

Advance pricing agreements

Removing uncertainty from
transfer pricing

What is an APA?

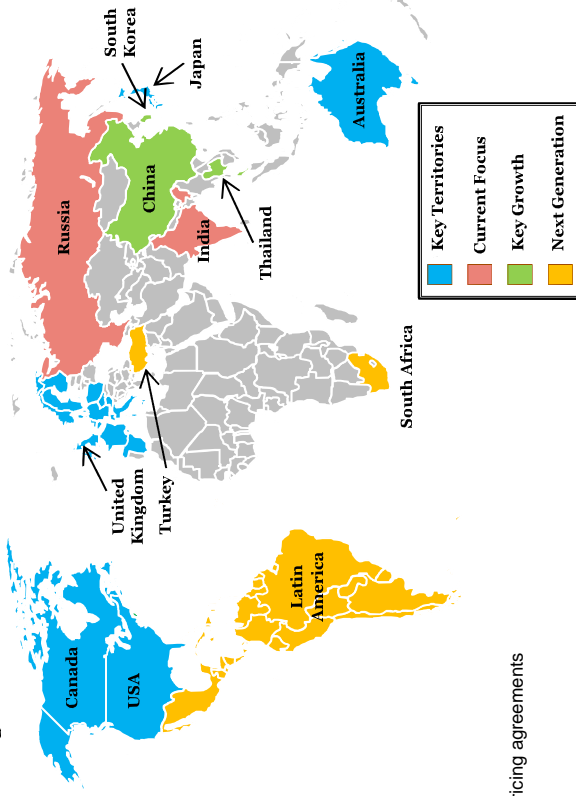
An Advance Pricing Agreement (APA) is a prospective agreement between a taxpayer and a tax authority on the appropriate transfer pricing methodology and price for particular transactions over a fixed period of time, usually for up to five years. APAs can be unilateral, involving only one territory, bilateral involving two tax authorities, or multilateral where more than two tax authorities are involved.

APAs are designed to help taxpayers resolve actual or potential transfer pricing disputes in a proactive, cooperative manner, as an alternative to the traditional audit or enquiry process. Although styled as 'advance' agreements, APAs may also help resolve transfer pricing issues pending from prior years and provide an effective means for resolving existing transfer pricing disputes.

An APA can also provide certainty and facilitate the financial reporting of potential tax liabilities, and may also reduce or eliminate the incidence of double taxation, and the costs associated with both audit defence and documentation preparation.

Where can you get an APA?

The map below shows key countries with APA programmes, as well as locations for future growth in APAs.



When should you consider an APA?

APAs are now well established as a mainstream tool to gain certainty on your transfer pricing policies. APAs:

- Can reduce or eliminate the risk of the same profits being taxed twice by different tax authorities
- Can avoid costly and resource-intensive transfer pricing audits
- Should reduce future compliance costs
- Can resolve tax audits for past years where a 'roll-back' of the APA is available.

APAs are particularly useful as part of a wider tax engagement strategy if:

- There are major changes in the business or changes in the existing transfer pricing policy are being considered
- A transfer pricing audit is expected either in the UK or elsewhere
- Gaining tax authority support for your pricing is important
- You are seeking to improve the relationship with a tax authority
- You are seeking a 'bespoke' solution to your transfer pricing.

In the UK, H.M. Revenue & Customs (HMRC):

- Has had a dedicated APA programme in place since 2000
- Is a strong advocate of APAs as a means of reducing disputes at Competent Authority level under the Mutual Agreement Procedure
- Has increased the resources it has to negotiate APAs
- Is extending the coverage of its APA Programme to new areas (e.g. insurance).

In the UK...

What is the process?

- The process is initiated by the taxpayer, after considering which type of APA would be most appropriate
- There would usually be at least one **Expression of Interest** (or Pre-Filing) meeting with HMRC. At these meetings the taxpayer should establish what information will be required in the **Application**
- The tax payer would then compile the **Application** and send this to HMRC
- In a **unilateral** case, HMRC may take up to nine months evaluating the Application, followed by negotiations over the terms and detail of the APA
- A **bilateral** case starts similarly, leading to preliminary discussions on the Application between the tax authorities
- Such discussions usually highlight areas of possible contention and so will prompt further rounds of information gathering and discussions with the taxpayer – **Negotiation With Taxpayer**
- That will be followed by a period of exchanges between the tax authorities (**Negotiation Between Tax Authorities**) leading to a final negotiation meeting

How long will it take?

APAs in the UK are usually completed in the following stages:



Why should you use PwC?

In the UK, PwC:

- Has advised on APAs since they became available
- Is recognised as the market leader in the UK
- Has the strongest team of APA advisors in the UK (see 'Our specialists')
- For bilateral and multilateral APAs we draw on all the strengths and experience of the world's leading Transfer Pricing Network, as well as our Global Tax Dispute Resolution Network
- Globally, PwC is frequently consulted by tax authorities on implementation of APA programmes including India, Russia, Vietnam and Hong Kong.

PwC has consistently innovated in the use and capabilities of APAs. For instance, in the UK, PwC advised or are advising on:

- The first Pan-European multilateral APA
- The first APA involving a recent EU Accession country
- The first APA involving transactions with an African country
- The first APA involving transactions with a Latin American country
- The first bilateral APAs with South Korea and with Singapore
- The first APA in Private Equity
- The first APA in Reinsurance
- The first bilateral APAs with India.

Our specialists

PwC employs a leading team of specialists providing APA services:



Diane Hay

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From 2004 to December 2008 Diane was the Deputy Director at HMRC with responsibility for international corporate tax issues, including transfer pricing. Diane was the UK's Competent Authority with responsibility for the Mutual Agreement Procedure and APAs. She was also the first Chair of HMRC's Transfer Pricing Group, which sets the strategic direction for all UK transfer pricing enquiries.

Our specialists



Annie Devoy

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Annie has, throughout her career, focused on international tax and transfer pricing and spent 2 years in the firm's New York based international tax group. Annie has been fully dedicated to transfer pricing for over 15 years and now leads the UK firm's transfer pricing practice. Annie works with major global operations across a range of industries, including significant work within the financial services, technology, consumer and wider services sector. Annie has negotiated APAs across a wide range of transactions and countries including Japan and Korea.



Ian Wood

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Prior to joining PwC in May 2012, Ian served as HMRC's Co-ordinator for the UK's APA programme. Ian built the UK's programme from a fledgling operation handling a few APA cases to one that now concludes 30-40 cases a year, with a bilateral coverage of around 20 countries. Ian has experience of how other tax authorities approach Competent Authority negotiations in the transfer pricing area, as well as detailed knowledge of and often hands-on involvement in most of the APAs that HMRC has concluded.



Victoria Horrocks

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Victoria Horrocks has over 25 years of corporate tax experience and has specialised full-time in transfer pricing for over 15 years. Prior to joining PwC in 1999, Victoria spent 12 years at HM Revenue & Customs where she began her career in transfer pricing. Victoria specialises in resolving tax audit disputes. She has negotiated a number of APAs and Advance Thin Capitalisation Agreements for clients across a number of different industry sectors and has experience in Mutual Agreement Procedure cases involving the UK, European countries, the US and Japan.

Frequently asked questions on APAs

How do you prepare for an APA?

Prepare a robust transfer pricing policy aligned with commercial substance, have intercompany contracts which properly capture the business substance and the transfer pricing policy, and execute and adhere to the transfer pricing policy with strong documentary evidence. If the business or the transfer pricing methodology is changing, an APA (and which type of APA is most suitable) should be considered when the new strategy is being finalised, not some time after.

What happens if the company changes its mind or the business facts and circumstances change during the course of an APA?

If the taxpayer wishes to reconsider filing for an APA because its circumstances have changed, the taxpayer may withdraw the APA request at any time before final agreement is reached. Alternatively, with the agreement of both tax authorities in a bilateral situation, the taxpayer may file an amended APA application. Where an APA has been concluded, the Critical Assumptions clause in the agreement may allow for amendments of the terms to be considered in the event that any of those assumptions are breached.

What is the formal and practical position on the rollback of an APA?

Both formally and practically HMRC is happy to consider rollbacks. In the UK, the APA legislation does not restrict the period for a rollback. Many tax authorities, including the UK, see rollbacks as a useful way of resolving transfer pricing disputes that have been running for some time and which have become entrenched. However, not all tax authorities have the same flexibility as HMRC in this area, so in a bilateral context the scope for roll-back of the APA outcome may be limited by the other tax authority's laws.

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