



The suitability of traditional APAs in the current scenario

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- A compliance instrument for tax certainty, transparency and cooperation.
- Critical assumptions must be made about conditions affecting the future transaction.
- Divergence of these conditions beyond an agreed level may require revision or cancellation of the APA.
- Pricing of all or specific transactions with related parties as well as entity characterisation.
- Valid over a fixed period with possibility of agreement for prior years.
- May be Unilateral, Bilateral or Multilateral.
- APA process based on fact-intensive analysis with compliance reports to be filed.



- Improves quality of earnings by eliminating need for reserves
- Achieves current and future certainty over multiple years
- Through “rollback” procedures, can resolve ongoing disputes
- Eliminates double taxation
- Frames characterization of entity and transaction
- Establishes “soft precedent” for non-covered jurisdictions and transactions
- Reduces future audit defense and documentation costs
- Mitigates impact of BEPS and anti-avoidance measures

- Global value chain shrinking.
- Changing transfer pricing models – business restructuring and exit charge.
- Contract reviews.
- Challenge in obtaining real time comparable - multiple year data may not provide the right results.
- Abnormal profits / losses.
- COVID related charges and their acceptability.
- APAs - Withdrawal, Revisions, Renegotiations or Cancellation.

- Group entities are compensated based on their characterisation as high, low or nil risk entities.
- Functionally low-risk entities would not bear risks related to the financial crisis and hence could not be loss making.
- MNEs would want to revisit and reanalyse the risk-profiling for entities receiving fixed returns in light of COVID-19.
- This will lead to change in the transfer pricing policy of the group and may alter the critical assumptions that may have been agreed to conclude an APA.
- Consequently, APAs may have to be renegotiated.

- Renewal of APA if no significant impact by COVID-19.
- If any TP implication (change in functional profile), assessee to provide relevant details to authority.
- Authority will review the case and if significant uncertainties are involved, it may put the case on hold or terminate the APA.
- If any breach of critical assumptions, assessee to notify and explain the same to the authority.
- Authority may decide the best course of action including suspending or modifying the APA for the impacted period.

- Similar to other jurisdictions, failure of a Critical Assumption can result in cancellation or re-negotiation and amendment of an APA.
 - Both Taxpayers and the Internal Revenue Service (IRS) may assert that a Critical Assumption has failed.
- Losses or financial hardship alone usually does not cause a Critical Assumption to fail. Rather, there usually needs to be a ***material change*** in the business or its functions, assets or risks.
- In May 2020, the IRS issued informal guidance indicating that the IRS is actively considering special transfer pricing issues arising in connection with the COVID-19 crisis impacting the 2020 tax year.
- The IRS Advance Pricing and Mutual Agreement Program (APMA) is discussing these issues with treaty partners and will accept questions and meeting requests from taxpayers.
- APMA may consider requests to amend or terminate an APA including 2020 early on a case-by-case basis, but in many cases may prefer a “wait-and-see” approach.

- If critical assumption breached, authority may renegotiate, suspend or modify APA.
- For on-going APA negotiations, may want to withdraw or hold negotiations till greater level of certainty on the impact of COVID-19.
- For bilateral APAs, consultation with corresponding jurisdictions.

Thank you.



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