

GUIDANCE ON APA PROCESS

1. Advance Pricing Arrangement

Advance Pricing Arrangement (hereinafter referred as ‘APA’) is an arrangement made between the taxpayer and the tax authority, providing transfer pricing issues for intra-group of companies’ transactions for a certain period in advance with appropriate methodologies, terms, as well as conditions.

2. Objective of APA

To avoid any potential disputes, or problems of double taxation caused by transfer pricing re-assessment, the taxpayer may apply for Bilateral APA in order to

- ensure APA is consistent with the Revenue Code
- avoid, and eliminate, double taxation according to Double Tax Agreements (DTAs) signed between Thailand and other jurisdictions.
- prevent tax avoidance and evasion
- enhance knowledge and understanding between the taxpayer and the tax authority.
- indicate certain tax liabilities

3. Filing APA application

A company or juristic partnership incorporated under Thai law, who enters into intra-group transactions with affiliates who are residents of Thailand’s treaty partners, may submit a written document of intent (APA proposal) directly to the Director-General of the Revenue Department. In this case, only Bilateral APA will be accepted.

If necessary, taxpayers may provide foreign languages’ translators, or specialists in relation to APA.

4. APA period

APA generally becomes effective between 3 to 5 accounting periods.

Notably, the last day of the first accounting period must be within or after the date of the submission of APA application.

5. Process of APA application

5.1 Pre-filing Meeting

(1) Objective of Pre-filing Meeting

- to discuss the reason for APA application
- to submit important Pre-filing documents according to 5.3 (1)-(6)
- to discuss about related documents attached to APA application
- to indicate the date of APA application
- to minimize the time taken for process of consideration

(2) Pre-filing Meeting Application

Taxpayer who wishes to apply for APA must submit a written document of intent (Pre-filing Meeting) to the Director-General of the Revenue Department at least 6 months prior to the last day of the first accounting period that APA aims to become effective. Taxpayer must submit important Pre-filing documents according to 5.3 (1)-(6) 15 days prior to Pre-filing Meeting. In case of reasonable cause, however, late submission may be taken into consideration.

Example:

If a taxpayer wishes to apply APA for accounting period ending 31 December 2010-2012, Pre-filing Meeting application must be submitted before 30 June 2010.

It should be noted that Pre-filing Meeting is not legal binding for all APA parties.

5.2 APA Application

In order to apply APA, taxpayers shall submit a written document of intent according to the form set out by the Revenue Department, as well as other required documents according to 5.3 to the Director-General of the Revenue Department prior to or within the last day of the first accounting period of APA submission.

Five copies of all related documents shall be submitted in both languages, i.e. Thai and English. One soft file is also required, e.g. CD rom.

Example:

If a corporate taxpayer, having accounting period starting 1 January to 31 December, intends to apply APA for accounting period ending 31 December 2010-2012, APA application should be submitted before or within 31 December 2010.

5.3 Preparation of Required Documents and Evidences for APA Application

Required documentations attached to APA application are as follows:

1. Name and address of taxpayer seeking APA. Accounting period of the entity and the transaction seeking APA.
2. Structure and relationship of the related parties. Types of business of the related parties and its shareholders.
3. Details of business revenue account showing all transactions. The types of transaction undertaken among related parties including their Pricing Policy and details explanation of the reason for choosing such Policy.
4. Detailed analysis of assets and risks of all transactions
5. Detailed analysis of the structure of industries and their market share.
6. Transfer Pricing Methodology (TPM) chosen for APA and the reason for choosing such TPM.
7. Benchmarking study of comparables.
8. Critical Assumptions.

Because the arm's length price/range proposed by the taxpayer is a process of using past transactions to forecast of future business profit, important aspects (ie. shift of competition in the market, and change of business structure or accounting practice) can lead to cancellation or revocation of APA.

9. History and status of audits. Investigation report of any Transfer Pricing transaction within the past 5 accounting periods.
10. Any other relevant documents, if any, for example: accounting standard of related parties, or governmental regulation that may influence Transfer Pricing.
11. Other documents requested by the Revenue Department.

5.4 APA Application Approval Notice

The Revenue Department shall notify the taxpayer of the result of the APA application within 3 months of the application of APA and documents according to 5.3

6. Taxpayer's Cooperation During APA Process

During the APA process the Revenue Department needs to consider the documents according to 5.3 as well as other related information. Taxpayers are required to give full cooperation to the Revenue Department, e.g. supplying additional information within a reasonable time, or attending meetings with the Revenue Department officials, during the period of APA process.

Any documents related to APA, which taxpayers provide to foreign tax authorities, shall also be required to provide to the Revenue Department within 7 working days starting from the date documentation have been delivered to the foreign tax authority.

7. Withdrawal of APA Application

Taxpayer may withdraw APA application by submitting a written letter to the Director-General before the day APA becomes effective.

8. Announcement of APA Conclusion

After the conclusion of APA between the Revenue Department and the foreign tax authority was made, the Revenue Department shall inform the taxpayer with a written notice.

The notice generally provides:

- 1) Details of the taxpayer's information, i.e. name, address.
- 2) Details of APA's terms and conditions
 - a. Covered Transaction
 - b. Transfer Pricing Methodology
 - c. APA Period
 - d. Arm's Length Price/Range
 - e. Critical Assumptions
 - f. Time frame for submitting APA Annual Report
- 3) Other details, if any

9. Termination of APA

Termination of APA is stated under the written notice. Nevertheless, in certain cases, the Revenue Department has the right to cancel, or revoke, APA before its termination, for example:

- 1) the taxpayer gave incorrect or insufficient information.
- 2) the taxpayer do not comply with regulation, process, and condition of APA.
- 3) the taxpayer refuse to cooperate with the Revenue Department.
- 4) the taxpayer, or the Revenue Department, ask for amendment, cancellation, or withdrawal of APA.

- 5) any event that changes, or effects, the condition or assumption stated under APA.
- 6) any amendment of domestic laws and international agreements that are relevant to APA.

In this regard, the Revenue Department shall notify the taxpayer with a written letter in advance, allowing taxpayers to submit additional information, or the objection, within the time period before the cancellation or revocation of APA is considered.

**Note : This document is a translation of the original Thai language guidance.
The Thai original is the official text.**