAS also expects the taxpayer to act in good faith with IRAS throughout the APA process and be forthcoming in providing complete and reliable information relating to the APA application, including any communication the taxpayer may have with, or any information provided to, the relevant foreign competent authorities concerned. Where these elements seem to be absent or not forthcoming during any part of the APA process, IRAS may consider discontinuing with the APA.

30 The paragraphs below provide examples of the circumstances which warrant IRAS discontinuing with the APA process initiated for a taxpayer's case and the approach taken by IRAS under such circumstances.

Non-submission of APA application after expiry of specified timeframe

31 Where IRAS and the taxpayer have agreed during a pre-filing meeting that the appropriate next step is for the taxpayer to submit an APA application, IRAS expects the taxpayer to take active steps to submit the APA application no later than the agreed specified date, unless otherwise extended by IRAS. If the taxpayer does not submit the APA application by the specified date, IRAS is entitled to consider the taxpayer as no longer interested in pursuing the APA application.

32 As a rule of thumb, IRAS will consider a taxpayer as no longer interested in pursuing an APA application if IRAS does not receive further information from the taxpayer regarding the APA application within 6 months from the date of the last pre-filing meeting.

Insufficient level of support efforts during the APA process

33 During the APA review and negotiation process, IRAS will likely need to request for additional information and other support from the taxpayer. IRAS expects full cooperation and proactive support efforts from the taxpayer in making available to IRAS on a timely basis accurate, good quality information and analysis in response to information requests.

34 In this regard, IRAS will seek to agree with the taxpayer on the expected timeframe by which the taxpayer should submit the additional information requested by IRAS. If the taxpayer fails to respond to information requests by the agreed specified timeframe and the information requested remains outstanding for an extended period of time, IRAS will consider the taxpayer as having withdrawn from the APA process.

35 As a rule of thumb, IRAS will consider the APA process as having been discontinued if the taxpayer fails to provide requisite information within 3 months after the agreed expected timeframe by which the information is due to be received.

Absence of communication of complete information

36 Evaluation of the APA application is carried out based on the specific facts and information furnished to IRAS in the APA application. Hence, any relevant and material facts or information arising subsequently that may affect the outcome of the APA should be provided to IRAS on a timely basis. For instance, in a bilateral or multilateral APA, the taxpayer and/or other covered entities of the APA may communicate with the relevant foreign competent authorities concerned, or have provided them with additional information in response to their queries. Such information is likely to affect the outcome of discussions between the competent authorities. Hence, IRAS requires the taxpayer to update IRAS on the details of all such communications with the relevant foreign competent authorities concerned on a

timely basis. IRAS reserves the right to discontinue the APA process if it is subsequently found that material information that could have affected the outcome of the APA have not been made known to us.

37 In any of the situations mentioned above, if the taxpayer were to subsequently express a wish to resume the APA process or seek discussion of the same APA application, IRAS will consider the timelines for pre-filing and formal application will apply on a fresh basis as if it were a new APA application subject to acceptance by IRAS. IRAS may take into account its prior experience in assessing the acceptability of the new APA application. IRAS may or may not accept the new APA application. If IRAS were to accept the new APA application, IRAS will process and prioritise it as such in relation to other cases that IRAS may already be processing. In this regard, unilateral, bilateral and multilateral APA applications will be treated in the same manner.

EFFECTIVE DATE

38 The administrative guidance provided in this supplementary circular shall apply to APA requests made on or after 20 October 2008. Taxpayers that have difficulty applying the administrative guidance for a proposed APA covered period on or before 20 October 2009 may contact IRAS, and such requests will be considered on a case-by-case basis.

ENQUIRIES

39 If you wish to seek clarification on this supplementary circular or discuss your transfer pricing issues with IRAS, please direct your request to:

International Tax Branch
Tax Policy and International Tax Division
Inland Revenue Authority of Singapore
55 Newton Road, Revenue House
Singapore 307987

Fax: 65 6351 2131
Email: international_tax@iras.gov.sg

Minimal information required by IRAS for pre-filing meeting and formal APA application

- the taxpayer's name, address, tax identification number and contact details;
- a letter of authorization to his tax agents or other representatives engaged to act for him for purposes of the APA application;
- whether the proposed APA is a unilateral, bilateral or multilateral APA;
- the covered transactions and how they relate to the overall business activities of the entities involved;
- the covered entities and a detailed organization chart;
- the covered period, including any roll-back period;
- an overview of the functions undertaken, assets employed and risks assumed by the covered entities during the proposed APA period;
- an analysis of how the functions undertaken, assets employed and risks assumed by the covered entities have changed compared to the period prior to the commencement of the proposed APA;
- the proposed transfer pricing methodology and the reasons for its selection;
- the transfer pricing analysis, including the following items (where applicable):
 - (a) the choice of tested party,
 - (b) the profit level indicator,
 - (c) the screening criteria for comparables and database(s) used (optional*),
 - (d) the adjustments needed (optional*), and
 - (e) the arm's length result (optional*); and
- the critical assumptions under which the proposed APA will operate.

* option is applicable only for pre-filing meeting